

2368

State of Michigan

Department of Consumer and Industry Services

Employment Relations Commission

Lake Linden-Hubbell Schools,

Petitioner,

And

Case No. L10 B-5020

Michigan Education Association,

Respondent.

_____ /

Robert Witter

Terry LaJeunesse

Representative for Petitioner

Representative for Respondent

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Michigan Education Association

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REPORT AND RECOMMENDATIONS OF FACT FINDER

On February 8, 2011, the undersigned was appointed by the Employment Relations Commission (MERC) as Fact Finder in this case, pursuant to 1939 PA 176. The Petition for Fact Finding had been filed on October 14, 2010, and no answer was filed. Mediation had failed to resolve the dispute. After appointment of the Fact Finder, two pre-hearing conferences were held, a 60 day period of discovery was requested and granted, and the fact finding hearing held on May 24, 2011 in Lake

Linden, Michigan, in a conference room at Petitioner school, without objection.

The representatives were present, as well as Craig Sundblad, school superintendent. The representatives, who are not attorneys, provided the Fact Finder with opening statements, evidence, including sworn testimony and exhibits, and closing arguments. The Fact Finder notes that both representatives did a very good job in presenting their cases. The hearing was not recorded, other than by written notes taken. Neither party requested an opportunity to file a written brief, and none was required by the Fact Finder.

The Fact Finder took the matter under advisement, has now reviewed the evidence and arguments, and issues this report with recommendations, pursuant to Part 7 of the MERC rules. In this report, exhibits are identified as marked for the record, and additionally, even if not marked as such, Petitioner's exhibits are identified with a "P" followed by the corresponding number from its exhibit book. Respondent's exhibits are identified with an "R" followed by the exhibit number. All exhibits offered by both parties were admitted into the record without objection.

Findings and Recommendations as to Disputed Issues

Introduction

The parties agreed that the last Master Agreement between them expired on August 31, 2009. Therefore, as agreed by them in response to questions from the Fact Finder, these recommendations all pertain for a successor agreement commencing retroactive to September 1, 2009, and from that date forward for whatever period of years the parties may be able to agree upon.

1. Insurance Provisions

The evidence presented shows a number of disputed issues. They roughly can be categorized as financial and/or language issues. Without objection or dispute from Petitioner, in closing arguments, the Respondent's representative stated that the "dollar" issues are the key, and if those are resolved, the language issues can then

be resolved “in short order.” Recognizing that there is no guarantee of that, the Fact Finder believes that approach to be the best chance of resolution, and arranges the recommendations in this report with highest priority to financial issues, then to language issues.

Further, among the financial issues, the Fact Finder believes that, from the evidence presented, the insurance provisions are the key, followed by salary and retirement issues. Accordingly, among disputed issues, insurance provisions are addressed first.

Exhibit P3 is the Master Agreement that expired on August 31, 2009. Article 19 on page 27 is the “Insurance Provisions.” That article basically provides PAK A, PAK B, and cash options. Robert Witter, Petitioner’s representative, without objection, also called himself as a witness, because he is the person with the most foundational knowledge of some of Petitioner’s exhibits, and was allowed to give a narrative testimony, subject to cross-examination. He explained Exhibit P19-T, Health Plan costs for the 2008-09 school year. The PAK A plan includes Health/Medical/Drug Card plus Dental, Vision, and Life Insurance. The PAK B plan, according to his testimony, is available if teachers do not take the full (PAK A) insurance, and in the exhibit, includes Dental/Vision/Life Insurance. Mr. Witter testified that teachers taking the PAK B option, then also can and do take a “cash” option of \$540 per month in lieu of the PAK A full insurance. (Exhibit P3, Article 19 technically shows that the cash option is actually in the form of an addition to that teacher’s tax deferred annuity). (Exhibit P19D1 is a duplicate of that exhibit).

Exhibit P4Q (2 pages) is for a prospective successor agreement for September 1, 2009 through August 31, 2010, and is a proposal by Petitioner as to this issue. It is a “live proposal for fact finding.” The proposal, if adopted, would cap the Petitioner’s contribution to a teacher’s insurance at \$15,100 per year, with the employee-teacher being responsible for any amount above that cap (in addition to any deductibles, co-pays, etc.). (Exhibit P19A is a duplicate of that exhibit).

Robert Witter testified that the Petitioner can no longer keep picking up the cost of insurance premium increases annually with cutbacks in state funding of schools

that have been experienced. Petitioner is in fact having to pick up those increased costs since the Master Agreement expired, due to Michigan's Public Employment Relations Act, even though its revenues have decreased (Exhibits P9C and D). This has resulted in cuts to some student programs. (The Fact Finder does find as stated in the last two sentences). Mr. Witter went on to testify that the amount of \$15,100 is an increase from the annual amount from fiscal year 2008-09 for a teacher in PAK A (which is supported by Exhibit P19T). He stated that under Petitioner's proposal, the Respondent and teachers would choose their plan, but the cap would provide a "fixed point" in the Petitioner's budget.

Exhibits P19D2 through P19R are selected comparables from contracts currently in effect at other school districts with a student enrollment in the same range as Petitioner, from 4 to 84 students, for the same year. Mr. Witter admitted that none of the comparables have capped insurance premium contributions by the school district, but that the Petitioner's proposal is a first time proposal to control costs. (Although, Exhibit P19K, the first page, appearing in the exhibit book before P19J, from Ontonagon schools, has a cap of a 6% increase. Also, Exhibits P19Z63 through 69 evidence numeric dollar caps on insurance premiums, but at larger school districts that Petitioner does not even consider to be comparables for this district).

Exhibits P19S through P19Z5 are annual insurance renewal sheets from MESSA, and sheets showing costs to Petitioner of insurance premiums. MESSA is the voluntary employee benefit association for Respondent's member-teachers, as well as teachers from other school districts. Terry LaJeunesse, Respondent's representative, without objection, called himself to testify, and was allowed to give a narrative testimony, subject to cross-examination. He testified that all teachers in the MEA unit at Petitioner school get their insurance through MESSA. He stated, and the Fact Finder so finds, that at the time of the insurance cap proposal, annual insurance premiums were less than the proposed cap of \$15,100 per teacher, but have since increased. There was no testimony as to the amount of annual insurance premiums per teacher, so the only basis for findings are in the exhibits.

Exhibit P19V shows an increase in the annual premium amount per teacher (for PAK A) from \$15,027.36 for the 2008-09 year, to \$16,406.52 for the 2009-10 year. Then, Exhibit P19X reflects that the situation becomes more complicated, because that year, MESSA began to “tier” the premium rates for single, two-person (teacher and spouse), and family enrollees. The renewal annual amounts for the (current) 2010-11 year are \$9,084.00, \$18,255.12, and \$20,089.20 respectively for those tiers (Exhibit P19Z).

Mr. Witter testified that with the Petitioner having to pick up increased insurance premiums, there is no money for wage increases. Barbara Frisk, MESSA field representative testified for Respondent. Exhibit RA1 is a list of six insurance changes agreed to by Respondent in prior contracts to contain insurance costs. The exhibit shows net cost savings of 40.9% over twenty years to the school district. (Witness Kath Kumpula supported that testimony in her own). Exhibit RA2 is an insurance rate renewal history. Ms. Frisk testified that Respondent’s members who teach at Petitioner school have incurred more out-of-pocket health care costs from co-pays over the years. Exhibit RA4 is a rate renewal sheet for Petitioner school from MESSA for year 2010. Also, teacher compensation, including insurance premiums as a part thereof, at Petitioner school district, has remained fairly constant as a percentage of both the district’s budget and expenses, within several points, over the past approximately fifteen years (Exhibits RA8 and RA9).

Exhibit RA5 from MESSA shows new options available from 2009 and 2010, after the Master Agreement expired and bargaining began. Exhibit RA6 shows annual savings of \$19,406.64 to Petitioner if there had been a move to adopt a plan option highlighted on Exhibit RA5 that requires an in network deductible of \$100/\$200, and co-pays of \$10 and \$20. That move was part of a proposal by Respondent, but Ms. Frisk admitted on cross-examination that most of the savings would have been offset by wage increases in the same proposal, if also adopted. Mr. Witter testified in rebuttal that the salary raise proposal was for \$500 per teacher per year, so that the overall savings to Petitioner from the entire proposal for insurance and salaries would have been more like \$3,000 (which the Fact Finder so finds).

The Fact Finder finds that for over twenty years, Petitioner has provided its teachers with health insurance by paying the full costs of premiums (except when the cash option was selected by the teacher). Premium costs have increased drastically on an annual basis. Declining student enrollments have combined with other state school funding cuts to reduce revenues to Petitioner, at the same time that costs have increased. The proposal by Petitioner for a \$15,100 per teacher annual cap on premium contribution by the employer represented an increase at the time the proposal was made, but during pendency of negotiations and bargaining, premium costs have risen to over \$16,000 per year per teacher. Further, the proposal has no real precedent for comparable size districts in the evidence, other than a 6% increase per year cap at Ontonagon schools. It is further found that there has never been any guarantee or obligation of Petitioner to perpetually fund all insurance premium increases in the future. The Petitioner's proposal would not have saved money in the first year, but is intended to provide a "fixed point" in the budget for all future years. The Fact Finder believes that under the economic circumstances, it is reasonable for Petitioner to, by way of bargaining and contract, give notice that there is some kind of limit to the insurance premiums that it can and will fund. However, the proposed \$15,100 numeric dollar cap is questionable at this time for a number of reasons.

First, the fact that since the proposal, actual insurance premiums have increased above that point make the proposal unrealistic for resolving the impasse at this time. The Fact Finder for that reason alone would not recommend a dollar cap less than the actual average for the current year, which again is over \$16,000. That is true even though the payment of that increased amount since August 31, 2009 under PERA has caused cuts in student programs. On the other hand, the Fact Finder sees no reason, if he is going to recommend a dollar cap, of using any higher amount than the current amount.

Secondly, however, there may be problems with using a straight dollar amount as a cap in general. Even though not pointed out by the parties, for example, such a dollar amount would, based on historical evidence, "lose value" over the years. So, if the current economic troubles were to normalize more in the future, as economic

cycles have in the past, there may be sufficient school district revenues in the future to pay a reasonable amount of insurance premium increases, either as a percentage increase (like the Ontonagon schools comparable), as a percentage of the school's overall budget, or otherwise. Further, if a percentage were used, the Petitioner's proposal for a \$15,100 per teacher per year cap could be used as of September 1, 2009, with an amendment of an annual percentage adjustment of that amount. On the other hand, locking in an annual percentage adjustment, which may always be an increase (since insurance premiums have not been shown to decrease), could be crippling currently, if the Petitioner's revenues do not increase.

The Fact Finder also finds from the testimony of Ms. Frisk, and Exhibits R5 and R6, that Respondent made a bargaining proposal, including a change in health insurance plans to those on the second highlighted line of Exhibit R5 and a \$500 annual wage raise per teacher. The insurance change would have required teachers to pay more deductibles and co-pays, reducing premiums, and saving the district (per Exhibit R6) \$19,406.64 in the first year, but over \$16,000 of the savings would have been offset by the salary raises (rebuttal testimony of Mr. Witter). Still, that proposal would have saved about \$3,000 the first year, and possibly in future years. It is found that proposal would not present any problem to any party in the current year of 2010-11, and in fact, would benefit both parties. However, the long term problem with that proposal is that eventually, probably within another year based on historical evidence, the premiums for even the new insurance plan would increase beyond the savings being realized this year, and on top of that, \$500 would have been added to the base salary of all teachers currently employed, increasing overall costs to the district to an unaffordable level.

Accordingly, the Fact Finder's recommendation as to insurance provisions is to first accept the Petitioner's proposal for a contract from September 1, 2009 and temporarily for the foreseeable future, with an annual per teacher cap on the Petitioner's contribution for insurance premiums, but amended to same dollar amount as for the current year (2010-11). (The Fact Finder does not believe it helpful toward a resolution to recommend a cap amount that is any lower than the

current amount of premiums, even though for some teachers that amount is already about 25% higher than it was just two years ago, because that would require teachers to reimburse the district retroactively for part of premiums already paid, almost certain to not be agreeable). The current amount, however, is complicated by the commencement by MESSA of the “tier” system. The evidence does not contain the reason that MESSA instituted these tiers. The actual amounts for the current year are set forth above. There would now have to be a different cap for single, two-person, and family enrollees.

A cap could conceivably, therefore, seem to penalize an enrollee in one or more of those sub-groups if, in a future year, premiums are increased a higher percentage than the one or two other sub-groups, but requiring a higher percentage of the premium be deducted from the pay of those enrollees. That is because the exhibits in Petitioner’s tab 19 show that increases are not uniform among those sub-groups, and may even include decreases at times. However, this would be due to decisions made by MESSA and its enrollees, and not due to any choice of Petitioner, so should not be a reason to throw out the cap proposal entirely. Therefore, for the 2011-12 and possibly subsequent years, the Fact Finder does recommend a dollar cap also based on the tiered annual per teacher amounts of the current 2010-11 year. While not ideal for either party (and there is no ideal recommendation to be made), this part of the recommendation will at least, if adopted, provide some substantial stability in the district budget until circumstances may improve.

Second, the Fact Finder also recommends that if and at such time that there is an identifiable increase in district revenues, and the district’s reserves (“fund equity”) have then also been restored to their September 1, 2009 level as a percentage of district annual expenses, future negotiations from that point center on a new premium cap that is based on a percentage increase over the prior year’s dollar cap (similar to the Ontonagon comparable), rather than a dollar figure. The percentage increase in premiums to be borne by the Petitioner should then be commensurate with, and not exceed, the percentage by which overall district revenues increase. Or, a reasonable alternative would be that there be a cap on the percentage of the Petitioner’s annual budget that can be contributed to insurance

premiums for teachers. This would ensure that a cap would not serve to decrease teacher compensation as a percentage of the overall budget or some pertinent aspect of it.

(It is noted that the Fact Finder, if re-appointed, would be willing to re-visit these issue with the parties in the future based on actual circumstances as they develop, hopefully in a much more expedited and current fashion than the procedures that led up to this full fact finding).

As to Respondent's proposal regarding insurance/salary provisions, it would save the district about \$3,000 the first year. The testimony of Ms. Frisk characterized the savings as "annual", but was based on Exhibit R6, which is in turn based on the 2010-11 year only. While the Fact Finder has found a net savings from the proposal the first year, he cannot find evidence that would necessarily be true in any given subsequent year. That is because while the salary raise would then be in place, even with a new insurance plan, the premiums for that will most certainly also increase over time, soon eating up and probably exceeding the overall savings experienced in the first year. Also, some of Respondent's witnesses made the point that different provisions of Respondent's proposals, such as salary raises, could be severed from the entire package, for consideration separately. However, the Fact Finder finds that even if that were done, and savings of over \$19,000 experienced in the first year, based on the evidence of rates of health insurance premium increases, those savings would likely still be exceeded by the costs of premium increases in the very next year. (Exhibits P19V, Z, and Z5 show increases of over \$19,000 in each of the last two years, as well as in the figures for the upcoming 2011-12 year).

Therefore, during the first year, the Respondent's proposal would be one that would ease the crunch from the district's revenue decreases, and would be recommended looking at the current year in a vacuum. In fact, the proposal is based on new options introduced by MESSA after the expiration of the Master Agreement (testimony of Ms. Frisk and Exhibit R5), and therefore, cannot possibly be recommended for a successor contract beginning September 1, 2009, before the

option was even available. At best, only after a one year or longer contract is adopted by the parties commencing September 1, 2009 (as to which the only proposal in evidence is Petitioner's), can a successor contract be even considered incorporating the insurance options in Exhibit R5.

After a successor contract commencing September 1, 2009, Respondent's proposal could be considered for the 2010-11 year that Exhibit R6 is based on, and subsequent years. For the 2010-11 year, it is hard to envision an argument against the proposal, due to the cost savings to the district, but for the apparent fact that the proposal was made as an alternative to implementing a cap on premiums as the Petitioner proposed, and not intended to also include such caps. This proposal of Respondent would require to the Fact Finder to recommend for the 2009-10 year a cap in the actual amount of premiums experienced that year, and then remove the cap for the 2010-11 year in favor of their proposal for a change of insurance plans. Then, for subsequent years, those changes would continue until such time that premium costs for that plan increase to a point where they again exceed what district revenues permit, rather than still saving money, leading the parties right back to this point in the near future in negotiations. This the Fact Finder finds to be untenable for any year but the current 2010-11 year, especially as a counter to Petitioner's long term cap proposal. The fact that teacher compensation in the district has remained fairly constant as a percentage of budget in the past does not negate or change the recommendations for the future.

For all of those reasons, the Fact Finder's recommendations as to insurance provisions are as set forth above on pages 7-9.

2. Salaries

Exhibit P3, Article 11 on page 15, and Appendix A, are the Master Agreement that expired on August 31, 2009 as to teacher salaries. The Appendix includes a chart with "steps", columns based on a teacher's highest college degree, and also includes provision for longevity. As with the prior agreement, this aspect of the contract has continued after expiration due to state law.

Petitioner's Exhibit tab P4 contains three separate proposals regarding salaries, in Exhibits P4R through T. These are all "live proposals for fact finding."

A. New teacher salary schedules

The proposal in Exhibit P4R is for a salary schedule for new teachers hired.

Robert Witter testified that due to the same circumstances as under the prior issue, declining district revenues, Petitioner does not have the money it would take to sustain the salary schedule in Appendix A to Exhibit P3. He made the point that continuing 4% step increases with flat revenues yields running out of money, not to mention longevity pay. The Fact Finder so finds.

Exhibit P18A contains comparables from the districts in the range selected by Petitioner (set forth under the prior issue). Mr. Witter testified that all of those districts have thirteen or more steps in their salary schedules, except Adams Township, which has eleven. He explained that Baraga, Brimley and Pickford schools have much larger fund equity balances, because those districts cover Native American trust and/or federal lands, for which federal "impact aid" money is received. Petitioner district does not receive that. Mr. Witter also pointed out that insurance premiums and salaries are paid out of the same revenues, and the Petitioner needs cost containment on all financial personnel issues. The uncapped increases in insurance premiums have left no money for raises. Adding to the financial pressures, the State of Michigan used to pay FICA and any retirement rates over 5%, but no longer do, so the district had to pick those costs up. Mr. Witter conceded that there are no comparables in the range of schools selected for a one-half step increase, or an alternative salary schedule.

Kathy Kumpula testified for Respondent that past measures accepted and proposals for cost containment by the education association have included not just insurance adjustments, but also wage freezes and half-steps. Again, exhibits show teacher compensation at this district as a percentage of both budget and expenses has remained fairly stable, within several points. The Fact Finder notes and finds

that compensation as a percentage has increased in terms of benefits such as insurance, and decreased in terms of salaries, indicating past concessions in salaries as benefit costs have increased. However, as Beth Crouch testified, the most recent proposals by Respondent this time around have called for salary increases, and concessions in terms of benefit packages.

The Fact Finder notes that none of the witnesses for either party clearly explained the respective parties' proposals regarding salaries for a new contract. However, as stated above, Petitioner's proposals are captured within its Exhibit P4, and it is clear that at least part of Respondent's proposals called for a \$500 per teacher annual raise, discussed previously.

Comparison of Exhibit P4R with Appendix A to Exhibit P3 shows that the Petitioner's proposal for new teachers hired represents the same starting salaries, based on level of education achieved, but lower salary at every subsequent step. The Fact Finder does not find in the evidence any comparables for a separate salary schedule for "new hires", except for Copper Country Intermediate School District in Exhibit RA12 (page 2). The Fact Finder does not find any reference in the record to any evidence or statement of position of Respondent with specific respect to this proposal by Petitioner, aside from the general evidence presented that teacher compensation has not increased substantially as a percentage of district budget or expenses over the years, and is not the cause of the district's financial pressures. Accordingly, there being no significant reason presented to do otherwise, the Fact Finder recommends that this proposal of Petitioner, the new hire salary schedule in Exhibit P4R, be adopted.

B. New teacher longevity

Comparison of Exhibit P4S with Appendix A to Exhibit P3 shows that Petitioner's proposal for longevity is the same as under the expired Master Agreement, except to add the following language at the end thereof:

"Employees hired after August 31, 2009 will only receive ½ (one-half) of the listed above longevity percentages at every year attainment level of the top track of said teachers' Salary Schedule."

Exhibit P17 admits that there is no comparable among the selected range of school districts for such a provision. There are, however, among the exhibits in tab 17 of Petitioner's exhibit book, school districts in the range that do not have longevity at all in their existing contract. As with the proposal for a salary schedule for newly hired teachers, the Fact Finder finds no reference to a specific response to this proposal by Respondent as to longevity for new teachers, either in evidence or statements of position. There is the general evidence as to teacher compensation stated previously. Despite the lack of comparables, there being no other reason presented to do otherwise, the Fact Finder also recommends that this proposal of Petitioner be adopted, as set forth in Exhibit P4S.

C. Step increases

Comparison of Exhibit P4T with Appendix A of Exhibit P3 shows an obvious proposed change in compensation for the 2009-10 year (and presumably subsequent years), by Petitioner. Exhibit P5 is identified by the testimony of Mr. Witter as "proposals and demands received" from Respondent. Included within that exhibit tab are Exhibits P5H through J. Those exhibits include handwritten notes, the author of which was not identified in the exhibits or testimony, and salary schedules for prior years. The notes have not been explained or interpreted, and the Fact Finder is unable to give much credence to them for those reasons. To the extent they can be deciphered, they appear to indicate that in bargaining sessions, Respondent conceded a 0% salary increase, but wanted a full (not half) step.

Further, the notes from May 17, 2010 and/or May 17, 2011 (both dates are mentioned therein) refer to "rounded schedule w/frozen step increments" and "\$200/member off schedule." Neither of these phrases has been explained, nor are they self evident to the Fact Finder. There was also, however, a reference to Respondent's proposal for a \$500 increase per teacher in 2010-11 with a move to a new insurance plan, as discussed previously. The salary schedules seem to reiterate that the parties agreed on a 0% salary increase above the 2008-09 levels.

Petitioner admits in the testimony of Mr. Witter and Exhibit P20 that there is no comparable for this proposal as to a one-half step increase. Further, Exhibit P18 only shows a comparable for a 0% increase at one district, and only for one year, 2009-10. There was also testimony from Respondent's witnesses, such as Ms. Kumpula and Ms. Crouch, and Exhibits RA10 and RA11, as to the reduced buying power of employees' salaries and financial pressures in their home and personal finances from increased living costs, especially when their own revenues, in the form of salaries, do not increase.

It is the Respondent's position that Petitioner has been trying over the years to shift the entire burden of funding onto its employees. Exhibit RA12, the Respondent's comparables, show steps fully paid by all other school districts listed. Exhibit RA13 shows that during bargaining, in 2009-10, and 2010-11, the teachers have not had a raise. The Fact Finder finds that in the same way the Petitioner has been locked by law into paying health insurance premium increases since August 31, 2009, the teachers have been locked into their 2008-09 salaries. This has certainly continued the shift in compensation shown in Exhibits RA8 and RA away from salaries, and towards benefits such as insurance.

While Respondent did not clearly state a position at the hearing, or in exhibits, as to Petitioner's proposal for a half-step, there is evidence as summarized above to the effect that Respondent is requesting a full step, as per prior contracts. There is no other reasonable assumption as to Respondent's position on this issue. The issue is then between a half-step as proposed, versus a full step increase. To further slightly complicate this issue, in a way not referenced by either party, Petitioner's proposal in Exhibit P4T was for the 2009-10 year only. But now, another year (2010-11) has also almost elapsed, and it is getting close to a third year beginning September 1, 2011. Neither party has elaborated on this issue vis-à-vis how it is impacted by the passage of this time. Presumably, Petitioner is now seeking a half-step for each and every year for the time being, and Respondent a full step for each year. But that is not clear.

The Fact Finder recommends a half-step increase as clearly proposed by Petitioner, but only for the 2009-10 year as proposed. For subsequent years to that, the Fact Finder recommends resumption of a full step increase each year.

D. Summary regarding salaries issues

Therefore, the recommendations as to salaries are summarized as adopting Petitioner's proposals in Exhibits P4R through T, with the clarification that the recommendation for a half-step is only for the 2009-10 year, with full steps recommended for subsequent years.

3. Retirement provision

Article 20 on pages 28 and 29 of Exhibit P#, the Master Agreement that expired on August 31, 2009, is Early Retirement Incentives. That article basically provides for teachers who qualify an election of one of two early retirement incentives.

Robert Witter testifies that Exhibit P5 is "proposals and demands received" by Petitioner from Respondent. Among those is Exhibit P5E-1, dated November 30, 2009. That is a letter of understanding regarding "Eligibility: Michigan ORS requirements." The exhibit goes on to say:

"\$30,000 in MEA 19.3 Plan (403 b)

\$10,000/year for those eligible to retire in June, 2010

Note: If eligible in 2010 but choose to retire in 2011

\$20,000 over two years.

If eligible in 2010 but choose to retire in 2012

\$10,000 paid in January 2013."

There is then a chart explaining the above, running over onto page 2 of the exhibit. Petitioner's exhibits do not contain any proposals by it as to retirement. Mr. Witter

did testify that Petitioner needs cost containment as to retirement (as with insurance and salaries). As mentioned earlier, he also testified that the Petitioner has had to pick up FICA and retirement rates that were previously, but no longer are, paid by the state.

For Respondent, Beth Crouch testified that the retirement changes proposed by Respondent were to reduce costs by shifting money. Terry LaJeunesse testified that due to past concessions by teachers, they are now at this district paying 8% to 9% toward their retirement.

Absent from the testimony and exhibits is any explanation of Exhibit P5E, or Respondent's proposal. The Fact Finder has compared Exhibit P5E with Exhibit P3, Article 20, but does not find any correlating references between the two, to help in understanding if the proposal even goes to that article, or if so, how it would amend that article. For example, no other reference is found in the evidence to MEA retirement plans.

The chart at the bottom of page 1 and on page 2 of Exhibit P5E does however, reasonably assure the Fact Finder to interpret the exhibit and proposal as follows: If a teacher retires in the year in which he/she is first eligible, the district would place \$10,000 for that teacher in something called a 19b (IRS section 403 qualified) retirement plan administered by the Michigan Education Association, and then an additional \$10,000 each of the next two years, for a total of \$30,000. If the teacher chooses to wait one year beyond eligibility to retire, \$10,000 would be placed for he/she in the plan that year, and an additional \$10,000 the next year, for a total of \$20,000. If the teacher chooses to wait two years beyond eligibility to retire, \$10,000 is placed for he/she in the plan in January of the next year.

If this is an accurate understanding, the Fact Finder does so recommend, there not being any response, counter-proposal in evidence or statements of Petitioner, or any reason to recommend otherwise, beyond general evidence of the district's finances. It is assumed that the proposal would carry some cost, but there is no evidence of how much, or the estimated impact on finances.

If the above is not an accurate understanding of the proposal, there is still no specific response to the proposal, but the Fact Finder believes he cannot recommend something that he cannot accurately understand, due to lack of any explanation in the evidence and statements, and which apparently is not self-evident. There are also no comparables in the evidence as to this proposal.

4. “Language” issues

Exhibit P4, beyond the financial proposals discussed above, contains a number of additional proposals by Petitioner, as to what are termed by Respondent to be “language issues.” It appears from the testimony of Robert Witter that Exhibit P4A need not be considered by the Fact Finder. Other proposals in Exhibit P4 have been withdrawn or otherwise not for fact finding, according to Mr. Witter and the exhibits. Exhibits within P4 that ARE for fact finding are Exhibits P4D,E,G,H,I,K, and M. They are discussed below, with outline tab letters to correspond to the exhibit number in tab 4 of Petitioner’s exhibit book. (Small letters are used in the outline however, because the Microsoft Word program will not permit usage of capital letters in the correct sequence). (Specifically, Exhibit P4U and V, as to school calendar, while discussed substantially in testimony, is not considered, because those exhibits clearly state that is “still being negotiated outside of fact finding”).

d. Article 5 of Exhibit P3, the Master Agreement, is “School Improvement.” The proposal in Exhibit P4D would add that the Master Agreement may be modified “to become compliant with state or federal law.”

Tab 11 of the Petitioner’s exhibit book contains comparables from the selected range of similarly sized districts as to this proposal. Six of the eight comparable districts have this or a similar provision in their existing contract.

e. Article 7 of Exhibit P3, the Master Agreement, is “Employee Discipline.” The proposal in Exhibit P4E would, in the event of teacher reprimand or discipline, amend the teacher’s right of having an Association representative present, so that if a representative is not readily available, the Board would have

the right to place the teacher on paid Administrative Leave, in which event the Board's designee and the association would be required to meet within two working days.

Tab 12 of Petitioner's exhibit book contains comparables from the selected range of school districts as to this proposal. Six of the eight comparable districts have this or a similar provision in their existing contract.

g. Article 10 of Exhibit P3, the Master Agreement, is "Vacancies, Promotions, & Transfers." In the proposal in Exhibit P4G, the Board would agree to, in filling vacancies, give consideration to "being qualified in accordance with State and Federal laws."

Tab 13 of Petitioner's exhibit book contains comparables from the range of similar sized school districts as to this proposal. Among those eight districts, only Baraga schools have this provision in their existing contract.

h. Article 12 of Exhibit P3, the Master Agreement, is "Staff Reductions." In the proposal in Exhibit P4H, in the event the Board decided to reduce the number of teachers, in the order of reduction of tenured teachers, eliminate "certification" as a consideration, and qualify seniority to "Certified-Qualified incumbent teachers for the remaining positions."

Tab 14 of Petitioner's exhibit book contains comparables from the range of districts as to this proposal. Among those eight districts, only Baraga and Forest Park districts have this provision in their existing contract.

i. Article 12 -The proposal in Exhibit P4I merely adds **certified** letter to registered letter as an optional method for the Board to give notice of recall from layoff.

Tab 15 of Petitioner's exhibit book contains the comparable school districts as to this proposal. Six of the eight districts have this or a similar provision in their existing contract.

k. Article 14 of Exhibit P3, the Master Agreement, is “Illness and Disability.” In the proposal in Exhibit P4K, the number of days of leave after which the teacher would be required to provide verification from a doctor would be shortened drastically from fifteen to three.

Tab 16 of Petitioner’s exhibit book contains the comparable school districts as to this proposal. Two of the eight districts have the three day provision in their existing contract. Additionally, one district has a five day provision, and three districts have the power contractually to require verification for any length of absence.

m. Article 17 of Exhibit P3, the Master Agreement, is “Severability.” In the proposal in Exhibit P4M, any provisions or application of the Agreement would be severed if found to be contrary to law as to the District – not just as to the employees as in the expired Agreement.

There are no comparables for this proposal in Petitioner’s exhibit book.

Respondent did not offer any exhibits as to “language issues.” Further, as stated earlier, Respondent argued in closing that these issues can be resolved in short order if the financial issues are first resolved after fact finding. No arguments were made as to any specific language issues.

As to the Petitioner’s proposals as to “language issues” in Tab 4 of its exhibit book, the Fact Finder recommends that the all them be adopted, for the following reasons, with references to the corresponding exhibit number for the proposal:

P4D- compliance with state and federal law, for that reason, and due to comparables

P4E (Employee discipline procedures) – due to comparables, and lack of any response to the proposal

P4G (Filling vacancies; qualifications) – despite only one comparable, due to compliance with law, and lack of any response

P4H (Staff reductions) – despite only two comparables, due to lack of any response from Respondent education association

P4I (add certified letter) – due to comparables, and that the law generally recognizes certified letters as an alternative to registered letters for giving of notice

P4K (shorten time before which verification required for illness leave) – due to there being no comparable for fifteen day provision in expired Master Agreement, and as to alternatives presented by the comparables, no response from Respondent, and

P4M (severability)- Despite lack of any comparables, due to lack of any response, and for apparent fairness.

In addition to the above proposals by Petitioner, again according to Mr. Witter’s testimony, the exhibits in tab 5 of Petitioner’s exhibit book are “proposals and demands received” by Petitioner from Respondent. However, these were not referred to by Respondent in the hearing, either in evidence or statements, and further, its representative argued in closing that the “language issues” can be resolved by it in short order once the “financial issues” are resolved. Therefore, there has been indication that these are “live proposals for fact finding”, and no request that the Fact Finder make any findings or recommendations as to them.

Summary

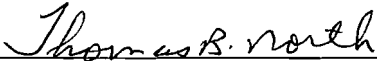
In brief summary, the Fact Finder recommends for a new contract commencing retroactively September 1, 2009:

1. As to insurance, Petitioner’s proposal be adopted, temporarily amended to a numeric dollar cap amount per year per teacher of the actual amount for the current 2010-11 year, as tiered by MESSA. Further, at such time there is an identifiable increase in district revenues to the point that fund equity is restored to its September 1, 2009 level as a percentage of district expenses, that the parties negotiate future caps on a percentage, rather than straight dollar amount, basis, as set forth on pages 7-9 above.

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2. As to salaries, Petitioner's proposal be adopted, with the clarification that the half-step is only recommended for the 2009-10 year.
3. As to retirement, that Respondent's proposal be adopted IF the Fact Finder has above stated an accurate understanding of that proposal; otherwise, that it not be adopted.
4. As to language issues, Petitioner's proposals in Tab 4 of its exhibit book all be adopted.

June 15, 2011



Thomas B. North

Fact Finder

By appointment

Michigan Employment

Relations Commission

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