

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

**BIRCH RUN EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION, MEA/NEA,
PETITIONING PARTY**

- and -

**BOARD OF EDUCATION
BIRCH RUN AREA SCHOOLS,
RESPONDING PARTY**



MERC CASE NO.: L16 F-0664

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A.176 of 1939 as amended)
[MCL 423.1, et seq], and
Public Employment Relations Act (P.A.336 of 1947 as amended)
[MCL 423.201, et seq]

Fact Finder

Barry Goldman

Advocates

Employer Advocate: Thomas A. Basil
Union Advocate: Capalene Howse

PETITION(S) FILED:	October 31, 2016
PANEL CHAIR APPOINTED:	December 14, 2016
SCHEDULING CONFERENCE HELD:	January 11, 2017 and January 17, 2017
CASE REMANDED TO MEDIATION	January 17, 2017
SCHEDULING CONFERENCE HELD	March 31, 2017
HEARING DATES:	No hearings were held in this matter. The parties submitted briefs on May 15, 2017 and reply briefs on June 8, 2017
REPORT ISSUED:	June 14, 2017

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1. INTRODUCTION AND BACKGROUND

The Birch Run Educational Support Personnel Association (BRESPA) represents “all full-time and regularly scheduled part-time Bus Drivers, Bus Mechanics, Custodial Maintenance, Secretary/Clerical personnel and Paraprofessional Aides, excluding Confidential Secretaries, (Superintendent and Personnel) Administrators, Supervisors and all other employees.” There are 33 employees in the unit. The CBA between BRESPA and the Birch Run Board of Education expired on June 30, 2016. The parties held three sessions with a State mediator before BRESPA filed for Fact Finding. Following a conference call with the undersigned Fact Finder the matter was remanded to mediation on January 17, 2017. The matter returned to the undersigned following mediation, and another conference call was held with the parties on March 31, 2017. On the call the

parties agreed that no hearing would be held, and the fact finder would rule based on briefs and reply briefs filed by the parties. That process concluded when the reply briefs were exchanged on May 30, 2017.

There are no unusual circumstances in this case. Birch Run is neither the richest nor the poorest district in Michigan. In comparison to each of the other districts suggested as comparables, Birch Run lies somewhere near the middle of the pack with respect to each issue in this Fact Finding. It has the usual combination of challenges, but nothing particularly severe. The district's financial condition is sound. On this record, there does not appear to be any reason why this round of contract negotiations should have produced anything other than a plain vanilla collective bargaining agreement.

2. STATUTORY CRITERIA

This fact finding was held pursuant to Michigan Labor Mediation Act (P.A.176 of 1939 as amended) [MCL 423.1, et seq], and Public Employment Relations Act (P.A.336 of 1947 as amended) [MCL 423.201, et seq]. All issues are deemed economic.

3. STIPULATIONS AND PRELIMINARY RULINGS

There were no stipulations or preliminary rulings.

4. ISSUES BEFORE THE PANEL

A. Subcontracting

The CBA at Article VIII Section B. reads:

The Employer agrees that supervisors shall not be used at any time to displace bargaining unit members regularly employed in the bargaining unit, except in emergencies when bargaining unit members are not available and a large volume of work must be completed in a short period of time. For purposes of this provision, an emergency shall be defined as an unforeseen circumstance or a combination of circumstances which call for immediate action in a situation which is not expected to recur.

The Employer seeks to remove Section B. The Association seeks to preserve the existing language. The Association argues that language protecting bargaining unit work from being performed by non-bargaining unit members is "exceptionally important to unions" and "at the very heart of collective bargaining." The Employer argues that, while the language may have been appropriate in the past, currently custodial work is performed by an outside contractor, and the provision no longer makes economic sense. Additionally, the Employer argues, none of the surrounding communities have this restriction.

Two of the goals of a fact finding report are that it should do the least possible violence to the parties' relationship, and that it should recommend an agreement that the parties could have reached themselves if their bargaining had been successful. I find the existing language meets those two tests. The existing provision is language the parties *did* reach themselves. I find no compelling reason to disturb it.

I therefore recommend the Association's proposal to retain the existing language.

B. Leaves of Absence with Pay

The CBA at Article XII Section C reads:

Each bargaining unit member will receive on the first day of work in the new school year one (1) day to be used for the bargaining unit member's personal business. A bargaining unit member planning to use a personal business day shall notify his/her supervisor at least one (1) day in advance, stating the nature of the business, except in cases of emergency. Personal business days shall be available for the practice of individual religious preferences. Personal business days shall be used only for business which cannot be scheduled outside the scheduled work day.

Unused personal business days shall be carried over and accrue no more than five (5) in any given year.

The Association seeks to add an additional paid business day per year and to provide that accrued days over five shall be added to an employee's sick bank. The Employer seeks to retain the existing language.

Not surprisingly, skillful counsel on both sides have been able to assemble arguments in favor of their respective positions with respect to each of the issues in this Fact Finding. I have not found any of these arguments persuasive. Consistent with my previous reasoning, I find no compelling reason to disturb the existing language in this CBA. I recommend the Employer's proposal to retain the existing language.

C. Holidays and Vacations

Article XIV Section A reads:

All full-time bargaining unit members, except for part time secretaries, shall have the following days off with pay. Pay shall be for the regularly scheduled hours of each bargaining unit member.

Such holidays will be observed in accordance with the schedule set forth in Appendix C of this Agreement.

Labor Day
Thanksgiving
Day after Thanksgiving
Christmas Eve
Christmas Day
New Year's Eve
Good Friday
New Year's Day
Memorial Day
Monday of Spring Break

*Floating Day (for all employees except part time secretaries and paraprofessional aides unless they work 181 days or more, seven (7) hours per day.)

Paraprofessional Aides, and part-time secretaries shall have Thanksgiving Day, Christmas Day and New Year's Day as a paid holiday.

Groundskeeper shall have Memorial Day, July 4 and Labor Day as paid holiday.

*No more than 2 maintenance, 2 secretaries per building, 2 aides per building will be scheduled off on a given day. Employees working summers shall have the days provided above plus July 4. Absences immediately prior to and/or directly after a paid holiday or scheduled vacation day will require proper verification to receive the holiday or vacation pay.

The Association's proposal is to add Good Friday as a holiday for part-time secretaries and para-professionals. The Employer's proposal is to retain the existing language.

I find no compelling reason to disturb the language the parties bargained for and agreed to by the parties.

I recommend the Employer's proposal to retain the existing language.

D. Holidays and Vacations

Article XIV Section B. reads:

All bargaining unit members regularly scheduled to work 195 days but less than 260 days per year will receive the following vacation days.

Days worked/260 multiplied by the Vacation Day Schedule minus six (6) days
Said vacation time may be used by eligible bargaining unit members at times of the bargaining unit member's choosing subject only to the condition where more than one bargaining unit member requests the same vacation date(s) and work scheduling demands reasonably prohibit all requesting bargaining unit members from being absent at the requested times. In such instances the affected bargaining unit member having the greatest seniority shall be granted his/her preferred vacation date(s).

During the first ten (10) days school is in session, employees can request vacation dates. If more than the allowable number of employees request the same time, vacation requests will be granted by seniority. After that time, requests can be made at any time. If approved, the time cannot be "bumped" by a more senior employee.

Vacation time may only be accumulated to the following year when circumstances caused by the employer prevents the bargaining unit member from using such vacation time. Upon termination a bargaining unit member shall receive pro rata vacation allowance for each month or major fraction thereof between his/her anniversary date and termination date. Pay for all unused vacation time shall be based upon his/her then current rate of pay. Vacation time shall be computed as of each bargaining unit member's anniversary date on the basis of the following schedules:

Vacation Day Schedule: *Credited Years of Employment Vacation Days during
first year 2 days after 1 but less than 2 years 5 days after 2 but less than 5 years 10 days after 5 but less than 10 years 15 days after 10 but less than 15 years 18 days
15 years or more 20 days

*Credited years of employment for vacation calculations shall require that persons going on unpaid leave of absence have that leave time subtracted from their total years of employment.

Example

Employee #1 works a 210 day schedule and has been an employee for 14 years.
 $210/260 \times 18 - 6 = 9$ days (rounded to the nearest tenth)

Employee #2 works a 220 day schedule and has been an employee for 6 years.
 $220/260 \times 15 - 6 = 7$ days

A minimum of two (2) hours may be taken for vacation and in not less than one (1) hour increments.

It is hereby understood between the parties that all full-time secretarial bargaining unit members employed before July 1, 1990 shall have their vacation time allotment to begin July 1 and end June 30 of each year. This vacation time allotment is based on the credited years of employment as per the Master Agreement dated July 1, 1991. Employees hired or awarded a secretary's position after January 1, 2007 and working less than 48 weeks a year will receive two (2) days vacation the first year and a maximum of five (5) days per year thereafter. Employees currently working in the Classification, Secretaries, on January 1, 2007 will receive vacation time per the above schedule or if a secretary held a secretary position on January 1, 2007 and transfers to another position in the classification, Secretaries, they will continue to receive vacation time per the above schedule.

The Association's proposal is to retain the existing language. The Employer's proposal is to add the following language:

Non-full time employees currently receiving paid vacations will continue to do so for the 2016-2017 contract year. For 2017-2018 those employees will receive 50% of the paid vacation benefit. For 2018-2019 those employees will not receive any paid vacation.

On the record before me, I see no reason to disturb the language the parties bargained for and agreed to in previous negotiations.

I recommend the Association's proposal to retain the existing language.

E. Compensation/Longevity

The CBA at Exhibit A reads:

SALARY SCHEDULE

HOURLY RATES

MAINTENANCE/GROUNDSKEEPER

Level	2012-13	2013-2014	2014-2015	2015-2016
I	9.20	9.28	9.35	9.53
II	13.71	13.83	13.93	14.20
III	17.08	17.23	17.35	17.68
IV	18.30	18.46	18.59	18.95
V	18.99	19.15	19.29	19.66

¹ 2016-2017 wage rates are found in Exhibit 1a.

LONGEVITY

At the beginning of:	6 years	16 years	21+ years
I & II	.11	.19	.23
III	.13	.21	.25
IV	.15	.23	.27
V	.19	.27	.31

PARAPROFESSIONAL

Level	2012-13	2013-2014	2014-2015	2015-2016
I	8.97	9.05	9.11	9.29
II	9.24	9.32	9.39	9.57
III	10.66	10.75	10.83	11.04
IV	11.06	11.16	11.23	11.45

LONGEVITY

At the beginning of:	6 years	16 years	21+ years
I	.09	.15	.17
II	.09	.15	.17
III	.11	.17	.19
IV	.11	.17	.19

SECRETARIAL

Level	2012-13	2013-2014	2014-2015	2015-2016
I	9.84	9.92	10.00	10.19
II	12.87	12.98	13.07	13.33
III	14.14	14.26	14.36	14.64
IV	15.37	15.50	15.61	15.91
V	16.09	16.23	16.34	16.66

LONGEVITY

At the beginning of:	6 years	16 years	21+ years
I	.11	.19	.23
II	.11	.19	.23
III	.13	.21	.25
IV	.13	.21	.25
V	.15	.23	.27

For the 2013-2014 school year, the salary schedule (excluding longevity) will be increased or decreased by the same percentage as the Per Pupil Foundation Allowance is increased or decreased with the base number of 2012-2013 being \$6,966. The same formula will be applied for 2014-2015 and 2015-2016 with

previous year's foundation allowance recognized as the base number in each of those years. The increase or decrease will not exceed three percent (3%) up or down for each of the three years of the contract.

The Association's position is: Current contract language. Add Level V paraprofessional classification. Double current longevity percentages. The position of the Employer is: Salary schedule will increase/decrease by 75% of the change in the State Foundation Grant. The increase/decrease shall not exceed 3.00%. Do not add Level V paraprofessional classification. Current contract language for longevity.

The Employer argues that its proposed reduction in the salary schedule increase/decrease is justified by the fact that a reduction to 50% of the State Foundation Grant was agreed to by the teachers' bargaining unit. I do not find that persuasive. The teachers unit may have had any number of reasons for agreeing to that change. Their bargaining history is not before me. There is no evidence in this record concerning what the Employer may have offered the teachers' unit to extract that concession. Accordingly, and consistent with my earlier rulings, I do not find any compelling reason on this record to disturb the parties' existing agreement. I recommend no changes to the existing language in any respect. I recommend the current levels be retained and no additional level added; that the salary schedule continue to increase or decrease by 100% of the change in the State Foundation Grant not to exceed 3%; and that the longevity payments remain what has been bargained and agreed to in previous contracts.

6. SUMMARY OF RECOMMENDATION

A. Article VIII, Section B. - Subcontracting	Existing language	(U)
B. Article XII, Section C. - Leaves of Absence with Pay	Existing language	(E)
C. Article XIV, Section A. - Professional Holidays	Existing language	(E)
D. Article XIV, Section B. - Vacation	Existing language	(U)
E. Article XV, Section A & Appendix A - Compensation	Existing language	(U)
Longevity	Existing language	(E)

Respectfully submitted,



Barry Goldman
Fact Finder
June 23, 2017