

2440

Riverview Recommendation
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
IN THE MATTER OF FACT-FINDING BETWEEN

RIVERVIEW SCHOOL DISTRICT, Employer

and

D11 K-1335

RIVERVIEW EDUCATION ASSOCIATION, Union _____ /

PRESENTED TO:

KEVIN FOLEY, Esq.
Foley & Robinette, P.C.
Attorney for Employer
13349 Reeck Court
Southgate, MI 48195
Phone: (734) 283-4000
Email: kfoley@frlawpc.com

And

JORDAN HARRIS,
UniServ Director
Association Representative
7445 Allen Road; Suite 200
Allen Park, MI 48101
Phone: (313) 381-5100
Email: jharris@mea.org

Representatives & Witnesses:

For the Michigan Education Association:
Jordan Harris, UniServ Director
Nancy Koziol, MEA UniServ Director
Ruth Beier, MEA Economist
Gary Betway, Chief Negotiator

For the Riverview School District:
Kevin J. Foley, Esq.
Russell Pickell, Superintendent of Schools
Frank Verhoven, Director of Finance and Business,
Gary Kennedy, Director of Operations

Before Fact Finder: Betty R. Widgeon

Background

The City of Riverview is located in the downriver area of metropolitan Detroit, in Wayne County, Michigan. It has a population of approximately 12,400. The Riverview Community

School District (the District/Employer) is a K-12 school district comprised of 5 school buildings: three elementary schools, a middle school and a high school. Its student enrollment count for the fall of 2011-2012 was 2871 students.

The School District and the Riverview Education Association (Union/Association) are seeking a successor to their CBA, which expired August 31, 2011. Bargaining began with the prior Superintendent before the expiration of the former contract. The Parties met on numerous occasions, with and without MERC mediator, Ms. Mikki Czerniak. However, they were unable to come to final agreement on all issues. After efforts at negotiation reached an impasse, the Employer filed a petition for Fact Finding. The undersigned Fact Finder was appointed by MERC to hold hearings and make recommendations in this matter.

On November 28, 2012, the evening prior to the Fact Finding hearing, the parties reached agreement on the issue of insurance. They signed a tentative agreement (TA) on the morning of the hearing. That agreement resolved the issue of health care, including prescription coverage, dental, life and vision. The hearing was held at the District's Offices in the City of Riverview on November 29, 2012. At that time the representatives thoroughly set-forth their positions. The Parties agreed to submit post-hearing briefs by December 21, 2012; the Arbitrator agreed to submit her recommendation(s) by January 21, 2013. This matter is now ready for the Fact Finder's recommendations. This report recognizes and incorporates into its recommendations the Parties' resolution regarding health care and any and all other TA's settled by the Parties during the pendency of this matter.

Unresolved Issue(s)

Wages (2011-2012; 2012-2013; 2013-2014)

Position of the Parties

The District

The District has proposed concessions of approximately \$1,500,000. It maintains that the Union has offered savings that are woefully short of the target. It advocates that District savings, its ability to refund its fund balance, and its ability to undertake limited necessary repairs can only come from two sources: additional State aid and Association concessions. It states that, as there is no real expectation that the State will appropriately fund education, the teachers must “step-up.”

In light of the agreement reached on health care, the District’s position is that now that the health care piece is closed, the Parties can look at salary, and that the 6% across the board decrease the District has requested, “becomes a feasible number to begin discussions.”

The Union

The Union’s position is that the District currently has ample funds to amicably settle the contract without the need for further concessions. It points out that Central Office/Data Process, Maintenance and Clerical took no reduction in wages. Moreover, the most highly paid leaders of the district, including the Superintendent, Finance Director, Curriculum Director, and RAC administrators, also took no wage concession. The Union maintains that the District’s position, of requesting teachers to take a significant rollback when it has not required the same from any other employee group, is untenable.

Criteria for Recommendations

Although no clear criteria dictates what Fact Finders must look to in order to adequately formulate recommendations, many Fact Finders use as a guide the criteria established in Article 9 of Act 312 of 1969, the Compulsory Arbitration of Labor Disputes in Police and Fire

Departments. These criteria are commonly used in fact finding proceedings involving public employers and police and fire unions, and this Fact Finder finds them to be a useful guide in assessing the issues presented by the parties in fact finding proceedings.

The applicable factors to be considered as set forth in Article 9 are as follows:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

(i) The financial impact on the community of any award made by the arbitration panel.

(ii) The interests and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

(f) The average consumer prices for goods and services, commonly known as the cost of living.

(g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) Other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service, or in private employment.

That statute directs that the financial ability of the unit of government to pay shall be given the most significance, *if the determination is supported by competent, material, and substantial evidence.*

Testimony

Ms. Ruth Beier (Beier), the Union's Economist was its first witness. Mr. Gary Betway (Betway), Union Chief Negotiator, testified second. Mr. Russell Pickell (Pickell), Superintendent of Schools, Mr. Gary Kennedy (Kennedy), Director of Operations, and Mr. Frank Verhoven (Verhoven), Director of Finance and Business testified for the District. Highlights of Beier and Pickell's testimony are discussed below.

Beier has been a staff economist for the Michigan Education Association since 1997. Prior to coming to the MEA in 1993, she was employed with the MSU Institute for Public Policy. Beier is the former Deputy Treasurer for the State of Michigan in Taxation and Economic Policy. She has a BA degree in economics from MSU and a MA degree in economics from Duke University.

Beier spoke extensively on the amount of money the district has. She underscored that her testimony did not touch on how the district uses its money, but only how much money it has

to spend. She noted that Riverview district is unusual among its surrounding downriver districts in that it is gaining students, not losing them. Beier focused on the state aid membership and the foundation allowance. She noted that the District also receives funds for certain categoricals, such as *Special Education* and *At Risk* populations. The District can also try to qualify for the *Best Practices* categorical that would net \$52 per student, which is down from the \$100 per student available last year.

Beier's testimony centered on the discrepancies between the District's beginning stated budgets and its final budget for the last two school years and the fact that the District's budget for revenue is significantly lower this year than it was for last year (by more than half-a-million dollars.) Beier states that there appears to be no reason for revenue to be going down when the District has an increase in students.

Beier began by highlighting that for the 2010-2011 school year the District's budget (set forth on June 30, 2010) reflected that the fund balance would go down almost \$1.4 million. At the close of the year, June 30, 2011, the District still budgeted that the fund balance would go down \$1.1 million. The audit for that year showed that the fund balance only went down \$316,000. The difference in the projected balance and the audit was about 1 million dollars. The difference between the final budget and the audit was about \$764,906. Then last year, the June 30, 2011 projection indicated a \$1.8 million fund balance decrease. The end of the year budget indicated a \$1 million decrease, and the audit showed a decrease of only \$282,268. Beier pointed out that this year the District's projected budget indicates a \$516,000 shortfall. She underscored that if this projection is inaccurate, there will be a significant amount of money available to settle the contract.

Beier testified that although the Union is proposing a 0% increase in wages, it is seeking steps for members for 2013-2014. The members last received step increases in 2010-2011. She further testified that although the Union acknowledges that the District does have needs, the Union feels that what is being requested of the teachers is excessive to the point of being punitive. Beier testified from her experience has been that without a labor agreement, it is difficult to get a bond passed.

Superintendent Pickell testified that substantial repairs are needed. The District is trying to move prudently, but it is also trying to maintain its attractiveness, both its current "home" students, and its School of Choice students. Additionally, the District is giving strong consideration to a non-voted bond for additional infrastructure needs. The bond will be funded via general fund dollars and will constitute an annual payment exceeding \$700,000 per year for the next fifteen years.

Pickell discussed the history of the District experiencing dire economic challenges in the past. He testified that there has been a lot of anxiety for Board members and the community as they see the fund balance decreasing. Pickell stated that such reductions damage the District's fiscal health and its credibility as it looks to bond prospects. He further testified that neither the Board nor the community would allow the fund balance to dwindle down to zero. He noted that the District is looking for a fair contract and to put this impasse behind them. Pickell stated that both sides recognize that there is currently an attack on public education. Up until now, the District has not given teachers the tools they need to achieve a competitive stance with respect to the tools other Districts have, such as up to date technology. Pickell concluded that the 6% reduction the District is asking is similar to what has been asked of similar bargaining units in the area.

District witnesses Verhoven and Kennedy testified about the District's repair needs. Some repairs (like desk purchases) have already been made and others (like some of the boilers) have been "patched along." Verhoven and Kennedy both predicted that the District's drop in Moody's listing would likely automatically cause it to have to pay higher interest rates on any borrowing it would have to do in the future; however, neither provided further information to substantiate the assumption. Their testimony established that the District had a good relationship with its bank that had been built up over the years, but there was no additional testimony on what the ratings drop would actually mean for the District in long or short-range costs.

Analysis & Recommendation

The Fact Finder took all the criteria of Article 9 of the Act 312 of 1969 and its amendments into consideration as a guideline in making her recommendations as well as the totality of the testimony, and all exhibits.

A big part of the disagreement concerns the accuracy District's projected revenue and expenses, whether all the stated repairs are necessary now, and if so, whether or not a rollback in teacher wages is the fairest and most appropriate way to get these repairs done. Figures from the financial information database show that last year the budget was almost balanced. There was a cut in the foundation balance, but the District was able to maintain a near balanced budget. The District's foundation allowance was \$7788 per student.

Beier's point, that right now, the District is making decisions and proposals with its original projected budget in mind, is a strong one. If the same holds true this year as it has for the past two years, where the District's figures have been "off" on an average of \$1.28 million dollars, there is already enough money available to settle the contract. The District's evidence to the contrary did not offset the potency of this point. Specifically, the Fact Finder was not

persuaded that the District's evidence regarding *ability to pay* was supported by competent, material, and substantial evidence. Moreover, evidence did not support that projection the District's finance are in dire straits.

The District's student enrollment has been growing for the past five years—from 2600 in 2006 to 2846 in 2011. This growth has been coming primarily from an increase in the number of School of Choice students. The testimony and exhibits paint a vivid picture of a District that has grown in popularity over the last half-dozen years or so, to the point where it has become first choice for a significant number of families in surrounding communities.

The District projects a leveling-off of enrollment growth during the current school year. However, this slow down is not due to the popularity of the District decreasing or to the numbers dropping of their own accord. It may be observed that for many families more than a district away, Riverview School District has been somewhat of a magnet. Instead, the testimony was that the District has made a decision to cap the number of students because it “wants to maintain” where it currently is with student population.

Moreover, of the numerous items on the District's list for repairs and acquisitions, the Union has legitimate questions: which of these items are “must have now”, which might be placed on a phase-in plan, and which might be appropriately considered for future bond attempts with both District and Union support. Although the District wants to upgrade its technology, its explanation of spending approximately \$500,000 at this time as a way to qualify for \$148,000 categorical grant, raises more questions than it satisfactorily answers.

With respect to the \$374,544, money budgeted for 2011-20 that was not paid because the Parties were without a contract, the District is correct that it would have been illegal for it to have done otherwise. Yet and still, those savings impact the District's budget. Similarly, actual

savings were realized with the Parties' agreement on health care. The Parties disagree on the actual savings because a large portion of the amount counted by the Union was State mandated. Yet, they are still real savings. The District wants to hold on to the number of students they have, and required repairs must figure into that equation. It also has a legitimate interest in maintaining a safe fund balance. However, it must not lose sight of the substantial drawing card sound, effective teachers are in this calculation.

Riverview has earned the reputation for delivering the goods, and its teachers are one of the core ingredients to that mix. They are not the highest paid teachers in the state, although they are near the top. Based on the Parties' presentations, the Fact Finder was unpersuaded that the Districts current financial position requires the concessions from the teachers that it advocates at this time. Thus the Fact Finder's recommendation as to wages is as follows:

1. 2011-2012
Recommended—salary/step freeze
2. 2012-2013
Recommended—salary/step freeze; step 0 to be included for future hires
3. 2013-2014
Recommended—salary/step freeze

Respectfully submitted and issued this 21st day of January, 2013.



Betty R. Widjeon
Fact Finder