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STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

**DEARBORN FEDERATION OF SCHOOL
EMPLOYEES, LOCAL 4750**

UNION,

CASE No. D04 L-1538
FACT FINDER: MICHAEL P. LONG

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DEARBORN BOARD OF EDUCATION

EMPLOYER.

FACT FINDER'S DECISION AND RECOMMENDATION

On January 11, 2006, after the Dearborn Federation of School Employees, Local 4750 (hereinafter referred to as "Union" or "DFSE") and Dearborn Public Schools (hereinafter referred to as "Employer" or "Board") found themselves unable to reach an agreement in contract negotiations, the Union filed a Petition for Fact-Finding with the Michigan Employment Relations Commission. On February 1, 2006, the undersigned was appointed the Fact-Finder.

On March 10, 2006 a Fact Finding Pre-Hearing Conference was held at the Dearborn Public Schools Administration Office. John Schlosser, Jr., Field Representative from the Michigan Federation of Teachers and School Related Personnel, appeared on behalf of the Union, and was accompanied by members from the Union team. Michael Gibbons, Attorney for the Dearborn Public Schools, appeared on behalf of the Employer, and was accompanied by members from the Employer's team.

The purpose of the Pre-Fact Finding meeting was to determine and define the scope of the dispute and determine such other things as the anticipated length of the hearing,

time and location of the hearing, deadlines for submissions, etc.

At the Pre Fact Finding meeting an issue was brought forth concerning the scope of evidence that would be admitted for consideration by the fact finder. A process was implemented at the direction of the fact finder whereby the parties had an opportunity to make written submissions in support of their positions, to assist the fact finder in making a determination.

After due consideration of the submissions of the parties, it was determined that In the spring of 2003 the Union and Employer met to discuss extending the collective bargaining agreement that was set to expire on August 31, 2003. After consultation with each other under auspices of the Michigan Public Employment Relations Act, the parties agreed to extend the agreement.

The agreement was entitled "Extension of the 2000-2003 Contract," and included the following parts that are pertinent to the matter with which we are concerned in this preliminary decision:

1. The 2000-2003 agreement between the Board and the DFSE, including Letters of Agreement numbered 1 - 16, shall be extended for three years (2003-2004 through 2005-2006). The 2002-2003 salary schedule shall be frozen for one year (2003-2004). Steps and longevity shall be paid. There shall be a re-opener in years two (2004-2005) and three (2005-2006) for wages only.
2. The DFSE and Board shall actively engage in collaborative undertaking charged with determining, economic efficiencies to effectively reduce costs of the current benefit package paid to DFSE while maintaining high quality coverage. * * *

The parties initiated a health care benefit review with the assistance of a health care consultant. The bargaining unit representatives (including the DFSE and others) and the representative of the Employer participated in meetings to discuss the costs of health benefits and the continued effect that they would have on the finances of the

district. The parties agree that they have met their responsibilities under paragraph 2 of the contract extension agreement regarding health benefit costs.

The parties reached an agreement regarding the 2003 / 2004 year of the contract, and that matter is not in dispute.

The subject matter of this Fact Finding is to make a recommendation regarding the "wages only" re-opener for the 2004 / 2005 and 2005 / 2006 contract years. It is anticipated that the parties will negotiate regarding a successor agreement, in which it is undisputed that all the wages, hours and other terms and conditions of employment are subjects for consideration, in the near future.

The Union's position regarding the scope of evidence that should be considered in this fact finding was that it should be limited to wage rates only, per the extension agreement of the parties. The Employer asserted that such limited scope of information would severely curb its ability to set forth appropriate options to resolve the dispute, and wanted to include options for adjustments in economic areas other than wages.

In a preliminary decision, the fact finder duly noted that the agreement of the parties is for a wage re-opener only. That is to say that all other matters of the collective bargaining agreement between the parties are "frozen," and all that can be changed without further mutual agreement by the parties is the amount of wages paid to the employees. It was also noted, however, that wage rates can be increased or decreased based on a number of factors to be considered regarding the determination of wages.

Factors considered in fact finding are very similar to those considered in compulsory police and fire arbitration. It is recognized that there is no "final offer of settlement" provision in fact finding and that the decision does not have the same legal effect in fact

finding as it does in compulsory arbitration, but the areas for determination are substantially the same. They are, in summary form, as set forth in the compulsory arbitration statute:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the fact finding proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the proceedings.
- (h) Such other factors, not confined to the foregoing, which as normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The fact of the matter is that fringe benefits (health insurance, etc.) are a significant part of, and substantially affect, the total economic package of the employment relationship.

The same criteria must be considered in setting wages only as in setting wages as well as other components of the wage and benefit package. It is recognized that the total bottom line cost to the Employer is a crucial determinative factor regardless of the distributive allocation of wages versus fringe benefits such as health care.

In recognition of the agreement of the parties that "wages only" are open for renegotiation, the fact finder determined that his recommendation would address wage rates – whether the recommendation is for an increase or decrease. In order to make such a determination, the fact finder indicated that he would be compelled to consider all factors of the employment relationship and economic package in determining the appropriate wage adjustment, if any. In the interests of effective resolution of the wage dispute that exists between the parties, the fact finder reserved the right to discuss alternatives to a wage only adjustment in the body of the fact finding decision, as an alternative to a "wages only" adjustment.

Therefore, it was determined that the scope of information that would be considered in the fact finding proceeding would include all the areas set forth above in a – h.

Subsequent to the preliminary ruling, the Fact Finding hearing was re-convened. After formal submissions, in line with the preliminary decision of the fact finder, the evidentiary portion of the hearing was closed, and the parties entered into a two-part closing phase. The parties, through their presentations of evidence, were aware of all that would be considered by the fact finder. Pursuant to the instructions of the fact finder, the parties, after consideration of the evidence and arguments presented, simultaneously exchanged their final positions regarding what they believed to be reasonable offers of settlement, and sent copies to the Fact Finder.

The Union's final position was, in pertinent part:

"From the Union's view, years two (2004-2005) and three (2005-2006) ought to include some additional compensation for all employees. For those employees that received a step or steps during those years, that

would suffice. For employees at the top of the grid, we think a 2% increase each year they were at the top is merited. This could be accomplished by adding an additional step each year at a rate of 2% above the "old" top step, or in an off-schedule payment of 2% each year, or a combination of both concepts.

As the fact-finder has indicated this is for salary only and should not be tied to language changes.

2003-2004	FREEZE
2004-2005	2%*
2005-2006	2%*

*At new top step only or as off-schedule payment to employees at the top of the 2004-2005 schedule."

The Employer's final position was, in pertinent part:

The terms upon which the Dearborn Board of Education will agree to settle the current wage-opener negotiations for the 2004-05 and 2005-06 contract years are as follows:

The Board will pay a lump-sum one-time only payment of 1% off-schedule, payable upon mutual ratification of the agreement, based on each employee's current hourly pay rate and profile for 2005-06 to DFSE employees on the active payroll at the time the settlement is mutually ratified for settlement of both the 2004-05 and 2005-06 contract years, if the Union will agree to pro-rated health-care payments (medical, dental, vision) for all eligible part-time employees hired after September 1, 2006;

Or, the Board will pay a .5% on-schedule payment only to employees on the active payroll at the time the settlement is mutually ratified who are currently on the top step of the wage scale. This increase will be based on each employee's current hourly rate, retroactive to September 1, 2005, for all hours worked in 2005-06, for a settlement of both the 2004-05 and 2005-06 contract years, if the union will agree to pro-rated health care payments (medical, dental, vision) for all eligible part-time employees hired after September 1, 2006;

Or, the Board will agree to a 0% increase in 2004-05 and a 0% increase in 2005-06, if the Union declines to make any contract language changes."

The parties, after having an opportunity to assess each other's final proposals, had three weeks to prepare written submissions to the Fact Finder in support of their

positions.

The Union states its case by pointing out that the rationale in extending the agreement with a wage only re-opener was to preserve the level and employee cost of the health care insurance. The Union's gain was that members' health care language would be preserved and that step increases would be paid. The quid pro quo for the Board was the wage freeze imposed on a large number of members who were already at the top of the schedule. The Union asserts that it "gave to get" in year one of the agreement. The Union asserts that any quid pro quo involving changes in language should be part of the negotiations for a successor agreement to the current contract that will expire soon. The Union argues that its members at the top of the salary schedule since 2003-04 should not be the only employees at Dearborn Public Schools who would have no additional salary increase for three years, and that, therefore, the rate of the top step should be increased.

The Board's position is that any improvement in wage rates must be contingent on an agreement to offset the cost of such an improvement through adjustments in the health plan or co-pay to reduce the costs of the Employer. Evidence shows that other bargaining units that received wage improvements did so through negotiated settlements that included some change in the unit contracts that provided a means to help fund those improvements through reductions elsewhere in the economic package.

The Employer points out that the same financial funding conditions existent in the State of Michigan at that time of the 2003/2004 portion of the agreement have not improved, and, in fact, have continued to deteriorate. With the continued rise in health care costs and the continued rise in the retirement obligation for all employees imposed by the state, the district has continued to face an increased financial burden without receiving a comparable increase in funding from the state. The Union membership has benefited by receiving no diminution in health benefits or retirement support. These benefit increases represent substantial total compensation increases to the Union bargaining

unit members. Accordingly, the terms of the contract extension have resulted in a net benefit to the Union membership at an increased expense to the Employer.

The Employer states that the Union traded the stability of the other economic components based on the likelihood that there would be no money to fund a wage increase. The District incurred the increased cost of benefits, and the Union is faced with a wage re-opener where there is no money for a wage increase. The Employer asserts that in order for there to be wage rate improvements, there must be other benefit changes that would offset the cost of wage rate improvements.

The Employer points to agreements reached with other bargaining units in the school district. In most cases the concessions by the other bargaining units were deferred concessions that would be realized at a later date by the district, but would free up funding that could pay for current wage improvements.

Severance for employees who left their employment with the district was a primary concession by those bargaining groups. As a result of the continued funding difficulties faced by the district, the district found it necessary to offer an early severance incentive for employees in 2006. As a result of the concessions by the other bargaining units, the members of those bargaining units were precluded from receiving the severance that they had previously had as part of their contracts. DFSE members who took advantage of the severance incentive retained their severance benefits. The Board contends that this is further evidence that the contract extension enjoyed by the DFSE has secured benefits that other groups have conceded.

During the fact finding process the Board provided unrebutted evidence that funding provided by the state was not keeping up with the increase in costs to the district. It was also demonstrated that wage rate improvements to other bargaining units were only provided in instances where concessions were made by bargaining units to help defray the costs of those improvements.

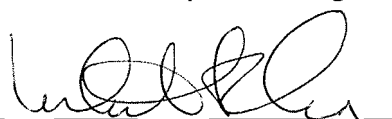
The Board points out that the Union has been steadfast in its insistence that the contract extension language did not provide for a change in contract language, and that negotiations concerned wage rates only. In light of the union's position and the fact finder's preliminary finding that the formal recommendation would be as to wage rates only, the Board takes the position that due to increased costs that surpass increased funding, the Board cannot offer a wage rate improvement.

After year one of the contract, the health care costs continued to rise, and the Employer was required by the terms of the contract to continue to pay the increases to the benefit of the employees. In essence, the cost to the employer rose and the employees were the recipients of this increase. While wage rates remained stable, and the benefits remained the same, the value of those benefits rose as their cost rose. The proofs verify the Employer's submission that funding provided by the state is not keeping up with the increase in costs to the district. Proofs also demonstrate that wage rate improvements to other bargaining units were only provided in instances where concessions were made by bargaining units to help defray the costs of those improvements.

Based on a careful review of the fact finding hearing record, the exhibits received into evidence and the arguments of the parties, it is found that the Employer's position is supported by the evidence. It is, therefore, the recommendation of the fact finder that there be no increase in wage rates for the 2004/2005 and 2005/2006 contract years.

The fact finder thanks all those who participated in these proceedings.

Dated: August 18, 2006



MICHAEL P. LONG
Fact Finder