

**STATE OF MICHIGAN**

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the matter of the fact-finding between:

Board of Education for the Southfield

Public schools

Fact Finder: Howard T. Spence

And

Southfield Education Association (SEA);

MERC case no. D08-K-1340

Southfield Education support personnel

Association (MESPA); and

MERC case no. D08-K-1339

Educational Secretaries of Southfield

(ESOS)

MERC case no. D08-K-1338

**FACT FINDER'S REPORT**

## INTRODUCTION

This document constitutes the fact-finding report issued by Howard T. Spence, Fact Finder assigned by the Michigan Employment Relations Commission (MERC) to conduct necessary hearings to determine facts for consideration by MERC in the ongoing labor disputes between the Board of Education for the Southfield public schools (hereinafter referred to as either the Southfield Public School District, the "Board of Education," "management" or "petitioner") and three of the recognized bargaining units representing employees within the Southfield public school district. The 3 bargaining units which are involved in this particular fact-finding case include the Southfield Education Association ("SEA"), the Southfield Education support personnel Association ("MESPA"), and the Educational Secretaries of Southfield ("ESOS").

SEA is the recognized representative of a group of employees of the Southfield Public School District who provide services to the district as teachers or other professionals involved in professional education activity for the District. Those employees focus on providing education and training for students attending the Southfield public schools in the grades ranging from kindergarten through the completion of high school (K-12).

MESPA is a separate and distinct group of employees of the school district who provide a wide variety of support services in the education process ranging from paraprofessionals and teaching assistants working in the classroom directly with

students through a number of other Department support functions necessary to maintain the various education related non-clerical support activities of the school district. ESOS is a separate and distinct bargaining unit representing employees of the Southfield Public School District who provide a wide range of administrative, clerical, and other support services necessary to maintain the administrative and business related functions of the school district.

Each of the 3 distinct employee bargaining units is affiliated with the Michigan education Association (MEA). While there is some overlap of common interest in the employment and Labor Relations areas between these 3 bargaining units, there are also strong individual differences of interest and focus which have not only justified the distinct representation status of each of these 3 groups, but which have also historically necessitated separate and distinct collective bargaining efforts on the part of each of these 3 representation unions and the Southfield public schools.

The Southfield Public School District has a long and mature bargaining relationship established with each of the 3 bargaining units involved in this proceeding. It appears that those bargaining relationships have been in existence and active for up to 3 decades. Historically it appears that the school district and its employees in these 3 bargaining units have been able to cooperate to negotiate collective bargaining agreements to which all parties were able to agree -- possibly after periods of "hard bargaining." In the most recent round of negotiations for collective bargaining

agreements involving management and the 3 bargaining units, the parties have been unable to independently reach a mutually agreeable decision as to what the collective bargaining contract terms and provisions should be governing the labor and employment relationship between the school district and its employees in these 3 organized bargaining units.

Due to what can be described as a significant deterioration in the financial base of the State of Michigan generally, and also the Southfield Public School District over time, recent bargaining has become more difficult -- in no small part because of the fact that adjustments have had to be made to reflect limited financial resources and funds which are no longer growing, but which in fact seem to be in decline and also much more difficult to predict. In the present bargaining cycle, it appears that the financial conditions which implicate bargaining conditions and possibilities within these 3 bargaining units in the Southfield Public School District have deteriorated to the point that the parties have felt the need to resort to the intervention of MERC. The Board filed three separate Petitions for Fact Finding with MERC seeking the assistance of MERC to resolve remaining disputes between the Board and its employees. At the present time there is no collective bargaining agreement ratified and in place between the Board and any of the three bargaining units.

The Southfield school board, in its written closing brief to the fact-finding hearing process, has stated its positions which reflects the fact that there are now significant

ongoing disputes between the school board and the employee organizations about contract terms and possibly even the direction in which the Southfield school district will be heading generally going into the next decade. In the employer's brief, the school district has articulated the purpose for its proposals which are now in dispute to be the following:

"Through an array of proposals, the Board of Education for the Southfield public schools seeks to modify the collective bargaining agreements with the SEA, MESPA, and ESOS bargaining units. The objective of each proposal is to preserve the quality of public education in Southfield while the school district, once flush with economic resources, adjust to a period of rapid economic decline."

The disputes or controversies in these cases arise from the fact that the proposals which the school board has drafted and proposed be implemented impact significantly upon the economic and financial well-being of the unions and the Southfield public school district employees who those unions represent. Not only do the employer's proposals have significant financial impact upon individual school district employees in these unions, but some of those proposals which are advanced by the Southfield school board have potentially significant long term impact and impose significant changes to previously established terms and conditions of employment and engagement between the Board and the employees in the school district. Some of the new school district

proposals even go so far as to suggest significant changes in previously negotiated "displacement" rules which affect the use of seniority of employees within the school district in a number of areas. Those proposed changes in "displacement" or seniority contract terms have the potential for changing the historic pattern for determining classroom and work assignments, and also for determining how employees get affected during times of layoffs and reductions in force which the school district may find it necessary to impose at any given time.

In light of the significance of the issues which are presented in these cases, it is understandable that the parties have not quickly and easily reached agreement on a number of significant issues. The collective bargaining agreement between the Southfield school board and SEA expired on or about August 11, 2008. The collective bargaining agreement between the Southfield school board and MESPA also expired on August 11, 2008. The collective bargaining agreement between the Southfield school board and ESOS expired on July 31, 2008.

Since the expiration of those collective-bargaining agreements, the parties have been involved in some negotiations toward new contracts, and apparently some concessions or agreements have been reached or implemented since the expiration of the particular contracts at issue. However, a significant number of "issues" for negotiations have not been resolved by the parties independently as of this time. Even though the parties did attempt to resolve some of their differences through a mediation process at MERC, there obviously remain a significant number of important issues which have not yet

been resolved. Based upon those outstanding issues, and the extended time period during which the school district has been operating without collective-bargaining agreements in place with these 3 unions, the employer, the Southfield Public School Board has petitioned that MERC assist with the resolution of the ongoing disputes through the fact-finding process, which is the dispute resolution process at the Michigan Employment Relations Commission which is provided for in the Michigan public employment relations act.

### The Fact-Finding Process

The Southfield public school Board of Education filed 3 separate petitions with MERC for assistance with dispute resolution involving collective-bargaining agreements with each of the 3 named bargaining units. Upon receipt of those 3 petitions, MERC did schedule those matters to be involved in resolution through the fact-finding process. Because of the significant overlap of factual information which would likely be involved in the consideration of each of the 3 separate cases, and at the request of the parties, MERC did assign all 3 of these fact-finding petitions to a single Fact Finder for review and disposition. On the agreement of the parties, the undersigned Howard T. Spence was selected as fact finder for each of the 3 cases.

Although the 3 cases were significantly independent proceedings, it was determined during the prehearing conference phase of this process that the most efficient and expeditious way to handle the 3 separate hearings would be for the parties to hold a single "unitary" hearing to address the "economic" issues which impacted economic and financial proposals for the respective bargaining units. It was further decided that following the conclusion of the portion of the hearing process where common economic issues and facts were presented and examined, additional separate hearing opportunities would be presented so that each of the unions could have an opportunity, along with the school board, to present evidence and testimony to the fact finder relating to any issues and concerns which were unique to a particular bargaining unit.

This Fact Finding Report is a unitary report issued to address the fact finding proceedings for all three bargaining units. Many of the common issues are discussed in a general discussion section. Towards the end of this Fact Finding Report, sections of the report are included which specifically address issues and discussion more directly related to each of the specific bargaining units and Petitions and the issues peculiar to those specific bargaining units.

Understandably there was the potential for considerable concern and adversarial contention between the parties because of the large "stakes" at issue in the resolution of these disputes. Events in the immediate past, including a significant reduction in force and privatization effort by the Board which had impacted MESPA, also may have, to



some degree, soured the negotiation environment and heightened any elements of distrust which may have already existed in the bargaining histories of the school district and its employee units. Even in light of this background and potentially a significant amount of distrust and anxiety, the parties cooperated and participated openly in the fact-finding hearing process to a degree which was very good.

The Fact Finder is appreciative of the cooperation and attitudes of the parties in the fact-finding process. If that attitude of cooperation demonstrated at the fact finding hearings carries over into the future, then the prospects for more normal resolution of labor relations and employment disputes in the future at the Southfield public school district are good.

During the fact-finding hearing process, the parties did successfully discuss and narrow their positions on a number of issues which previously had been in dispute. Those dispute resolutions or agreements appear on the fact-finding hearing record itself, and then also in written stipulations between the parties. Some of those areas of agreement are also discussed and documented in the written closing statements or briefs of the parties which were submitted at the conclusion of the evidentiary hearing record in this fact-finding proceeding.

Discussions -- both on and off the record during the fact-finding process -- also indicated that there may not have been adequate prior discussion and negotiation between the parties before the initiation of the fact-finding process. At the fact-finding hearing, it became clear that some of the proposal language offered by the Board which

was in dispute had not been adequately discussed by the parties or in some cases even presented to the unions prior to the hearings. The meaning of some of those proposals and/or the implications of those proposals had apparently not been adequately discussed or negotiated prior to the hearing. "Clarifications" which occurred during the hearing process for fact-finding facilitated both the narrowing of differences in position on some issues, and resulted in the actual resolution or negotiated settlement of other issues which had been previously in dispute.

#### The Record of the Case

The fact-finding hearing itself was conducted over a period of 5 days of hearing. The actual fact-finding hearings were held at the MERC offices located in the Cadillac State office building in Detroit, Michigan. Hearings were held on October 12, 2009; October 13, 2009; October 14, 2009; October 26, 2009; and November 3, 2009. Howard T. Spence presided at each of those hearing dates as the appointed MERC fact finder.

The evidentiary record of this fact-finding hearing effort was recorded and transcribed by a court reporter at the agreement of the parties, and the recommendation of the fact finder. The parties to the fact-finding process voluntarily agreed to split the costs associated with the transcription of the record. The Fact Finder declares that the transcript record, along with the exhibits which were introduced into the record during

the hearing process, constitutes the official fact-finding record for this group of 3 cases between the Southfield school district and its employees in the 3 named bargaining units. Also included in the official record of this fact-finding proceeding are the written closing statements and arguments, or closing briefs, of the parties. The briefs from both sides of participants in this fact-finding process were extensive, well-written, thoughtful, and should be helpful to both the Fact Finder and the Michigan Employment Relations Commission ultimately as they attempt to determine an appropriate disposition for these petitions. Those written closing statements are also determined to be an official part of this MERC fact-finding case record and file.

Although not specifically marked as exhibits in this fact-finding case, there were items of correspondence and pleadings submitted which are also a part of the official fact-finding hearing record. Those pleadings would include the 3 petitions filed by the Southfield public school board in these cases, as well as the "answers" provided by the representatives of the 3 collective bargaining units. In addition, there are other administrative documents and pieces of correspondence related to this fact-finding hearing process which were maintained or generated by MERC administrative staff or the Fact Finder himself. Those documents are also a part of the official fact-finding hearing record.

The transcript of hearing in this matter consists of the 5 days of transcripts, aggregating to be 850 pages of hearing testimony on the record. The parties were allowed to

present their positions on each of these issues as fully as they desired given time constraints.

The following persons testified as witnesses for the school board during the fact-finding hearing process: Diane Wells, Mark Rajter, Douglas Derks, John Edgerton, Lynda Wood, Kensen Siver, E. R. Scales, Bruce Grusecki, and Dandridge Floyd. Testifying on the hearing record as witnesses for the 3 unions were Patricia Haynie, Arch Lewis, Richard Ringstrom, Frederick Peters, Michael Graves, and Katherine Michalsen. All witness testimony was taken under oath.

There was one joint exhibit which was admitted into the record. Joint Exhibit 1 was a written and executed stipulation between the parties indicating their resolution of some of the issues which had previously been contested within this fact-finding proceeding.

The employer presented its exhibits in this matter in one exhibit book which was labeled and referred to throughout this proceeding as employer or board Exhibit 1. However, that rather voluminous exhibit book consisted of a number of "tabs," each of which was an independent document or exhibit in and of itself. By the time the fact-finding hearing had completed, the Board's Exhibit 1 had been expanded to be comprised of 33 individual sub exhibits or "tabs." Each of those tabs and the documents which they

represent are discussed in the record and have been itemized by the court reporter in the list of exhibits compiled within the transcripts of this proceeding.

The union presented four separate exhibits in support of its positions during the fact-finding proceeding. Also included in the record was a copy of a power point presentation which was made by union witness Arch Lewis during the economic focus portion of the fact-finding hearing process.

Early in November of 2009, subsequent to the actual last day of the fact-finding hearing, the official audit for the Southfield public school district for 2008 - 2009 was released. Pursuant to the earlier discussion and agreement of the parties and order of the fact finder, that final audited financial report for the school district for school year 2008 - 2009 was also admitted into the record per stipulation of the parties.

There were no exhibits offered during this proceeding which were rejected by the Fact Finder and excluded from exhibit status in this hearing process.

Waiver of Requirements of MERC Rule 423.137 (D.)

During the course of the fact-finding hearing itself, the parties did stipulate on the record that the Fact Finder would not be held to the requirement set forth in MERC rule 423.137 (D.) The parties agreed to waive the requirement for an identification of the "reasons and basis for the findings, conclusions, and recommendations" in the factfinder's report. Pursuant to that stipulation and request of the parties, there are significant findings, conclusions, and recommendations in this report which may not have been developed or discussed as fully as they would otherwise if the parties had not been willing to waive the Fact finder's statement of reasons and basis for his findings, conclusions, and recommendations.

Even though the parties did waive the rule 137(d) requirement, the Fact Finder has, on occasion, provide some reasoning or commentary in support of findings and recommendations. To a certain degree, that reduced amount of articulated reasoning is still necessary for the parties and ultimately the Michigan Employment Relations Commission members to be able to better understand the basis for some facts and conclusions which are found, and/or recommendations which might be made in this fact-finding report.

#### Issues or Proposals for Resolution

The Southfield Board of Education has not had a collective bargaining contract in force with any of the 3 bargaining units involved in this proceeding since August 11, 2008.

There have been occasional meetings between the parties since that time where proposals for contract language changes have been made by management. A witness for the unions stated that the bargaining had been limited, and that there had not been full discussion of some of the issues or proposals which were raised by the employer in this fact finding proceeding. That witness indicated that some of the board proposals had been presented "conceptually," but not fleshed out with actual discussion of specific offered contract proposal language.

To date, it does not really appear to the fact finder that the bargaining opportunities or efforts of the parties have been as vigorous or significant to date as they probably should have been. At the time of the fact-finding hearing, it even seemed that there was some confusion as to what was the actual meaning or intent of some of the bargaining proposals that had been made and which needed to be considered in this fact-finding process. As a part of the pre-hearing process, representatives for the various parties did exchange documents in an attempt to identify what the actual proposals were that would be subject to this fact finding process. During the dialogue which occurred during the pre-hearing process, and also during the actual the fact-finding hearing process itself, some of the language in various proposals was rewritten, discussed, "clarified," or withdrawn or accepted. A considerable amount of time was expended determining an understanding between the parties as to the "intent" or interpretation to be given to some of the newly proposed contract provision language.

As was indicated above, during the fact-finding hearing process some of the proposals and issues have been clarified. Once clarified, some issues have been removed from this dispute resolution as the result of an agreement or stipulation between the parties to accept a particular proposal or issue which was clarified, or modified, or, in some instances, actually withdrawn. For example, a contested proposal or issue relating to the length and end the date of the school calendar was resolved when it was determined that there had been legislative changes which apparently addressed the concern of the school board. Those statutory language changes, which occurred during the time frame of the collective bargaining process and fact-finding process, removed the need for the proposed contract changes that had previously been contested for that particular provision.

Some of the more significant proposals or disputes, particularly the economic issues -- wages, severance pay, and longevity -- remain to be resolved through the fact finding process. However, in the economic environment in which current negotiations have been occurring, the parties realistically have agreed that the salaries and/or wages of members of the SEA and MESPA and ESOS would not be enhanced in this contract term. This fact finder has not recommended any increases to basic wages of any of the members of the three district bargaining units. The unions have by and large agreed that the actual present stated wages or salaries would continue to be at the levels negotiated for the most recent contract term which ended in 2008. Given the fact that



the parties realistically have been able to agree that the prior/present salaries and wages should continue in the new contract term, one of the major issues which typically is most contentious is not actually presented in this fact-finding case.

This fact finding report attempts to address each of the proposals and concerns voiced during this fact finding process. However, that effort has been complicated to some extent by the parties focusing on different portions of the contract language (historical or proposed) which concerned them the most, and basing their discussions both on the record and in closing briefs on language which the other side may not have thought to be a major area of concern. For example, when the employer proposed that a contract provision section be deleted, the purpose of that proposal by the employer may not have been focused on or concerned with other language or terms that would be simultaneously changed or deleted with the deletion of the overall provision which was being changed. That situation is highlighted or illustrated by the fact that in some portions of their closing briefs, the parties are focusing on or talking about different concerns emanating from the same contract language or section.

#### Issues/Proposals Relating to the SEA

The board has identified, in its written closing brief, as Board proposals to the Southfield education Association (SEA), proposals in the areas of wages, severance pay, and

longevity. There also remain for resolution in this proceeding employer proposals regarding "Department chairs," the filling of "vacancies," as well as proposals or issues regarding "teacher displacement" and class size. The SEA has identified issues resulting from Board proposals to include wages, duration of the contract, fringe benefits, retirement, longevity, as well as teaching conditions (class size), Department chairs, vacancies, displacement, and "sick bank." The SEA in its brief acknowledges that the issues relating to the school year calendar have been settled during the course of the fact-finding process to date.

#### Issues/Proposals Relating to MESPA

Similarly, the board has identified as issues for resolution in the fact-finding process involving MESPA matters or issues regarding wages, retirement, and longevity, fringe benefits, association days, and displacement. MESPA has also identified as issues for resolution in the fact-finding process the economic issues relating to wages, duration of contract, fringe benefits, retirement, and longevity, as well as additional issues relating to association days, displacement, "sick bank," and the length of work days for paraprofessionals and teacher assistants. MESPA indicated in its closing brief that issues which had existed prior to fact-finding relating to promotions of members of the MESPA argument have been resolved or settled, and need not be addressed further by the fact finder.

## Issues/Proposals Relating to ESOS

Finally, the Board, in its closing brief, has identified remaining issues for resolution for the ESOS bargaining unit to be association days and displacement, working conditions and working hours, health insurance, longevity, and severance pay. The Union has identified the issues relating to ESOS to be wages, duration of the contract, fringe benefits, retirement, longevity, association days, assignment, reduction in personnel, vacation, transfer, promotion, and probationary period, reduction in personnel, working conditions, working hours, and "job descriptions."

## The Present Economic Environment in Which Dispute Fact-Finding in the Southfield Public School Cases Is Occurring

No one who lives in Michigan and 2009 and 2010 and is who is aware of what is going on in the business environment has to be told that these are challenging and difficult times for the Michigan economy and for many of the people who reside in this state. No one who participated in this fact-finding proceeding has taken the position that the Michigan economy is healthy, or that weakness in the Michigan economy has not impacted upon the finances of the Southfield public schools and similarly situated schools in this state. What does seem to be at issue in this proceeding is the magnitude of the economic weakness which we presently confront here in Michigan, and the

financial deterioration or financial condition of the Southfield public school district in particular. A large part of the fact-finding hearing process in which we engaged in these cases focused on testimony and evidence relating to the present and future finances of the Southfield public school district and its "ability to pay" for the services provided by members of the 3 bargaining units involved in this fact-finding hearing process.

The Board, in its closing brief, highlighted and addressed some of the dire economic stresses which impact upon the educational processes and services offered in the Southfield public school district. One of the most significant concerns of the Southfield public school district -- and for that matter almost any school district in the State of Michigan -- is the instability and uncertainty associated with the large part of each district's budget that comes in the way of funding from the Michigan school aid fund. The sour Michigan economy has impacted the overall State of Michigan budget resources greatly over the past 2 years. That deterioration in the State budget appears to be related to structural fiscal defects embedded in the Michigan budget fundraising system. Near term prospects for recovery of the overall Michigan government structure financially are -- at this time -- dim to bleak. The negotiation and adoption by legislators of the final budget for the State of Michigan in the current fiscal year was a grueling and disappointing process.

Overall economic indicators for both the state (and the local Southfield public school district) are not good, and prospects for significant recovery are nowhere to be seen in

the short term. As the school Board stated in its closing brief, a large part of the funding base for programs in the Southfield public school district comes from the State of Michigan in terms of school aid fund per pupil funding. In the last State budget process school boards, including the Southfield public school district board, were waiting from moment to moment for reliable, accurate data relating to the anticipated state aid fund payments and information about the amount to be plugged into the local school district budget which would be received based upon the state's per-pupil funding formula. In the last State budget cycle, the amounts allocated per-pupil to school districts, including the Southfield Public School District, actually decreased significantly from the amount which had been promised and/or anticipated only a few months earlier. The Board argues in its closing brief that the actual decrease in funds from the state on a per-pupil basis amounted to approximately \$384 from the amount which the District had earlier been given to use as a basis for its budget for the present fiscal year.

Another significant portion of the operating funds for the Southfield public school district derives from property tax collections from residents and businesses in the school district. Property values have fallen in the Southfield school district and across the state. The fall in property values will ultimately result in fewer property tax dollars being collected and available to the district. However because of effects of proposition A and other factors, the economic impact of the reduced property values has yet to be fully realized in the collection of property tax revenue available to the school district.

The weakness in the overall State of Michigan state government budget apparently continues, and it would be even worse in this present fiscal year if significant amounts of Federal Government "stimulus money" had not been made available to the state and used to fund some of the state's program priorities -- including K. -- 12 education. The continuation and magnitude of the Federal stimulus money into the next fiscal year is anticipated, unknown, but not promised at this point.

The uncertainty associated with money from the state government to help pay for the education programs in the Southfield public school district certainly adds to the "risk" which the Southfield Public school board faces when attempting to adopt a budget for the upcoming school year. Aversion to that enhanced risk certainly is reasonable, and provides a good basis for understanding why management in the Southfield Public School District would be conservative with both budget planning and fund expenditures. That aversion to risk and concern that anticipated funding may not continue at prior levels apparently has been the basis for many of the positions taken by the school board representatives in the current collective bargaining and negotiation process. Even in this fact-finding proceeding, as the school board itself acknowledges, the Board's witnesses testified "time and time again about 'cost-reduction' and the 'need for flexibility.'" As the board stated in its written brief, most of the Board's proposals are based in an awareness of economic uncertainty and lack of prior levels of funding.

As has been indicated already in this fact-finding report, the 3 bargaining units involved in these proceedings certainly appear to be aware of and sympathetic to the financial plight of the Southfield public school district. There have already been significant "concessions" from an economic standpoint by the teachers, support staff, and secretaries in the Southfield Public School District. The district employees have not been pressing for increments in salaries and wages for at least the past 2 years, and rather have expended their bargaining efforts in an attempt to conserve their previously negotiated wages and salaries and to avoid the necessity of any actual reduction in wages or "givebacks."

While there normally have been for many prior years high stakes and ongoing tension between the parties in collective bargaining relating to economic/financial issues, recent bargaining in the Southfield school district up to the present time has been complicated by the "abnormal" condition of actual reduction of potential funding resources available to the school district itself. All parties to the fact-finding process give what appears to be sincere lip service to the goal or "purpose" of sustaining the quality of public education in the Southfield public school district during this prolonged and deep recession which has ravaged the Michigan economy for at least the past 2 or 3 years. The tension in these current proceedings focuses on the actual reality of the financial condition of the school district contrasted with the desire for continuation of the "quality of education" which the Southfield school board will be offering to its students during the term of any contracts which derive from this fact-finding process. The unions justifiably are resistant to the loss or scale back of any wages or benefits their members would receive merely

because there are allegations of a need for "cost-reduction" and/or a "need for flexibility." While the unions appear to be open to receiving information to justify the positions advocated by the school board, there was an obvious resistance to "cost savings or cuts" merely for the purpose of implementing cost savings. Furthermore, the unions appeared to be raising issues of equity in terms of what would be their fair compensation and also contribution to maintaining quality education in the school district in face of acknowledged budgetary problems.

### The Bargaining Environment

A part of the difficulty in coming to a better resolution of disputed economic (and other) issues seems to be that some of the trust and cooperation which may have existed between the unions and the school district during better economic times has now dissipated. Parties on both sides have contributed to or exacerbated the tension in the bargaining relationship by a hesitance to share basic information with the other side which would be useful for a less biased critique of the economic condition and financial prospects of the District. The school board has criticized the unions and their representatives for failure to be more open with information relating to some of the internal cost data or experience rating data relating to the insurance coverages which the union purchases through MESSA -- a VEBA which is very closely associated with the MEA and the union interests. Similarly, management has not been quick and completely forthcoming with economic data which would allow the union to better



analyze and critique the ability of the employer to pay the members of the bargaining units. It came to light during the fact-finding hearing process that the school board had declined to provide the unions with a data report which showed detailed information about relationships between individual employees, their education attainments, and their years of service as calculated by the school district management. In past years that data, sanitized and presented in a scatter gram format, had been shared with the unions and had even been discussed by prior fact finders when attempting to analyze some of the economic characteristics of the bargaining unit members which would impact upon costs to the school district. Apparently the unions have even filed a complaint of an unfair labor practice against the employer for the recent determination by management not to no longer generate and provide this economic data which was previously made available to the unions in previous bargaining cycles.

The unions also appear to be resistant to some of the proposals from the school board -- both economic and otherwise -- in part because some of the school board's proposals have not been clear and/or well documented. Apparently there has not been adequate dialogue prior to the beginning of the fact-finding process about what the Board's proposals contemplated, or how they board's proposals would be implemented. Some of the Board's proposals were apparently made to address problems perceived by the Board which had possibly already been addressed in collective-bargaining agreement language in prior bargaining cycles. One example of such a situation apparently existed is illustrated a board proposal relating to modifying position descriptions of some of the members of ESOS. The Board's witnesses who testified about that proposal during the

fact-finding hearing process apparently had been unaware of the fact that there already was a process in place by which position descriptions could be reviewed and modified through an established management/union position review committee.

### The School Boards Economic Analysis and Presentation

Although both sides in this fact finding proceeding presented their views of the economics and financial situation of the Southfield Public School District, neither side presented testimony of any person who would be considered to be an expert in the areas of econometrics or economic analysis. Neither did either side present any testimony from actuaries relating to the health insurance proposals and issues which were so predominant in this fact finding case. Fortunately, the fact finder concludes that such expert testimony was not necessary in this case to comprehend and analyze economic and insurance related issues presented in this fact finding hearing.

The Board, in its closing brief, provides a detailed summary of the circumstances which have led to the present and anticipated future financial problems of the Southfield Public School District. Again, that summary, which appears to be a reasonable analysis in these circumstances, shows a deteriorating financial condition and related circumstances in the Southfield Public School District which will cause even further financial stress within the next few years. The assumptions and bases for the Board's

analysis and projections are consistent with the economic analysis which is presently available relating to the general over all financial and economic prospects for the State of Michigan. While the present consensus among economists seems to be that the Michigan economy will begin to turn around and improve over the next few years, best estimates and projections now are that any such recovery will be slow and uneven within this state. The Southfield school board is also prudent and realistic to assume that there is the potential for continued escalation of some budgetary cost items during that same time frame which likely will exert greater and greater adverse impact upon the finances of the school district. Given concessions in base salary growth for members of the 3 bargaining units which have already been offered by the unions, the escalation of budgetary costs within the district over the next few years is not likely to be attributable to wage costs that the District will experience during the imminent time frame. While tacitly acknowledging that the actual salaries and wages will not significantly escalate during the term of the anticipated collective-bargaining agreement, the Board does point justifiably to significant concerns about increasing costs and financial pressures associated with some of the fringe benefits offered to employees -- and in particular the board points to dangers it perceives about cost consequences related to increases in the premium costs of the health insurance benefits offered to employees.

Addressing the obvious anticipated financial issues within the school district into the immediate future is in the best interests of all persons impacted by the Southfield public school district budget. This includes students and their parents, the teachers and other employees of the District, and the school board which is charged with providing a basic

quality education to the students within the district while at the same time being fiscally responsible and prudent. If the school district is unable reasonably to meet its ongoing financial obligations at any point in time, all of the stakeholders in the Southfield Public School District-- including members of the 3 collective bargaining units -- likely will become "losers."

It is clearly in the best interests of all concerned for the school district to begin making responsible and yet realistic budgetary and financial moves at this time in order to protect all concerned from potential significant harm in the future. The difficult balancing act which must be achieved now and into the immediate future is to implement budgets and collective-bargaining agreement terms for the district which are fair to the employees, yet which are fiscally sound and consistent with the ability or willingness of the residents in the school district to pay, and also consistent with the state K-12 student fund payments which are reasonably anticipated. The school district characterizes this choice as being a "stark" choice: modest and cautious cost-cutting in a time of rapid economic deterioration, in a manner which preserves the quality of public instruction, or the status quo.

#### The Union's Position on Economic Issues

The unions, in their presentation on the economic situation confronting the Southfield Public School District, have taken the position that although there were significant financial issues and pressures impacting the district, the proposals from the school board required concessions or agreements from the unions which were much greater than the actual reality of what was absolutely necessary to assure that the school district was able to function in a safe financial manner throughout the duration of the next collective-bargaining agreements. The bulk of the unions economic testimony presentation was given by Mr. Arch Lewis.

The unions also presented an economic analysis and discussion during the fact-finding hearing which was both interesting and informative. Although the employer has characterized much of that testimony as a "dog and pony show" which took an historical perspective and failed to adequately address future trends and concerns, the presentation by Mr. Lewis was replete with valuable information which should be considered when making determinations about financial budgetary and economic issues relevant to this fact-finding proceeding. In one sense, unless one is engaged in an exercise of zero-based budgeting, future budget decisions and projections must be made while taking into consideration prior economic trends and patterns, as well as the present-day condition of the Southfield public school district.

The union's witness testified about historical patterns, and pointed to possible sources of budgetary funding resources which could be used to address the acknowledged

economic situation in the Southfield Public School District on a short term basis. The thesis behind much of Mr. Lewis' presentation was that there was sufficient money available within the district to continue the "status quo" in many areas. Furthermore, according to the union presentation, some of the proposals deriving from the school board would result in the deterioration in the quality of education offered to students within the Southfield Public schools. As the union pointed out, the primary -- if not exclusive charge of the Southfield school -- is to provide a quality education to students enrolled in the Southfield public school district.

Historically Southfield has been one of the premier school districts within the state of Michigan, offering a recognized quality of education which was significantly greater than that found in many other locations within the state. The enhanced education success of Southfield public schools was, according to the union presentation, the result of significant historical investment by the school board in its primary asset -- the teachers and other employees who come into direct contact with the students who are being educated within the school district system.

In keeping with the theme of the unions that the school board should continue to focus asset dollars into its teaching and student contact personnel, the union offered the implied suggestion or position that cost cutting or cost containment should occur in areas which were not focused on the actual education or teaching of the students. Examples of possible areas for such prospective cost containment might, according to

the union presentation, occur would be in none staffing areas such as and physical plant, equipment and technology, and in nonacademic activities such as possibly high school athletics. The unions also identified as a possible area of cost containment savings what the union perceived to be a considerable overhead in administration costs. Apparently the Southfield public schools continue to support administrative or management staffing levels which are relatively high compared to other school districts within the state -- at least from the perspective of the unions involved in this fact-finding process.

Another position apparently taken by the unions in this fact-finding process was that the budgeting process utilized by the Southfield Public School District Board was overly conservative and cautious. Southfield, like many other school districts in the more recent past, has been required to make "estimates" for some of the revenue assumptions of the budgets which are ultimately adopted in the school district. This has been particularly true in light of some considerable uncertainty from year to year in terms of what would be the revenues available to the district for a particular school district fiscal year. In the most recent year, as the school board pointed out in its closing brief, there was considerable uncertainty and inaccurate information provided to the school district from the state department of education budget officials about what the anticipated levels of per pupil state aid reimbursement would be in the budget which was ultimately adopted (late) at the beginning of October, 2009. Due to the negative variations in the overall state financial situation, the amount of funding which actually was finally legislated to be available to the public schools within the State of Michigan

was considerably reduced from funding levels which have been suggested by the state only 3 or 4 months before.

The unions posited that the school board in Southfield tended to be overly cautious in its budgetary analysis and approach. Each year the "budget" adopted by the Southfield school district would have to be amended or revised on various occasions during the school year covered by the budget. As the union pointed out in its closing brief, it was not until the publication of the annual audit of the Southfield Public School District during November of 2009 that it became obvious that some of the figures or assumptions previously adopted or incorporated into the budget for the year at issue deviated significantly from the amounts which had been utilized by the school board as the basis for collective bargaining agreement proposals relating to economic issues and cost containment. The union pointed to the fact that the audit of the district for the 2008 -- 2009 budget revealed that the year end "fund balance" of the district was approximately \$9.7 million. That fund balance ended up being approximately \$2 million more than what had previously been the "guesstimate" of the school board.

Similarly, the union argued that other budgetary amounts also indicated that the school board may have been too conservative in its ongoing budgetary and financial analysis for the District. As an example the union argued in its closing brief that the audit or review of the 2008 -- 2009 budget revealed that approximately \$2.2 million less was expended for "instruction" than had been projected in earlier budgets. That statistic was



offered by the union in support of their repeated position statement that any financial distress or problems within the Southfield public school district's finances was not the result or related to escalating costs for payment of salary and wages and benefits to the employees who were members of the 3 collective bargaining units involved in this fact-finding process.

Consistent throughout the presentation by the unions on the economic issues was a suggestion that although the situation was obviously bad within the school district finances, the financial situation was not as bad as the Board attempted to indicate in its presentation. The unions suggested that the Board should make other choices for the allocation of funds which would continue to preserve the enhanced education and instruction available to Southfield public school students. The unions also suggested that any financial analysis of the school districts situation should be made while recognizing that the cash fund balances maintained by the school district were "excessive" in light of financial risk which existed in the environment. Historically, the funds balance maintained throughout the school year in Southfield and similar school districts had been tracked in the range of approximately 10%. More recently the Board had set as a target or goal for fund balance retention to be 15-20% -- which had been recommended by the Michigan School Business Officials organization (MSBO). However, as the school Board argued in its closing brief, although the MSBO Consultants and analysts utilized by the school district have suggested that the Southfield public school District Board attempt to maintain a funds balance of approximately 15-20 percentage of the total budget throughout the budget cycle, even

with an adjustment of the funds balance for 2008 – 2009 to show a final audit funds balance of over \$12 million at the end of the 2008 – 2009 school year, that funds balance amount actually only equated to approximately 8.1% of the expenditures in that school district fiscal year. The Board points out in its closing brief that the \$12 million ending funds balance amounts to approximately only the funds necessary to operate the school district for 15 days. In terms of the "cushion" provided by the funds balance maintained by the school district, the actual funds balance at the end of the 2009 fiscal year was effectively reduced from the previous year. The funds balance at the end of the previous year was estimated to be sufficient to maintain the operation of the school district for 17 days.

#### Discussion of Economic Issues and Facts Relevant to the

#### Present Fact-Finding Experience

The economic analysis and recommended fact-finding related to economics and finance issues as presented by both sides in this debate during the fact-finding process have merit and need to be taken into account by the Fact Finder when making recommendations, and ultimately by the Michigan Employment Relations Commission when making determinations relating to what the terms of the next collective bargaining agreements for the Southfield school district should be in the present negotiation/contract implementation cycle. From the presentations made at the fact-finding hearing, it appears that the budgetary and financial problems of the Southfield

Public School District derive more from instability and shortfalls on the revenue side than from escalating costs associated with expenses attributable to employees who may be members of one of the 3 bargaining units involved in this proceeding.

Notwithstanding the fact that the unions and their members have been making concessions and sacrifices to help address the budgetary problems of this particular school district, the data introduced into the record, if accepted at face value based upon the testimony of supporting witnesses, indicates that there is a present budgeting/financial problem in the district which is likely to grow in the near term at least.

While the unions correctly point out that the human resources such as teachers in the classroom are the most valuable asset of the school district, the truth of the matter is that other assets -- including buildings, equipment, and technology -- also contribute in significant and meaningful ways to the overall education of the students in the District. The record reflects that there already have been some actions taken by the school board to curtail or contain costs associated with none employee assets. Testimony was offered in the fact-finding hearing process that there have been changes in the technology acquisition schedule so that the District was making use of technology for longer periods of time before replacing the equipment -- possibly resulting in inferior technology for both the maintenance and support of administrators and staff, and also for interface with students in learning situations in the classroom and educational training environments.

Even though significant opportunities and/or efforts to contain costs in non-employee economic areas must be explored, ultimately it is not realistic to assume that significant changes or cost savings in the budgetary/financial area will occur only by focusing on stringent financial decisions relating to non-human assets. This is particularly true since salary and fringe benefits within the Southfield Public School District comprise approximately 82% of the overall school funding level.

The resolution of this particular dispute in this particular school district will not derive from a determination of who is "at fault" in any way for the District being in the position that it finds itself in at this time. The Southfield public schools have a long-standing history of excellence and superior education opportunities for the students attending within the district. The unions argue persuasively that it is certainly in the public interest and especially in the interests of the Southfield public school students to continue to maintain a superior and/or exceptional education experience. The union pointed with pride to the fact that teachers and classroom professionals who interacted with Southfield public school students are across-the-board presently required to be "exceptional" or highly qualified in the subject matter areas in which they teach. It has been argued during the fact-finding hearing process, and it is probably true, that some of the proposed changes which have been made by the Board may lead to an eventual reduction in the quality of educational instruction and teaching faculty who serve the Southfield District students. However, when all is said and done, some of the decisions

relating to the best allocation of funding and resources to assure a "minimal" acceptable education experience for Southfield school District students will fall within the discretionary province of the Board of Education.

That board is charged with the responsibility of making decisions on a policy level, and also at the management level to meet statutory requirements for providing education to Southfield Public school District students. If the school board makes less than optimal decisions, then the students -- and also the employees of the District -- will suffer.

Theoretically the result of poor or inappropriate management and policy decisions by the school board will eventually be action by the resident/citizens within the school district to correct those policies by utilizing the citizens' power at the ballot box. Even though the school Board does have wide discretion in many instances to determine the allocation and weighting of priorities and resource expenditures, in the public employment bargaining environment there are some restrictions on the absolute authority of the Board which provide an opportunity for school district employees to have meaningful and experienced input into the decision-making process -- surely on mandatory subjects of bargaining, but also, to some degree, in bargaining subject areas which are deemed to be permissive.

For the sake of peace and harmony in the workplace, and also for the sake of achieving optimum educational outcomes, input by employees should occur in the collective bargaining negotiation process. There are some indications on this record that the

collective bargaining efforts between the school board and the 3 union's involved in this case may not have been as extensive, open, and collaborative as they should have been, or as extensive, open, and collaborative as they may have been in previous times and previous collective bargaining situations. In the fact-finding and collective-bargaining process which is being considered in this proceeding, the best interests of all involved would indicate that great care should be taken in resolving these contract disputes so as not to unnecessarily poison the workplace environment in a manner which will impact upon the education and training of the students who, after all, are the reason for the existence of the school district and these bargaining units.

“Unknown” Factors in the Environment Which May Impact upon the

Budgets and Operation of the Southfield Public School District in the near Term

As is obvious from a review of the record and testimony in this particular case, there are a number of variables or environmental factors which likely will have a significant impact on the operation of the Southfield Public schools in the near term. Unfortunately, the parties to this bargaining process have little control over those factors at this point in time. Indeed, those factors are in some ways "great unknowns" which are difficult to prognosticate or predict or to plug into any budgetary analysis.

Among those unknowns which lurk in the background are the following: (1) pending state legislation designed to address structural deficits within the state budget and budget process, including those which impact upon the state portion of funding for public education at the K-12 level; (2) potential increases in health insurance costs for employees of the district in the near term as a result of yet to be announced health insurance rate increases which may be associated with claims experience rating data for the district's employees; (3) the ongoing national legislative debate concerning health care generally, and possible cost containment legislation and requirements which may be incorporated into federal health care legislation which are designed to control what seems to be frequent and ever increasing insurance premium adjustments for almost all American citizens; (4) a possible modification in the near term by the State of Michigan Legislature to the state employee and teacher retirement acts which will possibly significantly impact the retirement plans available to the members of the 3 collective bargaining units involved in this proceeding; (5) the possibility of further "outsourcing" or privatization efforts by the Southfield school district; (6) the continued projected loss of students within the school district resulting from families leaving the District or possibly transferring to other school districts and/or charter schools; (7) federal legislation including legislation for additional "economic stimulus plans" which may provide federal money to the State of Michigan to be redistributed to supplant or enhance funds necessary for K. -- 12 education; and (8) proposed and pending legislation in the State of Michigan designed to reduce public employee costs by encouraging and/or forcing senior public employees -- including teachers -- to retire from state and school District employment earlier than they otherwise might have

planned to do so, or otherwise to face significant reduction in their future retirement benefits from the state.

Neither the school board nor the school district employees in these 3 bargaining units have any significant control over any of these unknown variables which all stand a possibility of occurring and of significantly impacting the budget and finances of the school district in the near term. While the prospects for any of these possible extraneous situations to occur are not known, it seems to be more than likely that at least some of these outside uncontrolled variables will actually come into play and impact the finances of the Southfield school District and other similarly situated school districts over the next year or 2. Certainly, given the very real and very significant projected budget shortfall for the State of Michigan for the next fiscal year, at least some of the state legislative actions ( including budget allocations limiting or decreasing real amounts of per-pupil funds available to school districts such as the Southfield Public school District), stand a good likelihood of being enacted in some form between now and the end of the current fiscal year on September 30, 2010.

Anticipated Continued Decrease in the Student Body Population

in the Southfield Public School District



The school board, in its closing brief, outlines a very real and significant fact relating to the past and future of the Southfield Public School District. That fact relates to the documented decrease in the number of students enrolled in the Southfield public schools over an extended period of time. The charts presented in the board's closing brief on page clearly show that over the past 40 years the number of students in the Southfield school district has declined significantly. After reaching a plateau of student enrollment which was steady at approximately 10,000 students between 2001 and 2006, that decline in student enrollment has started to escalate since 2006. That significant decline in student population is reasonably anticipated and projected to continue over the next few years.

The Board witnesses testified convincingly that that decline in student population in the past few years can be attributed to the fact that there has become significant instability in the employment opportunities of the families of a large number of the students presently and recently residing in the Southfield public school district. Many of those families have had to relocate out of the Southfield school district, and even outside of the State of Michigan, as the parents in those families have relocated to seek additional work opportunities to support their families. The Board witnesses indicated that this fluctuation and reduction in student population has also escalated over time as more and more of the children and families in the school district have been residing in rental apartment situations as compared to in family owned homes.

Although the basis for the reduction in student population within the Southfield public schools was not fully discussed or disclosed on this fact-finding record, it also appears that there has been some movement of students from the Southfield Public School District to other educational opportunities such as charter schools, private schools, as well as other school districts.

A direct and obvious consequence of the reduction in the student population or "head count" in the Southfield public schools has been a corresponding reduction in the amount of state funding paid to the Southfield school district by the State of Michigan pursuant to the funding formulas which presently exist in the laws of this state. This reduction in the student population has been one of the significant factors which led to the problematic budgetary and financial situation in the Southfield school district today. Unfortunately, this decline in student population is one more area over which the board and the employees in the school district have little control.

#### Recent History of Privatization and Layoff

The parties testified on the fact-finding record that along with the reduction in student head count or population, there have been corresponding reductions in the number of employees or staff required by the school district to meet its core education functions. Reductions in force have occurred within the past few years which have led to the layoff

or "displacement" of hundreds of employees associated with the 3 bargaining units -- including teachers. In fact, in the very recent past, the school board made the difficult and unpopular decision to privatize some of the support functions which previously had been work performed by Board employees who were in the MESPA bargaining unit. That privatization effort and the corresponding reduction in force or "displacement" which occurred within the Southfield Public School District was ostensibly made for the purpose of cost reduction in a time of obvious decline in reliable budgetary and funding resources. That recent history of privatization has apparently and understandably negatively impacted to a significant degree the trust and collaboration efforts of employees of the district -- especially within the remaining members of MESPA.

Health Insurance Costs and the Impact of Health Insurance on the  
Budget of the Southfield Public School District

One of the major areas of discussion on the fact-finding hearing record was a discussion on "escalating" health insurance costs for employees within the school district. As is true in almost every employment situation in this state, health insurance is one of the relatively expensive benefits which many Michigan employers have historically provided to employees. There has been recently a great health care insurance debate on a national level, which continues through this fact-finding proceeding itself. Health insurance premiums and costs are escalating nationwide and health insurance rates typically greatly exceed other employment benefit costs in both

the private and public sectors. In this proceeding the school board witnesses expressed great concern that significant rate increases for health care insurance are eminent and likely to occur during the term of any collective bargaining agreement which comes out of this negotiation and fact-finding process.

At the present time, the health insurance coverages for employees in each of the 3 bargaining units involved in this proceeding are provided through MESSA. MESSA is a VEBA which is closely affiliated or associated with the Michigan employment Association (MEA). In collective-bargaining agreements which the MEA has negotiated across the state, including in the Southfield Public school District, insurance benefits which have been negotiated for MEA related bargaining unit members have routinely been procured through MESSA. MESSA is perhaps the largest provider of health insurance for school District teachers within the State of Michigan. At the present time MESSA acts as a VEBA or "co-op" to use its bargaining power as representative for large numbers of teachers to obtain health insurance coverages from health insurance companies or providers at relatively attractive rates. At the present time the MESSA health insurance coverages are obtained and provided through Blue Cross and Blue Shield of Michigan.

While providing a range of excellent health insurance products and coverages at competitive prices within the State of Michigan, MESSA has become the object of suspicion by management in the Southfield Public School District which believes that

MESSA will likely announce significant rate increases during the term of any collective bargaining agreement which is now put in place. The prospect of large and unpredictable health insurance premium costs is hardly a prospect that the Southfield Public school Board is comfortable facing in these times of tight budgets and significant financial uncertainty.

Recently the laws of the State of Michigan were changed in regards to health insurance coverages provided to Michigan school districts. School districts with sizable pools of employees recently began to be independently rated and had local rates and premiums set and adjusted based upon the "claims experience" of the employees who were actually employed within those school districts. Southfield is one of those school districts which is deemed to be "credible" in terms of the number of employees insured because of its relatively sizable workforce. Only within the past year or so, the health insurance premiums in the Southfield school district began to be computed based upon rates which reflected the actual claims experience of employees of the District.

A review of the recently proposed rates submitted by MESSA for the employees of the Southfield public school district showed an actual slight decrease in proposed rates to be applied on a prospective basis based. Those rates were based upon the experience claims information compiled by MESSA. That claims experience data was shared with other potential competitors of MESSA so that those competitors could bid – along with MESSA – for the insurance coverage for the district's employees. The actual bid by

MESSA was lower than the bids from competitors who were provided the experience data of the employee groups by MESSA. In fact, MESSA actually bid a lower rate than the experience data from the prior time frame would indicate on its face.

This unusual situation in which MESSA was able to underbid other health insurance competitors significantly has currently resulted in some skepticism and concern by the school board that perhaps MESSA was somehow understating its claims experience to justify rates that would be "low ball" to assure MESSA being selected as the health insurer in the health insurance bidding process. Board witnesses suggested that the apparent decrease in health insurance costs reported by MESSA to support its bid on an experience rating basis did not accurately reflect the true experience and related costs of insurance of employees in the Southfield Public School District bargaining units. This skepticism and concern about rates proposed to insure collective bargaining unit members in the short-term was discussed not only on the record, but also in the board's closing brief.

In this collective-bargaining process and during the fact finding hearing, the unions were quite concerned with the possibility that the school board was proposing language changes which ultimately would allow the Board to replace MESSA with another health insurance carrier or supplier. Contrary to the concern expressed by the Board's representatives and witnesses about the integrity of the MESSA health insurance bid, the union's witnesses from MESSA testified that the reduction in health insurance rates

which had occurred as the result of the change to experience rating for the district did not result from the manipulation, falsification, or misstating the experience data, but rather reflected the new reality of experience for the Southfield public schools which had occurred as a result of significant reduction in the number of actual school district employees. That reduction had occurred from either layoffs or displacements of several hundred employees due to a large-scale privatization project which had removed numerous employees from the bargaining unit and district health insurance coverage. MESSA, in compiling and sharing experience data with competitors for bidding purposes on the health insurance in the Southfield Public school District had presented the actual historical experience data for the required time frame, which had included the several hundred employees who were not employed by the school district shortly after the experience rating period ended. MESSA then submitted its renewal bid based upon the experience data which reflected only the actual employees remaining employed within the district.

The explanation presented by the union representatives as an explanation about the "suspect" claims experience of Southfield Public School employees is plausible. For purposes of rating and prospective calculation of premiums for members of the Southfield Public school District, it does make more sense to utilize the claims experience data of the employees who are actually remaining to be insured. The testimony of the unions witnesses in that regard at the fact finding hearing does appear to be credible, and an appropriate response to the mandate to compile and share

experience data with the District and potential competitors for the health insurance coverages in the Southfield Public school District.

Even in face of the explanation presented by the unions as to how the experience data for employees and the Southfield Public School District was compiled, the Board continues to be skeptical, and has presented on this fact-finding record that while they have no particular preference as to who would be the health insurance carrier providing coverages for employees of the District, they continue to have concerns that the claims experience numbers and rates provided by MESSA were actually understated, and that there would soon be a need expressed by MESSA for increasing the rates and related premiums for health insurance coverage within the district. In order to protect itself against significant rate increases which were conceivably “just waiting to happen,” the Board has proposed that insurance health care premium caps be included in the terms of any collective bargaining agreement which derives from this process. The proposed caps, which as proposed effectively requires employees to immediately begin to pay significant portions of their health care premiums which they have not historically been required to do, will be discussed later in this fact finding report.

Another health insurance issue or concern which was discussed during the fact-finding hearing related to a MESSA insurance coverage which was referred to as “PAK B” coverage during the fact-finding hearing. Basically this particular coverage provided a mechanism for election by members of the Southfield Public School District bargaining



units of to select an option for no medical health care insurance. In any large group, such as the group of employees of the Southfield Public School District, there invariably will be a number of employees who do not actually need the group health insurance coverage which is negotiated for all members of the bargaining unit. Those individuals quite often are individuals who already have health insurance coverage available to them -- perhaps through a spouse who has a family coverage plan with another employer. Under previous collective bargaining agreements, members of the Southfield Public School District bargaining units who elected to forgo the medical health insurance benefit would elect coverage known as "PAK B." Bargaining unit members who elected the PAK B no medical health insurance coverage option would historically be paid a cash benefit -- usually in the amount of approximately \$1000. In this latest round of collective bargaining, the Board has proposed to discontinue payment of the cash bonus or incentive to bargaining unit members who affirmatively elected not to accept the group health insurance benefit which was negotiated and available to all members of the bargaining unit.

Apparently the reason for the board to propose discontinuing this cash incentive to bargaining unit members who elected not to avail themselves of the group medical health coverage was to cut costs and to reduce expenditures in an attempt to address significant cost and expense concerns which impacted the district's annual budget. Although this proposal which would have discontinued the "PAK B" coverage had been made by the Board, it appears that there had not actually been any significant dialogue or discussion between the parties prior to fact-finding about this proposal. The actual

"Pak B" coverage option had been negotiated in earlier collective bargaining agreements, and had been characterized at that time as a cost containment feature. Apparently for every bargaining unit member who elected not to take advantage of health insurance offered through MESSA, there would be much larger and significant savings in costs because the \$1000 payment for electing not to be insured was obviously much less a cost to the Board than the cost of providing the negotiated group medical health insurance benefit that the bargaining unit member decided to forego. If the Pak B no health insurance provision was discontinued along with the \$1000 bonus for electing not to use that health insurance coverage option at all, then none of the employees who previously had elected PAK B would likely opt to forego receiving the health insurance benefit to which they were entitled anyway under the collective bargaining agreement and group health insurance provisions.

Payment of incentives to members of employment goals who choose to forego employer paid health insurance coverage would seem to be an effective and relatively inexpensive cost containment vehicle for the district as it attempts to provide group health insurance coverage to the district's employees. If a significant number of bargaining unit members who otherwise would elect no health insurance coverage (PAK B) did decide to select health insurance coverage, even if there were co-insurance clauses or if medical claims had to be coordinated between different health insurance programs and carriers, the cost to the school board in this case would likely be much greater than any costs associated with the \$1000 incentive to forego those benefits which would otherwise have to be offered and placed for all group members.

## NON-ECONOMIC ISSUES

While the primary focus of the fact-finding hearing was on economic or financial issues, the Board had submitted numerous proposals for collective bargaining agreement changes which were on their face “noneconomic.” Those noneconomic proposals could, however, potentially have an impact on the overall financial situation of the school district. Several of the noneconomic proposals were offered by the school board with the suggestion that implementation of the proposed changes would lead to “efficiencies and flexibility” which would potentially translate into real cost savings during the life of the next collective bargaining agreement. These noneconomic issues were identified earlier in this fact-finding report, and they will be addressed further below in this report on an individual basis, as necessary.

The Fact Finder indicated elsewhere in this record that he is of the opinion that collective bargaining negotiations prior to the filing of the fact-finding petition were not as extensive or as aggressive as they might have been or possibly should have been. During this fact-finding hearing process some of the proposals for the next collective bargaining agreement which were made by the school board were discussed and clarified. In a normal bargaining situation, it would seem that the parties would have had a better understanding of the proposals that were on the table prior to the time of a fact-finding hearing.

The present bargaining cycle in the Southfield Public School District is somewhat unusual in that negotiations and discussions about prior practices and prior contract language implementation may have been impacted by the fact that there was considerable change in the management staff in the Southfield Public School District Human resource function within the past year or two. For a substantial portion of the time during which the present collective bargaining process was underway, the human resource functions were being staffed by interim human resource managers who also provided employment relations counseling and advice to the school board. Two of those interim HR directors testified in this proceeding. They were E. R. Scales, and Mr. Grusecki.

“Displacement” or seniority concepts generally

The Board witnesses who addressed some of the previously existing collective-bargaining agreement language indicated that the earlier negotiated language and procedures – particularly those which related to “displacement” or management flexibility to address changes in staffing needs – were somewhat unusual and differed from the language and procedures which existed in collective bargaining agreements in some comparable school districts. In light of what was perceived to be an impending financial crisis which could require quick and decisive action to curtail “unnecessary” expenses, the Board made a series of proposals which arguably would have provided

the Board with that flexibility and which would have been more in line with similar displacement provisions in other school districts.

Many of the “displacement” proposals which were advanced by the Board would have impacted on the way that both selection and reduction in force procedures would be implemented within the school district in the future. In some areas the concepts of “seniority” which had been followed within the school district for many years might be disturbed or modified. The Board's proposals would have generally shifted the emphasis or importance that would be assigned to seniority in some displacement decisions, and would have provided the Board with an opportunity to utilize other criteria when making determinations about who might be laid off, or who might be considered for vacancies or other transfers within the school district.

During the discussion on the application of seniority or preference issues at the fact-finding hearing, the testimony of the witnesses indicated that generally there had not been any real or significant problems with the implementation of the previously existing contract provisions for determining who would be “displaced” when management made decisions relating to staffing, including reductions in force which had been required to meet budgetary constraints or other staffing needs of the District. The Board represented that the existing or historical contract language had the potential to cause problems, particularly when the Board was required to make staffing decisions within the rigid timelines articulated in the previously existing contracts. Testimony indicated

that while there was certainly this potential to cause management extra work or effort when trying to meet negotiated timelines for notice, etc., and that there was some management concern about the amount of notice and other timelines required before staffing actions could occur, up to this point in time the use of the existing preference and seniority provisions for displacement decisions had not really been problematic. In some instances, management had been required to make extraordinary efforts to meet some of the negotiated notice and procedural requirements for implementing displacement and staffing decisions, but it does not appear that there had really been any significant problems – especially of a cost or expense nature – when utilizing the previously negotiated contract provisions relating to seniority and displacement.

The unions articulated that they desired that the previously negotiated contract language and provisions relating to displacement and seniority be continued into any new contract. The language which was proposed to be replaced had been followed in previous reductions in force and disputes relating to staffing with a satisfactory and timely result. A body of past practice and contract language interpretation and application had developed over time which provided significant guidance to both management and the unions as to how displacement and staffing decisions would occur into the future. With the deletion of that contract language and the adoption of the more “efficient and flexible” seniority and displacement proposals offered by the Board, there would be a potential for period of significant confusion and incorrect displacement decision-making since the tried and true language and procedures would not be available to be utilized. Especially in light of the significant potential for further staffing

reductions and even a possible expansion of privatization efforts, it would be very important that the parties had a clear understanding of what the operant proposed provisions would be and how they would be interpreted and implemented. Normally that understanding would have been fleshed out during direct negotiations between the parties in the collective bargaining process. Discussion at the fact-finding hearing indicated that the parties had not come to a clear understanding or meeting of the minds as to what the deletion of prior displacement provisions and substitution of the new language would mean.

The Board is well within its rights and it possibly has proposed changes which would be in the interest of all parties in the areas of contract language dealing with seniority and displacement. However, for any changes in these contract terms and provisions to be effective and efficient, the Fact Finder believes that additional discussion and negotiation might be well advised. Ambiguities and disputes about proposed contract language certainly present a significant possibility of numerous grievances and disputes relating to the implementation of those provisions. While the natural course of events is to develop the meaning and requirements of contract language overtime, it certainly seems that the best interests of the parties would be to have as clear an understanding and meeting of the minds as possible in the significant contract provision areas when the language or provisions are adopted in a collective bargaining agreement. Otherwise, there likely would be a large number of grievances filed for adjudication – possibly during times when significant “displacement” of staff would be occurring. Disputes relating to the implementation of new displacement provisions could significantly slow

down or reverse displacement actions – to the financial detriment of all involved including the school district.

A part of the difficulty in regard to dealing with or addressing the seniority or employment preference related portions of the Board's proposals derives from the fact that historically "seniority" has been close to sacrosanct and a basic tenet of unions seeking to protect the interest of their members in what they perceived to be a fair and equitable way. While some of the Board's proposals do appear to be reasonable and likely would accomplish the stated objectives of simplifying and making displacement and staffing decisions more flexible for management, it is not clear on this record that adequate consideration or discussion of the impact and actual application of some of those provisions has occurred.

In the search for improved education quality and opportunities for students, there does need to be some need for discussion of the balancing of seniority interests against "qualifications" of teachers and other District employees – especially when those considerations are being entertained in a school district such as the Southfield Public Schools, which has always prided itself on the high level of qualification of employees having direct interaction with students. In some instances it appears that the proposals offered by the school board would deemphasize seniority in staffing and displacement decisions. This may or may not be a good thing from the standpoint of the goals of the Southfield Public School District. However, the parties also need to move cautiously and



in a cooperative manner in changes to seniority related issues. With any de-emphasis on the use of seniority in staffing and displacement decisions, the Board, and possibly the unions, may be opening up any future staffing or reduction in force decisions to attack by individual employees or even prospective future employees who might claim that the school district engaged in employment selection and staffing processes which had a disparate impact upon minorities or other protected group members. Historically one of the primary defenses against disparate impact or discrimination claims in the hiring or staffing or termination processes of an employer has been the ability of the employer to point to a bona fide seniority system which has been negotiated and which controls the decision-making process. Greater emphasis on selection and staffing criteria other than seniority – such as qualifications – could potentially open up a whole new can of worms dealing with displacement disputes and even possible litigation. In order to achieve the stated goals of efficiency and an orderly displacement process, the Board and also the unions should tread carefully and be mindful of the potential for incorporating additional delays and complications in any displacement decisions in which there is a de-emphasis on the use of seniority.

## FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS

### OF THE FACTFINDER

The discussion which has been provided in this fact-finding report reacts to the proposals and presentations of the parties, and throughout this fact-finding report are

numerous findings and conclusions of the Fact Finder which impact upon his recommendations to the Michigan Employment Relations Commission. In addition to the general comments and facts stated earlier in this report, the Fact Finder will be making some specific findings and recommendations for each of the actual proposals or issues which were determined to be adjudicated in this fact-finding process.

This fact-finding report actually addresses 3 separate petitions which were filed by the school board initiating the fact-finding review process. This unitary fact-finding report addresses those 3 separate petitions – while realizing that each of those petitions raises unique issues applicable either to the SEA, MESPA, or ESOS.

The remainder of this fact-finding report will address each of the proposals as enumerated or discussed by the parties in their written closing briefs. If any particular proposal or position is not addressed directly in this fact-finding report, then the parties should assume that the Fact Finder has made findings of fact or conclusions in those areas which result in a recommendation that the status quo ante continue and that the prior contract provisions applicable be adopted.

The term or duration of the collective bargaining agreements

In this proceeding the board has recommended that the duration or term of any collective bargaining agreements which derive from this process be limited to 2 years. The unions initially took the position that it would be more appropriate to have a contract term of 3 years so that there would be a period of time during which the parties could adjust to the contract language and proposals and avoid an almost immediate return to the collective bargaining process in a relatively short term.

The negotiation and implementation of any collective bargaining agreement now being considered will likely occur in a period of time during which there will be significant activity and changes within the school district's legal, political, and economic environment. There is presently considerable turbulence and change pending in the political and legislative environments at both the state and the federal level which will require that the board and also the unions react to yet to be determined funding levels and cost considerations.

In their written closing brief the unions have indicated that they believe that an appropriate time for the duration of these contracts should be more in the line of two and a half years. While a fact finder can understand the wisdom of the position that a longer contract should be considered to provide for a period of "rest" and familiarization with the new contract before embarking on another round of collective bargaining in the relatively near future, the Fact Finder concludes and recommends that the collective bargaining agreement which will be implemented as a result of this process should be 2

years in duration as recommended by the school board. The shorter term collective bargaining agreement may actually be in the interests of both parties as relevant events and conditions unfold in the immediate future. Changes in funding levels, insurance rates and premiums, state employee retirement provisions, or federal health insurance laws during the next several months may make a relatively quick review of present contract provisions a good thing and provide the parties to renegotiate their next contract provisions with a clearer perspective of what economic conditions will be and what legal implications for the financial health of the district will be.

## THE BOARD'S PROPOSALS TO SEA, FOR CASE NUMBER D08K -- 1340

### A. Wages, severance pay, and longevity

As was discussed earlier in this report, the SEA has proposed that there be no increase in salaries or wages in the forthcoming contract period. To a certain extent, this position represents a concession by the union, and the recognition of the fact that the conditions present in the economic environment and the financial condition of the district do not support any significant enhancement in costs associated with teacher salaries at this time. The Board's proposal of a wage freeze, with step increases, therefore does not appear to be in serious contention in this proceeding, and the fact finder recommends

that any collective bargaining agreement arising from this process for the Southfield Education Association include a wage freeze, with step increases.

In its proposal to the Southfield Education Association, the Board has proposed that there be an elimination of local or district retirement pay benefits provided by the school district to employees in the SBA who elect to retire. As the Board notes in its brief, this proposal for the elimination of retirement pay has nothing to do with the retirement benefits which have been earned by the members of the bargaining unit which are to be provided by the State of Michigan retirement system.

[However, as was discussed elsewhere in this fact-finding report, there presently are pending proposals in the State legislature which are supported by the governor which would potentially significantly impact some of the senior teachers within the Southfield Public School District beginning as soon as the fall of 2010. The presently pending gubernatorial legislative initiatives for changes to the state retirement act would limit retirement benefits to state employees, including teachers, who are presently eligible to retire who elect not to retire within a relatively short time frame. The proposed state retirement act provisions are admittedly being recommended and designed to encourage senior state workers – including teachers – who are eligible for retirement at this time to leave their state funded positions as retirees in the near term. This particular retirement legislative proposal obviously is designed to result in cost savings as senior level employees and teachers – who also tend to be higher paid employees – leave

and/or replaced by younger, less expensive employees. The prospects of this particular legislation should unfold over the next couple of months while this Petition is being considered by MERC and finalized.]

The Southfield Education Association opposes the Board's proposal for the elimination of retirement pay which is provided in the most recently adopted collective bargaining agreements.

Again, the proposals being considered in this fact-finding proceeding do not exist in a vacuum. In light of the possibility of significant changes in the state retirement laws which would encourage or force senior teachers eligible for retirement to leave their positions within the next year, there is the potential for extraordinary retirement levels in the Southfield Public School District during the coming year. There was no discussion on the record about what the cost implications might be, and any such discussion at this point would be based on speculation and possibilities rather than hard facts. What the financial budgetary implications would be for the Southfield Public School District if a significantly larger number of teachers retired voluntarily or were forced to retire in the coming year is a "great unknown" on this record. Discussion on this fact-finding record relating to the board proposal to eliminate district based retirement pay was couched in terms of assumptions of normal retirement levels which would likely occur if there were no significant changes in the state government environment – such as modifications to the state employees retirement act.

Due in large part to the uncertainties in the economic environment, and the drastic economic downturn over the past 2 or 3 years in the State of Michigan, employees of all types in Michigan have tended to be less likely to retire or abandon jobs which they are fortunate enough to have had during this time period. Under the most recent collective bargaining agreement language relating to retirement pay, a potential liability has been accruing which would need to be satisfied if a large number of eligible teachers did retire. The expected annual liability and payout to retirees for the local retirement provision would likely significantly increase if legislation is enacted which “encourages” eligible teachers to retire. On this record the extent of that liability in a scenario of unusually high retirement has not been explored, but it could be a substantial amount – certainly more than would normally be anticipated in any given year up to this point in time.

The Southfield Education Association argues in its closing brief that the \$10 million liability for retirement benefits discussed by the Board only reflects the unlikely situation that “all employees would have to retire today....” The union points out that numerous comparable school districts do also have a local or district retirement pay provision, and the union argues that the retirement provision should continue in any future contract deriving from this fact-finding process. The union suggests that the actual or “real annual cost” to the District for the retirement benefit is less than \$200,000.

Furthermore, the union in its written closing brief suggests that the retirement benefit under the most recent collective bargaining agreement for teachers who retired from the Southfield Pub. Schools is \$12,000 – which SEA points out is significantly less than the average retirement benefit paid by comparable school districts which were considered and discussed in this proceeding.

Undoubtedly many of the senior teachers within the Southfield Public School District have relied upon the continuance of this particular retirement benefit and considered it in their planning for their remaining tenure as teachers in the Southfield Public School District. To suddenly eliminate this benefit in the face of teachers being forced to make unanticipated retirement decisions in the near term if proposed legislation is enacted could cause significant short term hardship to the individually teachers who would be affected by discontinuing the retirement benefit. There is no discussion on this record as to the detailed nature of his retirement benefit, and it does not appear from what is actually in the fact finding record that this retirement benefit is one which has “vesting” considerations. For purposes of this fact finding report and discussion, the Fact Finder is assuming that this local district retirement benefit being discussed can be lawfully be discontinued without violation of any federal or state law controlling or addressing individual retirement benefits or when they are deemed earned or vested.

The Fact Finder does not make a recommendation for the complete elimination of the retirement pay benefit. During the future pendency of this petition, the parties and the



employment relations commission will be better advised as to the likelihood of any possible changes in the state laws which impact upon the retirement benefits of Southfield Public School District teachers who are presently vested in that State retirement system. Once some clarity and understanding of what is going on legislatively in the environment for state employee and teacher retirement benefits is realized, then a decision relating to the elimination of the Southfield Public School District retirement pay provision could be made in a more meaningful manner. The parties may be well advised to negotiate the amount of any reduction in the stated district retirement benefit if the benefit provision continues in any contract deriving from this fact finding and review process before MERC. If it is determined that the prospective collective bargaining agreement should provide for a significant reduction in the amount of the district retirement benefit, or the elimination of that retirement pay, the fact finder would recommend that change be made effective after the end of the academic school year. To implement the elimination of a retirement benefit prior to the end of a school year could potentially result in some teachers leaving mid-year to avoid loss of the benefit. Any significant loss of teachers mid-year could be detrimental to education efforts and students.

#### The school board proposal for the reduction and longevity payments

The school board has proposed that there be a reduction of \$200 in the longevity payments for eligible members of the Southfield education Association. Longevity

payments are a benefit which adds to the overall compensation levels of affected employees. Historically longevity payments were implemented to encourage the retention of employees, and to reward them for their extended loyalty and continued service. In this environment, it makes less economic sense to encourage employee loyalty and retention through the inducement of additional compensation in the form of longevity payments. The fact finder recommends that the Board proposal for a \$200 reduction in longevity payments be adopted. Members of the bargaining unit have already made significant financial concessions to deal with the anticipated and real fiscal problems of the school district over the next year or two. While it is not apparent that the amount at issue here aggregates to be a very significant cost savings for the District, it is a cost savings none the less. The reduction (but not elimination) of the longevity payment would be an additional concession by employees which would seem to be reasonable in amount given a consideration of the present economic conditions and the relative individual hurt or pain which would be imposed by the proposed reduction.

#### B. Fringe benefits

One of the most contentious proposals made by the school board is embodied in the Board's proposals relating to health insurance provisions. That the employer would focus on health insurance costs is hardly a surprise, given the magnitude of the costs involved, and also given the fact that to a large extent health insurance costs are less

predictable and subject to significant increases over even the short term. I do not think that anyone involved in this fact finding process expects health insurance costs to remain stable over any extended time frame – including the proposed two year collective bargaining agreement. And indeed, there is little likelihood under any foreseeable scenario that health insurance costs will decrease if the coverage limits continue.

The Board clarified during its testimony in the fact-finding hearing process that its concerns and proposals related to directly only to the costs of insurance, and that the board was not attempting to force or require that the negotiated health insurance benefits not be provided by MESSA. The Board's witnesses have articulated that other than for cost concerns, the Board is neutral to which health insurance carrier or provider the union nominates to provide the negotiated coverage. As was discussed elsewhere, it is fairly evident on this record that the continuation of health insurance coverage through MESSA is an important consideration for the union generally for all 3 of the bargaining units who were involved in the fact finding hearing process before this Fact Finder.

The focus of the Board's proposal in the area of health insurance does not appear to be on limiting or changing benefits provided, nor on insurance carriers, but rather focuses on an attempt by the Board to assure as much stability and predictability as possible relating to health insurance benefit premium costs during the term of any contract which

derives from this fact-finding process. This concern is certainly a legitimate one, and cost containment and control over insurance premiums to the greatest possible extent is certainly an important management consideration – and also an important employee consideration. While salaries and wages are the basis upon which the financial security of the employees rests, it is well known and documented both in the national health care debate and locally at the state level, that escalating costs of health insurance and limits on availability of health insurance coverage are problematic and potentially jeopardize the financial security not only of employers, but also of individual employees.

In this fact-finding proceeding, the employer has proposed changes to the health insurance provisions which would ostensibly impose strict cost containment features into the health insurance provision. Not only do the provisions proposed by the school board address cost-containment issues, but according to the Board's written closing brief, the estimated cost savings associated with the petitioner's proposals in this area are approximately \$1.4 million. As was discussed earlier, the Board is greatly concerned that "hidden" within the underlying experience rating data for the employees in the Southfield Public School District is a "ticking time bomb" which will explode in the near future to cause a sudden and rapid escalation in the premiums associated with the negotiated health insurance benefit. Under the terms and provisions of the prior collective bargaining agreements, and anticipated within the prospective collective bargaining agreement terms, the school board would be responsible to pay increases in health insurance premiums for the benefits which are negotiated in any contract.

As was discussed elsewhere in this fact-finding report, the Fact Finder believes that the explanation relating to the credibility of the experience rating data provided by MESSA to justify present rates is plausible. The rates implied by the experience rating data provided by the carrier were reduced from levels which would have otherwise been anticipated but for the removal from the risk or claim pool of several hundred employees who had either retired, been laid off, or who were otherwise no longer employees as the result of privatization which had occurred. Those employees who contributed to the experience reported by MESSA had been separated from the District after the end of the timeframe which was used to generate the claims experience data which had been used by the District to solicit bids from insurers. Nevertheless, in light of history of highly *observable cost increments in insurance premiums both locally and nationwide*, the concern and efforts by the school board to impose cost-containment constraints and protections are prudent in the circumstances. The Fact Finder would recommend that some form of cost containment be included in any collective bargaining agreement which derives from this fact finding hearing process. The Fact Finder is not convinced that the “caps” proposed by the Board are a fair and reasonable way to initiate cost containment for health insurance benefits at this time.

The record reflects that some of the comparable school districts which were discussed in this fact-finding hearing record have imposed cost-containment features into their contract language. In this proceeding the Southfield Board has proposed that cost-

containment be achieved through “caps” on the premiums which the Board will pay during the term of any contract which derives from this process.

The Southfield Education Association understandably opposes the implementation of “caps” as proposed by the school board during this collective bargaining cycle. The position of the union is that the Board's proposal would add significant monthly premium increases directly to bargaining unit members-- ranging from \$217.80 a month to \$437.01 a month. The “cap” which is proposed would not shift future increases in costs to employees, but would rather shift some of the already existing costs of coverage to bargaining unit members in the form of co-pays, deductibles, and contributions to premiums. For a bargaining unit member electing to have health, dental, vision, and disability coverage for family members, the impact of the proposed “cap” changes sought by the school board would be to effectively reduce that employee’s take-home pay by over \$5000 a year. The fact finder does not recommend adding such a drastic amount (which effectively constitutes a pay cut) as an additional burden to bargaining unit members so suddenly within this collective bargaining cycle.

Cost containment is a “good thing.” However, on this record, and given the possibility of significant economic and legislative changes in the financial and political environment at both the state and the federal level, the Fact Finder is not convinced that the “caps” as proposed by the school board should be implemented in the form that the Board has set forth. The Fact Finder would recommend that such a large amount of presently existing

premium costs not be shifted to employees at this time, but that employees might be required to make contributions towards future costs which occur as a result of premium and rate increases imposed by the insurance carrier – whether MESSA or otherwise – during the term of the collective bargaining agreement which derives from this process. While agreeing in “concept” with contract adoption that would enhance cost containment efforts through the adoption of “caps” or imposition of some sharing of the costs of medical health insurance premiums, the Fact Finder cannot adopt or recommend the degree of cost shifting that would result from the adoption of the Board’s proposal. The negotiation of a plan and contract language which would bring about a degree of cost containment and cost-sharing is recommended by the fact finder, and the parties should collaborate to find a fair solution and contract language which would accomplish that end. The Fact Finder does not conclude that the adoption of contract language which would effectively extract up to \$5000 more from some members of the Southfield Education Association is fair, necessary, or the best way to affect the mutual goal of cost savings and the slowing of escalating premiums in the health care insurance area.

#### Proposal regarding department chairpersons

The school board has proposed to modify the previously existing contract language to make the responsibilities of “curriculum coordinators” “similar” to those of department chairs, rather than “identical” to Department chair responsibilities. Only a very small number of members of the Southfield Education Association bargaining unit are

impacted by this proposed change. The Board's witness testified that this particular change was sought to create "flexibility." Curriculum coordinators at the present time are only employed at two of the District's middle schools. The Board's witnesses explained on the hearing record the rationale for the proposed change, and how the present employees would be affected.

The fact finder recommends that this proposal by the school board be adopted and incorporated into any collective bargaining agreement which derives from this fact-finding process.

#### E. Proposal regarding vacancies

The school board seeks additional flexibility by revising how vacancies are determined and filled within the Southfield Public School District. In particular, the Board has proposed to discontinue the previous practice which is implicated when school district desires to withdraw a posted vacancy. Changes in contract language which would allow the district to withdraw posted vacancies without the present constraints are reasonable, and the fact finder would recommend that those be adopted.

Another aspect of this proposal regarding vacancies which came up during the fact-finding hearing process and which is discussed in the union's closing brief deals with the



issue of the “qualifications” of teachers – particularly insofar as those “qualifications” relate to determining who would be eligible or appointed to a vacancy which might occur. The Union has indicated that the proposed board language relating to vacancies would have the effect of downgrading the importance of the “qualifications” of persons being considered for those vacancies. Historically, the Southfield Public School District and the Southfield Education Association have worked together and agreed to require that “all” of the district’s teaching faculty be “highly qualified.” Under existing Federal laws, including the “no child left behind law,” there is a goal or requirement that K. – 12 teachers in certain basic or core class subject areas be certified and determined to be “highly qualified.” Generally the certification of being “highly qualified” can be accomplished through advanced education and training – such as completion of a masters degree in a related subject area. Certainly, all parties to this proceeding agree that having teachers and instructors who are highly qualified is a good thing. But, under the guise of providing management with the ultimate flexibility, language changes proposed by the Board would lessen the importance of candidates for vacancies being highly qualified in areas which were not mandated to be so by the federal law.

The history of requiring faculty in all areas to be highly qualified, or giving weight to that particular designation, has contributed to the reputation of the Southfield Public School District as the district which provides quality education to its students. Certainly that is a desirable objective and goal. However, if the Board wants to set a lesser standard for appointment, selection, or placement in vacancies, that would seem to be a reasonable thing to allow. Again, the Board may in this area makes unwise decisions, but if those

decisions do result in a deterioration in the quality of education provided in non-core subject areas, then the board ultimately will be responsible for that particular policy decision and any detrimental impact than it would have on students. The Fact Finder therefore recommends that future contract language deriving from this fact-finding proceeding allow management discretion to consider candidates for vacancies who are not highly qualified so long as any such appointments are not in violation of any federal or state education law or mandate.

#### F. Proposal regarding teacher displacements

One proposal which was presented at the fact-finding hearing by the Board related to changes in future contract language which would deal with the area of “teacher displacement.” Displacement is an euphemism for layoff or transfer to different positions.

The Board expressed concerns about time lines and constraints in previously existing contract language which caused the school district management additional work and effort during times when there might be impending displacements. Generally “displacement” appears to be a term which is used to describe either layoffs or reassignments within the school district resulting from reductions in force, or other considerations – most of which seem to be due to budgetary/finance issues, but some

of which relate to changes in staffing needs due to changes in the student population or curriculum requirements.

The proposal from the Board regarding displacement appears to be solely within the teacher population of the district which is represented by the Southfield education Association. In particular, the Board's witness expressed concern that adherence to previously negotiated contractual time lines to accomplish the displacement process sometimes presented significant and unnecessary stress to management. The Board advocated that changes should be made in the displacement contract language to allow greater flexibility in displacements resulting from reduction in force and other staffing events. The Union has proposed that there be no changes in the previously existing contract language.

From another perspective, the timelines about which the board complains also serve the purpose of providing teachers with additional opportunities to assure their own personal economic welfare in the face of the uncertainty of staffing needs and appointments by the school board. Requirements that teachers receive notice of impending layoffs or reductions in force or reassignments in a timely manner early in the process in the spring of the school year has the desirable effect – from the teacher's perspective – of giving the teachers some significant indication of the likelihood that there will be a job for the teacher within the school district when classes resume in September. If the teacher has concerns about the security or likelihood of a job in the Southfield Public

School District in the following September, the teacher does have the option to investigate employment opportunities in other school systems prior to the close of the academic year. In some cases, failure of the employer to give the individually affected teacher notice of the likelihood of their employment at an early opportunity may prevent an individual teacher from making decisions to relocate and from applying for alternate employment during the time when other school districts are making hiring decisions for the fall. Those school districts which are hiring will generally be making plans for hires that begin with the start of classes in the fall. If a teacher received early notice of likelihood that he or she will not be retained by the Southfield Public School District in April or May as has been the case under the prior collective bargaining language, then that employee could take measures to seek more secure or stable employment opportunities in other locations.

On this record, the Fact Finder was not presented with testimony or evidence which caused him to conclude that the previously negotiated contract language relating to timelines for notice of layoffs actually caused any meaningful problems or detriment to management historically. It appears that this is one of those proposal areas which was not fully explored and discussed adequately by the parties prior to the time that the fact-finding petition was actually filed.

The Fact Finder does not recommend any changes to previously existing contract language regarding vacancies or displacement. The parties should be encouraged to

explore and discuss further in future collective bargaining negotiations any modifications which address the time concerns raised by the school board. The record reflects that historically, with very few exceptions, the union has cooperated with the employer to address unusual situations which arise where there is a need for “flexibility” in providing notices in a timely manner.

Under prior contract language, the employer was pretty much precluded from laying off teachers after the start of the academic year if notice had not been timely given in the spring. The fact finder does note that there may be situations which arise where it will become necessary to lay off a teacher after the start of the academic year. The issue of how and if teachers may be “displaced” after the beginning of the school year is a topic which the Fact Finder believes the parties should discuss further in the collective bargaining process which derives from this fact finding hearing.

#### G. Class size

As a result of proposed changes for deletion to previously existing contract language, it appears that there may be some dispute between the employer and the union relating to what would be the appropriate “class size” for teachers in the Southfield Public School District. The school board has argued persuasively in its closing brief that determination of class size – within parameters allowed by state and federal laws – is a

management policy decision. Negotiation about class size and the impact of class size on teachers or other district employees is a permissive subject of negotiations.

Historically there have been negotiations between the board and the Southfield Education Association relating to class size which have resulted in agreements about what the class sizes would be, and the appropriate compensation to teachers for work conditions related to large class size. Surely the size of classes will have a direct impact upon the educational experience and learning opportunities of students enrolled within the Southfield Public School District. The Board, in light of education goals and mandates and also budgetary constraints, will have to make judgments and determinations about appropriate class size within the district. The parties will, into the future, need to discuss class size and its implications for teachers and their work load and compensation as appropriate and permitted by law.

The fact finder makes no specific conclusion or recommendation relating to language which should be included in any collective bargaining agreement between the school board and the Southfield Education Association relating to class size requirements in the Southfield Public School District. Any previously negotiated language in collective bargaining agreements which address class size would seem to be a good starting point for further discussion and permissive subject negotiation between the Board and the Union.

A. Proposals regarding wages, retirement, and longevity pay

The Board's proposals regarding wages, retirement, and longevity pay for the district's employees in MESPA "mirror" the terms of the Board's proposals for the teachers in the Southfield Education Association. The findings and conclusions of the Fact Finder in these areas for the MESPA bargaining unit therefore also mirror the findings, conclusions, and recommendations which were articulated by the Fact Finder earlier in this Fact Finder's report in response to the proposals by the Board for the teachers in the Southfield Education Association unit.

B. The board's proposal regarding fringe benefits – health insurance and sick bank

Again, the proposals made by the Board in regards to fringe benefits for MESPA bargaining unit members mirror the proposals made by the board for members of the SEA. The evaluation and conclusions of the Fact Finder in this regard would be the same as those made by the Fact Finder in response to the Board's proposal to the SEA.

C. The board's proposal regarding Association days

As was pointed out in the closing brief filed on behalf of the Board, the size of the MESPA bargaining unit has been approximately cut in half as the result of a decision by the Board recently to privatize many of the functions of the district which had previously been performed by district employees who were within the MESPA bargaining unit. As a result of the “downsizing” of the MESPA functions and bargaining unit membership, the Board has proposed that the previous contract language relating to the number of “association days” be reduced from 100 to 70 days per year. Association days are days were members of the MESPA bargaining unit may be released from their regular job functions or duties with pay while they are attending to some of the union business which relates to the MESPA membership. The proposed change, if implemented, would result in cost savings which are negligible, and which are estimated by the Board to amount to only about \$30,000.

In response to this proposal, and in recognition of the fact that the business of the association would has been reduced as a result of the significant reduction in MESPA membership, the Union has countered with a proposal that the number of association days be reduced from 100 to 80 days in the school year. The Union has further stated in its counterproposal that the half-time release of the Southfield MESPA President should continue.

While there certainly has been a reduction in the magnitude of the business which would be associated with the MESPA bargaining unit as result of significant privatization



of functions which previously were performed by MESPA members, into the near future there may be extraordinary demands and concerns on the MESPA bargaining unit which will remain at a relatively high level as a result of proposed changes in the collective bargaining agreement, and as the result of recent privatization efforts along with the possibility of the need for the bargaining unit to be prepared to address further cost-containment proposals from management during the near term and into the future.

The Fact Finder concludes that the counterproposal made by the MESPA bargaining unit is reasonable, and will not adversely impact on the interests or budgetary issues of the school district. The Fact Finder therefore recommends that any collective bargaining agreement resulting from this petition and fact-finding effort includes the provision which the MESPA bargaining unit has proposed which would reduce the number of association days only from 100 to 80 days per school year. The proposal by the MESPA bargaining unit that the MESPA president continued to have half-time "release" to perform Union business also is reasonable, and is recommended by the fact finder.

#### D. The Board's proposal regarding displacements

During the course of the fact-finding hearing process, the parties did meet and discuss the original proposal made by the Board for changes in the language relating to displacement procedures for laid off or displaced employees. As a result of that

discussion, at this point it appears that the major difference in the Board's proposal from the previously existing contract provision would be to reduce the notice timeframe to the union for layoffs from 60 days as required in the previous contract to only 30 days. The Board's proposal would also reduce the required written notice time to MESPA employees of impending layoff or displacement from 30 days as required in the previous contract to 20 days notice in the proposed new contract language.

The rationale provided by the Board for its proposed changes in notification time frames is that such changes would "enhance flexibility." The MESPA bargaining unit has maintained its position in this proceeding that the previously existing contract provision regarding displacement should not be changed beyond that which was discussed and stipulated to in the fact-finding hearing process.

The Fact Finder believes that in these circumstances, 30 days notice to individual employees of impending displacement is reasonable. The Fact Finder therefore recommends that the previous contract language be adopted in any collective bargaining agreement which results from this fact-finding process.

In addition to the proposals from the Board for contract language modification for the MESPA bargaining unit, the bargaining unit itself made some proposals for changes in the contract provisions which had existed in the prior collective bargaining agreement.

MESPA has recommended that the workday for paraprofessionals and teacher assistants be changed from the 7 hours per day, which is presently the work day as defined in the previous collective bargaining agreement. The Union has proposed that the workday be extended so that all paraprofessionals and teacher assistants would have a workday of 7 ½ hours per day. If the proposal made by the MESPA bargaining unit in this regard is adopted, the Union would expect that the affected employees would be compensated for the additional one half hour per day of scheduled work time.

The rationale presented by the MESPA bargaining unit for expanding the work day was that the present seven hour workday had not been adjusted to reflect the fact that the hours during which students were present at school had slightly extended since the time the language of this contract provision was originally negotiated. The union witness testified that adherence to the present seven hour work day for certain paraprofessionals or teacher assistants resulted in those employees ending their work day a short time before the students were sent home. According to the union, MESPA members leaving before the end of the school day (or coming shortly after it began) resulted in additional work for teachers, and confusion for students – especially those who were relatively young.

Although the MESPA bargaining unit has also adopted the Union position that there would be no increase in wages for bargaining unit members in the next collective

bargaining agreement, the expansion of the workday for certain employees would, in fact, result in some small additional expense to the school district in that some of the MESPA employees would need to be compensated for an additional 2 and a half hours per week of work time.

While the rationale presented by the MESPA bargaining unit for this increase in the workday is meritorious, the school board has not deemed it necessary or in the best interests of the district to make this change. As indicated above, there are also cost implications resulting from the union proposal which would effectively be a wage increase for certain employees due to expansion of hours during a time in which the Southfield Public School District is clearly under significant and ongoing financial stress.

The fact finder does not recommend that the proposal made by the MESPA bargaining unit to expand the workday for certain paraprofessionals and teacher assistants be adopted. Again, implementation of this change, if it were to occur, would be an area which would be ripe for normal negotiation between the parties outside of the fact-finding hearing process.

THE BOARD'S PROPOSALS TO ESOS, CASE NUMBER D08 --1338

The Board has also made proposals to ESOS, which is the clerical secretarial and administrative support unit comprised of district employees who provide a myriad of secretarial and administrative functions for the school district. ESOS members are not confidential or excluded employees. The Board has proposed modifications of the collective bargaining agreement with the ESOS bargaining unit in areas relating to Association days, displacement, working conditions, working hours, health insurance, and also longevity and retirement.

During the course of the fact-finding hearing representatives of the ESOS bargaining unit were present for at least a portion of the hearing process which dealt with economic considerations. A management decision was made while this overall fact-finding hearing process was being conducted that members of the ESOS bargaining unit would not be compensated for time away from their work to attend fact-finding hearings which were primarily focused on issues for the other two bargaining units who participated in this fact-finding hearing process. Apparently this decision by the district management deviated from past practice in some regards. The affected parties have apparently determined to seek resolution of any dispute about the Board's actions outside of this fact-finding process, in a more appropriate forum.

#### A. Association days and displacements

The employer has proposed collective bargaining contract language which would impact the filling of vacancies within the ESOS bargaining unit. Management has characterized the proposed changes as likely to result in the placement of the "most qualified" candidates in open or vacant positions. That proposal would result in some changes to the displacement process. The displacement at issue previously would have occurred based upon strict seniority application. In addition, according to the Board's proposals, some positions within the ESOS bargaining unit would, for the first time, have additional qualification requirements which could also circumvent the prior seniority provisions and give management the option of only considering applicants who had experience or abilities related to the specific job functions which set ESOS secretarial member would perform. By way of example, secretaries who would be employed within the insurance areas of the administrative office would be required to have an additional qualification of experience or training in insurance related areas, and secretaries who would be working as support staff in accounting areas would be required to have some "accounting" experience in order to be well qualified for any secretarial vacancies or positions supporting accounting and bookkeeping functions for the District. In the past there has been no specific such additional experience requirement, and for the most part secretaries were considered to be "fungible" and could be placed in any of the positions and would supposedly function adequately with a small amount of training in the new position.

The proposed changes in contract language which have been made by the Board for the ESOS bargaining unit raise a number of issues, and encompass a broad swath of

considerations. For one, it appears that there would be a required change in some of the secretarial position descriptions or changes to the job qualifications required by the board for certain secretaries. Generally it is the responsibility of management to assign the duties of employees in the workplace, and to determine requirements expected of those employees. (This is especially true where the employer is dealing with jobs which are not otherwise regulated by outside entities. For example, the job duties assigned by the board to teachers would seem to need to be consistent with the job duties and qualifications of teachers which are the minimum qualifications for certification to teach as proscribed by State Department of Education.)

Under the now expired contract between the Board and ESOS, there had been contract language and past practice relating to the determination of job duties of members in the ESOS bargaining unit. That prior language had provided that there would be a joint committee of members of the bargaining unit and representatives of management who would review qualifications and job duties, and those persons would work together jointly to hopefully agree upon proposed changes to position descriptions or jobs within the unit. At the fact-finding hearing, there was some discussion about this prior committee and position description review procedure. Testimony was given that even as the fact-finding hearing process continued, that job review committee was working on some proposed changes to some of the position descriptions for members of ESOS. The Board witness who appeared to testify regarding proposed changes to the qualifications and job duties of certain secretaries in the ESOS bargaining unit appeared not to have been aware of the fact that there was such a committee that was working to

accomplish some of the changes that either management or ESOS members proposed for jobs within that bargaining unit.

Some of the concern which was verbalized during the fact-finding hearing process relating to “qualifications” derived from the board's proposal that mandatory skills test for secretaries already within the bargaining unit be required, and that management should have a greater ability to fill positions from outside the unit “if qualified candidates are lacking.” A change in the definition of qualifications for those positions would seemingly give management much greater flexibility in filling bargaining unit positions through procedures other than the application of seniority if management made a determination that there were no “qualified employees” in the bargaining unit who could be considered for promotion to the vacant positions.

Another change proposed by the employer which is discussed in the employer's brief in this section relating to “association days and displacement,” was to reduce the notice timelines for displacement. The proposal for notice of layoffs of members within the ESOS bargaining unit would be reduced from from 45 days to 30 days. Also, the employer proposed that there be minor changes to the way that seniority would accrue while a secretary was on leave of absence or layoff status. A final topic discussed in this general subject area related to the district asserting that it should have unfettered freedom in selecting substitute secretaries. The staffing of substitute secretaries has previously been outsourced by the school district previously, and a 3<sup>rd</sup> party agency had



assumed responsibility for providing substitute secretaries when, and if, management determined that there was a need for such substitutes.

From the testimony and evidence presented on the fact-finding record, the fact finder does not conclude that there is any compelling or significant justification for deviation from the prior collective bargaining agreement language relating to association days and displacement. The Fact Finder agrees that management should have considerable flexibility for staffing and establishing job duties within this bargaining unit. Under the prior contract language, it appears that there already was a considerable amount of such flexibility available to management. The rationale offered by the employer that the requested changes would enhance operational efficiency by allowing staffing decisions to be made in a flexible, cost-effective, and efficient manner is an interesting one and does have merit. However it is not apparent that the proposed changes in this regard would actually made significant strides toward fulfilling these stated goals or rationale.

The fact finder does not recommend any changes to existing contract language which relates to Association days and displacement.

#### B. Working conditions and working hours

In relation to working conditions for members of the ESOS bargaining unit, the school board has proposed to eliminate “double time” in favor of time and a half for certain “overtime hours.” Included within this proposal also would be a change to the way that overtime for members of the ESOS bargaining unit would be earned and computed. The Board has proposed to go from a system which determined and applied over time on an 8 hour daily basis to a system which applied over time on a 40 hour work week basis. Either approach to the computation of overtime is permissible according to both state and federal wage hour laws. The Board has indicated that one of the anticipated results of this particular change would be the reduction in costs associated with overtime work performed by members of the bargaining unit. In actuality, in recent times there has been relatively little overtime offered or required of ESOS bargaining unit members. However, the fact finder concludes that the proposed change in the way in which overtime hours are determined and computed for ESOS bargaining unit members is appropriate, and the Fact Finder recommends that language allowing that particular change to overtime computation should be allowed in any collective bargaining agreement which derives from this fact-finding hearing process.

C. Health insurance, longevity, and severance pay

The proposals by the Board in the areas of health insurance, longevity, and severance pay are very similar to the proposals which have been made by the Board in these areas for the other two bargaining units in the Southfield Public School District. Among

the most significant proposals by the Board in this area would be the implementation of a "cap" on health insurance rates. The proposal would also eliminate longevity and severance pay for members of the ESOS bargaining unit.

There continues to be no significant agreement between the parties as to the adoption of the proposed contract language changes relating to health insurance, longevity, and severance pay. Again, the Fact Finder does not recommend that any collective bargaining agreement deriving from the fact-finding hearing process incorporate the proposals made by the school district in the area of health insurance, longevity, and severance pay. The Fact Finder recommends that the parties continue to negotiate and discuss cost containment considerations which would help control economic risks associated with the possibility of increases in health insurance premiums during the term of any collective bargaining agreement which derives from this fact finding process.

### SUMMARY AND REPORT CONCLUSIONS

This fact-finding hearing process was concluded after 5 days of hearing. During those 5 days the parties freely and professionally interacted both on and off the record to discuss proposals and concerns relating to any future collective bargaining agreement which would result from this process.

In this particular collective-bargaining cycle, the Board has made a number of proposals which reflect an exigent and pressing need for the Board to begin to make changes in both programming and financial matters. The economic analysis which was presented on this record by both sides reflects the fact that these are hardly the "best of times" financially for either the Southfield Public School District, or for the State of Michigan generally. The recognition of the financial stress under which the school board is attempting to meet its statutory functions is reflected by the fact that over the past 2 or 3 years the three unions involved in this proceeding have generally acknowledged that stressful financial situation by agreeing not to seek enhancements to the base salaries and wages paid to their members. The union has taken the position that the "concessions" made in the area of wages to date reflect a fair contribution by the union members towards the ongoing financial health of the District.

Clearly the political, economic, and demographic variables which impact upon the operation of the Southfield Public School District are significant, and in a state of flux. The present situation in which the financial condition of the Southfield Public Schools is in jeopardy is not the "fault" of any of the parties to this fact-finding proceeding. Revenues are uncertain, and they certainly are not going up at this time. Indeed, the school board is attempting to meet its statutory mandate to provide a quality education to the students in its district by instituting a program of cost containment and prudent financial management practices and standards. The "tension" in the system which has

led to this particular set of petitions and this group of fact-finding hearings has arisen because the school board is seeking to extract further concessions from the unions which would, in effect, result in union members giving back some of the wages and benefits which they fought so hard in the past to secure during better economic times.

The entire situation which presents itself in these fact-finding hearings is daunting, and the resolution to problems raised by this situation is clouded by the fact that there are presently so many significant variables "at play" politically and economically over which none of the parties to this proceeding have any significant control. In the short term, one of the most significant problems faced by the Board as it attempts to assure continued solvency and quality of education is the unpredictability of funds which the district receives from the state as a part of the base state aid student fund allocation system. Economic crises in the state of Michigan government budget have eroded the reliability and amounts of state aid payments available to the Southfield school district, and indeed to almost all of the school districts in the State of Michigan.

At the state government level, the State has acknowledged a severe budgetary shortfall for the next fiscal year already, and the Legislature and the governor are apparently attempting to work through this financial crisis in Michigan by looking at some of the underlying structural defects that have an impact on the state budget, and on the K-12 education funding component specifically.

Funding available from the state over the past year or more has been unpredictable and sometimes delayed. The reality is that that funding has eroded and the amounts available and payable to school districts have decreased – occasionally to a drastic degree. One of the proposals which is being given serious consideration at the state government level presently is a proposal which would affect all state employees – including teachers and other school employees such as the ones who work in the Southfield Public School District. That proposal which is being considered would enact changes in the state retirement programs which would effectively give long-term state employees and teachers who are eligible to retire an incentive to retire at this time – even if they had previously not contemplated retirement in the near future.

If that particular legislation and change in the state retirement act is actually effected, then there is a considerable possibility that many senior level teachers in the Southfield school district who are eligible to retire may elect to do so. If that occurs, then potentially there would be very serious cost implications for the school district – both positive and negative. A significant exodus of senior teachers from the Southfield school district would reduce some of the costs associated with teaching and instruction as some senior level teachers are replaced with younger, less expensive teachers. However, there also could be significant short-term financial consequences for the school district given some of the present contract terms relating to a local school district retirement benefit. While those retirement benefits are proposed to be reduced or eliminated in this fact-finding proceeding, if those local retirement benefit terms continue during the time when many teachers may elect to leave the Southfield school district, then a previously

unanticipated retirement liability of possibly significant amounts would be immediately thrust upon the school district in the coming fiscal year.

There also are significant considerations in this fact-finding process relating to cost containment – especially insofar as that relates to health insurance costs. Health insurance costs have constantly increased in the State of Michigan at a rate which is higher over time than most other products which are purchased by the school district or other entities. One of the major points of contention in this fact-finding proceeding related to a legitimate fear by the Board that there would be a significant increase in health insurance premiums payable during the term of any collective-bargaining agreements which derive from this fact-finding hearing process. If such premium increases were to occur, then those increases could have a significant and potentially disastrous effect on the overall financial condition of the school district given the fact that the Board would be contractually obligated to meet those premium increases during the term of the collective bargaining agreement.

In response to this legitimate concern about the possibility of unpredictable health insurance premium increases in the near term, the Board has proposed that “caps” on health insurance costs be required in any collective-bargaining agreement deriving from this proceeding. The position taken by the Board to implement cost containment requirements into the collective-bargaining agreements is prudent from a management standpoint. The “rub” arises, however, over what those caps will be, how those caps will

impact upon the overall compensation of school district employees, and whether those caps are actually necessary given the uncertainty of the economic environment and the present apparently "healthy" financial status of the school district.

In this fact-finding report this fact finder did not recommend the adoption of the language proposed by the Board for cost containment and the imposition of "caps" in the health insurance proposals made by the Board. The failure to make recommendations for adoption of the Board's proposals on the part of this Fact Finder in some areas did not derive from the fact that the Fact Finder concluded that concepts advanced – such as for cost containment in the insurance area -- were inappropriate or not needed. Rather, the failure of this Fact Finder to recommend adoption of some of the Board proposals in cost containment and some other areas resulted from the conclusion of the Fact Finder that the short term impact language and proposals – such as the proposals for "caps," were either ambiguous, or needed further discussion. For example, the proposal by the Board for "caps" in some instances would effectively reduce the income of District employees by up to \$5000 a year, which the fact finder concluded was too great an amount to be required of employees in such a short period of time. The Fact Finder was concerned that such a harsh financial impact on some district employees would not be "fair" to the employees in the circumstances documented on this record.



During the course of the fact-finding hearing, union members indicated that management had not, in the opinion of the unions, made a significant bargaining effort with the unions in which relevant economic data was shared, discussed, and negotiated. There also was expressed concern that the substance or implications of proposed contract language had not been adequately explained prior to fact finding. One witness indicated that the latest round of collective bargaining proposals had been presented as a series of "concepts" which the Union should consider and which the employer desired to discuss. Apparently, from exchanges observed on this record by the fact finder, those concepts would never adequately fleshed out or discussed prior to the initiation of the fact-finding process. Opportunities for cooperation and collaboration and agreement on contract language prior to the fact-finding process appear to have been less than they should have been. During the fact-finding hearing process itself, parties on both sides expressed some confusion about proposals which were on the table for fact-finding consideration.

The resolution of this collective bargaining/fact-finding process will still have to address the proposals made by the employer. But there may be significant problems in administering the proposed contract language changes as offered, if adopted. From an arbitrator's perspective, some of the language offered or proposed during this process from either side constitutes a "grievance waiting to happen." Some of the language offered and discussed is ambiguous, especially given the fact that significant changes made may not necessarily always be better understood by referring to past practice or previous agreements made which had resulted in significantly different language.

Concerns about proposal language are further heightened by the fact that there appears to be significant ambiguity and lack of clarity about what has been proposed in some of the proposals which remain on the table.

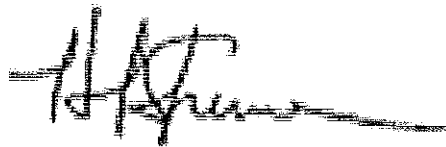
The present fact finding hearing process has left a considerable record for consideration by the parties and MERC. The administration and implementation of any collective bargaining agreement which derives from this process will likely result in additional challenges given the fact that there have been significant and ongoing recent changes in the staff who constitute the management District HR team over the past year. Very recently, during the term of this fact-finding process, the district did hire a new human resources director who will have the considerable responsibility for establishing a relationship with the bargaining units in the Southfield Public School District, and also for administering the terms of any new collective bargaining contract which ultimately is put in place. There undoubtedly will be a period of learning and adjustment as the parties get to know each other, and as information is exchanged about prior practices and the bases for those practices. The Fact Finder is optimistic that a positive and collaborative contract administration relationship will develop between the parties and that they will work together to implement any collective bargaining agreement reached in a manner which is in the best interests of the students of the district, the employees of the District, as well as the financial/management interests of the Board.

While the concepts offered by the Board which are at issue are reflect an understandable need to address some significant financial problems, and in some cases are commendable, the actual language proposed to address issues and problems would have benefited, and indeed still would benefit, greatly from additional discussion and collaboration in the drafting of the language of the final offered collective-bargaining agreement product. The Fact Finder is hopeful that the employment relations commission will be able to encourage the parties to work together to implement these difficult contract provisions with language which all parties can understand and act in good faith to implement in a positive way.

This fact-finding report is being transmitted, along with the developed record in this fact-finding process, to the Michigan employment relations commission for their review, consideration, and disposition. Copies of the Fact Finding report are being emailed to the parties today, and hard copies will be mailed to the parties this week.

The Fact Finder again thanks all of the parties and their representatives for the professionalism, cooperation, and information which they shared with each other and with the Fact Finder during this process. It was a pleasure to meet and work with these parties. I hope that this report and the effort I expended during this process will help the parties to re-evaluate their positions, and to come up with additional proposals which they will jointly consider and eventually implement to assure the continued positive

operation of the school district, and their mutually shared and very important goal of educating the children and young adults who attend the Southfield public schools.



Dated: March 10, 2010

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Howard T. Spence (P-27045)

MERC Fact Finder