DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

Madison School District

----and ----

MERC Case No. D11 B-0103

Madison Education Association,
MEA/NEA

FACT FINDING REPORT

Appearances

Fact Finder: Donald R. Burkholder, Ph.D.

For the Employer: William Albertson

For the Association: Calvin Mott

Date of Report: November 9, 2011

The Madison School District (the employer or the district) and the Madison Education Association/MEA/NEA (the association) have been engaged in bargaining to reach a successor agreement for their contract which expired August 31, 2009. The unit is composed of approximately 80 teachers and other unit members. Several bargaining sessions have occurred as well as five (5) mediation sessions. Although approximately seven (7) issues remain unresolved, compensation has been the largest single obstacle to agreement.

The association petitioned for fact finding on March 18, 2011. The petition listed the following unresolved issues:

Salary
Insurance
Language on evaluation
Lack of steps on salary schedule
Longevity pay

The union petition asserted that "The District has continued to give the Association the same proposal and worse as time goes by. The District has money. The District is now practicing regressive bargaining."

The district's answer to the association's petition included additional issues, as follows:

The work day at the district's alternative high school
Staff meeting language
Class size language
Transfer language
Layoff language
Academic freedom language

Further, the district took issue with the union assertion that it has money, i.e., "The District does not have any fund equity and will operate at a deficit next year…The Association proposes substantial increases in wages and benefits and insists on retaining other language that restricts the District's flexibility."

The crux of the dispute centers on the employer's position, i.e., a 12 per cent, or $750,000 reduction in salaries and benefits is necessary to comply with the district's legal, fiduciary, and practical mandate, i.e., to avoid a negative fund balance. The district asserts that the association has refused to consider a 12 per cent reduction, not proposed "a single dollar in decreases, and is also asking step increases." With one per cent (1 %)

on the salary schedule equaling $57,965, a twelve per cent (12%) salary reduction equals approximately $695,580. The cost of step increases if put in place for next year would be in the range of $186,000, or three per cent (3%).

The District characterizes its financial condition as "dire." In fact, the condition of the national and state economies are dire. The Michigan legislature and its governor have reacted to this circumstance with recently approved and immediately effective statutes limiting bargainable subjects, thus drastically altering the status quo. One such area of dispute, e.g., concerns professional behavior and just cause.

The employer asserted in its Post-Hearing Position Statement that "...these two parties fully understand each other's proposals, as well as the necessary ramifications ....The parties' true disagreement is not as to the objective facts but, rather, as to **which** of the facts are important and must or should be reflected in the fact finder's report and, ultimately, in the collective bargaining agreement." This is an accurate summary of the situation as this report and accompanying recommendations are being formulated. The employer also stated a preference for current language or the status quo on language regarding professional behavior in its August 15th post hearing position statement and during the hearing. It notes that "...the current language contains no language requiring that just cause is necessary in order to discipline or discharge a teacher." The association argued for insertion of a just cause clause. The employer noted that Public Act 103, effective July 19, 2011, requires that a tenured teacher may be discharged or demoted only for a reason that is not arbitrary and capricious, thus eliminating negotiation of a just cause requirement. I note that Public Acts 100 – 103 of 2011, inclusive contain restrictions on, or prohibited subjects, of bargaining, for public school employees.

The context in which any dispute takes place must be known and acknowledged in order to establish any reasonably realistic chance for agreement, and for a fact-finder to offer sensible recommendations. The nature of 'new' or recently enacted legislation directly impacting fact finding in public education and general local government, as well as the unpredictable manner in which these statutes may be implemented, are concerns which must be taken into account, or at least acknowledged. The 'new' statutes, particularly those dealing with education, include provisions for appointment of an emergency financial manager; increasing the percentage of the cost of health insurance required of the employee by capping the employer portion; freezing wages and benefits; establishing additional significant limitations on collective bargaining between a public school employer and a bargaining representative of its employees; 'reforming' the teacher tenure process, i.e. by changing the reasonable and just cause standard for teacher removal to a "...reason that is not arbitrary and capricious." Legislation revising the School Code, Act451 of 1976, and effective September 1, 2011, calls for "... implement(ing) for all teachers and school administrators a rigorous, transparent, and fair performance evaluation system..."

The major changes in present and past practice envisioned/required by the 'new' legislation are almost certain to breed legal challenges, delaying resolution and likely necessitating substantial expenses. Especially in view of these uncertainties, I emphasize that the recommendations of this fact finder are just that, recommendations, formulated in an environment akin to tap dancing on ice, with the intent that they will be useful in moving the parties toward resolution. In view of these major changes in the law, and the

resultant additional vagaries, the usefulness and the value of comparability is substantially reduced, but has been considered.

A selective summary of highlights of four recently enacted Michigan Statutes including the aforementioned local government and fiscal responsibility act, relating to public sector employees and the dates they become effective, with particular reference to employees in public education, is as follows:

> Public Act 54 of 2011, effective June 8, 2011, freezes wages and benefit levels, including wage step increases, upon the expiration of a collective bargaining agreement; shifts any increased cost of maintaining "health, dental, vision, prescription or other insurance benefits" to employees, also authorizing increased payroll deductions to fund sueh increases; forbidding parties to agree to or an arbitration panel to order retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration of the collective bargaining agreement. If a collective bargaining agreement expired before June 8, 2011, wages and benefits are limited to amounts in effect on that date.
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> Public Act 152 of 2011 establishes limits on the amounts that a public employer may pay for health care benefits (including but not limited to hospital and physician services, prescription drugs and related benefits") or be subjeet to sanctions. Beginning with benefit year commeneing January 1, 2012, annual limitations are either a "hard cap" or an 80/20 provision, requiring that the employer contribution may be no more than 80% of its total expenditure for employee health benefits. The hard cap is $5,500 single; $11,000 individual and spouse; and $15,000 family.
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> Public Act 4 of 2011, effective March 16, 2011 The "local government and school district fiscal responsibility act," provides a detailed process to ascertain fiscal responsibility, and to appoint a local government emergency financial manager for general local governments and school districts.
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> Publie Aet 100 of 2011, effective July 19, 2011 – A tenured teacher may be discharged or demoted only for a reason that is not arbitrary and capricious (previously only for reasonable and just eause); probationary period is extended to the first five full school years unless a teacher is rated highly effective on three consecutive year-end evaluations (previous probationary period first four full school years).

The guidelines utilized by a number of Michigan fact finders, including myself, are found in Section 9 of Public Act 312. The law and rules pertaining to fact-finding provide no criteria that must be used in determining recommendations. Section 9 standards, required to be followed by arbitrators involving public employers in negotiations with police and fire unions, include several subsections adapted to fact finding.

Section 9 contains the eight factors the arbitration panel must consider as applicable as follows:

(a) The lawful authority of the employer.
(b) Stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
  (i) In public employment in comparable communities.
  (ii) In private employment in comparable communities.
(e) The average consumer price for goods and services, commonly known as cost of living.
(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(g) Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.
(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 9 includes (paraphrased) consideration of the financial ability of the unit of government to meet the proposed costs, comparables, and changes in circumstances during the pendency of the hearing, which is interpreted to mean until the decision is issued. It is not required that each element receive equal weight; indeed consideration of the ability to pay criteria is the most crucial factor to be dealt with, according to the training 312 arbitrators including this fact finder have received and recently enacted legislation. Taking note that the employer's unreserved general fund balance at the end of each budget year is generally considered the most useful measure of overall financial health, and recognizing that other factors are likely to come into play, the number of students present on final count day is the single most basic factor in determining the amount of state aid and the district's financial viability during the upcoming year. With

these factors in mind, and based on a 'common sense' approach to the matters at hand, I asked to be notified of the official count of students when the count was finalized. The Employer reported that the fourth Wednesday (October 5, 2011) count for the 2011-2012 school year was 1,350, noting that the District's student count as projected at the June 30 fact finding hearing was 1,352. The per student foundation grant was $6,846, compared with the $7,416 per student funding for 2010 – 11. Thus the district had a loss of approximately $600 per student. And the continual trend in the decrease of students is not abated.

The employer has made a good-faith and significant effort to reduce spending, adjusting the 2010-2011 budget by sharing food service management, thus 'saving' $40,000l; attracting and enrolling non-resident students; reducing the compensation of custodians by five per cent (5%); and by adjusting the millage rate, Nevertheless, an enrollment drop of 27.79 students less than the previous year meant a loss of approximately $220,000. The employer asserts that 74% of ever dollar spent by the district is directed to wage and benefit costs and the remaining 26% is virtually composed of non-discretionary fixed costs, thus giving the district only one alternative, i.e., to seek significant real dollar reductions and employee wage and benefit costs.

The comparables utilized by the association but not accepted by the Employer (Brandon, Holly, Huron Valley, Pontiac, and South Lyon) indicate that Madison School District's salaries and benefits are approximately in the middle of the grouping. One glaring exception to the 'middle' category is the number of Madison teachers, approximately 80, when compared not only with the comparables but with all Oakland County school districts. By this measure Madison is by far the smallest district in

Oakland County. This is a significant factor in understanding the association's assertion of the higher than average percentage of expenditures devoted to administrative salaries. (Source: "Teacher Salaries and Health Care Benefits in Oakland County Public School Districts," a survey published in the Oakland Press, Sunday, June 13, 2010. It did not include the South Lyon District, one of the comparables.)

The Employer's unreserved general fund balance at the end of each budget year is and has for a number of years been substantially below the 10 to 15 percent flexible standard suggested by an association of public school finance officers, as well as the approximately 10 percent suggested by a national organization of local general government finance officers. Indeed, a former Michigan Education Association official has acknowledged the validity of the general 10 to 15 per cent standard for a district's unreserved general fund balance. Madison's general fund surplus percent of total revenue was .79 for 2008 – 2009, and 3.02 for 2009 – 2010, as indicated in association exhibit 6. Among the comparables, only the Pontiac school district, with approximately 400 teachers, had lower general fund surplus percent of total revenue, minus 10.8 per cent in 2008-09, and minus 15.64 per cent for 2009-10.

The finance authorities of the professional organizations recognize, as does this fact finder, that application of the suggested measure of 10 to 15 percent unreserved general fund balance is subject to the unpredictable variations in a governmental unit's specific situation. Nevertheless, the .79 and 3.02 percent figures noted above and Madison's $430,515 fund balance for 2010 are far below the approximate and flexible 10 to 15 percent standard, which would be indicative of a financially viable organization. The recent past and current status of the district's unreserved general fund balance

support the district's assertion of dire financial circumstances. The State School Aid Act of 1979 prohibits a deficit budget or operating budget, and provides for monitoring of districts falling into deficit. Michigan Public Act 4 of 2011, the local government and school district financial responsibility act, spells out a process to provide for appointment of an emergency manager.

Employees in the private sector today are faced with the reality of taking reductions in order to remain employed, that is, if they remain employed. The same problem now manifests itself generally, nationwide, in the public sector as tax revenues drop in a weak economy. The association asserts accurately that its members already have experienced some losses. Along with other public education employees, they will be subject to more of the same given the nature of the recent legislation. Election results in a number of states in the November 8th elections indicate a strong possibility that the divisiveness and high emotion will continue indefinitely, with a Michigan Education Association campaign successfully recalling a state legislator who initiated statutes limiting collective bargaining and tenure for teachers. Additionally, in Ohio, voters yesterday approved a referendum to throw out recent legislation severely limiting the bargaining rights of public employees.

As professionals, teachers have invested heavily in higher education. They are deserving of the recognition that comes with realistic recognition of their services. It is sad that society seems in some ways to value its professional athletes and actors more than those who spend their days attempting to stimulate and teach young minds. However, that is a personal observation, a commentary on society's priorities. It does not alter reality, the combination of 'facts' set forth here. As a former public school teacher,

although of limited duration, it is not difficult to understand the predicament of Michigan's public school educators.

The situation today is that the long-standing basis of public employee collective bargaining in Michigan has been drastically altered, limiting or eliminating long-standing practices. The district notes that teachers enjoyed robust increases in the past, whether the tide was rising or lowering. As a district representative commented at the hearing, we can respect the past but we can't live in it. As stated by an employer advocate, "We are no longer in the environment of local millages...the legislature determines..." The district lists its options if it does not obtain significant relief as 1) reduce programs and services; 2) reduce staff; and 3) engage in deficit spending. The association asserts accurately that its members have historically worked with the district to moderate its financial problems, and that they have not been compensated at a par with the association-selected comparables. That is the here-and-now. It is also reality that Madison is a relatively small district in terms of numbers of teachers, and provides a differing perspective on the association assertion that too much of the financial resources are devoted to non-teaching employees, management, etc. The bottom line is that neither party is likely to take kindly to a situation where the contract is defined or altered either by a mandate imposed by the State or by a State imposed emergency financial manager. In the bargaining subsequent to these recommendations, any tentative agreements should be dealt with as issues that have been decided with the understanding, of course, that they are still bargainable by mutual agreement. Nevertheless, the fact that any tentative agreement on any item in dispute has been achieved obviously facilitates movement to agreement, which is the goal.

SALARY, HEALTH INSURANCE, STEPS

The primary item in dispute is salary. There has been considerable negotiation and probably movement on health insurance. With an inevitable reduction in salary, some increase in employee contribution to health insurance would probably result in a tax advantage. Health insurance coverage should be maximized under the new cap 80-20 cap, with employees bargaining to increase their contribution. Removing the required steps, which is proposed by the employer, would provide some relief, approximately $186,000 for the coming year. It should also reduce the extent of the inevitable and substantial salary reduction, ideally considerably less than twelve per cent. Freezing longevity as the district suggests should also be part of this package. Painful though this recommendation may be, I wish the parties well in fashioning a more acceptable course of action.

TEACHER EVALUATION

Language should be negotiated within the parameters of the recently enacted teacher evaluation legislation. Any further specificity would be meaningless.

CLASS SIZE

Association language is preferable for the primary purpose of effective teaching. Given the reduced number of students overall, it would appear to be suitable.

REDUCTIONS IN PERSONNEL

The district proposal, which would make reduction possible because of 'curriculum changes' is preferable under the circumstances, and at any rate probably could be claimed as a management right under the new legislation.

TRANSFERS/ASSIGNMENT OF TEACHERS

The district proposal is preferable if modified to exclude the deletion of language regarding re-assignment priority for involuntary transfers. Although this may limit management rights to some extent, it does provide a degree of fairness for an involuntarily removed teacher.

PROFESSIONAL BEHAVIOR

The district-proposed current contract language is recommended because it is not in conflict with new legislation as discussed above.

OTHER LANGUAGE ISSUES

Current language.

The parties were thoroughly, competently, and professionally represented. The Fact Finder appreciates the courtesy and helpfulness of those present in clarifying a number of matters, and the cooperation of the advocates.

Note: Although I recognize that both parties will be displeased with these recommendations, it is clear that drastically changed circumstances require that both will need to 'bite the bullet.'

Respectfully submitted,

Donald R. Burkholder 11/9/2011
Fact Finder