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STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING RECOMMENDATION

In the matter of Fact Finding

/

REDFORD UNION SCHOOL DISTRICT NO. 1

Employer/Respondent

-and-

MERC Fact Finding
Case No. D07-0620

WAYNE COUNTY MEA/NEA/RUEA

Union/Petitioner

/

Appearances:

For the Employer

George P. Butler III, Esq.

For the Union

Steven J. Amberg, Esq.

Date of the Report: September 8, 2009

Background

The Redford Union School District No. 1 (the District) is a public school district located in Redford, Michigan. The enrollment for the 2008-2009 school year was approximately 3584 students. The District employs approximately 490 staff members, and, according to District figures, 264 of the staff are teachers. The District's budget for the 2008-2009 school year was approximately \$31 million. The District includes one high school, one middle school, two elementary schools (grades 2-5) one elementary school (grades K-1) and one alternative

education and early learning center. The District also runs an elementary day treatment center, an adolescent day treatment center, and a special program for hearing impaired students. The local affiliate of the Wayne County Education Association, RUEA [the Association] is the bargaining agent for the District's teaching staff.

Procedural History

The last bargaining agreement between the parties extended from 2000 to November of 2005. Subsequently, the parties began negotiating for a successor contract. Although the parties worked hard to find acceptable solutions and were able to reach tentative agreements on some issues, their efforts with respect to the issues of **wages and health insurance** have thus far proved unsuccessful. On or about April 27, 2007, the District sent an email to the Association declaring an Impasse. At that time the District imposed terms and conditions of employment on the teachers' bargaining unit. [The Association filed an Unfair Labor Practice (ULP) charge against the District on or about June 11, 2007 (MERC No: C07 F-132) and the District filed an ULP charge against the Association on or about June 25, 2007 (MERC No: C0 F-030). Those proceedings were held before Administrative Law Judge David M. Peltz (ALJ) on or about November 11, 2007, November 30, 2007 and January 30, 2008. The ALJ eventually ruled for the Association and against the District. The District may appeal].

A petition for Fact Finding was filed by the Association, and the undersigned Fact Finder was appointed by MERC to hold hearings and make recommendations in this matter. The Fact Finder held two pre-hearing telephone conferences with the parties, and fact finding hearings were held on April 15, April 17 and May 13, 2008, and on March 26, May 28, June 4, June 9, June 11 and June 22, 2009 at the District's administrative offices. The Association was initially represented by Daniel J. Hoekenga (during the 2008 hearings), and by Steven J. Amberg (during

the 2009 hearings). The District was represented at all hearings by George P. Butler, III. As one would expect the case to be from the number of hearing dates required, an all-inclusive record was created during the 9 days of hearings. The Fact Finder received extensive testimony both from experts and Association and District officials and the parties supplemented the transcribed testimony with numerous detailed exhibits books. The parties filed closing briefs as scheduled during the last day of hearings. The Fact Finder indicated that a report of her recommendations would be completed by the end of August or first week of September, 2009. In preparing the recommendations the Fact Finder drew upon the entire record; however, this report attempts to comment only on those portions the Fact Finder felt were most germane to present a succinct synthesis of the parties positions and supporting evidence and to fulfill her charge as the appointed Fact Finder.

Association's Position

The crux of the disagreement is about the District's shift (under the imposed contract) of a part of the cost of health insurance to the teachers through changing the coverage provided by its self-insured plan from a traditional to a PPO plan, requiring a contribution by employees and increasing the co-pays for prescriptions. The switch under the imposed contract to employee contributions resulted in each teacher contributing \$1500 to the cost of insurance with additional out of pocket expenses for prescription drugs. The Association points out in its closing brief that the last salary increase (percentage or dollar amount added to the salary schedule) was during the 2002/2003 school year. No additional compensation was added to the salary schedule during the last two years of the 2000/2005 contract, and no salary increase was provided for in April 2007 the imposed conditions. The Association sees this as expressing yet another reduction in compensation for staff.

The Association alleges that the District's position has been intractable, willing only to accept a "systemic change". It argues that the District has not seriously explored options open to it, and must use a *rational and creative approach* that seeks to limit the harm to its employees and spread the burden for its financial difficulties in a reasonable and equitable manner. The Association's bottom line position is that the District has *unfairly opted to rest the bulk of this burden on the teaching staff instead of charting a more equitable path of spreading the burden around among the entire constituents of the school community.*

District's Position

The District points to the responsibility it has to sustain its fiscal viability despite rapidly decreasing revenues and dramatically increasing costs, especially health insurance costs. It argues that its proposals as presented through the imposed contract presented *a viable plan which addressed the reality of the its current economic struggles* (which are similar to those existing throughout the state and the entire country). It further argues that the bargained-for contributions to health insurance costs and increased co-pays from other unions in the District combined with the imposed contributions and increased co-pays from the RUEA were successful. In support, it asserts that the collective result of those changes led to the District having a positive fund balance for the first time in 5 years. Its position is that the RUEA's wage proposals and stance of "no additional contributions towards health care costs for its members" could only be satisfied at the expense of other District employees and the quality of services and programs offered to students. If adopted, the District warns, such measures would *thrust the District back into deficit.*

Criteria for Recommendations

Although no clear criteria dictates what Fact Finders must look to in order to adequately formulate recommendations, many Fact Finders use the criteria established in Article 9 of the Act 312 of 1969, the Compulsory Arbitration of Labor Disputes in Police and Fire Departments as a guide. These criteria are commonly used in fact finding proceedings involving public employers and police and fire unions, and this Fact Finder finds them to be a useful guide in assessing the issues presented by the parties in fact finding proceedings. The applicable factors to be considered as set forth in Article 9 are as follows:

- 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 arbitration 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 arbitration proceedings.*
- h) *Such other factors, not confined to the foregoing, which are 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.*

Comparables

Comparables were introduced through the parties' witnesses. The Fact Finder looked for useful comparisons between those districts tendered by the parties and Redford Union. There

were no overlapping districts and, not surprisingly, the Parties disagreed with each other's suggested lists.

The difficulty of comparing health insurance costs across districts is highlighted in the Association's limited efforts to do so. It presented two sets of *external* comparables; however, for the most part their comparisons appeared to be based solely in the criteria that either, 1) the districts were also represented by MEA/NEA or 2) the Districts were geographically contiguous to Redford Union. Very little else was brought out through testimony regarding the appropriateness of its proposed external comparables. The Fact Finder heard little, if any, testimony comparing these proffered districts and Redford Union with respect to size and financial characteristics of the communities, size of the districts (including student population), size of budgets, amounts of state aid per student, and/ or deficit histories. One district included by the Association, Garden City, has a "deficit history," but the Association witnesses made no comparison on this ground.

At one point, however, witness J. Helen Brish did indicate that one of the Association's criteria was that the districts *faced the same general labor climate* as Redford Union. No subsequent evidence or discussion supported that this was a considered basis for comparison. In its closing brief the Association offered additional justification for its lists of comparables. However few, if any, of the grounds and arguments promoted at that juncture are supported by testimony in the earlier record. Overall, the Fact Finder found the Association's presentation of comparables inadequate to demonstrate any helpful comparisons.

The District concentrated on internal comparisons, drawing the Fact Finder's attention to its agreements with other bargaining units. District witness Edward Callaghan, consultant to the superintendent, testified about agreements with the central office administrators, the building

administrators, educational assistants, custodians and bus drivers, and food service managers respecting employee contributions to health insurance and co-pays.

Fact Finders often place considerable weight on internal comparability with respect to benefits such as health insurance because often health insurance plans are the same for all employees.

The particular plans will usually cover the breadth of health related matters faced by all employees regardless of their bargaining unit. To the extent that the Fact Finder found the parties' comparables helpful, the internal comparables with respect to other bargaining units were deemed valid and informative.

Financial Considerations/Ability to Pay

The issue of *ability to pay* examines the ability of the public employer to finance and administer proposed plans. Several pieces appear to comprise the resolution. The impact of a down economy knows no distinctions. Families, agencies, districts and businesses must find ways to manage their budgets. This may include ideas and strategies previously not thought of or formerly "unacceptable". Both sides are seeking ways of creating a more viable and sustainable system for delivery of the highest caliber education along with retaining an equitably compensated staff of teaching personnel.

No district wants to fall into deficit, and when that does occur, it wants to recover as soon as possible. Among the many negative "tag alongs" that occur when a district is in deficit are increased borrowing, increased borrowing rates and a lowered bond rating. There is no dispute between the parties about whether or not the District was in deficit at the time the Petition for Fact Finding was filed. At the end of the 2003-2004 school year it had accumulated a deficit of just over \$2 million. By the end of 2004-2005 that deficit had increased to almost \$2.5 million.

As a consequence, the State of Michigan required the District to develop and submit a Deficit Elimination Plan (DEP).

Testimony established that the District has experienced declining enrollment for the past five to six years. District witness, Glenda Rader, Assistant Director of the Office of State Aid and School Finance for the State of Michigan, testified extensively about how and when state aid is paid to school districts and state requirements when a district falls into deficit. Her testimony was clear and unequivocal. Ms. Rader testified that her office has noticed that districts who have declining enrollment seem to experience deficit more readily than do those with increasing enrollment, and that she was aware of data confirming that Redford Union is a declining enrollment district.

Auditor Kim Lindsay testified that the District lost between 700-800 students over the last five to six years. He described a loss of that magnitude as a *huge financial drain . . . almost impossible for schools to make cuts quickly enough to make up*. He opined that with a 15% fund balance school districts usually don't have to borrow and incur increased debt. Lindsay reiterated that assistance provided under the State Aid Act is a *fluctuating annual appropriation* and cautioned that if there is a shortfall somewhere else, the anticipated money may be quickly shifted away from this package.

Respecting budget areas districts generally focus on in trying to reduce costs, Ms. Radar confirmed that because employee benefits and salaries constitute about 80 to 85 percent of the total budget, [most districts] would probably have to receive some concession in that area in order to accomplish a deficit elimination plan. She further testified that the District was on track to come out of deficit by June 30, 2009 with a projected balance of \$300,000. In its closing brief the District confirmed that by following its DEP it had indeed eliminated its deficit as of June 30,

2009 and has a fund balance of approximately \$320,000, equating to roughly 1% of its budget. In April of 2009, however, the ALJ decided against the District and ordered it reimburse the effected employees the \$1500 it deducted from their wages for contributions to health insurance costs. The District has indicated that if this decision stands, the District will be “thrown back into deficit.”

The District characterizes the state’s economic conditions as “dire” and “seriously affecting” the District’s financial strength. Testimony supported the view that although school funding has increased over the past 4 years, fixed costs have virtually consumed those increases. Evidence also supported the outlook that without the influx of the recent federal stimulus monies to the states, the foundation allowances across the state were anticipated to decrease by \$265 per student. Testimony likewise confirmed that indications of a much steeper reduction of about \$600 per student within the two years appear to be based more in reality than rumor. James Hayes, the insurance agent representing the District for its benefit program, testified that health insurance costs continue to rise, and *have averaged a 10 percent increase per year for probably the last 10 years*. He confirmed that for the 07-08 year the projected per employee cost for health insurance was \$12,814, and that the projected cost for 08-09 was in the \$14,000 range.

The Association counters that the District has ignored other options it could have pursued to save dollars because it found that it was easier to “strip them from the pockets of its employees. Areas that the Association asserts the District has failed to investigate include “pay for play” athletics policy, reduction or elimination of non-required transportation, closing buildings, eliminating staff and the potential for privatizing in areas such as food services.

District Superintendent Donna Rhodes testified that the District has utilized a pay to play policy since the 90’s, and that the rates families pay has increased over the years. Moreover, Kim

Lindsay's testimony was that eliminating athletics and transportation from the District's budget in the year the initial year of the DEP would not have solved its deficit problem. With respect to other District options, Rhodes testified that the District explored staff reduction and had actually discussed and implemented some early retirement incentives. It has closed middle and high school "schools of choice" programs, rented out a wing in one building and reconfigured grades in another building in order to close some buildings. As to privatization, Superintendent Rhodes indicated that the District has *many quality, loyal employees* whom it is *unwilling to sacrifice*.

The Fact Finder finds that the District has demonstrated a limited ability to pay at the present time, given the specific conditions and circumstances discussed heretofore and the overall state of the economy within Michigan.

Recommendations

The Fact Finder's recommendations follow below. She preferences them with two observations: 1) The Fact Finder noticed no lack of regard by anyone respecting the District's budgetary concerns. Rather, the Association appeared duly concerned about the welfare of the entire system, while keenly aware of the impact of general downturn of the economy and the resultant decline in its constituents' buying power over the past 5 plus years. Because the parties appeared so close, from time to time, in coming to agreement on wages and health insurance, the Fact Finder could not help but wonder how differently matters may have worked out had the parties been able to engage in meaningful sessions of mediation long before any filings or impetus for filing ULP claims arose. 2) The District's Last Best Offer with respect to wages rests on the decline in student enrollment being fewer than 150 students and the State Foundation Allowance being \$150 greater than the previous year. The Association argues that such a tie-in is doomed for failure. Given the District's extensive testimony regarding an average loss of over

200 students per year for the past 5 years, and the parties' recognition of the instability associated with the Foundation Allotment, the Fact Finder must agree with the Association's assessment. Thus, the parties will note that the recommendations specifically exclude the contingencies relating to student decline and foundation allotment.

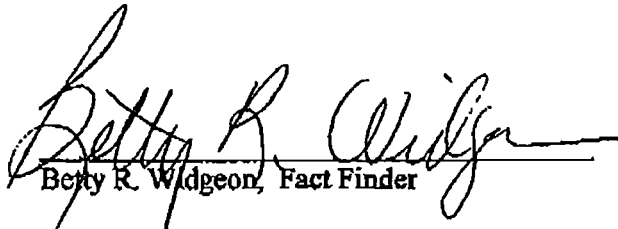
A careful consideration of the issues in light of the very thorough presentation by the parties leads the Fact Finder to the following recommendations:

- 1) Wages: 2008-2009 1% increase for Step 9 with 10 years
- 2009-2010 .25% increase for Step 9 prorated base
- & 2010-2011 salary as one-time payment [not tied to student enrollment or fund allowance]

- 2) Drugs: 10/20/40 With no annual cap \$40/co-pay/designer/anti-ulcer
- 1 designer drug/anti-ulcer "grandfathered in to 2nd tier

- 3) Medical: PPO #1 Option Employee contribution of 10% of monthly COBRA rate as of June 30 of previous contract year.
- PPO #4 Option No cost sharing to employee
- Wellness program Participants entitled to \$300 cash incentive

Date: September 8, 2009



Betty R. Widgeon, Fact Finder