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

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In the Matter of Fact Finding

Inland Lakes Public Schools

Employer,

-and-

MERC Case No. L07 J-3002

Inland Lakes Education Association  
NMEA/MEA/NEA

Union

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**INTRODUCTION**

On August 6, 2008, MERC appointed Kenneth P. Frankland as Fact Finder in this matter.

Inland Lakes Public Schools (hereafter, "Inland") filed a petition for Fact Finding pursuant to Act 176 of Public Acts of 1939 on April 17, 2008. The current contract expired June 30, 2007. There were 13 bargaining sessions and three mediation sessions. The parties worked diligently to narrow the disputed issues to eleven (The Employer brief has subdivided some issues and has 11 denominated; the Union has nine in its brief).

At the hearing on December 4, 2008 held at the Cheboygan-Otsego-Presque Isle ESD offices in Indian River, Michigan, the parties presented testimony, exhibits books and agreed to submit briefs by January 12, 2008. Briefs were timely received and this

Report ensues.

The parties have agreed to incorporate tentative agreements into a new agreement. The remaining issues are:

1. Salary
2. Health Insurance
3. Tuition Reimbursement
4. Posting and Filling of Supervisory Positions
5. Certificate - Nullification Notice
6. Lay-offs
7. Paid Leave
8. Year Book Compensation
9. Retirement Incentive
10. Cash in Lieu of Insurance
11. Involuntary Transfer

#### BACKGROUND INFORMATION

Before going into the merits of each issue, a few prefatory comments are in order. Fact Finding is a process to present the facts to a neutral third party, along with the respective positions of the parties and thereafter a report is generated by the fact finder with recommendations to resolve the disputes and develop a new collective bargaining agreement. By bringing the issues to public scrutiny with public discussion, it is thought as a way to reach an accord.

Similar to mandatory police and fire arbitration, each party designates communities it believes to be comparable and uses data from those alleged comparable communities to support its position. More often than not, the communities that are selected will have provisions in existing collective bargaining agreements that mirror or at least support the position that is taken in this proceeding.

In this case, there are no agreed comparables per se. Inland suggests the Cheboygan-Otsego-Presque Isle Service District comprised of Cheboygan, Gaylord, Inland Lakes, Johannesburg-Lewston, Mackinaw City, Onaway, Posen, Rogers City, Wolverine and Vanderbilt. The Union would expand the list to include 37 members of the Northern Michigan Education Association; NMEA excludes Districts that do not use MESSA services. Inland points out that three districts within the ESD, Wolverine, Gaylord and Onaway are not now part of NMEA; the first two because of recent health insurance settlements and Onaway is a non-MEA unit.

Inland used exhibits of districts of similar size, membership group code L (1,000-1499 pupils) and Group code M (500-999 pupils) or the ESD. The Union used available statistics from all the member NMEA districts for its exhibits. Neither side advanced many factual arguments how the districts were similar or dissimilar to Inland but just took the available information from its chosen comparables and charted or graphed the results on each issue.

For purposes of this case, I believe that districts that are geographically proximate, fairly close in student population, teachers and available revenue would best be used for comparison and the record suggests that most of the districts nominated by Inland would fall in this category. I will give appropriate weight to those districts statistics and note many are also in the NMEA and further note that Gaylord is in the statistical base used by NMEA but was just recently removed from NMEA. I will also give consideration to Wolverine and Onaway that are not in the NMEA data base.

#### DEMOGRAPHIC AND ECONOMIC INFORMATION

Inland is located in the upper northwest sector of the lower peninsula in and about the Indian River-Burt Lake environs. It has 162 square miles and as its name indicates is surrounded by lakes and thus primarily a resort area. There are three school buildings, a combined Middle and High school and one elementary building. As of September 2008,

enrollment was 981 including 120 schools of choice students; in 2003, five years ago, the student count was 1112 and the district anticipates losing up to 50 students for 2009-2010. As of 2008, there were 56 members of the Union. In contrast, in 2000-2001 there were 68 teachers.

The financial environment is the focal point of the matters in dispute. The parties produced literally dozens of exhibits with graphs and charts of budgets, general fund balances, revenue and expenditure analyses and countless other bits of information in the record. I have read it all and tried to digest as much as possible but could not mention all in this report but will try to outline a few salient items.

Inland like all other Michigan districts is funded primarily through the State School Aid Act. This is done by a basic foundation allowance that is multiplied by the blended count of students. Payments are made on the state fiscal year (Oct -Sept) but Inland operates on a July-June fiscal year. Because of state budget issues, the allowance is not guaranteed but may be prorated and this happened in 2002-2003 and 2003-2004. Inland claims a revenue loss from declining enrollment in five years of over \$1 million dollars (Bd 40, not 41 as stated in Brief) but actual total revenue gained marginally from 2004 to 2007 and decreased by \$250,000 in 2008. (U tab 2, Audit, p. 7) Inland claims that the 2008-2009 student allowance increased \$100 per pupil but health insurance costs increased by \$114 per pupil and \$173 per pupil for current contract increases thus eating up the foundation increase. (Bd. 37). The per pupil allowance for the last five years is 2004 - \$6,626; 2005 - \$6,700; 2006 - \$6,875; 2007 - \$7,085 and 2009 - \$7,085. (U Tab 2, Audit p.5). The pupil count for the same period is 2004 (1,112), 2005 (1,107), 2006 (1,076), 2007 (1,074) and 2008 (1,027). For 2008 that number in the Union exhibit is misleading as it is a blended count from the 2007 fall count and the count for fall 2008 was 981. (U Tab 2, Audit p.6). History shows that enrollment is declining and the Union does not dispute this fact. If there are fewer students, then even if the allowance goes up somewhat, the revenue stream will be static or decline.

Inland claims that 82.9% of the operating expenditures are for employee compensation. From 2000 to 2008 there was an 18% increase for salaries and benefits. Inland also asserts that retirement costs have escalated from 11.67% to 16.54% of salary over the last ten years. (Bd. 3, 41)

Inland says the goal of a fund balance is 15-20% of expenditures. The June 30, 2008 Administration Discussion and Analysis document (U. Tab 2, p.1) states the total net assets of the District increased by \$694,391 with a fund balance of \$1,780,133 an increase of \$165,879 from the prior year. At the end of the fiscal year (June 30, 2008) the fund balance was \$956,550 or 11.4% of expenditures. However, the Audit shows fund balances as a percentage of expenditures for the last five years to be 2004 (11.87), 2005 (12.43), 2006 (8.52), 2007 (11.52) and 2008 (11.80) (U Tab 2, p. 12) [It should be noted that these numbers are minutely different in U Tab 2, p.5 behind a purple sheet when expressed as a % of total revenue].

At Bd Exhibit 47, Inland claims that the Fund balance would fall from \$976,552 in 2007 to \$90,009 in 2008, (\$488,445) in 2009 [projected] and (\$1,711,555) in 2010 [projected] if the Union proposal were adopted. In contrast, Inland claims the fund balances would be \$1,193,344 in 2008 and \$1,474,101 in 2009 [projected] if its proposal is adopted. These are projections and the Superintendent conceded the estimates on revenue were very conservative, not planning for expanded state revenues in the face of state budgetary problems and past history of reductions once the fiscal year was well underway.

Inland asserts that with declining enrollment and revenue growth per student fairly stagnate and with rising costs for step increases, retirement benefits and health insurance, it has taken steps to avoid a deficit as schools are mandated to have a balanced budget. These include reduction of seven employees from 42 to 35 in non-teaching positions since 2001; privatization of food service; fewer bus routes; elimination of extra curricular positions. Also, administrators and central office staff switched to a health saving accounts saving \$38,000 for nine employees.

## **CONSIDERATION OF INDIVIDUAL ISSUES**

## **HEALTH INSURANCE**

From the tone of the hearing, I sense this is the most contentious issue with wages not far behind. Many of the language issues might well have been settled had the parties reached agreement on the two main economic topics. Since Health Insurance is most dominant I will offer recommendations on it first.

Currently, Inland pays the full premium for MESSA Choices 2. There are no deductibles. There is a \$5/10 prescription co-pay but Inland reimburses \$3 per script. Additionally, MESSA PAK Plan A and B is available. Employees with health insurance have PAK A that includes dental, vision and life. PAK B is for employees not needing health insurance and includes dental, vision, life and LTD. Six teachers receive cash in lieu of health coverage and receive LTD that PAK A recipients do not receive.

**Inland proposes a contribution of \$1,000 per month or \$12,000 per year toward premiums for health insurance; maintain current contract regarding LTD provisions in PAK A and B and; a cap of \$250 per month as cash in lieu of health.**

**The Union proposes the Employer fully pay MESSA Choices premiums; that all participants in PAK A receive LTD and; that the cash in lieu of health should be the single subscriber rate for MESSA Choice 2.**

Inland claims that rates charged by MESSA have increased 93% since 2001-2002 from \$8,810 to \$17,006. (See, chart at Inland Brief, p18). They assert that MESSA does not allow a District to negotiate rates but rather simply tells a District what the rate will be for the next year and thus costs are higher than on the open market. Although this may be true, MESSA plans have been very effective for teachers and they are very reluctant to shift to other health providers. Inland recognizes this fact and has not requested leaving MESSA rather, if that is what the teachers want then the alternative is a cap on premiums.

Inland offers evidence that in Michigan and nationally teachers are contributing to some of the cost of health insurance or switching plans. In Gaylord, the teachers switched to a third-party administrator from MESSA with a reported 25% savings to the District. (Bd. 32). It was noted that part of the savings was used to fund salary increases. In Gwinn, teachers accepted

a partial monthly premium and co-pays on prescriptions. In Howell, teachers will contribute \$600 in \$2007-2008 and \$750 the next year. Mason-Lake Intermediate School District will move from MESSA to Blue Cross. Jackson will contribute more per month than current. This suggests a trend to some form of cost savings/cost containment.

Inland says neighboring Wolverine is instructive. In that district, a fact finder suggested a cap was justified even in the face of a 20% fund balance. The contract does provide a cap of \$1,255 per month. Inland suggests that the trend in fact finding is to suggest a cap. (See, Brief, p.22).

Inland has a Blue Cross plan for nine administrators and central staff. There is a \$2,500 deductible per employee funded by Inland. There are no co-pays for prescriptions or office visits over the deductible. They claim a savings of \$38,000 in the first year. The Union asserts this plan is almost as costly as the existing plan for teachers. ( See, Brief, at 9.) They claim that at a cap of \$12,000 that would be almost \$5,000 less per year than the premium cost it is willing to pay administrators. It is hard to evaluate the views of each party as they present the numbers in the best light for their position. Some weight must be given to the comparison of the internal comparables in this case as expressed by the Union.

The Union acknowledges that health insurance is a national concern but that past bargaining history allows for give and take and now the District is rigid on health insurance. The Union suggests that the hard cap concept is not fact based, but a reaction to unfounded perceptions regarding MESSA and a failure to look at the Union comparables. They assert the option given teachers is punitive when compared to how the administrators are funded. They assert that insurance costs have been offset by lower salary cost. Also at Union 5, p. 17a and 17b they assert that the difference in cost between the teacher plan and the Flexible Blue for administrators is \$298.64 for the family plan.

#### RECOMMENDATION

It is noted that nationally the vast majority of workers pay some part of a health premium. With double digit health rate increases many workers have lost coverage. In the public sector in Michigan, more and more entities are instituting cost containment by switching

carriers, using higher deductibles more and bigger co-pays etc. It is noted the UAW has now agreed to a PPO instead of the Blues. In education, retired public school employees contribute to health care cost by pension deductions. The use of only one health care option (indemnity) as opposed to PPO, HMO or POS is becoming outdated.

Since the benefits levels are not negotiable and if a switch to another provider is not on the horizon and if cost containment is a desirable goal then some premium sharing by employees is a necessity. I cannot ignore that the record shows ever-increasing health insurance rates that are disproportional to other rising costs and that these costs have nowhere to go but upward. With revenues stagnant sooner or later fund balances will be eroded. Whether the fund balance in Inland is within the norm or is a source of funding for health can be debated ad nauseam. Fully paid fee for service health insurance is a slippery slope and the parties should look now at creative solutions before the slide produces other more drastic options. On balance, the evidence produced by Inland presents a better case for cost containment to avoid the slippery slope rather than the Union emphasis on the status quo. Unfortunately, the Union members do not seem to look at the bigger picture and project what may happen in the future if meaningful health cost reforms are not addressed now.

An acute problem in this case is that the contract expired August 31, 2007. A fully retroactive insurance co-pay would be hard to swallow as it would have to be addressed as a payroll deduction in the future for a benefit already received so I do not recommend a change for 2007-2008.

For 2008-2009 we have some what of the same problem. This matter was delayed for various reasons not the least was the Union decision regarding representation at the hearing. I note that a Petition was filed by Inland in April 2008 and also a Petition by the Union in October 2008. Naturally any delay on implementation of a cap works in favor of the teachers.

Although Inland asks for \$1,000 cap per month for the 46 teachers opting for health care, I believe that the parties should go slower on this item. I recommend a cap of \$1200 in 2009-2009 and \$1100 in 2009-2010. Start the process moving and try to reach agreement with a new template to work with. The Inland fund balance, if necessary to maintain a

balanced budget, is not in a precarious situation and should be able to absorb this cost and still achieve part of the cost saving objective. In the first year, the cap would mean the teachers would contribute about \$200 per month significantly less than the national average for full family coverage. I recognize that few comparables have a cap but I find Wolverine to be highly instructive. The fact finding report ( Bd. Tab D) expressed the reasons for the cap. I concur that other comparables are instructive but not definitive as the plans are not all Choice 2 and comparisons on costs are elusive. What is the same is rising uncontrolled costs, and the fact that nationally and in Michigan both in private and public sector responsible parties are looking at finite resources and taking action. So to should these parties. The teacher contributions by way of payroll deduction should be deposited in a Section 125 plan.

If the teachers find this recommendation difficult they may want to look at the plan offered to the administrators if in fact the Union believes it would not cost the teachers as much as this recommendation.

There are two other facets to health, LTD and cash in lieu (CIL).

With respect to CIL, Inland wants a cap of \$200 per month (it is noted the Union believes the cap to be \$250) instead of the single rate minus cost of the PAK options (currently \$431.21 per Union brief). The Union wants to retain current language.

The comparables support the Union position better than Inland as most have a payment that would be greater than proposed by Inland. Given there are only six employees in this category, the relative cost saving to Inland is marginal at best. **The Union position is recommended.**

On LTD, the PAK A teachers do not get LTD, all others do. It seems incongruous that LTD is not in PAK A and the record does not offer an explanation or I have missed it somehow. The comparables do not suggest any differentiation and thus **I would recommend that the parties explore the cost of LTD for PAK A and Inland should strongly consider adding this so all employees in the District have the same LTD benefit.**

SALARIES

Inland proposes .5% increase for each year and the Union 2% increase for each year.

The teachers have been paid at the 2007-2008 rate and have been given step and degree changes for 2007-2008 and 2008-2009. Inland argues that the average salary is \$51,886 and \$2,783 more than its comparables. They also say the mean teacher salary is 8.5% higher than Group L and 29% higher than Group M. Salaries and benefits are \$4,675 per pupil or 54.5% of operating expenses. They also say that revenue is less than the state average and total instruction costs are also slightly higher than the state average. Because of step and lane increases teachers get more than an across the board increase which they assert is 36% pay increase at step BA-1 from 1999-2000 through 2008. They also say that salary increases have exceeded the CPI from 1999 to 2006.

The Union counters that the dismal forecasts and alleged inability to pay does not ring true given the Administration's own audit! (U Tab 2). Therein, for FY ending June 30, 2008, net assets increased \$694,391; fund balance was \$1,780,133 (an increase of \$165,879 from prior year) of which \$956,550 is available for spending or 11.4% of total expenditures. The audit did confirm that revenue over five years was relatively stagnant and did decrease in 2008. (U Tab 2. p 8) Also, salary expense decreased over five years to \$4,278,689 in 2008. This is probably explained by decrease in personnel including teachers.

Given the audit one can argue that inability to pay is not an issue regarding salaries. The real issue is the Inland structure compared to the comparables. Using its comparables, the Union says Inland is in the middle of the pack but only because the numbers assumed a 2% increase for 2007-2008. They say U Tab 4 Part 2 pages 4b, 5b, 6b, and 7b support their proposal. Inland counters that using its comparables they are second in average salaries.

The blizzard of numbers and statistics are mind boggling. Suffice it to say, I am more impressed with the Union presentation on ability to pay salaries. The current salaries are clearly not disproportionately low requiring any "makeup" nor disproportionately high suggesting no or low increase. Frankly, the parties are in the ballpark, it simply is an issue of continuing what has been a pattern of 2% raises (in each of expired contract years) and what appears to have been the norm in the comparables or something less.

## RECOMMENDATION

This issue presents the same first year dilemma as in Health above. I did not recommend a first year cap for the reasons stated. Since Inland did not receive the benefit of its proposal, in equity, the Union should not get its proposal in year one either. While I do believe an increase is justified **I recommend it should be 1%**, less than they want the Union asks and more than Inland's .5%. The audit for 2007-2008 already includes the step and lane increases (from Bd. Brief) and I believe the health insurance premium costs. A 1% increase should not have a significant impact on the bottom line given the numbers the auditor has stated. The Union should give strong consideration to this as it is an increase and builds the base for the future. This would be a retroactive payment and real income in these trying times. Not having a recommended health contribution in the first year, the Union should find this increase acceptable.

**For years two and three, I recommend the Union proposal.** First, I believe there is merit based upon all the comparables. The 2% is about the norm in the comparables with a few more and some less. Bargaining history also suggests this number is not out of line. Second, the audited numbers support an ability to pay; there should be no dire consequences assuming the insurance cap is accepted. The steep projected decrease in Fund balance suggested by Inland is based upon under-stated revenue and possibly over-stated expenditures and no relief on health insurance, a worse case scenario. Reasonable minds should not let the worse case scenario ever come to fruition. Third, assuming a health cap is instituted, there has generally been a trade off during settlement negotiations in many communities, a salary increase to help offset the new share of health insurance premium. (See, Wolverine)

## TUITION REIMBURSEMENT

Section 5.3 (G) provides full reimbursement for college credits related to a teachers instructional responsibilities upon proof of successful completion. There is \$5,000 per year allocated to this program on a first come first serve basis. Further, "should the stipulated

amount become exhausted, the issue shall be reopened and additional funds negotiated in the regular manner.”

Inland proposes to delete this paragraph; the Union would retain the language and increase the funding to \$10,000 per year.

The parties have not monitored this section over the years and once the \$5,000 annual amount was depleted, rather than pursue the quoted language above, the teachers' names and amount of reimbursable credit were maintained on a list and with each succeeding year, the names at the top of the list would be paid and those who submitted new applications each year were added to the bottom of the list. Presently, the June 30, 2008 audit shows an accrued liability of \$49,010 for reimbursements that date back to 2002!

Thus we have two parts to this issue, the past and the future.

As to the future, meaning this contract, there is merit to a tuition reimbursement plan to reward teachers that are seeking advanced degrees or other aids that help in the classroom. However, there should be well defined parameters such as limits on total hours; cost per credit hour; online v classroom or instate v out-of-state; being a current employee to mention a few. In the ISD, I note that four districts do not have a similar benefit and six, including Inland do. On balance I see value to the benefit and given the bargaining history the paragraph should not be deleted per the district suggestion nor more money added without significant amendment. Thus I reject both proposals.

#### RECOMMENDATION

The parties should redesign a new section and may want to look at Mackinaw City and Rogers City contracts for examples. Critical elements should include limitation to credits in the teacher's field; prior approval by the Superintendent; limitation to in-state institutions to be able to monitor the course content and possible cost savings; and some limit on the amount to be reimbursed such as x% up to maximum of y\$. The fund should be not more than \$5,000 per year and once exhausted on first come first serve basis, no more applications would be taken in that year.

Regarding the past, those who have submitted requests have done so with some expectation of payment but they also know that payments have been slow and many years in arrears. Thus expectations for full payment cannot be very high. I suggest that the list be frozen as of August 31, 2007 the end of the current contract and a moratorium be placed on payments. The parties should negotiate a way to resolve these past applications. I suggest that all requests should be reduced by a pro rata reduction across the board on all claims by 60% and the district fund the 40% balance (\$19,604) and make reimbursement over whatever timetable it deems advisable. This will give some benefit to teachers who in good faith thought they would be reimbursed and also allows Inland to eliminate an accrued liability from its books with a one-time cost.

#### POSTING AND FILLING SUPERVISORY POSITIONS

Section 2.1 (D) states:

The Board declares its support of a policy of filling vacancies, including vacancies in supervisory positions, from within its own teaching staff. When ever a vacancy arises or is anticipated, the Superintendent shall promptly post notice of the same on a bulletin board in each school building and/or mail the notice of vacancy to each staff member. Notices for teaching positions will specify subject area and the grade level. Professional personnel shall indicate their interest within ten (10) class days following posting. Professional vacancies shall be filled on the basis of experience, competency, and qualifications of the applicant, length of service in the district, and other relevant factors as determined by the Board of Education. Any new positions, including supervisory positions, shall be posted with accompanying job descriptions as above. An applicant with less service in the district shall not be awarded such position unless his qualifications shall be substantially superior. When two or more internal candidates are equally qualified for a vacancy, seniority shall prevail.

Inland proposes that the filling of an administrative position vacancy that is outside the bargaining unit not be subject to grievance by a dissatisfied member of the bargaining unit. This would happen if a less senior bargaining unit member was deemed to be substantially superior to other internal candidates and awarded the vacancy.

Inland wants the discretion to hire into non-bargaining unit positions without the threat of a grievance. Specific language for this purpose is in the Board proposal of April 7, 2008 by deleting the substantially superior sentence and adding, "Supervisory positions will be filled at the Board's discretion and may not be grieved."

The Union objects to the selections being removed from the grievance procedure. Although they suggest the employer's proposal would eliminate internal posting of supervisory positions or eliminate consideration of internal candidates for new supervising vacancies, I accept the Board's position that those circumstances are not at issue, only the grievance procedure.

#### RECOMMENDATION

I generally follow the suggestion made by the Union that a party desiring change in language has the burden of proof and in the absence of a compelling reason to change the language, the proposal should not be adopted. Applying this standard, **I do not see a compelling reason for a change**. Apparently this provision has been in the contract for some time and the Union points out that when language changes are made, there is usually consideration on both sides and the Union perceives that it has not obtained any quid pro quo for a change of this section. I agree. Although there is merit to the suggestion that the board should have wide latitude in selecting supervisory candidates, given the bargaining history, there is a standard and the Board must be able to establish that it did in fact select a superior candidate. If there is a legitimate dispute regarding that qualitative decision, and a bargaining unit member is affected, then the normal grievance procedure should apply based upon bargaining history. If this is a significant issue for the Board, there may be other items in this fact-finding package that may be adjusted in the settlement process to effectuate the Board's purpose.

#### CERTIFICATE - NULLIFICATION NOTICE

In this issue, Inland proposes to add a new subparagraph E. to section 2.3 regarding certification nullification. This issue arises as a result of a bargaining unit member applying for nullification of a special education certification. The Michigan Department of Education granted the nullification and the timing sequence created problems with class scheduling for the next year and adversely affected a more senior teacher being laid off. The Board proposes that any nullification be done by March 1 so that the scheduling and notices for the

succeeding year can be accomplished without significant disruption. The Union proposes July 1 as the notice date as it is consistent with the notification of assignments for the upcoming school year.

### RECOMMENDATION

On this issue, I find that the Board's position has significant merit and sufficient rationale to meet the burden to add language to the contract. The Union apparently has no objection to the concept of notice; simply the date of the notice. In a sense the Union is torn between competing interests; on the one hand it would not want to interfere with an individual member's right and yet at the same time if such right was exercised improvidently it could have adverse effects upon one or more members of the rest of the Union. Nullification is a significant professional decision and should not be done lightly and under perceived duress because of a potentially dissatisfying assignment. Providing notice at the earliest possible time makes sense so that any objection by the District can be processed with the Michigan Department of Education and still provide time to prepare assignments in the event that nullification is granted. I perceive a legitimate objective of the district and frankly an early notice provision would seem to be beneficial to the vast majority the members of the bargaining unit and thus I believe the Board proposal is logical, practical and should be adopted.

### LAY-OFFS

Currently, the contract requires that teachers be given notice of a layoff at least 30 days prior to the first teaching day of the school year. The employer desires to change the notice requirement to 60 days prior to the effective date of a layoff. This would allow the Board to make midyear layoffs in the event of significant pupil enrollment reductions and/or significant reduction in revenues that in its opinion require midyear layoffs.

The Union would agree to an extension from 30 to 60 days but only prior to the first teaching day of the school year, thus preventing midyear layoffs. Inland points out that the

Union proposal would be even more regressive than current language, giving 30 more days of notice and yet not allowing midyear layoffs.

Inland has the burden to show the need for such contractual change. The comparable communities are not of much help here since some comparables do not have a notice requirement at all; some have 30 or 60 days notice usually before the start of school and Wolverine appears to be the only district that specifically prevents midyear layoffs. Some districts have 30 days notice but may make layoffs because of financial distress thus implicitly authorizing mid year layoffs.

The real issue is whether the need for Board options for midyear layoffs is real or hypothetical. The record does not disclose whether layoffs in general have been a problem in the District and Inland does not point to any specific problems that would have necessitated midyear layoffs in the past and was prevented from doing so by the existing language. Although revenues may decline and enrollments seem to be declining, more specific concrete information should be provided to show how and why midyear layoffs would be a critical component of administering the school district. The audit does not show a District in dire shape to require midyear layoffs as the only recourse.

#### RECOMMENDATION

While the theoretical objective might be laudable, I do not find the empirical data that supports midyear layoffs in this record. While I agree with the Union on this issues, it would behoove the Union to be forward thinking and consider language with sufficient guidelines attached that would permit midyear layoffs in the event of unforeseen emergencies particularly of a financial nature. Both sides might be accommodated by giving the Board the option but with sufficient standards that the Union members are not professionally disadvantaged.

#### PAID LEAVE

Currently, Section 4.4 M states teachers reaching 16 years of service as a teacher with the Inland Lakes District upon retirement shall receive \$20 per day for each day of

unused sick leave. The Union proposes to increase the payout to \$50 per day and Inland opposes this change

As the initiating party, the Union would have the burden on this issue. The Union says the maximum cost would be \$6,750 an increase of \$4,050 if a teacher had accumulated the maximum number of days allowed. They assert that this benefit would be in range with the ISD comparables and they also attempt to tie-bar this issue with employee retirement incentives. If the Union's proposal on ERI is rejected, then this enriched payment for accumulated sick leave would be a possible incentive when considering earlier retirement.

Inland says that there is no justification for this proposal other than an enhanced benefit with no real advantage to the District. While guaranteeing a sick leave payout tends to decrease unwarranted use of sick leave, the mechanics of implementation are up to the parties. While there may not be an immediate cost to Inland, this would create a contingent liability for the future. Inland also argues that without accepting any health insurance alternatives this proposed increase by the Union is unacceptable.

#### RECOMMENDATION

I do not find the comparable communities to be helpful on this issue as almost like comparing apples and oranges and Inland does not appear to be disproportionately out of line with the comparables. How long this language has been in the contract is unclear. But the Union does have the burden and it has not presented any concrete basis for why this enhanced benefit is needed at this time other than the desire of the membership.

**Accordingly I recommend that the Union proposal not be adopted.**

#### YEAR BOOK COMPENSATION

The Union proposes the addition of the position of year book adviser to the extra-curricular schedule in section 5.4 and at a rate of 6%. All described positions in sections 5.4 are expressed as a percentage. Inland opposes the addition of yearbook adviser to the schedule. The Union at Tab 3, p. 24 lists the NMEA units that pay a stipend called yearbook

and all are expressed as a specific dollar amount. There is no indication whether this is a specific class or if this stipend is in addition to teachers normal caseload.

The Union would have the burden on this issue. The District makes compelling points that there already is a yearbook class and assumptively is taught by a yearbook adviser. They also indicate that yearbook production is a joint responsibility of yearbook and journalism teachers. They point out that if this position is added to the schedule, other teachers such as journalism could request the same addition and further that other teachers might likewise seek additional compensation based upon alleged extraordinarily demands of their workload. Most telling however is the fact that there already is a class and the teacher who is already receiving a regular salary for teaching that class would receive an additional 6% compensation with no demonstrated reason why extra compensation is warranted.

#### RECOMMENDATION

I agree with Inland that the Union has not presented a compelling reason to add this item to the schedule. **I recommend that the proposal not be adopted.**

#### RETIREMENT INCENTIVE

The current contract at section 6.5 contains a provision for a retirement incentive for the 2000-2001 school year only. Notwithstanding the fact that the provision is limited to one school year, the section has remained in the contract. Inland proposes to delete Section 6.5 as a cleanup or editorial change. The Union proposes that the Board agree to a severance benefit of \$1000 for each year served in Inland with 1-2 years of eligibility for MP SER; \$750 for 3-4 years eligibility and; \$500 for 5 years. The Union claims that their position is more reasonable than the employer saying that comparable communities have either an ERI proposal or severance incentive such as paying out sick leave. They claim that If this is deleted and the Union's sick leave payment proposal is not recommended then Inland would be the only District without a retirement component . The suggestion is that EPI provides savings for an employer because they would not have to pay higher wages that are typically earned by senior teachers by way of step increases and additional degree accreditation. They

also suggest there is a benefit to the employee by providing a financial bridge for retirees before they attain Social Security benefits.

Inland argues that editorial deletion of the language is proper. They also claim that this item was first proposed by the Union November 21, 2008 after the fact-finding petitions were filed. Inland states that in two years it offered limited retirement incentives in order to minimize potential layoff of teachers and that the \$10,000 that was paid at that time correlated to the cost of unemployment compensation that would have been paid to laid-off teachers. Inland also suggests that there may be a legal problem with respect to violation of age discrimination laws.

#### RECOMMENDATION

**I recommend that the provision be deleted and that the Union proposal not be adopted.** Apparently, this provision remained essentially a non-entity until the parties reached an impasse and payoff on sick leave days was in dispute. As I've indicated in the prior discussion on sick leave I do not see a necessary linkage in these issue and as there was no basis for an increase in sick leave I do not see a basis for an ERI incentive either. If a person is eligible for retirement they should not be given an additional benefit just to leave unless there are extenuating circumstances. It seems like this proposal is a mirror image of a proposal recently publicized by the MEA to provide statewide incentives for early teacher retirements. Perhaps the legislative arena is the best place to discuss the public policy ramifications of such a program. Here, the District apparently has utilized a retirement incentive in order to avoid layoffs in prior years. In my view that is the better way of using incentives where a significant reduction in the workforce may be avoided and in direct response to then current financial concerns.

#### INVOLUNTARY TRANSFER

On this issue, Inland proposes a change to Section 2.1 B. that would allow an involuntary transfer on or after August 15 or during the school year to be made to avoid an undue disruption of instructional programs. The only requirement would be that the superintendent notify the effective teacher as soon as possible and the Union of the reasons

for the transfer. Current language allows the involuntary transfer only in case of an emergency which would cause undue disruption of instructional programs and is defined as a sudden, unexpected or current set of circumstance demanding immediate action. Further current language limits the involuntary transfers to 20 class days.

Inland argues that Involuntary transfers generally occur because of educational<sup>17</sup> necessity from scheduling demands, staff reductions, resignations or teacher accreditation requirements and that 20 class days, essentially four academic weeks, is not long enough to address the problem. They argue that 20 class days is simply not enough time and causes too much disruption to student education and other staff members. They also argue that no other comparable labor agreements include restrictions on the duration of involuntary transfers.

The Union counters that the District would have unfettered right to make involuntary transfers because of the elimination of the definition of emergency. This delegation of discretion could possibly impact upon contractual assignment notification and seniority rights. Further, the Union asserts that Inland has not provided record evidence of any problems in the past that would require such a dramatic language change to address perceived needs

## RECOMMENDATION

### **I recommend the status quo.**

As with other language changes, the burden is upon the proposer to explain why the change is necessary. There was no record evidence of any specific situations that would support the proposed change. It is noted that Inland focused upon the 20 date limitation of involuntary transfers but did not address other language to be deleted. Contrarily, the Union hardly mentions the 20 date issue but rather the elimination of the emergency requirement and the definition of emergency. Involuntary transfers are just that, not done with the acceptance of the transferee. They should only be done as the current contract language specifies in cases of emergency that cause undue disruption of institutional programs. The current language provides a definition of emergency that would trigger involuntary transfers.

As proposed by the District, there would be no check upon the exercise of the superintendent/ Board's extraordinary discretion. If the 20 class date limitation is a real practical problem than the parties may consider discussing lengthening that provision while maintaining the underlying basis for an involuntary transfer.

### CONCLUSION

I wish to acknowledge the effort of the parties as they produced a great amount of material in the exhibit books. The Briefs were very helpful to assist in understanding the issues. Needless to say fact finding is an imperfect science. The recommendations may not make a party happy on a particular issue; but that is the very nature of the process. However, it is hoped the comments and recommendations will be of benefit to the parties and that they will be able to reach an accommodation and quickly develop a new agreement. At least it may give the parties food for thought and the ability to alter their positions and reach an accord.

Respectfully submitted



Kenneth P. Frankland  
Fact Finder

Dated: February 11, 2007