FF 12/30/83

1983

30 December 1983

To: Michigan Employment Relations Commission
Shlomo Sperka, Acting Director

From: Carl Cohen
Fact Finder and Agent

Re: ANN ARBOR PUBLIC SCHOOLS -and- ANN ARBOR EDUCATION ASSOCIATION
MERC Fact Finding Case No. D83 H-2207

The above named parties, having been unable to resolve their dispute over health insurance, have submitted this dispute to the fact finding process. The Employment Relations Commission concluded that the matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known. The Commission appointed the undersigned, Carl Cohen, as its Fact Finder and Agent to conduct a fact finding hearing pursuant to Section 25 of Act 176 of Public Acts of 1939 as amended, and the Commission's Regulations, and to issue a report with recommendations with respect to the matters in disagreement.

A public hearing was held at the Ann Arbor Public Library on 9 December 1983, the earliest date convenient to both parties. At that hearing a full opportunity was given to the parties to submit documentary evidence, to examine witnesses, and to present argument in support of their positions. Representing the Ann Arbor School Board at the hearing was Mr. Errol Goldman, Director of Employee Relations; representing the Ann Arbor Education Association was Mr. Gerald Van Wambeke, Chief Negotiator. Also appearing for the Employer was Mr. Robert Moseley, Assistant Superintendant of Schools; also appearing and testifying for the Association were Mr. David Harrell, Executive Director, and Mr. Richard Taylor, President of the Association.

One topic only was presented for the Fact Finder's recommendation: health insurance for the school year 1985-86. By agreement of the parties, the Fact Finder was "limited to choosing either the position of the Board or the position of the Union."

The enclosed report is submitted pursuant to the charge above. The issue in dispute is complex. This Report therefore includes a careful review of the history of this dispute, an examination of the considerations of importance to the parties, and a detailed rationale for the recommendation made. The Fact Finder expresses his appreciation for the lucid, thorough, and very helpful presentations of both parties, supported on each side by hundreds of pages of documentary evidence. There is no doubt that both the Board and the Association continue to exhibit the genuine and serious intention to serve the best interests of the citizens of the Ann Arbor School District.

Respectfully submitted,

Carl Cohen

Carl Cohen
Fact Finder and Agent

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1. Contractual Background

The Ann Arbor School Board (the Board) and the Ann Arbor Education Association (the Association), in negotiating their Master Agreement for 1983-84, were unable to resolve all of their differences regarding health insurance. A partial accord was reached in a lengthy Memorandum of Agreement on health insurance, signed on 26 October 1983. This Memorandum of Agreement was appended to the Master Agreement for 1983-84, and it appears also as Appendix I of this Report.

This critical Memorandum has four sections. The first section settles the way in which health insurance for teachers will be handled during the current, 1983-84 school year; the second section settles the way in which health insurance for teachers will be handled during the 1984-85 school year. The fourth section specifies some of the continuing duties of the "health care insurance study committee," established under the provisions of paragraph (b) of the first section. The third section of the Memorandum of Agreement, central in the continuing disagreement, addresses the issue of health insurance for the school year 1985-86. This third section reads, in full, as follows:

"3. For the 1985-86 school year:

THE PARTIES AGREE TO SUBMIT THE INSURANCE ISSUE FOR THIS YEAR TO NON-BINDING FACTFINDING BY OCTOBER 1, 1983, WITH THE FACTFINDER'S REPORT TO BE RECEIVED BY THE PARTIES BY NOVEMBER 30, 1983, UNLESS THESE DATES ARE EXTENDED BY MUTUAL AGREEMENT. FOLLOWING RECEIPT OF THE FACTFINDER'S RECOMMENDATION, THE PARTIES AGREE TO NEGOTIATE THE LANGUAGE FOR THIS YEAR, WITH MEETINGS TO BE HELD AT LEAST ONCE A WEEK FOR AT LEAST THE FIRST FOUR WEEKS FOLLOWING SUCH RECEIPT. THE FACTFINDER'S RECOMMENDATION SHALL BE LIMITED TO CHOOSING EITHER THE POSITION OF THE BOARD OR THE POSITION OF THE UNION." [Caps in original.]

The question facing the Fact Finder, therefore, is not only limited to health insurance for teachers, but limited also to matters of health insurance for the school year 1985-86. The positions presented by the Board and by the Association, between which the Fact Finder must choose, are directed to that school year only.

The conflicting positions of the two parties will be set forth below, in Section 3. However, the two competing alternatives can be intelligibly discussed, compared, and evaluated only after the history of this dispute has been briefly reviewed.

2. History of the Dispute

Both the long-term and short-term history of negotiation between the parties on health insurance must be borne in mind. Part A, below, reviews this history over the many years of discussions and agreements; Part B, below, reviews the history of this matter during the negotiations leading to the Master Agreement for the current year, 1983-84.

A. Long-term History. [See Association Exhibit #3] There have been ten Master Agreements negotiated by the parties prior to the current (1983-84) contract; health insurance was dealt with in each of these. It is instructive to examine the larger pattern of agreements reached by the parties on this topic. That pattern exhibits three major phases.

First phase, 1967-68. In the first collective bargaining agreement reached between the Board and the Association a co-payment system was agreed upon. Health insurance premiums were paid for by contributions from both the Board and the individual teacher requesting such coverage.

Second phase, 1969-75. In the Agreement for 1968-70, a very different system was introduced. For 1968-69 the co-pay system was retained; but for 1969-70 it was eliminated, it being agreed that as part of the teachers' fringe benefits, the Board would pay for full health insurance coverage, either through Blue Cross/Blue Shield (BC/BS), or through the Michigan Education Special Services Association (MESSA). At this time MESSA became the major vehicle for health insurance for Ann Arbor teachers, and it has remained so since. In the first years of this second phase, yearly increases in health insurance costs were not very threatening. For 1970-71, any increases were absorbed by the teachers, through payroll deduction. [It was in this year also that the contract clause covering health insurance acquired the number 6.211, which it retains still.] In the contracts for 1971-73, and for 1973-74, and for 1974-75, when the possibility of very large premium increases was foreseen, it was

agreed that the Board would cover those increases, but only to a maximum of 25%.

Third phase, 1975-83. Steadily rising health care costs, and therefore health insurance costs also, led the parties to adopt a new system to cover those costs in the the three-year contract for 1975-78. Full payment by the Board, as part of fringe benefits, was retained. But for 1976-77 it was agreed that increases in health insurance costs would be funded as part of a formula, agreed to in an Appendix of that Agreement, which established the percentage (then 72%) of the increases in tax revenues to the Board that would be devoted to the wage-benefit package for the teacher bargaining unit. From the sum determined by this percentage would be paid the increased costs of all fringe benefits, the remainder then being devoted to a salary program whose ratios were determined in advance. This system met the needs of both parties. Increasing property values in the District resulted in increased Board revenues; the formula made it possible to cover rising benefit costs while reasonable salary improvements could still be made. Thus the formula system was introduced, constructing the salary-plus-benefits package out of the computed total employment costs for the District. Effective 1 July 78, however, the increases paid for by the Board were to be capped at 10% of the premiums of the preceding year. In the three succeeding Agreements, 1978-80, 1980-81, and 1981-83, the formula system was retained, to the satisfaction of both parties. In each of those contracts full hospital-surgical coverage was provided, through the MESSA Super-Med II program. And in each of those contracts paragraph 6.211 concluded with the same sentence: "Any increased cost of this benefit will be funded as part of the total cost settlement for the bargaining unit."

B. Short-term History. [See Board Exhibits #1 - #39] Why could the apparent harmony of the preceding years, in the realm of health insurance, not be retained for the 1983-84 Agreement? One contributing factor was the difficulty encountered in seeking to apply the "total cost settlement formula" system under circumstances in which benefit costs were rising sharply, but revenues were not.

Health insurance premiums for the current year were to rise almost 20%; but by mid-year it became clear that the increase in State Equalized Evaluation (SEV), which had been hoped to approximate 4%, would in fact be only .41 of one percent. Whatever the date at which this difficulty should have been anticipated, the result was a turn away from the formula system, the parties seeking to confront the escalating cost of health insurance more directly.

Thus the Board entered negotiations in 1983 determined to find some way to effect savings in the health insurance program for teachers, and the teachers entered those negotiations determined to retain a health insurance program whose comprehensiveness and responsiveness they had found very satisfying. The stage was set for a dispute that has eventuated in this Report.

Health insurance was not the only source of conflict during the 1983 bargaining, of course, but it was a major one. In the months of negotiation many, many proposals and counter-proposals were made by the parties to each other. Every step in these difficult negotiations need not be recapitulated. The object here is to understand the genesis and force of the two alternative proposals presented by the parties for the year 1985-86. To do that it will be sufficient to make several observations about the 1983-84 negotiations overall, and then again to distinguish the several phases of this process.

The Fact Finder has examined the documentary history of these negotiations in great detail, and has listened carefully to the account given of them by the two chief negotiators. The following conclusions may be confidently expressed. First, the parties were certainly bargaining in good faith. Second, both parties had goals they were determined to achieve, but neither party was intransigent; each changed its position several times during the negotiations, struggling to reach agreement. Third, the villain of the piece is the rising cost of health care, a problem which the Board representative rightly observed is by no means unique to Ann Arbor, and which the Association representative rightly observed is a source of anxiety to teachers no less than to the Board.

Negotiations over health insurance began, in 1983, with the submission by the Board of their initial proposal on 31 May — a proposal to supply coverage comparable to Blue Cross/Blue Shield, but with the Board maintaining the right to select the the carrier and policyholder. This began the first phase of negotiations, in which the Board proposed a series of similar changes, but the Association rejected them all, wishing to retain the language of 6.211 in the then current contract.

A second phase began on 9 August 1983, when the Association proposed another way of attacking the problem — the establishment of an "Issue Resolution Mechanism" to deal on a continuing basis with various contractual issues, removing them for purposes of early and extended discussion from the traditional bargaining process, and thus encouraging their timely resolution. The concept of an issue resolution mechanism was, as the Board reports, "immediately accepted by the Board." Such a mechanism (with many subsequent adjustments and refinements) was in fact adopted by the parties, through a Memorandum of Agreement appended to the 1983-84 Master Agreement. [See Appendix II] The Board did not find the Issue Resolution Mechanism an adequate way of dealing with health insurance at this juncture, in view of the long delays it would entail; negotiations broke down on 19 August.

With the assistance of a state Mediator, the third phase began on 30 August with the Board proposing that each employee be given a choice of three fully paid options: its own initial proposal was one of these; a MESSA plan (SMIAD 5, with $250 per person, $500 per family deductible) was a second; and a BC/BS plan was the third; the existing MESSA plan would remain available for employees if they were willing to "co-pay" the premium differential. The replacement of MESSA as major contractor by a carrier whose performance was untested, with coverage that was "comparable" but uncertain, was unacceptable to the Union; co-pay systems, eliminated from the contract in 1969, the Union finds repugnant. On 3 September the Association presented a counter-proposal with a different set of options for employee choice, five in number, three of these being

various MESSA plans, one being a Blue Cross/Blue Shield plan, and one the unkown "comparable" coverage, with the amount of the deductible paid to a tax-free annuity maintained for those who chose such a plan. [The device of contributing the amount of the deductible to an annuity for the teacher had been earlier proposed by the Board, as a way of winning teachers away from MESSA.] The Board believed, however, that so long as the MESSA plans were available as fully paid options, one of them would be chosen by most teachers, in which case the Board's hoped-for economies would not be achieved; the Association's counter-proposal was found unsatisfactory, and again negotiations broke down.

A fourth phase began on 4 September, two days before school was due to begin. The Association proposed yet another approach to the problem, looking to the creation of a Health Maintenance Organization (HMO) which might deal with health care for teachers in a more satisfactory way over the long term. This idea of instituting an HMO recurs repeatedly in subsequent proposals, and in the later Memorandum of Agreement as well, but the time-consuming exploration of such a possibility could not meet the Board's demand for assured early savings. During this phase the Board sought to make the determination of "comparable coverage" more acceptable to the Association by agreeing that if disputes concerning coverage arose in the committee formed to establish its principles, the independent insurance consultants, rather than the Board itself, would resolve such disputes. But for the Association the uncertainties regarding the nature and performance of an unknown replacement for a MESSA program that had proved satisfactory for some 13 years, remained too great a risk. On 6 September a strike began.

On 8 September the Association proposed another try at the formula system that had been in use for the preceding three contracts, opening a fifth phase. The Board had also made such an effort, in its initial proposal of 31 May. The formula proposed by the Association at this point used the figure 61.3% as the teachers' share of revenues, to which the Board did not object; but this formula also supposed that savings from attrition -- retirement and resignation -- would be added to the wage-benefit package. Moreover,

to protect teachers against possibly deficient revenues, the Association's proposal also now included a 7% "floor" -- the wage-benefit package not to fall below that level of improvement, regardless of revenue. That floor, combined with the principle of retained attrition monies, the Board could not accept. Efforts to re-introduce the formula system failed.

Discussion documents subsequently presented by the Board, and by the Association, were unsuccessful in breaking the jam. A sixth phase was entered when the Association made a proposal, on 9 September, of an entirely different kind. This proposal called for a unification of all the varieties of insurance carried by the Board — health, dental, life, and long-term disability insurance — all to be handled through a single contract with MESSA. The unification of coverages, it was argued, would permit substantial savings for the District. This proposal — called MESSA-PAK — sparked some interest by the Board. Three factors led the Board to reject it: a) The low rates for the package promised by MESSA could not be guaranteed beyond the present year, while the Board wanted longer term assurances. b) The savings promised were $285,000 on an annual basis, but in fact only 66% of that, $188,000 in savings, would be possible in 1983-84, due to the late date in the year at which the coverage would begin. c) If MESSA could offer such savings with a unified package, another company might, if bidding were opened, bring yet greater savings to the Board. The Board's counter-proposal, with these concerns met, could not be satisfied by MESSA. Ultimately, MESSA-PAK was rejected.

The work stoppage was becoming painfully extended. The Board was determined to incorporate some use of market forces to hold costs down; but it was also willing to postpone that accomplishment if it could be assured for a subsequent year. On 14 September the last phase of negotiations began, with a discussion document presented by the Board that suggested a spreading of the process over three years. MESSA would remain in place for the first year, while a joint study committee would work out the specifications for comparable coverage to be submitted for bidding; the plans presented by the successful bidder, as well as the MESSA plan, would be

options for the second year; in the third year the successful bidder would become the standard carrier, with MESSA available on a co-payment basis. The opportunity thus developing to discuss the issues over an extended period accorded with the Association's original thrust, but the absolute commitment to accept an unknown carrier in place of MESSA then, only because it was low bidder, the Association could not accept. A torrent of proposals, adjustments, and counter-proposal followed.

That three-year approach was the key to the agreement that helped to end the strike. The Memorandum of Agreement ultimately signed by the parties (described in Section 1 above) addresses each of the coming three years. It maintains MESSA, and a BC/BS option, for 1983-84. It establishes immediately a joint committee to lay down the specifications for acceptable coverage, which are to be opened for bidding by competing carriers. For the 1984-85 school year the Board will offer teachers MESSA and two alternative plans presented by the successful low-bidding company. Meanwhile, the possibilities of a Health Maintenance Organization will be investigated. But what shall be done regarding the third year, 1985-86? Unable to agree upon this, the parties commit themselves, in the Memorandum of Agreement, to submit that matter to this Fact Finding process.

3. Position of the Parties

The force of the two proposals for 1985-86, one from each party, may now be appreciated, and their merits weighed.

A. Position of the Board

The Board position for the 1985-86 school year, reported by Errol Goldman, Director of Employee Relations, on 21 November 1983, is as follows:

> "a. The Board shall provide for all teachers the standard year-round full family hospital-surgical coverage which was bid and implemented as described above. [The reference here is to the process of bidding and implementing alternative coverage, as laid down in Sections 1 and 2 of the Memorandum of Agreement of 26 October 1983.]
> b. The Board shall offer as an option the above standard health insurance coverage with a $250/500 deductible with the teacher selecting the deductible receiving $500 in a lump sum payment or placed into a tax-sheltered annuity at the employee's choosing.
> c. As an alternative, the employee may choose to retain MESSA Super Med II and pay the difference in premium between that coverage and the standard health insurance through payroll deduction."

B. Position of the Association

The Association position for the 1985-86 school year, reported by Gerald Van Wambeke, Chief Negotiator, on 17 November 1983, is as follows:

> "The Association's position is that current contractual language contained in Section 6.211 of the Master Agreement should be unchanged until such time as the parties renegotiate this section based upon specific health insurance programs, carriers, and coverage. We are willing to engage in the process and modifications of current language and practice which are contained in year one (1983-84) and year

two (1984-85) of the proposed memorandum of agreement on health insurance. However, year three (1985-86) is unacceptable to us."

These two proposals approach the issue in dispute from different angles. The Board seeks a cost-saving commitment to a change from the present health insurance system; to achieve this it proposes a set of options for the 1985-86 school year, to be agreed upon now. The full content of these options would be known only after the specifications for coverage are decided upon, put out for competing bids, and a new insurance carrier selected. The cost differential, if any, between the new carrier's insurance plan and MESSA Super Med II will then determine the size of the teacher co-payment for those choosing MESSA instead of the new carrier. The Association seeks to avoid any immediate commitment to an insurance carrier whose identity and performance is presently unknown; it proposes to continue the process of negotiation in the light of what is learned from the study of alternative coverages during year one (1983-84), and from the performance of the low-bidding carrier during year two (1984-85), leaving the question of the replacement or retention of MESSA in 1985-86 undecided for now.

The two proposals have logically disparate shapes. The Board offers a reasonably specific, although in some respects incomplete solution for adoption now; the Association offers a method of reaching a solution later. Between these two alternatives the Fact Finder must make his judgment.

4. Discussion: Concerns of the Association

There are merits and demerits in both proposals, of course. At issue is a major change in a long-standing contractual arrangement that has worked reasonably well. The justifications given by the Board for that change will discussed at length in Section 5, below. The Association strongly opposes the change, partly because of its likely adverse impact upon teachers, and partly because it is certainly premature, since not enough is known now about the alternatives the Board is proposing, to evaluate them fairly. It is the latter of these two arguments -- that of unripeness -- upon which the Association places greatest weight.

The adverse consequences foreseen by the Association are, in turn, of two kinds. First. the quality of insurance coverage -- its comprehensiveness, promptness, sensitivity, and the like -- is almost certain to decline. Second, the Board's proposal re-introduces the element of co-payment for insurance, which the Association finds highly objectionable.

The argument based upon the decline in the quality of coverage is not compelling, for reasons given by the Association itself in another context: we simply cannot say, with any confidence, what the quality of coverage will be under the Board proposal, and therefore cannot say with confidence that it would be less good than that presently provided.

The argument based upon the objectionable features of a co-payment scheme has merit, but it is not compelling either. Co-payment involves a contribution, by the individual teacher, toward the cost of the insurance premium. It is particularly burdensome because the individual teacher's contribution comes out of his income after it has been taxed; fringe benefits purchased in full by the employer (as health insurance now is) are paid for with pre-tax dollars, and therefore cost the parties (considered collectively) much less. Moreover co-payment was once part of the Master Agreement (See Section 2, above) and was eliminated by negotiation well over a decade ago. The Association would find its re-introduction a painful regression.

Co-payment is painful, and should no doubt be avoided if that is possible. But the pains of alternative solutions must all be weighed. If there is no single fully-paid health insurance plan upon which the parties can agree, the use of co-payments for one of several options may make possible the retention of a quality plan that would otherwise be lost. The pain of co-payment is mitigated by the fact that the individual teacher would have, under the Board proposal, a fully-paid health insurance option; individual contributions would be necessary only to retain a specific insurance plan that then proves to be more costly. It is true that co-payment was long ago negotiated out of the Master Agreement; but it does not follow that, if the reasons are good enough, it cannot now be negotiated back in. The re-introduction of the co-payment scheme is a reason not to adopt the Board proposal; but it is not by itself an overpowering reason.

Much more powerful is the Association's argument based upon timing. The issue in dispute is the system of health insurance for the school year 1985-86; with the calendar year 1984 about to begin as this report is written, twenty months are at the disposal of the parties to resolve their disagreement. There are many good reasons to believe that they can and will do so before that period elapses.

The bargaining history over the long term, and especially the bargaining history during 1983 (See Section 2, above), plainly show both the determination of the parties and their flexibility. In the course of recent bargaining there were many changes in the positions of both parties; many new proposals, or revised older proposals, were put on the table. Both parties exhibited intensity, imagination, and a serious desire to resolve the dispute. The Association argues, very persuasively, that there is sufficient space, in this health insurance arena, to permit and promote continued collective bargaining that will be productive for both parties.

It is not attitudes alone that provide this space. The bargaining concluded in September, 1983, introduced a number of new and important factors that can influence the continuation of health

insurance negotiations. New techniques are available as a result of the 1983-84 Master Agreement, and new information soon will be available too. Careful examination of the documentary evidence before the Fact Finder reveals six major factors entering the picture, five of them entirely new. These will be first listed, then discussed in turn:

(1) The Issue Resolution Mechanism
(2) The Health Care Insurance Study Committee
(3) A Health Maintenance Organization
(4) Unified Insurance Packages
(5) Retention of an Employment Cost Formula
(6) Performance Evaluation of Insurance Carriers

1. **The Issue Resolution Mechanism.** As noted earlier, a new procedure has been devised, by the parties, to deal with difficult issues in a context outside of the normal summer bargaining sessions. It has yet to be tested, but it is very promising. It calls for sessions during the fall and winter; it makes possible the establishment of a five-person resolution panel (two from each party, with a fifth person mutually agreed upon); it sets a reasonable schedule. In many respects it gives both parties the opportunity to exhibit flexibility and move cautiously toward mutual agreement.

The Board exhibited grave doubts about the ability of this mechanism to deal with the health insurance issue adequately, and they may be right — but they may prove unduly sceptical. The new procedures deserve a chance to be tested; the twenty months between now and September, 1985, give them such a chance.

The Memorandum of Agreement which establishes the Issue Resolution Mechanism is appended to the 1983-84 Master Agreement; its full text appears as Appendix II to this Report.

2. **The Health Care Insurance Study Committee.** As noted earlier, the need to reach agreement upon appropriate specifications

for a health insurance plan "comparable" to the 1982-83 MESSA Super Med II plan, led the parties to the establishment of a wholly new committee, composed of representatives of employee groups, and including three independent insurance consultants selected in a way that will insure balance. The work of this committee will lead, in accordance to the Memorandum of Agreement on health insurance, to a bidding process by competing insurance carriers, one of whom will be selected to offer two programs competing with the MESSA program for the school year 1984-85.

A very great deal is likely to be learned from the work of this committee. When its insurance specifications have been laid down, and bidding completed, both parties will be in a position to negotiate health care matters for 1985-86 with more understanding, more precision, and more factual knowledge of great relevance. The establishment of this committee, scheduled for November of 1983, gives another ground to believe that the bargaining process in this sphere should not be cut short.

The Memorandum of Agreement that establishes the health care insurance study committee is appended to the 1983-84 Master Agreement, and appears as Appendix I to this Report.

3. **A Health Maintenance Organization.** The Association several times urged during negotiations that the possibilities of a health maintenance organization (HMO) be explored. An HMO deals with health care costs in a way very different from normal insurance: health care is pre-paid; the cost of care (often including preventive medicine) is not calculated on a fee-for-service basis; coverage is commonly more comprehensive than standard health insurance. Such programs have merits and demerits; they deserve investigation in this context. That will happen over the coming months. Section 2(c) of the Memorandum of Agreement on health insurance [Appendix I] provides that the parties will investigate an HMO as a possible option for employees when it becomes operational.

It is unlikely that an HMO could become fully operational before September of 1985. Nevertheless, the possibility of that option may have significant impact on bargaining. In this matter

also much will be learned over the next year and one half.

4. **Unified Insurance Packages.** The integration of all the insurance policies purchased by the Board (health, dental, life, long-term disability) was discussed, as noted earlier, when the MESSA-PAK proposal, ultimately rejected, was put on the bargaining table. Such amalgamation of insurance coverage may make possible savings of hundreds of thousands of dollars each year.

No agreement on MESSA-PAK was reached, but the Board did exhibit honest interest in proposals of this kind. One reason (there were several) given by the Board for not accepting the MESSA-PAK proposal was that, should such a consolidated package be offered for open bidding, yet more money might be saved. The point is a good one. In response to the Fact Finder's question about plans to consider such consolidation, the Board's chief negotiator replied, appropriately, that it was his intention to urge the health care insurance study committee to investigate this possibility as one of the very first items on its agenda.

The Board's present proposal for 1985-86 calls for the selection of a health insurance carrier based on competitive bidding in that sphere alone; adopting that approach now would appear to preclude large-scale insurance consolidation then. But any avenues offering the possibility of cost relief ought not now be precluded. Moreover, the possibility of savings through purchase of a consolidated insurance package -- perhaps even MESSA-PAK itself, modified to meet Board concerns -- enhances the likelihood that a solution satisfactory to both parties will be successfully negotiated.

5. **Retention of an Employment Cost Formula.** In its initial proposal in 1983, the Board again used the sentence that had concluded Section 6.211 of the Master Agreement in each of the three preceding Master Agreements; it reads: "Any increased cost of this benefit will be funded as part of the total employment cost settlement for the bargaining unit." The Association also incorporated exactly that language in one of its proposals, as late

as 9 September 1983. There were and still are very good reasons for both parties to find this old strategy attractive; it had proved a successful approach to health insurance increases for over five years. More will be said about this strategy below. This much is clear: if the hurdles to the adoption of a formula approach can be somehow overcome, both parties may find a return to it to be prudent and advantageous. Both parties remain interested in that possible course. But if the Board's proposal for 1985-86, using a different approach to increased costs, were adopted now, the return to the "total employment cost formula" system would be precluded for 1985-86. Changes in the District's circumstances between now and then, including possible changes in the revenue picture, render such preclusion unwise at this point.

6. **Performance Evaluation of Insurance Carriers.** One of the most sensitive aspects of the present dispute concerns the evaluation of the actual performance of any company selected as carrier, administrator, or policyholder as the result of an open bidding process, with the specifications of coverage laid down in advance. This is a very complicated matter.

The Board has taken the position that when the nature of the health insurance coverage has been clearly specified, and the qualifications of the bidding companies appropriately established, the selection of the carrier becomes principally a matter of economics: the low bidder should win the contract. There is much to be said for this approach, especially when little is directly known about any one of the competing insurance carriers.

The Association has taken the position that under present circumstances such an approach is unacceptable, because little is known about some of the likely bidders, and a great deal is directly known about one of the competitors, MESSA, through which most Ann Arbor teachers have been insured for over thirteen years. MESSA's performance has been -- from the Association's perspective -- excellent; claims have been paid fully, promptly, courteously, with sensitivity to the needs and circumstances of teachers. This is not surprising, says the Association, since MESSA is closely associated

with the Michigan Education Association, the parent group of the Ann Arbor Education Association. MESSA is administered by persons who understand and sympathize with the problems of teachers. No proposal that would replace MESSA with some company unknown, and in Ann Arbor untested, is therefore acceptable to the Association.

The Fact Finder is not charged with the task of evaluating MESSA, or any competing insurance carrier. Indeed, the carrier that wins an open bidding process could not now be evaluated, since it cannot now be identified. But the question of whether the identity and actual performance of an insurance carrier is an appropriate matter for negotiation is one that demands response here.

Fortunately, there has been a good deal of discussion and argument on this matter over the years, in many school districts, in Michigan and in other states. Issues arising in this sphere have been repeatedly litigated in Federal Courts. The identity of the insurance carrier has been held a mandatory subject for collective bargaining where, as in this case, the carrier's identity is inseparable from the benefits offered by the insurance plan. [Bastian-Blessing, Division of Golconda Corp v National Labor Relations Board, 474 F2d 49, 52 (1973)] Similarly, when a change of the administrator of a group health insurance program would bring other changes that have "material and significant effect or impact upon terms or conditions of employment...including differences in payments for many procedures," the identity of the administrator also is a matter for mandatory, not merely permissive, collective bargaining under the National Labor Relations Act. [Keystone Steel and Wire v National Labor Relations Board, 606 F2d 171, 172 (1979)] In Michigan, the State Court of Appeals has recently held -- explicitly relying upon the same rationale -- that a District Board of Education is required to bargain with its Teachers' Association over the identity of a health insurance plan policyholder. [Houghton Lake Education Association v Houghton Lake Community Schools Board of Education, 109 Mich App 1, 8-9, 1981] This holding expressly concerned an Association insured through the MESSA Super Med II plan, the same plan in use in the Ann

Arbor District, which (the Michigan court said) "has a profound effect upon the conditions of employment."

MESSA is the administrator, and the policyholder, of a group insurance plan actually underwritten by the Equitable Life Assurance Company. MESSA is responsible for paying the claims, for establishing the claim appeal procedure, and for interpreting the insurance contract. Thus, for example, Super Med II compensates the employee for doctor's fees that are "customary and reasonable." MESSA, as the administrator and policyholder, has the authority to determine what "customary and reasonable" means in any concrete context. MESSA is therefore in a position to protect individual claimants, a form of protection its connections with the Michigan Education Association dispose it to provide.

All this must be borne in mind when the actual peformance of competing insurance carriers is at issue. There is no reason why some other insurance carrier could not exhibit the same responsiveness and sensitivity to the needs of teachers; but it is entirely reasonable for the Ann Arbor Education Association to seek good evidence regarding that sensitivity and responsiveness.

The evaluation of MESSA's peformance is not the object of this Report. But the considerations described just above render the identity and actual performance of a competing insurance carrier matters appropriately introduced into the bargaining process, without pre-judging the outcome of that process. Were the Board's proposal for 1985-86 to be adopted now, such matters could not be introduced. To preclude their introduction now, when the successful bidder will in fact be servicing some Ann Arbor employees during the 1984-85 school year, would be premature.

These many considerations do strongly tend to show that the disagreement over 1985-86 cannot be wisely resolved in 1983. New and changing circumstances, affecting and probably altering the bargaining stances of the parties, render the Association proposal -- which calls for negotiations that can take those changes into account -- highly rational and very persuasive.

5. Discussion: Concerns of the School Board

This dispute arose out of a proposal, by the Board, to change the health insurance provisions of the Master Agreement. The concerns which led it to initiate such discussions must now be carefully and respectfully addressed. In the argument of the Board at hearing, in its proposals during collective bargaining, and in its position papers and carefully worded explicating statements, five related but distinct concerns may be identified. Two of these are major; three are subsidiary; each will be discussed below, in turn.

(1) Cost Containment. The steadily rising cost of health insurance for teachers is one major concern of the Board. The MESSA Super Med II insurance plan, long in use and now agreed upon as one option for the current year (1983-84) and the next year (1984-85), is more costly than the standard Blue Cross/Blue Shield MVF II Master Medical IV and prescription drug .50 program. There is dispute as to the "comparability" of these programs; there is great uncertainty about what the cost of each of these, and any other competing program, will be in the years to come. But it appears very likely that the replacement of MESSA by another program will -- putting the issues of comparability and actual performance aside -- effect substantial savings. The Board takes very seriously its responsibility to spend tax-payers' money with maximal care and prudence. Convinced that this duty obliges them to seek an alternative to the present system of health insurance, the Board has struggled, thoughtfully and honorably, to find some way to reduce health insurance costs, or at least to reduce the rate of their increase. That was one of its major goals in the recently completed 1983 bargaining sessions. The adoption of the Association proposal would fail to achieve this goal. Tax-payers in the Ann Arbor School District may be proud of a Board that remains determined to effect every economy reasonably within its power.

The legitimacy of this concern will be doubted by none. But it is not clear that the adoption of the Board's proposal is the only

way to achieve this objective. It may even turn out, by the opening of the 1985-86 school year, that the Board's present solution is not the best way to achieve its own proper goal. As noted in the discussion in Section 4, above, further trials, investigations, and even large-scale strategy changes may yield savings greater than those possible through the proposal put forward by the Board in its present state of knowledge. Or it may turn out that the cost increment for the rentention of the MESSA program is sufficiently small, and the value received sufficiently great, as to make its continued purchase a wise one in the interest of teachers, and thus indirectly in the interest of the children and the citizens of the District.

Even if the Board's present proposal turns out, after some experience, to be the best of available alternatives, there is nothing in the Association proposal, if adopted, that would block that outcome. If that path, or some variant of it, be ultimately the one followed, it will be far better for all concerned if it be chosen out of knowledge, and with mutual accord.

Rightly troubled by the premature replacement of what is known and satisfactory with what is unknown and possibly unsatisfactory, the Association has been intensely loyal to the MESSA program. But the Association has frankly and plainly said that it is open to other alternatives that can be shown to be as good or better. The rising cost of health insurance is a cause of anxiety for all, for teachers as well as for the Board. The Association recognizes candidly that those costs inevitably erode the wage-benefit package that the Board can provide. It is therefore very much in teachers' interests to cooperate with the Board in seeking out ways to control health insurance costs. Recent bargaining history gives good indication that they will do that -- partly out of self-concern, partly out of community concern that all parties share.

It is a painful fact that neither the Board's proposal, nor any available proposal that is at all feasible, can actually "contain" health insurance costs; those costs will go up as the cost of health care rises, whatever the program adopted. "Cost containment" is therefore a misnomer. What the Board rightly insists upon is

maximal economy — and that means getting best value for the money spent. That goal is shared, and can be jointly pursued over the coming months. The Association's proposal does not by itself achieve that goal, but it does not hinder movement toward it. The uncertainty of the savings the Board's proposal may later provide, and the possibility of yet greater savings through very different arrangements, leads the Fact Finder to conclude that the economic aims of the Board, entirely appropriate in their thrust, do not justify the adoption of its proposal for 1985-86 at this time.

(2) The Relation Between MESSA and the Michigan Education Association. The second major concern of the Board is a delicate one, having ramifications that are not easy to specify. The core of this concern lies in the fact that MESSA is very closely tied to the MEA, with which the Ann Arbor Eduction Association is affiliated. Thus, from the perspective of the Board, the administrator and policyholder of the health insurance it pays for is an organ of the unit with which it must bargain in sometimes adversarial posture. The Board is pained by this, understandably, and seeks the elimination of MESSA as the chief insurance intermediary, quite apart from its expense.

This aspect of the matter has cost implications too, as the Board sees it. Because MESSA acts in teachers' interests it will, from time to time, so interpret the policy as to increase benefits -- increases that have to paid for one way or another, ultimately by the Board and the tax-payer through higher premiums. The Board's discontent with this relationship is manifest in the language used in its brief to describe it; it is, the Board contends, an "incestuous relationship", its higher costs the result of "collusion."

The Association proposal does not result in the elimination of MESSA as insurance administrator, and therefore cannot meet this concern. The Board's proposal does not do so directly either, since it leaves open the question of what carrier will ultimately succeed in an open bidding competition. The Board is convinced, however, that with the coverage it offers MESSA cannot win such competitive

bidding, and therefore will be eliminated. Since that is not certain (though it is very probable) it should be noted that the Board's proposal does not resolve this matter definitively.

There is room for argument about the underlying ground of the concern here expressed. The relation between MESSA and the MEA is a public matter; its organizational structure is aboveboard; there appears to be nothing surreptitious or unwholesome about it. Respectfully, the Fact Finder would observe that to describe the relation as "incestuous" strongly suggests wrongful conduct, immoral relations between members of a family; but between the MEA and MESSA there are, to the best of the Fact Finder's knowledge, no wrongful relations at all, in law or morals. Nor is the relation "collusive" -- collusion plainly suggesting secret agreements for fraudulent purposes.

It is true that MESSA, as administrator of the health insurance, can so interpret the policy as to upgrade the benefits received by teachers, and that it may be inclined to do so because it is so closely tied to the teachers' Association. This is an understandable concern of the Board, which has the duty to manage public funds frugally. But it is not clear that such upgrading is in any way improper. With changing therapies, procedures, and prosthetic devices, it is not unusual for health insurance carriers to upgrade benefits in order to adjust to new medical circumstances. We would not want it otherwise, for ourselves or for teachers.

An illustration is helpful. Health insurance policies often exclude the cost of prosthetic devices. But with the widespread introduction of cardiac pacemakers as standard therapy for some conditions, even policies which embody the prosthetic exclusion have commonly been interpreted so as to cover the cost of <u>that</u> prosthetic device. The enormous price of a pacemaker can be so devastating to an unprotected individual that honorable insurance companies -- Blue Cross/Blue Shield, for example -- commonly pay for the cost of devices that their formal policy certificates permit them to refuse payment for. Ultimately, of course, every pacemaker so provided will be paid for by the premiums of those insured; but even those of us who have no expectation that we will need a cardiac

pacemaker do not complain about that upgrading; we recognize that interpretive adjustments are needed as medical realities change, and that many of us may one day need some protection against shocking new costs.

It is argued that MESSA engages in this practice of upgrading coverage more frequently than most insurance companies do, and that such tender concern for the group insured gives more to the teachers than the Board bargained for. There may be merit in that complaint; one would need to ascertain the actual number of such upgradings, and estimate their actual long-term cost to the Board. Absent a detailed investigation, one might reasonably presume that the upgrading of coverage practiced by MESSA is part of the value being purchased through it. Savings achieved by "freezing" health cost coverage might prove a bad bargain for all. The product as well as the price must be appraised.

The economic consequences, direct and indirect, of the ties between the teachers' insurance administrator and the teachers' Association are, of course, an appropriate concern of a responsible Board of Education. Future negotiations may yield formal assurances from MESSA that will give the Board appropriate protection against premium increases. These questions need to be explored, the entire matter fully and frankly discussed. The Association, at hearing, expressed pride in the formal ties between MESSA and the MEA. No evidence of wrongdoing flowing from these ties has been presented to the Fact Finder; speculation on that matter has no place in this Report. The Fact Finder concludes that the interlocking relation between MESSA and the MEA, although understandably disconcerting to the Board, is not in itself a justification of the Board proposal which would, in effect, eliminate MESSA as the main administrator for teachers' health insurance in 1985. Whether MESSA is ultimately retained is a matter for the parties to determine on the basis of the quality of the services it renders, and all their costs. These are matters properly discussed at the bargaining table.

(3) The Provision of Experience Data. Group insurance carriers commonly provide information to the insurer regarding the claims

made and paid, upon which subsequent rate adjustments are calculated. It is a concern of the Board, subsidiary but certainly not unreasonable, that such data are not provided by MESSA as they are by other companies, including Blue Cross/Blue Shield.

This matter is more complicated than it appears on the surface. Different kinds of data can be compiled; to evaluate the Board's concern in this sphere, one must ask what information can be provided, and what information should be provided.

A distinction must first be drawn between data exhibiting the experience of the insurance carrier based on categories of claims and the costs of the assorted categories (category data), and the amounts paid out in behalf of named individual members of the insured group (individualized data). The Board complains that MESSA "refuses" to provide experience data; it does refuse to provide individualized data — but it does so as a protection for individual teachers, and the Association argues that this sensitivity to teachers' needs is an example of MESSA's integrity, not its failing. There is little danger, in this District and in these times, that an individualized listing of amounts paid, (which might, for example, identify by name those employees under psychoanalytic care) would be used nefariously by school administrators; it is well, nevertheless, that possible invasions of privacy be guarded against. The Board agrees, in any event, that it has no need for the individualized data, and has promised not even to ask for it from those carriers who can provide it. The fact that MESSA does not provide this kind of data, therefore, keeps nothing from the Board that they will seek elsewhere.

There is another important distinction here, however. Category data, which do help to explain rate adjustments, MESSA does provide -- but it provides them only on a county-wide basis, while the Board seeks the data for the Ann Arbor District only. The Association argues that such information by district cannot be provided; the Board argues that the carrier of its health insurance policy has the duty to provide it.

Again, the Board's concern is a reasonable one. But this matter is less than earth-shaking, and can surely be resolved by

intelligent parties of good will. Why not calculate the category data by district? The Association contends that Ann Arbor teachers actually receive, in paid claims, about 130% of what is paid out by MESSA, on average, to teachers in all districts of the county. Since the rates are county-based, Ann Arbor teachers are substantial beneficiaries of this imbalance, which it might prove both awkward and injurious to document. Hence the Board's demand for the Ann Arbor figures is (they say) a potential injury to Ann Arbor teachers. On the other hand, The Board has a legitimate right to information justifying its expenditures of public funds. The Association may rejoin that the Board receives all of the data it needs -- since it receives category data by county, and rates are adjusted by county. The Association also contends that the Board must be able to get along with the current type of data provided since it is willing to maintain MESSA with teacher co-payments, in which case it will continue to receive category information from it on a county-wide basis. The Board responds that it could tolerate that continuing inadequacy of data, for a portion of those insured, if its larger economic objectives were being met. From this it may be inferred that the disagreement surrounding the provision of experience information is indeed a subsidiary one.

The Fact Finder is convinced that the parties can find a way to accomodate one another's important needs in this controversy without sacrificing either the well-being of teachers or the appropriate authority of the Board. As a justification for the Board's proposal in the present dispute, this concern has very moderate weight.

4. "Low-balling". It sometimes happens that a group health insurance carrier, seeking a three-year contract, will announce an attractively low rate -- but guarantee that rate for the first year only, later raising its rates sharply and thus leaving those insured with a much poorer bargain than they had been led to anticipate. This practice of deliberate underbidding the first year is called "low-balling"; the Board is rightly very much concerned that it not be manipulated in this fashion.

This concern of the Board is partly met, with respect to the carrier to be selected as an alternative option to MESSA for 1984-85, by paragraph 1(c) of the Memorandum of Agreement on health insurance referred to above. [See Appendix I] That paragraph addresses the required reputation, assets, and experience of the bidding companies, and specifically guards against low-balling with the following provision: "All bids must be for at least three (3) years with a guaranteed rate for two (2) of those years and a cap on the maximum increase allowable for the third year." The Board's proposal for the year 1985-86 includes the provision that the standard health coverage for that year will be "bid and implemented as described above," which would insure the extension of those safeguards against low-balling, incorporated in the Memorandum, for at least one more year. The Association proposal, since it leaves the details of 1985-86 coverage undetermined, does not now provide that protection for the third year.

There is no doubt about the reasonableness of this Board concern. It is shared by the Association. Teachers as well as administrators are exceedingly wary of companies that may give informal assurances they later prove unwilling or unable to live up to. This joint concern led to the provisions of the Memorandum now in force, and there is no reason to believe that such provisions cannot or will not be maintained in any resolution reached in subsequent negotiations. It may turn out that MESSA, if it is to be retained, will need to match the rate guarantees of it competitors. The mutual anxiety about this danger gives good ground to suppose that it will be guarded against, so far as it can be guarded against, in whatever agreement is ultimately reached.

5. The Third Year of the Memorandum. Lastly, there is a concern of the Board which is entirely understandable and which cannot be met by the Association proposal. It arises from a dispute over the wording of the Memorandum of Agreement itself. The preamble to this Memorandum [see Appendix I] contains the following sentence: "This Agreement shall take effect immediately and shall remain in effect until August 31, 1986." Thus it is a three-year agreement, the Board argues; but the Association proposal negates any present agreement for the third

year, thus failing to fulfill the purpose of the agreement.

There is genuine merit in this complaint. The Board, as noted earlier, struggled throughout the bargaining process to achieve health insurance economies now -- or at least as soon as possible. Reluctantly it was prepared to postpone the achievement of that goal to a second year, and then, exhibiting good faith and much flexibility, to postpone it to a third year, 1985-86. This explains the "three-year" reach of the Memorandum of Agreement, and the Board's rejection of a proposal which, effectively, reduces the span of the agreement to two years, with the goal of cost reduction further delayed.

The force of this objection, however, must be weighed in the light of the actual language of the Memorandum of Agreement signed. That Memorandum very carefully refrains from specifying a particular outcome for the school year 1985-86. It specifies, in deliberately capitalized letters, that what shall be done during that third year will be decided after "NON-BINDING FACTFINDING", the Fact Finder's report restricted to a choice of one of the two positions proposed. The Fact Finder submits that report, the document in hand, on the basis of his judgment of the merits of the proposals confronting him. If the Fact Finder were obliged to choose the Board's proposal because it provides specific content for the third year, while the Association's presents only a method of determining content, there would have been no point in resorting to the fact finding process. One must conclude, therefore, that the Memorandum addresses the question of the third year system, but not in the sense that it requires a specific answer to it. For the many reasons given in Section 4, above, a specific answer cannot be wisely given now, and the effort to provide such specificity in 1983, for the school year 1985-86, is not likely to serve the best interests of either party, or of the citizens of the Ann Arbor School District.

It therefore would not be correct to say that the Association proposal "scraps" the third year of the Memorandum, or "deletes" it. It does neither. It is one of the two alternatives confronting the Fact Finder in his effort to serve both parties; it is, for the reasons given, the better of those two.

6. Recommendation

The Fact Finder has thoroughly scrutinized the mass of documentary and testimonial evidence presented by the Board and by the Association, and carefully considered their arguments. He has weighed the seriousness of the many different concerns expressed by both parties, and the degree to which each such concern is likely to be met by one or the other of the proposals put forward.

In summary: The Board's concerns are reasonable throughout. Some of them are of only moderate weight. Some of them, although substantial and appropriate, are very likely to be satisfied, at least in good measure, through subsequent negotiation. But the merits of the substance of the Board's proposal are outweighed by the merits of the process urged by the Association. A rational and harmonious resolution of the dispute over health insurance for 1985-86 will require the pursuit of investigations now about to begin as the result of recent agreements. That solution will also require information not available now, but soon to be provided by experience in this School District. New instruments have been devised by the parties; new approaches will be tested over the coming months. The interests of both the Board and the Association will be served best by a proposal that gives these instruments and approaches at least the opportunity to succeed.

Of the two proposals, whose exact formulations are reported in Section 3, above, the changing circumstances of the District therefore compel the choice of that presented by the Ann Arbor Education Association. In accord with that proposal, The Fact Finder recommends that the contractual language of Section 6.211 of the Master Agreement be renegotiated based upon specific health insurance programs, carriers and coverage. The process of health care study and issue resolution should be begun immediately; negotiations on this issue should be completed, and new contract language agreed upon, well before the start of the 1985-86 school year.

7. Larger Strategies in Dealing with Health Insurance Costs.

Several important matters, raised by the parties in the course of this dispute, can be addressed intelligently only by looking beyond the resolution adopted for any given school year, to the larger question of the approaches that might be taken in dealing with steadily rising health insurance costs.

1. The Formula Strategy. At several points in this report reference has been made to the use of a "total employment cost formula". The strategy which relies upon the application of such a formula has been used by these parties, and remains attractive to them both, for good reasons. Such a strategy avoids the kind of stymie now being confronted, by making a joint determination of the percentage of the Board's revenues properly devoted to the entire package of salaries and benefits. With such a formula agreed upon, the Association need not fear that benefits it prizes will be eroded for the sake of economy, and the Board need not fear that its resources will be exceeded, or its fiscal responsibility undermined. Both parties emerge with a clear picture of what is available, and can negotiate with a comprehensive view of differing patterns of distribution within a feasible frame. This, indeed has been the parties practice for some time prior to 1983, and both (as noted earlier) made efforts to return to it during the bargaining sessions of this year. It is regrettable that they were not able to find a way to make that system work once again.

Why was that so? Two issues, much discussed at the public hearing, blocked that joint desire. One of these was a disagreement concerning the actual and proper revenues of the Board; the other concerned the disposition of monies made available by resignations, retirements, and other forms of personnel attrition. Some attention to each of these is called for here.

A. Revenues. A formula system works because it gives the parties a fair share of the available resources. When revenues in the District were increasing substantially, a percentage of those increases could

be used to cover increasing health insurance costs. When revenues do not increase as expected, or cannot be expected to increase at all, while health costs continue to escalate, the formula system, by limiting the total wage-benefit package, must have an adverse impact upon the salary program. In the current conflict the Association argues that the Board did not make, though it could have made, adequate provision for new revenues. Not enough of the tax millage rates already authorized by the voters were actually levied, and thus, the Association contends, earlier decisions by the Board undermined the possible success of the formula system. But it is the School Board, not the Association, that has been elected by the citizens of the District to collect and disburse tax revenues for the schools. The decision concerning the percentage of authorized millage appropriately levied is one that must rest with the elected Board, to be made in the public interest. That interest may be best advanced, at times, by the exhibition of great restraint; the decisions of the Board in such matters will and must be judged by the citizens they serve.

The Association expresses an honest desire to return to a formula system. It must realize that such a system distributes burdens as well as benefits proportionately, and that in times of economic stagnation or decline a fair distribution of what is available will mean economic hardship for teachers also. The formula system is a worthy one; it must be understood by all to have fluctuating concrete outcomes. Some protection for teachers may be possible through the introduction of moderate percentage "floors"; but even that may be sometimes impossible. No just formula can assure the Association advantage when the District gains, and the same advantage when the District loses.

B. Attrition. When the size of the work force declines, through resignation, retirement, layoff, or like reasons, the savings achieved thereby properly revert to the general funds of the school system, to be used by the Board in the best interests of the system as a whole. In recent years there has been a substantial decline in the number of teachers employed by the Ann Arbor Public Schools. It is the duty of the Board, and properly within its authority as an elected body, to control the disposition of the funds which accrue as a consequence of

that decline. A formula that is fair and workable must take this into acount. If the Association insists that all monies devoted to teacher salaries and benefits at a given point in time be committed inflexibly to that purpose thereafter, the formula system is doomed to failure.

A return to the strategy relying upon a "total employment cost formula", desired by both parties, can be negotiated; but that negotiation will require the recognition of the appropriate roles of each, and flexibility on the part of both.

2. Possible Long-term Strategies. Both parties understand very well that the problem now being confronted has its roots in an external condition that neither party can control: the apparently inexorable and sometimes frightening rise in the cost of health care, and therefore of health insurance also. This report concludes, therefore, with a brief review of the larger strategies open to the parties as they negotiate a resolution of their differences.

Suppose — what appears to be the painful truth — that health insurance costs will continue to rise for the indefinite future. How are those rising costs to be paid for? School Board revenues either will increase substantially, or they will not. If they do (as they did over much of the last decade) a reasonable solution to health insurance costs will not prove inordinately difficult. But suppose they do not. Suppose — what is true now, and may remain true for an extended period — Board revenues remain approximately stable. How then shall the problem be attacked?

Three larger strategies appear to exhaust the available alternatives.

First Alternative. Some School Board funds not now devoted to wages and benefits could be shifted from present uses to pay for increasingly expensive benefits. Such shifts may have adverse impact upon the facilities or educational program of the schools. This would be unfortunate and perhaps dangerous; certainly it is an alternative that all, including teachers, would very much hope to avoid.

Second Alternative. The wage-benefit package could be held

approximately stable too, with a greater percentage of that package devoted to health insurance, and, as a consequence, a smaller percentage of that package devoted to salaries. Nobody will find this an attractive alternative, teachers least of all. The Chief Negotiator for the Association wisely noted, at the public hearing on the present dispute, that while health insurance has long been called a "fringe" benefit, its central importance in protecting teachers and their families (and indeed all employees) from the virtual impoverishment that gargantuan medical bills can impose has really changed its status; it lies now not at the fringe but at the heart of teacher compensation. The force of this observation should not be forgotten. Health care insurance must be paid for somehow; it cannot be treated as an extra.

Third Alternative. Health care insurance for teachers must be paid for -- but it is not ordained in Heaven that it be paid for in full by the Board, although that has been the wholesome practice in the Ann Arbor School District since 1969. Prior to that time a co-payment system had been in effect; the Board and the individual teacher would contribute to pay the required premium. The far smaller premiums of that time made the "co-pay" system tolerable then, if not pleasant. Now, with health insurance premiums growing ever more burdensome, the Board's proposal for the year 1985-86 incorporates a co-pay element once again for one of the options it presents. To this suggestion the Association responds with repugnance. Teachers' strong aversion to any co-pay system arises not from their unwillingness to contribute in some measure to that cost; indeed they have contributed in years past, when the total employment cost formula resulted in a reduced salary program as a direct result of increased health insurance costs. But the co-pay system does not merely distribute the burden; it distributes it with the teachers' share coming out of take-home pay that has <u>already been taxed</u>. The provision of health insurance benefits by the employer, with pre-tax rather than after-tax dollars, is one of the few precious tax shelters that teachers can enjoy. The Association's objections to the re-introduction of the principle of co-payment, even if only for one option among several, is entirely understandable.

The adoption of any one of these three alternative strategies would prove painful; each of them will be condemned, for good reason. Nevertheless, if the suppositions above prove true (that is, if health insurance costs do continue to rise, and if Board revenues do remain approximately stable) there will be no way to avoid the selection of one or more of these three alternative strategies by the parties, through negotiation.

With this painful prospect, no one will suppose that the negotiations now about to recommence will prove smooth or easy. The difficulty, it cannot be emphasized too strongly, will flow not from the selfishness or intransigence of the parties, but from impinging economic forces out of their control. Yet there are grounds for optimism too. The intelligence and imagination of both parties is manifest in the recent development of new mechanisms, new ideas, and new combinations of old ideas (discussed in detail in Section 4, above), which have not yet been fully explored. Rising insurance costs are clearly seen by the two parties as a common enemy, against which they need to construct a common defense. In recommending the renegotiation of the language of the Master Agreement dealing with health care costs, the Fact Finder expresses his confidence in the good will of the Board, and the Association, and in their capacity to make collective bargaining succeed.

Respectfully submitted,

Carl Cohen

Carl Cohen
Fact Finder and Agent

30 December 1983

Appendix I

MEMORANDUM OF AGREEMENT

between the

ANN ARBOR BOARD OF EDUCATION

and the

ANN ARBOR EDUCATION ASSOCIATION

The parties hereby enter into this memorandum of agreement regarding health insurance. This Agreement shall take effect immediately and shall remain in effect until August 31, 1986.

1. For the 1983-84 school year:

a. An open enrollment period will be held in October, 1983 in addition to the normal May open enrollment. The Board shall offer MESSA Super Med II, Blue Cross/Blue Shield MVI II Master Medical IV with a $.50 Prescription Drug Program or the above Blue Cross/Blue Shield Plan with a $250 per person/$500 per family deductible. Any changes from current coverage will be effective November 1, 1983. Individuals who elect the deductible will receive $335 (the prorated amount for the $500 deductible) to be paid in two equal payments on pay dates closest to the end of each semester directly into any tax-sheltered annuity offered by the Board.

b. Beginning November 1, 1983 a health care insurance study committee shall be established, composed of representatives of employee groups, to work with three (3) independent insurance consultants, with one (1) chosen by the Board, one (1) chosen by the employee committee, and the third selected by the above two, in order to determine specifications for a policy comparable to the 1982-83 MESSA Super Med II plan and review options for cost containment. In addition the specifications shall include the option of a plan comparable to the 1982-83 MESSA Super Med II plan with a $250/$500 deductible which the successful bidder must also offer. In cases where agreement cannot be reached on specifications, the three (3) insurance consultants shall make the final determination. Specifications shall be completed by the committee by February 1, 1984 and submitted for bids. Identification of the successful bidder shall be made by May 1, 1984 with implementation of the selected carrier occurring by July 1, 1984.

c. All bids must be for at least three (3) years with a guaranteed rate for two (2) of those years and a cap on the maximum increase allowable for the third year. Companies which desire to bid must meet among other criteria:

- An industry reputation for quality claim service

- Sufficient assets to adequately underwrite the policy

- A reputation in the medical community for providing comprehensive coverage

- Experience in providing health care insurance coverage.

2. For the 1984-85 school year:

a. An open enrollment shall be held October, 1984 in addition to the normal May open enrollment. The Board shall offer MESSA Super Med II and two (2) alternatives provided by the successful bidder: a standard health insurance program and a standard health insurance program with a $250/$500 deductible. Employees selecting the deductible policy will receive $500 to be paid in two (2) equal payments on pay dates closest to the end of each semester directly into a tax-sheltered annuity offered by the Board.

b. The Board shall pay the full premiums for any one of the three options mentioned in 2. a.

c. The parties agree to investigate an HMO as a possible option for subsequent offering to the employees when it becomes operational.

3. For the 1985-86 school year:

THE PARTIES AGREE TO SUBMIT THE INSURANCE ISSUE FOR THIS YEAR TO NON-BINDING FACTFINDING BY OCTOBER 1, 1983, WITH THE FACTFINDER'S REPORT TO BE RECEIVED BY THE PARTIES BY NOVEMBER 30, 1983, UNLESS THESE DATES ARE EXTENDED BY MUTUAL AGREEMENT. FOLLOWING RECEIPT OF THE FACTFINDER'S RECOMMENDATION, THE PARTIES AGREE TO NEGOTIATE THE LANGUAGE FOR THIS YEAR, WITH MEETINGS TO BE HELD AT LEAST ONCE A WEEK FOR AT LEAST THE FIRST FOUR WEEKS FOLLOWING SUCH RECEIPT. THE FACTFINDER'S RECOMMENDATION SHALL BE LIMITED TO CHOOSING EITHER THE POSITION OF THE BOARD OR THE POSITION OF THE UNION.

4. In 1984-85 and subsequent years the health care insurance study committee will continue to meet for the purpose of a) evaluating the quality of service provided by the selected insurance carrier, and b) studying any newly available options for containing health care insurance costs. The committee shall share its findings and recommendations with the Board by May 1 of each year.

Signed/ Errol Goldman	Signed/ Richard E. Taylor
FOR THE BOARD	FOR THE AAEA
Oct. 26, 1983	Oct. 26, 1983

Appendix II

MEMORANDUM OF AGREEMENT

between the

ANN ARBOR BOARD OF EDUCATION

and the

ANN ARBOR EDUCATION ASSOCIATION

ISSUE RESOLUTION MECHANISM PROCEDURE

1. Two (2) issue resolution sessions lasting four (4) weeks each will begin on the first Monday of November, 1983 and the first Monday in February, 1984.

2. Each side may choose one (1) issue for each of these sessions with notification of that issue to the other party by October 1, 1983 and January 3, 1984. Items which are permissive topics of bargaining as defined by MERC must have mutual agreement of both parties in order to have that issue considered in this process.

3. The parties agree to meet at least once a week during each four (4) week session unless a mutually agreed upon schedule of meetings has been arranged before the beginning of each session. Additional meetings may be added by the parties during each four (4) week session by mutual agreement.

4. The parties will present written information which explains their position, engage in discussion of the parameters of the issue, and explore possible solutions. The parties will attempt to arrive at a mutually agreeable written solution, including when necessary the drafting of contrct language which could be incorporated into the Master Agreement.

5. If the parties fail to reach an agreement, one of the following will occur:

a. The parties mutually agree that present contractual language and practice will continue, or

b. The parties mutually agree that they will continue to discuss this subject for a specified period of time, or

c. If agreement cannot be reached on "a" or "b" above, the issue will be submitted to a resolution panel as defined below.

6. If required, a resolution panel will be established for each issue resolution session consisting of two representatives selected by the Association and two representatives selected by the Board. A fifth peson to serve as chairperson of the panel will be mutually agreed to by the

Board and the Association. When an issue is submitted to this panel for resolution by the parties, a hearing will be held no later than December 14, 1983 for the first session and no later than March 14, 1984 for the second session. The parties agree to submit their last-best-offer: total package to the panel for its consideration. Presentations will be made at a public hearing before the panel with each party having an opportunity to comment on the presentation of the other party. The panel may adopt the last-best-offer: total package of either party. However, if the panel declines to adopt the last best offer of one of the parties, it may suggest possible solutions to the parties for their consideration and possible agreement. The panel's decision shall be rendered no later than one month after the hearing dates specified above. If the panel makes a recommendation on one of the last best offers, it will be incorporated into the Master Agreement if both the Ann Arbor Board of Education and the Ann Arbor Education Association ratify the panel's recommendation. The ratifiction procedures shall be the same as those used for ratification of the Master Agreement, complying with any relevant requirements of the respective parties and the Public Employment Relations Act (PERA). The Association shall submit the panel's decision for a ratification vote no later than fourteen (14) days after receipt of the recommendation from the panel. The Board shall vote on the panel's recommendation within seven (7) days of the Association's ratification vote or at its next regularly scheduled meeting, whichever is sooner.

7. If instead of making a recommendation the panel suggests possible solutions to the parties, the parties shall continue to study those solutions for an additional seven (7) days. The parties may mutually agree to extend this time beyond seven (7) days. If at the end of that time period a proposed solution has still not been agreed to, the parties may revise and shall submit a final last-best-offer: total package for a recommendation by the panel. Within ten (10) days the panel will recommend one party's last-best-offer: total package, which shall be submitted for ratification as specified in #6 above.

8. All presentations to the panel will be held in public.

9. Both parties will be governed by the Public Employment Relations Act (PERA).

10. For 1984-85 the parties agree to negotiate employment costs and calendar for one (1) week in January, 1984. A mutually agreeable schedule of talks will be established before December 15, 1983. If settlement on these items is not reached in January, 1984 for the 1984-85 contract year, notification by either party must be provided by April 1, 1984 to open the entire contract and follow the normal negotiations procedure. The parties may agree to extend this procedure for the 1984-85 school year.

11. Recommendations of the panel shall not be binding on either party, except to the extent specified in number seven (#7) above.

Signed/ Errol Goldman
FOR THE BOARD

Oct. 26, 1983

Signed/ Richard E. Taylor
FOR THE AAEA

Oct. 26, 1983