

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

West Bloomfield Education Association

Union

CASE No. D09 I 0974
FACT FINDER: MICHAEL P. LONG

— and —

West Bloomfield School District

Employer

FACT FINDER'S DECISION AND RECOMMENDATION

The West Bloomfield Education Association (hereinafter referenced as “Association” or “Union”) and the West Bloomfield School District (hereinafter referenced as “Employer” or “District”) have been engaged in negotiations since early October, 2009, seeking a successor to their collective bargaining agreement which expired August 31, 2010. Nineteen bargaining sessions have occurred, eight of which involved the State appointed mediator. On or about May 15, 2010, the District filed a Petition for Fact Finding with the Michigan Department of Labor and Economic Growth, Employment Relations Commission. A Fact Finder was appointed on June 25, 2010, and a Pre-Fact Finding Conference was held on August 26, 2010. The Association is represented by Gerald E. Haymond of the Michigan Education Association. The District is represented by William G. Albertson of Lusk & Albertsin, P.L.C. Fact Finding Hearings were held on October 7 and 19, 2010 at

the West Bloomfield Schools Administration offices. Written summations were submitted by the parties on November 8, 2010. The matter is now ready for the Fact Finder's Decision and Recommendation.

Factors considered in fact finding are very similar to those considered in compulsory police and fire arbitration. It is recognized that there is no "final offer of settlement" provision in fact finding and that the decision does not have the same legal effect in fact finding as it does in compulsory arbitration, but the areas for determination are substantially the same. They are, in summary form, as set forth in the compulsory arbitration statute:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the fact finding proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

- (g) Changes in any of the foregoing circumstances during the pendency of the proceedings.
- (h) Such other factors, not confined to the foregoing, which as normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Fact Finder has considered all of these criteria in relation to the facts and arguments presented by the parties in reaching the Fact Finder's recommendations.

The fact of the matter is that fringe benefits (health insurance, etc.) are a significant part of and substantially affect the total economic package of the employment relationship. The same criteria must be considered in setting not only wage rates, but also in setting other components of the wage and benefit package. It is recognized that the total bottom line cost to the Employer is a crucial determinative factor regardless of the distributive allocation of wages versus fringe benefits such as health care.

Although approximately ten issues remain unresolved, it is evident that compensation issues have been the largest obstacles to an agreement being reached. The parties' inability to date to reach an accord is not the result of such impediments as insufficient number of bargaining sessions; frequent changing of table positions; lack of bargaining experience or sophistication; or real disagreement as to the objective facts - including financial data. It is clear that the parties comprehend each other's proposals, as well as the necessary ramifications of accepting same. The parties' true disagreement is not as to the objective facts but, rather, as to which of the facts are important and must or should be determinative in regards to the collective bargaining agreement.

The open issues are listed below along with the proposals and statements of each of the parties regarding them. A box at the end of each section contains the Fact Finder's Decision and Recommendation regarding that issue.

Item A
Salary
(Article X, Schedule A)

ASSOCIATION'S PROPOSAL:

The Association proposes a two year contract with the following changes:

- A 0% wage increases for 2010-12 school years.
- A step freeze effective at the time of ratification for the 2010-11 school year.
- Step increases in the 2011-12 school year with a \$1,000 off-schedule for those employees at the top of the schedule (not receiving steps).
- Two scheduled furloughs days for the 2011-12 school year.
- A Letter of Agreement for a 20% reduction in schedule B (Athletics) and C (Co-Curricular) for both years.

SCHOOL DISTRICT'S PROPOSAL

- 2010-11 10% reduction in 2009-10 salary schedule
- 2010-11 Freeze in both movement and payment of salary step increments.

ASSOCIATION'S STATED RATIONALE:

Much discussion and testimony along with many exhibits were presented regarding the District's finances. The District's position to effectuate a ten percent (10%) salary reduction and a freeze on all incremental salary step raises is due to what they perceive to be their projected financial status at the end of this school year (2010/2011) and the fact that other bargaining units within the District accepted a

ten percent (10%) reduction in wages and a step freeze spread over the 2009/10 and 2010/11 school years.

As regards to the settlements of the other groups, three important facts must be considered:

First of all, Ms. Cyndi Austin, Spokesperson for the MEA Units cited (Custodial and Maintenance, Paraprofessionals, Transportation, and Educational Secretaries) made it clear in her testimony that at least two of these groups, of the four that negotiated as a coalition, faced a real threat of being privatized and this was a major consideration in their deliberations during the bargaining process.

Secondly, the West Bloomfield Team Management group (principals, directors, etc.) on one hand, agreed to a ten percent (10%) salary reduction but on the other hand, received five (5) additional "Special Project Days" (for a total of ten (10) for which they will receive their per diem pay. This certainly cannot be construed to be a ten percent (10%) reduction in their annual wages.

Finally, it must be noted that at the time these settlements were reached and ratified, (November 2009) there was an assumption that state funding would either be reduced or at best remain static for the 2010/2011 school year, which at this point, we know will not occur.

Pertaining to the District's finances, the following points are based on facts, not budget projections made last Spring:

Pertaining to Revenue

1. The District has an audited Ending Fund Balance as of July 1, 2010, of negative \$1,722,193.
2. Page 11 of the District's audit states, "The School Aid Bill" for the 2010-2011 school year was finalized after the adoption of the budget on June 21, 2010. The School District anticipated a decrease in State funding of \$268 per pupil. However, the adopted school aid bill did not contain the \$268 decrease and, in fact, added \$11 per pupil. This has a positive change in school aid of \$279 per pupil and overall \$1.9 in operating revenue. The concern exists, however, as to whether or not there will be mid-year proration in school aide after the results of the January 2011 revenue consensus conference are known.
3. Since the time that the above was written by the District's auditors, we know that the District will minimally receive the additional \$279 per pupil and that there cannot be a mid-year proration or the federal funds will be withdrawn.

Pertaining to Expenses

1. Association Exhibit A pages 4 and 5 contain the salary schedule placement of all West Bloomfield Education Association (WBEA) members for the 2009/10 school year and the 2010/11 school year along with the total salary schedule cost. These Exhibits show that the difference in the annual salary schedule costs of the respective two years reflect a cost reduction of \$2,580,524 from 2009/10 to 2010/11, even when the cost of step increases is included in the 2010/11 salary schedule scatter-gram. This reduction in costs can be attributed to the following:
 - A. Eighteen (18) FEWER WBEA members
 - B. Thirty-Nine (39) more WBEA members on the first step of the salary schedule
 - C. Twenty-Six (26) FEWER WBEA members on the top step of the salary schedule
2. Should the costs for FICA and Retirement be added or not, the fact remains that salary costs are, in fact, reduced by 2.5 million dollars from 2009/10 to 2010/11.
3. Due to the almost \$2,000,000 increase in projected revenue (according to the District's auditors) and the reduction in salary costs, the Association finds no reasonable cause to accept a reduction in salary. However, the Association stands by its proposal to freeze the incremental salary increases at the time of reaching an agreement for the 2010/11 school year. It was jointly agreed at the meeting that the step raises were \$791,000 of the total 2010/11 salary schedule cost. Thus, should settlement be reached by mid-way through this school year, this would result in another \$400,000 reduction from the expenditure side of the ledger.
4. Item B (Fringe Benefits) will show even more cost savings from those that were incurred in the 2009/10 school year.
5. The Association's proposal for the 2010/11 school year also includes a twenty percent (20%) reduction in Appendix B (Athletics) and Appendix C (Co-Curricular). This proposal will reduce costs \$116,291 for 2010/11. For inexplicable reasons, the District has refused to accept this offer.

In Summary:

- The facts, as they are now known, in no way support the District's projections.
- The revenue is higher than the projections that lead to the District's demand for a ten percent (10%) reduction in salary and step freeze.
- The expenditures are much lower than the projections that lead to the District's ten percent (10%) reduction in salary and step freeze demand.
- The known revenues and differences in expenditures will more than make up for the current negative fund balance.
- The District's only response, after apparently realizing the facts as outlined above, was to quote the late Mr. Al Short, former MEA Chief Lobbyist, in a purported statement he made (well out of context) to the Detroit Free Press in 2007, regarding school district's fund equities. In fact, this was brought up on both hearing dates. The Association has proposed very reasonable salary offers and the Fact Finder, hopefully, will make a determination on facts rather than projections.

SCHOOL DISTRICT'S STATED RATIONALE:

By far, the largest single source of revenue to the School District, indeed its very financial lifeline, is the per pupil foundation allowance (\$8,962) coming from the State legislature pursuant to the annual State School Aid Act. It is no secret that currently all State of Michigan sourced funding is in peril and each round of State budgeting involves legislative infighting as to which programs and areas of appropriations will be cut more or less. The current Governor-elect is reported to be confronting an approximate \$1.6 billion State budget deficit, and likely growing. As the largest single recipient of State funding, the public schools are very likely and vulnerable legislative targets for appropriations reductions and/or executive order cuts.

As the saying goes, the proof is in the tasting of the pudding. During the last six years, the State-supplied revenues of the School District have **dropped** in actual dollars (\$50,430,172 to \$46,139,201) and percentage (3%) terms, notwithstanding the steady cost growth in such areas as health insurance rates, utility rates, and supplies/equipment.

The reasonable person may inquire as to how the public school districts, including the West Bloomfield School District, have financially managed when their primary

source of revenue has declined? The answer to this question is in three parts: (1) program/service cuts, (2) staff cuts, and, most notably, (3) **deficit spending**.

Over the last several years, many Michigan school districts, including the West Bloomfield School District, have been reluctantly covering their expenditure-over-revenue shortfalls by tapping their general fund balances (savings accounts/rainy day funds). Indeed, in the 2008-09 school year alone, the School District incurred an annual operating deficit (expenditures over revenues) of \$3.5 million that was covered entirely by drawing from and reducing the existing fund balance by 66%! This action reduced the School District's fund balance from 7.26% to 2.33% of its overall operating budget -- an unacceptably low percentage. Deputy Superintendent for Business Operations, Tom Goulding, testified that the School District's outside certified public accountants recommend a 10-15% fund balance retention. Likewise, Al Short, the former Michigan Education Association's chief lobbyist, within a 2007 interview, advised the *Detroit Free Press* that fund balances of 10-15% of operating budgets are a "reasonable amount" of reserve. It must be noted that more than \$2 million of the \$3.5 million expenditure-over-revenue figure for 2008-09 went directly for and covered the increase in the payment of salary and benefits to instructional and building administrative staff.

However, just as one cannot continue to operate a household paying monthly bills from an unreplenished savings account, neither can a school district indefinitely continue to meet its ongoing costs by drawing from its shrinking fund balance. Being optimistic in nature, many school districts over the recent years have engaged in deficit spending with the expectation and hope that the State legislature would recognize the structural financial funding dilemma and reform the method of school funding in time to avert the otherwise inevitable crisis. The legislature, however, has not found a way to adequately fund schools during the current economic climate. As a result, time has run out for many Michigan school districts, including the West Bloomfield School District, and will be running out for many more.

In this regard, and as has been audited by the School District's outside accountants, the School District's deficit spending, as of June 30, 2010, completely exhausted all of its previous fund balance, and more. The audited fund balance at the conclusion of the 2009-10 school year was a **negative** \$1.7 million.

Thus, unfortunately, the School District is now the fifth Oakland County public school district to have fallen into an actual negative fund balance (true deficit) situation. Although the remaining 22 Oakland County school districts enjoy positive fund balances for the time being, and are thus able to choose to continue to deplete same to pay wages and other expenses, this option is simply no longer available to the West Bloomfield School District. Indeed, the School District's first

priority from both a legal and fiduciary view is to use future revenue to first reduce and then eliminate the existing deficit.

However, the Association's salary proposal does nothing to address the glaring deficit nor, for that matter, even acknowledges this negative fund balance.

Furthermore, Mr. Lewis' various claims that the teachers' bargaining groups in no way contributed to the present financial condition of the School District is contrary to fact. The truth is that when the School District possessed the financial resources, such were freely and consistently passed on to its employees, and particularly, to its teachers. A typical teacher commencing employment with the School District ten years ago has seen his/her base salary grow from \$31,881 to \$80,200, or 151% (9.5% per year). Also, the present annual cost for full family health insurance, to which the teachers presently make **no** contribution, is \$19,476.72 (\$1,623.06 per month x 12).

Therefore, although the School District certainly does not regret and indeed is pleased that it has been historically able to provide its teachers and other employees with enviable salary and benefits packages, to assert that the very high costs of such have not directly contributed to the current financial plight of the School District is to engage in sophistry.

It must also be understood that the School District is not attempting to balance its books solely from the teachers' salaries. Rather, the School District has been engaged in staffing and program cuts that are deep and wide. Over the last nine years, although the student enrollment has remained relatively constant, the School District has nevertheless reduced its overall staffing from 916 to 767 full time equivalent employees, some 17%. Furthermore, the School District enacted nearly \$5.7 million in budget cuts for the current school year, **not** including the 10% salary reduction being sought from the teachers. These cuts include the 10% wage reductions accepted by all employees other than the teachers and reach to virtually every corner of the School District's activities and services, including instruction, support, athletic/co-curricular activities, and community services. By way of specific examples, the current year cuts include:

- 11 fewer elementary teachers (including class size averages from 32 to 36 students)
- 5 fewer middle school teachers
- 7 fewer high school teachers
- Increasing from zero to one mile the distance from home to school for students to receive bussing service
- Elimination of the financial hardship exclusion for pay-to-play charges for interscholastic athletics.
- Reduction of technological support to instructional and administrative staff.

Even with the assistance of the \$5.7 million in budget cuts, the School District faces a current projected current year-end deficit of slightly more than \$3 million, attributable in large part to the \$3.4 million above the School District's salary proposal required to maintain the current teacher salary schedule and pay the increment/steps called for therein (including FICA and retirement rollups, which represent an annual cost of \$1,005,016). It must be noted that the \$279 per pupil foundation allowance reinstated by Governor Granholm for the 2010-11 school year has been accounted for within the School District's "Updated General Operating Fund Deficit" and thus may not be used, as suggested by Mr. Lewis, to set off the \$3 million budget deficit.

In this regard, the \$3,999,770 "total savings" figure the Association associates with its 2010-11 salary proposal must be placed in proper perspective. First, the \$2,580,524 number identified as "Salary Cost Savings" and the attendant \$865,154 FICA/retirement amounts are wholly the result of the elimination of 23 WBEA teaching positions and have **already been factored** into both the June 21, 2010 budget and the Updated General Operating Fund Deficit figure of \$3,060,752. Thus, none of the \$3,445,678 (\$2,580,524 + \$865,154) identified as savings is available to reduce the \$3,060,752 2010-11 budget deficit. The remainder of the "savings" identified by the Association (\$554,092) is represented by a cessation of the payment of salary step increments, as of December 1, 2010, and is diminished by \$65,921 each month thereafter, totally disappearing on June 30, 2011.

Where is the School District to go in search of the more than \$3 million required to avoid an operating deficit for the current school year, let alone for additional monies to start to reestablish a positive fund balance? To this question, the Association offers no solution other than to articulate unspecified skepticism as to the accuracy of the audit and the 2010-11 budget. The Association does suggest that its health care proposal would save the School District some \$850,000 and that its current proposal to freeze the salary step increments could realize another \$1,005,000, totaling \$1,855,000 of the \$3 million. However, the purported health care savings are in the form of health care premium costs associated with the proposed changes in the health care plan and may only start to be realized after the plan changes become effective. Thus, assuming that the School District agreed to the Association's proposal and the plan was changed effective February 1, 2011, the premium savings for the current school year (July 1, 2010-June 30, 2011) would not be \$850,000 but merely one-half that amount, or \$425,000. Similarly, the Association's proposal to freeze the payment of salary step increments (costed at \$1,005,000 per year), as noted before, is effective only upon **ratification** of a new contract by both parties. Assuming a February 1, 2011 date for such hypothetical contract ratification, the actual current year savings would not be \$1,005,000, but one-half that amount, or \$502,500. Thus, the maximum sum total of the possible credit against the \$3 million 2010-11 budget deficit represented by the Association's

salary and health care proposals is approximately \$927,000, assuming the parties ratify a contract with such provisions being effective February 1, 2011. Of course, each month that elapses without an agreement and ratification reduces the value of the Association's proposals by \$154,583 ($\$1,855,000 / 12$) and on June 30, 2011 becomes \$0.00.

Thus, depending upon whether and when the parties were to ratify a new contract containing the Association's 2010-11 salary and health care plan proposals the monies available to offset the 2010-11 budget deficit of \$3 million and the Association salary schedule reduction necessary to eliminate the deficit would be as follows:

Effective Date	Savings	Deficit	WBEA Salary Reduction*
January 1, 2011	\$927,000	\$2,073,000	7.40%
March 1, 2011	617,000	2,382,000	8.51%
May 1, 2011	309,000	2,691,000	9.61%
June 30, 2011	0	3,000,000	10.71%

* 1% of the teachers' salary schedule represents \$280,000.

Contract Duration.

Given the great uncertainty that presently characterizes Michigan Public school financing and will do so for the foreseeable future, a multi-year contract that addresses wages is neither responsible nor realistic. Any future legislative reduction in the per pupil foundation allowance will wreck havoc with a contractual salary schedule premised upon higher numbers. Furthermore, the presently unknown cost of health care premiums and retirement costs for the 2011-12 school year present additional financial question marks.

Should the Factfinder be prone to recommend a two year agreement, the School District suggests that such include a wage reopener for the second year so that the parties could have both the benefit of a contract and the flexibility to responsibly adjust to the then current financial environment -- should such be better or worse. Certainly, however, the Association's proposal that in year two of a contract the School District would pay full salary step increments (\$1,005,000) and \$1,000 to each of the approximately 200 teachers not receiving step payments (\$200,000) is wholly unjustifiable and financially irresponsible. This \$1,200,000 second year additional cost, combined with the certain loss next year of the federal jobs money (either \$263,000 or \$778,000) would result in the School District starting the 2012-13 school year in a financial hole of between approximately \$1.5 million to \$2 million.

Item A

Salary

(Article X, Schedule A)

Fact Finder's Findings and Recommendation

The West Bloomfield School District, as well as a growing number of other Michigan public school districts, is confronted with an unprecedented economic reality that mandates significant and immediate reductions in expenditures. These financial demands are exacerbated by coming at the same time that society and government are calling upon the public schools to improve educational programming and student performance.

The West Bloomfield School District in accepting of the challenge must do more with less, and, in so doing, must obtain the cooperation of its employees if there is to be any real chance of success.

The current economic reality is not the consequence of either the actions or inactions of school districts or labor organizations in the sense of fault, but rather is the product of local and international business activity and the resulting inability of the Michigan legislature to maintain public school funding at normal/historical levels.

The proofs demonstrate that the District no longer has the financial ability to continue to provide the wage and benefit package to teachers as it has in the recent past. It has been shown that legally, and practically, the School District cannot continue its deficit operations. To this end, the School District has made difficult decisions, and has implemented cost reductions throughout its operations, specifically including a 10% wage reduction for all employees except the teachers, from whom it now seeks like compliance. All the employees of the district have taken a wage cut of approximately 10% across the board. The overall compensation package remains good, and is comparable on an income / expense ratio with that of employees of neighboring districts.

As to Item A, a combination of the District's and Association's proposals is recommended as follows:

It is recommended that there be an immediate across the board 10% reduction in the salary schedule. With implementation all steps of the salary schedule will be affected, and there should be no need to freeze movement and payment of salary step increments. It is recognized that even with step increments, the salary of the employee may not reach the level of the salary before the 10% across the board reduction.

It is also recommended that the Association proposal for two scheduled furlough days for the 2011-12 school year be implemented.

In addition it is recommended that the parties strongly consider a Letter of Agreement for a 20% reduction in Schedules B (Athletics) and C (Co-Curricular) effective immediately.

Item B
Fringe Benefits
(Article XI, Section A)
Health Insurance

ASSOCIATION'S PROPOSAL

Add the \$300/600 deductible with the RX Saver prescription coverage to MESSA Choices.

SCHOOL DISTRICT'S PROPOSAL

Change to a MESSA Choices plan with a \$200/\$400 deductible and a \$10/\$20 drug card.

Add monthly premium contributions by teachers of \$100 full family, \$80 2-person, \$60 single subscriber.

ASSOCIATION'S STATED RATIONALE:

The Association proposes two major changes in Health Care coverage for its membership. The institution of a \$300 per person/\$600 per family deductible from zero (\$0) deductible and a change from a \$10 generic / \$20 name brand prescription drug rider to a \$2 maintenance /\$10 generic /\$40 name brand prescription drug rider. These two coverage alterations result in a premium cost savings to the District of \$175.50 per month for the composite cost per insured for the total fringe benefit package from the current monthly cost.

This monthly premium cost savings multiplied by twelve months, multiplied by the lower number of subscribers (\$175.50 X 12 months X 27 fewer subscribers) equals \$56,862 annual premium savings from current costs. Add to this the \$132,958 savings from the large turnover of staff (48 new subscribers) that were not covered during July and August as new employees whose coverage commenced in

September and you arrive at \$189,820 lesser in premiums than would be incurred should the coverage continue unchanged.

A comparison to last year's premium costs based on last year's composite cost for all fringe benefits results in \$96,080 in reduced premium costs from last year.

Thus, whether a comparison is made regarding premium costs to the District from last year to this year or from current costs to Association proposal cost, reduced fringe benefit costs are realized.

The per person composite premium reduction is solely a result of the Association's proposal to alter the coverage within the insurance package. The Association proposal results in new out of pocket costs to the West Bloomfield Education Association (WBEA) members of \$201,300 annually not including higher prescription drug costs that are impossible to determine.

Additionally to be considered is that while the 2005/06 composite rate for all fringe benefits was \$1,245.06 per subscriber per month, the Association's proposal results in a composite per month premium cost of \$1,447.56. This \$202.50 increase equals 16% over the six (6) years or 2.67% per year. This, combined with fewer subscribers to be paid for, certainly cannot be "spiraling health care costs," at least in the West Bloomfield School District.

Finally, the District points out that "half of even the districts the Association chose as comparables have some type of subscriber premium cost." Association Exhibits show that those that do contribute something contribute much less than what the District proposes and two of the three districts pay no deductible and the third district pays a much lower deductible.

In Summary

- It is not the fringe benefit costs that created the District's negative fund equity.
- The Association's proposal results in less cost to the District regardless of the bench mark to which it is compared.
- The members are assuming costs for the first time under the Association's proposal equivalent to \$50 per month for the \$600 annual deductible.
- The Association's proposal is not at all "out of line" with that which is received in the surrounding districts.
- The Association has recognized that costs must be controlled and its proposal does so. It is confident that the Fact Finder will recognize that its proposal is

reasonable and responsible as opposed to the District's attempt at "over kill," especially when the need is not present.

SCHOOL DISTRICT'S STATED RATIONALE:

Both parties agree that meaningful health care premium savings are available if employee deductibles are instituted and both have proposed such throughout bargaining. The Association, in late August, increased its proposed deductible from \$200/\$400 (being proposed by the School District) to the higher \$300/\$600 plan. Each month that passes results in the irretrievable loss of nearly \$71,000 of unnecessary health care premium payments. The School District asserts that the parties would be greatly benefited if the Factfinder was to specifically recommend the immediate agreement and implementation of the MESSA Choices healthcare plan and drug card proposed by the Association.

Although the drug cards differ somewhat, the issue keeping the parties from agreement on health care is employee contribution to premium. Presently, the teachers pay nothing toward health care premiums and the Association proposal seeks to continue the zero contribution.

The three highest salaried teacher groups among the six school districts the Association has chosen as "comparable," Birmingham, Bloomfield Hills and Farmington all require teachers to make health care premium contributions – demonstrating a trend in that direction.

The School District's proposal would yield approximately \$384,000 (for a full year) that could be used to help defray the likely health insurance premium increases that the School District will sustain for the 2011-12 school year.

Item B
Fringe Benefits.
(Article XI, Section A)
Health Insurance
Fact Finder's Findings and Recommendations

As the District will realize a 10% across the board savings in salary, and, as in addition the Association's proposal offers a cost savings, the Association's proposal of "Add the \$300/600 deductible with the RX Saver prescription coverage to MESSA Choices" should be adopted.

Item C Online Classes

ASSOCIATION'S PROPOSAL

The Association proposes a Letter of Agreement as follows:

If, during the term of this Agreement, the District offers an online curriculum the bargaining teams from the District and the Association shall meet prior to offering and initiating any online classes for credit within West Bloomfield Schools. The parties shall meet to bargain a letter of understanding regarding the terms and conditions of the class size, curriculum, and responsibilities of the teacher regarding any online offerings.

SCHOOL DISTRICT'S PROPOSAL

The District does not agree to enter into the above Letter of Understanding.

ASSOCIATION'S STATED RATIONALE:

Simply put, the Association, looking to the future and viewing activities in other Districts, wishes to be proactive. It is not mandating specific class sizes. It is not mandating certain curriculum stipulations. It is not mandating what the teacher's responsibility should be. The Association simply wishes to assure that it will have the right to negotiate issues involved with the institution of online classes.

SCHOOL DISTRICT'S STATED RATIONALE:

The Association seeks to require the School District to agree, by way of a Letter of Understanding, to not offer students online classes without first negotiating and reaching mutual agreement upon "the terms and conditions of the class size, curriculum, and responsibilities of the teacher regarding online offerings." No such requirement or contract language presently exists.

The School District contends that this proposal improperly invades the exclusive province of its Board of Education to determine curricular and course offerings. Furthermore, the Association's proposal is a direct attempt to collectively bargain the issue of using technology to deliver instructional programming and as such constitutes a prohibited subject of bargaining under Michigan law. Section 15(3)(h) of the Michigan Public Relations Act, MCL 423.215(3)(h), reads as follows:

Collective bargaining between a public school employer and a bargaining representative of its employees shall not include any of the following subjects:

Decisions concerning use of experimental or pilot programs and staffing of experimental or pilot programs *and decisions concerning use of technology to deliver instructional programs and services* and staffing to provide the technology, or the impact of these decisions on individual employees or the bargaining unit. [Emphasis added.]

Section 15(4) further provides:

Except as otherwise provided in subsection (3)(f), the matters described in subsection (3) are prohibited subjects of bargaining between a public school employer and a bargaining representative of its employees, and, for purposes of this act, are *within the sole authority of the public school employer to decide*. [Emphasis added.]

Clearly, the Association proposal constitutes a prohibited subject of bargaining and, as such, must be rejected by the Factfinder.

Item C
Online Classes
Fact Finder's Findings and Recommendations

Based on all the facts and circumstances, and especially noting that there is no current stated plan to offer an online curriculum, it is recommended that the Association's proposal for a Letter of Agreement not be adopted.

Item D
Elementary Prep Coverage
(Article V, Section H)

SCHOOL DISTRICT'S PROPOSAL

The District proposes to change the existing contract language as follows:

- H. Since it is recognized ~~(1)~~ that elementary teachers need preparation time; ~~and (2) that an enrichment program for elementary schools, including art, music, and physical education, is desirable; it is agreed as follows:~~ **that**

- ~~(1) — The Board will provide an enrichment program in each elementary school grade commencing with Kindergarten in art, music, and physical education. Further, it shall assign art, music and physical education teachers as classroom teachers in their specialty. The enrichment program shall provide at least one hundred and eighty (180) minutes of instruction per pupil, per five (5) day week of school. No art, music or physical education teacher shall be assigned more than one teacher's classroom at a time except in the event of an emergency.~~
- ~~(2)~~**(1)** All elementary teachers, including specialists, shall be provided a minimum preparation time per week of ~~two hundred and eighty (280)~~ **three hundred ten (310)** minutes per week. Any time after school, passing time and recess time shall not be considered as preparation time.
- ~~(3)~~**(2)** The recess time prohibition shall not apply to art, music and physical education teachers. However, no planning time shall be in increments of less than twenty-five (25) minutes.
- ~~(4)~~**(3)** Elementary teachers shall utilize time during which their classes are receiving instruction from various teaching specialists for instruction preparation.
- ~~(5) — In addition to the preparation time outlined in (2) above, elementary teachers, including specialists, will be released an additional 960 minutes per school year for additional planning time, grade level sessions, team planning projects, curriculum planning. For classroom teachers this time shall be provided by the elementary media consultants in blocks of not less than thirty (30) minutes. Teachers are not required to remain with their class during the thirty (30) minute guaranteed release time. A yearly schedule of media time shall be provided to classroom teachers during the first week of school. Teachers whose weekly schedules include more than the required 280 minutes of preparation period will be provided this additional preparation time only on a pro-rata basis.~~

ASSOCIATION'S PROPOSAL

The Association proposes no changes in existing language.

SCHOOL DISTRICT'S STATED RATIONALE:

The School District seeks to change existing contract language. What was originally designed to assure elementary teachers a guaranteed and specific amount of weekly professional preparation time without students is presently overreaching this purpose in that such appears to also require the unintended consequence of requiring the School District to continue to maintain the specific classes of art, music and physical education. This is so because the **vehicle** by which the preparation time is to be provided is expressly identified.

This identification unnecessarily restricts the School District from providing other types of learning/enrichment activities to students during elementary teachers' preparation time. Instruction in such matters as technology, nutrition, personal finance, health, or online learning may well be preferable to continuing traditional art, music, and physical education activities.

Under the School District's proposal, the 310 minutes of weekly elementary teacher professional preparation time without students will be preserved. Only what the **students** are doing during the teachers' preparation periods will be subject to change.

The School District contends that the language of the contract should not continue to require it to provide elementary teacher preparation through only one vehicle. Students would have the opportunity to enrich their experiences during the school day and the objective of the language, to provide student-free preparation time to teachers, will be preserved.

ASSOCIATION'S STATED RATIONALE:

The Association's goal is to ensure the continued enrichment of all students so that they may have equal amounts of art, music, physical education and media. The District's practice and the structure of the current elementary preparation language have given West Bloomfield students this opportunity. The District proposal could not only curtail the student's enrichment opportunities but could severely cut the media time for all students.

Item D
Elementary Prep Coverage
(Article V, Section H)
Fact Finder's Findings and Recommendations

The District's proposal removes impediments related to curriculum design and changes, but does not diminish the overall preparation time afforded to teachers. Its real purpose is to guarantee adequate preparation time; the proposal accomplishes this; and the District's proposal should, therefore, be adopted.

Item E
Travel Between Buildings
(Article VII, Section O)

ASSOCIATION'S PROPOSAL

The Association proposes the following new language:

- O. All teachers who travel between buildings will be given sufficient time to break down, travel and set-up classrooms between buildings.

SCHOOL DISTRICT'S PROPOSAL

The District does not agree with the new language.

ASSOCIATION'S STATED RATIONALE:

The Association's proposal has no hidden agenda. Its intent is exactly what is stated.

In the past, there have been some situations that caused a teacher to not be fully prepared for his/her classroom due to insufficient time being allotted for "travel" as a result of that teacher's schedule of classes. It is feared that with the reduction of staff that more teachers will be required to travel between buildings during the course of the day, especially within the music and art departments.

The Association's goal is to simply place a clause in the Master Agreement "upon which it can hang its hat" should informal discussions not resolve a travel time concern in the future.

SCHOOL DISTRICT'S STATED RATIONALE:

The Association seeks to add contract language that would expressly provide teachers who travel between buildings to be “given sufficient time to break down, travel and set-up classrooms between buildings.”

In this regard, the Association presented no compelling reason for adding this language and it was somewhat apparent that the necessary accommodations in such circumstances have been consistently and successfully made by both teachers and building administrators.

The School District asserts that the Association’s proposed language seems to seek to fix something that is not broken and may well lead to unnecessary disagreements as to what the unspecific term “sufficient time” means in operation.

The School District requests the Factfinder to recommend against inclusion of the proposed provision within the parties’ contract.

Item E
Travel Between Buildings
(Article VII, Section O)
Fact Finder’s Findings and Recommendations

The Association’s proposal asks for sufficient time for all teachers who travel between buildings will be given sufficient time to break down, travel and set-up classrooms between buildings. This has been shown to be reasonable, and will foster communication and cooperation between all parties. It should, therefore, be adopted.

Item G-1
Lead Mentor Release Time
(Article VIII, Section L)

SCHOOL DISTRICT’S PROPOSAL

Eliminate the three (3) hours Lead Teacher Mentor release time.

Current Language – Article VII, L

~~At the high school all teachers in their first three years in the classroom will be provided with a subject area mentor as described above. In addition, a lead mentor will be identified. The lead mentor of the building staff and will be assigned three (3) teaching hours off to attend to lead mentor duties. The mentor will also be provided a co-curricular stipend.~~

~~The mentoring program will provide:~~

- ~~• Observation of experienced teachers by mentees and mentors.~~
- ~~• Review and preparation for parent/teacher conferences, administrator evaluation and other major events in the new teacher's professional life. Observation of mentee by mentor feedback.~~
- ~~• Observation of mentee by mentor feedback.~~
- ~~• Support and help in lesson planning, establishing grading procedures, classroom management, time management, etc.~~
- ~~• Resources for mentee.~~
- ~~• Support and help to both subject matter mentors and all mentees.~~

~~Any documents developed by the mentors or mentees or collaboratively by both which indentifies the mentee or the mentee's work shall become the personal property of the mentee.~~

~~The mentor-mentee relationship shall be confidential and there will be no discussion of any kind between the mentors and the administration regarding mentees. Any concerns that this confidential relationship has been violated will relieve the mentee in question of participation in the lead mentor program and will be reviewed and resolved by the parties.~~

ASSOCIATION'S PROPOSAL

No change in current language.

SCHOOL DISTRICT'S STATED RATIONALE:

Presently, the parties' contract provides the High School Lead Teacher Mentor release time for the purpose of meeting with teacher-mentees and related recordkeeping. Neither the Elementary Lead Teacher Mentor nor the Elementary Lead Teacher Mentor are provided release time. All three Lead Mentors receive a \$2,850 annual stipend.

The School District contends that the High School Lead Teacher Mentor's release time is excessive and costly. Of the 1150 weekly instructional minutes required of high school teachers, the Lead Mentor works only 450, or 39% of the normal expectation. Essentially, the Lead Mentor actually teaches students for only one class three days a week and two classes two days a week. The Lead Mentor also receives the same daily preparation period provided to the high school teachers with full teaching schedules.

During the 2009-10 school year, the High School Lead Teacher Mentor was assigned 24 mentees and thus was allotted some **17.5 hours per mentee per year**. The High School Lead Mentor prepared a log of his 2009-10 contracts with the 24 mentees, a

review of which strongly suggests that the 17.5 hours provided per mentee were grossly excessive. At the Factfinding hearing, the Lead Mentor conceded as much.

The annual cost for the release time is in excess of \$50,000, in that the School District is required to employ a teacher to work approximately 60% of a full schedule and compensate accordingly.

No teacher has been, or will be, assigned the position of High School Lead Teacher Mentor without agreeing to same.

The School District is confident that it will secure the services of a High School Lead Teacher Mentor, as it has at both the middle school and elementary school levels by continuing to provide the \$2,850 annual stipend by discontinuing the 60% release time.

ASSOCIATION'S STATED RATIONALE:

The Association feels that the mentoring program is essential to the continuing success of the new and veteran teachers in the district. The District stated the program is a "good idea," and in fact, is supported by the current superintendent. As indicated in the testimony of Dr. Brandell, over the past 10 years, there have been numerous anecdotes from building and district administrators espousing the virtues of Mentoring program. The District stated that it was a "luxury" that the district should not provide but the Association maintains that the program is necessary in order for teachers to be successful in the richly diverse and highly competitive West Bloomfield School District.

In Summary:

- The Mentoring Program is strong and important element to the support the retention of the new teachers in the school district.
- The Program assists new teachers by providing analyzed achievement data across the curriculum in order to build a culture of data-driven decision-making which is essential with the new state requirements for evaluation.
- The Program also provides mentoring veteran teachers who are transferred into positions in which they are highly qualified but have not taught in the field for many years. This was especially crucial this year due to the large number of retirements and transfers in the district.

Item G-1
Lead Mentor Release Time
(Article VIII, Section L)
Fact Finder's Findings and Recommendations

The Association's has demonstrated that its rationale to continue this position within the Mentor Program unchanged is sound. It is especially crucial due to the large number of retirements and transfers in the district necessitating a higher than usual need for mentoring of new and recently reassigned teachers. The existing contract language should remain unchanged.

Item G-2
WBEA President's Release Time
Article XX, Section B

ASSOCIATION'S PROPOSAL

The Association proposes the following changes to the President's release time:

The Board shall provide, at no cost to the individual or the Association, half-time release of their teaching duties ~~time~~ to the President of the Association. ~~on the following basis:~~

- ~~(1) — Should the President be a middle school teacher, he/she will be released sixth hour. In addition the President will be assigned the last lunch period of the day.~~
- ~~(2) — Should the President be an elementary school teacher or a teacher in a non-classroom assignment, he/she will be released according to a mutually agreed upon arrangement to equal the time specified in items 1 or 2 of Section B of this Article.~~

~~It is understood that the district will make every effort to schedule the Association President's preparation period as 5th period in the middle school.~~

~~The parties agree to the following:~~

- ~~(1) — Should the President be a high school teacher, he/she will be released seventh (7th) period.~~
- ~~(2) — The district will assign the President 5th and 6th period as his/her preparation time. In addition the President will be assigned "C" or last lunch of the day.~~

~~(3) — The President will only be required to participate in the student enrichment activities during 5th period.~~

The Association President will be provided with a reserved parking space at his/her designated building to be selected by the Association President.

Nothing in this section shall prohibit the parties from developing an alternative form of released time as long as the parties mutually agree to the arrangement.

SCHOOL DISTRICT'S PROPOSAL

The District proposes to eliminate all Board paid President's release time.

ASSOCIATION'S STATED RATIONALE:

Joe Lupi, the past West Bloomfield Education Association (WBEA) President for thirty-five (35) years, testified to the need for the President to be released and outlined many of the activities undertaken by the President. He explained that the majority of the duties performed during the release time involved meetings with central office administrators and building principals in an attempt to settle mutual concerns in an expeditious manner. Many after school meetings, regardless of release time, are necessary due to the availability of others, and there are personal/family commitments. This makes it virtually impossible to complete all necessary tasks outside of school hours. Finally, Mr. Lupi stated that many activities, in fact, assisted the District and resulted in precluding disruption within the educational community.

Kim Pilarski, newly elected WBEA President, testified regarding the need to expand the release time from what it is presently to half-time release. She stated that she naturally, did not have the luxury of Mr. Lupis' thirty-five (35) years of experience and that this time is necessary in order for her to appropriately perform her duties. Further, it is not only the time involved but, also, the classroom responsibilities. Currently, she has eight (8) classes assigned (from the normal load of ten (10)) over the two (2) semesters of the school year. The proposal for half-time release would reduce that to five (5) classes over the course of the year which would significantly reduce the time necessary to appropriately perform all duties associated with classroom teaching.

It must also be noted that providing district paid president's release time is not at all unusual. Association Exhibit G-2 page 3 lists the surrounding school districts and what each respective president is provided.

In Summary:

- Release time is necessary to assist in solving concerns that arise at the lowest possible level and as quickly as possible.
- District provided release time is not at all unusual.
- The cost associated with the current release time equates to two-tenths (0.2) of a teacher's salary or approximately \$16,000. The change to half-time release would result in five-tenths (0.5) of a teacher's salary (\$40,000) or an additional cost of approximately \$24,000.

SCHOOL DISTRICT'S STATED RATIONALE:

- Presently, the contract provides the Association President with paid release time equal to one (1) class period per day. The School District also cooperates to schedule the Association President's work day so that he/she has no student contact/responsibilities beyond approximately 11:30 a.m. each day. The Association seeks to triple the release time from one class period to one-half day.
- The Association is also serviced by a full time UniServ Director employed by the Michigan Education Association and assigned to the West Bloomfield School District bargaining units.
- The School District asserts that the Association has not demonstrated a pressing need to triple the release time of its President, or that the time presently provided in conjunction with the availability of the UniServ Director is insufficient to adequately service the membership.
- Should the Factfinder nevertheless be of the opinion that an expansion of the Association President's release time is appropriate, the School District asserts that such should not be at its expense. The approximate cost of such an expansion is between \$35,000 - \$50,000 and should, in the opinion of the School District, be borne by those who will presumably directly benefit. The individual annual cost for the requested expanded release time would be between \$87 and \$124 per teacher, or \$0.48 and \$0.68 per working day. Alternatively, the cost of the expanded release time could be satisfied from the \$262,000 Association/MEA annual dues paid by the West Bloomfield teachers (\$650 x 403 teachers).

Item G-2
WBEA President's Release Time
(Article XX, Section B)
Fact Finder's Findings and Recommendations

Both sides have made proposals here. The Association has proposed to clarify the bases for release and increase the time allowed, and the District has proposed to eliminate all Board paid release time.

The Association has substantiated that Release time is necessary to assist in solving concerns that arise at the lowest possible level and as quickly as possible; that District provided release time is not at all unusual; and that the cost associated with the current release time is not prohibitive in relation to the services obtained in the furtherance of healthy labor relations. The language of the current collective bargaining agreement should be continued.

Item H
Filling of Vacant Positions
(Article VII, Sections A, B and C)

ASSOCIATION'S PROPOSAL

The Association proposes the following changes in the contract:

- A. It shall be the responsibility of the Human Resources Administrator to hire the most qualified person for all openings in accordance with the policies of the Board of Education.

Individual teachers may express in writing their preference of:

- (1) Grade level
- (2) Subject
- (3) Department assignment
- (4) Extra-curricular assignment
- (5) Administrative assignment

Such requests shall be filed with the Human Resources Administrator annually by March 1 and shall be kept on file for one (1) school year. Receipt of such requests will be acknowledged in writing provided the teacher solicits a receipt. These requests shall be given consideration as vacancies occur within the bargaining unit, in the building, or in the school system. **If the position is open and there is a request for the position by a current member of the teaching staff and the teacher is certified and highly qualified for the vacant position, the position must be granted to the most senior certified and highly qualified applicant.** Requests which were not acted upon must be

refilled by March 1 each year in order to remain active. A teacher whose request was not acted upon may ask for an explanation and shall be given one. Notices regarding personnel vacancies, both administrative and teaching, including driver training and summer school teaching, but excluding extra duty assignments, extra-curricular assignments and summer curriculum development, will be mailed to the Association President or his/her designee for distribution to all buildings within twelve (12) calendar days prior to the filling of such vacancies. Mail to the President of the Association at his/her last known address will be sufficient. The twelve (12) calendar day posting requirement prior to the filling of vacancies may be waived in emergency situations such as in the case of an increase in student population during fourth Friday count where teachers are needed immediately. Contact with the Association will be made before an emergency situation is declared.

- B. Any teacher may apply for vacancies within the school district. In filling vacancies within the teacher bargaining unit, the Board agrees to ~~give due weight to the professional background and attainments of all applicants and to other relevant factors. The Board declares its support of a policy of filling such vacancies with applicants, including applicants from within the bargaining unit, who in the judgment of the Board are best qualified to fill such vacancies. If the two (2) applicants have equal qualifications, the Board's decision shall be final and not subject to the grievance procedure.~~ **fill the vacant position with a current member of the teaching staff if applicants are available. The teacher must be certified and highly qualified for the vacant position. The position must be granted to the most senior certified and highly qualified applicant. If there are no internal applicants, the position will be posted and filled outside the bargaining unit.**

When bargaining unit vacancies arise (excluding those governed by the recall language in Article VIII), the district will:

- (1) Develop an internal application form, which will include:
 - a. Space (or directions for attachments) for applicants to set forth his/her qualifications
 - b. Where to return form
 - c. Reasons for desiring position
- (2) Interview each bargaining unit member who applies and meets the qualifications for the position as determined by ~~the administrator(s) who is interviewing~~ **certifications and qualifications of the position.**
- (3) Notify each applicant of the decision concerning assignments to the position.

- C. In filling vacancies in full-time positions, **the most senior** part-time teachers having the posted qualifications **and certifications**, for **the full-time** positions, and satisfactory evaluations, shall be given **the positions**. ~~preference in selection and part-time teachers will be guaranteed an interview for positions for which they are qualified. For the purpose of this section, “posted qualifications” may include, but are not limited to, certification and experience after certification.~~

Part-time teachers, less than five (5) days per week, shall, upon request, be placed at the head of the available substitutes for those days not scheduled.

SCHOOL DISTRICT’S PROPOSAL

No change in current language.

ASSOCIATION’S STATED RATIONALE:

It is the position of the Association that teachers should be awarded a sought after transfer according to their seniority. This is looked upon as a well deserved “perk” to teaching professionals that have chosen to spend their career in the District.

Naturally, it is understood that the teacher must be appropriately qualified in accordance with applicable laws, but beyond that, it is difficult to understand why a teacher would not be granted the transfer.

It must be assumed that the teacher has performed his/her duties satisfactorily as there are very specific evaluation procedures in place. Thus, the teacher should be placed in a sought after vacancy according to his/her service to the District.

SCHOOL DISTRICT’S STATED RATIONALE:

The Association proposes to dramatically change the teacher assignment language of the contract. Present language expressly recognizes that the School District is possessed of, and exercises, the plenary and discretionary authority to match teachers to teaching assignments. Article VIII.B of the parties’ contract reads, in relevant part, as follows:

The Board declares its support of a policy of filling such vacancies with applicants, including applicants from within the bargaining unit, who in the judgment of the Board are best qualified to fill such vacancies.

The School District has historically assigned teachers with the primary objective of providing students with the best possible educational experience.

Such decisions are based upon many more objective and subjective considerations than merely that of teacher certification and the minimum requirements of the No Child Left Behind law. Such include past performance, recent experience, individual accomplishments, composition of the existing teaching team, relationship with building administration, and the specific needs of both the building or team that may gain or lose particular staff members.

The Association's proposal permits seniority to control the assignment process and will thus clearly result in teachers, not administrators, deciding who will teach what and where. With all due respect, although the Association's proposal may well resonate within a bargaining unit of bus drivers or custodians, the individual and unique talents of teachers and the needs of students make such a concept particularly unsuited to the issue of teacher assignment.

The School District asserts that the existing contract language providing the School District with the authority to assign teachers is educationally sound and in the best interests of the students and parents it serves.

Item H
Filling of Vacant Positions
(Article VII, Sections A, B and C)
Fact Finder's Findings and Recommendations

The proofs in light of the arguments of the parties do not substantiate a need to alter the contract in this area, therefore, no change in the current contract language is recommended.

Item I
Notification of Administrative Meetings
(Article II, Sections B and D)

ASSOCIATION'S PROPOSAL

The Association proposes adding language to Section B:

- B. In the course of normal school business, including evaluations, a teacher should not request association representation when asked to meet with an administrator. However, when a teacher has reasonable grounds to believe that an interview with an administrator is an investigatory interview in

which the risk of discipline reasonably inheres, he/she may request that an Association Representative be present as a witness for the teacher. **The meeting will not take place until an Association Representative and the teacher is notified in advance of the purpose of the meeting.**

The Association proposes adding language to Section D:

- D. Any complaint lodged against a teacher, judged by a supervisor to have substance, shall be brought to the teacher's attention within ten (10) school days of receipt in a personal conference. Such complaints shall be put in writing along with name(s) of the complainant(s), and any administrative action ~~taken~~ **that might be contemplated prior to the start of the meeting. The Administrator will offer the teacher time to meet with their Association Representative privately after this information is shared. If the name of the complaint or the date of the alleged offense is not shared at this time, the meeting will be terminated.** The supervisor shall offer the teacher an opportunity to meet with the complainant. The teacher may submit a written notation or reply regarding any material, including complaints, and the same shall be attached to the file copy of the material in question. No complaints shall become a part of the evaluation or placed in any file unless it is serious in nature or regularly occurring.

SCHOOL DISTRICT'S PROPOSAL

The District proposes no changes to the current contract language.

ASSOCIATION'S STATED RATIONALE:

The Association's proposal has a two-fold purpose:

1. To assure that the member involved receives appropriate due process.
2. To rectify concerns at the lowest possible level in as expeditious a manner as possible.

It is the Association's position that to inform an individual of the purpose that his/her supervisor has requested a meeting is both a courtesy and a logical step. Ms. Cyndi Austin testified that this does not occur on a regular basis and should the member involved and she, as the member's advocate, been informed of the purpose for meetings, the outcome would have been more positive for all parties concerned and arrived at much sooner.

To assure that all involved are "on the same page," is simply good business practice and causes much less disruption. This proposal is intended as an additional tool for

problem solving and cannot be construed to be for the purpose of circumventing an issue.

SCHOOL DISTRICT'S STATED RATIONALE:

The Association seeks to place additional procedures and requirements upon the School District when administrators seek to meet with teachers in investigatory or disciplinary circumstances.

Current contract language provides an abundance of due process in this regard. The teachers Weingarten right to have a union representative present whenever he/she reasonably believes that disciplinary action may occur, is expressly provided for. Furthermore, the existing language goes beyond the law and requires that the School District bring any complaints to the teacher's attention within ten days of receipt and that such be put in writing. In this regard, the teacher is provided the right to meet face to face with the complainant.

To require the School District to provide advance notice of the range of possible consequences **prior** to conducting an investigatory interview is both odd and unworkable. Furthermore, within matters that involve possible criminal prosecution, requiring the School District to identify a specific purported victim at the onset could well interfere with law enforcement activity and place students in increased jeopardy.

The School District asserts that the existing contract language provides teachers with more than adequate information and procedural safeguards during investigations.

Item I
Notification of Administrative Meetings
(Article II, Sections B and D)
Fact Finder's Findings and Recommendations

The Weingarten rights of the teachers are adequately protected by the language currently in the contract. The proofs in light of the arguments of the parties do not substantiate a need to alter the contract in this area, therefore, no change in the current contract language is recommended.

Item J
Seniority

(Article VIII, Section C and Letter of Understanding, p 69)

ASSOCIATION'S PROPOSAL

The Association proposes changes to Section C:

C. Seniority

Seniority shall be determined by length of employment in the bargaining unit and shall begin on the first day of work. Seniority shall accrue while on leave except during the second year of a personal, professional or child care leave. Less than full-time teachers shall accrue seniority on the same basis as full-time teachers. Seniority will not accrue on a period of layoff. **Seniority will be frozen at the time of separation if a West Bloomfield Education Association (WBEA) member leaves for an administrative position within West Bloomfield.** Loss of seniority shall be effected by change in number of days worked. Seniority rights shall be severed by resignation, retirement or discharge.

These changes will also be reflected in the Letter of Understanding as follows:

The parties agree that during the period from September 1, ~~2008~~ **2010**, to August 31, ~~2010~~ **2012**, **any WBEA member leaving for an administrative position within West Bloomfield School District shall have their bargaining unit seniority frozen.** ~~all~~ Current West Bloomfield administrators (**who are former WBEA members**) holding valid certification and meeting highly qualified status who lose their administrative position will be placed in a bargaining unit position and credited with all **WBEA seniority that was frozen upon their separation as long as no WBEA member's position is reduced or eliminated causing a layoff or reduction in pay due to the placement.** ~~West Bloomfield School District seniority the seniority that they had as a West Bloomfield bargaining unit member as long as:~~

- ~~• No WBEA member's position is reduced or eliminated causing a layoff or reduction in pay due to the placement, and~~
- ~~• The former administrator pays the WBEA the full current dues (national, state and local) for every year of seniority earned as an administrator.~~

SCHOOL DISTRICT'S PROPOSAL

The District proposes no changes to the current contract language in Section C or Letter of Understanding on Administrative Seniority.

ASSOCIATION'S STATED RATIONALE:

Currently the language is confusing. It states that those "who lose their administrative position will be placed in a bargaining unit position and credited with West Bloomfield School District seniority, the seniority that they had as a West Bloomfield bargaining unit member . . ."

The above phrase underlined for emphasis, is contradictory. Is the individual credited with "West Bloomfield School District seniority" or "the seniority they had as a West Bloomfield bargaining unit member?"

It is this confusion and apparent contradiction that lead the Association to make its proposal.

The Association's Proposal:

1. Assures that an administrator who was previously a bargaining unit member that returns to the bargaining unit will return with the seniority that person had at the time he/she became an administrator.
2. Assures that an administrator who was not previously a bargaining unit member enters the bargaining unit with no seniority accrual. (As regards to placement, it is understood that the tenure law may have some effect and that that law would be overriding.)
3. Discontinues the language requiring that the individual pay full current WBEA, MEA, and NEA dues for every year of seniority earned as an administrator.

It is the Association's position that this language change is necessary to assure a clear understanding of the intent.

SCHOOL DISTRICT'S STATED RATIONALE:

The parties' current contract and related Letter of Understanding expressly grant to administrators who enter the teacher ranks WBEA bargaining unit seniority equal to all prior years worked both as a West Bloomfield teacher and a West Bloomfield administrator. The parties specifically and knowingly agreed to this unitary

district wide seniority method within a May 20, 2008 Letter of Understanding (Contract, p 69).

The Association's proposal would completely disrupt this recently agreed upon method of calculating bargaining unit seniority in two very important particulars, to wit:

1. WBEA bargaining unit members who accept promotions to administrative positions within the School District would no longer continue to accumulate WBEA seniority while serving in administrative positions.
2. Administrators who did not formerly work as West Bloomfield teachers would be stripped of WBEA bargaining unit seniority and prohibited from acquiring such while employed as administrators.

The current method of crediting WBEA bargaining unit seniority serves as an important incentive and recruiting tool to the hiring of administrators, both from within and without the WBEA teacher ranks. In this regard, the current language clearly benefits WBEA members in particular who may wish to accept an administrative position on a personal trial basis.

Furthermore, the current language prohibits administrators from using seniority acquired outside the WBEA bargaining unit if such exercise would result in the contemporaneous layoff or reduced assignment of a bargaining unit teacher. The School District asserts that the parties' recent Letter of Understanding constitutes a most acceptable balancing of the legitimate interests of both teachers and administrators and, accordingly, urges the Factfinder to recommend that the existing seniority agreement be continued intact.

Item J
Seniority

(Article VIII, Section C and Letter of Understanding page 69)
Fact Finder's Findings and Recommendations

The first sentence of Article VIII, Section C of the contract, "Seniority shall be determined by the length of employment in the bargaining unit ...," makes the intent clear that bargaining unit seniority is dependent upon bargaining unit service.

The Letter of Understanding allows District Administrators meeting certain non seniority related criteria to upon release from administration be placed in vacant bargaining unit positions – and requires the administrator (now teacher) to pay dues for bargaining unit (teacher) seniority earned as an administrator (which according to the above quoted first sentence is none.

The Association is correct in its position that the contract provisions regarding how seniority is earned and the Letter of Understanding are incongruent and/or ambiguous.

The District complains that if the Association's proposal is adopted, administrators would be hard to recruit because they would not receive WBEA bargaining unit seniority while serving as administrators - not serving in the WBEA bargaining unit.

It is not unreasonable, and it is consistent with the general intent of Article VIII of the contract that bargaining unit seniority be earned only for service within the bargaining unit. The Association's proposal does clarify the contract and Letter of Understanding language to award bargaining unit seniority only for bargaining unit work, and it would no longer require back dues for administrators transferring into the bargaining unit. It does not preclude administrators who otherwise meet the qualifying criteria from being appointed to vacant teaching bargaining unit positions. It is recommended that the Association proposal be adopted.

Item K
Curriculum Council
(Article XIII)

SCHOOL DISTRICT'S PROPOSAL

The District proposes changes to the Article:

- A. The parties mutually recognize that the school district has important needs to improve and evaluate its instructional program and, furthermore, that teachers must play a necessary and important role in shaping and developing that curriculum.
- ~~B. Curriculum council will provide teachers with direct input including, but not limited to, the following areas:
 - ~~(1) Initiating and/or advising curriculum proposals;~~
 - ~~(1) Establishing curriculum committees;~~
 - ~~(3) Recommend approval or non-approval of summer workshops, innovative projects, textbooks and programs.~~~~
- ~~C. Teacher members of the curriculum council shall be elected by the teachers in each building. There shall be one representative from each elementary and middle school and two representatives from the high school. Further a~~

~~representative from special education shall be elected by his/her peers. A WBEA representative will be appointed by the WBEA president.~~

D. Participation on any committee by any teacher shall be voluntary.

~~E. Compensation for curriculum work done by teachers after the regular school day shall be accomplished by:~~

~~(1) Paying the teacher an hourly rate established by Article X, Section H.~~

~~(2) Initiating an individual supplementary contract at a dollar amount determined by Article X, Section H.~~

~~(3) Any combination of release time, hourly rate and/or individual supplementary contract.~~

~~F. Curriculum Council shall meet regularly throughout the school year. The Curriculum Council shall consist of teachers, administrators, and a board member. Curriculum Council representation will be as follows:~~

- ~~• Assistant Superintendent for Instruction (co-chairperson),~~
- ~~• Teachers (3 co-chairpersons) one from each level (elementary, middle school and high school)~~
- ~~• Director of Curriculum~~
- ~~• Administrator from each level~~
- ~~• Teacher from each building (2 representatives from WBHS and 1 from Laker Academy) a special education teacher, and a pre-K teacher~~
- ~~• Board Member.~~

~~The Council will establish meeting dates and operating procedures.~~

ASSOCIATION'S PROPOSAL

The Association proposes the following change to Section A only:
Proposed Language:

- A. The parties mutually recognize that the school district has important needs to improve and evaluate its instructional program and, furthermore, that teachers must play a necessary and important role in shaping and developing that curriculum. **No new course or curriculum will be established or implemented within any of the buildings in the District without prior vote and consent of the full curriculum council members.**

SCHOOL DISTRICT'S STATED RATIONALE:

The issue of whether the curriculum council should continue whatsoever has apparently been resolved by the parties. At the Factfinding hearing, the Association clarified that the prior representations of its President, that were interpreted by the School District to constitute the Association's desire to disband the curriculum council altogether, were not so intended. Given this clarification, the School District has no objection to continuing the existing language of Article XIII calling for a curriculum council.

However, the School District does take great exception to the Association's proposal to add wording to Article XIII that would clearly prohibit the School District from creating or implementing any new course of curriculum without the prior approval and vote of a majority of the entire curriculum council. The curriculum council is composed of 16 bargaining unit teachers and 6 representatives of the School District.

The curriculum council was intended to, and has, served as an **advisory** body to central administration and the Board of Education.

The School District asserts that the Association's proposal is most ill-advised and would result in the Board of Education's virtual abdication of its legal and fiduciary duty to establish and implement the instructional program.

The School District requests that the Factfinder recommend against the Association's proposed new contract language.

ASSOCIATION'S STATED RATIONALE:

It was apparent at the Fact Finding Hearings that there had been some miscommunication on the part of both parties regarding the District's Curriculum Council. The Association believes that through discussion at the hearings that both parties wish the Curriculum Council to continue to exist. Thus, it believes that the only issue remaining is the Association's proposal to add: "No new course or curriculum will be established or implemented within any of the buildings in the District without prior vote and consent of the full curriculum council members."

Through testimony from both Mr. Lupi and Ms. Pilarski, it was learned that perceived attempts to circumvent the curriculum council process by labeling a program a "pilot" were what lend to the Association's proposal. The District understood the proposal as an attempt to alter the current operating procedures of the curriculum council. Quite honestly, the Association can understand the District's interpretation of this proposed new language especially as it relates to

“without prior vote or consent.” This proposal was not intended to alter the curriculum council’s procedures.


The Association believes that altering its proposal to the following would serve both parties’ needs.

“No new course or curriculum will be established or implemented within the District without first being submitted to the curriculum council for its review.”

Item K
Curriculum Council
(Article XIII)
Fact Finder’s Findings and Recommendations

The issue of whether the Curriculum Council should continue has been resolved by the parties in favor of continuance. The curriculum council was intended to, and has, served as an **advisory** body to central administration and the District, and in that capacity serves a valuable purpose. The Association asserts that some programs labeled as “pilot” programs have been implemented without referral to and, therefore, in circumvention of the Curriculum Council. The matter may well be resolved by the addition of language to the end of the existing paragraph A of Article XIII that provides that all new courses or curricula must be submitted to the curriculum council for its review – without any provision requiring votes or consent before the program may be implemented. As the positions of the parties were ameliorated by their closing arguments, and the resolution suggested above is what I cursorily perceive to be a possible solution, it is my recommendation that the language of the existing contract remain unchanged unless the parties agree to do otherwise.

Submitted December 22, 2010



Michael P. Long
Fact Finder