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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

In the Matter of:

BOARD OF EDUCATION SCHOOL
DISTRICT OF THE CITY OF HARPER
WOODS

-and-

MERC Fact Finding
Case No. D09 C-0280

HARPER WOODS EDUCATION
ASSOCIATION/MEA-NEA LOCAL 1

**FACT FINDER'S FINDINGS OF FACT,
REPORT AND RECOMMENDATIONS**
(Last Hearing April 12, 2011; Date of Report May 12, 2011)¹

APPEARANCES:

FOR SCHOOL DISTRICT OF THE CITY
OF HARPER WOODS:

John L. Gierak, Attorney
Jeffrey Steele, Attorney
Todd Biederwolf, Superintendent
Michelle Schurman, Business Manager

FOR HARPER WOODS EDUCATION
ASSOCIATION/MEA-NEA LOCAL 1:

Daniel J. Hoekenga, Executive Director
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Patricia Schore, HWEA President
Ruth Beier, MEA Economist
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Larry Banek, MESSA Mgr. Field Services

Prologue

As Robert Burns, the great poet of Scotland, once wrote, "Now is the day, and now's the hour."² Or, to put it another way, as Paul is reported to have said to the Corinthians, "Now is the

¹ Following the last fact finding hearing on April 12, 2011, the Association requested a delay in issuing the Fact Finder's Report so as to permit additional negotiations. This request was honored by the Fact Finder.

² Scots Wha Hae (1794).

accepted time.”³

The last Master Agreement between the Board of Education School District of the City of Harper Woods, as extended, continued through August 2009. In an attempt to reach a successor Agreement, beginning as early as April 21, 2009 if not before, there were at least 26 bargaining sessions of one type or another, including mediation, between the parties until the Association filed a petition for fact finding on December 20, 2010. The petition indicated that there had been 12 mediation sessions prior to filing the petition.

The Association, on July 12, 2010, had filed an unfair labor practice with the Michigan Employment Relations Commission alleging that the Board on Tuesday, June 29, 2010:

“ ... unilaterally imposed a health insurance cap on the Association members and eliminated the cost of living adjustment (COLA) provisions set forth in Article XXIII of the parties’ Collective Bargaining Agreement (copy of the Board’s resolution to partially implement Board’s bargaining proposal to contain costs is attached hereto as Exhibit 1). Specifically, the Board placed an annualized basis cap on its contribution to the teachers’ health insurance at \$13,720 per teacher receiving medical insurance with teachers paying the cost of their insurance premium above the cap through payroll deduction.”

The hearing on this unfair labor practice has been adjourned to Tuesday, June 21, 2011, and Wednesday, June 22, 2011.

The issue is not whether the Board or the Association will prevail on the merits on the unfair labor practice. The Fact Finder takes no position on the merits of the unfair labor practice. There will be no winners regardless of whoever prevails in the unfair labor practice. If the Association prevails, financially the District is doomed and could well be a candidate for the imposing of Public Act 4 of Public Acts of 2011 – the Emergency Financial Manager and what

³ The Second Epistle of Paul the Apostle to the Corinthians 6:2.

all of that entails, including a potential dismantling the gains obtained by the teachers over the years through good faith collective bargaining.

If the Board prevails, the Board will have spent literally thousands of dollars unnecessarily in legal fees for, in the judgment of this Fact Finder, this is a matter that could end up in the courts all the way up to the Michigan Supreme Court because of the potential impact on collective bargaining in Michigan. This Fact Finder, who is familiar with the economics of practicing law, estimates that the fees to the Board could run, if this matter was litigated as this Fact Finder predicts, upwards to \$100,000. This is money. So even if the Board prevails, the Board will have spent substantial sums that the Board does not have to spend.

It is for these reasons that this is not the usual fact finding scenario faced by a fact finder. The problem here is to, so to speak, “right the ship”, namely, to eliminate the potential litigation and potential liability and cost of litigation so that both the Association and the Board can go about their joint goals of having a financially viable school district that has and will continue to have devoted teachers educating the children of Harper Woods.

The time is now to end the unfair labor practice litigation. It takes two to successfully complete negotiations for a collective bargaining agreement. It is imperative that this be done and that it be done now. June is too late to do so because the train to the point of no return by that time will have left the station. Hopefully, this Fact Finding Report will give guidance to both parties to resolve their dispute, including, as part of resolution, resolving the litigation.

As will be explained in this Report, the financial situation at Harper Woods is fragile, to say the least. The Governor of the State is pressing for a rollback of per-pupil State aid. Harper Woods is losing students. Harper Woods depends on State aid for 76% of its revenue. Health

care insurance costs are continuing to rise. State mandated pension contributions continue to escalate. Real estate values in Harper Woods have fallen. This combination highlights the fragile nature of the District's finances that cannot be ignored by either party.

This Fact Finder, in setting forth the details of the Recommendations and the basis for same, emphasizes that this is not the ordinary fact finding. This Fact Finder has approached this fact finding, including meeting with the Board by attempting to pursue the art of the possible under these circumstances. The presence of the litigation, to repeat, and its disastrous consequences, regardless of the result on the merits, requires an unusual approach in fact finding to encourage the parties to mutually agree to a realistic contract.

This is not the time to stand on principle or protocol, but the time to deal with the practicalities of the situation.

Time is of the essence. Both the Board and the Association have run out of time. In the view of the Fact Finder, unless an agreement is mutually reached within the next two weeks, disaster for both the teachers and the District will follow. Both parties, namely, the Board and the Association, must in the view of the Fact Finder recognize this and hopefully "work it out" and "do it fast."

Neither side will realize all their expectations and goals as a result of this Report and the following Recommendations. But the Recommendations will give "breathing room", allowing the new administration in the District to work with the Board and the Association. And, hopefully, Lansing will recognize that the education of our young people is of paramount importance and will not under-fund the districts that need financial help, including Harper Woods.

Harper Woods Public Schools Profile

Harper Woods School District consists of two elementary school, a middle school and a high school. The middle school and high school are housed in the same school building which is a recently built modern structure, creating a solid educational environment. The Fact Finder visited the building and was indeed impressed with the decorum in the building, the upkeep of the building and the general atmosphere.

As of September 2010, there are 1,283 enrolled students in the District's K-12 program, down from 1,319 in September 2009, a year earlier, for a difference of 32 students. As the District relies on approximately 76% of its revenue from State foundation grants and other State sources, based upon the estimated State foundation grant for Harper Woods this loss of 32 students meant a loss of approximately over \$250,000 in revenue in 2010-2011.

The District has 68 teachers represented by MEA-NEA Local 1 Harper Woods Education Association. There are 13 steps in the salary grid. Sixteen teachers are at the BA level, three of whom are at the top of the scale, the 11th step. Twenty-two teachers are at the MA level, 11 of whom are at the top 11th step. Nine teachers are at the MA+15 scale, all of whom are at the 11th step. Eleven teachers are at the MA+30 scale, eight of whom are at the 11th step. Ten are at the Educational Specialist, all of whom are at the 11th step. Thirty-eight, or 55% of the teachers, with Master's Degrees or more, are at the 11th step. Twenty-six percent are at the 11th step at the MA+30, or Educational Specialists. These figures translate to the fact that a large portion of the teachers in the Harper Woods School District are not only at the top of the scale, but a substantial number are receiving the top pay provided in the contract.

At MA+30 in the 2008-2009 contract, Harper Woods teachers at the MA+30 maximum

salary was \$87, 057 which was the fourth highest of 17 districts compared in Macomb County – only topped by Chippewa Valley, a growing district, and Utica and Warren Consolidated, much larger districts. Harper Woods similarly compares favorably on the other tracks.

The Criteria

In formulating a fact finding recommendation in a given dispute, a fact finder relies on certain criteria. As applied to the Harper Woods School District, the dominant criteria would be the District’s financial ability to meet its financial obligations. In addition, there is the comparable criteria which as to Harper Woods takes several forms. There are the external comparables, namely, the comparables with the compensation and benefits of teachers in nearby school districts, the comparables with other employees within the District and other comparable factors as to other school districts which might impact on the situation in Harper Woods. Basically, in the situation the Fact Finder now faces in Harper Woods, the comparable criteria serves as a check after reviewing the District’s financial ability.

Recognizing that the fact finding process as provided by the legislature is intended to be a substitute for the inability of a teachers union to engage in a strike, an appropriate criteria would be the so-called “strike” criteria, namely, if there have been strikes of notoriety by entities in the area, the results of these strikes may serve as a guide in considering resolution of the dispute at hand.

Finally, there is the “art of the possible”, namely, that collective bargaining is the result of compromise; that a recommendation should be made with compromise in mind in order to assist the parties in reaching an agreement because, ultimately, it is the art of the possible that prevails in any labor dispute if the parties intend to go forward.

It is these criteria that have guided this Fact Finder in making the recommendations that will follow this Report.

The Function of the Fact Finder
(This Fact Finder's Viewpoint)

There are differences in opinions as to the function of a fact finder and the method of operating. This Fact Finder believes that a fact finder should attempt to assist the parties in reaching an amicable agreement, considering the entire circumstances rather than engage in an esoteric report that may overlook the ultimate purpose of fact finding.

With this in mind, recognizing the goals of the Association and the Board, the Fact Finder first arrived at Harper Woods on February 1, 2011, after being notified by the Michigan Employment Relations Commission of his appointment as Fact Finder on January 31, 2011. The Fact Finder engaged in discussions with both representatives of the Association and the Board. The Fact Finder met with the Board as a whole to discuss the situation. The purpose in doing so was to attempt to narrow the issues and by ascertaining the underlying concerns of the parties in an attempt to provide recommendations that could hopefully lead to a mutually ratified collective bargaining agreement.

The Fact Finder discovered that the teachers were resisting any wage cuts and wished to be relieved of the \$13,700 cap on the cost of health insurance which had resulted in most teachers in the District as of a report generated on Friday, April 1, 2011, contributing thus far \$3,022.10 or more.

The Board was concerned with the fact that five years previously it had a fund balance of \$2,166,439; that the current fund balance is \$290,829, or 2.4% of expenditures; that this meant that the District has spent \$1,875,670 of its fund balance in the last five years; that without the

\$13,700 benefit cap and not paying any alleged COLA payments due, which had been demanded by the Association's representative, the Board would have been in deficit financing by the 2010-2011 school year; that the situation was exacerbated by the loss of student enrollment affecting the State foundation allowance, a proposed decrease of the State foundation allowance, increasing health care costs and mandated increased pension costs.

Recognizing these competing interests, the Fact Finder wrote the representatives of the parties on March 18, 2011 as follows, designed as an order to show cause setting forth potential ideas that may be utilized as guidelines to resolving the parties' dispute consistent with their special interests, concerns and goals:

Re: Harper Woods Schools -and- MEA-NEA Local 1
Fact Finding MERC Case No. D09 C-0280

Gentlemen:

This will confirm our telephone conversation of Thursday, March 17, 2011 wherein it was agreed that we would have a fact finding hearing in the above matter on Tuesday, April 12, 2011 commencing at 8:00 a.m. at the Community Room at the Harper Woods High School. As I indicated, this letter will serve as an order to show cause why I should not issue a fact finding report that provides as follows:

1. Duration: 3 years commencing July 1, 2009 (or actual date that previous contract expired) and ending June 30, 2012.
2. Wages:
3 years, 0% increases, and 1 freeze
2 new bottom steps
1 new step by splitting Steps 10 and 11

2009-10	0%	
2010-11	0%	Establish new 3 steps
2011-12	0%	Freeze salaries at 2010-11 (there will be no step increases in 2011-12)
3. Benefits:

- A. 2010-11 Change MESSA Choices II to \$500/\$1,000, \$20 OV, RX Saver Do ASAP
 - B. Imposed contribution will stop once both parties ratify the Agreement.
 - C. The imposed contributions will not be recovered by the teachers and the unfair labor practices concerning same, as well as any litigation, will be dropped.
 - D. Any plan suggested by the Fact Finder at the hearing to address further modification of health care plan to contain costs.
- 4. Article XXII – Retirement contribution shift (language deleted).
 - 5. Article XIII – COLA – The Agreement will provide that the COLA provisions in previous contracts or in current contract will not be enforced and will be abated.
 - 6. Direct Deposit
 - 7. Sick day language change
 - A. Cap at 125 days
 - B. Pay only to employees that retire
 - C. Grandfather members at their current sick day accumulation at the time of ratification.
 - 8. Calendar 178-185
 - 9. Middle School 6 period day, High School – phase out trimester
 - 10. Class size language for overage:
 - A. \$4 per day, per student
 - B. MS-HS \$1 per class hour
 - C. 30 day grace period. If student remains in the class following that 30 day grace period, the teacher will be paid retroactively.
 - D. This 30 day grace period is for the beginning of the school year.
 - 11. LOU – For 2011-12 only for MS and Elementary school teachers will provide an additional 2.15 hours at \$18 per hour for 2011-12 if their grade level or subject is determined to need to participate on the enrichment

program. A committee of teachers and administration will work on the enrichment program. If additional teachers are required, they will be selected based on qualifications and seniority.

I am concerned about increasing health care costs that may become obvious by the time of the end of the first semester of 2011-12. I would like to discuss this. In this connection, I would expect the District to advise me when the certified audit for 2010-2011 would be available. These audits are usually available in November 2011. It may be that the discussion concerning increased pressure on the District's finances that might be caused by increased health care costs could be tied in to the certified audit and a suggestion how to address this possibility. This can be discussed at the fact finding hearing. I do expect the District to produce its last certified audit and provide me information of when the certified audit for 2010-2011 will be available.

Any exhibits are to be exchanged by the parties by April 5, 2011.

I look forward to working with you. My preference is oral arguments so that I can get the report out within a week.

Thus, the representatives of the parties were invited and did present in a hearing between themselves over 150 exhibits addressing the so-called order to show cause and urging their respective viewpoints on the issues at hand.

As a result of the presentation of the exhibits and the arguments made, the Fact Finder has applied the criteria discussed above.

The Fragile (Precarious) State of the District's Finances

Eighteen percent of the District's revenue comes from local sources, namely, property taxes. Six percent comes from Federal revenues. Seventy-six percent comes from State revenues, primarily foundation grants based upon student count. By any definition, the financial survival of the District hinges on the State revenue it receives.

In comparing the estimated foundation allowance between fiscal year 2010-2011 and fiscal year 2011-2012 for Harper Woods, the following is revealed:

ESTIMATED FOUNDATION ALLOWANCE

Per Pupil	FY 2010-11	FY 2011-12
State Foundation Allowance	\$8,173	\$8,173
11d LEA pupil Deduct	(170)	
22b Discretionary Pmt adj	(116)	
Rebase of Foundation Allowance		(470)
HB 6212	<u>0</u>	<u>316</u>
State Foundation per Pupil	\$7,887	\$8,019
ARRA - Stabilization funds	116	0
Education Jobs Fund	110	0
152a Adair V. State of Michigan	16	16
Maintenance of Effort - Prior Year Adj.	<u>49</u>	<u>0</u>
Per Pupil Funding Base	\$8,178	\$8,035

What the facts reveal is that Governor Snyder had proposed reducing the State foundation allowance for school districts, including Harper Woods, for the 2011-2012 fiscal year by \$470. Fortunately, as a result of HB6212, the District is one of approximately 21 districts that will have certain funds restored which per pupil in the District will amount to \$316 and will offset to some extent the Governor's proposed reduction of the base State foundation allowance. However, for 2011-2012, stabilization funds, education job funds and maintenance of effort funds will not be available so that the per pupil funding base for 2011-2012 is estimated to be \$8,035, which represents \$143 less per student than available in 2010-2011.

There are expenses beyond the District's control while faced with shrinking revenues. The Michigan Public School Employees Retirement System (MPSERS) required in 2009-2010 that District contribute 16.94% of payroll toward pensions. In 2010-2011, this jumped to 20.66%. It is projected that in 2011-2012 the projection will be 24.46%.

Five years ago the District had a fund balance of \$2,166,439. In the past five years, the

District has spent more than it has received in revenue to the tune of \$1,875,607. The District's fund balance, as confirmed by an audit statement in 2009-2010 was \$600,315. At one point, the amended 2010-2011 budget indicated a general fund balance of negative \$192,226.

There is no question, with expenses exceeding revenue in the last five years and a rapid depletion of the fund balance that the District's finances are fragile, to say the least. Standard & Poor's Investment Rating Service on December 22, 2010 downgraded Harper Woods School District's bond rating from an "A-" to "BBB+". The rationale given for the downgrade was "Standard & Poor's Rating Services lowered its issuer credit rating (ICR) on Harper Woods School District, Mich.'s bonds to "BBB+" from "A-" based on our view of the District's long pattern of imbalance operations that has led to near completion of reserves. ..."

The order to show cause was based on a three year contract ending August 31, 2012. Based upon the figures presented to the Fact Finder, in 2010-2011, applying the order to show cause, the District will have a fund balance of \$280,659. By the end of the 2011-2012 school year, applying the order to show cause, the fund balance will be a negative \$724,341. The projected deficit of \$720,000 for the 2011-2012 school year would mean that structurally the deficit would be approximately 6% of the revenue which presents a serious financial situation.

In the 2009-2010 school year, Harper Woods had 1,319 students. In the 2010-2011 school year, this figure dropped to 1,283, or a drop of 32 students. Based upon a foundation allowance of \$8,178, including all State funds, this meant that the District, from State resources in 2010-2011, received approximately \$261,696 less from the State than in 2009-2010.

The projected enrollment for the 2011-2012 school year is 1,255 students, or another drop of 28 students. Combined with the drop of 32 in 2010-2011, by the 2011-2012 school year the

total drop in the number of students will be 60 as projected. The reduced per pupil funding base for 2011-2012, as noted, is \$8,035. Thus, in 2010-2011, as contrasted with the funds received from the State in 2009-2010, the District will receive approximately \$482,000 less monies. The reducing student enrollment in the District and the reduced per pupil funding base is, so to speak, a “double whammy” to the District’s finances.

The Comparable Criteria

Though the external comparable figures with other school districts in Local 1 presented by the Association and the District are not in sync with each other, the respective figures presented indicate quite clearly that in terms of other Local 1 school districts, Harper Woods teachers are well paid, being among the top paid teachers among the compared groups in the Local. Even if there are no across-the-board pay increases and a step freeze for the third year in the three years of the recommended contract, the teachers will continue to be reasonably paid in comparison with other Local 1 districts, considering the District’s financial resources. For example, at the MA+30 maximum, even without any across-the-board wage increase for three years, the comparables indicate that Harper Woods at \$87,057 is the fourth highest paid teacher scale of 17 Local 1 districts compared.

The collective bargaining agreements negotiated between the District and AFSCME covering the period 2009-2010, 2010-2011 and 2011-2012 represent a 4% reduction in the pay scale for secretaries as well as a 4% reduction in the pay scale for bus drivers and custodians, with a two tier system for the bus drivers and custodians. During this same period, the secondary, assistant and middle school principal, the elementary principal and the secondary principal have taken pay cuts, depending on their position on the salary steps. The

Superintendent and Business Manager have a pay freeze.

Thus, the comparables certainly both externally and internally would support the order to show cause proposal of no across-the-board increases for three years and a freeze on step increases for the third year.

References to other comparable statistics such as the fund balances, foundation allowances, ratio of administrators to expenses and similar references, though interesting, are not particularly helpful in gauging the vitality of the concepts set forth in the order to show cause to attempt to resolve the dispute between the parties. The issue here is the circumstances involving Harper Woods. When considering the circumstances of Harper Woods, this Fact Finder has considered the internal and external comparables which he deems are relevant to determine whether the Recommendations are reasonable and considered the totality of the circumstances, including the concerns that the teachers have as to gains they have obtained through a long series of collective bargaining agreements and the concerns that the Board has as to the fragile financial state of the District.

The Strike Criteria

In recent times in Detroit, a major non-profit organization, the Detroit Symphony Orchestra, underwent a six month strike. This strike involved skilled musicians. As reported, the result of this strike is that the musicians took an approximately 23% pay cut plus changes in benefits because of the Orchestra's lack of financial resources.

In evaluating the situation in the Harper Woods School District, the Detroit Symphony strike has some relevance for it illustrates that in these recessionary times the lack of resources can cause concessions and moderation in contract expectations.

It is the lack of financial resources that is the core problem in Harper Woods and just cannot be ignored.

The Art of the Possible

As already noted, the art of the possible criteria is a recognition by a fact finder that a negotiated collective bargaining agreement is a result of compromises between the parties; that in a situation such as that faced in Harper Woods, the recommendation must be based on the reality of the circumstances from the viewpoint of both the teachers and the Board; that in the end it is what is possible in reconciling these viewpoints that can lead to a collective bargaining agreement. It is this “art of the possible” criteria, along with the District’s financial situation and the looming litigation in the background, that has guided this Fact Finder in first proposing the order to show cause and then, after the hearing on the order, formulating the Recommendations that will follow.

The District’s Finances Revisited

In formulating the Recommendations herein, starting with the concepts set forth in the order to show cause, the Fact Finder again considers the District’s finances, recognizing that these finances are indeed precarious or fragile. The order to show cause, based upon the District’s analysis, including the current anticipated 2011-2012 per pupil funding base of \$8,035, would result at the end of the 2011-2012 school year in a deficit of about \$772,341. This estimate is based upon a reduction in the proposed State foundation allowance of \$470 which is offset, at least for the fiscal year 2011-2012, with HB6212 of \$316.

But this cutback is not necessarily a given. As the late Will Rogers once said, “All I know is what I read in the newspapers.” Of course, this is a simplification. And one should be careful

as to what is gleaned from the newspapers or the electronic media. But it goes without saying that as the State budget is taking shape there is mounting pressure to avoid cuts in State aid in the K-12 program.

On Sunday, May 8, 2011, Chris Christoff, Free Press Lansing Bureau Chief, at page 4A under the caption “Wrapping up state budget a tough task – Some want to wait for higher revenue estimate”, wrote in part:

* * *

A compromise tax reform plan that would tax pensions of those younger than 67 hasn't found enough support from Senate Republicans, some of whom oppose any increase in pension taxes. Republicans hold a 26-12 majority and need 20 votes to pass the tax plan; Democrats are certain to give them none.

Some Republicans say they'll seek further budget cuts.

Or wait until May 16, when state economists are expected to announce there'll be as much as \$500million more in state revenue than previously thought.

On that, they have company.

“Why not wait 10 days, what's the rush” before the revenue-estimating conference, lamented JoAnn Andrees, superintendent of West Bloomfield Schools.

She said there is plenty of money available to avoid the school aid cuts that the Legislature and Snyder have put forth. And like many educators, she is especially upset that the House and Snyder budget plans take about \$900 million from the school aid fund to distribute to universities and community colleges, rather than distributing their share from the state general fund.

* * *

House Speaker Jase Bolger, R-Marshall, said the vote to cut school aid was painful but necessary.

“Unfortunately, for too long in Lansing, people previously were not willing to make these difficult decisions to make state government live within its means,” Bolger said.

But the will to cut aid to schools may yet slam into Snyder's will to tax pensions.

Democrats and others critical of Snyder's tax reform alternately claim that cuts to schools and a new tax on pensions would unfairly pay for a \$1.7-billion cut in business taxes. There will be tremendous pressure to use additional revenue to reduce those cuts to schools, or to kill or reduce the pension tax plan.

In March, state tax revenues were \$265 million above expectations in January, largely because of a boost in auto industry production, said David Zin, economist for the Senate Fiscal Agency.

Zin said it's reasonable to expect revenues for next year will be \$350 million to \$500 million higher than was predicted when lawmakers crafted their budget plans.

* * *

Of course, this is a Bureau Chief writing as to what he detected in his interviews. Bureau Chief Christoff's article, along with discussions on the radio and television suggest that there is pressure on the legislature to reconsider the proposed cut to K-12 funding. Based upon this pressure, the proposed cuts may be moderated, meaning that the State aid allowance for Harper Woods cut may not be as great as estimated. For example, if the cut is \$100 less than anticipated, even based on the projected 1,255 students, this would be an increase of \$125,000 in revenue to Harper Woods. If the cuts are even less, then of course, the revenue goes up.

The Fact Finder recognizes these comments are based upon pure speculation. It is even speculation of just what the student count may be.

The point, however, is that the final amount of State aid is in flux, suggesting to this Fact Finder that based upon the order to show cause with the modifications recommended herein should be a basis for settling the contract and permit the parties to again review the situation in negotiations for a successor contract because, presumably, the revenue issue will have clarified itself with more certainty by the end of the third year (2011-2012) of the contract. In other

words, it is time to take a chance for the proposed deficit may not be as great as is expected and might not even exist or may even be able to be controlled by a sustained effort to retain Harper Woods students and possible other economic savings.

The Order to Show Cause Revisited

General Comment

Some teachers have had as high as \$3,723.54 deducted from their paycheck based upon the imposed \$13,750 cap in September 2010 on health care insurance. The Association in its Exhibit 14 suggested that the “total deducted from bargaining unit members employed from the beginning of 2010-2011 school year for health benefits ...” equals \$184,890.09. This is a substantial amount in the District where others have not made similar contributions for health care insurance. However, administrators and non-instructional employees have taken wage reductions. This Fact Finder is also aware that there have been fact finding reports recommending wage reductions.

The problem in Harper Woods is that the deductions affected 58 out of 68 teachers; that the deductions in some cases were disproportionate to the teacher’s individual plan. In other words, the Fact Finder is led to believe that single subscribers in many cases were having deductions in amounts similar to those having family plans. And the ultimate amounts deducted represented far more in many cases than the wage reductions of others in the District and even in some of the fact finding reports presented to this Fact Finder for review.

In other words, the teachers have already contributed in an effort to stabilize the District’s finances. Given the fact that the imposing of the cap has spawned an unfair labor practice which in the view of this Fact Finder should be withdrawn as part of the effort to reach an agreement,

the Fact Finder is of the view, applying all the criteria suggested, that at least through 2011-2012 until a more clear picture of the District's finances emerges there should not be emphasis on wage reductions. Rather, the emphasis should be to address, in the view of this Fact Finder, the twin roadblocks to agreement, namely, the teachers' goal of eliminating or at least modifying the health care insurance deductions and the goal of the Board to stabilize its finances which hopefully would include encouraging the teachers to withdraw the unfair labor practices as to the cost of living and imposing of the health care insurance cap.

It is on this basis that the Fact Finder proceeds to make specific Recommendations.

Wages

The Fact Finder has already said much about the wages to be recommended. The comparable criteria supports an across-the-board wage freeze for three years – 2009-2010, 2010-2011 and 2011-2012 – plus a step freeze for 2011-2012. This means that, cost-wise, unless the District chooses to hire an additional teacher, the cost for 2011-2012 for providing teachers will be the same as 2010-2011.

Duration

The Fact Finder will recommend a three year contract commencing September 1, 2009 and expiring August 31, 2012. More will be said about this Recommendation later in this Report.

Cost of Living

In discussions with the parties, the Association indicated that it wished to continue the cost of living, but would not enforce it during the life of the contract. In applying the art of the possible criteria, after discussing the situation with the Board and reviewing the District's

financial conditions, the Fact Finder recommends that the cost of living provision be removed from the contract and not be part of the contract. The Fact Finder recognizes that a cost of living provision could serve as a bargaining chip, so to speak, for the Association. But in a district faced with the financial circumstances as Harper Woods, the existence of the cost of living provision, even if abated, exacerbates the situation. The economic improvements that may come forth in the future will come about from cost savings and hopefully increased revenue from student retainment and State aid as well as perhaps stabilizing real estate values. But until this all comes about, which may take time, the cost of living is no longer a bargaining chip and only hinders the ability to engage in collaborative bargaining to work out solutions as applied to Harper Woods.

This Recommendation no doubt will be a concern to the Association. But it is part of the art of the possible, namely, to address a major concern, namely, the deductions, and yet provide the Board with leeway in adjusting its finances.

The Unfair Labor Practice Charge

This Fact Finder has no jurisdiction over the unfair labor practice charge. But the Fact Finder can make recommendations designed to reach a collective bargaining agreement.

In the opinion of this Fact Finder, it is doubtful that the Board would reach agreement if the unfair labor practice charge is pursued. And, without an agreement, the Recommendations accomplishing a major thrust of the teachers' current bargaining position of at least moderating the amount of the current deductions cannot be accomplished as a result of the Recommendations that follow. And there is the spectrum that the District could prevail on the unfair labor practices on the merits. And, again, the District may not prevail. Then there is future bargaining

following this Report.

When all of these equations are considered, the Fact Finder will recommend as part of a global settlement to reach a contract that the Association withdraw the pending unfair labor practice charge concerning the cost of living and imposing of the health care insurance cap.

Health Care

According to the District, as of April 1st, it has deducted a grand total of \$177,443.23 from the teachers for health care insurance. According to Exhibit 14, presented by the teachers, the total amount deducted was \$184,890.09. The teachers in discussions with the Fact Finder are willing to go to a MESSA Choices with a \$500/\$1,000 in network deductible, a \$1,000/\$2,000 out of network deductible, and a OV/UC/ER co-pay of \$20/\$25/\$50, an Rx drug co-pay saver Rx with no change in other insurances that are now provided.

In comparing the rate between the current MESSA Choices 2 plan and the proposed plan, it was quoted effective September 1, 2010 the following was revealed:

Total composite rate per member - single	\$799.70	
Proposed plan		\$ 683.84
Total composite rate per member - 2 person	\$1,608.62	
Proposed plan		\$1,347.95
Total composite rate per member - family	\$1,770.40	
Proposed plan		\$1,480.77

The Association suggested that this would be represented for the 2010-2011 school year a total monthly savings among teachers of \$14,436.79 or for the eight months between September 1, 2010 and April 17, 2011 of \$114,926. In fact, for this period, the Association suggests that if the administration in the main office and custodians were on the same MESSA plan there would have been a total savings of \$182,209 versus the imposed contribution on teachers of \$174,345.

The testimony of the MESSA representative was that Harper Woods teachers, because of

the size of the unit, are grouped with other units in the area for rating purposes; that the experience has been an average rate increase of 9%. If the rate increase goes to 9%, then the family rate for the \$500/\$1,000 deductible in network plan would go from \$1,480.77 to \$1,640.10, which would still be less than the current plan.

As a comparison, if there was a 9% increase for the eight month period that was measured rather than \$114,926 difference in plan costs, the difference would be approximately \$104,580.

However, in making this observation, the Fact Finder notes that the negotiations between the parties have been long and difficult. It is not clear just when the proposal to modify the MESSA plan to the present plan was made. Nevertheless, there is little question that the MESSA plan with the \$500/\$1,000 deductible as proposed for the teachers will be less costly than the current plan.

During the fact finding process, it was suggested that even if the \$500/\$1,000 MESSA plan was adopted there still would be a gap in terms of total annual cost of insurance for teachers of between \$75,000 to \$100,000.

There is also another problem in terms of containing health care costs. Article 20, "Fringe Benefits," of the expired contract in A provides for a Plan B which has an option provision for employees not taking the MESSA Choice 2 health insurance. Prior to the 2010-2011 school year, the experience of the District was that four teachers would opt out of the insurance plan. With the advent of the deductions, apparently 10 teachers opted out of the District-provided health care insurance. Six of the 12 newly hired bargaining unit members did not select health care coverage in September 2010. There is concern that deductions encouraged this phenomena and that if there were no deductions there would be possibly as many as eight

more teachers than in 2010-2011 electing to have health care coverage provided by the District which would add to the health care coverage.

The evidence before this Fact Finder also indicates that MESSA has offered a competitive package and is in the process of developing other competitive packages that consider the needs of the teachers as well as the financial concerns of the District and for this reason the Fact Finder believes there is no reason to change carriers for the teachers at this time.

In balancing the interests at play in a major cost concern – health care insurance – the Fact Finder has come up with certain Recommendations. The deductions and cap shall continue to the end of the current insurance year; that beginning with the insurance year in school year 2011-2012, presumably September 1, 2011, teachers shall be covered by the MESSA Choice 2 \$500/\$1,000 plan as discussed above.

Teachers in this MESSA plan will pay for any increase in the cost for 2011-2012 over the quoted figure as of September 1, 2010 for the cost of the MESSA \$500/\$1,000 plan as of September 1, 2010. The deduction will be based upon the plan that the teachers has, whether it be single, two person or family. So that all understand, this would mean that if the quoted \$1,480.77 family plan goes up 9% to \$1,640.10 a month, on a yearly basis for a teacher having 26 pays, the deduction would be approximately \$61.50 per pay. This is a major reduction in the deductions resulting from the \$13,700 cap. If MESSA should decide to continue the same quote as September 1, 2010, then there will be no premium contribution.

Of course, if the costs increase beyond 9% or 10%, then the contribution will be larger. But the Fact Finder relies on the representation made in the evidence that MESSA has kept costs down on a State-wide average of around 5% and knowing the situation in Harper Woods

certainly will make every effort to keep the costs down in the Harper Woods School District.

As a further Recommendation, if during the course of 2011-2012 MESSA designs another program and the MESSA \$500/\$1,000 plan is costing more than the quote of September 1, 2010 and the newly designed plan will reduce the cost to the September 1, 2010 level, the teachers, at their option as a group, may elect to go to the redesigned plan with no deductions.

Addressing the problem caused by the 2010-2011 opt outs, during the course of the fact finding hearing, the Fact Finder suggested that a sometimes practice with some employers is not to provide health care insurance if the employee can obtain health care insurance through their spouse's employment. In addition, pursuant to the recently passed national health reform legislation, some younger teaches can continue on their parent's health insurance.

The Fact Finder will recommend that during the insurance year covering the 2011-2012 year that there be a provision that if a teacher can be covered by a spouse's health insurance plan or a teacher can be covered by a parent's insurance plan, then the District will not be obliged to provide a health care insurance plan to the teacher and instead the teacher will be eligible for the opt out provisions in the contract. This provision shall automatically expire at midnight on August 31, 2012 unless extended or renegotiated by the parties. Furthermore, if the same number of teachers opt out in 2011-2012 voluntarily as opted out in 2010-2011, then this provision will not be implemented.

These Recommendations are designed to address the health care cost issue as part of an inch-by-inch approach to the District's financial concerns. It does continue the deductions until the end of the current insurance year. But, based upon the art of the possible, this is the only way to "right the ship" and to set the stage through negotiations for addressing in the future the

District's financial concerns. Otherwise, it will be difficult to reach an agreement in this situation. It is a very difficult financial issue.

Duration Revisited

There is no question that the Association would prefer a four year contract with the present wage scale continued into the fourth year and restoring the step increases in that year. However, in good conscience, the Fact Finder cannot so recommend. What the Fact Finder has recommended is that there be a three year contract; that the District modify the deductions and see how the finances play out, considering what is going on in Lansing and what may develop in the Harper Woods School District in terms of retaining students and perhaps persuading students who have gone to the charter schools to return to the Harper Woods Public Schools. It is an inch-by-inch process.

What the Fact Finder can do is recommend a time table for bargaining for a successor contract so as to avoid delays in the parties being able to address their concerns. If it turns out that the deficit does develop as predicted, then within a short time the parties can address this problem. If it turns out that the deficit does not come to pass for a variety of reasons, then this can be reflected in the future bargaining. But, at this point in time, it is an inch-by-inch situation and a wait and see approach, at least for the 2010-2011 school year.

Other Provisions

There are other Recommendations such as extending the wage schedule, providing for a class size overpayment and other such provisions which are being recommended as a result of discussions with the parties. Some of these Recommendations represent long-range savings. Others are designed to improve learning possibilities in the District such as the letter of

understanding.

The Art of the Possible Revisited

The above proposed Recommendations along with other Recommendations that were set forth in the order to show cause that was developed in discussions with the parties were designed to reach an amicable solution. The Board has a new administration which must have time to gel and establish with the Board's consent a policy of action, including a firm and fair negotiation posture for the future. In return for the teachers dropping the unfair labor practice charge and therefore modifying the deductions, the Board should be willing, for at least one year, to determine to take a chance as to where finances are going, given the unsettled state in Michigan and, as alluded to previously, the political wins that may in the end favor K-12 education.

No increases for three years, step freezes for the third year of the contract, eliminating the cost of living and continuing the imposed contributions for the remainder of the insurance year covering the 2010-2011 school year are indeed difficult provisions to be recommended for the teachers to accept. The Board should understand this.

The Board would no doubt continue to ask why this Fact Finder has not recommended wage reductions as have been recommended by some fact finders. The Board may ask why certain concessions were not recommended as were adopted by the Dearborn teachers as reported in The Detroit News on May 4, 2011. The Board may be insisting on a wage reduction, noting that there were wage reductions of non-instructional groups and administrators in the District. The answer is straightforward. Neither the non-instructional nor administrators contributed as much to the health of the budget as the teachers did by the imposed deductions which will continue for the remainder of the 2010-2011 school year. The fact is the teachers have made

substantial contributions by these deductions. The deductions have spawned an unfair labor practice which raises problems for both parties. There is a point where both parties must recognize the situation for what it is and reach agreement and do so immediately. The audit for the 2010-2011 school year presumably will be completed by November 2011, at which time presumably it will be furnished to the Harper Woods Education Association and Local 1. Upon doing so, the parties can commence bargaining in early January 2012 to address financial problems if they exist. By that time, the air hopefully will be cleared as to State funding.

This is the reason why a three year contract and why some of the provisions that have been recommended. The teachers are not immune to the District's finances. The Fact Finder has every reason to believe that the teachers and their representatives are willing to work with the Board. Now that there is continuity in the Superintendent's Office, there is no reason why this cannot be done. And if there comes to pass a need for more difficult solutions, there is no question that this can be worked out at the bargaining table in the future. But, in the meantime, get rid of the unfair labor practice charge and work together in difficult times.

The stakes are too high for both the teachers and the Board. The Board could just ignore the approach taken here, roll the dice and just assume that if it loses the unfair labor practice that an emergency financial manager will bail them out. The teachers should also worry about this possibility.

In the end, if teachers have the right to strike, both parties would compromise. The Recommendations here are difficult compromises, but they are compromises to avoid the high stakes risk that neither party needs to take. Harper Woods is not at the critical stage yet. The audit for 2010-2011 will be an indicator. It is at that time the parties can address future concerns.

In the meantime, it is time for both the Board and the Harper Woods teachers to bring closure for the reasons this Fact Finder has suggested.

RECOMMENDATIONS

The Recommendations are as follows:

1. Duration: Three (3) years commencing September 1, 2009 and ending August 31, 2012.

2. Wages:
 - 2 new bottom steps
 - 1 new step by splitting Steps 10 and 11

2009-10	0%	
2010-11	0%	Establish new 3 steps
2011-12	0%	Freeze salaries at 2010-11 (there will be no step increases in 2011-12)

3. Benefits:
 - A. The imposed health care premium contribution will continue through the 2010-2011 insurance year, namely, until September 1, 2011 at which time the imposed contribution will be eliminated.

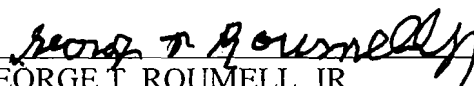
 - B. For the insurance year 2011-2012, the health care insurance for teachers shall be changed to MESSA Choices II to \$500/\$1,000, \$20 OV, RX Saver Do ASAP with the teachers paying any increase in the cost of said insurance over the rates quoted as of September 1, 2010 as discussed in the Report. If these costs are higher than the rates quoted as of September 1, 2010 and MESSA has designed another plan with rates that equal or are lower, then the MESSA Choice 2 \$500/\$1,000 quote of September 1, 2010 teachers as a group may elect to go to this plan with no contribution toward premium.

 - C. The imposed contributions will not be recovered by the teachers and the unfair labor practice charge concerning the imposed contributions and the cost of living shall be withdrawn by the teachers.

 - D. Teachers who can obtain health care insurance from spouses or parents will be obligated to do so. This provision will automatically expire at midnight, August 31, 2012. This provision shall not be implemented if the same number of teachers opt out of the District's health care insurance plan as did so in 2010-2011.

4. Article XXII – Retirement contribution shift (language deleted).

5. Article XIII – COLA – Eliminated.
6. Direct Deposit
7. Sick day language change
 - A. Cap at 125 days
 - B. Pay only to employees that retire
 - C. Grandfather members at their current sick day accumulation at the time of ratification.
8. Calendar 178-185
9. Middle School 6 period day, High School – phase out trimester
10. Class size language for overage:
 - A. \$4 per day, per student
 - B. MS-HS \$1 per class hour
 - C. 30 day grace period. If student remains in the class following that 30 day grace period, the teacher will be paid retroactively.
 - D. This 30 day grace period is for the beginning of the school year.
11. LOU – For 2011-12 only for MS and Elementary school teachers will provide an additional 2.15 hours at \$18 per hour for 2011-12 if their grade level or subject is determined to need to participate on the enrichment program. A committee of teachers and administration will work on the enrichment program. If additional teachers are required, they will be selected based on qualifications and seniority.
12. There shall be two committees established consisting of two members of the HWEA and two designees of the Board. One committee shall study health care proposals and report back to the Board, the Association and the administration of their findings as to proposed changes by February 1, 2012. A second committee shall be known as the Finance Committee and shall meet with the Business Manager once a month to discuss the status of the District's finances. The District shall furnish to the Harper Woods Education Association and Local 1 of the MEA a copy of its audited financial statement for 2010-2011 within four (4) school days after receiving same.
13. Bargaining for a successor contract shall commence no later than January 15, 2012.



GEORGE T. ROUMELL, JR.
Fact Finder

May 12, 2011