MICHIGAN DEPARTMENT OFLICENSING AND REGULATORY ARRAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

CLINTONDALE EDUCATION ASSOCIATION, PETITIONER

-and- **MERC CASE NO.: D16 B-0103**

CLINTONDALE COMMUNITY SCHOOLS, RESPONDENT

FACT FINDER'S REPORT AND RECOMMENDATIONS

ADVOCATES:

UNION: John Canzano Attorney
EMPLOYER: Lisa L. Swem, Attorney

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939 as amended)
[MCL 423.1, et seq], and
Public Employment Relations Act (P.A. 336of 1947 as amended)
[MCL 423.201, et seq]

Fact Finder

Joseph P. Girolamo

PETITION FILED: March 11, 2016
PANEL CHAIR APPOINTED: January 24, 2017
SCHEDULING CONFERENCESHELD: January 30 and February 15, 2017
HEARING DATES: April 25,26 and June 5, 2017
REPORT ISSUED; August 7, 2017

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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CLINTONDALE COMMUNITY SCHOOLS

-and- **MERC CASE NO.: D16 B-0103**

CLINTONDALE EDUCATION ASSOCIATION

FACT FINDER'S REPORT AND RECOMMENDATIONS

INTRODUCTION AND BACKGROUND

Clintondale Community Schools (Employer/CCS) and Clintondale Education Association (Union/CEA) have a lengthy collective bargaining history. This case began as a result of the CEA filing a Fact Finding Petition on March 11, 2016. The Petition contains the following Unit Description: "All certified teacher personnel, including social workers and psychologists". The Unit comprises "approximately 115" individuals. The Petition notes a contract expiration date of August 31, 2015. The issues in dispute are described: " ... wages, benefits, reserve teachers, Association professional leave time, calendar, duration".

The starting point in this case is the troubled financial history experienced by the CCS. The Full-Time Enrollment (FTE) student population declined from 4,212 in 2007 to 3,118 in 2016. The situation was exacerbated by a decline in the Foundation Allowance provided to CCS from 2013 to the present. As a result of the above factors, the CCS was subject to a Deficit Elimination Plan (DEP).

In response to the CCS financial difficulty, the CEA agreed to reopen its existing Collective Bargaining Agreement (CBA) in 2011-2012 with a 1% off schedule pay cut and a step freeze. In 2012-2013, the off schedule wage cut increased to 6% and has remained in effect to the present. The CEA stresses that in addition to the wage reduction and step freeze inflation has caused an even greater decline in teacher pay since 2012. Although CCS has experienced a decline in revenue for many years, its Fund Balance has more recently shown improvement. The audited Fund Balance on July 1, 2011 amounted to a negative $4,993,072. On July 1, 2016, the Fund Balance was a positive $1,405,921.

The earlier CCS financial distress led to a mid-CBA signing of a Memorandum of Understanding (MOU) which contained concessionary terms. One aspect of the MOU was a provision to "discuss salary and benefit packages" in the 2014-2015 year. The parties reached a Tentative Agreement (TA) on August 22, 2014, however, it was not approved by the CCS Board – a second TA in April 2015 was ratified. The latter continued the 6% off schedule wage concession.

The parties exchanged several proposals relative to a new CBA. A State appointed Mediator joined the parties in March 2016, however, a new CBA was not reached. Negotiations continued without success.

The above described events provide only a skeletal backdrop for this matter. In that regard, I note the parties have submitted in evidence over 180 Exhibits. It is simply impossible for the Undersigned to reference each and every Exhibit submitted in evidence. Suffice it to say, I have attempted to give careful consideration to the evidence and testimony presented. The respective Advocates have provided Briefs which are instructive on the issues and they, too, have been given my careful attention.

STATUTORY CRITERIA

This Fact Finding Report is governed by the Michigan Labor Mediation Act – P.A. 176 of 1939 as amended (MCL 423.1 *et seq*). and the Public Employment Relations Act – P.A. 336 of 1947 as amended (MCL 423.201 et seq).

COMPARABLES

The Parties were unable to agree on Comparable School Districts and, therefore, they each made an independent selection. The CCS selected East Detroit Public Schools, Ferndale Public Schools, Hazel Park Public Schools, Redford Union Schools and Romulus Community Schools. The CEA selected Fraser, Harper Woods, Allen Park and Woodhaven/Brownstown. Although I have given the selections attention, I find this use of limited value in this case given the peculiar circumstances herein. It further appears to me that they have made selections which to some extent paint an unduly optimistic and pessimistic picture of their respective state of affairs.

WITNESSES

The CEA called the following individuals:

Ruth Beier – MEA Economist
Mike Ward – CEA President
Freya Weberman – MEA Executive Director

The CCS called the following individuals:

Brandy Pavlik – CCS Business Manager
Greg Green – CCS Superintendent
Jason Davidson – CCS Board President

STIPULATIONS AND PRELIMINARY RULINGS

The Parties stipulated to the authenticity of all submitted Exhibits. They, of course, did not agree as to the relevancy of the Exhibits.

ISSUES BEFORE THE FACT FINDER

1. Professional Compensation – Article XX
2. Reserve Teachers – Article VIII.K
3. Association Leave Time – Article XII.B
4. Association President Leave Time – Article XII.C

Professional Compensation

The last CEA Wage Proposal, dated April 12, 2017, is displayed:

Wages

Wages, Salary Schedule

A. Duration of 16/17
Effective upon ratification of this Agreement: the current 6% off schedule wage concession shall be eliminated and all bargaining unit members shall take a 3% off schedule wage concession.

B. 17/18

1. Salary Schedule
Effective at the commencement of the 17/18 school year, replace the current 2007/2008 Second Semester 11 step Salary Schedule (Steps 0-10) with the attached 13 step smoothed Salary Schedule (Steps 1-12). All bargaining unit members shall slide over to the new 13 step smoothed salary schedule at or near, but not less than, their step and lane as set forth in the current 2007/2008 Second Semester Salary Schedule. As a result of this slide to the new 13 step smoothed Salary Schedule, some bargaining unit members will be placed one step higher than other bargaining unit members; therefore, the minimum placement for all bargaining unit members shall be 1 step higher than the bargaining unit member's 2007/2008 Second Semester Salary Schedule placement. All bargaining unit members shall be paid in accordance therewith.

2. Wage Concession
Continue 3% off schedule wage concession.

3. Schedule B

Freeze Appendix B.4 Salary Schedule

C. 18/19

1. Step Advancement

All bargaining unit members eligible for step advancement shall advance 1 step.

2. Wage Concession

Effective 1/1/19:

a. In the event that the 17/18 audited General Fund Balance is 6.0%-6/5%, then 1% of the 3% off schedule wage concession shall be restored to all bargaining unit members.

b. In the event that the 17/18 audited General Fund Balance is 6.6%-7.0%, then 2% of the 3% off schedule wage concession shall be restored to all bargaining unit members.

c. In the event that the 17/18 audited General Fund Balance is above 7.0%, then the 3% off schedule wage concession shall be eliminated.

3. Schedule B

Continue Appendix B.4 Salary Schedule freeze. Said freeze shall sunset on 8/15/19.

* * *

13 STEP SMOOTHED SALARY SCHEDULE

	A	B	C	D	E	F	G	H
1	STEP	BA	BA20	MA	MA 15	MA 30	EDS	PHD
2	0	37028	37890	40241	41979	43024	43617	44221
3	1	39570	40434	43722	45462	46509	47103	47708
4	2	42112	42978	47203	48945	49994	50589	51195
5	3	44654	45522	50684	52428	53479	54075	54682
6	4	47196	48066	54165	55911	56964	57561	58169
7	5	49738	50610	57646	59394	60449	61047	61656
8	6	52280	53154	61127	62877	63934	64533	65143
9	7	54822	55698	64608	66360	67419	68019	68630
10	8	57364	58242	68089	69843	70904	71505	72117

11	9	59096	60786	71570	73326	74389	74991	75604
12	10	62448	63330	75051	76089	77874	78477	79091
13	11	64990	65874	78532	80292	81359	81963	82578
14	12	67537	68421	82009	83778	84841	85451	86065

The CCS, on April 17, 2107, countered with the following:

1. **Wages**

A. Appendix B.1. New 16 Step Salary Schedule (0-16 steps):

1. Eliminates BA20, MA15, Ed. Specialist, and PhD lanes.
2. Schedule will be based upon a 1% restoration for the top and bottom of the scale.
3. Smoothed Step Schedule (Even increases between steps). (See attached)

B. <u>2016-2017 School Year</u>:

1. Effective for the regular payroll date after one (1) full payroll cycle after the Board ratification date;
2. Hold Harmless: transfer to new salary schedule will result in each employee receiving at least a $500 increase;
3. No lane advancement through July 31, 2018 (See 1.C.1).
4. $500 off-schedule payment will be provided to the membership payable after one (1) full payroll cycle following the Board ratification date, contingent upon the proposal being accepted and ratified by the Association on or before May 1, 2017.

C. <u>2017-2018 Fiscal Year:</u>

1. Step advancement (effective 2nd Semester of 2017/2018), contingent on District's 2016-17 audited fund balance being greater than 6.75% as of the November 1, 2017 audit report for the 2016-17 school year.
2. No Lane Advancement

D. <u>2018-2019 Fiscal Year:</u>

1. Step Freeze.
2. 1% Salary Schedule Increase (effective 2nd Semester of 2018/2019), contingent on District's 2017-18 audited fund balance being greater than 7.25% as of the November 1, 2018 audit report for the 2017-

18 school year.

3. Lane Advancement – Lane Advancements will occur effective 2nd Semester of 2018/2019 for any eligible members who provide supporting information to the District on or before June 15, 2018, contingent on District's 2017-18 audited fund balance being greater than 7.75% as of the November 1, 2018 audit report for the 2017-18 school year.

E. Appendix B.4. (Schedule for Extracurricular Activities) – Freeze through the duration of the agreement (July 31, 2019).

The Proposed Lanes are as follows:

BA Combined Salary Lane

	Current BA	New BA	2018/2019 Wage	
0	34,806	35,154	35,506	Starting Wage $ 35,154
1	36,831	36,965	37,334	Top $64120
2	40,869	38,775	39,163	Annual Step $1,810
3	42,676	40,585	40,991	Steps 16
4	44,858	42,396	42,820	Hold Harmless $500
5	47,041	44,206	44,648	
6	49,563	46,016	46,477	
7	52,587	47,827	48,805	
8	55,609	49,637	50,133	
9	59,273	51,447	51,962	
10	63,485	53,258	53,790	
11	63,485	55,068	55,619	
12	63,485	56,878	57,447	
13	63,485	58,689	59,276	
14	63,485	60,499	61,104	
15	63,485	62,309	62,932	
16	63,485	64,120	64,761	

MA Combined Salary Lane

	Current MA	New MA	2018/2019 Wage	
0	37,827	38,205	38,587	Starting Wage $ 38,205
1	39,815	40,683	41,090	Top $ 77,859
2	44,517	43,162	43,593	Annual Step $2,478

3	47,041	45,640	46,096	Steps 16
4	49,563	48,118	48,600	Hold Harmless $500
5	52,921	50,597	51,103	
6	56,623	53,075	53,606	
7	60,314	55,554	56,109	
8	64,852	58,032	58,612	
9	69,390	60,510	61,116	
10	77,088	62,989	63,619	
11	77,088	65,467	66,122	
12	77,088	67,946	68,625	
13	77,088	70,424	71,128	
14	77,088	72,903	73,632	
15	77,088	75,381	76,135	
16	77,088	77,859	78,638	

MA30 Combined Salary Lane

			2018/2019	
	Current MA30	B+New MA30	Wage	
0	40,443	40,847	41,255	Starting Wage $ 40,847
1	41,565	43,328	43,762	Top $ 80,548
2	47,132	45,810	46,268	Annual Steps $ 2,481
3	49,650	48,291	48,774	Steps 16
4	52,178	50,772	51,280	Hold Harmles $ 500
5	55,530	53,254	53,786	
6	59,230	55,735	56,292	
7	62,925	58,216	58,798	
8	67,461	60,698	61,304	
9	71,949	63,179	63,811	
10	79,751	65,660	66,317	
11	79,751	68,141	68,823	
12	79,751	70,623	71,329	
13	79,751	73,104	73,835	
14	79,751	75,585	76,341	
15	79,751	78,067	78,847	
16	79,751	80,548	81,354	

The CEA admonishes the Undersigned to view with skepticism the CCS projection of its future financial condition. The CEA points to several years in which the Employer forecast of revenue has been exceeded when the audited figures have been available. The Employer has pointed out that the CEA first suggested correlating a wage increase with the General Fund Balance. In that regard, it is argued the CCS has had a long history of financial distress and it simply does not want to return to the situation where it must constantly deal with State oversight. The CEA, of course, emphasizes the wage reduction which has been endured and the fact that the Employer conditions have, in its view, substatially improved.

Obviously, both sides have merit in the positions they have espoused. In weighing the competing claims, the following is noted. Certainly, financial integrity is an appropriate goal. On the other hand, the strict dependence on General Fund Balance to achieve the goal is not entirely satisfactory. Testimony provided at the Hearing noted Fund Balance can be manipulated by the movement of funds. The CEA cited expenditures which in its view were unnecessary and/or unreasonable. The bottom line is that Fund Balance is a factor of import, but it is not properly the only consideration. Here, we have a group of employees who have endured a lengthy wage reduction and who have the direct responsibility to deliver the Employer service – education.

A new 16 Step Schedule is proposed by the Employer The CCS proposal provides a 1% increase for the top and bottom of its new scale which reflects the existing 6% off schedule concession. It also proposes eliminating the following lanes: BA20, MA15, Ed. Specialist and PhD. While the top and bottom steps will realize an increase, all of those in Steps 3 through 15 will be reduced below 6% off schedule being paid at present. A hold harmless provision of an increase of at least $500 lessens the impact for current employees. This proposal is a reduction from one made on April 12, 2017.

The CEA Proposal is grounded on the current reality of a 6% off schedule wage concession. In the initial year – '16/'17 – the 6% concession is reduced to a 3% amount. In '17/'18, the CEA proposes an elongated 11 Step Schedule. The basic structure of the proposal is to take the difference between highest and lowest Step and divide the amount by 12 as the new amount of increase for each Step. It is based on the Salary Schedule which does not reflect the current 6% off schedule concession but the 3% off schedule wage concession is continued. Although a concession is continued, the basic structure of the proposal is premised on continuation of the existing salary schedule i.e. all steps and lanes are preserved except 2 steps are added.

The CCS and CEA support their respective proposals with references to a multitude of data. The CEA emphasizes the fact that the Employer's Fund Balance has improved from a negative amount of $3,243,465 in 2007 to a positive amount of $1,405,922 in 2016. The District is no longer subject to a Deficit Enrollment Plan (DEP) and it is not under State oversight. Another positive in the CEA view is the more recent improvement in the State-provided Foundation Allowance. While the latter amounted to $7,758 in 2011 and is currently below that amount at $7,526, it has improved from a low of $7,288 in 2013. It further appears that voter approval of a millage has been realized by the District. Finally, the Salary Schedule has not increased since 2007and in that interim a 6% off schedule concession has been in effect at the same time that inflation detracts from the value of wages. Reference is also made to State law changes relative to payment of medical insurance and the prohibition of any increase after the CBA expiration.

The CCS focuses the Fact Finder's attention on the issues which have confronted it in recent years. First and foremost, the FTE has declined from 4,212 in 2007 to 3,118 in 2016. The FTE loss has resulted in a revenue loss - $30,543,493 in 2007 to $28,929,918 in 2016. In that time period the District has reduced expenses from $32,541,083 in 2007 to $26,430,283 in 2016 which attests to its contention that the CEA has not been alone in the cost reduction efforts it has implemented. It is also noted that a significant portion of District revenue has occurred as a result of implementation of non-traditional education programs – *i.e.*, cyber school programs – the latter are not within the jurisdiction of the CEA. Finally, it is asserted the CCS selected comparable Districts have greater funding and demographic attributes with Clintondale than those proposed by the CEA.

The CEA contends that the difference between its proposal for '17/'18 and the District proposal is $341,643. The CCS states the cost of the Union proposal for '17/'18 amounts to $575,134. The District states that teacher salaries account for 60% of the District expenses. Given the latter, it follows that much of the Fund Balance improvement the District has experienced is significantly attributable to concessions by the CEA. On that basis it follows that economic improvement is warranted.

Based on the above considerations, your Fact Finder concludes a reasonable balancing of the interests of the Parties is achieved with elimination of the 6% off schedule concession and replacing it with a 3% amount for 17/18. The cost associated with a 3% increase is less than $300,000 to the District - a little more than 21% of the most recent Fund Balance. He does not recommend adoption of the remainder of the CEA 17/18 proposal.

For '18/'19, the CEA estimates the cost difference between its proposal and that of the CSS is $591,346. Your Fact Finder cannot agree that a differential of that magnitude is warranted under present circumstances. . The most bothersome aspect of the District's ability to pay lies in the decline in enrollment which has already been noted. Even if some improvement in Foundation Allowance is assumed, the enrollment decline cannot be ignored. This is an area where both sides are encouraged to discuss measures for improvement. On the other hand it appears the CCS Fund Balance is on an upward trajectory. Both Parties have indicated a willingness to tie wage improvement to Fund Balance albeit with a difference in the amount proposed. The CCS has estimated a Fund Balance for 16/17 of $1,909,537. At approximately the same current expenditure level the Employer Fund Balance estimate translates to 7%.

Despite my earlier comment on the use of Fund Balance I recognize it has a useful purpose. Moreover both Parties reference Fund Balance in their respective proposals and thereby have suggested it be used. I recommend for 18/19 that in the event the 17/18 audited General Fund Balance is 6.5 -7% then 1%of the remaining 3% wage concession be restored. If it is 7 – 8%an additional 1%of the remaining off schedule wage concession is to be eliminated. In the event the audited Fund Balance for 17/18 is above 8% all of the off schedule wage reduction is to be eliminated.

Both Parties have put forth revised Salary Schedules and movement therein. I decline to make any changes on the basis this is a matter best left to the Parties during the course of negotiations. In the same regard I have not recommended Lane and Step increases since this is a matter in which the Parties are best able to assess the impact of changes. I do note a majority of the Comparators – CCS and CEA – have fewer Lanes than the CBA herein. In regard to Steps more diversity is the case. Again, this is a matter best left to the Parties. It is simply not feasible for me to conduct a review of the number of individuals in the existing Lanes and Steps. It seems the described review is necessary in order to modify the Salary Schedule so that it is equitable to everyone.

In all likelihood neither Party will be satisfied with this Recommendation. For the CEA it needs to be realized the Employer remains in a precarious situation. An improvement has been recommended because it appears the downward trend has been reversed. For the CCS it is suggested that a reduction in costs is a worthy goal but fair compensation is also a step toward providing its students with a dedicated teaching staff.

Reserve Teacher Provision

The CCS proposal on this issue is as follows:

> B. Article 7.J. – Delete (mandate to employ 3-5 "reserve teachers at full salary").
> *(Note: This was initially intended to protect administrators in the 1980's and is obsolete from the District's standpoint).*

The expired CBA provides for a minimum of three Reserve Teachers and a maximum of five. The Employer contends the provision serves no useful purpose. The language, in part, allows for a maximum of two Administrators who have teaching seniority to return to the bargaining unit. If no Administrators fill the position, the number of Reserve Teachers is reduced to three. The CCS stresses that PERA – Section 15(3)(j) – makes a provision allowing the return of Administrators to the BU unnecessary. To the extent that Reserve Teachers are serving as Substitute Teachers, the CCS contends "it is more costly to employ a Reserve Teacher instead of a Substitute Teacher".

The CEA wants to preserve the provision but agrees to reduce the number by two. Aside from the return of an Administrator to the BU, the CEA says the provision has value providing the Employer with flexibility in placing Teachers and filling positions. A Reserve Teacher can also be used as a Substitute Teacher. On that point, it is noted a shortage of Substitute Teachers exists.

The CEA submitted an Exhibit which shows that one Reserve Teacher was utilized in the '15/'16 school year. The CCS notes that the above referenced individual was the former Association President. Aside from his utilization, it does not appear that anyone has been used as a Reserve Teacher. PERA, Section 15(3)(j) and (k) undermine the CEA reasons to justify the provision.

It is recommended that the Reserve Teacher provision be eliminated from the CBA.

Reduction of Association Leave Time

The Parties are in agreement as to the reduction of leave time. The issue here is that the Association has not submitted CBA language providing for the reimbursement of costs associated with the provision use – *i.e.*, MSPERS, etc., even though required by law.

The fact that the CCS concern is covered by existing law is deemed a sufficient basis for rejection of the Employer proposal.

It is recommended that the Employer proposal be rejected.

President Leave Time

Article XII – Professional, Personal and Association Leave – includes the following:

> C. The Board shall provide the Association president ***one half (½) day (three class periods)*** release time per school day with full pay and fringe benefits. For a new president, the release time will commence at the beginning of a semester. It is also agreed that the President shall have the right to use personal and team planning periods for union business. Notice will be provided to the building administrator if the President will be leaving the building, during planning time.

The CCS wants to remove the above provision. It is urged the role of teachers is the education students rather than conducting Union business. The Employer asserts it has incurred costs of $228,245.99 in the past five years for this provision.

Very little of the above asserted costs are attributable to the current President. It has not been alleged that the provision has been abused. The CEA presented persuasive testimony to the effect that potential areas to conflict may be resolved before the issue becomes one which is not subject to resolution.

It is recommended the provision remain in the CBA.

CONTRACT EXPIRATION DATE

The CEA has suggested in its Brief the CBA herein should expire on December 31, 2019. The most recent CBA contained an expiration date of August 31. This issue has not been sufficiently addressed so as to warrant a change by me and therefore I recommend the status quo- an expiration date of August 31, 2019.

RECOMMENDATIONS

Wages: For 17/18, it is recommended that the current concession be reduced to 3%; for 18/19 an additional 1% concession reduction if the audited Fund Balance for 17/18 is 6.5 - 7%, if the Fund Balance is 7%-8% an additional 1% concession reduction, and if the Fund Balance is above 8% all of the off schedule wage reduction be eliminated.

Reserve Teacher Provision: (Article VIII.K) It is recommended that the Reserve Teacher provision be eliminated from the CBA.

Reduction of Association Leave Time: (Article XII.B) It is recommended that the Employer proposal be rejected.

President Leave Time: (Article XII.C) It is recommended the provision remain in the CBA.

Contract expiration: August 31, 2019.

JOSEPH P. GIROLAMO

Dated: August 7, 2017