

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

**CALHOUN INTERMEDIATE SCHOOL
DISTRICT,**

MERC Case No. L11 F-4008

Employer,

-and-

**CALHOUN INTERMEDIATE EDUCATION
ASSOCIATION, MEA/NEA**

Kathleen R. Opperwall
MERC Fact Finder

Union

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FACT FINDING REPORT AND RECOMMENDATIONS

A fact finding hearing was held on August 22, 2012, in Marshall, Michigan, under the provisions of Michigan’s Labor Relations and Mediation Act (MCLA 423.25). The Calhoun Intermediate School District (hereafter the Employer or CISD) was represented by Kevin S. Harty of the Thrun Law Firm, P.C. The Calhoun Intermediate Education Association (hereafter the Union or CIEA) was represented by Tara D. Wilbur of the Michigan Education Association. The purpose of the fact finding procedure is to provide factual findings and non-binding recommendations to assist the parties in reaching agreement on a new contract.

The bargaining unit includes approximately 160 employees in the following job positions: special education teachers, school social workers, school psychologists, occupational therapists, physical therapists, teacher consultants for special education, teachers of the homebound and hospitalized, and teachers of the speech and language impaired.

The parties’ previous collective bargaining agreement was a two-year contract which expired on June 30, 2011. The Union filed a petition for fact finding on February 2, 2012.

To date, the parties have not been able to reach agreement on a new contract. They have reached tentative agreements on certain modifications to their contract. The recommendations in this Report will assume that the parties incorporate those tentative agreements into their final contract. The new contract will cover the following three years: 2011-2012 (already completed), 2012-2013 (underway), and 2013-2014.

The parties submitted the following issues to fact finding:

1. Wages:

- | | |
|-------------|---|
| 2011 - 2012 | the Employer proposed 1.5% on the top step only
the Union proposed 1.5% on all steps
(employees advance steps upon ratification, but no retroactivity under either proposal, per 2011 PA 54) |
| 2012 - 2013 | the Employer proposed 1% on all steps, plus ½ % off-schedule
the Union proposed 1.5% on all steps
(employees advance steps upon ratification, but no retroactivity under either proposal, per 2011 PA 54) |
| 2013 - 2014 | the Employer proposed 1% on all steps
the Union proposed 1.5% on all steps |

2. Insurance Benefits:

Premium sharing:

The Employer proposed limiting its share of premiums to 80% for vision, dental, and life insurance as well as health insurance. The Union proposed the Employer paying 80% of the health insurance premiums per 2011 PA 152, but paying 100% of the vision, dental, and life insurance premiums.

Deductible increase timing:

The Union agreed to increase the deductible for the health insurance to \$200/\$400 in-network. The Employer proposed for this increase to occur as soon as possible after ratification; the Union proposed for this to occur July 1, 2013.

Cash in lieu:

The contract currently provides that employees who do not receive health insurance receive a cash payment of 100% of the single subscriber rate. The

Employer proposed reducing this to 80% of the single subscriber rate; the Union proposed maintaining this at 100%.

3. Recognition clause

The Employer proposed modifying the recognition clause to clarify that it could sub-contract for substitute and temporary employees; the Union opposed this proposed modification.

4. Duration of contract

Both parties proposed a contract to cover three school years, including the 2011-2012 school year which has already been completed. The Employer proposed an ending date of June 30, 2014, while the Union proposed an ending date of August 31, 2014.

The parties filed their post-hearing briefs on October 12, 2012.

Findings of Fact

The Calhoun Intermediate School District (“CISD”) provides special education services to its thirteen constituent K-12 school districts. The constituent districts are centered in Calhoun County, Michigan. (The boundaries of CISD follow the school district boundaries, which do not exactly match the boundaries of Calhoun County.)

Some of the bargaining unit members are “itinerate” staff who travel to the constituent school districts to provide special education services. Other bargaining unit members work in center-based programs which are operated by CISD.

CISD provides special education services to its constituent districts in two ways: reimbursing the districts for their special education expenses; and, providing services directly with CISD’s own staff. For 2011-2012, the reimbursement of constituent districts totaled \$11.6 million. The exact amount has fluctuated somewhat from year to year but has been close to this amount over the last five years. CISD has been reimbursing its constituent

districts at 85% of their special education expenses, although it is not legally obligated to reimburse them at this rate.

CISD's special education programs are supported by a 4.5 mill property tax throughout its geographic area. This is a relatively high millage rate among Michigan intermediate school districts. This millage rate produced \$17,268,126 in property tax revenues for the 2011-2012 year (Employer Exhibit 15). That was down about 2% from the two previous years, and close to the property tax revenue for 2008-2009. Property tax revenues are the largest source of revenue, and account for almost half of CISD's revenue. CISD receives approximately one-quarter of its revenue from State sources, and the remaining one-quarter of its revenue from federal sources (including Medicaid).

As of the date of the fact finding hearing in August, the last year for which audited financial figures were available was 2010-2011. Total revenue for that year was about \$39.5 million. The testimony indicated that about \$1 million of this revenue was from the settlement of Medicaid litigation; that \$1 million was owed for previous years, and will not be an ongoing revenue source.

CISD's final adopted budget for 2011-2012 showed total projected revenue of \$36.4 million, which was about \$3.1 million less than the previous year. It was not entirely clear from the exhibits and testimony why revenue would be down this much. Local property tax revenue from the millage was down about \$344,000. State reimbursement was estimated to be down by about \$571,000, of which about \$412,000 was due to a reduction in categorical funding (Employer Exhibit 14). The special Medicaid revenue for the previous year accounted for another \$1 million.

The historical pattern shows that in most years the revenue figures in CISD's final budgets are fairly close to the audited actual figures. Over the last five years, there has been a larger gap for expenditures, with the audited actual expenditures averaging about \$500,000 less than the final budgeted amount (Union Tab 25).

As of June 30, 2011, CISD had a fund balance of just over \$11.4 million. This is a relatively high fund balance among Michigan intermediate school districts, and represents about 29% of CISD's expenditures for that year. CISD was able to increase its fund balance fairly consistently over the previous six years, from a fund balance of \$5.7 million as of June 30, 2005. CISD's projections show it using \$1.5 million of its fund balance in 2011-2012 and another \$2.8 million in 2012-2013 (Employer Exhibit 13). These projections may be on the high side, considering the historical pattern of revenue being somewhat higher and expenditures being somewhat lower than budgeted.

CISD presented information concerning the revenue impact if Senate Bill 34 were to become law. SB 34 was introduced in the Michigan legislature last year, but so far has not progressed. This proposed legislation would eliminate the personal property tax on commercial, industrial and utility properties. The potential impact on CISD if SB 34 were to become law would be significant, reducing the property tax revenues from CISD's special education millage by about \$2.4 million annually (Employer Exhibit 16). This is a relatively large impact, compared to other ISDs and certainly compared to K-12 districts, because CISD receives such a high proportion of its revenue from local property taxes.

The parties proposed different "comparables" for purposes of this fact finding. On the whole, I think the contiguous ISDs from the surrounding counties are the more appropriate comparables. The Union included the Barry ISD as one of its comparables, while the

Employer did not. The Barry ISD is contiguous and it should be included as one of the comparables. Of the Employer's proposed comparables, Berrien and Van Buren ISDs are not contiguous. In choosing its proposed comparables the Union put considerable weight on the size of an ISD's fund balance. While fund balance is a factor to consider in the final analysis, I do not think it should be a predominant factor for purposes of choosing comparables. Fund balance can change from year to year and is not a very stable factor.

It is difficult to do a complete analysis using the contiguous ISDs as comparables, because full data was not presented for all years. Nonetheless, it appears that CISD is currently a little below the mid-point for employees at the lowest BA step (CISD starting salary: \$35,191), and a little above the mid-point for employees at the MA level with 13 or more years employment (CISD salary: \$69,146).

One of CISD's other bargaining units should also be considered a comparable - the Calhoun Area Career Center Education Association ("CACCEA"). This is a smaller bargaining unit than CIEA, with only about 30 members. Its members are primarily teachers at CISD's vocational education center. Their work is covered by a separate vocational education millage and a separate portion of CISD budget. They have already settled their contract with CISD, on terms which are similar to what CISD has offered to CIEA.

More than half the bargaining unit members, 87 out of 163, are at the top of the salary "steps." While employees are moving up the steps, they receive annual salary increases which start at \$2,082 for an employee with a BA degree moving up from the bottom step. The average step increase is \$2,622 in annual salary, which translates to an average increase of 5.3% for those who are getting step increases (Employer Ex. 27).

During the last few years the Michigan legislature has passed a number of statutes which have had a significant impact on public sector bargaining. 2011 PA 54 took effect shortly before the parties' previous contract expired. This statute provides that the amount a public employer such as CISD pays for wages and benefits will not increase after the expiration of a collective bargaining agreement. PA 54 also prohibits giving retroactive effect to any increases in wages or benefits. One effect of PA 54 has been that bargaining unit members did not receive step increases or "lane" increases for the now completed 2011-2012 school year, and have not received such increases to date for the 2012-2013 school year. (Lane increases are received for completing additional education, such as moving from having a BA degree to an MA degree.)

Another effect of PA 54 is that the insurance premium amounts paid by bargaining unit members increased for 2011-2012, because the bargaining unit members rather than CISD absorbed the premium increases. The parties' previous contract provided for a \$95 per month premium share. Because of PA 54, this increased to \$162.43 per month for 2-person coverage and \$227.67 per month for full family coverage during the 2011-2012 school year. The premium share for single person coverage remained at \$95 per month during that year.

For the current year and future years, a second statute, 2011 PA 152, is having an additional impact on the share of health insurance premiums paid by bargaining unit members. PA 152 provides, in general, that public employees such as CISD's employees pay 20% of the health insurance premiums. For the current, 2012-2013, school year, this has resulted in the employee share for single coverage increasing to \$116.04 per month, for 2-person coverage increasing to \$260.72 per month, and the for full family coverage increasing to \$289.65 per month. The impact of these increases in insurance premiums can be

substantial, especially for employees on the lower steps of the salary schedule. An employee with full family coverage has seen the premium share increase by \$194.65 per month, which is \$2,335.80 for the full year. For an employee on the lowest step of the BA salary schedule, this premium increase is equivalent to a 6.6% reduction in salary. For an employee at the top of the MA schedule this premium increase is equivalent to a 3.3% reduction in salary.

Over the last several contracts, CIEA has agreed to certain changes in insurance coverage which have kept premium increases to an average of 2.4% per year. For the current, 2012-2013 year, the premium rates actually decreased by 7.34% compared to the previous year. (Union Tab 17).

Retirement costs are a major expense. Over the last ten years, the percentage of wages which CISD contributes to the Michigan Public School Employees' Retirement System (MPSERS) increased from 12.99% of wages in 2002-2003, to 25.36% of wages for 2012-2013 (Employer Exhibit 20). This includes retiree health insurance as well as pension benefits. Recent State legislation is having some effect in slowing the growth in the contribution rate. Nonetheless, the MPSERS contribution rate increased by almost 1% for 2012-2013 compared to the previous year. The contribution rate is set by the State, and CISD does not have the ability to re-structure benefits in order to affect the contribution rate.

One of the disputed issues is the expiration date for the new contract. The parties agree that it will be a three year contract. However, they disagree on what the expiration date should be. The Employer proposed June 30, 2014, while the Union proposed August 31, 2014. CISD's fiscal year ends on June 30, and the contracts between the parties have historically ended on June 30. CISD's three other bargaining units also have contracts which end on June 30. Of the various other districts presented as comparables by the parties, about

half have June 30 expiration dates, and the others vary, with dates from mid to late August being the next most common.

Changing the expiration date to the end of the summer would allow for negotiations over the summer prior to the expiration of the contract. That would favor the Union, because any July 1 health insurance increases would be shared at the 80/20 percentage rates, instead of falling entirely on the employees per PA 54. It might also allow step increases to occur, depending on the timing of those increases. One effect of PA 54 is that the lower paid employees who are still moving up the steps are disproportionately impacted, because their step increases cannot be made retroactive.

Recommendations on the Disputed Issues

1. Wages
 - 2011-2012: 1% on all steps
 - 2012-2013: 1% on all steps, plus 1% off-schedule
 - 2013-2014: 1% on all steps
2. Insurance
 - a. premium share – do not extend 20% to dental, vision, and life insurance
 - b. deductible increase timing – start July 1, 2013
 - c. cash in lieu – reduce to 80% of single subscriber rate for health insurance
3. Recognition clause

Execute a Letter of Understanding to clarify that temporary and substitute employees can be provided through third party providers
4. Duration – ending date

Extend the contract through June 30, 2014.

Reasoning

Wages: My recommendation is similar to, although structured somewhat differently than, the increases experienced by CISD's vocational education teachers in the CACCEA

bargaining unit. CACCEA members received 1.5% on the top step and \$300 off schedule for the first year; 1% on schedule and ½ % off schedule for the second year; and 1% on schedule for the third year.

For CIEA, I am recommending 1% on all the steps for the first year instead of 1.5% to only those employees on the top step. By my calculations, 60% of the wages in the CIEA bargaining unit go to employees who are already at the top step. Giving a 1% increase to all employees will therefore cost only slightly more than giving a 1.5% increase only to the employees on the top step. I am considering that CISD salaries are more competitive at the top step than at the BA entry level (Employer Exhibits 30 and 36).

I am recommending a 1% off-schedule payment for the 2012-2013 year, to roughly make up for the additional \$300 off-schedule paid to CACCEA members in March of 2012. By my calculations, the average salary in the CIEA unit is just under \$59,000. \$300 per person therefore translates into roughly one-half percent of salary. Adding that one-half percent to the one-half percent off-schedule received by CACCEA in the second year, yields one percent off-schedule.

The recommended increases are below the 1.5% annual increases which were the average for this bargaining unit over the previous 8 years (Union Tab 23). Economic conditions have changed over that time period - most notably, the decrease in property tax revenues. I am considering that the main revenue source, local property taxes, has decreased 2 percent and is projected to be basically flat over the next few years. There is no reason to believe that State or federal revenues will increase appreciably either.

The recommended salary increases should keep CISD wages competitive with those in the neighboring ISDs. Even some of the ISDs chosen as comparables by the Union are experiencing wage freezes during one or more of these years (Union Tab 27).

I am also considering that the step increases will continue to add to overall salary costs. With about 40 percent of the bargaining unit receiving step increases which average about 5%, the step increases could increase payroll costs by as much as 2% per year. This estimate needs to be reduced somewhat, because the turnover in the bargaining unit will normally include retirements at or near the top of the pay scale being replaced by new hires at or closer to the bottom of the pay scale. However, not all replacements start at the bottom of the pay scale. In the most recent year, the replacements came in on average at step 4 ½, with an average salary of about \$48,000 (Employer Exhibit 45). I think a reasonable estimate is that the step increases will add about 1.5% per year to payroll costs.

I am also considering that the percentage of wages which CISD pays to the Michigan Public School Employees' Retirement System (MPERS) for pension and retiree health costs is continuing to go up. For 2012-2013, the rate is 25.36%, which is an increase of .9% from the previous year. With a bargaining unit payroll in the vicinity of \$10 million, this increase due to the increase in percentage rate comes to roughly \$90,000 per year. The contribution rate may rise again during the third year of the contract.

CISD does have a sizeable fund balance: \$11.4 million as of June 30, 2011. The Employer projected that over the life of this contract it would be using a good portion of this fund balance as expenditures exceeded revenue. Employer Exhibit 13 showed projected deficits of about \$1.5 million for 2011-2012 and \$2.8 million for 2012-2013. Based on historical patterns, actual deficits may not be as large as projected at this time. Nonetheless,

with expenses increasing and revenues basically flat, it is not unreasonable to project deficits during the life of this contract.

In addition, the fund balance would also be needed if Senate Bill 34 or something similar is passed by the Michigan legislature. While passage does not look likely at this time, it is still possible, and it is prudent to retain some cushion for this possibility.

The Union argued that CISD could reduce the reimbursement percentage below the 85% that it currently reimburses constituent K-12 districts for their special education expenses. This reimbursement presently amounts to almost one-third of CISD's budget. I do not think reducing the reimbursement rate should be a strategy unless exceptional circumstances were to occur. It might be a short term solution that would have long term negative consequences, if CISD were to lose some of its community support as a result.

Insurance Issues: the bargaining unit employees have been required to absorb significant insurance expenses as a result of changes in State law. State law does not require that the 20% sharing be extended to vision, dental, or life insurance. I think there has been enough cost shifting in the last few years without also extending this to vision, dental and life insurance.

I am recommending that the switch to the higher (\$200/\$400) deductible occur July 1, 2013. This is when the insurance rates renew, when changes are normally made. I am also considering that even without the higher deductible the Employer is experiencing cost savings this year due to a 7.34% decrease in insurance rates.

I am recommending that those who receive cash in lieu of insurance be paid 80% of the single subscriber rate for health insurance rather than 100% as is presently stated in the

contract. This is a logical change to keep the cash in lieu payment at the same equivalent value.

Recognition clause: The testimony indicated that it can be difficult for the Employer to find properly qualified individuals to fill in for bargaining unit members who are absent or on leave. Section B.1 of the Recognition Clause excludes from the bargaining unit temporary employees and substitute employees who fill in for bargaining unit members, for specified periods of time. An issue has arisen whether the use of the word “employee” in Section B.1 allows for the use of substitutes or temporaries who are not actually employees of CISD, but are furnished through a third party provider, such as a hospital.

I am recommending that the parties clarify Article I.B.1 by entering into a Letter of Understanding which includes language such as the following:

“The parties understand and agree that for purposes of Article I. B.1, the substitute employee or temporary employee does not need to be an individual hired directly by the Board as its own employee, but can be an individual furnished through a third party which is able to provide substitute or temporary employees.”

Duration: I am recommending that the contract extend through June 30, 2014. This matches CISD’s fiscal year and has historically been the date used by the parties. While I can see some benefit in changing to an August date, I think this is outweighed by these factors.

November 12, 2012


Kathleen R. Opperwall, Fact Finder