STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION

BOARD OF EDUCATION OF THE
MUSKEGON PUBLIC SCHOOLS, MERC Case No. L12 E-0670

Employer,

-and-

MUSKEGON CITY TEACHERS'
EDUCATION ASSOCIATION, MEA/NEA Kathleen R. Opperwall,
MERC Fact Finder

Union.
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FACT FINDING REPORT AND RECOMMENDATIONS

A fact finding hearing was held on July 16 and 17, 2013, in Muskegon, Michigan, under the provisions of Michigan's Labor Relations and Mediation Act (MCLA 423.25). The Muskegon Public Schools (hereafter the Employer or the District) was represented by attorney Marshall W. Grate of Clark Hill PLC. The Muskegon City Teachers' Education Association (hereafter the Association or MCTEA) was represented by attorney William F. Young of White Schneider Young & Chiodini, PC. The purpose of the fact finding procedure is to provide factual findings and non-binding recommendations to assist the parties in reaching agreement on a new contract.

The bargaining unit includes the District's classroom teachers and other professional employees, excluding those in supervisory positions. This report will refer to the bargaining unit members as "teachers," even though some of them are in other job positions. The parties' previous collective bargaining agreement was a two-year contract covering the period from July 1, 2010, through June 30, 2012. In December of 2012, the parties entered into an agreement which extended the contract through June 30, 2013, and made some modifications.

The parties began bargaining over a new contract in March of 2012, and have had over 20 bargaining sessions, including 10 sessions with a mediator. While both parties recognize that the District is facing serious financial difficulties and some concessions are necessary, they have not been able to reach agreement on a new contract.

The parties agreed to limit the fact finding procedure to the following issues:

1. Salaries;
2. Early Childhood Teacher Salaries;
3. Medicaid Reimbursement Stipend;
4. Employer Contribution for Medical Insurance;
5. Cash in Lieu Payment for those not receiving insurance;
6. Planning Time;
7. Class Size Overload Pay;
8. Union's Proposal for 7-Period Work Day;
9. Duration of the Contract.

The parties filed their post-hearing briefs on September 20, 2013.

Findings

Muskegon Public Schools is a medium-sized urban school district, located in the City of Muskegon, State of Michigan. It currently operates five elementary schools, one middle school, one high school, an early childhood center, and a community education center.

The District has been gradually but steadily losing students. While the losses fluctuate somewhat from year to year, they have averaged about 3% per year over the last five years. The District's pupil count for the 2012-2013 school year was 4,716. This count includes some 309 special education students. (It does not include adult education students.) The District loses more students than it gains through the "schools of choice" (SOC) program, with a net loss of about 430 students during the last school year. On the positive side, although the District has a high percentage of students who live at or below the poverty line, it does not have any schools classified as "priority" schools due to poor academic performance. The District also has a long tradition of excellence in its athletic and band programs.

The fact finding petition indicated that there were 304 employees in the bargaining unit as of March 2013. The District indicated that for the 2013-2014 school year it was reducing its entire work force by 10 percent, including reducing the bargaining unit by 31 FTE (full time equivalent) positions.

Although audited figures were not yet available for the hearing, the District's final budget for the 2012-2013 school year showed revenues of $53.6 million and expenditures of $56.9 million, for an operating deficit of $3.3 million. The District started the school year with a fund balance of about $1.3 million, and ended the year with an (unaudited) fund balance deficit of about $2.0 million. The District filed a Deficit Elimination Plan (DEP) with the State. (The District's revised DEP was approved by the Michigan Department of Education on October 3, 2013. It showed about $900,000 less in expenditures during the 2012-2013 school year than had been shown in its final budget, with a resulting fund balance deficit of about $1.1 million.) The State generally expects school districts to show that they will be eliminating a fund balance deficit within two years.

This District is not alone in experiencing serious financial difficulties. There are now over 50 school districts in the State which have negative fund balances, and another 50 which have fund balances of less than 5% of annual expenditures. The combination of declining enrollment and declining revenue per pupil has made it very difficult for school districts to maintain financial equilibrium.

This District's fund balance has been decreasing over at least the last six years. The information presented showed a fund balance of about $4.3 million at the end of the 2006-2007 school year, which was 6.81% of expenditures for that year. The fund balance decreased gradually over the next few years, to 5.68% of expenditures for 2007-2008; 5.56% for 2008-2009; 4.81% for 2009-2010; and 4.26% for 2010-2011. It dropped to 2.23% at the end of 2011-2012, and was projected to be negative by the end of the 2012-2013 school year (District Ex. 8k, page 0366; approved DEP budget attachment). It is generally recommended that school districts maintain a fund balance of 15% of annual expenditures.

School districts in Michigan are now highly dependent on student enrollment counts, because the largest portion of their revenues come from "foundation allowances" which are calculated on a per pupil basis. In recent years, this District has on average received 64% of its revenues from its foundation allowance. During the economic downtown of the last five years, the State significantly reduced the per pupil allowances which it pays to school districts. This District received $7,806 per pupil for the 2010-2011 school year. That was reduced to $7,248 per pupil for the 2011-2012 and 2012-2013 school years. For 2013-2014, the basic per pupil allowance is increasing by $55 to $7,303, but this is being offset by a $46 per pupil reduction in what the State is contributing toward MPSERS retirement costs. The result is that the per pupil payments from the State will be basically flat, up only $9 per pupil. The prospects for any significant increases in revenues from the State, at least in the next few years, are not good.

At the end of the 2011-2012 school year, this District closed four elementary schools (Bluffton, Nims, McLaughlin, and Craig). Per the hearing testimony, with retirements and layoffs, the teacher count dropped to about 274. However, many of the laid off teachers were later recalled, bringing the teacher count back up to about 300.

In this District, under the now expired contract, a new teacher starting at the first step of the salary schedule receives a salary in the first year of $36,926. The contract calls for "step" increases for completed years of employment, through 35 years. There are also "lane" adjustments for completing an MA degree and for completing credits toward or beyond an MA degree. At the present time, the top of the BA scale is a salary of $65,959, the top of the MA scale is $71,868, and the top of the scale for a teacher with 60 credits beyond an MA degree is $73,714.

The evidence presented showed that the average salary for teachers in the District as of 2012 was $53,342. The parties presented information concerning a number of other school districts which are somewhat "comparable" to this District. Both parties included the following school districts among their comparables: Battle Creek, Mt. Pleasant, Mona Shores, and Reeths-Puffer. Battle Creek and Mt. Pleasant are other medium-sized urban districts; Mona Shores and Reeths-Puffer are nearby districts within the Muskegon Area Intermediate School District (MAISD). The information presented by the District showed that the average salaries here are somewhat higher than those in Battle Creek ($50,843) and Mt. Pleasant ($48,948), but lower than those in Mona Shores ($61,742) and Reeths-Puffer ($61,694). Average salaries do not show the whole picture, because a district with more high seniority teachers will tend to have higher average salaries.

Under the most recent two-year contract, the teachers did not receive raises on the salary schedule for either the 2010-2011 or 2011-2012 school years. Step increases did occur in 2010-2011, but not in 2011-2012. The agreement which the parties entered into which extended the contract for the 2012-2013 school year, provided that there were no increases on the salary schedule for 2012-2013 either, nor were there any step increases or lane increases. That one-year agreement also revised the medical coverage and provided that the teachers would pay 20% of the premium costs for their medical coverage. This 20% premium payment was basically required by a change in State law, commonly referred to as Public Act 152. The teachers also agreed to take two unpaid snow days. The parties did not agree as to what the total dollar value of these concessions was.

The District's medical insurance costs for the bargaining unit have decreased over the last few years, largely as a result of P.A. 152. Assn. Exhibit 21 shows a decrease in this expense of some $567,000 for 2012-2013 compared to the previous year. Over the last four years the District's annual expense for medical insurance for the teachers has decreased by about $1.7 million, from over $5.1 million to about $3.4 million.

During this same four year period, the District's annual expenses for retirement contributions to the Michigan Public School Employees Retirement System (MPSERS) have increased substantially, from just over $3.6 million for the 2008-2009 school year to over $4.5 million for the 2012-2013 school year (Assn. Ex. 21). The MPSERS pension contribution rate for the District is now 24.79% of payroll.

Over the last five years, the costs for the teachers' salaries, plus the largest benefit expenses of medical insurance, retirement, and FICA taxes, have averaged just under 50% of the District's total revenues. For the remainder of this report, the references to "salaries and benefits" will mean these major items. There are other expenses (such as overload pay, longevity pay, and pay for extra duties such as coaching athletic teams) but these are not as significant and generally were not itemized by the parties in their financial data. For the

2012-2013 school year the expenses for the bargaining unit's salaries and benefits edged up slightly over the average, to 51% of revenue. Although the District's expenses for this unit's salaries and benefits dropped by about $1.4 million, which was a decrease of 4.9%, this was less than the 5.9% decrease in the District's total revenue. If this bargaining unit had absorbed a decrease of 5.9% it would have meant about $300,000 less being spent on this bargaining unit. ($28,781,129 for 2011-2012 salaries and benefits decreased by 5.9% would yield $27,083,042 versus the $27,367,165 actual for 2012-2013, based Assn. Ex. 21).

For the 2013-2014 school year which is now underway, the District's initial budget projected revenue of about $48.4 million, which is down $5.2 million, or 9.7% from the revenue for 2012-2013. (The approved DEP budget projected about $1.4 million in additional revenue from the State, with resulting total revenue down 7.05% compared to 2012-2013.)

The District's 2013-2014 initial budget included a projected enrollment loss of about 227 students, with a resulting loss in State revenue of about $2.4 million. At the time of the fact finding hearing, the actual enrollment figures for 2013-2014 were not yet known. If the actual number is significantly higher or lower than those projected, the parties will need to make adjustments. In particular, the enrollment numbers will impact the total number of teachers, and either increase or decrease the teacher count to keep pace with enrollment.

The District projected that revenue from federal sources would decrease by about $2.0 million, which would be about a 21% decrease (Dist. Ex. 8a, p. 0301). (The approved DEP budget showed federal revenues for the completed 2012-2013 school year coming in about $400,000 lower than previously estimated.) The Association disputed the District's estimates of federal revenue. The Association presented evidence that in recent years the District's initial budgets have generally underestimated federal revenue. I note however, that some of those were unusual ARRA (American Recovery and Reinvestment Act) years. The Association presented evidence that federal revenues have been fairly consistent from year to year (excluding ARRA revenue) and that other school districts in the area are not projecting nearly this large a decrease in their federal revenues. Most of those other districts, however, are not as large as this District and do not receive nearly as much federal revenue. While the District is in deficit status, I think it is advisable to give some benefit of the doubt to the District concerning its revenue estimates. If there is some additional revenue, that revenue can help raise the fund balance back into positive territory.

The District did not present specific figures showing what the expenses for this bargaining unit would be in 2013-2014 after the planned staff reductions. The District did provide information showing that for 2012-2013 with a staff of 300 its salary expense for the bargaining unit was $17,185,788 (Dist. Ex. 1.c). District Exhibit 1d (pages 0137 & 0138) showed salary plus MPSERS plus FICA dropping by 9.7% in 2013-2014 with the reduction in teachers. This would yield figures which are close to those used in Association Exhibit 21. The Association presented its calculations on its Exhibit 21, using an assumption of 32 fewer teachers and assuming an average salary of $50,000 for each of these 32 teachers. The salary and benefit expenses for the bargaining unit with 32 fewer teachers showed a savings of $2.5 million, or about a 9.2% reduction compared with the previous year.

Summary of Parties Proposals

The District proposed a 7% reduction on the salary schedule; elimination of the planning period in 2014-2015 in return for a $2,000 off-schedule payment; capping the early childhood teachers at Step 5 of the salary schedule; eliminating cash in lieu of medical insurance; eliminating the Medicaid record-keeping stipend; freezing the District's medical insurance at the current dollar amounts; and freezing step and lane advancements for the duration of the contract. The District proposed a two-year contract.

The Association proposed a two and one-half year contract, with salaries and steps frozen during the first two years, and a 1% salary increase with step and lane advancement during the final half year. The Association proposed reducing but not eliminating the cash in lieu of medical insurance and the Medicaid record-keeping stipend. The Association proposed going to a seven-period day at the high school and middle school in 2014-2015; and, at the elementary level, eliminating the computer teachers in 2013-2014, and eliminating music and physical education for one-half year beginning in 2014-2015. The Association was agreeable to capping the early childhood teachers at Step 5, but only beginning with the 2014-2015 year. The Association proposed maintaining the employer/employee shares of medical insurance costs at 80/20. The Association also proposed changing the formula for overload compensation.

Recommendations

I am recommending the following for the 2013-2014 school year in order to achieve a savings of about $1 million from this bargaining unit, in addition to the savings from staff reductions:

- a 2% reduction on the salary schedule ($434,000 estimated savings);
- two unpaid snow days, which equates to roughly 1% of payroll ($217,000 est. savings);
- eliminating the cash in lieu of medical insurance (District est. savings $300,000);
- eliminating the Medicaid billing stipend (est. savings $70,000 per Dist. Ex. 16).

This recommendation for 2013-2014 also assumes that there will be no step or lane increases during this year.

For the 2014-2015 school year, it is my recommendation that the above be continued. In addition, the salaries for teachers in the early childhood program be capped at step five of the salary schedule, at an estimated additional savings of $200,000.

I am recommending that the District agree to increase its contribution to the medical plans if the cost for those plans increases, so as to maintain the District at 80%, so long as 80% does not exceed the “hard cap” limit during any year while the District is a “hard cap” employer.

It is also my recommendation that the parties adopt revisions in the class overload provisions in the contract, along the lines of the Association’s proposal, with the aim of keeping the District’s overload expenses from increasing.

I am not recommending the Association’s proposal to switch to a seven period day in the middle school and high school. Nor am I recommending the District’s proposal to eliminate planning time starting in 2014-2015. I am recommending that the parties discuss modifying Article 5.2. B of their contract to provide that teachers can volunteer to teach an additional class, and to provide that the pay for teaching an additional class will be an agreed upon amount, perhaps in the vicinity of $2,000 to $2,500 per semester.

I am recommending a two year contract, ending June 30, 2015.

Reasoning behind Recommendations

My analysis and recommendations are based primarily on the exhibits presented at the fact finding hearing itself. The financial figures attached to the approved Deficit Elimination Plan (DEP) budget, which was submitted after the hearing was completed, were somewhat different than those presented at the hearing. Those approved DEP budget figures show a smaller fund balance deficit at the end of 2012-2013, about a $1.1 million deficit, instead of the earlier projection of a $2.0 million deficit. Those figures also show about $1.4 million more in revenue from the State for 2013-2014 than had been projected earlier. That would be consistent with losing fewer students than the earlier projection, perhaps more in line with historical averages.

To the extent that the District may be doing marginally better, that would not significantly change my analysis. I am assuming that the District needs to come out of deficit status, and that this means that expenditures will need to be below revenues over the next few years.

My analysis uses the District's projected available revenue as the starting point. The revised DEP budget shows this as $48.7 million for 2013-2014; the initial budget showed it as $48.4 million (using a somewhat different approach). Historically, an average of 50% of total revenue has gone to the salaries and benefits (i.e. medical, MPSERS, & FICA) for this bargaining unit. This means that, using the 50% historical average, this unit's salaries and benefits would be in the vicinity of $24.3 million. However, in order to come out of deficit status and build fund balance back up, expenditures will need to be less than revenues. If this bargaining unit drops down to 49% of revenue for the next two school years, it would effectively be contributing about $500,000 per year to rebuilding the fund balance. For 2013-2014, 49% of revenue of $48.7 million would be about $23.86 million for this bargaining unit's salaries and benefits.

Association Exhibit 21 calculated $24.82 million for the bargaining unit's salaries and benefits after assuming a loss of 32 positions (and prior to subtracting for Association proposed concessions). The District did not present an equivalent calculation, broken down for just this bargaining unit, itemized for benefits. However, the District did present an estimate that, after the expected staff reductions, each 1% reduction in bargaining unit payroll for 2013-2014 would yield a savings of $216,603 (District Ex. 1.c & d.) This figure is quite close to what would be calculated using Association Exhibit 21, which by my calculations would yield a savings of $217,310 for each 1% reduction in payroll. The closeness of these figures shows that the parties are on the same page at least in this respect. I used $217,000 for each 1% of payroll for purposes of my analysis.

My recommendations would result in the District spending about 49% of revenues on this bargaining unit's salaries and benefits. With the fluctuating financial figures it is not possible to put a precise dollar amount on this. However, the concessions I am recommending should allow the District to make headway in getting out of deficit status, if the other half of its budget is also held to 49% of revenues.

The District seemed to argue that the savings achieved by eliminating bargaining unit positions could not be considered as savings attributed to this unit, because they were not achieved by concessions. I did not find this argument to be persuasive. Savings which are achieved by staff reductions are just as valid as savings achieved by salary concessions. It is understandable that the District would prefer to achieve savings by salary and benefit concessions. However, it is also understandable that the bargaining unit members resist significant reductions in their salaries and benefits. It is reasonable to expect the bargaining unit members to absorb some decreases when the *per pupil* revenue has decreased. It is not realistic to expect them to absorb revenue losses which are caused by enrollment losses. When enrollment is declining, staffing reductions need to keep pace. A ten percent staffing cut actually achieves more savings than a ten percent salary reduction, because it also reduces medical insurance expenses. It may be, with the benefit of hindsight, that staffing cuts should have been made sooner as enrollment declined.

The District does not seem to be taking into its concession calculations the fact the teachers are now paying a larger share of their medical insurance costs than they were a few years ago. The cost shifting which has occurred here has been substantial, and has exceeded the increases in the District's retirement contributions to MPSERS. Between 2011-2012 and 2012-2013 the District's cost for the teachers' medical benefits and MPSERS combined decreased by about $590,000. This is the equivalent of 3.2% of the teachers' salaries for the 2012-2013 school year.

The bargaining unit members have not received any wage increases on the salary schedule for the last three years, and have not received any step increases for the last two years. When step increases are not occurring, the District should be able to experience some savings as higher seniority teachers retire and new teachers are hired at or nearer to the bottom of the salary schedule.

For the above reasons, I do not think the District's financial difficulties can simply be analyzed as the teachers' refusal to accept a 7% wage decrease to match the decrease in the foundation allowance. Some of the districts the parties agreed were "comparable" receive less in foundation allowance than this district does. For example, Battle Creek received $7,059 per pupil last year versus $7,248 here.

I am also considering that salaries here are not out of line when compared to the other school districts which both parties considered to be comparable in some respects. If salaries here were reduced by 7% they would fall below those in Battle Creek ($49,608 in Muskegon with 7% decrease, versus $50,843 in Battle Creek) and nearly all the other districts selected as comparables by the parties (Dist. Ex. 23, page 2, corrected to compare with other districts' salaries without reducing salaries in the other districts).

The District argued that staffing reductions are a "permissive" subject of bargaining, and that its governing board has the inherent right to make such decisions. This is correct. However, the District also argued that the fact finding procedure did not have jurisdiction over permissive subjects such as staffing, citing in particular the Michigan Supreme Court's decision in *AFSCME Local 1277 v. City of Centerline*, 414 Mich 642 (1982). That case involved an Act 312 proceeding between the City of Centerline and its police officers. The Court concluded that the Act 312 panel had exceeded its authority by mandating that the city adopt a layoff clause. The Court's reasoning clearly applied to Act 312 proceedings. The Court concluded that the Act 312 panel only had authority to "compel agreement as to mandatory subjects," and therefore it did not have authority to issue a binding award on a permissive subject, namely layoffs (414 Mich at page 654).

Fact finding proceedings are fundamentally different than Act 312 proceedings. The fact finder does not have authority to issue a binding award. The fact finder can only make recommendations. The basic reasoning in the *Centerline* case therefore would not apply to fact finding proceedings. The parties are not prohibited from negotiating concerning permissive subjects. Nor, in my opinion, is the fact finder prohibited from making recommendations concerning permissive subjects.

The District has made a significant reduction in staffing for the 2013-2014 school year. This will most likely mean larger class sizes. The Association proposed changes to the overload pay provisions in Article 11. At the elementary level, the Association's proposal would limit the availability of the option of an overload assistant or overload substitute teacher to situations where the class was overloaded by at least three students. It would also pay less for overloads of one or two students. At the secondary level, the Association's proposal would pay progressively more as class sizes increased, instead of paying more per student for the first 5 overload students. The Association estimated that these changes could save about $100,000 per year. I think these changes may be needed just to keep overload costs from increasing.

I am recommending that the cash in lieu of medical coverage be eliminated. The District argued that with teachers now paying 20% of their medical premiums, this incentive is no longer needed. I think the District is probably correct, and this is worth trying.

For the early childhood teachers, both parties agreed that going forward it made sense to cap these positions at step five of the salary schedule. I think these teachers should be given an opportunity to switch to other positions. Starting this at the beginning of the 2014-2015 school year allows this to happen.

For the Medicaid billing stipend, the Association did not dispute that this seems to be a unique benefit in this District (Dist. Ex. 16; Assn Ex. 10). I think the District's proposal to eliminate this stipend is a reasonable way to achieve some of the savings which are necessary at this point.

I am not recommending adoption of the Association's proposal to eliminate the elementary computer teachers and reduce the PE and band teachers to half a year. In particular, the testimony indicated that the athletic and band programs are very important here, and help the District retain students.

I am not recommending the adoption of the Association's proposal to switch to seven periods instead of six at the secondary level (while retaining a planning period). This proposal would marginally increase the portion of the day each teacher spent in class (by about 2.4%), and could potentially result in eliminating a few FTE positions. However, the savings are somewhat speculative, and adding a period could also increase the complexity of scheduling.

I am not recommending adoption of the District's proposal to eliminate planning periods. That could help solve overload problems, by having teachers teach additional classes. At the secondary level, this would translate into each teacher teaching 20% more. That would be a substantial increase in work, for a proposed 4% increase in pay ($2,000 per year). It would also eliminate a time during the day which teachers use to prepare for classes, interact with parents and students, etc.

I am recommending that the parties discuss a modification of Article 5.2 (B) which I think might be more equitable and still provide the District with some relief. Article 5.2 (B) currently provides that a secondary-level teacher who volunteers to teach a sixth class will receive an increase in salary equal to one-sixth of his or her salary. For a teacher at the top of the steps, this could translate into $10,000 or more per year ($5,000 per semester) while for a new teacher it would be about $6,000 per year ($3,000 per semester). This current provision may help solve some scheduling problems, but gives the District little financial relief, and cannot be used if it results in a layoff. The Lansing School District is experimenting with a new contract, under which its teachers agreed to give up their planning period and teach an additional class per day, in return for an additional $5,000 (potentially up to $6,500) per year. I would encourage the parties to discuss whether there may be a middle ground, where the payment would be in the vicinity of $2,000 to $2,500 per semester, regardless of step, and teaching the additional class would be voluntary. Teaching an additional class may make sense for some teachers but not others. For this to work, Article 5.B.2. would need to be amended, so the provision could function even when teachers were on lay off status.

I am recommending a two year contract. The parties had reasonably good financial figures for 2013-2014, but little definite information for 2014-2015, and even less for 2015-2016. The Association made some reasonable arguments for ending the contract on December 30th. However, I do not think this is the time to attempt that change in addition to the other issues the parties are addressing.

Kathl R Opperwall

Dated: October 16, 2013

Kathleen R. Opperwall
MERC Fact Finder