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STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding between:

Lapeer Education Support Personnel Association

-and-

MERC Fact Finding No. D02 B-0281

Lapeer Community Schools

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APPEARANCES

For the Employer

Donald J. Bonato, Esq.

For the Association

Jerry Haymond, Uniserv Director

A Fact Finding hearing was held on February 10, 2003, at the offices of the Community Schools, before Fact Finder Martin L. Kotch.

## **FACTS**

The parties (hereinafter designated Association and Board) have been engaged in a financial re-opener for the last year of the 1997-2002 contract, *i.e.*, the contract year 2001-2002. Negotiations concerned only wages and fringe benefits.

The summary of the Association's position is as follows:

1. The Association seeks to retain the current contract language on insurance.
2. The Association seeks a 2.085% wage increase, applicable to longevity and compensation for unused sick time, with full retroactivity.
3. The Association contends that the Board wants a 6% cap on health insurance despite significant concessions made by the unit in the previous contract, and the savings of about \$1,000 per month realized this year by moving all insurance into a PAK.
4. The Association has offered to take a lower wage than offered by the Board, 2.085% as opposed to 2.3%.
5. The Association's total proposal is less costly to the Board than is the Board's proposal itself.
6. The Association does have cost containment in its proposal, although the Board has stated that the issue is not money.
7. The Board has the financial ability to meet the Association's proposal.

The Board's position, in its answer to the Petition, disputed the Association's position in the following language:

1. The Lapeer Community Schools denies the contention that the Association's total is less than the Lapeer Community Schools' proposal for the reason that the allegation does not take long-term cost into consideration.

2. The Board seeks a 6% cap on insurance premiums, offers a 2.3% wage increase, but proposes no retroactivity with respect to that increase.

## DISCUSSION

The parties have posed a chronological issue to the Fact Finder, which underlies the position taken by each. The Board stresses the consequences, *in the long term*, of not addressing the matter of a cap on insurance in the re-opener year. The Association urges the Fact Finder to limit his consideration of the parties' proposals solely to that year.

The Board is gravely concerned with the escalation in health care costs. The rise in such costs is virtually a matter for judicial notice, and ample evidence of that rise has been presented. Yet, the rise for the re-opener year, 2001-2002, is not particularly steep. Imposition of the desired cap *for the re-opener year* would have realized a savings to the Board of \$10,632.96. Indeed, on the basis of dollars alone, the total package presented by the Association, which does not include a cap, is *less* costly than was the one presented by the Board. The past tense is appropriate here because the Board now opposes retroactivity for any wage offer, since it cannot realize any insurance savings, even were it to prevail and achieve a cap for the contract year in question here.

While there are some minor discrepancies in the figures presented by the parties, there is no question, and both parties concede this, that the final cost figures of both proposals are extremely close. As a consequence, there is no serious dispute as to comparables, or, indeed, what they demonstrate. What strongly divides the parties is the manner in which they seek to fund their proposals. Thus, as to wages, the Board's offer is higher, 2.3% as opposed to 2.085%. This, it explains, is because that figure was tied to its cap proposal. The Association's offer is lower than that of the Board, but, of course, comes without a cap. Nonetheless, as to the "bottom line," the proposed packages are virtually identical.

Financial evidence at the hearing was abundant. Matters of state funding, or the lack thereof, were covered. Strength of enrollment was discussed, with the District appearing to face flat or

declining numbers, a matter of some significance, given the method for calculating financial support from the State. In addition, of course, were the data showing increasing insurance costs. The bulk of this evidence was put forward by the Board. Yet, and this goes to the crux of the Fact Finder's chronological dilemma, virtually all the data concerned a state of affairs *not yet present*, i.e., not present in the contract year in question.

The parties were candid as to the single, real issue before them. It is, of course, rising insurance costs, and how to meet them. In essence, the Board wants the Fact Finder to recommend a cap for the contract year in question, essentially as a matter of principle, since it cannot recoup any increase in the cost it has absorbed in the year already gone. (It must be remembered that those costs, *in that year*, were marginal). As "compensation" for its lost cap opportunity, the Board opposes retroactivity for any wage increase, extending to sick days and longevity as well. Thus, it seeks inclusion of a cap, which, while having no immediate financial impact, would be part of the contract language which would form the basis subsequent negotiations. At the same time, it would deny any raise to its employees in that same year.

The Association contends that the Fact Finder must focus *only* on the re-opener year, 2001-2002. In that year, insurance costs rose in a relatively modest fashion. As part of its desire to assist the Board in combating such costs, it says, it proposes a wage increase substantially lower than those given in most of the comparable communities the parties rely on, and substantially lower than that proposed by the Board.

The Association does not dispute that insurance costs are rising. In fact, it concedes that caps are coming, to it, as well as throughout the education system in the State. This perception is buttressed by what is by far the strongest support for the Board's position: internal comparables. These units all have, or soon will have, insurance caps.

Where does the Association derive its support? First, it points to the fact that insurance costs for the contract year in question did not rise in an extreme fashion, and has substantial evidence to support its contention that the Board has the ability to pay those costs, as well as the Association's recommended wage increase. Again, the Association stresses, this relates to the re-opener year.

As to the cap, while admitting its probable inevitability, the Association argues that Fact Finding is not the appropriate method for inserting it into a collective bargaining agreement.

The Association argues that the figure of 6% is nowhere justified in the Board's proposal. Where does the 6% figure come from? Why not 5%? Why not less? No evidence relating to this matter was brought forward. Moreover, the Board proposes to be responsible for only 6% of any increase over a prior year's premium. The Association asks why this method should be deemed appropriate – why not 6% of the total increase amount?<sup>1</sup>

The Fact Finder is not unsympathetic to the plight of the Board. It is forced to meet rising costs in a circumstance not of its own making. It is not, however, within the province of the Fact Finder to recommend a contractual proposal without a substantial degree of substance behind such a proposal. And, the Association is correct – the Board's insurance provision is not buttressed by the amount of evidence which would be required for its adoption. Indeed, virtually all of its evidence concerning the effects of the rise in insurance rates relates to years *beyond* the contract year in question.

The last gives rise to the second concern of the Fact Finder. The Board asks, in effect, that the provision it seeks be recommended because, once in the contract, even though without impact on that contract, it will be in place as a starting point for the next negotiations. However, the Fact Finder cannot play a role in support of one party's "wish list" *for a forthcoming negotiation*. The Fact Finder's role is restricted to evaluating evidence with respect to the time frame of a specific contract – in this case, the contract year 2001-2002. As to this year, the Fact Finder determines that the Board has not supported its proposal for a 6% cap on insurance for the Board.

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<sup>1</sup>The Association posits the following example of the Board's proposal: Assume a 1<sup>st</sup> year, 12 percent increase in insurance cost. The Board will pay 6%. Assume in the following year, an additional 12% cost increase. The Board will not pay 6% of the second 12% raise. It will pay only 6% above its last year's payment, or 106%. The employee would now be paying 18% of the 2 year cost raise.

Without a cap, the annual insurance difference in the re-opener year is \$10,632.96.<sup>2</sup> In the following year, using the Board's figure of an increase of 17.94%, the difference to the Board with a cap is almost \$109,000. The monthly increase to an employee with full family coverage would go from \$9.55 per month to \$97.62 per month. This figure could be mitigated by tax consequences following adoption by the employee of Section 125 Plan deductions. Even with this latter consideration, any potential salary increase would be more than wiped out by the adoption of the cap. To be sure, there are many approaches to this problem, including a modification of the insurance coverage, perhaps necessitating abandoning M.E.S.S.A. coverage. And it is precisely owing to the complexity of the various options and trade-offs that the matter is best left to the parties in negotiations, rather than to what would be an arbitrary conclusion of the Fact Finder.

As to the dollar amounts in dispute, we have the anomaly of the Association seeking less than the Board offers. Of course, this relates to the tying-in by the Board of its wage and cap proposals. The real issue is retroactivity. The Board has not challenged, in any substantial, evidentiary way, the amount sought by the Association, aside from the cap proposal. For the contract year in question, the Board has the ability to pay. An examination of the comparables shows that the Association's proposal is well within the range.<sup>3</sup>

The Board has argued since it did not have the benefit of a cap in this contract year, the Association should not have the benefit of a raise. It took this position even assuming it would *prevail* here on the insurance cap issue. But the pay raise sought by the Association is within comparable ranges, and there is no question of ability to pay, *with or without a cap on insurance*, for the contract year in question. The same reasoning would apply to compensation for unused sick leave days and longevity, which, in their treatment by both

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<sup>2</sup>See Board Exhibit 3.

<sup>3</sup>See, e.g., Association Exhibits 17-21.

parties, were afterthoughts in the wage discussion.

### **RECOMMENDATION**

For the reasons given above, the Fact Finder recommends the following:

1. The current language relating to insurance should remain.
2. There should be a wage increase of 2.085%, applicable as well to longevity payments and compensation for unused sick time.
3. There should be complete retroactivity for the wage increases.

March 18, 2003

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Martin L. Kotch

Fact Finder