

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION**

**WEST IRON COUNTY EDUCATIONAL  
SUPPORT PERSONNEL ASSOCIATION**

**MERC CASE L10 B5001**

**-and-**

**WEST IRON COUNTY PUBLIC SCHOOLS**

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**FACT FINDER'S REPORT**

**Procedural History**

The collective bargaining agreement between the parties expired on June 30, 2010. The parties attempted mediation with limited success. The Association filed a petition for Fact Finding on September 22, 2011. The undersigned was appointed Fact Finder by the Michigan Employment Relations Commission on February 14, 2012. The Union was represented by Steven L. Smith, Uniserve Director, Western Upper Peninsula Education Association, /MEA/NEA. The Employer was represented by John S. Lepard of Scholten Fant.

No hearings were held in this matter. The parties submitted Exhibits on August 10<sup>th</sup>, Response Exhibits on August 31<sup>st</sup>, Briefs on November 11<sup>th</sup>, and Reply Briefs on December 21, 2012. Final submissions were filed and the record was closed on January 17, 2013.

The issues remaining for the Fact Finder concern: Articles 13 and 15 Leaves, Article 16 Health Benefits, Article 19 Miscellaneous Provisions, Appendix A(1) Job Classifications, Appendix A(3) Wage Scale, and the Duration of Agreement. I will treat them in that order.

**Background**

Like other school districts in Michigan, West Iron County has experienced dramatic cuts in State aid and increases in costs in recent years. It has also experienced substantially decreased enrollment leading to further reduced revenue. Not surprisingly, the Association and the District have different views about how the resulting pain should be shared. Both the District and the

Association have skilled advocates, and both have devoted considerable effort to preparing their arguments and exhibits.

Not surprisingly, the two sides have suggested different sets of comparables. The Employer justifies its choices based on geographical proximity. The Association bases its choices on a combination of geography and MEA representation. Neither method is inherently more appropriate than the other.

In general, I think it's fair to say the District has taken an aggressive approach in these negotiations. My goal in what follows has been to suggest a compromise package that reflects "an equitable distribution of dissatisfaction."

### **ARTICLES 13 and 15 - LEAVES**

#### **District's Position:**

Merge existing Article 13 (Unpaid Leaves) and Article 15 (Paid Leave) into new and revised Article 13 (Leaves of Absence).

#### **Association's Position:**

The Association does not oppose consolidating the two articles. It does oppose the proposed changes.

#### **Paid Sick Leave**

The District proposes reducing the amount of sick leave earned by all employees and changing the formula for prorating sick leave for employees who work less than full time. The Association proposes the status quo.

#### **Personal Business Leave**

The District proposes to increase the notice period before personal business leave can be taken and to eliminate this form of leave for employees working less than ½ time. The Association proposes the status quo.

#### **Bereavement Leave**

The District proposes to begin charging bereavement leave to sick banks. The Association proposes the status quo.

### **Emergency Leave**

The District proposes to add language so that if a leave request is based on a serious health condition which qualifies for FMLA leave, the leave shall be treated as FMLA leave.

### **Jury Duty and Subpoenaed Witness**

The District proposes to pay the difference between Jury Fees and regular pay rather than have the employee "sign over" the Jury fee check and pay full pay. The Association objects on the grounds that the change would affect retirement service credit.

### **Holidays**

Under the expired contract full year employees had 14 paid holidays and school year employees had 12. The District proposes to reduce those numbers to 11 and 10 respectively. In negotiations the Association offered to eliminate Easter Monday for all employees, eliminate July 5 for full year employees, and proposed that a school year employee's work year had to include a given holiday in order for the employee to be paid for it.

### **Vacations**

The District proposes to reduce the amount of paid vacation, to extend the time period before each level of vacation is achieved, and to eliminate vacation entirely for school year employees.

According to the Association's Brief:

During the mediation session on February 14, 2012, the Association offered the following compromise proposal:

For full year employees:

1. Lower the maximum vacation accumulation to 25 days, grandfathering in any current employees with more than 25 days (1).
2. Delete 12 days of sick leave.
3. Delete 3 days of personal leave.
4. Create 17 days of "compensatory leave" which may be used by the employee for any purpose.

That would take a maximum of 17 days (5 vacation + 9 sick leave + 3 personal leave) and reduce it to just 14 days of compensatory leave.

For school year employees:

1. Delete the week of vacation
2. Delete 9 days of sick leave
3. Delete 3 days of personal leave
4. Create 14 days of "compensatory leave"

The Board approved of the concept but demanded that the number of compensatory days received by full year employees be further reduced to 14 days and the number of compensatory days received by school year employees be further reduced to 11 days. That was unacceptable to the Association and mediation broke down shortly thereafter.

**Fact Finder's Recommendations:**

I find the 14 day/11 day compensatory leave proposal to be an appropriate compromise under the circumstances, and I recommend its adoption.

I recommend adoption of the Association's proposal with regard to Holidays.

I do not find any compelling reason on this record to charge bereavement leave to sick time or to change the way pro rata leave is calculated. I make no recommendation with regard to FMLA leave. Federal law will govern FMLA regardless of what the CBA says. The District's proposal regarding payment for jury duty strikes me as sensible.

**ARTICLE 16 – HEALTH BENEFITS**

The District has opted to take the hard cap option under Public Act 152 of 2011. In addition, the District proposes to require employees to pay 20% of non-health insurance premiums. Further, the District proposes to change the definition of full time and therefore to change the way pro-rata benefits are calculated. Finally, the District would increase the cash-in-lieu of insurance payment from \$2,400 to \$3,000 for "full-time" employees but would prorate that benefit for employees working 30 or more but less than 40 hours.

**Fact Finder's Recommendation:** Unless subsequent litigation proves me wrong, the Employer has the right to impose the hard cap option. On this record, though, I do not find support for a change in non-health premiums, a change in the definition of full time, or a change in the way

pro rata benefits or cash in lieu payments are calculated. With respect to those items I recommend the status quo.

**ARTICLE 19 - MISCELLANEOUS PROVISIONS**

The District proposes to change the language of Article 19 to comport with changes in PERA. It also proposes “to eliminate the need to pay some support staff employees on teacher professional development days when school is not in session and unit work is not required.”

**Fact Finder’s Recommendation:** There is no justification for retaining unenforceable language in the CBA. Similarly, there is no justification for paying custodians on days that they have no work and are receiving no training. I recommend adoption of the District’s proposal.

**APPENDIX A (1)**

The District proposes to implement a two tier system for employees hired after July1, 2012. The Association is opposed.

The District also proposes several changes in the classification system and the addition of a new Category of employees. The Association proposes that “positions should remain in current classifications with the addition of Custodian added to Category B.”

**Fact Finder’s Recommendation:** I agree with the Association that tiered systems are divisive and pernicious, and the need for such a system is not supported on the record before me. I recommend adoption of the Association’s proposal.

**Appendix A (2)**

Both the District and the Association propose 0% in the first year of the contract, July 1, 2010 – June 30, 2011.

Both the District and the Association propose 0% on schedule and a \$500 off schedule payment to full time employees in the second year of the contract. The District, however, proposes to change the definition of full time to include only employees scheduled for 8 hours and to prorate for less than 8 hours.

In the third year of the contract (July 1, 2012 – June 30, 2013) the Association proposes a 3% increase. The District proposes a 0% increase and a \$500 off schedule payment for full time (as re-defined) and pro rata under 8. In addition, the District proposes “\$300 off schedule bonus

payable to both full year and school year employees and prorated below 8 hours per day, with payment of this bonus being contingent upon year round employee vacation time being capped at 25 days and school year employee vacations being eliminated.” The district also proposes a new wage scale for employees hired after July 1, 2012.

**Fact Finder’s Recommendation:** Act 54 of 2011 prohibits retroactive increases. I recommend the proposed off schedule payments to the extent they do not conflict with Act 54. The record does not support either imposition of a two tiered wage structure or redefinition of full time.

**DURATION OF AGREEMENT**

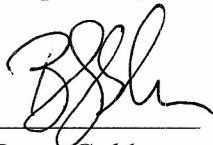
The Association proposes expiration of the new CBA on June 30, 2013. The District proposes an agreement to expire June 30, 2014. The District’s proposal for the final year of the contract includes a 1% salary increase on schedule, a \$300 off schedule stipend payable to full year employees and prorated below 8 hours per day, and a “\$200 off schedule bonus payable to both full year and school year employees and pro-rated below 8 hours per day, with payment of this bonus being contingent upon year round employee vacation time being capped at 25 days and school year employee vacations being eliminated.”

In addition, the District proposes that employees hired after July 1, 2012 would be paid in accordance with its proposed two tier wage schedule.

**Fact Finder’s Recommendation:**

Given the date of this report, I recommend that the new CBA extend until June 30, 2014, as the District proposed. I also recommend adoption of the 1% increase and the proposed off schedule payments. I do not recommend either the redefinition of full time or the two tiered wage structure.

Respectfully submitted,



Barry Goldman  
January 23, 2013