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STATE OF MICHIGAN

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

In the Matter of Factfinding
Under Act 176 (Public Acts of 1939):

COLON COMMUNITY SCHOOLS,

Employer,

and MERC Case No. L97 E-6040

COLON PARAPROFESSIONALS/MEA

Union.

Colon Community Schools

FACT FINDER'S REPORT

The undersigned was appointed by the Michigan Employment Relations Commission as a fact finder in the above captioned matter. A hearing was conducted on September 17, 1998, at the offices of the Colon Community Schools. Witnesses testified with respect to the facts in this matter, and an array of exhibits were offered to support the various positions of the parties. The following is the report of the fact finder with recommendations.

BARGAINING HISTORY

The Colon Community Schools has historically maintained a cadre of persons identified as teaching assistants, now paraprofessionals. The record shows that there was an agreement between the Colon Board of Education and the teaching assistants from July 1, 1993, to June 30, 1996. The TA's met and conferred with the Board and the agreement was a written

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understanding of their conditions of employment. On August 13, 1996, MERC certified the bargaining unit with the Michigan Education Association as the representative of the TA's for purposes of collective bargaining. The existing dispute concerns the first contract between the parties. Negotiations were held on April 29, May 21, May 28, June 25, August 13, September 24, October 15, and October 30, 1997, and January 13, 1998. Additionally, on February 18, February 24 and March 5 the bargaining team met with the superintendent and Board members and attempted to resolve the matter, to no avail. Mediation was held on March 18, 1998, an impasse incurred with respect to salary, insurance benefits, agency shop and holidays, but tentative agreements were reached on all other sections of the contract. Fact finding ensues. It is thought that by presenting the facts to a neutral, objective third party making those facts public along with the fact finder's suggestions of possible reconciliation of disputed items can be beneficial and assist the parties in ultimately reaching a contract.

THE ISSUES

The parties submitted a copy of the tentative agreements already reached, which consists of 14 different articles and some 25 pages of text. Article 9, compensation and benefits, is unresolved.

1. Agency shop. As a result of discussions during the fact finding, the parties have agreed upon the language for agency shop and we need not discuss that issue. Although specific language has not been adopted, the parties have agreed that they would have a voluntary program for 1997 and 1998 and then the agency shop would become mandatory for new hires in 1998/99.

2. Holidays. The expired agreement provided for two days of Christmas

holiday pay. The Union has requested four holidays based upon a comparison of what paraprofessionals receive from unionized employers in St. Joseph County, as well as non-unionized St. Joseph County employees. They also argue that internally, other full time Colon employees, such as custodians and secretaries, receive up to nine days, while employees who only work two to three hours, such as food service and school helpers, receive two days, with bus drivers receiving no days.

The district proposed several economic options. One is a combination of no additional holidays if a 3 percent increase for each of the three years in question is accepted; a second option is two additional holidays if a 2 percent salary increase for each of the three years was accepted; or no holidays under a third option in which the Board proposed total money available of $3,527 for 1997/87, $3,633 for 1998/99, and $3,742 for 1999/2000. As a result of progress made during fact finding, it seemed that the parties were reasonably consistent on focusing their attention to agreement upon the option proposed by the Board that would have no additional holidays; that is, there would be just two, with an understanding of a 3 percent salary increase for each year of the contract. For reasons stated later, it would be the recommendation of the fact finder that the parties indeed agree on no additional holidays, irrespective of whether the parties ultimately agree upon the 3 percent wage increase. This is so because the economics to be discussed later suggest that the Union's request in all three economic issues, in the fact finder's view, would not be in the best interests of the community. Having listened to the testimony, the increase in holidays is the least significant of the Union requests. If additional resources are going to be made available, they should be used for salary and insurance rather than an increase in holidays.

Exhibit E4 reflects that the three year cost for additional holidays would be $5,215.55, $1,690.82 for first year, $1,734.77 for the second and $1,789.96 for the third. Given the potential cost implication and the fact that Colon is not drastically out of line with other comparable communities as identified in Exhibit E3, the recommendation for no additional holidays seems to be supported by the record.

3. Salaries. Apart from the financial consequences of the most dynamic issue, insurance, the evidence suggests that if one looks at salaries alone, the question is whether there should be a 2 percent or 3 percent increase in each of the three years of the contract. The Board is not suggesting it does not have the ability to pay some salary increase. Union Exhibit 13A identifies the existing paraprofessionals, their various wages, hours worked per day, and what the current annual costs are. Those total $134,712.87. There are 17 members of this unit, with 2 members working 7 hours a day, 9 members working 6.5 hours a day, 1 at 5 hours, 1 at 4.5, 1 at 3.5, and 4 at 3.25. Union Exhibit 13B shows the cost to the Board if either 2 percent or 3 percent is adopted. The cost for 1997/98 at 3 percent is $4,580.24; for the second year, $4,178.79; and for the third year, $4,304.16. If 2 percent is adopted, the pay difference in the first year would be $1,885.98 less and the second year, $1,430.65, and the third year, $1,501.05. Union Exhibit 13C also demonstrates that there formerly were 184 days worked and apparently there was a reduction to either 179 or 181 days in 1997/98. Apparently the Union claims there was 181 and the district claims 179. Be that as it may, as a result of there being fewer days actually worked, the economic consequences at least for 1997/98 to the members of the unit is that there is less money being received, and apparently the parties would tend to agree that the lost pay would be somewhat comparable to a 3 percent increase for 1997/98. In other

words, if 3 percent were to be granted, the members of the unit would almost be in the same position as if they had worked longer days at the old rate.

When one looks at the internal comparables in Union Exhibit 14, 3 percent seems to be the norm, with custodians and bus drivers receiving a 2.9 percent increase, teachers got at 3.5 percent increase in 1997/98, and 3 percent in 1998/99, and 3 percent in 1999/2000. The evidence suggests, at least with the internal comparables, there seems to be a patter of 3 percent as opposed to 2 percent.

With respect to external comparables in St. Joseph County, Union Exhibit 18A shows were Colon would be with respect to minimums and Union Exhibit 19A with respect to salary maximums. They would be fourth lowest out of ten and third lowest out of the same ten. Thus, it would seem that a compelling case that an increase of even 3 percent would not jump Colon to the head of the pack, but rather even with a 3 percent increase the members of this unit would still be receiving less than the vast majority of other school districts in St. Joseph County.

The factual information presented at the hearing does suggest that an increase is warranted and that 3 percent as opposed to 2 percent is clearly justified. Given the parties' suggestion during the hearing that 3 percent while holding the line at 2 holidays seems to be palpable, the fact finder finds that there is clear record evidence that would support a 3 percent increase for each year.

4. <u>Insurance</u>. This is clearly the most difficult issue. The Association proposes through Union Exhibit 21 the Super Care I package, with individual coverage for current employees, a two year waiting period for new employees. They had also suggested a $75 per month annuity in lieu of health. The Board has offered no insurance and that position

has been steadfast, notwithstanding the direct involvement of some Board members as discussed in the history portion of this report.

Because of the significance of this issue, it's now pertinent to discuss a little bit about the Colon School District and its total financial picture as presented by the parties through various exhibits.

Colon is located in St. Joseph County, approximately 15 miles from the Indiana/Michigan border. The surrounding area is predominantly agricultural, with some small lakes. There is not much major industrial and it is not a well endowed school district by any measurement. It is also home for the National Magic Convention during the summer. Exhibit E10 shows it to have 66 teachers, 951 students and a student/teacher ratio of 14.1 percent. Exhibit E5, selected financial data, shows it to rank 336 according to Michigan Department of Education 1995/96 data. On a total revenue per pupil basis, by comparison within the county, Burr Oak is 449, Centreville is 126, Constantine is 457, Menden is 384, and Nottawa, which is a K-8 district, is 539. There is one junior high/senior high and two elementaries, K-6 in Colon and a 1-5 in Leonidas. The paraprofessionals are located 4 at the high school, 1 at Leonidas, and 12 at Colon Elementary. Union Exhibit 3A shows that there has been decreasing membership with a high of 1,005 in 1994/95, 960 in 1997/98, and an estimate by the school district of the same for 1998/99. This is so because there are more families that are getting older with fewer children. Those houses that are sold are not turning over to families with children and there are retirees moving into the lakes area as opposed to young families. The average family income is around $25,000.

Central to this case is an understanding of the finances of the school district.

Each party presented significant exhibits to demonstrate its position. The union presented information through its staff economist, Ruth Beier, attempting to demonstrate that there is more than enough funds for each of the three years to afford insurance, salary increases and holidays. Conversely, the district suggested that prudent budgeting reflected that expenditures were going to exceed revenues in the last years of the contract and thus cut into the fund balance. The factors which would create the problem would be potentially decreasing enrollment, uncertainty with respect to the amount of the foundation grant that would be available via legislative action and general cost increases in all areas of the budget.

The financial affairs of a particular school district is discussed in the context of the aftermath of the adoption of Proposal A. Union Exhibit 4 shows per pupil revenues in K-12 districts sorted by gain or loss from Proposal A. Colon ranks 21st, but shows a 26 percent increase in the first four years after Proposal A (1993/94 - 1997/98). This is so because they had started at a lower position and one effect of Proposal A was to bring up the less financially advantaged communities more quickly. Exhibit U3A illustrates the foundation revenue that has been available post Proposal A rising from $4,428 in 1994/95 to $5,272 in 1997/98. Both the Union and school district did not project an increase for 1998/99, although the school district did project an increase for the following two years. Subsequent to the hearing, the legislature has adopted a two year budget for K-12 school districts, which adds $51 per student in one time payments for 1998/99 and the foundation grant will be $5,652 per pupil in 1999-2000. This is the second consecutive year the legislature has enacted a two year budget in K-12 school aid. A two year budget, including a budget for 1998/99, was initially enacted in 1997 after the state lost the Durant case. Although it is possible that a subsequent legislature could change the grant for 1999/2000, that's highly unlikely. The passage of the school aid act (HB 5516) adds a little bit more certainty to the financial outlook for the district, but it makes some of the exhibits, particularly E2, three year financial outlook, out of date, as well as E1, budget comparisons. Frankly, it slightly enhances the Union's arguments with respect to available revenues and undercuts to some degree the school district's view that the future is not quite as rosy with gross uncertainty. With the availability of increases in the foundation grant, the only other unknown with respect to gross revenues is student count. The school district under E2 projects 960 students for 1997/98, 956 for 1998/99, and the same numbers for the following two years. It is probably prudent planning not to anticipate more students than there might actually be.

With respect to expenditures as compared to revenue, Exhibit E2 and E1 suggest that the fund equity in 1997/98 will be 17.9 percent, in 1998/99 would be 17.4 percent, and 1999/2000 would be 11.4 percent. The latter years do not reflect the above mentioned legislative foundation grant improvements. It should be noted, however, that the district did project some foundation grant improvement in its 1999/2000 figures. It is always thought that approximately 15 percent is an appropriate fund balance and that school districts should strive for that amount. In 1994/95 it was only 5.9 percent, in 1995/96 it was 10.5, but increased in 1996/97 to 15.1. This is a reflection of positive impacts of Proposal A with respect to revenues and assumptively prudent expenditure oversight by the Board in those years.

There are two other financial matters that bear mention. One is the Durant settlement funds, and the other is a one time retirement reduction in costs. With respect to Durant, Colon will receive $136,247 from the November, 1998, amendments to the State School Act. This is part of the state's settlement with all school districts with respect to claims or potential claims that could have arisen from the Durant case. Colon was a non-plaintiff and is receiving 50 percent of what they were owed in ten equal annual installments. The non-plaintiff districts can only use Durant funds for textbooks, buses, electronic instructional materials, software technology, training for technology, school security, infrastructure improvements or existing debt service. They also must hold a public hearing within 90 days of receipt of the funds to discuss how to use the money. Needless to say, these funds are not to be used for operations, and although they obviously will be a benefit overall to the district, they are not intended to be available for annual operations.

The other one time benefit is savings from the retirement rate change. The retirement rate would have been 14.66 percent in 1997/98, but has been reduced to 11.2 percent. Accordingly, there is a retirement savings in 1997/98 of $86,807 on a 9 month basis at 11.2 percent. The projected savings of $118,058 in 1998/99 is based upon a 12 month savings of 11.2 percent as reflected in Exhibit U3A. The Union suggests that this means there is 1.91 percent effective increase in spending power in 1998/99. Needless to say, they suggest that the Board should use those funds to pay for the insurance, whereas the Board states that given overall expenditures and the goal of obtaining a 15 percent minimum equity balance, there is not available monies for insurance. The district, through Exhibit E2 in its projected three year financial plan shows a 17.9 percent fund equity with what they call excess expenditures over revenues of a positive $171,551 for 1997/98, reflecting in part the retirement savings. In the succeeding years, the district shows a negative $20,731 in 1998/99 and a negative $290,894 in 1999/2000. However, as pointed out above, particularly 1998/99, there is a $51 per pupil increase in the foundation grant, which would produce $40,756 in revenue not currently projected in E2. This changes the numbers from a negative to a positive number of approximately $28,000, thus allowing a fund balance in 1998/99 to be close to 18 percent. The increased foundation grant for 1999/2000 will reduce the suggested negative expenditures over revenue on Exhibit E2 and will not dramatically impact the fund balance as drastically as was projected in Exhibit E1.

Cost of Insurance

Exhibit U24 shows that the single subscriber cost for the Super Care I is $230.65 per month. There are 14 full time paraprofessionals and 3 part time. The parties agree that the 3 part time paraprofessionals would not be eligible for the insurance benefit (at least it doesn't appear from the record that the union is using 17). The Union exhibits are predicated upon 14 potential recipients. This would equate to $3,229 per month, or a total of $38,749 over 12 months for 14 employees. The Union indicates that a survey of employees suggests that 9 want the insurance and 5 others would not take it. It also should be noted that these costs are predicated upon a July 1, 1998, to June 30, 1999, MESSA contribution rate schedule (See U25).

Union Exhibit 26 is instructive as it relates to insurance provided to other paraprofessionals in St. Joseph County. Of the unionized employees, Centreville has a two-tier single subscriber insurance program, Three Rivers, a $60/month or option, and Constantine doesn't provide any insurance. St. Joseph Intermediate School District provides both family dental and vision, but it is not to be considered a comparable. With respect to all other St. Joseph County paraprofessionals, apparently no others offer an insurance program. Internally, Union Exhibit 22 shows that all full time employees other than paraprofessionals receive insurance, including teachers, administration, custodians who work 8 hours for 12 months, and a secretary who works 8 hours for either 11 or 12 months. Apparently a secretary who works 6 hours 10 or 11 months has a option for 75 percent Super Care, but may not be taking it. The food service and school helpers who are admittedly part time do not have insurance. The bus drivers who are four hour employees (with two employees having 6 hours) do have individuals Super Care I capped at a 10 percent increase. The testimony suggested that 12 to 15 years ago, the bus drivers were offered this program and they took a wage freeze for three years in consideration of obtaining the insurance benefit. There was also testimony that paraprofessionals likewise were offered some insurance some 12 to 15 years but took a salary increase in lieu of insurance benefits. The testimony on this issue was somewhat vague, but the sense that the fact finder has is that in fact the bus drivers gave up a wage benefit to get the insurance,a nd the paraprofessionals did just the opposite.

RECOMMENDATION

Clearly insurance is a very sensitive issue, and members of the unit believe that they provide a valuable service to the school district, and although none of them have enhanced educational skills, such as bachelors, masters or doctorate degrees, it seems apparent, particularly at the elementary school level where 12 of the employees work, that they provide substantial assistance to teachers and help to nurture a sound educational program in the classroom. Now that they have been recognized as an MEA collective bargaining unit, their bargaining power has been enhanced, particularly as it relates to access to the MESSA plan. MESSA obviously has been the exclusive plan of MEA bargaining units, and is perceived by some to be an expensive program often called the Cadillac of health plans. It is not this fact finder's role to compare various health plans, but simply to make a recommendation on what is being proposed. When the fact finder inquired as to costs or availability of other plans, the response was clear that a MESSA plan was the only option.

From the district's perspective, they have had a working relationship with the paraprofessionals for many years and steadfastly refuse to provide insurance coverage. The rationale for that policy was not articulated other than in a financial context. Perhaps the choice of salary over insurance by the TA's was viewed as precedent setting. Perhaps the district viewed the union election as being less than unanimous in that of the 11 then members, 7 voted yes and 4 voted no, for representation. But the record focuses only on economics.

We are mindful of the fact that this is a three year contract for the 1997/98, 1998/99 and 1998/2000 years. For insurance benefits, we can only be looking prospectively and not retroactively. Given the lateness of the calendar in 1998, most likely an insurance program could not be implemented before January 1, 1999. Thus, we are looking at six months in 1998/99 and 12 months in 1999/2000. It is the fact finder's recommendation that for those members of the bargaining unit who would want insurance, the same be made eligible commencing January 1, 1999, through the balance of the contract, and that the expense be borne equally by the district and the employee with the proviso that if the rates for July 1, 1999, are increased, that the increased would likewise be shared 50/50.

In dollars and cents, a single subscriber cost for 14 employees, if all took it, would be $1,614.55 per month for the school district. The monthly cost per employee would be $115.33. The cost to the school district on an annual basis would be $19,374.60, and half of that for six months. This increased cost is within the financial resources of the school district. The above referenced discussion of the economics suggests the $51 increase in the foundation grant for 1998/99 is an available resource and the retirement one time savings realization in the preceding fiscal year provides the Board with sufficient flexibility to accommodate the retroactive 3 percent salary increase for this unit as well as other district wide costs and will not negatively impact the fund balance. For 1999/2000, the same analysis would apply, as the increase in the foundation grant should provide resources to accommodate the increases for this unit as well as the budgeted increases that have already been allocated for other employees in the school district.

The district claims a right to establish priorities. This is true, but the facts suggest that the Board can maintain a prudent fund balance and give this unit a 3 percent wage increase plus pay 50 percent of the health care costs starting January 1, 1999. The suggestion that these are not full time employees is not persuasive. They work 6½ and previously 7 hours.

Why should the employees consider this proposal? Clearly, its a foot in the door that creates an opportunity to establish an insurance program that will allow the parties time to see how the actual finances of the school district are impacted prior to collective bargaining on the next agreement. In mandatory arbitration in other sectors, there are no winners when a third party requires one party to accept something less than it wants. However, here, where collective bargaining is still in progress, it's hoped that the fact finder's suggestion will break the log jam. This is not a large unit and this is the first contract. Neither party should have all its cake and eat it too. Insurance is a fairly significant cost item and the Board rightly can seek quid pro quos in its collective bargaining approach. The facts as presented at the hearing suggest there are available resources to accommodate a salary increase as well as a 50 percent contribution by the school district toward the insurance plan. The district cannot empirically support only offering 3 percent salary increase. Although employees in other districts don't seem to be achieving the insurance benefit other than the three identified, it's hard to explain to these members who consider themselves full time employees why the insurance program is not available to them and it is available to all other full time employees within the district (The fact finder equates the 6.5 hour employees to be full time). Common equity suggests treating people in the district comparable unless the economics are not available. Here, the relatively small amount needed to pay the 50 percent health benefit in comparison to the total budget is manageable.

CONCLUSION

It is hoped that the above report is helpful to the parties to give them an objective analysis of their respective positions. No one wants to force parties who are in a collective bargaining process to be required to do something. The very essence of collective bargaining is mutual consent, give and take. Each party must give something in order to get something. Whether the proposal suggested by the fact finder is the proper give and take is obviously open to subjective analysis. The recommendation is clearly supported by the factual information at a minimum, and the fact finder urges the parties to resolve their contract as recommended above.

Respectfully submitted,

Dated: 10/14/98

Kenneth P. Frankland (P13643)