

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

In the Matter of:

SWARTZ CREEK SCHOOLS
Employer

-and-

MERC Fact Finding
Case No. L12 B-0170

SWARTZ CREEK EDUCATION
ASSOCIATION
Union

**FACT FINDER'S FINDINGS OF FACT,
REPORT AND RECOMMENDATIONS**

APPEARANCES:

FOR SWARTZ CREEK SCHOOLS:

Donald J. Bonato, Attorney
Ryan Nicholson, Attorney
Jeffrey Hall, Superintendent

FOR SWARTZ CREEK EDUCATION
ASSOCIATION:

Brad Gibson, MEA Uniserv
Eric A. Minore, Local President
Maureen McCallister, Chief Bargaining Chair
Grant B. Hegenauer, SCEA Bargaining Unit

The Fact Finding Petitions

The Board of Education of the Swartz Creek Community School District and the Swartz Creek Education Association entered into a Master Agreement effective August 31, 2009 and continuing "in effect" until the 31st day of August 2012.

At some point, the parties began negotiating for a successor master contract. The parties were unable to reach an agreement on a successor Master contract.¹ The parties were involved in

¹ Throughout this Report the Fact Finder will make reference to the "Board" or the "District" interchangeably as being a reference to the Employer. Likewise, the Fact Finder will interchangeably make reference to the "Association" or "Teachers", referring to the bargaining unit.

mediation with a State-appointed Mediator on October 11, 2012 for three hours and on December 3, 2012 for two hours. Thereafter, on December 6, 2012, the Swartz Creek Community Schools petitioned for fact finding, representing that the number of employees in the unit were 210, namely, primarily K-12 teachers, with the unit being described in Article I of the Master Contract as:

ARTICLE I
Representation

1. **RECOGNITION**

- A. The Board hereby recognizes the Association as the exclusive bargaining representative as defined in Act 336 of the Michigan Public Acts of 1947, as amended, for all professional personnel performing 40% or more of school time as classroom teachers. This would include by way of illustration, but not by way of limitation, counselors, media specialists, psychiatrists, psychologists, social workers, librarians, speech therapists, hearing therapists, visiting teachers, advising or critic teachers, teachers of the homebound or hospitalized, and school nurses. Only schedule F will apply to full-time or regular, part-time alternative academy teachers or counselors employed by the Board (whether or not assigned to a public school building). The positions above include personnel on tenure, probation and on per diem appointments who teach sixty (60) or more consecutive school days in the same assignment, but excludes supervisory and executive personnel engaged in direct administration and supervision of professional personnel. The term "teacher" when used hereinafter in the Agreement, shall refer to all employees represented by the Association in the bargaining or negotiating unit as above defined, and reference to male teachers shall include female teachers.

The issues listed as unresolved in the Board's petition were:

1. Calendar
2. Compensation
3. Grade changes
4. Pay Periods – that comply with law
5. Health Care

6. Compliance with PA 152
7. Dental Care
8. Vision Care
9. Release Time
10. Contract Duration
11. Deletion of Prohibited Subjects of Bargaining – as specified under PERA

On December 17, 2012, a Petition for Fact Finding was filed on behalf of the Swartz Creek Education Association acknowledging that the contract expired on August 31, 2012; that the number of employees in the unit were 210; and that there were two mediation sessions on October 11, 2012 for three hours and December 3, 2012 for two hours. The Association's Petition agreed as to the unit description. The Association listed the unresolved issues as:

1. Calendar
2. Health Care – inclusive of Dental & Vision
3. Salary
4. Protection of Teachers
5. Teaching Load
6. Mentor Teacher
7. Teacher Rights
8. Alternative Academy Teachers
9. Personal Days/Sick Time
10. Preservation of current contract language related to professional staff not subject to Teachers' Tenure Act.

The undersigned was appointed as Fact Finder. A fact finding hearing was held in what turned out to be a 12 hour hearing on June 19, 2013 where testimony was taken as well as further mediation with the Fact Finder took place with the consent of the parties.

The Issues

By the time the Fact Finder arrived on the scene, the parties had narrowed the issues down to Calendar, Health Care Issues including Dental and Vision, Salary, Protection of Teachers, Grade Changes, Release Time, Contract Duration and the issue of Prohibiting Subjects of Bargaining as Specified under PERA (Board's description) – Preservation of current contract

language related to professional staff not subject to Teachers' Tenure Act (Association's description).

At fact finding, the parties resolved the issue of Grade Changes, Pay Periods and Teacher Protection. Subsequent to the fact finding hearing on June 13, 2013, the parties met and resolved the calendar. Thus, the issues that are subject to recommendation in this Report are Salary, Health Care inclusive of Dental and Vision, Release Time, Contract Duration and the issue of Prohibited Subjects of bargaining.

The Demographics

As already indicated, there are 210 individuals in the bargaining unit represented by the Swartz Creek Education Association, including Teachers in Grades K-12. Most of the teachers either have Master Degrees with hours beyond or 18 hours beyond the BA. The District operates one high school, one alternative education school, one middle school and six elementary schools. The District is located in Genesee County. The District serviced in the 2012-2013 school year a 3,992.18 student count.

In terms of comparables, the District is proposing that it be compared with school districts in its athletic league, namely, Kearsley, Brandon, Fenton, Linden, Lapeer, Holly and Clio. Most are school districts about the same size as Swartz Creek with the exception of Lapeer which operates two high schools, has more students, and is in Lapeer County. The other districts are in either Genesee or Oakland Counties.

The Association proposes that the comparables be the Districts in Genesee County serviced by the Genesee Intermediate School District.

The Criteria

In preparing a Report, Findings of Fact and Recommendations, a Fact Finder, in the view of this Fact Finder, should be guided by ascertainable criteria. The statute providing for fact finding does not provide guidance as to the criteria to be used by Fact Finders. However, in enacting Act 312 of Public Acts of 1969, as amended, addressing interest arbitration involving police and fire departments, in Section 9 thereof the Legislature has set forth certain criteria to be followed by an arbitration panel. Furthermore, the Legislature by virtue of Act 116 of Public Acts of 2011 amended Section 9, becoming more specific as to the order of the criteria to be used. This pronouncement by the Legislature beginning in 1969 and continuing to 2011 gives guidance to any neutral making recommendations as to the provisions to be included in a collective bargaining agreement.

Section 9 of Act 312 as amended sets forth the criteria as follows:

Sec. 9. (1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

(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.

(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.

The gist of the Act 116 amendment is to emphasize that financial ability is the most important criteria to be followed by a neutral, although other criteria still are applicable.

To a Fact Finder looking for criteria in order to make and form recommendations, the message of the Legislature is clear – financial ability is the major consideration. But there are other considerations. Then there is the Section 9(1)(h)(i), the so-called “other criteria” that are considered by Fact Finders. What are these criteria? Such criteria include the bargaining history of the parties, namely, what present and past bargaining has revealed as to the parties’ position on issues. In addition, there is the art of the possible, namely, that in the give and flow of negotiations, considering the bargaining history, the parties eventually, to avoid disruption in services, and facing reality do make compromises, *i.e.*, the art of the possible, in reaching settlements.

The criteria also, as pointed out, includes comparisons with other employees of the Employer outside of the bargaining unit involved and other similarly situated employees of other employers, namely, other school districts. It is these criteria that will guide this Fact Finder in the preparation of this Report and Finding of Fact.

The Financial Condition of the Swartz Creek Community Schools

Recognizing that the financial ability of the governmental entity – here, the Swartz Creek Community Schools – is the major consideration under recognized criteria, the starting point to examine the financial ability of the District is to review the last audited financial statement by the District’s CPAs, namely, Taylor & Morgan. Though the Association provided the Fact Finder with certified audits going back to 2008, in the view of this Fact Finder the critical audit for consideration is the most current audit that was available at the time of the fact finding. The audit for the 2011-2012 school and fiscal year became available the last week of September 2012. As of the date of the fact finding hearing and the date of this Report, the audit for the

2012-2013 fiscal year of the District running from July 1 through June 30 had not yet been received.

The notes to the 2011-2012 audit from pages 6-9 tell a most interesting story, reading as follows:

GOVERNMENTAL FUNDS FINANCIAL HIGHLIGHTS

Our financial statements provide the following insights about the results of this year's operations:

The financial condition of the governmental funds has declined overall from the prior year.

In the General Fund, the fund equity decreased by \$2,401,924 to \$1,365,946. The Building and Site Sinking Fund increased by \$906,353. The CDC fund decreased by \$29,383, and the Cafeteria Fund decreased by \$25,168.

MAJOR GOVERNMENTAL FUNDS BUDGETING AND OPERATING HIGHLIGHTS

The School District's budgets are prepared according to Michigan law and are initially adopted prior to July 1 of each year, before student enrollment counts are known. Therefore, it is expected that there will be changes between the initial budget and subsequent budgets, as actual enrollments and resultant staffing requirements are known. Currently, the most significant budgeted funds are the General Fund and the Capital Projects Fund. During the fiscal year ended June 30, 2012, the School District amended the budgets of these major governmental funds once in June of 2012.

General Fund

In the General Fund, the actual revenue and other financing sources totaled \$33,106,606. This is above the original budget estimate of \$32,325,760 and \$57,480 below the final amended budgeted amount of \$33,164,086, a variance of .17%. The actual expenditures and other financing uses of the general fund were \$35,508,530. This is above the original budget estimate of \$33,814,896 and \$407,501 above the final amended budgeted amount of \$35,101,029, a variance of 1.16%

The fund balance of the general fund was \$1,365,946 on June 30, 2012 as compared to \$3,767,870 on June 30, 2011.

A schedule is provided in the required supplemental information of these financial statements showing the District's original and final budget amounts compared with amounts actually paid and received.

GOVERNMENTAL FUND EXPENDITURES

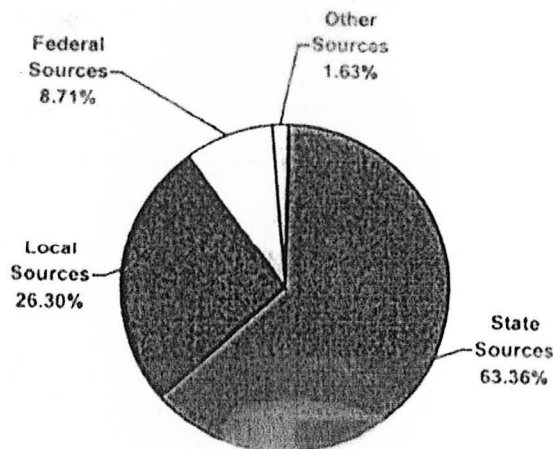
The following chart illustrates that the General Fund comprises approximately 9.82% of all the equity within the governmental funds of the School District. As of June 30, 2012, the District's program expenditures for all programs totaled \$41,784,778 compared to \$41,547,466 in 2011. The ending fund balance for all funds was equal to \$13.9 million and is detailed below. The capital projects funds include the sinking fund and the 2011 bond fund. Non-major funds include the school lunch fund, the child development fund, the community education fund and the debt service fund.

	June 30, 2012 <u>(In millions)</u>	<u>% of Total</u>
General Fund	\$ 1.366	9.82%
Capital Projects Funds	12.122	87.08
Other Non-major Funds	.432	<u>3.10</u>
Total	\$ 13.920	100.00%

TOTAL REVENUES FOR ALL GOVERNMENTAL FUNDS

Revenues for all governmental funds totaled \$37,501,492 compared with \$37,918,603 in 2011. The following graph illustrates the District revenues by source as a percentage of total revenue:

Total Revenue by Source for All Funds



GENERAL FUND

Unrestricted State Aid

The district's operating costs are predominately funded by State Aid. The per-pupil allowance was reduced by \$470 for the 2011-12 school year; however, districts could lower the amount of the reduction by approximately \$190 per student given certain conditions set by the state were met. The district met the criteria and received the additional funding as Best Practice Incentive and MPSERS Cost Offset categoricals. State Aid membership was computed in 2011-12 school year with a blended count of 10% of the February and 90% of the

September counts.

Property Taxes

The District levied 18.0 mills of property taxes on all non-homestead property located within the district for General Fund operations. The levy is assessed on the taxable value of the property. The increase in taxable value is limited to the lesser of the inflation rate of the prior year or 5%. When a property is sold, the taxable valuation of the sold property is readjusted to the State Equalized Value, which is approximately 50% of market value. The 2011-12 non-homestead property tax levy including delinquent taxes totaled approximately \$6,600,145, compared with \$6,700,188 in 2010-11.

Federal Funds

Federal funds in the general fund were reduced by \$1,997,084 from \$3,586,038 in 2011-12 to \$1,558,954 in 2010-11. These reductions were primarily in ARRA, EduJobs, Title II, and PeNut foundation Funds.

In total the district saw a decrease of \$1,233,943 from all revenue sources from 2010-2011 levels.

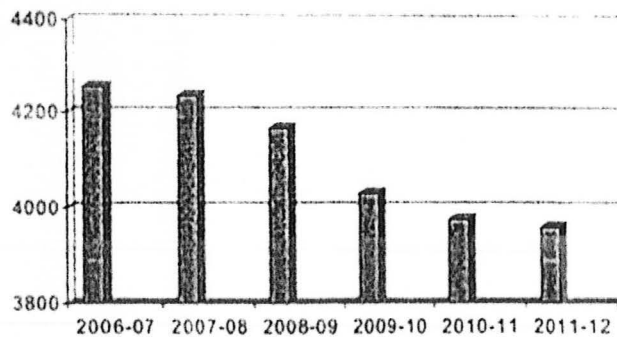
Sinking Fund

In the 2011-12 school year, the District levied 1.8059 mills for the District's sinking fund, which was renewed by district voters in May of 2011. During the 2011-12 school year, revenues for the fund were \$1,558,561, which represents the levy, along with interest and penalties that are reinvested into the fund.

Enrollment

The Swartz Creek School District's 2011-12 Blended FTE count, which is the basis for school funding, totaled 3,960 students. This is a decrease in enrollment of 16 students from last year.

Student enrollment over the last six years can be illustrated as follows:



Enrollment is important to the financial health of the District, because State funding is based on a per-pupil formula.

OUTSTANDING DEBT AT YEAR-END

As part of an agreement from the State of Michigan, Swartz Creek Community Schools received a settlement as a non-plaintiff District. If the State Legislature fails to appropriate funds for the Bond payments, the District is under no obligation for payment and will write off the debt service requirement for that year only. The Durant Bonded Debt for the year ended June 30, 2012 and 2011 was \$42,957 and \$83,962, respectively.

Debt

Bonded debt consists of \$13.6 million dollars from the 2011 bond issue. Installment notes consist of a land contract for the purchase of the Cage Fieldhouse Athletic facility totaling \$1.377 million.

For more detailed information regarding capital assets and debt administration, please review the Notes to the Basic Financial Statements located in the financial section of this report.

CAPITAL ASSET AND DEBT ADMINISTRATION

Capital Assets

At the end of fiscal year 2012, the School District had \$24.55 million invested in land and buildings, furniture and equipment, and vehicles and buses. Of this amount, \$13.65 million has been depreciated. Net book value totals \$10.9 million. Total additions for the year were approximately \$400 thousand and were comprised of site improvements, bus and equipment purchases. The District's academic buildings range in years of construction from 1928 to 1969. The majority of these buildings were constructed in the 1960's. The district is committed to the timely repairs and maintenance of its facilities. Computer purchases are under the District's capitalization threshold of \$5,000 and are expensed accordingly.

CAPITAL ASSETS AT YEAR END
(NET OF DEPRECIATION)
(IN MILLIONS)

	Governmental
	<u>Activities</u>
Land and Improvements	\$ 1.74
Buildings and Additions	7.98
Furniture and Equipment	.33
Vehicles and Buses	<u>.85</u>
Total	<u>\$ 10.90</u>

CONTACTING THE SCHOOL DISTRICT'S FINANCIAL MANAGEMENT

This report is designed to give an overview of the financial conditions

of the Swartz Creek School District. If you should desire additional detailed financial program audits, they can be obtained by contacting the following person:

James F. Bleau
 Assistant Superintendent for Personnel and Business Services
 Swartz Creek Community Schools
 8354 Cappy Lane
 Swartz Creek, Michigan 48473
 810-591-2300

The General Fund Equity decreased by about \$2.4 million between 2010-2011 and 2011-2012 from \$3,767,870 to \$1,365,946. What is established is that the District's operating costs "are predominantly funded by the State Aid, namely, 63.36%. Local sources are 26.30%. Federal sources 8.71%. Other sources 1.63%. The per pupil allowance was reduced by \$470 for 2011-2012 school year, although part of this was recouped by the Best Practice incentive and MPSERS cost offset.

The Budgetary Comparison Schedule - General Fund for the year ending June 30, 2012 as attached to the certified audit was as follows:

	Budget			Variance with Final Budget Positive (Negative)
	<u>Original</u>	<u>Final</u>	<u>Actual</u>	<u>(Negative)</u>
Revenues				
Local sources	\$ 7,321,950	\$ 7,339,834	\$ 7,151,212	\$(188,622)
State sources	23,017,436	23,544,779	23,661,493	116,714
Federal sources	1,572,552	<u>1,663,740</u>	<u>1,588,954</u>	<u>(74,786)</u>
Total revenues	31,911,938	32,548,353	32,401,659	(146,694)
Expenditures				
Education				
Instruction				
Basic programs	17,101,651	17,880,236	17,889,040	(8,804)
Added needs	3,654,917	3,513,885	3,708,609	(194,724)
Supporting services				
Pupil services	2,111,290	2,579,936	2,689,454	(109,518)
Instructional staff	1,183,114	951,336	991,114	(39,778)
General administration	514,230	624,513	598,663	25,850
School administration	2,181,984	2,423,745	2,409,134	14,611

Business services	819,734	1,147,285	1,126,939	20,346
Operation & maintenance	3,008,531	3,067,246	3,098,602	(31,356)
Transportation	1,556,970	1,545,182	1,616,077	(70,895)
Central services	671,678	543,069	564,446	(21,377)
Athletics	760,113	657,489	656,290	1,999
Community services	<u>155,184</u>	<u>90,567</u>	<u>85,718</u>	<u>4,849</u>
Total Expenditures	33,719,396	35,024,489	35,434,086	(409,597)
Excess of Revenues Over/ (Under) Expenditures	(1,807,458)	(2,476,136)	(3,032,427)	(556,291)
Other Financing Sources/(Uses)				
Sale of Fixed Assets	12,422	16,757	26,253	9,496
Interdistrict Sources	401,400	598,976	584,012	(14,964)
Operating Transfer In	-	-	94,682	94,682
Operating Transfers Out	<u>(95,500)</u>	<u>(76,540)</u>	<u>(74,444)</u>	<u>2,096</u>
Total Other Financing Sources/(Uses)	<u>318,322</u>	<u>539,193</u>	<u>630,503</u>	<u>91,310</u>
Excess of Revenues Over/ (Under) Expenditures and Other Financing Sources/(Uses)	(1,489,136)	(1,936,943)	(2,401,924)	(464,981)
Fund balance - July 1	<u>3,767,870</u>	<u>3,767,870</u>	<u>3,767,870</u>	-
Fund balance - June 30	<u>\$ 2,278,734</u>	<u>\$ 1,830,927</u>	<u>\$ 1,365,946</u>	<u>\$ (464,981)</u>

Revenues were down. The cost of instruction was approximately \$203,000 more than in the final budget. Transportation costs exceeded the final budget by almost \$71,000. The general administration, school administration ended up with a positive balance in the final budget. However, the final budget for both areas was substantially higher than in the original budget.

Besides the certified audit for 2011-2012, Taylor & Morgan prepared a chart illustrating general fund revenues and expenditures. In 2007-2008, the revenues and expenditures were almost balanced, although the expenditures exceeded revenues. The trend continued where expenditures were exceeding revenues in each of the succeeding years. However, between 2010 and 2012 there was a substantial increase in expenditures in the area of \$35.434 million whereas

revenues dropped to \$32.401 million.

These changes were against a background whereby the District was for five years continuing to spend more than it received in revenues, thereby impacting the general fund balance. In 2007-2008, the fund balance was \$6,661,050; in 2008-2009, \$5,394,736; in 2009-2010, \$4,673,539; in 2010-2011, \$3,767,870. These drops in fund balance up to 2011 were about \$1 million a year or less. However, as noted, in 2011-2012, the fund balance dropped to \$1,365,946 – a drop in fund balance of almost \$2.4 million which by any count was the highest one year drop in general fund balance in the last five years.

There were other financial pressures on the Board's budget that were unanticipated. As contrasted to the years between 2006-2007 and 2009-2010, the Board's retirement costs jumped 16.95% or approximately an additional \$606,000. For the year 2011-2012, there was an additional 16.7% jump of a little over \$700,000 so that in 2011-2012 the Board was paying \$4,946,028.89 for retirement costs whereas in 2009-2010 the Board was paying \$3,622,966.09. This is because the retirement rate in 2007-2008 was at 16.72%. In 2012-2013, the retirement rate had jumped to 25.36% of payroll. This amount had to be assumed by the Board.

Health care costs was an increasing problem for the District through 2010-2011 with costs increasing each year so that in 2010-2011 the cost was \$3,821,649.51. With the District adopting a hard cap, this cost did decrease by 1.64%. Yet, health care still cost the District \$3,759,110.60 in 2011-2012.

By any test, the financial situation in Swartz Creek was deteriorating. The Board proposed the following budget reductions in 2012-2013 in an attempt to balance its budget and restore its general fund balance:

The Board reviewed cuts of about \$2,000,000 for next year in order to balance the budget.

Cuts

Eliminate 1 Assistant Principal Position	\$ 90,000
Eliminate Co-op Student Paid Positions	\$ 95,000
Privatization of Custodial positions	\$ 500,000
5% across the board pay cuts for all employees	*\$1,000,000
3 rd party Substitute Teachers	\$ 60,000
3 rd party Non-Staff Coaches	\$ 34,000
1 less Bus Purchase	\$ 76,000
Elimination of Mid-afternoon bus runs due To all day Kindergarten	\$ 39,000
Gas savings from mid-afternoon run	\$20,000
TOTAL	\$ 1,914,000

*Portion of teaching staff cuts did not take place - pending negotiation outcome.

A snapshot of the Swartz Creek Foundation Allowance Pupil Count in 2008-2009 to

2012-2013 is as follows:

School Year	Foundation Allowance	Student Count	Total	Difference From Previous Year
2008-2009	\$7,316	4,168.15	\$30,494,185.40	
2009-2010	\$7,316	4,030.84	\$29,489,625.44	-\$1,004,559.96
2010-2011	\$7,316	3,976.16	\$29,089,586.56	-\$400,038.88
2011-2012	\$6,846	3,960.48	\$27,113,446.08	-\$1,976,140.48
2012-2013	\$6,966 (-52 Less for Best Practices)	3,992.18	\$27,601,932.52	\$488,486.44

Difference Between 2008-2009 and 2012-2013 -\$2,892,252.88

What this reveals is that, though the State reduced per pupil foundation allowance by \$470 from 2010-11, because Swartz Creek did receive \$52 per student for the Best Practices Incentive along with the fact that in 2012-2013 the trend of losing students was reversed so that there were 32 more students in the District as between 2011-2012 and 2012-2013, the District received

\$488,486.44 more in 2012-2013 than in 2011-2012 in State allowance. As noted, State Aid accounts for 63% of the District's revenue.

Following the 2011-2012 year, among the 30 school entities in Genesee County, the average general fund equity is 8.90%. With Swartz Creek's 3.85%, Swartz Creek is 5% below the average.

Within the athletic league comparables, the following is noted:

District	% Fund Equity	Total General Fund
Brandon	8.01	
Clio	17.43	30,541,080
Fenton	6.14	28,958,923
Holly	6.41	
Kearsley	12.36	27,291,555
Lapeer	6.30	
Linden	9.76	23,472,296
Swartz Creek	3.85	35,434,086

Though the certified audit for the 2012-2013 school-fiscal year was not available at the time of the fact finding hearing or the date of this Report, introduced into the evidence before this Fact Finder was a series of projections concerning the 2012-2013 year as well as 2013-2014. The updated budget overview 2013 dated May 13, 2013, after considering costs in connection with the PAC and GSRP, the forecast was that the 2012-2013 deficit, namely, expenses over revenue for 2012-2013 was projected to be \$357,500. If this prediction holds true, the fund balance will drop to \$1,084,446 which will be the lowest drop in the fund equity in six years. Nevertheless, it will continue the trend of a reducing fund balance caused by expenditures exceeding revenue and percentage-wise will be below the 2011-2012 3.85% fund equity.

The exhibits which were part of Exhibit 42 presented by the Association proceeded to discuss 2013-2014 revenue assumptions. In regard to the foundation allowance, the exhibit noted that for 2012-2013 the District received \$6,966 per pupil. In addition, the District received

\$52 per pupil for Best Practices. The Governor proposes that in 2013-2014 the District will receive \$7,000 per pupil for an increase of \$34 per pupil. However, whereas the District in 2012-2013 received \$52 for Best Practices, making in effect the State Aid to Swartz Creek of \$718, the projected Best Practices amount in 2013-2014 for Swartz Creek will be \$16 per pupil, or a reduction overall of \$2 per pupil to \$7,016 which over 3,992 students does amount to almost \$8,000 which in the overall scheme is not significant. Nevertheless, the District cannot expect additional State Aid unless the student count trend continues to increase.

The 2011-2012 funding level for federal funds for Swartz Creek was \$1,610,086. With the 5.3% cut as a result of the sequester impact, the prediction is that the District will receive at least \$85,335 less in federal aid in 2013-2014.

Introduced as evidence was a Section 221 Technological Funding of \$80,000 for technological equipment. The District's expenditure assumptions was noted to include an already 4% reduction in AFSCME plus no pay beyond three snow days, a 5% reduction in PAT administrators contact with a reduction of \$40,000 in permit pay from 2011-2012 and 2012-2013. In addition, there is a 5% reduction in central office administrators 2012-2013 compensation assumption. There were some additional expenses predicted to the tune of \$101,000.

In regard to tentative staff changes, it was predicted that there would be .5 additional Special Ed position, one additional 5th grade position, possible two additional teachers at the middle school, possible one additional Special Ed at middle school. It was predicted that there would be three less kindergarten positions at Gaines, Dieck and Elms, respectively, plus a .5 less Special Ed position at Dieck. The bottom line was predicted that there would be one additional

net teacher at a cost of \$70,000. \$99,100 for new curricular costs were predicted. Cost associated with SWCRK 21 was projected to be \$23,224.

Health care costs was predicted to be increased by \$96,600 due to increases in the CPI. Whether this increased cost in health care will be as high as suggested might be brought into question because of the hard cap. The total new curriculum cost was predicted to be \$99,100. Additional technological costs for 2013-2014 was predicted to be \$237,960. In 2013-2014, the revenue assumption totaled \$33,513,486 which took into consideration the one-time sale of property amounting to \$270,000 plus \$80,000 in 221 technological funding and \$20,000 in anticipated PAC rental fees. The total expenses for 2013-2014 were projected to be \$34,339,386. With an anticipated deficit for 2013-2014 of \$885,900 showing that the projected fund equity for 2013-2014 "based on above assumptions" would be \$122,546 which would be less than a 1% fund equity. If 3.8% was substantially lower in either group of comparables, the athletic league or Genesee County districts, it becomes clear that a fund equity below 1% is by any definition approaching, if not there, deficit financing. It is obviously dangerously low.

The only conclusion that can be made is that expenditures are outstripping revenues at Swartz Creek at a rapid pace so that in six years' time, if the projections hold, a fund balance of almost \$7 million, almost 18%, becomes less than 1%. If the conditions continue, the District by 2014-2015 could be near deficit financing unless the expenditures are stabilized. These projections come about even though, as already pointed out, the District received a \$488,486.44 increase in State allowance in 2012-2013 over 2011-2012 and the one-time sale of property in the amount of \$270,000 which is not a repeating source of income.

Presumably, consideration was given to the Board's cuts of about \$2 million discussed at

page 14 of this Report which may or may not have been realized. The 5% across-the-board pay cuts for all employees, for example, did not apply to the teaching staff because of pending negotiations which is the subject of this fact finding.

There is no question that something needs to be done – that a hard look must be made at both the District’s expenditures and revenues to avoid a cascading financial crisis. The Fact Finder in his Recommendations recognized this fact. But, in doing so, there must be a realistic balance, namely, the art of the possible.

The Teachers’ Salary Schedule and Comparisons

The 2011-2012 Teacher Salary Schedule in Swartz Creek was as follows:

2011-2012
Teacher Salary Schedule

Step	BA	BA+18	BA+30 or MA	MA+15	MA+30
0	\$38,861	\$40,895			
0.5	\$39,876	\$41,970			
1	\$40,895	\$43,039	\$45,292		
1.5	\$41,970	\$44,166	\$46,480		
2	\$43,039	\$45,292	\$47,668	\$50,164	\$52,794
2.5	\$44,166	\$46,480	\$48,916	\$51,479	\$54,176
3	\$45,292	\$47,668	\$50,164	\$52,794	\$55,559
3.5	\$46,480	\$48,916	\$51,479	\$54,176	\$57,016
4	\$47,668	\$50,164	\$52,794	\$55,559	\$58,471
4.5	\$48,916	\$51,479	\$54,176	\$57,016	\$60,003
5	\$50,164	\$52,794	\$55,559	\$58,471	\$61,533
5.5	\$51,479	\$54,176	\$57,016	\$60,003	\$63,147
6	\$52,794	\$66,669	\$58,471	\$61,533	\$64,757
6.5	\$54,176	\$57,016	\$60,003	\$63,147	\$66,455

7	\$55,559	\$58,471	\$61,533	\$64,757	\$68,154
7.5	\$57,016	\$60,003	\$63,147	\$66,455	\$69,937
8	\$58,471	\$61,533	\$64,757	\$68,154	\$71,723
8.5		\$63,147	\$66,455	\$69,937	\$73,606
9		\$64,757	\$68,154	\$71,723	\$75,481
9.5		\$66,441	\$69,926	\$73,590	\$77,446

In addition, there was a longevity schedule which provided the following additional salary:

		15 yrs	20 yrs	25 yrs	30 yrs
Degree Status	Salary	1.50%	3.00%	4.50%	6.00%
BA	\$58,471	\$59,348	\$60,225	\$61,102	\$61,979
BA+18	\$66,441	\$67,438	\$68,434	\$69,431	\$70,427
BA+30/MA	\$69,926	\$70,975	\$72,024	\$73,073	\$74,122
MA+15	\$73,590	\$74,694	\$75,798	\$76,902	\$78,005
MA+30	\$77,446	\$78,608	\$79,769	\$80,931	\$82,093

Salary Differences with Longevity

		15 yrs	20 yrs	25 yrs	30 yrs
Degree Status	Salary	1.50%	3.00%	4.50%	6.00%
BA	\$58,471	\$877	\$1,754	\$2,631	\$3,508
BA+18	\$66,441	\$997	\$1,993	\$2,990	\$3,986
BA+30/MA	\$69,926	\$1,049	\$2,098	\$3,147	\$4,196
MA+15	\$73,590	\$1,104	\$2,208	\$3,312	\$4,415
MA+30	\$77,446	\$1,162	\$2,323	\$3,485	\$4,647

Within the athletic league, the following is to be compared:

District Code	District	Average Teacher Salary	Rank within State	Pupil/Teacher Ratio
63180	Brandon	\$62,681	146	25:1
25150	Clio	\$59,488	220	25:1
25100	Fenton	\$63,505	131	25:1
63210	Holly	\$64,321	116	24:1
25110	Kearsley	\$73,020	24	26:1
44010	Lapeer	\$56,523	290	24:1
25250	Linden	\$62,336	157	26:1
25180	Swartz Creek	\$64,745	106	24:1

There are 549 School Districts in the State of Michigan.

Swartz Creek Community Schools ranks in the top 19.30% of State school districts in terms of average teacher salaries.

80.7% of school districts rank below average in terms of teaching salaries.

These percentage figures do not include charter schools or public school academies.

Among the eight school districts in the athletic league, including Swartz Creek, one – Kearsley – has a higher average. Holly is close to Swartz Creek. In any event, Swartz Creek’s averages are in the top third in its athletic league. If the comparisons are with Genesee County, Swartz Creek in most categories is in the top one-third at most step levels.

The Fact Finder recognizes that averages are the product of the census of the teachers involved and the degrees and experience they may have. In Swartz Creek, a substantial number of the teachers have MA+15. Most have MA’s which affect the average. Nevertheless, Swartz Creek fares well in terms of salary averages, being among the top 20% in the entire State.

The Bargaining History

The present salary schedule which is most competitive, was as a result of bargaining

between the parties. As a result of negotiating for a successor Agreement to the 2009-2012 Agreement, the District was not able to obtain any concessions from the Teachers, whose salaries and benefits constitute the District's major expense. Thus, for the 2012-2013 school year, the salary schedule continued intact except, by virtue of the applicable statute, there was no movement in the steps or on the lanes so that the salaries that the teachers received in 2012-2013 were the same that they received in 2011-2012.

During this same period, the District sought what it deemed as 5% concessions from the various bargaining units in the District and from non-represented groups, including the Superintendent and Business Manager. These concessions, which did occur during the 2012-2013 school year, were as follows:

- PAT: Loss of Merit pay for two years
 Hard caps on insurance premiums
 Pay freeze totaling +5% of compensation

- IUOE: Hard caps on insurance premiums
 Pay freeze for 2012-13

- AFSCME: 4% Pay Decrease
 Reduction of "Act of God" days limited to 3 days in 12-13 (actually had 7 days)
 Hard caps on insurance premiums

- SUPERINTENDENT: Elimination of vacation day payout and cash in lieu of health totaling 5% of compensation.

- ASST. SUPERINTENDENT: Elimination of vacation day payout and reduction of cash in lieu of health totaling 5% of compensation.

The District maintains that the above "concessions" represented a 5% savings in each of the units involved as well as the Superintendent and Assistant Superintendent.

The Issues in Contention

Salary Schedule

As to salary, on March 18, 2013, the District proposed for 2012-2013 previously proposed pay scale (minus 5%) no step increases or lane changes or longevity payments. For 2013-2014, the District proposed if minus 5% in salary schedule in 2012-2013 is not realized then (minus 5% will be implemented in year 2013-2014 with no movement to steps, lane changes or longevity. For 2014-2015, one year movement on steps, lane changes and longevity based on new base for previous year. The proposed salary schedule of the District for teachers hired prior to July 1, 2013 is as follows:

**2012-2013
Teacher Salary Schedule**

Step	BA	BA+18	BA+30 or MA	MA+15	MA+30
0	\$36,918	\$38,850			
0.5	\$37,882	\$39,871			
1	\$38,850	\$40,887	\$43,028		
1.5	\$39,871	\$41,958	\$44,156		
2	\$40,887	\$43,028	\$45,285	\$47,655	\$50,154
2.5	\$41,958	\$44,156	\$46,471	\$48,905	\$51,468
3	\$43,028	\$45,285	\$47,655	\$50,154	\$52,781
3.5	\$44,156	\$46,471	\$48,905	\$51,468	\$54,165
4	\$45,285	\$47,655	\$50,154	\$52,781	\$55,547
4.5	\$46,471	\$48,905	\$51,468	\$54,165	\$57,003
5	\$47,655	\$50,154	\$52,781	\$55,547	\$58,457
5.5	\$48,905	\$51,468	\$54,165	\$57,003	\$59,990
6	\$50,154	\$52,781	\$55,547	\$58,457	\$61,519
6.5	\$51,468	\$54,165	\$57,003	\$59,990	\$63,132

7	\$52,781	\$55,547	\$58,457	\$61,519	\$64,746
7.5	\$54,165	\$57,003	\$59,990	\$63,132	\$66,441
8	\$55,547	\$58,457	\$61,519	\$64,746	\$68,137
8.5	\$55,547	\$59,990	\$63,132	\$66,441	\$69,925
9		\$61,519	\$64,746	\$68,137	\$71,707
9.5		\$63,119	\$66,430	\$69,911	\$73,574

The Board's proposal provided that if the 5% reduction had occurred in 2012-2013, based upon the Board's proposed new salary schedule, then in 2013-2014 the Board had proposed one year movement on steps, lanes and longevity based on the new schedule. The Board was prepared in such a case to restore longevity based upon the percentages that were in the expired contract.

In addition to the above schedule for current teachers, for teachers hired after July 1, 2013 the Board proposed a 22 step salary schedule beginning with a BA at \$36,000 and a MA+15 maximum of \$71,049.11 and eliminated the MA+30 track, replacing it with an EDS or second Master's step.

On April 17, 2013, within six weeks prior to the original fact finding hearing date in this matter, the Association made a comprehensive proposal to settle the contract. As to salary, the Association proposed the following:

2012-13 School Year:

Wage, step, lane changes (i.e. education credits) and longevity will be frozen at (2011-12) salaries.

* * *

2013-2014 School Year:

Implementation of new salary schedule A. Current employees will be credited one (1) step advancement from the 2012-2013 school year

along with lane changes (i.e. education credits) and longevity.

* * *

Regular Sustained Teaching During Preparation Period. The maximum amount of teachers allowed to teach during their preparation period is limited to ten (10) teachers per semester per building at secondary level and one (1) per semester per building at elementary level. Teachers who teach an additional class shall be paid according to the following schedule: Elementary – Prorated according to the additional portion of the day taught. Middle/High School – One-eighth (1/8) per full year; one-sixteenth (1/16) per semester of his/her salary exclusive of longevity.

2014-15 School Year:

* * *

0% Increase

Implementation of new salary schedule (changes to step 10.5 and adding 11 only). Current employees will be credited one (1) step advancement from the 2013-2014 school year along with lane changes (i.e. education credits) and longevity.

2015-16 School Year:

0% increase. Current employees will be credited one (1) step advancement from the 2014-2015 school year along with lane changes (i.e. education credits) and longevity.

* * *

The proposed salary schedules by the Association were:

2013-14					
STEP	BA	BA+18	MA	MA+15	MA+30
0	\$36,475	\$38,476	\$40,490	\$42,613	\$44,844
0.5	\$37,424	\$39,481	\$41,554	\$43,729	\$46,020
1	\$38,476	\$40,490	\$42,613	\$44,844	\$47,196
1.5	\$39,481	\$41,554	\$43,729	\$46,020	\$48,432
2	\$40,490	\$42,613	\$44,844	\$47,196	\$49,667
2.5	\$41,554	\$43,729	\$46,020	\$48,432	\$50,969

3	\$42,613	\$44,844	\$47,196	\$49,667	\$52,271
3.5	\$43,729	\$46,020	\$48,432	\$50,969	\$53,640
4	\$44,844	\$47,196	\$49,667	\$52,271	\$55,009
4.5	\$46,020	\$48,432	\$50,969	\$53,640	\$56,451
5	\$47,196	\$49,667	\$52,271	\$55,009	\$57,892
5.5	\$48,432	\$50,969	\$53,640	\$56,451	\$59,409
6	\$49,667	\$52,271	\$55,009	\$57,892	\$60,924
6.5	\$50,959	\$53,640	\$56,451	\$59,409	\$62,522
7	\$52,271	\$55,009	\$57,892	\$60,924	\$64,116
7.5	\$53,640	\$56,451	\$59,409	\$62,522	\$65,797
8	\$55,009	\$57,892	\$60,924	\$64,116	\$67,479
8.5	\$56,451	\$59,409	\$62,522	\$65,797	\$69,245
9	\$57,892	\$60,924	\$64,116	\$67,479	\$71,013
9.5	\$59,409	\$62,522	\$65,797	\$69,245	\$72,877
10	\$60,924	\$64,116	\$67,479	\$71,013	\$74,734
10.5	\$62,522	\$65,783	\$69,234	\$72,861	\$76,679

2014-15
2015-16

STEP	BA	BA+18	MA	MA+15	MA+30
0	\$36,475	\$38,476	\$40,490	\$42,613	\$44,844
0.5	\$37,424	\$39,481	\$41,554	\$43,729	\$46,020
1	\$38,476	\$40,490	\$42,613	\$44,844	\$47,196
1.5	\$39,481	\$41,554	\$43,729	\$46,020	\$48,432
2	\$40,490	\$42,613	\$44,844	\$47,196	\$49,667
2.5	\$41,554	\$43,729	\$46,020	\$48,432	\$50,969
3	\$42,613	\$44,844	\$47,196	\$49,667	\$52,271
3.5	\$43,729	\$46,020	\$48,432	\$50,969	\$53,640
4	\$44,844	\$47,196	\$49,667	\$52,271	\$55,009
4.5	\$46,020	\$48,432	\$50,969	\$53,640	\$56,451

5	\$47,196	\$49,667	\$52,271	\$55,009	\$57,892
5.5	\$48,432	\$50,969	\$53,640	\$56,451	\$59,409
6	\$49,667	\$52,271	\$55,009	\$57,892	\$60,924
6.5	\$50,959	\$53,640	\$56,451	\$59,409	\$62,522
7	\$52,271	\$55,009	\$57,892	\$60,924	\$64,116
7.5	\$53,640	\$56,451	\$59,409	\$62,522	\$65,797
8	\$55,009	\$57,892	\$60,924	\$64,116	\$67,479
8.5	\$56,451	\$59,409	\$62,522	\$65,797	\$69,245
9	\$57,892	\$60,924	\$64,116	\$67,479	\$71,013
9.5	\$59,409	\$62,522	\$65,797	\$69,245	\$72,877
10	\$60,924	\$64,116	\$67,479	\$71,013	\$74,734
10.5	\$62,125	\$65,398	\$68,829	\$72,433	\$76,229
11	\$63,385	\$66,706	\$70,205	\$73,882	\$77,753

The structure of the Association's proposed salary schedule for 2013-2014 is a reduction at every level of the schedule, beginning with reducing the beginning BA salary from \$38,861 to \$36,475. By adding two more steps in 2013-2014, the salaries at the MA, MA+15 and MA+30, for example, have been reduced in the sense that instead of 9.5 years to reach the maximum at the MA+30, it now takes 10.5 years and the maximum has now been reduced to \$76,679. In 2014-2015, an additional step has been added, the maximum at the top step, which would be 11, has been increased by .04% with the beginning salary remaining at \$36,475. The Teachers' proposal also includes the same longevity calculation as in the 2009-2012 contract.

The Association also proposed as further "cost savings" to increase the split grade classrooms to five and to permit 10 teachers per semester per building at the secondary level and one per semester per building at the elementary level to teach during his or her preparation

period. The question of split classes raises educational issues plus the need for split classes can never be predicted. Furthermore, though teaching in prep periods may in some cases be unavoidable, it is questionable whether the proposal should be memorialized in the Collective Bargaining Agreement. This follows because over the years in K-12 contracts permitting a prep period during the school day has been a way of life, recognizing that such a period represents sound educational policy. In any event, it is difficult to put a figure on this aspect of the so-called cost savings.

The Cost Analysis of the Salary Proposals

The budget projections for the 2012-2013 school year for which the certified audit has not yet been delivered was premised on a total savings of \$1,914,000, including \$1 million of a 5% across-the-board “pay cut for all employees”. In the exhibit discussing the “cut” attempted or initiated in 2012-2013, there is a footnote: “Portions of teaching staff cut did not take place – pending negotiations outcome”.

From the Fact Finder’s perspective, after being with the parties for about 12 hours on June 19, 2013 and reviewing multiple exhibits, it becomes clear that if one steps back this situation must be put in perspective. Beginning with the proposition that the District needs to repair its finances because of the cascading march to a negative fund equity balance, the teachers suggested, and it does not seem to be challenged by the District, that the District request for a 5% cut on the teachers’ compensation would represent approximately \$680,911 based upon 5% of a base salary of \$13,618,228. This, of course, does not include the added retirement costs which should have been figured in.

In presenting their case, the Board noted that the Principals (PAT) lost merit pay for two

years and took a pay freeze. The secretaries (IUOE) took a pay freeze and no step increases. Both groups took hard caps on insurance premiums. AFSCME took a 4% pay decrease and the reduction of snow days. The argument was made by the Association that in the case of AFSCME, because of a threat of privatization that this internal comparable is not reasonable. The Fact Finder agrees.

It took some time for the Fact Finder to realize, but what the District is seeking to do is more than a pay freeze with the teachers. The District is attempting to revamp the salary schedule of current teachers plus new teachers – a major overhaul designed to permanently affect the cost of teacher salaries. Yet, it is interesting to note that this was not the approach with PAT. There was no attempt to permanently overhaul PAT's entire salary structure. Nor was there an attempt to permanently overhaul the entire salary schedule of the IUOE. There were pay freezes at least for one year, maybe two years, for those units.

This incongruity in a District that is concerned about a cascading deficit was not lost on the Fact Finder. The point is that the Association did propose for the 2012-2013 school year for a pay freeze, namely, no movement on the steps or on the academic lanes. There is some dispute as to what such movement would have cost as compared to 2011-2012 salaries. The District has advised the Fact Finder that the cost of such a movement would have been \$229,000. The Association claims it is more near \$500,000. Taking the District's figures, this would represent around 1.73% what this Fact Finder terms "avoidance", namely, if the steps and lanes had been honored in 2012-2013 when there was no contract, at a minimum the cost of the same teacher count and same level would be \$229,000 more than in 2011-2012. As the Fact Finder reviews it, this would have meant that the expenses exceeding revenues for 2012-2013 would increase at

least \$229,000 more, impacting the fund equity balance. This limited saving, of course, is what the District was not looking for in its proposal to the teachers.

Having made this observation, it would seem that the Board and its negotiators should recognize this fact and be somewhat more realistic on the situation. So should the Association negotiators. There is a reason why the Board needs more from the teachers because the teachers represent a majority of the costs in operating the District. The Fact Finder understands this.

The teachers agree with the Board that the salary schedule needs revamping in order to address the financial needs of the District and that the revamping should not only be short-range but long-range. Both parties are in agreement on this approach.

Although the teachers will take a pay freeze for 2012-2013, including no step increases and no lane changes, which represents the elimination of additional costs in 2012-2013, as this Fact Finder has suggested with the same teacher count and same degrees and experience presumably the cost of the teachers in 2012-2013 would be the same as in 2011-2012, continuing the strain on the District's budget and falling fund balance.

The teachers have proposed a major overhaul in the salary schedule beginning in 2013-2014 and continuing for 2014-2015 and 2015-1016 as already discussed. There seems to be agreement that as a salary schedule this represents a 1% decrease. However, there were two sets of figures presented concerning the teachers' salary schedule as presented that were intriguing. In the exhibit referred to as "Proposals – Salary Schedule A Compensation" under a bar graph the following comparison is made:

	2011-12	2012-13	2013-14	2014-15	2015-16
0% Current Contract-					
All Movement Allowed	\$13,618,228	\$13,425,436	\$13,391,347	\$13,581,374	\$13,766,374
SCEA Proposal	\$13,618,228	\$13,209,485	\$12,613,501	\$12,954,501	\$13,139,501

A review of this chart suggests that, if the teachers' proposed schedules were adopted, there would be less cost than the current cost of teachers through 2015-2016. In discussing this chart with Counsel, it became clear that these figures were subject to misinterpretation.

What seems to be a more realistic assessment of the teachers' proposal was set forth in the teachers' Exhibit 41, "Financial Highlights of SCEA Proposal", which read:

- Proposal actually lowers SCEA overall ranking (starting to ending salary average) of salary compared to other teacher units in Genesee County (Salary (9) and Per diem (12)). Drop takes the unit out of the top 25-30% and now puts salary schedule in the 40-52% percentile. (Current rank is Salary (5) and Per Diem (7)).
 - Salary Savings per new teacher hired (starting 2013-14 for 20 years) with schedule A changes (reduction in schedule) \$32,325.
 - Asked to save \$680,911, four year salary savings (Schedule A) to district **\$2,555,924**
 - Total 4 year contract Savings from 2011-12 Compensation Level = **\$4,614,266**
 - **Proposal establishes short term and long term concessions in salary**
 - **SCEA PROPOSAL MEETS AND EXCEEDS Guidelines set by SCCS**
- (Emphasis in original.)

These figures may not be exact. They could be misleading. Or they could represent the savings that the Board seeks. In any event, there is the upcoming certified audit that will serve as a check on the impact of the proposals along with the audit that will be forthcoming for the 2013-2014 school/fiscal year.

The Fact Finder appreciates that Exhibit 41 sets forth the relative standings in Genesee County whereas the Board seeks this Fact Finder to make the comparison with the athletic league which basically the Fact Finder has done while using the Genesee County comparables as a check on the facts. Perhaps the teachers' schedule does not change the positions within the

athletic league. Yet, there are savings. There is a major overhaul of the salary schedule in the teachers' proposal. The teachers are making permanent changes although they do add steps that give some members at Step 11 improvement in compensation by 2014-2015 over 2011-2012. Furthermore, in comparing the teachers' salary proposal with that of the Board's proposal for current teachers, at most steps the teachers' salary proposal is less than the Board's except the added steps 10, 10.5 and 11.

The difficulty with the Board's two-tier salary schedule is that such proposals, which do not represent a universal long-term approach to all employees of the District, *i.e.*, PAT and IUOE to begin with, plus the two-tier approach is not followed in the athletic league as a general proposition. In addition, this approach is premature. The Fact Finder uses the word "premature" because if the Board makes permanent changes in the salary schedule as proposed by the teachers and perhaps some permanent changes for Principals and secretaries, it may be that the fund equity balance will be stabilized and increased. The Fact Finder is only recommending a contract expiring August 31, 2015 so that if the recommendations here, which hopefully will be adopted, do not stabilize the fund equity balance, then the matter can be reviewed in a short period of time because August 31, 2015 is not too far off.

The other difficulty with the Board's proposals is the Board has not indicated what savings is expected with their proposals. The proposals ignore the bargaining history of the District and the Association, how the teachers arrived at the salary schedule that they have, and do not represent the art of the possible. The art of the possible is to work out a change and monitor the economic situation.

There are factors that impact on the economics of the situation. Able Counsel for the Board pointed out that the Fact Finder should not rely on upward changes in student count in view of the fluidity of student movement in school districts, particularly in districts in and around Swartz Creek. Yet, Swartz Creek is beginning to see a movement upward in student count that could possibly increase State Aid. This depends on the creativity of the Board's academic program, student population trends, school of choice and, for that matter, the basic State Aid formula. Though the State Aid basic foundation allowance has increased, as the parties have noted the Best Practices allowance has dramatically changed. There is also a possibility, although hopefully not the case, that the State Aid foundation allowance per pupil could be decreased or hopefully increased. Then, too, the PAC will affect finances of the District. Whether the District can accelerate the rental of the PAC to generate income is an open question. The Fact Finder is also aware that up to now the fiscal statements of the District have been somewhat skewed because of the one-time sale of property to the tune of \$270,000. These are all factors in the mix.

Recognizing these factors, the Fact Finder recommends the following.

Recommendations as to Duration and Salary

Because the duration of the contract is intertwined with the economics of the District, the Fact Finder is recommending that the contract be from August 31, 2012 through August 31, 2015. The reason for this recommendation, as already has been stated, namely, that August 31, 2015 is approximately two years off and is a relatively short time and gives the parties an opportunity to again review the District's finances in view of subsequent developments at the State and Federal level in terms of financial aid and the impact of the recommendations in this

Report if adopted as to salary and health care.

As to salary, in 2012-2013 there shall be a pay freeze plus no movement on either the step or lane increases. This follows for the reasons discussed as that the year has passed and any increases of any kind over the 2011-2012 school year would further skew the fund balance, making it virtually impossible to recommend a reasonable solution for the 2013-2014 and 2014-2015 school years.

The recommendation for 2013-2014 and 2014-2015 shall be based on no pay increases, but a one step movement each year on the steps, as applicable, as well as lane changes plus for each of the two years – 2013-2014 and 2014-2015 – there shall be the same percentage longevity payment based upon the new salary schedule. So that all understand, in 2013-2014 there will not be a double step increase, recognizing there was no step increase in 2012-2013. There will be only one step so that if an individual was on Step 2 in 2011-2012 that individual will move to Step 3 for 2013-2014 and the next year, 2014-2015, will move an additional step. The same would be true with lane changes. A lane change would only be from the status that existed in 2011-2012 to whatever the status existed of 2013-2014 and into 2014-2015. The salary schedule will be the schedule as proposed by the Teachers for each of 2013-2014 and 2014-2015, except the 11th Step will not be part of the Recommendation. The salary schedule as proposed by the Teachers for 2013-2014 and 2014-2015 is hereby recommended except without, however, a Step 11 as proposed.

For 2013-2014 and 2014-2015, the longevity payment shall continue at the same percentages as in the 2011-2012 schedule based upon the new salary schedule so that the longevity percentage will be based on whatever step the teacher is on, as was the case in the

2011-2012 salary schedule.

In addition, following the lead of the Brandon Schools District, for the 2013-2014 school year commencing the second semester of that school year, if the fund balance as revealed by the certified audit for 2012-2013 due in September 2013 reveals a fund balance of less than \$1.2 million, then the teachers for the second semester shall have three unpaid work days. If the fund balance is \$1.2 million or more, then the Teachers shall not have any unpaid work days in the 2013-2014 school year. If the fund balance as revealed by the 2013-2014 certified audit due in September 2014 shows a fund balance of less than \$1.3 million, then the Teachers for the second semester 2014-2015 school year shall have three unpaid work days which in any event would not be instituted until the second semester 2014-2015 to give time for the certified audit to be reviewed.

So that all will understand, depending on the status of the fund balance following the 2012-2013 certified audit, the Teachers may or may not have three unpaid work days during the 2013-2014 school year. These unpaid work days will not be carried over. Instead, there will be a new review period, namely, when the 2013-2014 certified audit becomes due and if it reveals a fund balance of less than \$1.3 million, then the Teachers will be required in the second semester to serve three unpaid work days. It should be clear that this Recommendation is not intended to provide for three additional unpaid work days. Each year is separate and distinct so that no more than three unpaid work days can be served in any one year, depending on the status of the fund balance as determined by the certified audit. It is the certified audit that determines whether unpaid work days will be served. And, in each applicable year, the unpaid work days would only take place in the second semester so that there will be time to receive the certified audit and to

review it.

The Fact Finder realizes that basing the addition to the salary schedule on the existence of a \$1.2 million fund balance or the trigger point for instituting unpaid work days for 2013-2014 and 2014-2015 at \$1.3 million represents a low fund balance. The Fact Finder appreciates this.

The Fact Finder will go one step further for, in his travels, he has recognized that leading accounting firms recommend upwards to a 7% fund balance, if not more. Yet, this Fact Finder is basing a Recommendation on a very low fund balance. The Fact Finder appreciates that there is a need to stabilize the District's finances and to restore the health of the fund balance which, except for six years ago, never approached 7%. Influencing the Fact Finder, as already alluded to, there are a variety of economic factors impacting Swartz Creek. And, until these factors play out, which may take another two years, there is a limit to a concessionary recommendation. This Recommendation does seek to stabilize the District's finances consistent with the claims made by the District as to what is needed and recognizing the interests of the Teachers for, hopefully, in two years time the need for concessions will cease.

Admittedly, the Recommendation does not approach the Brandon settlement. Yet, the Recommendation does provide an escape valve for both parties. There is a new salary schedule that has built-in cost savings. The Association claims these cost savings will amount to the \$680,000 that the District sought. Presumably, the District at one point was satisfied with such cost savings. The District also was seeking a revamped salary schedule. The Association has provided what it believed is a cost savings that the District sought plus a revamped salary schedule. If the figures are not correct or the projections are incorrect one way or the other, there is the escape valve that provides for additional cost savings. On the other hand, the Teachers are

protected from dire cost projections that do not come to pass.

The point is that the Association did not accept the Board's proposals both as to the across-the-board cut and the salary schedules. Likewise, the District did not accept the Teachers' proposals. The fact finding Recommendations represent the art of the possible, designed to establish a pathway to stabilizing the District's finances while at the same time recognizing the bargaining history that has led to a salary schedule that is competitive. There are changes. This is a concessionary Report. But, readjustments were necessary to address the realism of the situation. But it is suggested that the Recommendations as to duration and salary, along with the Recommendations that will follow as to health care and release time, do represent the art of the possible while considering the District's financial ability, bargaining history and comparability. Furthermore, as the Fact Finder observed, there were other impediments to settlement which hopefully, as a result of this Report, will be resolved and should be, namely, the release time, the issue of the unfair labor practice charges, and the question of prohibited subjects of bargaining as well as health care.

But the aim is to stabilize costs and to stabilize the downward trend in the fund equity. There is the escape valve. If it turns out that the Fact Finder's Recommendations and the contract that will hopefully follow therefrom do not lead to the stabilization of the fund balance, then the parties will be back at the bargaining table in a relatively short period of time.

It is true that the Fact Finder in West Bloomfield Hills, as pointed out by the District, recommended a 10% reduction across-the-board. But, there, West Bloomfield Hills was in deficit financing, had a deficit fund balance against a history of giving substantial pay raises. It was brought to the Fact Finder's attention that the Fact Finder in Linden recommended a 7%

reduction. Linden, as has been pointed out, is a district that is losing students, which is not the case in Swartz Creek. Linden lost 312 students or 8.5% of its total student population since apparently 2007-2008 and is in a downward trend. This seemed to be the problem in Carman Ainsworth where there was recently a 5.15% reduction adopted after three consecutive years of 1.5% raises. The three districts, West Bloomfield, Carman Ainsworth and Linden, are in totally different situations than Swartz Creek.

Health Care

The District has adopted the alternative hard cap. Nevertheless, the District has experienced in the past cost increases in its contribution to health care, including vision and dental care.

What happened at fact finding concerning health care was described at page 2 of the District's Supplemental Brief where it was stated:

During the mediation sessions conducted as part of the fact finding, representatives of the Board were advised that the Association had dropped the issues of dental and vision care. However, the July 18, 2013 e-mail to the Fact Finder from the Association's advocate, Brad Gibson, (copy attached) indicates that the Association's willingness to drop those issues was based upon the belief that executive secretaries and building administrators took cuts to dental and vision insurance benefits. Those employee groups did agree to cuts in both dental and vision insurance. However, since those groups receive dental and vision insurance benefits that are slightly greater than those provided to members of the Association's bargaining unit, the Association has reversed course and opted to pursue improvements in those benefits.

In a July 18, 2013 email from the Association's Uniserv Director adds understanding to the situation when he writes:

With that said there is still one question regarding the briefs. I asked Mr. Bonato about the briefing dental and vision. He communicated that we dropped all the health care issues. It is my understanding, and I confirmed it with my Chief Negotiator today, that we never resolved or dropped the issues of dental and vision care. However, we are aware

that you Mr. Roumell sent signals that we are not likely to prevail on that issue especially in light of a Tentative Agreements the district reached with the Executive Secretaries and Building Administration which we were told at the hearing took cuts to dental and vision care. After finally receiving the TA's yesterday I discovered that those groups still received greater dental and vision care than the teachers currently have. The point of this is that I was still planning on briefing dental and vision.

It may be that the executive secretaries and building administrators and perhaps central administrators have a slightly improved health care program than the teachers. But the fact is the teachers do have a health care, including dental and vision, program financed substantially by the District that has been negotiated over the years. Given the serious financial situation faced by the District, this Fact Finder will not recommend any further changes in the teachers' health care, vision and dental plans than now exist, including the compliance with PA 152. Hopefully, the Board of Education will see fit, when the opportunity arises, to synchronize the health plans among all groups. But, with the economics of the District and the need to stabilize the District's finances, this is not the time to increase health care costs for the District cannot afford it. Thus, the email that was sent correctly predicted the approach of this Fact Finder as to health care.

There is another reason to not make any changes. The health care program, except with the intervention of PA 152, was negotiated over the years and its bargaining history should be honored.

It is for all these reasons, recognizing that basically the teachers have a reasonable health care program, that the Fact Finder will recommend the *status quo*.

Release Time

The Board has proposed to delete Article V.3.A, B, C, D, E and F, which is essentially addressing release time for Association Board members and the Association President as well as

members of the NEA and MEA Boards as well as the negotiating team. Here comes the art of the possible.

During fact finding, there was concern expressed as to the time that the Local President was being released, namely, Eric A. Minore, for Union matters. The District had also transferred Mr. Minore to a new assignment on the grounds that his release time would be less disruptive to his teaching duties as compared to his previous assignment. This transfer generated an unfair labor practice that is pending before the Michigan Employment Relations Commission. In addition, there is an unfair labor practice pending concerning the fact that for 2012-2013 the District did not honor step movement, lane changes or longevity.

The art of the possible would suggest that in terms of the core issues in these negotiations, namely, financial stability, that the District request to eliminate Article V.3 A through F and all attempts to eliminate release time be dropped. In return, the Association should drop the unfair labor practice as it applies to Mr. Minore's new assignment. In addition, it would seem that the unfair labor practice as to the 2012-2013 salary schedule is unnecessary as the issues will be resolved between the parties by negotiations following this Fact Finding Report. Both parties in their respective proposals seem to agree that there be no changes in the 2012-2013 salary schedule as a practical matter and that there would be no movement either on the steps, lanes or longevity.

The cost of litigation, including any appeals, takes away monies that can be used to settle the contract.

The fact is that during mediation (and herein is the bargaining history), the Association was willing, as was the Board's administration, to keep the release time as is in return to

dropping the alleged unfair labor practice as to the teaching assignment of Mr. Minore. Where the agreement broke down is the administration believed that the agreement also included withdrawing the entire unfair labor practice as it applied to the 2012-2013 salary schedule. Now that in the view of the Fact Finder the 2012-2013 salary issue, by virtue of negotiations, will be a non-issue, there is no reason not to drop all unfair labor practices and for the parties to agree to keep the release time as is in the contract and Mr. Minore accept his assignment.

It is for these reasons that the Fact Finder will recommend that the release time in the contract remain as is on the condition that all unfair labor practices be dropped. This is the art of compromise or the art of the possible and is consistent with the current bargaining history. This Fact Finder so recommends.

Duration

As already noted, the duration of this Agreement should be for three years, namely, from August 31, 2012 to August 31, 2015. There are approximately two years left in this contract. The savings are there. It will allow the parties to reassess their respective situations after the new schedule has had a chance to operate in a relatively short time. Hopefully, the District's finances by that time will be stabilized. They should, with the savings involved, in at least the teachers' contract.

The Prohibited Subjects

The landscape for collective bargaining between public school employers and bargaining representatives of public school employees has been substantially changed as a result of recent enactments by the Legislature of the State of Michigan. MCL 423.215, and in particular Section 15(3), lists a number of subjects that are now prohibited subjects of bargaining – subjects that

previously have been in the parties' collective bargaining contract. As a result, the School District proposes to remove a number of provisions that it believes are prohibited subjects of bargaining. Some of the matters designated as prohibited subjects of bargaining are limited to teachers and public employees whose employment are regulated by the Michigan Teachers' Tenure Act. Those public school employees who are not regulated by the Tenure Act might still be subject to bargaining on certain subjects that are prohibited as to teachers.

In addition, Section 10(1)(b) of PERA (MCL 423.210(1)(b)) provides:

Sec. 10. (1) A public employer or an officer or agent of a public employer shall not do any of the following:

* * *

(b) Initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization. A public school employer's use of public school resources to assist a labor organization in collecting dues or service fees from wages of public school employees is a prohibited contribution to the administration of a labor organization. However, a public school employer's collection of dues or service fees pursuant to a collective bargaining agreement that is in effect on March 16, 2012 is not prohibited until the agreement expires or is terminated, extended, or renewed. A public employer may permit employees to confer with a labor organization during working hours without loss of time or pay.

The parties have reached agreement on certain prohibited subjects language, but there are still disputes between the parties as to other language in the contract that may be required to be deleted or modified to comply with the provisions of MCL 423.25(3).

There is a fundamental dispute between the parties as to the method of handling language that is prohibited as applied to teachers and others subject to the Michigan Teachers' Tenure Act and employees represented by the Swartz Creek Education Association wherein the prohibition is not applicable.

The Board proposes “to delete prohibited subjects from the Contract and relocate the deleted language in a Letter of Agreement which applies only to employees whose employment is not regulated by the Michigan Teachers’ Tenure Act”.

The Association proposes “the language that is prohibited and note that the italicized language does not apply to those subject to the Tenure Act. The reasoning behind this is simplicity and consistency. The contract is already has logical table of contents that has worked for years. The Association contends that simplify identifying the language in question is sufficient.”

The Fact Finder concludes that the Board’s proposal of adopting a Letter of Agreement which would include the prohibited subjects that have been deleted from the contract that would apply to employees not regulated by the Michigan Teachers’ Tenure Act. This Letter of Agreement would include those provisions be attached to the contract with the statement that the attached Letter of Agreement is part of the Master Agreement applying to those employees whose employee is not regulated by the Michigan Teachers’ Tenure Act. Thus, the Letter of Agreement would have the status of a contract, but would clearly delineate that the subject matters of the Letter of Agreement, which otherwise would be prohibited subject matters, would apply only to those employees not regulated by the Michigan Teachers’ Tenure Act. This is the most expedient way of handling the issue. It is a procedure that has been adopted in other school districts that have settled their contracts since the adoption of MCL 423.215.

In Exhibit 47, the Association’s Advocate listed the prohibited subjects differences as follows:

Summary of Prohibited Subjects Differences

1. No dispute that the language applies to SCEA members who are not subject to the tenure law. Question remains as to what happens to language in the contract as it relates to placement. The district wishes to remove the language and place it as an appendix. The Union wishes to identify the language (underline or similar identification) and state this language only applies to members not subject to the tenure law.
2. Article 1-2-C:
Dues deduction
3. Article IV-1-C:
Grievance Process- Prohibited Subjects not subject to grievance.
4. Article IV-5B-(new 5):
Limiting arbitrators' power
5. Article V-2:
Arbitrary and Capricious definition
6. Article VII-2-B-2:
Notice of Assignment
7. Article VII-2-B-3:
Assignments outside regular day
8. Article VII-2-C-1:
Consultation when changing assignment
9. Article VII-D-1:
Definition of Effective
10. Article VII-2-D-3:
Posting
11. Article VII-2-E:
Number of Split classrooms
12. Article VII-2-H-2, 5, and 6:
Teaching on Prep period
13. Article X-A:
Definition of Seniority
14. Article X-B:
Consultation with Association regarding effects of reductions

15. Article X-G:
Consultation with Association
16. Personnel Policies include in contract- Section V-E:
Discharge- Notification to teacher of tenure charges
17. Personnel Policies include in contract-Evaluations
Evaluation of non-classroom teachers.

The Board proposes that Article I, Section 2, B, C, D and E be deleted from the contract. These provisions deal with dues checkoff. The Association reluctantly has dropped its objection to these deletions “in light of the recent U.S. Court of Appeals ruling.” Therefore, there is no need for a recommendation as the objection to the deletion has been dropped.

In regard to Article IV, “Grievance Procedure”, in 4.1.C, the Board proposes language, “Any problem not covered under PERA’s prohibited subjects of bargaining except for those covered under a separate Letter of Understanding for non-tenured track teachers” and also add the sentence to 1.C, “Prohibited subjects of bargaining per PERA Section 15(3) are not subject to the grievance process”. The Association objects to this language. This language would be too restrictive and would not permit any challenge to facts or circumstances that are best left to an internal mechanism for resolution.

In other words, there could be a question of whether the subject matter of the grievance is a prohibited subject or is covered by the contract. The right to grieve, therefore, should remain intact so that whether a subject is or is not a prohibited subject or is covered by the contract can be addressed in the grievance procedure. Thus, when the District in Article 4, “Grievance Procedure”, Section C, modifies the language, the Fact Finder would further modify the language as follows:

- C Any problem **not covered under PERA’s prohibited subjects of bargaining except for those covered under a separate**

addendum for non-tenured track teachers or a challenge as to whether the issue is a prohibited subject of bargaining must be filed within 45 school days of the occurrence or reasonable knowledge thereof. Probationary teachers hired after August 1, 2004 have no access to the following grievance process beyond the Board level in regards to dismissal due to an unsatisfactory reevaluation. **Prohibited subjects of bargaining per PERA Section 15(3) are not subject to the grievance process** except a challenge as to whether the issue of the grievance is a prohibited subject of bargaining may be an issue presented in the grievance process.

- | | |
|----------------------------------|----------------------|
| 1. FIRST STEP: (Elementary) | Elementary Principal |
| (Secondary) | Secondary Principal |
| (Adult) High School | Director or Designee |
| Alternative | |

(The bold print is the original proposal of the District. The underscoring is the additions by the Fact Finder which the Fact Finder recommends.)

In regard to the fourth step, arbitration, in 4.A.5, the Board provides as to the arbitrator's jurisdiction, "He shall have no power to consider or rule on any dispute that pertains to a prohibited subject of bargaining under the Public Employees Act." That language is inappropriate. The appropriate language would be, "If the arbitrator finds that the dispute relates to a prohibited subject of bargaining under the Public Employee Relations Act, the arbitrator, upon such a finding, shall have no authority to issue a final and binding award". There should always be an internal mechanism to determine whether a prohibited subject is involved. The language proposed by the Fact Finder replaces or modifies the Board's language and partially meets the objection of the Association because it accomplishes the purposes of both parties, namely, the Association to challenge the facts and the District, if the facts reveal that a prohibited subject is involved, not to have a final and binding award.

One of the key problems on the prohibited subjects issue is that the District has overreached in deleting contract language on the alleged grounds that the language represented a

prohibited subject of bargaining. Some of the changes that the District proposes under the concept of prohibited subjects of bargaining have not been challenged by the Association, even though language that is being deleted represents basic rights that have been negotiated over the years into the contract. The Legislature changed this. But there is other language that the prohibited subjects legislation did not bar which the District is attempting to bar while seeking substantial concessions from the teachers. These areas have been brought to the Fact Finder's attention. In order to obtain a contract, the art of the possible, recognizing the bargaining history, the parties should take heed and recognize that the prohibited subjects of bargaining do not go as far as claimed. These comments are particularly apropos to the proposals involving Article VII.

The Board proposes to delete Article VII.2.B.2 and 3. The Board previously agreed to "give tentative notice of a teaching assignment to an individual teacher upon request by July 1st. Should it become necessary to change a tentative agreement, the teacher will be notified as soon as the change is known." There is no prohibition in the statute to such language. It is reasonable to notify teachers of their upcoming assignments. Likewise, the Board proposes to eliminate 2.B.3, "Assignments Outside of the Regular Day: Adult Education, Coaching, etc. shall not be obligatory but shall be with the consent of the teacher." It is true that assignments as such are prohibited subjects. But it would seem that the teacher is being employed to work on a teaching day basis. To demand that a particular teacher work outside of his/her regular day on a regular basis, as compared to current parent/teacher meetings or temporary assignments certainly would impact on individuals who have family obligations, for example, outside of the work day. It is difficult to believe that the Legislators intended to suggest that continuing such language in the contract was in any way prohibitive.

As to Article VI.2.C.1, the Board has proposed to eliminate the language, “Teachers affected by a change in a building, grade or class assignment due to changing enrollment or available building facilities shall be consulted by the Director of Personnel immediately.” “Consult” does not mean that the change cannot be made by the Board as contemplated. But it is reasonable to consult with the teacher and obtain the teacher’s input. Such input could be helpful to the administrators making the decisions on behalf of the Board. There is no prohibition in the statute to have such language.

The Board proposes to change Article VII.D, “Teacher Transfers”, by renumbering it VII.C and adding “1. The Board shall assign teachers to positions where they are certified, qualified and deemed effective”. The Association has raised the issue of what is the definition of “and deemed effective”. The Fact Finder suggests to the Board that the language proposed be, “The Board shall assign teachers to positions where they are certified and qualified”, which gives the Board the authority contemplated by the statute. Adding the term “and deemed effective” is a vague, undefined term. The Board does not need this language in the contract to make decisions concerning assignments and the removal of this phrase should not stand in the way of obtaining a collective bargaining agreement where there are concessions being made.

In Article VII.2.D.3, the Board proposes to eliminate posting requirements. Where in the statute are posting requirements declared a prohibited subject of bargaining? There is none in the statute. Furthermore, such language works to the disadvantage of the Board. Here is why. There may be a teacher unknown to administration who may be highly qualified to teach a certain subject in which there is a vacancy who, upon seeing the posting, could well express his or her interest in the position. This language should stay.

In Article VII.E.3, the Board proposes to remove the language “no more than three (3) split grade classes District-wide will be offered during a school year.” In this regard, although it would seem to be sound policy to agree to such language, the Board could remove this language and the Fact Finder would not recommend against removing the language although the Fact Finder raises questions about split grade classes as an educational policy. It was represented that the Board during negotiations had stated that negotiations over a split class assignment was a prohibited subject of bargaining. On this basis, the Fact Finder will recommend deleting the language.

Article VII.2.H.2, 5 and 6 involve language being removed concerning teaching prep periods. The Association does make a point. Secondary teachers “have traditionally included teaching five class periods and a preparation period.” As this Fact Finder reads the statute, there is nothing in the statute that would suggest that negotiations on the work day is a prohibited subject of bargaining. For this reason, there is no basis to remove this traditional language concerning the teaching day and protection for the teachers as to who may or may not teach during a preparation period. For this reason, the Fact Finder will recommend that the current language remain.

Initially, there was a move to change the definition of seniority in Article VII.A. The Board withdrew the proposal and for this reason the Fact Finder is not obliged to make a recommendation on this subject.

In summary, as to Article VII, the Fact Finder makes the recommendations that he suggested in his discussion of the Article VII proposals at issue.

Article X deals with reduction in staff. The Board proposes to remove the entire article

and substitute it with “Reduction in staff will occur per administrative guidelines which will not be in conflict with the current State law.” As the Fact Finder understands it, the Association does not object to removal of most of the language in Article X except G and particularly the following language which is sought to be removed: “The Association recognizes that in accordance with this Article the Board may find it necessary to eliminate or reduce certain programs which do not require teaching certificates and it may be necessary to hire new certified teaching staff while staff remain on layoff from said programs. If such a situation should occur, the Association shall be consulted and made aware of the facts”. While Section 15.C would mandate essentially the gutting of most of the language of Article X, there is no reason why the consulting language in G as just quoted by the Fact Finder should not continue. “Consulting” does not prevent the District from taking contemplated actions. Yet, by consulting, the Board administrators might obtain insight that would be helpful in decision making. The statute does not prohibit consulting and it should be continued. The Fact Finder so recommends.

In regard to the personnel policies, the one change that the teachers object to as those policies apply to personnel subject to the Teacher Tenure Act is Section 5.E which provides for notification of charges. For some reason, the Board wishes to delete this provision. It should not be deleted. It is there to give the individual involved notice according to the provisions of 5.E.2. For this reason, 5.E.2 should continue in the personnel policy as it is doubtful that the statute prohibits notification. Likewise, the personnel policy should continue as is for all employees represented by the Swartz Creek Education Association who are not covered by the Michigan Teachers’ Tenure Act. For this reason, the Fact Finder recommends as to the personnel policies the statements contained in this paragraph.

In Article V, the Board proposes to delete the current language and replace that language with “The capricious and arbitrary standard shall be used as the standard of discipline for employees covered under this contract.” The rationale for this change was set forth in the Board’s post-hearing brief at page 24 as follows:

4. The Board proposes the addition of contract language to Article V which confirms that the arbitrary and capricious standard for discipline shall be utilized. PERA prohibits a public school employer from utilizing a standard for discharge or discipline different than the arbitrary and capricious standard. MCL 423.215(3)(m).

The statute speaks for itself whether this Fact Finder likes it or not. For this reason, the Board’s proposed language change as to Article V.2 should be adopted and will be recommended by this Fact Finder.

Conclusion

Hopefully, the Fact Finder in this Report has applied the relevant criteria, including emphasizing as the principle criteria the District’s financial ability, the comparables both internally and externally, and the bargaining history as well as the art of the possible. At some point an agreement needs to be reached in order to have stable labor relations. It is important to Swartz Creek for the delivery of quality educational services, for neither party to be distracted by labor issues. This Report is designed to balance the interests of both parties and to overcome impediments that were there to reaching a settlement. The Fact Finder is well aware that a Report can be useless. Hopefully, on reflection, the parties will understand the approach taken by this Fact Finder. Both parties must recognize the District’s financial situation. The critical landmark is the certified audit. The Fact Finder has built in certain what he deems as “release valves” geared to the certified audit after initially undertaking at the invitation of both the Board

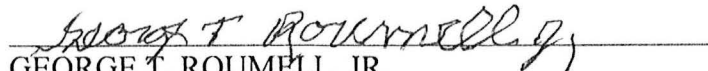
and the Teachers, the adoption of a cost savings salary schedule. The schedule is not exactly what the Teachers sought. But it is realistic considering the District's financial situation and the fact that the Teachers will be fairly compensated. On the other hand, if the audit is consistent with the projections, there is the safety valve for the Board that the Teachers will engage in further cost savings. On the other hand, if the audit in each of the two years at issue is contrary to the projections and shows a stabilizing fund balance, although not necessarily the fund balance the Board would like to see, then the safety valve is no longer needed.

Finally, this in effect is a two year contract as one year has already passed. If after two years the cost savings predicted have not materialized or the projected revenues have not materialized, then there will be another go around at negotiations.

This is the art of the possible. Fact finding attempts to eliminate any impediment to negotiations that have gone on too long. The time has come to make compromises. At fact finding and subsequent to fact finding, the spirit of compromise took place and did result in some settlements. Now is the time to complete the contract without further ado.

RECOMMENDATIONS

The Recommendations that the Fact Finder has made as to all issues are set forth in the text and are hereby incorporated by reference and are the recommendations of this Fact Finder.


GEORGE T. ROUMELL, JR.
Fact Finder

August 15, 2013