STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICE
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING
BETWEEN

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| WATERFORD EDUCATION ASSOCIATION, WATERFORD MESPA I, MESPA II, AND MESPA III, MEA/NEA | MERC Case Nos: D07-D-0527; D-0569; D-0570; and D-0571 |
| the Associations, | |
| -and- | FACT FINDING REPORT AND RECOMMENDATIONS |
| WATERFORD SCHOOL DISTRICT | |
| the Employer, | |
| Re: Fact Finding for 2007-10 Agreement | |

Appearances:

| For the Associations: | For the District: |
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| Mr. Gerald E. Haymond,<br>MEA/NEA UniServ Director | William G. Albertson, Esq.,<br>Attorney |
| Ms. Marcia L. Felegy<br>Exec. Dir. Waterford MEA | Ms. Peni Aldrich,<br>Assist. Supt. Human Res. |
| Mr. Troy Beasley,<br>WEA President | Mr. Tom Wiseman,<br>Assist. Supt. Bus. Services |
| Ms. Dianna Pennartz,<br>MESPA 1 President | Mr. Bill Holbrook,<br>Assoc. Dir. Bus. Services |
| Ms. Denise North,<br>MESPA 1 Incoming Pres. | Mr. Robert J. Daddow,<br>Witness |
| Ms. Kathy Huey,<br>MESPA II President | Mr. David C. Ruhland,<br>Witness |

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| Ms. Debbie Lutan,<br>MESPA III President | Mr. Jim Anthony,<br>Witness |
| Ms. Cynthia Dickstein<br>MESSA Field Rep. | Ms. Karen Anthony,<br>Witness |
| Ms. Suzanne Cox,<br>MEA Field Assist. | Mr. Josh Wenning,<br>Witness |

## FACT FINDER'S REPORT, FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS

## STATEMENT OF PROCEDURE

Pursuant to four Petitions for Fact Finding each dated October 26, 2007, I was advised by letter dated December 19, 2007, from MERC Commission Member Eugene Lumberg that I had been selected as Fact Finder for the parties in the above-referenced cases. The dispute involves the negotiation of new collective bargaining agreements between the parties to succeed the previous agreements that had expired on June 30 and August 29, 2007. The parties began negotiations for the new contracts on May 15, 2007. There were between eight and twelve negotiation sessions for each bargaining unit and between two and nine sessions with the state appointed mediator for each of the units. Association Fact Finding Binder (hereinafter "Association"), Tab C, Page 3. While the parties have arrived at an agreement on many of the issues in dispute they have not been able to reach agreement on all of the terms of the new contracts.

By letter dated January 11, 2008, I contacted the representatives of the parties to discuss the matter. On February 1, 2008, I was advised by the Association that the parties were discussing the matters and were seeking to limit the issues and agree upon available dates for the hearings. On March 7, 2007, I was advised by electronic mail and e-mail by both parties that they had not been able to resolve all of the issues and that hearings on the matter would be required. Each party requested that I provide them with available dates in April and May. By e-mail dated March 10, 2008, I responded to the parties with my available dates. Subsequently, the parties exchanged e-mails and letters over available dates and by March 18, 2008, we agreed to conduct hearings on the matter on Tuesday, May 6, and Wednesday, May 7, 2008. By letter dated, April 14, 2008, the Association advised me of the issues to be considered, the issues that the Association would not raise at the hearings, and the issues that the District sought to raise in fact finding but that the Association felt should be excluded from the hearings. On April 29, 2008, I inquired of the parties by e-mail whether there were any unresolved matters that should be discussed prior to the hearings and advised that the parties felt there were none and believed that the matter was ready for discussion at the hearing.

The parties met at 10:00 a.m., on both May 6 and 7, 2008, at the offices of the Association located in Waterford, Michigan, to permit each party to present its facts,

evidence, witnesses and examine the facts, evidence and witnesses submitted by the other side. At the second day of hearing each side was able to conclude its presentation. At the conclusion of the hearing each side requested the opportunity to present written post-hearing briefs which requests were granted. The parties prepared their briefs by June 3, 2008, and forwarded them to me for my consideration. The matter was submitted to me that day for my findings of fact, conclusions and recommendations.

## STATEMENT OF THE CASE

The Waterford School District ("School District" or "Employer") is located in western Oakland county. As of the Fall of 2007 it had enrolled 11,433 students, slightly down from the total of 11, 523 that had started in the Fall of 2006. This continued a decline in the student body from an enrollment of 11,547 in the Fall of 2005 and an enrollment of 11,648 in the Fall of 2004. The School District projects a further decline to an enrollment of 11,237 in the Fall of 2008 and a projection of 11,232 for the Fall of 2009. Employer Exhibit 6. This reduction in the size of the student enrollment has resulted in a reduction in the size of staff of the School District.

The School District has about 1,100 employees, including about 680 teachers in the Waterford Education Association (WEA) bargaining unit, about 80 secretarial employees in the Michigan Educational Support Personnel Association (MESPA) I bargaining unit, about 45 instructional aides and library technicians in the MESPA II bargaining unit, and about 230 custodians, food service, maintenance and transportation employees in the MESPA III bargaining unit. While not directly equal to these numbers, the School District presented a chart showing that from the 2002-03 school year to the 2007-08 school year the full time equivalents (FTE) of various groups of employees had been reduced from 84.50 administrators to 64.00 (24.26% reduction), 99.00 secretaries to 76.00 (23.23% reduction), 119.00 maintenance/operations personnel to 96.25 (19.12% reduction), 88.00 transportation employees to 75.00 (14.77% reduction), 509.35 general education classroom teachers to 475.25 (6.69% reduction) and 155.21 special education classroom teachers to 152.39 (1.82% reduction). This totaled a full time equivalent staff reduction from 1,055.06 FTEs in the 2002-03 school year to 938.89 FTEs in 2007-08 school year for a total reduction in staff of 11.01%. Employer Exhibit 4, Page 11.

The parties' most recent bargaining agreement was in effect from July 1, 2004 and expired on June 30, 2007 for the MESPA I, II and III bargaining units. The last teacher bargaining unit collective bargaining agreement also went into effect in 2004 at the beginning of the work year for the 2004-05 school year and expired on the first day of the 2007-08 school year. These were the latest in a series of agreements between the parties over the last twenty or more years. As mentioned above, the parties negotiated over several months on each of these proposed agreements and took advantage of the resources of the state mediators in trying to reach an agreement. At the time these matters entered the hearings in this Fact Finding process the parties sought assistance on the following issues:

1. Salary
2. Health Care Administration
3. Health Care – New Employees
4. Inclement Weather Days
5. Fingerprinting Costs
6. WEA – Supplemental Pay
7. MESPA I – Vacancies/Layoff/Recall
8. MESPA III – Wage restructuring
9. MESPA III – Partial Daily Bus Runs
10. MESPA III – Average Hours for Food Service

During the course of the Fact Finding hearings, and after discussions between the parties and the presentation of the respective side's position and evidence had occurred, the parties elected to remove from fact finding issues numbers 6, 8 and 10. These items were remanded back to the parties for further negotiations between the parties. I concluded at the hearing that I understood the respective parties' position on issues 4, 5 and 9 and that parties need not address these matters in their respective post hearing briefs. The parties were instructed to submit briefs on their respective positions on issues 1, 2, 3 and 7.

## FINDINGS OF FACT AND CONCLUSIONS ON ALL MATERIAL ISSUES

I will set forth in this portion of the Report my findings of fact and conclusions on the material issues between the parties, their disposal by the parties at or after the hearings as appropriate, as well as my findings and an explanation of my reasons for my recommendations of the issues that remain.

### 1. Salary

The dispute in salaries for the three years of the agreements was a major hurdle for the parties in the course of the hearings. Employer had initially asked for a "role-back" of salaries because of the uncertainty of state funding, possible reductions in enrollment and escalating costs in health care and retirement benefits. The Association requested modest salary increases and the maintenance of the salary steps. Much of the evidence and testimony on the first day of hearings was addressed to these issues with comparables to other districts discussed by both sides.

In both parties' post hearing briefs they informed me that they reached agreement on the wage and salary issues for the 2007-08, 2008-09 and 2009-10 school years. Employer's Post Hearing Brief, Page1; Association's Post Hearing Brief, Page 2. Since the predominate amount of time at the hearings and the majority of the exhibits addressed the respective positions of the parties on this issue of wages and salaries the parties are to be commended on their continuing negotiations over these matters after the Fact Finding

hearings had concluded. This agreement by the parties has alleviated the necessity for me to provide any analysis of the parties' respective positions or to make any findings or recommendations on this most important of issues.

2. Health Care Administration.

Second only to the salary dispute is the question of who will be the health care administrator for the health and welfare plans for the next three years of the agreements. It is what most strongly divides the parties and probably keeps them from resolving the remainder of the disputes between them for new collective bargaining agreements. The Association strongly urges that the parties continue to have the Michigan Education Special Services Association (MESSA) administer the health and welfare programs as it has done for many years. The School District as strongly urges that a new administrator should be selected and that it should be Michigan Employee Benefits Service (MEBS). It has both legal as well as economic reasons why it urges that the administrator to be changed.

The Association argues that the status quo should be maintained for many reasons. The Association notes it has agreed over the years to a reduction in coverage for the purposes of a reduction in premiums five times (1973, 1987, 1992, 1999, and 2003) and has proposed a sixth reduction for the next year. Association Tab F, Page 10. It presented evidence that premium costs for the four bargaining units could be reduced from the costs for the 2007-08 school year to the 2008-09 school year by $480,043 for the WEA unit, $58,871 for the MESPA I unit, $24,447 for the MESPA II unit and $105,450 for the MESPA III unit, or a total savings of $668,810 to the School District. These numbers were slightly below that of the prepared exhibit for the hearing since they reflected only a partial year savings instead of the entire year as reflected in the exhibit. Association, Tab F, Page 8. It notes that these savings are as a result of the employees paying more in co-pays for prescriptions (from $5.00 to $10.00 for generic and $5.00 to $20.00 for brand names, for example). It also notes that the Employer's premium costs for the 2008-09 school year are not yet set if the MEBS plan is adopted (assumed to be increase about 10%) while the MESSA costs are guaranteed. Association Brief, Page 4. It notes that MESSA is the carrier for twenty-two (22) of the twenty-eight (28) of the districts in Oakland County. Association, Tab F, Page 11). It asserts that the six districts not members of MESSA either never have been or changed many years ago.

Employer takes just as strong, but opposite view of who should be the third party administrator of the plans. It states that the dispute between the parties is not over the slight differences between the benefits contained in the plans proposed to be administered by different entities, but in reality only a dispute over the identity of that administrator. It notes the close affiliation between MESSA and the Michigan Education Association (MEA) and the interrelationship of the members of the board of trustees of MESSA and MEA. It argues that the premium rates over the years of MESSA have been artificially high as is evidenced by the reserves that it enjoys and has used in recent years to keep the cost of premiums at a lower rate. It notes that when these reserves are exhausted

premiums can be expected to increase. Employer Brief, Pages 3-5. Employer also asserts that Michigan statutes provide it as a public school employer with the sole authority to decide who will be the policyholder of employee group insurance plans, citing MCL 423.215(4). It notes that MESSA asserts that it is the policyholder of the plans that it administers and that it is not planning to abandon that position of ownership of its policies or contracts. Employer Exhibit 19. In this respect, the parties notified me at the time of the hearing that Employer had filed unfair labor practice charges against the Association over the insistence of the Association that MESSA remain the administrator of the plans. In its brief, Employer acknowledges that I am not empowered to resolve any such claim of an ULP, but urges me not to make a decision that "will surely impede rather than facilitate fruitful negotiations." Employer Brief, Page 8.

I will attend to one housekeeping matter before I begin my discussion in depth on this issue. Employer at the time of the hearing, and in its Brief, mentioned as a part of the symbiosis between MESSA and MEA that UniServ Directors received "incentives for successfully negotiating contracts containing MESSA branded healthcare plans." Employer Brief, Page 2. The Association denied that any such relationship existed. Employer noted at the time of the hearing, and in its brief at footnote 1, that its evidence was taken from a MERC case, St Clair Intermediate School District, 6 MPER ¶ 24026. It introduced this case as Employer Exhibit 13. But I read that case differently than Employer. I note that on page 2 of that exhibit the Commission in review of the Administrative Law Judge's Decision and Recommended Order found:

> We also however find that Section 5(a) taking issue with the finding that UniServ Directors receive incentives for negotiating MESSA plans is not supported by the record is meritorious.

This was in the part of the decision where the Commission was reviewing cross-exceptions filed by the Association. This indicates to me that the Commission granted as meritorious the Association's objection to the finding of the ALJ that such an incentive program existed. If there is any evidence to support this assertion of Employer it was not presented in this hearing and the St. Clair case does not support Employer's claim in this regard.

I turn now to the heart of this matter. Should Employer be permitted to change the third party provider of the health plans because it feels that it will save money over what it pays as premiums to MESSA and still provide identical, or nearly identical, coverage to the members of the four bargaining units? I realize that the answer to this question involves a much larger issue regardless of how I answer it. The issue and question will remain unresolved. If I find that the Association has the better of the argument, and that the administrator should remain MESSA, the School District will not be satisfied since it feels that it has the statutory right to change administrators and that the Association has committed an unfair labor practice by insisting that MESSA remain the administrator. If I find that the School District has the better of the argument, and that it should be permitted to change the administration to MEBS, the Association will view this as a fundamental change in how health plans are administered in public

education in Michigan. Fortunately, these matters are beyond my control and I am limited to finding facts in the current issues presented in these combined cases.

I find that the two plans submitted by the respective parties are substantially equal and without significant differences as to the benefits available to the membership of the four bargaining units. Moreover, Employer has pledged that if there are any significant differences that later arise with the administration of the MEBS plan that are not available to the membership that were available to the membership with the MESSA plan then Employer will seek to modify the MEBS plan to come into compliance with the previous benefits. If Employer reduces this promise to writing to become a part of its agreements with the Association this should assure the membership that MEBS will be the substantial equivalent of the MESSA plan. Employer has used MEBS for its administrators' coverage this last school year and the testimony indicated no major problems with the administration by MEBS. There was also testimony from officials from the Farmington Public Schools that it has used MEBS for the last ten years without any significant problems. The underlying issue is, of course, money.

Both sides presented extensive evidence and testimony about whether the MEBS plan or the MESSA plan would save more money and provide better coverage than the other plan. As stated above, I find the coverage to be substantially equal under both plans. As to which plan will save Employer more money the record is incomplete in that both sides are trying to forecast what will occur in the uncertain future of health care cost for the next two years. Notwithstanding all of the helpful exhibits and testimony I have about as much chance of accurately predicting what the costs will be in the next two years as I do predicting the price of gasoline during that time. But I can predict that since both systems are predicated upon coverage by Michigan Blue Cross and Blue Shield the cost of providing these benefits will be approximately equal to Employer except for the cost of the third party administrator. Since one school year of the three school years involved with this bargaining has already expired with the use of MESSA as the administrator, I find that a change to MEBS for the remaining two years is reasonable to afford Employer the opportunity to see if this change will actually save it significant money. The likelihood that medical coverage costs will increase in the next two years is almost a certainty so an opportunity to afford Employer a chance to see if its costs can be reduced is reasonable in this restricted time of school finances in Michigan.

I also note for the parties that since they have agreed upon the wage and salary levels for the four bargaining unit for the three year period at issue the cost of health care becomes a much more manageable issue to resolve. By the end of these contracts in 2010 the legality issues raised by Employer concerning MESSA should be resolved so that the parties in negotiation for the 2010-11 and succeeding years will have that established. There will also be a record of what MEBS has cost Employer and the parties will be able to extrapolate what these costs would have been under MESSA. If MEBS was less costly than MESSA Employer will have reduced its expenses. If MESSA would have been less expensive than MEBS, that can be established as well. The parties in 2010 will have greater knowledge of which administration of their health care plans provides the best coverage for the premium dollar.

My recommendation on this issue is that Employer should be allowed to change the third party administration from MESSA to MEBS with the assurance by Employer that if there arises any significant coverage issues for the membership of the four bargaining units Employer will work with MEBS to make the appropriate adjustments for the benefit of the membership.

3. Health Care – New Employees

The parties' differences on health care coverage for employees in their first four years of employment can be easily stated. Neither party wishes to continue with the current agreement that these new employees be covered by plans different from that of employees who have worked for more than four years. The Association proposes that all employees be provided with the same benefits while Employer proposes that while the same benefits should be granted the employees for their first four years should pay 20% of the premiums for the 2008-09 school year and 25% of the premiums for the 2009-10 school year. Association Tab F, Page 2.

The Association's position is that these new employees are at the bottom of the salary scale and such costs will be a significant part of their wages. The adoption of Employer's proposal will mean, according to the Association, that a new teacher earning less than half of what an experienced teacher at the top of the salary scale earns will be paying about 8.5% of the new teacher's salary for health care. Similarly, a newly hired instructional aide will be paying about 14.74% of the aide's salary for health care coverage. The Association notes the inequity of this result for those who are paid the least. Association Brief, Pages 6-7.

The School District responds that there is a "clear trend in the workplace" that employees should make contributions to the cost of health care and that its agreement that these new employees will receive increased coverage from the previous contracts indicates that they should pay for a portion of the coverage. Employer Brief, Page 8-9.

Since I have recommended that the parties adopt the Employer's position that the health coverage should be administered by MEBS since Employer feels that this will provide it with significant savings I find that a portion of these savings should be used to provide health care coverage to employees for their first four years. I agree with the Association that as a matter of fairness those employees are at the bottom of the salary levels and scales and are usually less able to afford such premiums.

I understand that it is a trend in employment generally that employees should share a portion of their health care premiums that are paid for their coverage. I am also aware that there may be an eligibility period for such coverage, although it is usually only for a brief period of time. But I am not aware of any trend in employment, public or private, that imposes a greater portion of health care costs on new employees instead of all employees equally. If it is a necessity that members of the bargaining units should be

required to pay a portion of their health care premiums this issue should be brought to the bargaining table and "hammered out" in the crucible of the negotiation process. But I find that the opening of this "can of worms" by way of imposing a portion of these costs upon the new employees is unwarranted and an imposition of costs upon those generally least able to pay the cost. Employer anticipates that it will have major savings in its health care costs by the adoption of the MEBS plan. A portion of those savings should be used to pay the full health care costs of the new employees and not just 80% or 75% as proposed by Employer.

My recommendation on this issue is that employees during the first four years of their employment should not have to pay a portion of the health care cost, but be treated the same as the remainder of the employees in the bargaining unit.

4. Inclement Weather Days

Each of the four existing agreements has provisions for the event of what occurs in case the schools have to be closed due to inclement weather. Association Tab G, Pages 1 and 2. The Association proposes that the existing language be adopted for the new agreements. The School District proposes various changes in each of the contracts upon the general principle that if you get paid for work you should work. Association Tab G, Page 2. It also notes that often when schools are closed it is because of bus service and the safety of the children in very cold weather. It feels that on many of those occasions employees could come to work and do productive activities in the absence of the children. The Association responded that these benefits were provided long ago as a result of teachers who had child care responsibilities when their children could not go to schools that were closed.

I find that Employer has not made the case of why this well-established language in the agreements should be changed. There was no evidence of how often this had occurred in the past or what, if any, financial impact the current language had upon the School District.

I recommend on this issue of changes in the language concerning inclement weather that the contract language remain the same as in the previous agreements.

5. Fingerprinting Costs

This issue involves the fingerprinting costs for current employees hired prior to July 1, 2007. The Association seeks payment of such costs by the School District for fingerprinting costs for those employees who were employees as of July 1, 2007, but are required to provide fingerprints under the law. The School District acknowledges that there are certain costs involved with such fingerprinting (apparently currently it is $49.25), but that Public Act 84 of 2006, §1230(g) of MCL 380.0123g(1)(b) places the burden on the individual to obtain such prints. Employer feels that there does not need to

be any language requiring such costs and that this should be viewed similar to teacher certification costs that are the responsibility of the teacher and not the School District.

The Association presented two charts indicating that in the vast majority of the school districts in Oakland County the district pays the entire cost. Association Tab H, Pages 2 and 3. It urges that the School District should come into compliance with what the vast majority of the other districts do and pay the entire costs of such fingerprinting.

I believe that there is a difference between an applicant for employment and a current employee when a law is changed that requires compliance in order to obtain or retain a position. In this case the Association does not seek to have the School District pay for the costs of fingerprinting for those persons hired after July 1, 2007, apparently the effective date of the new law. But it does seek those costs associated with employees hired prior to that time that need to comply with the law in order to retain their jobs.

This is not an issue of a continuing cost to the School District as over time all new employees will have incurred these costs in order to obtain employment with the District. It may not even be a current costs has many of the employees may have already complied with the law and paid those costs. But I do feel that as to existing employees who had to have those costs incurred to obtain the fingerprints it is a cost associated with their jobs imposed by the legislature. Most of the other districts have agreed to pay these costs which seems reasonable to me.

I recommend on this issue that the School District agree to pay the costs of fingerprinting required by law for those employees hired prior to July 1, 2007.

### 6. WEA – Supplemental Pay

The parties presented their respective positions on this issue at the fact finding hearings. After discussion of this issue at those hearings they elected to remove this matter from consideration by me and elected to return to the bargaining table and resolve this matter through negotiations.

### 7. MESPA I – Vacancies/Layoff/Recall Provisions

This issue involves difficult problems of interpretation of language contained in Article IV of the MESPA I agreement involving the rights of members of the bargaining unit who have been notified that their position has been, or will be, eliminated and what rights they have to take "vacant" positions in lieu of the noticed layoff. Both parties agree that the language of Part E involving Layoff and Recall of that article needs to be redrafted, but they are in disagreement how that should be done. While the parties have explained their differences in their respective briefs I am not sure that I have an accurate understanding of their respective position in this regard. Employer Brief, Pages 9-11; Association Brief, Pages 8-11.

As I understand the dispute, Employer feels that before a secretary who has been notified of layoff can exercise her right under the provision of Part E "to be given the opportunity to fill an existing vacancy in the same classification" that vacancy should be posted and other members of the bargaining unit be given an opportunity to fill that position. The Association asserts that a secretary on notice that her position has been eliminated should have the first opportunity to fill any vacancy for which she is qualified thus eliminating the need for a posting of that position and the layoff. The Association asserts that this was the past practice of the parties for at least the past six years, but that Employer changed this practice last summer. Association Brief, Page 10. Having stated what I understand the problem to be I am concerned that I have not accurately reflected the disagreement between the parties.

I note that this issue concerns not only the language of Part E, mentioned above, but also Parts B and C of Article IV. I have dealt with clauses involving promotions, transfers, vacancies and layoffs enough over the years to understand that the application of such clauses is part contractual, part past practice and part luck. In this case the parties seem to be taking contrary positions to what are the usual positions of the parties in cases of vacancies. Usually the union asks that the employer consider the most senior qualified person for any opening that may occur. Employers often do not want to do that if someone is on layoff, or expects to be laid off in the near future, and who meets the qualification of the position. But the parties' positions seem reversed in this case which causes me to wonder whether I understand the respective positions of the party.

I find that fact finding is not conducive to determine such abstract, complicated and interrelated issues such as bumping rights, vacancies, job posting and layoff. Therefore, I remand this matter back to the parties for further bargaining and the refinement of exactly what each of the parties desires, the proposed language that will meet those interests and a thorough revision of Article IV as required. In this regard, however, I do have several comments and observations for the parties.

First, I note that the parties in Article IV, Part C, paragraph 5 agree that:

> As each new position is created or as each vacancy occurs, notice of such vacancy will be posted in school district buildings for five (5) working days if not filled by a person on leave.

In this respect, a person "on leave" appears to trump the requirement that the School District "post" the position. I am not sure if a person on leave can include a person on layoff. If so, it would appear that the Association's position as I understand it would be stronger. No postings occur if there is someone "on leave" who has qualifications to fill the position. But the parties have provided for "leaves" in Article VI of the Agreement which does not discuss layoffs as a leave. So the parties need to correct this language to avoid possible confusion by third parties and possibly the parties themselves.

Next, I note that if the parties desire to do what I understand the School District

desires they can draw a distinction between a vacancy that may occur pending a posting and bidding of the position and a vacancy that may occur after the posting and bidding process has been completed, or if no current employee seeks the vacant position. In the first case they might call such a position an "available position" indicating that posting and bidding has to occur prior to its award to an existing employee. If this does not occur they could label it a "vacant position" indicating that bidding has already occurred and no one was awarded the position. If the parties so designate such a position, there would be no difficulty permitting the employee who has been notified on March 1 that her current position was being eliminated on July 1 from bidding on the available position. If she was awarded the job through the bidding and interview process her pending layoff notice would be rescinded and she would be awarded the job. If no one bid on the available position then it would become a vacant position and she could decided whether she desired the vacant position in lieu of layoff. If the parties agree that an employee who has been issued a notice of layoff to occur in the future should have priority over more senior employees who may desire the available position they can state that as well.

I make no recommendation on the issue of the vacancy/layoff/recall language of the parties in Article IV of the MEPSA I agreement as it is not ripe for determination by a fact finder. I remand this issue back to the parties for further negotiation and clarification.

## 8. MESPA III – Wage restructuring

The parties presented their respective positions on this issue at the fact finding hearings. After discussion of this issue at those hearings they elected to remove this matter from consideration by me and elected to return to the bargaining table and resolve this matter through negotiations.

## 9. MESPA III – Partial Daily Bus Runs

This issue involves the assignment of bus drivers for unanticipated runs. The parties in the current language of Appendix C entitled "General provisions – Transportation Department" have agreed as follows:

> G. Additional regular daily runs shall be assigned on the basis of seniority whenever practical.

The Association proposes that the language be changed with the following underscored provision:

> G. Additional regular runs, <u>including partial day absences and runs not completed</u>, shall be assigned on the basis of seniority whenever practical.

The School District would have the new language changed with the following

underscored provision:

> G. Additional regular runs, not runs due to absences, shall be assigned on the basis of seniority whenever practical.

The Association asserts that its proposal would add back what it claims the drivers previously enjoyed in such assignments. While it notes the needs for temporary workers as substitutes it notes that several other districts have provisions similar to what it seeks in this case. Association, Tab L, Page 3. It further notes that since drivers are only paid for hours worked some senior drivers may be sitting while junior drivers or temporaries are permitted to work.

The School District does not see the need for the changes proposed by the Association as they would complicate the assignment of drivers in such circumstances and deny the district needed flexibility in such assignments. It feels that its proposal will clarify what has been the practice of the parties.

I also note that the proposal of the School District contained in Association Tab L, Page 2, indicates that the School District proposed the elimination of paragraph K and the omission of the words "or extra runs" contained in the first phrase of paragraph L.1. Since no evidence was presented on these matters at the hearing I conclude that the School District has abandoned any interest that it may have had in changing these provisions and that these provisions will continue on in the new agreement.

I am not convinced that the Association has established sufficient reasons for its suggested changes and that any such changes will further complicate the assignment of drivers in these situations. I agree with the School District that its proposal is one of clarification, not substance, and that the practice of assigning drivers in such cases will remain as it was in the previous agreement.

I recommend that the language of the School District that the provision be modified as it proposes.

### 10. MESPA III – Average Hours for Food Service

The parties presented their respective positions on this issue at the fact finding hearings. After discussion of this issue at those hearings they elected to remove this matter from consideration by me and elected to return to the bargaining table and resolve this matter through negotiations.

## CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

Based upon the findings of facts and conclusions on all the material issues presented to me in these fact finding hearings I recommend as follows:

1. My recommendation is that Employer should be allowed to change the third party administration from MESSA to MEBS, with the assurance by Employer that if there arises any significant coverage issues for the membership of the four bargaining units Employer will work with MEBS to make the appropriate adjustments for the benefit of the membership so that it will substantially provide the same or similar benefit currently enjoyed by the membership under the MESSA plans.

2. My recommendation is that employees during the first four years of their employment should not have to pay a portion of their health care cost, but be treated the same as the remainder of the employees in the bargaining unit.

3. I recommend that there be no changes in the language concerning inclement weather and that the contract language remains the same as in the previous agreements.

4. I recommend on that the School District agree to pay the costs of fingerprinting required by law for those employees hired prior to July 1, 2007.

5. I make no recommendation on the issue of the vacancy/layoff/recall language of the parties in Article IV of the MESPA I agreement as it is not ripe for determination by a fact finder. I remand this issue back to the parties for further negotiation and clarification of their respective positions on this issue.

6. I recommend that the language of the School District that the provision of paragraph G of Appendix C of the MESPA III agreement be modified to provide:

> G. Additional regular runs, not runs due to absences, shall be assigned on the basis of seniority whenever practical.

The issue of salary for the members of the bargaining unit was resolved by the parties after the hearing, but prior to their submission of briefs so that is no longer is in dispute. The issues of WEA supplemental pay and MESPA III wage restructuring and average hours for food service were remanded to the parties at their request during the fact finding hearings and did not continue in dispute in these proceedings.

Dated: July 9, 2008

Respectfully submitted,

Stephen A. Mazurak,
Fact Finder