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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

TRAVERSE BAY AREA
INTERMEDIATE SCHOOL DISTRICT

-and-

MERC CASE NO. L13 D-0495

MICHIGAN EDUCATION ASSOCIATION

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

UNION: FILLIPE S. IORIO, ATTORNEY
EMPLOYER: KEVIN S. HARTY, ATTORNEY

PETITION

DATA: PETITION FILED: JUNE 13, 2013
 HEARING DATE: NOVEMBER 19, 1013
 RECOMMENDATION DATE: JANUARY 20, 2014

FACT FINDER RECOMMENDATION:

Wages:

2013-14: The Employer Proposal is Recommended.
2014-15: The Union Proposal is Recommended.
2015-16: The Employer Proposal is Recommended.

Health Insurance:

- (1) The Union Proposal on Contribution Smoothing Is Not Recommended.
- (2) The Union Proposal to categorize an Employee and Dependent Child as a Family is Recommended.
- (3) The Union Proposal to adjust the Hard Cap on January 1st rather than on the Health Insurance Plan Year Is Not Recommended.

School Calendar:

The Union Proposal is Recommended.

Payroll Deduction:

The Union Proposal is Recommended.

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INTRODUCTION

The Michigan Education Association (Union/MEA) and the Traverse Bay Area Intermediate School District (TBA-ISD/Employer) were parties to a Collective Bargaining Agreement (CBA) which expired on June 30, 2013.

The Union filed a Petition for Fact Finding on June 13, 2013. The Petition identified the following issues in dispute:

- | | |
|-------------|---|
| “Article I | Recognition Clause (a reaffirmation that all certified staff are within the unit) |
| Article IV | School Calendar |
| Article VI | Payroll Deduction |
| Article VII | Absence from Duty |
| Article XII | Professional Employees’ Salary and Related Matters (Health Insurance, including aggregate, employee + child=2P) |
| Article XII | Professional Employees’ Salary and Related Matters (Wages)” |

The issue relative to Article I has been withdrawn by the Union. The Absence from Duty issue

has been resolved.

A Fact Finding Hearing was held on November 19, 2013. At the conclusion of the Hearing, the respective Advocates elected to file Post-Hearing Briefs which have been received and considered. I have given careful consideration to all of the evidence and arguments submitted by the Parties, even though the Opinion herein may not specifically reference each and every one of the above.

BACKGROUND

The TBA-ISD covers five counties – Kalkaska, Grand Traverse, Benzie, Leelanau and Antrim – in northwestern Michigan. Testimony received at the Hearing indicates the Bargaining Unit (B/U) numbers 238 Full-time Equivalent (FTE) Positions. The B/U consists of a variety of professional employees, including many who are certified by the Michigan Department of Education. The B/U employees provide services associated with Special Education – 213 FTE positions – and Vocational Education – 25 FTE positions. The B/U employees work in a variety of locations and some are Itinerant Staff who travel to various locations.

The TBA-ISD has two Funds – Special Education and Vocational Education – which provide most of the monies to support the services provided by the B/U staff. The Fund Balances for the two Funds are displayed:

	<u>Special Ed.</u>	<u>Vocational Ed.</u>
June 30, 2009	\$11,382,484	\$3,816,156
June 30, 2010	\$13,513,685	\$4,448,567
June 30, 2011	\$13,888,359	\$4,989,214
June 30, 2012	\$16,533,340	\$5,453,552
*June 30, 2013	\$17,547,854	\$5,297,231
*June 30, 2014	\$15,743,427	\$4,460,303
*June 30, 2015	\$13,017,095	\$3,638,833
*June 30, 2016	\$ 9,360,302	\$2,816,685

(*Projected)

The projected amounts are Employer estimates and incorporate wage and benefit increases offered to this B/U and paid to other TBA-ISD employees. The Employer notes that according to its estimate the Special Education Fund Balance, as a percentage of Special Education Revenue, is projected to decline from 42.2% (6/30/13) to 20.1% (6/30/16). It is also noted the Vocational Education Fund Balance is projected to decrease from 63% (6/30/13) to 30% (6/30/16).

The Union has a different view of the Fund Balances, noting that the Employer has a history of understating the end of year Fund Balance. By way of example, the Special Education Fund Balance for 2011-12 was projected to be \$12,437,058 compared with an actual amount of \$16,533,340 – a difference of 33%. In the two preceding years, the percentage differences were 20% and 22%, respectively. The actual versus projected amounts for the Vocational Education Fund Balance differed by a lower percentage.

The Employer explained that the difference reflects the fact that the Special Education Fund is subject to more variability in regard to revenues and expenditures. The 2011 – 12 Revenue difference was primarily the result “of a \$4.7 million Medicaid settlement, which the Michigan Department of Education characterizes as ‘local’ revenue.” In any event, the Employer does not claim an inability to pay.

The Parties have not agreed as to the ISDs which are comparable to TBA. The Employer suggests the following:

Eastern Upper Peninsula ISD; Charlevoix-Emmet ISD;
Cheboygan-Otsego-Presque Isle ESD; Alpena-Montmorency-
Alcona ESD; Crawford-Oscoda-Ogemaw-Roscommon ISD;

Manistee ISD; Wexford-Missaukee ISD and Mecosta-Osceola ISD.

The Employer contends: “These ISDs represent the relevant labor market for the skills within the Association’s bargaining unit”. The Employer also contends Constituent School Districts in the TBA-ISD are comparable by reason of geographical proximity and their financial link to TBA-ISD.

The MEA contends the following ISDs are comparable to TBA-ISD:

Eastern UP; Mecosta-Osceola; Wexford-Missaukee; Charlevoix-
Emmet; Alpena and Mason Lake

The Union strenuously objects to using school districts as comparables – “It is not disputed that local school districts are funded on an entirely separate statutory basis as intermediate school districts”.

A review of Fund Balance and Fund Equity for the ISDs reveals a correlation between Fund Equity and wage rank.

COSTS OF PROPOSALS

The TBA-ISD and the MEA have provided their respective cost estimates relative to their Proposals and those of the Opposing Party.

The Union estimate is displayed:

EA Proposal

2013-14 step placement with 2.75%	\$ 644,653
2014-15 step placement with 2.50%	\$1,535,348
2015-16 step placement with 2.50%	<u>\$2,355,007</u>
Total Cost	\$4,535,009

ISD Proposal

2013-14 step placement with 1.50%	\$ 403,991
\$500 off schedule	\$ 116,600 (520,591)
2014-15 step placement with 1.50%	\$1,084,614

2015-16 step placement with 1.50% \$1,681,288
 Total Cost \$3,286,493

Difference: 2013-14: \$124,062; 14/15 \$450,734; 15/16 \$673,719
Difference (Total) \$1,248,518
Difference per year (Average) \$ 416,172

Estimated Local Revenue Increase \$ 433,514

Note: Both proposals assume yearly retirements of the 7 most senior.

The Employer estimate is as follows:

<u>Comparison:</u>	<u>Board Proposal</u>	<u>Union Proposal</u>	<u>Difference</u>	<u>Higher Proposal</u>
Year 1 2013-2014 Fiscal Year	893,581	967,643	74,061	Union
Year 2 2014-2015 Fiscal Year	543,096	933,079	389,983	Union
Year 3 2015-2016 Fiscal Year	<u>730,530</u>	<u>965,844</u>	<u>235,314</u>	Union
Total Cost Increase over Contract	2,167,208	2,866,566	699,358	

The differences are attributable to assumptions: TBA-ISD is based on 245 FTE with seven retirements being replaced at MA/Step 7 and Union is based on 233.2 FTE with seven retirements being replaced at lowest salary level; as well as different estimated retirement contributions.

The Employer disagrees with the Union "Estimated Local Revenue Increase \$433,514". The Employer projects a revenue decline for 2013-14 of some \$283,000. In any event, the Employer points out that even with the Union estimate, all new revenue will be needed to meet the cost increases associated with its demands.

ISSUES

Wages:

The Employer proposes:

2013-14: 1.5% salary schedule increase and an off-schedule payment of \$500
 2014-15: 1.5% salary schedule increase
 2015-16: 1.5% salary schedule increase.

In each of the above years, “eligible employees would move up step and across columns.”

Union:

The Union proposes:

2013-14: a salary schedule increase of 2.75%
 2014-15: a salary schedule increase of 2.5%
 2015-16: a salary schedule increase of 2.5%
 (It also includes step up and across column increases.)

The Employer points out that with its Proposal for 2013-14, the Base Salary Improvement since 2003-04 amounts to 20.75%. It is also stressed that B/U employees, in addition to step increases, have the ability to move across lanes – *i.e.*, from BA; BA+20; MA; MA+15; and MA+30. The step increases occur annually 1-12 and additional steps for years 13-16; 17-19; 20-21 and 22 years and beyond. Other TBA-ISD employees have received a 1.5% salary increase for 2013-14. Insofar as other comparable ISDs are concerned, the Employer contends its Proposal is substantially above amounts reflected in the Comparable ISD Settlements for 2013-14. The TBA-ISD B/U employees are in the mid-range in most Lane categories when compared to those Comparable ISDs selected by the Employer.

The TBA-ISD Special Education Fund is the largest for all ISDs referenced as Comparables by the Parties. The Special Education Fund Balance and Fund Equity for the Employer and Union comparable ISDs is displayed for 2011-2012:

<u>ISD</u>	<u>FUND BALANCE</u>	<u>FUND EQUITY</u>
Cheboygan-Otsego-Presque Isle	\$ 5,519,049	58.6%
Mason Lake	\$ 5,749,824	58.6%
Charlevoix-Emmet	\$ 9,029,109	53.0%

Wexford-Missaukee	\$ 5,394,207	46.9%
Alpena-Montmorency-Alcona	\$ 3,293,616	43.6%
Traverse Bay Area	\$16,533,340	39.3%
Manistee	\$ 1,560,152	35.2%
Mecosta-Osceola	\$ 4,461,911	29.0%
Crawford-Oscoda-Ogemaw Roscommon (COOR)	\$ 769,150	9.5%
Eastern Peninsula	\$ 388,658	4.8%

The following is a recent history comparison of Inflation and Base Salary Schedule

Improvements for TBA-ISD:

<u>Year</u>	<u>Inflation</u>	<u>% Increase</u>
2003-04	3.27%	2.5%
2004-05	2.53%	2.0%
2005-06	4.32%	2.0%
2006-07	2.71%	2.0%
2007-08	4.99%	2.5%
2008-09	-1.42%	2.25%
2009-10	1.07%	2.0%
2010-11	3.53%	1.5%
2011-12	1.68%	1.5%

The Employer reiterates that, in addition to the annual percentage salary increase, the B/U employees also accumulate increased compensation by qualifying for Step increases – based on Years of Service – and Lane Increases – based on Educational Attainment. The Union discounts the reference to Education Attainment on the basis that a Lane Change is only available when a B/U employee obtains additional education which requires additional individual effort and it is beneficial to the Employer by reason of an improved skill set.

To the extent that the TBA-ISD relies on Constituent Districts as comparables, the Union strongly objects:

“It is not disputed that local school districts are funded on an entirely separate statutory basis as intermediate school districts. ...

Because of the different statutory funding mechanism, comparing a local school district to an intermediate school district is an apple and orange comparison ...”.

The Union also notes that the Employer in the current year is benefitting from the operation of 2011 PA 54. The Union further justifies its wage demand:

“The ISD should not be operated for the purposes of hoarding cash and accumulating massive fund balances.”

While the Union concedes Act 312 is not specifically applicable to fact finding, it notes that:

“Under Act 312, the arbitration panel ‘shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material and substantial evidence.’”

In this case, it is argued: “The record evidence shows that the TBA-ISD has an undisputed ability to pay the Association wage proposal.”

From June 30, 2009 to June 30, 2013, the sum of the Fund Balance of the Special and Vocational Education Fund have increased by the following percentages:

<u>Year</u>	<u>% Increase</u>
6/30/09-10	+18.2%
6/30/10-11	5.3%
6/30/11-12	16.5%
6/30/12-13	3.9%
*6/30/13-14	-11.6%

Based on the above projected shortfall for the current year, I recommend the Employer proposal be implemented for 2012-13. Thereafter, the Employer projects substantial decline for 2014-15 and 2015-16 based on its 1.5% salary increase for each year. It projects the Special Education Fund Balance to decline to 29.9% for 2014-15 and 21% for 2015-16. It should be

noted that in 2009-10, this B/U had a Base Salary Improvement of 2%; 2010-11 an increase of 1.5%; 2011-12 – an increase of 1.5% and the Fund Balance continued to increase. The point here is it is not clear that the picture is as dire as painted by the Employer and probably not as optimistic as suggested by the Union. Despite the above observations, the Union proposal of 2.75% is not recommended because it will substantially increase all of the “roll-in” costs associated with the various fringe benefits provided in the CBA. Your Fact Finder believes a 2.5% increase in 2014-15. and 1.5% increase for 2015-16 is reasonable to all concerned. It appears the Michigan economy is on an upward trend, albeit a modest upturn, so an increase in the future should not have harmful consequences to the Employer and it will alleviate some of the purchasing power losses in earlier periods when inflation exceeded salary improvements. In that regard it does not appear that the rate of inflation will, in the applicable period herein, outstrip the recommended wage increases. Furthermore, the increases herein will positively impact all fringe benefits. From the Employer view, I recognize that Lane Changes are available, however, it is noted that almost 50% of the B/U employees are in the L-1 and above Lanes with the majority of those in L-4 – Years 22 and beyond. The latter have no further Lane movement available.

Health Insurance

Union Proposal:

- (1) Aggregate the total cost of health insurance for the B/U, subtract the Hard Cap amount and divide the remaining amount equally among all in the B/U who receive health care benefits.
- (2) A B/U employee with a dependent child should be categorized as Family coverage rather

than Individual and Spouse;

- (3) The Employer Hard Cap should be adjusted on January 1st rather than the date of the Health Insurance Plan Year.

Employer Proposal:

- (1) Retain Single, Two Person and Family Contributions;
- (2) Reject Employee and Dependent Child as Family;
- (3) Utilize Medical Plan Year to adjust Employer Contribution;

(1) The Union contends this is a no cost item to the Employer. The Union twice polled its membership and it received unanimous votes in favor of everyone in the B/U paying the same amount without regard to Single, Two Person or Family status.

The Employer notes that a Single payer will pay significantly more than the other 2 categories under the proposal. It also objects to the so-called “smoothing” because enrollment changes will constantly affect the aggregate premium which then must be recalculated. The net result would be an administrative burden. Finally, if the Employer erred and exceeded spending limitations, it would be subject to penalty of 10% State Aid by virtue of 2011 PA 152.

It appears 2 Constituent School Districts have implemented a “smoothing” of premium costs. Another, Traverse City, had a smoothing provision in a CBA which is now expired – it was implemented before 2011 PA 152. With reference to the Employer fear of a penalty cost, the Union responds that it is not aware of any District having experienced a 10% penalty.

The fact that no school district has experienced a 10% penalty does not render the Employer concerns as one without merit. It also needs to be noted both Parties assume 7

retirements in each of the next 2 years. It is not known whether the new hires will have a favorable view on the “smoothing” proposal. I also am not persuaded that the administrative burden should be ignored.

The Union Proposal relative to “smoothing” is not recommended.

(2) The Union emphasizes that PA 152 plainly provides for three categories under the hard cap provision – Single; Individual and Spouse; and Family. It is therefore argued: “The Board has disregarded the plain text of the statute in categorizing an individual plus child as an ‘individual and spouse’.”

The Employer relies on a Department of Treasury regulatory guidance:

“ ... employees choosing ‘individual plus one’ coverage to insure single parent plus a child should be included in the ‘hard cap’ calculation at the same rate specified for employees with ‘individual and spouse’ coverage.”

It is also noted that legislation is pending which will yield the result the Association seeks.

In the absence a clear Directive requiring an individual plus dependent child to be equated to an individual and spouse, it is difficult to find fault with the Union Proposal. In that regard I note the Treasury guidance is permissive –“should” – rather than mandatory.

The Union proposal has merit and it is recommended that it be adopted.

(3) The Union contends the Employer Hard Cap should be adjusted at the start of the calendar year rather than in conformity with the Insurance Provider Plan year. The Union explains that a pending Unfair Labor Practice (ULP) is not at odds with its position here because the ULP concerns the Employer having implemented the Hard Cap before the expiration of a CBA which had required the Employer to pay 90% of the health insurance premium.

The Employer refers to a communication from the State Treasurer in which Employer contribution amounts are set forth for “medical benefit plan coverage years beginning on or after January 1 ...”.

The statutory provision, in part, provides:

“By October 1 of each year after 2011, the state treasurer shall adjust the maximum payment permitted under this section for each coverage category for medical benefit plan coverage years beginning in the succeeding calendar year, based on the change in the medical care component of the United States consumer price index for the most recent 12-month period for which data are available from the United States department of labor, bureau of statistics.”

The Union contends the provision is clear: “The plain terms of the statute dictate adjusting the employer contribution amount upward ‘beginning the succeeding calendar year based upon the change in the medical care component of the United States consumer price index (CPI) for the most recent 12 month period’.”

The provision directs that “the state treasurer shall adjust... for medical benefit plan coverage years beginning in the succeeding calendar year...” Despite any personal preference your Fact Finder may have, it does appear to him that the Employer implementation of the Employer contribution amounts is in accord with the statutory provision.

The Union Proposal to adjust the Hard Cap amount on January 1st of each year is not recommended.

School Calendar

Union:

The Parties have agreed to 182 days of instruction and 185 teacher contract days.

The Union seeks a calendar in the CBA which will specify non-teaching days for each calendar year. The prior CBA contained a specified Calendar and no reason has been offered to justify a Calendar change in that regard.

The Union Proposal is recommended.

PAYROLL DEDUCTION

Union:

The Union recognizes the existence of 2012 PA 53, however, it explains “the Association has proposed that the parties recognize and agree to abide by the Sixth Circuit decision that payroll deductions are currently unenforceable.” The Union seeks to make clear the payroll deduction will take effect in the event “that Article VI is later determined to be enforceable, either by legislative act or judicial/administrative decision.”

Employer:

Remove the provision from the CBA because the Agency Shop language is unlawful and a prohibited subject of bargaining.

The Parties have differing views on the legality of the Union Proposal. The finality of 2012 PA 53 is not yet certain. That is to say the 6th Circuit has issued a Decision reversing the granting of a Preliminary Injunction and remanding the Case for further proceedings. The Union Proposal does not challenge the Decision of the 6th Circuit. Rather, it proposes that the Parties abide by the Decision unless “Article VI is later determined to be enforceable, either by legislative act or judicial/administrative decision.” In that event “the Article shall become effective immediately.”

The Parties had a history of operating within the parameters of Article VI. The recent

enactment which changed the rule relating to Payroll Deductions is in litigation. Under that circumstance it is deemed reasonable to retain a provision which will give immediate effect to a resumption of Payroll Deductions if the provision is determined to be enforceable.

The Union Proposal is recommended.

AWARD

Wages:

2013-14: The Employer Proposal is Recommended.
2014-15: The Union Proposal is Recommended.
2015-16: The Employer Proposal is Recommended.

Health Insurance:

- (1) The Union Proposal on Contribution Smoothing Is Not Recommended.
- (2) The Union Proposal to categorize an Employee and Dependent Child as a Family is Recommended.
- (3) The Union Proposal to adjust the Hard Cap on January 1st rather than on the Health Insurance Plan Year Is Not Recommended.

School Calendar:

The Union Proposal is Recommended.

Payroll Deduction:

The Union Proposal is Recommended.


JOSEPH P. GIROLAMO

Dated: January 20, 2014