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State of Michigan
Department of Licensing and Regulatory Affairs
Bureau of Employment Relations

In the Matter of Statutory Factfinding between:

HUDSON AREA PUBLIC SCHOOLS,
Employer

-and-

HUDSON EDUCATION ASSOCIATION,
MEA/ NEA
Union.
______________________________________/

MERC Case No. L11 E-9005

Hearing: December 5, 2012
Hudson, Mi.

Briefs filed Feb. 4, 2013

FACTFINDER'S
REPORT, FINDINGS, AND RECOMMENDATIONS.

Factfinder Benjamin A. Kerner

Appearances:

For the Employer:	Martha Marcero Thrun Law Firm, P.C.
For the Association:	Mary H. Halley Uniserve Representative

Also present: Brandon Walker, Jackie Bower, Michael Osborne, Rex Murphy, and Mike Borton, Ellen Fitch, Amy Leffel, Pat Pastula, Craig Culver, and Ruth Beier.

BACKGROUND.

The School District employs approximately 50 Full Time Equivalent (FTE) teachers in 2012-13. It has approximately 948 students. During 2009-10, the Hudson Area School Board (Board) found that it had entered into a deficit phase. There were various efforts made to alleviate the deficit, including the layoff of 13 employees. The deficit continued in 2010-2011. Further efforts were made, including retrenchments by the Hudson Education Association (Union), as shown below, to alleviate this deficit. By 2011-12, the School District had "clawed its way out." However, the Board was continuingly monitored by the State Office of Education.

Bargaining for the current contract began in April 2011. The parties have had 29 negotiations sessions (including one in January 2013); and 5 mediation sessions. In June 2012, the Board implemented its impasse offer, which included a reduction in teacher salaries of 6% of salary across-the-board. Testified Superintendent Osborne, "The 6% does not cover the whole amount needed." Furthermore, he testified that the Board has already reached an intermediate target of a 2% general fund balance for 2011--12.

The Board outlined two over-riding goals for this contract. One is to stabilize the budget; Two is to increase the general fund balance to 10% -15%. It is recognized that the goal of 10% of the budgeted general fund as an operating balance will take some time to achieve. The Board's basic position in factfinding is to maintain the 6% reduction and to implement an expanded lane-and-step structure for 2013-14 which would effectuate savings in salary by virtue of stretching out the time required to reach the highest step (and also affords teachers greater flexibility in crossing from the BA lane to 3 successive educational lanes, BA+30 credits, MA, MA+30 credits, instead of just one increment, the MA level, under the expired contract).

The Union says that due to its cooperation in meeting deficit reduction proposals there are no financial benefits for teachers left in the collective bargaining agreement. They have—in the interest of financial stability—abandoned early retirement incentives; tuition reimbursement; paid health insurance; extra duty pay; and have agreed to add 5 additional teaching days without additional pay; and have agreed to unemployment benefit concessions. "We have given our share" says Representative Mary Halley. But the revenues expected in 2012-13 and beyond that in 2013-14 have been under-estimated, says the Union, and the Board-imposed salary reduction of 6 % is not warranted and should be supplemented with recoupment of salary raises described in the Union's final bargaining proposal as follows:

> For each $60,000 of district audited revenues exceeding the Board of Education's predicted 2012-2013 General Fund revenue of $7,233,010, 1% will be reinstated to the 2012-2013 salary schedule (from the reduced 6% schedule) up to a maximum of 3% increase over the 2011-2012 schedule. Fifty percent (50%) off any additional 2012-2013 district audited revenue received beyond $7,773, 010 will be paid out as "year end bonuses" in an off schedule payment and equally distributed to all 2012-2013 employees on the second payroll after the November 2013 district approved audit. Since the final adjusted 2012-2013 (which will also be the 2013-2014 schedule) will not be known until the 2012-2013 audit is received and approved, all adjustments to the 2012-2013 and 2013-2014 salary schedule shall be made retroactive the beginning of the respective school year.

For the 2013-2014 contract year, the Union proposes as follows:

> The 2013-2014 salary schedule will be in place and adequately funded to afford and keep Hudson Area Schools on solid financial footing based on the above-described formula. Step and lane changes occur retroactive to the beginning of the 2013-2014 school year if audited 2012-2013 revenue exceed $7,503,010 plus the total cost of step/ lane advancements.

By adopting these proposals, says Ms. Halley, the Board can meet its primary goals of achieving financial stability and increasing the fund balance to 10% (over a number of years). In addition, teachers would not be penalized for the Board's meeting and exceeding its goals.

The Union's petition for factfinding is dated June 3, 2012 (Sunday). It was apparently received by the Michigan Employment Relations Commission on June 13, 2012. On June 4, 2012, the Board adopted its resolution of impasse and declared that salaries would be cut by 6% across-the-board in this unit. I was appointed the factfinder on August 16, 2012, under the procedures normally employed by the Michigan Employment Relations Commission. I held a pre-hearing conference on September 13, 2012, with the parties' representatives in attendance. The evidentiary hearing was held on December 5, 2012. The parties were afforded unlimited opportunity to present the evidence each had in support of its position at the hearing. The right of cross-examination was preserved. The parties have chosen to brief the issues. And I have had an opportunity to study the briefs. With these arguments in mind, it is appropriate to make my findings and recommendations to the parties.

THE FINDINGS.

The Union points to the bargaining history between the parties as showing numerous and substantial concessions by the Union and the bargaining unit, indicative of an awareness of the Board's financial situation. Starting on May 26, 2011, the parties reached a letter of agreement requiring laid off bargaining unit members to pay back unemployment money received, if and when they are recalled.

In June and July 2011 the parties bargained on the subjects of health insurance and salary. On August 9, 2011 the Union presented a health insurance concessionary proposal; however, there was no response from the Board.

On August 15, 2011, the Union gave another concessionary proposal freezing the step and lane structure of "the salary index". That offer was accepted. Says the Union, "This agreement allowed the district to save an entire year of paying steps and lanes to all bargaining unit members." [U. Brief, p.2].

On August 18, 2011, the Union proposed $16,000 in cuts to Schedule C (extra duty assignments). This offer was not immediately accepted. Likewise in September 2011 the Union made a new offer on health insurance; but this offer was tabled by the Board.

On September 28, 2011, the Board made a full presentation of a health insurance proposal with a new previously unutilized risk carrier and administrator. Ultimately, the Board decided that the Union-endorsed carrier, MESSA, would be financially superior to the other vendors it had considered.

On October 10, 2011, the Board "formally proposed a three percent (3%) salary reduction with an off-schedule payment if the two percent (2%) fund balance goal was reached." [U. Brief, p. 3] The Union estimated that the financial information available at that time indicated that the Board would achieve a 2% fund balance by the end of FY 2011-2012.

A grievance which had been filed in regard to increased health insurance premium deductions was withdrawn by the Union, on the understanding that it would effectuate significant cost savings to the Board. There was a corresponding negative impact on bargaining unit members.

In November 2011, the Board began bargaining with its present attorney. She made a comprehensive proposal which incorporated all the items previously settled—most in favor of the Board—and presented the prospect that a greater-than-3% wage reduction would be needed. The above-cited grievance was settled by the Union's withdrawal of the grievance. The Union also agreed to an increase in the health care employee premium contributions from 5% to 20%. (This change anticipated the effective date of PA 152.)

In bargaining in January 2012, the Board introduced its revised salary schedule index, which changed the existing 25 steps and 2 lanes to a proposed 38 steps and 4 lanes. This would have stretched out the application of steps to a bargaining unit member over a longer time; and allowed intermediate steps for teachers with intermediate educational attainments, with the result (according to the Union) of reducing salary over a career at Hudson Area Schools by over $100,000.

At bargaining in February, 2012 the Union proposed buy-outs of specifically identified teachers. Substantial long-term cost-savings could have been realized by these buy-outs. The Board's Superintendent did not accept.

In March the parties utilized a MERC-appointed mediator for several sessions. It was the Union's observation by June 1, 2012, that the Board had—largely through concessionary savings offered by the Union—achieved a non-deficit position and a 2% general fund balance. In view of the Union's observation that the Board was not making concessions, and was not moving to close the deal on the basis of the concessions already given by the Union, there was a need for factfinding. This was communicated to the Board. Promptly, on June 4, 2012, the Board passed a resolution declaring impasse and imposing a 6% salary reduction effective immediately.

Other facts will be summarized, as needed, with respect to the positions of the parties.

POSITIONS OF THE PARTIES AND SUPPLEMENTAL FINDINGS.

The student count has gone down in successive years from 1107 in 2001-2002 to 948 in 2012-2013, with a slight upward blip in 2011-12 of 928 to 957. [Bd. Exh. 12] The School Board takes the position that the blended student count will continue to go down. The Union takes the position that the blip in 2011-12 indicates a likelihood that the blended count will go up in future years.

The Foundation Allowance—the basic State-determined amount of aid per pupil-- has gone down from a high of $7,316 in 2008 to a low of $6,846 in 2011 and has rebounded very little since then.

Some one-time grants or allowances have been made to the School District, and will not be repeated. These include $48,880 in best practices revenue and $82,429 in MPERS off-set revenue [E'er. Brief, p. 26] as well as ARRA [federal stimulus] funds. The School District's 2011-12 budget, inclusive of these items, is $7.9 million (November audited figures).

The Union says that notwithstanding the deficit position in which the School Board found itself in 2009-10, and in 2010-11, a comparison of the original budget figures to the actual audited figures at the conclusion of those school years and in 2011-12 shows that there has been a consistent under-estimate of revenue by $515,000 to $550,000, as follows [based on U. Exh. 6] :

	2009-10	2010-11	2011-12
Original Budget	7, 554, 716	7,663,022	7,352,049
Actual Audit	7, 982,221	8,228,719	7,902,701
Underestimate	427,505	565,697	550,652
Underestimate as % of audit	5.3%	6.9%	7.0%

Assuming this relationship between budgeted and audited figures remains constant, the Union argues that the Board has the amount needed to meet the Union proposal of a 1% wage recoupment for each $60,000 in under-estimate between budget and audited figures. In addition, says the Union, it has left room to improve the general fund balance percentage, by allocating $25,000 of each $60,000 under-estimate to fund balance improvement; and $35,000 to wage improvement.

Thus, given the likelihood, says the Union, that the Board will actually experience revenues of $7.5 million in 2012-13; as compared to a budgeted amount of $7.2 million, there will have been an under-estimate of $300,000 in actual revenues. Certainly, the teachers should share in the distribution of this amount, argues the Union, even as the Board improves its position on fund balance.

The Board argues as follows:

> In Assoc. Ex. 5 the Association projects that the district with $7,964 million in "general fund revenues" with $604,0343 or approximately 7.5% of the revenues being described as "balancing figure assumption" by Michigan Education Association Labor Economist

> Ruth Bier. For 7.5% of the budget, based upon "assumption," to be undefined as a balancing figure is simply irresponsible and hardly anything that the district or fact finder can or should rely upon to make such important recommendations.
> [E'er. Brief, p. 13]

The Board argues further that the concessions it has put forward for this Union are consistent with, and shared in by the other employee groups of this Employer. For instance, says the Board, the custodial, maintenance and grounds employees have received a $4.00/ hr. reduction. The Board argues further that the administrative staff has maintained no increase for 2012-13 whereas the HESPA (education support personnel) took a 1% decrease for 2012-13.

With regard to external comparables, the Board says that the community of 10 other Lenawee County school districts provides an appropriate group of comparables. Most are smaller school districts but a few are larger (Adrian and Tecumseh). The ten school districts have an average teacher salary of $57,260; whereas Hudson Area School District has an average teacher salary of $69,318. Concludes the Employer, "Nothing in the Hudson community warrants the Hudson teachers being so significantly inflated over its peers. There is no broader tax base, no spikes in student enrollment, no extraordinary ongoing grants and no large community endorsement." [E'er. Brief, p. 24]

Furthermore, the Union shows that the Board has hired 4 new FTE teachers in the last year: a special education teacher, a kindergarten teacher, a 7th grade teacher, a Spanish teacher (1/2 FTE) plus a Sacred Heart position (1/2 FTE). Of these, the kindergarten and the 7th Grade teachers were discretionary. Had the Board decided to postpone hiring those two teachers, the savings would have been in the neighborhood of $140,000. The benefit of the 6% pay reduction to the Board is approximately $157,000 per year. [U. Exh. 19] As economist Ruth Beier for the Union put it, this was a settleable contract.

CONCLUSIONS.

The external comparables, as cited above, show that the 10 communities in the presumed comparable group are not offering teacher salaries equal to Hudson Area Schools. The Board shows further that at the BA salary level, the County average is $35,818 whereas Hudson with the 6% salary reduction, would still be $36,337, or 1.4% higher than the comparables. At the MA level, the County average is $38,940 whereas Hudson with the 6% salary reduction would be at $38,915, virtually the same as the average. [E'er. Exh. 31] These facts tend to indicate that a 6% wage reduction is not prohibitive.

In regard to internal comparables, the evidence shows that the maintenance-custodial group of employees has experienced 0% increase in contract year 2012-13 (with a $4 per hour reduction for new hires). The education support personnel bargaining unit has experienced a 1% decrease in 2012-13. [E'er. Exh. 35]. And, the administrative group received no increase for 2012-13. It would appear that a decrease of 6% for teachers is not warranted by this evidence.

I find further that there has been a consistent under-estimate in budgeting; the amounts are not insignificant and range as shown above from 5-7% of budget. It appears that at least 2-4% of these amounts is available for allocation to the teachers' contract and other employee expenses, while still leaving 3% as an under-estimate which is appropriate, is a cushion against a deficit position, and is fiscally conservative.

It has been shown that the Hudson Area Schools has come through a precarious period in which it was the subject of a 3-year deficit elimination program, instituted and approved by the State Office of Education. The third of those years, with 2011-12, is now behind us. However, the evident need to build upon the deficit elimination program is paramount. In particular, the razor-thin 2.0% (or even 3.65%) general fund balance must be improved upon. The Union's consistent statement that the Board has reached its goal of "2% fund equity" expresses only the immediate Board goal. I also heard the Board witnesses state: the Board's goal is to improve the fund balance position to 2% in 2011-12 and by increments thereafter, to achieve a 10-15% fund balance.

The Union's goal, evidently, is to recoup the heavy losses it suffered when the Board took action on June 4, 2012, to implement a 6% wage cut. And, to maintain the wage growth inherent in the step-and-lane salary index under which the parties have lived for many years. The Board's view is that the current step-and-lane salary index is outmoded, since it only refers to the BA lane and the MA lane, and does not credit teachers' other educational attainments. Its suggestion for a salary index standardizes the percentages between steps; meets Michigan Department of Education certification guidelines; and provides for long-term stability, by stretching out the number of steps and lanes it takes to reach the highest rungs.

The evidence supports a finding that the Board can meet its goals while insisting upon a 3% decrease in wage rates *from pre-June 2012 rates*. The Board will be able, according to the figures on actual vs. budgeted figures, to meet its non-deficit goal. Thus, I recommend that the parties settle on a 3% wage increase over current rates across-the-board to members of the bargaining unit effective for all hours worked or earned *since December 1, 2012*, and continuing to June 30, 2013. [1] Thereafter, I recommend for the 2013-14 year that the parties settle on the same wages as are paid for the remainder of the 2012-2013 year.

At the same time, it appears to me that the Board will be able to increase or continue its program of growing the general fund balance by approximately 2.0% per year with substantial assistance in that regard if it adopts the salary index evidenced at p. 10 of the Union's brief. I recommend that the parties settle on the basis of adopting that salary index, adjusted for then-current base wages, for 2013-2014.

RECOMMENDATION.

I recommend that the parties adopt for their 2012-14 contract the provisions of the last two paragraphs above-stated.

Benjamin A. Kerner
Factfinder

Dated: February 11, 2013
Detroit, Michigan

[1] The retroactive adjustment for the period December 1, 2012, until the date this contract is settled does not run afoul of 2011 PA 54 because it is not for an amount greater than the last contractual wage rate.