

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

PETITIONING PARTY: Lansing Public Schools

and

RESPONDING PARTY: Lansing Schools Educational Assistants, MEA/NEA

MERC CASE NO.: L16 K-1040



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

Ralph L. Maccarone

Advocates

Employer Advocate: Charles T. Oxender, Esq.

Union Advocate: Suzanne K. Clark, Esq.

PETITION(S) FILED: JUNE 28, 2017
PANEL CHAIR APPOINTED: JULY 27, 2017
SCHEDULING CONFERENCE HELD: AUGUST 10, 2017
HEARING DATE(S) HELD: SEPTEMBER 22, 2017 and OCTOBER 17, 2017
REPORT ISSUED: DECEMBER 8, 2017

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WITNESS LIST

1. Ruth Beier – MEA Economist
2. David Hockaday – LEA President
3. Carolyn Foster – LEA
4. Mark Coscarella, Deputy Superintendent, Lansing School District (for the LSD)
5. Robin Bartshe – LEA (listed)
6. Sandy Grier – MEA/LEA (listed)

1. INTRODUCTION AND BACKGROUND

The word “Impasse” when used in labor law can be defined as:

“A point in especially labor negotiations at which reaching an agreement is impossible because neither party is willing to compromise or change position.”

*Merriam-Webster.com, Merriam-Webster
www.merriam-Webster.com/dictionary/impasse.
Accessed Oct. 2017¹*

And as more fully explained below, in Michigan public employee labor disagreements, an impasse can result in this sort of proceeding. The Employer’s June 28, 2017 Petition for Fact Finding contained the following statement:

¹ See also Flint Twp., 1974 MERC Lab Op 152; City of Saginaw, 1982 MERC Lab Op 727; & City of Ishpeming, 1985 MERC Lab Op 697 for additional similar meanings at law.

“The parties have been negotiating the successor agreement for over a year and are at or near impasse. The parties have had eighteen bargaining sessions.” That form also listed six dates where Mediation occurred.

In the August 10, 2017 scheduling telephone conference, the Union disputed the Employer’s filing for Fact Finding. The Union claimed there was no impasse. To afford an opportunity for a meeting of the minds on that issue, a half-day ‘Preliminary Hearing’ was scheduled for September 22, 2017. The parties were encouraged to continue mediation and/or their negotiations pending that date. The parties were unable to settle their differences, and the Fact Finding proceeded to a full Evidentiary Hearing on October 17, 2017. At the end of that day, the parties were again encouraged to seek further mediation and/or negotiate in advance of this Report. With negotiations beginning in May of 2016, and over 115 days having passed since the scheduling telephone conference call, it is my finding that impasse on the five issues covered in this Report persisted throughout.

Since this Report may be read by those unfamiliar with public sector labor a bit of explanation is in order. One may ask, “How do public sector employee contracts come to Fact Finding?” Mediation as a first step.

Section 7 of the Public Employee Relations Act (PERA) authorizes the labor organization or the public employer to request that the Michigan Employment Relations Commission (MERC), through its Bureau of Employment Relations, intervene and mediate matters, including disputes concerning negotiation of labor agreements and the alleged violation of a labor agreement. Mediation is a non-binding process in which a neutral third person assists the parties to resolve their dispute. In collective bargaining, the parties should seek to resolve as many issues as possible on their own; however, when it becomes apparent to one or both parties that they are unable to reconcile their differences or are not making adequate progress towards doing so, labor mediation may be appropriate.²

The Mediation Division of the MERC Bureau of Employment Relations (BER) assists employers and unions in the settlement of disputes involving contract negotiations. MERC mediators have an extensive background in contract administration and typically have handled numerous grievance disputes – some involving arbitration. By mutual agreement between the employer and the union or when included as a step in the contract’s grievance procedure, both parties present the basis of their position to the mediator. The mediator will become familiar with all aspects of the case and will seek to assist the parties to reach a satisfactory settlement that will resolve the dispute. An experienced mediator may also take an unbiased look at the dispute and share a neutral perspective on the parties’ respective positions. A mediator’s assessment of the weak points in a case or clarification of the underlying issues being disputed may prompt one or both parties to view the dispute in a different light and seek resolution by compromise or concession.

In this matter the parties were fortunate to have had one of the premier Mediators the state of Michigan could have offered, Jim W. Corbin.

² Ref. MCL 423.207

Mr. Corbin joined the mediation staff of the Michigan Employment Relations Commission in April 1999. Prior to his appointment, Jim held positions in the public and private sectors including: Deputy Director of the Office of Human Resources and Labor Relations for the Michigan Department of Labor, Director of Labor Relations for the Michigan Family Independence Agency and co-founder and owner of CDET, Inc., a Michigan company specializing in customized employment and job training programs. Mr. Corbin received his Bachelor of Science Degree and Master's Degree in Labor and Industrial Relations from Michigan State University. Jim serves on the Board of Directors of the Michigan Labor-Management Association and served on the Alumni Board of Directors as a past president of the MSU School of Labor and Industrial Relations.³

In this case, 'Mr. Corbin met with the parties on 'at least three occasions. but the parties still could not resolve all of their differences.'⁴

Fact Finding as the next step.

When collective bargaining and mediation assistance do not result in a complete final labor agreement, a party may file a petition with MERC for fact finding. A neutral fact finder is then appointed by the Commission to conduct hearings and issue a written, non-binding recommendation. Its true utility is to provide the parties a reasoned path to an agreement.

MERC fact finding is available to public sector employers and employees subject to PERA who are not eligible for compulsory arbitration under Act 312, which binds public safety employees to arbitration that concludes their labor contract outcome. Although the recommendation of a fact finder is not binding, it is helpful as the parties return to negotiations to resolve their differences and, hopefully, reach contract resolution. Since labor strikes in the public sector are prohibited under PERA, fact finding is the final impasse resolution procedure available to eligible public sector employees.

Looming beyond the failure of a Fact Finding Report to result in a meeting of the minds to settle disputed issues, is the Employer's legal right to impose conditions of employment. This rare and final step into the abyss of all but certain increased labor unrest and protected union activism rarely achieves the objective that a well-intentioned public employer seeks in providing a best qualified and reasonably satisfied workforce. Counterbalanced against that proposition is a public sector school union's responsibility to recognize the financial reality of uncertainty of student enrollment, shifting demographics, competing private schools, the vagaries of Michigan's notably flawed public sector school funding plan, including a school district's fiscal year beginning months before that of the state budget which funds that year, and the state legislatures' patent and well established disregard for the appropriation provisions of the Headlee Amendment when mandating new or additional school services⁵.

³ Source: Michigan Employment Relations Commission Fiscal Year 2017 Annual Report (October 1, 2016 thru September 30, 2017) adopted November 14, 2017.

⁴ LEA Post Hearing Brief p 1.

⁵ Reference Sections 25 through 33 of Article IX of the Michigan State Constitution, which requires any new state mandate or increase in an existing state mandate upon a subordinate unit of government (including a school district) to be accompanied by an appropriation of state funds to cover the cost of implementing it.

In a noteworthy series of decisions of the Michigan courts (*Adair v State of Michigan, et al*), after a nine-year court battle, it was first ruled that the State violated § 29 of the Amendment by failing to provide the required funding to local schools for the costs of state mandated services. Later the courts ruled that the absence of a specific amount in controversy nullified that claim. Had Adair prevailed, it was reasoned that over 450 school districts could have been reimbursed hundreds of millions of dollars for unfunded mandates that drained their budgets, and all public schools would have been provided funding for state mandated services imposed upon them. Now, with a low likelihood of ‘success’ predictable, and because of the enormous cost to pursue such complex litigation, coupled with the reluctance of a local school board willing to fund the cost and time (almost 15 years combined in the Adair cases) involved in pursuing an uncertain court resolution, the typical result for such added ‘costs of doing business’ is to acquiesce when unfunded state mandates are imposed.

As to the parties:

The Lansing School District (LSD) covers over 52 square miles, making it the fifth largest school district in Michigan. The Lansing School District is a Public School District serving Pre K-12 in Lansing, Michigan. The District reports that it serves over 11,000 students in 27 school buildings.⁶ The Lansing School District has nearly 3,000 employees with approximately 1,250 teachers.⁷

The Lansing Educational Assistants (LEA) was established in 1965. The bargaining unit consists of approximately 283 paraprofessionals employed by the Lansing School District. In the 2013-2016 CBA, this included 43 specific classifications. In their 2017 negotiations, the parties have reached a tentative agreement⁸ to reduce the classifications to five classifications moving forward: *School Support Assistants, Student Support Assistants, Specialized Assistants, Technical Assistants, and Interpreters*. These employees provide important support for the educational services the District provides its students.⁹ The last time that the LEA membership experienced a salary schedule increase was in 2012.¹⁰

It is upon that backdrop that the undersigned came to conduct Fact Finding in this public employee labor contract dispute.

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⁶ Ref. <http://www.lansingschools.net/district/>

⁷ Ref. <http://www.lansingschools.net/departments/human-resources/>

⁸ Appendix 1

⁹ Ref. Page 1 at II.A. of Employer’s Post Hearing Brief. Although fluctuating, number of members of the Union can fairly be considered to be approximately 300. Ref. P1 para. 2 of Union’s Post Hearing Brief.

¹⁰ Ref. Union’s Hearing Exhibit 25, and Page 4 para. 1 of Union’s Post Hearing Brief.

2. STATUTORY CRITERIA

This Fact Finding Report is governed by the Michigan Labor Mediation Act – P.A. 176 of 1939 as amended (MCL 423.1 *et seq.*), and the Public Employment Relations Act – P.A. 336 of 1947 as amended (MCL 423.201 *et seq.*). In addition, having also served as an MERC Arbitrator, this Fact Finder, as many, shall also consider guidance given under Act 312 binding arbitration Section 423.239, for economic rationale of his findings.

423.239 Findings, opinions, and orders; factors considered; financial ability of governmental unit to pay.

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 financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, 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.

(j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.

(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.

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties have reached tentative agreements on a number of issues and appear to be in agreement that where not in direct conflict with the 5 issues in contention in this Fact Finding, they are bound to the tentative agreements that have been reached. The parties also agree that the duration of the contract under their Tentative Agreement for Article 25 Duration dated 1/3/17 and found in Appendix A.

4. COMPARABLES

Submitted as Exhibits at the Hearing are comparables listed in Appendix B.

5. ISSUES BEFORE THE FACT FINDER

In coming to the conclusions and recommendations below, the Fact Finder has considered all submissions and admitted exhibits, live testimony and the Employer's Audit Report, (submitted by stipulation of the parties upon its publication) that were determined to be competent, material, and substantial evidence of opposing views. The issues considered are:

- a. 1. Wages (Contract Appendix B) - Economic
2. The Employer's last wage proposal is:
 1. *Increase of 1 % to the salary schedule; (2017-18)*
 2. *No Increase; (2018-19)*
 3. *On schedule step increase for 2019-20.*

The position of the Union is for a three-year salary schedule with step increases in the first and second year and a 1 % wage increase in year 3.

3. The Employer has experienced the ebb and flow of financial uncertainty that other school districts have felt. Acknowledging that enrollment has declined, but counterbalanced by a robust appearing Audit for FY ending June 30, 2017, this Employer seems well situated to retain and attract the talent needed to continue to provide the high level of premium education it has achieved. As reported, from a financial standpoint, the Employer has experienced 0.7% growth in Non - Exempt Property Tax Revenues; a \$113 increase in per pupil state funding from \$7,550 to \$7,653; a reduced rate of loss of students on an annualized basis to a low of 110 less pupils in 2016-17, from a high of 456 in 2012-13; (and although

not to be depended upon for continued financial planning) \$4,988,330 more in Operating Grants; with a decrease in County Special Education Allocations of \$121,883 for an allocation of \$15,999,555; and Interest Revenues increased \$182,953. Even with substantial debt service, the Employer came in \$1,975,720 (or 7.3%) under its final Amended Budget and almost \$3.5 million under its Original Proposed Budget. To be fair, there are negative balances created by the existence of Pension and Other Post Employment Benefit obligations, and debt service was considered. However, the Employer has the ability to pay, and if followed, the 5 recommendations below should not harm its planned financial advancement, or curtail any plans, or debt service, reported in its Audit Report.

4. Recommendation on Issue #1. Given the paucity in pay increases, and considering the Employer's current ability to pay, overall financial outlook, potential for some savings to it on acceptance of the next 4 recommendations, and relevant comparables, 1% for 2017-18, 1% increase for 2018-19 & step increases for 2019-20, is recommended.

b. 1. Employer's Insurance Contribution (Contract Article XVI) - Economic

2. The Employer's last proposal for Health Insurance is:

- *Hard Cap: District will pay the hard cap maximum for health benefits for 2016-2017, and then District's cost will be frozen for remainder of contract.*
- *Cash in Lieu: All benefit eligible LEA members would receive a monthly cash in lieu payment of \$160 if they opt-out of the district provided medical plan.*

The position of the Union is:

- The Employer pay the legally maximum amount (hard cap) allowed by Section 3 of PA 152 of 2011 for all eligible employees for health insurance for the duration of the contract. With respect to cash in lieu of health insurance, the proposal is to increase the amount to a \$200 monthly payment for an LEA member who opted out of insurance.
3. In its Post Hearing Brief at page 5, the Employer states that it, "...will treat the bargaining unit the same as others who have modified their plans to save their members and the District money in health care costs." As to the cash in lieu of insurance, "...the District has proposed an increase in the pay to bargaining unit members from \$140 per month to \$160 per month. The Union has proposed an increase to \$200 per month. The testimony revealed that approximately ninety-eight members [about 1/3] take the monthly payout."

The Union counters in its Post Hearing Brief at page 6, "*The rationale for the LEA proposal is that these employees are low wage earners and they need the district to pay all that they can toward the cost of health insurance. Moreover, a review of the LEA-LSD comparables on the hard cap rate demonstrates that the LSD is contributing the legal maximum allowable amount for all other unionized employees (See Exhibit 28). Thus, the LSD should treat these employees in an equitable fashion. Furthermore, with respect to cash in lieu, the testimony of Mr. Hockaday was that the teachers receive a \$400 monthly payment. This is double what the LEA is proposing...*".

4. Recommendation on Issue #2. Both parties have proposals that offer merit. If language is drafted into a final agreement that binds the Employer to its assertion that it, "*will treat the bargaining unit the same as others who have modified their plans to save their members and the District money in health care costs.*", the Employer's demand is recommended. As to cash in lieu of insurance, although meager, the offer of the Employer seems a savings to it that will improve the position of the Union members so affected without disrupting a hopeful resolution of all issues in dispute as herein recommended. Note the words "*the same*" above are emphasized to mean the hard cap issue being treated also in the same fashion 'as others'.

c. 1. Right of Assignment (Contract Article X and App. C) – Non-Economic

2. The Employer's last proposal for Right of Assignment is:

- The District's last proposal on right of assignment are changes to Article X which will provide the District with assignment powers over LEA members comparable to that (now in place) for its teachers, replacing the current policy which the Employer claims relies mainly on seniority.
- The position of the Union is the current contract language in Appendix X remain with the change only in Section D as follows:

D. ~~Involuntary Transfers.~~ RIGHT OF ASSIGNMENT: Employees who will be affected by a change in assignments during the school year will be notified and consulted by their building principal as soon as practicable. The Superintendent of Schools, or a designee, THE LEA HUMAN RESOURCE SPECIALIST has the sole right to assign Assistants to positions for which they are qualified within the school district. NO ASSIGNMENT SHALL BE FOR ARBITRARY OR CAPRICIOUS REASONS.

3. Testimony taken gave rise to the notion that preference on a personal level rather than performance on a professional level may overtake the

assignment/reassignment of personnel. The Union's stated concern is that by diminishing seniority protections, arbitrary and capricious personnel assignments may result. However, the Fact Finder does not recollect any testimony giving support to that happening to other employees in the School District subject (as the Employer stated) to the now demanded change. The Employer claims it seeks some more control over their decision as to 'right person-right place' relying less on seniority. Under the current contract provisions, each school year offers the chance for the Employer to reassign this Union's personnel. The Employer's proposal does not seem to this writer to be unduly burdensome or inherently abusive. As proposed, it seems to provide management a tool to address 'needed' change within the course of a school year. In its Post Hearing Brief, the Employer indicates that the policy now demanded would mirror that of its Educators, also a unionized group.

4. Recommendation on Issue #3. Based upon a fair experience of the other bargaining unit(s) under this 'mirror image' provision, adding the safeguard to permit a grievance for an involuntary reassignment that is alleged to be without good cause, the Employer has made the better case for meeting its Educational Assistants placement mission objectives. If a well grounded transfer is made, no grievance should follow and if it does, it should fail.

d. 1. Compensable Leave Cap & Pay Out (Contract Art. XIV) – Economic

The current Contract states in pertinent part:

Compensable Leave. Compensable leave of one (1) day per month worked shall be credited to the compensable leave account of each employee. Assistants shall be entitled to unlimited accumulation which shall be available to them in future years.

Unused Accumulated Compensable Leave. a. A qualified Assistant shall be granted, upon retirement from the District, an additional salary payment equal to his/her current rate of pay for one-half (1/2) his/her unused accumulated compensable leave. Such payment shall be limited to a maximum of sixty (60) leave days. For purposes of this paragraph, qualified employees shall include those who are eligible to receive a Michigan Public School Employees Retirement System (MPERS) Defined Benefit Pension including regular, disability and deferred retirement.

b. Assistants not qualifying for MPERS retirement, but having reached the age of fifty-five (55) and having fifteen (15) years

of regular service, shall be paid \$225.00 upon retirement from the District.

2. The Employer's last proposal for Compensable Leave Cap & Pay Out is the following change:

- *Compensable Leave: LEA members with an excess of 60 compensable leave days on the last LEA work day of the school year (2016/2017) shall be required to release the days in excess of 60 from their compensable leave bank in exchange for a cash payment equivalent of 20% of their wage value. (Example: If an employee's daily wage is \$100, he/she shall be compensated \$20 for each day released.). This provision for unused sick time is a one-time pay out and is applicable for the 2016/2017 school year only. This stipend shall be paid upon ratification of this agreement as practically as possible. Unused portions of each year's leave shall be allowed to accumulate up to but not exceeding 60 days.*

The District will pay for Long Term Disability (66 2/3% of monthly earnings with a max of \$4,000) beginning on day 61 for personal illness or injury.

Employees transferring in to the LEA unit may transfer no more than 60 days of accumulated compensable leave time from their previous position to be capped at 60 days.

- The position of the Union is to modify the current contract language as follows:

Compensable Leave: LEA members with an excess of 60 compensable leave days on the last LEA work day of the school year shall be required to release the days in excess of 60 from their compensable leave bank in exchange for a cash payment equivalent to 50% of their wage value. (Example: If an employee's daily wage is \$100.00 he/she shall be compensated \$50.00 for each day released)

3. Both parties seem to agree that the concept of limiting compensable leave days is achievable. The dispute lies in the worth of those days already accumulated that the employer plans to eliminate for a fixed cost in the first year, and then limiting compensable sick days to not more than 60 per school year. The long-term disability provision is what the Employer plans 'to make whole' for the affected employee if personal illness or injury uses up 60 compensable sick days in a school year. The Union wants a 'carry forward' plan that allows a member to be paid for more than 60 compensable sick days at the end of every school year.

4. Recommendation on Issue #4. Given the fact that 60 days in a five-day work week can approximate a 3-month absence, and with an employer funded policy of insurance paying 66-2/3% of wages beginning on day 61, I recommend that the Union accept the Employer's proposal provided that there is a meaningful concession increasing the one-time 20% cash payment equivalent to an amount the Union is willing to compromise to that is below its demand of 50%. Such an accord would grant Union members assured compensation if they become ill or are injured and are consequently off work for an extended period of time. Such an implementation could also allay the Employer's concern (founded or not) of excessive use of compensable time for other than its intended purpose.

e.1. President's Release Time (Contract Article IV G) - Economic

2. The Employer's last proposal for President's Release Time is

- LEA President Release Time. – Eliminated.

The Union's last proposal on President's Release Time is to make changes in displayed in italics and strikeouts, as follows:

Article IV: LEA Considerations

C. Association Release time:

Add to section C (3): The Association agrees to remain current in reimbursing the district for Association release time and will provide full reimbursement within ~~60~~ *45 days* of the billing date by the District. If the Association does not reimburse the District within ~~60~~ *45 days* of the billing date the District reserves the right to eliminate this section until such time the LEA is current on reimbursements.

G. LEA President Release Time.

1. a. The parties agree that it is in their mutual interest to have additional opportunities to try to proactively address situations before they become problems and to interact more regularly on day-to-day issues. In order to facilitate this interaction, the parties agree for the term of the Agreement to relieve the LEA President of his/her regular assignment of twenty (20) hours per week during the school year and summer. The rate of compensation for these 20 hours shall be at the "Technical Assistant" classification unless the newly elected president is already classified at a higher rate of pay, in which case they shall be paid at the same rate of pay as their previous assignment. The Association shall reimburse the District for all

wages represented for seven (7) release hours per week, plus the current appropriate rate to cover the District's share of FICA, retirement contributions and proportionate share of costs associated with workers' compensation and unemployment expenses as detailed in Article N, Section C, and the District agrees to release the president for thirteen (13) hours for a total of twenty (20) release hours per week.

b. The District shall also pay the President an additional twenty (20) hours per week in wages, at the rate of pay for his/her normal assignment(s). The President will have the option to either take a part-time, twenty hour a week assignment(s), or reduce his/her employment to a half time (20 hour) assignment performing only Association duties. The District will make all appropriate deductions and contributions during the period of this arrangement, including the Michigan Public School Employees' Retirement System. *If the President elects to reduce his employment below 40 hours per week but selects a "supplemental position" that results in an employment status of 25-39 hours per week, the employee (local President) shall be provided health insurance.*

c. The Association shall pay the District the cost of the President's seven (7) hours per week in *wages within 45 days, following the billing cycle of the service period, on a quarterly basis.* The Association shall provide the District with at least thirty (30) days' advance notice if it intends to change its commitment to pay the President and/or reimburse the District for these work hours. In the event that the Association ~~reduces its commitment under seven (7) hours per week, or fails to reimburse the District within 6e 45 days for the Association's~~ commitment in section 1 (a and b) above, this provision will become invalid, and the President shall have no further release time until the LEA becomes current with reimbursement. *If the Association elects to reduce the number of hours that it is responsible for as it applies to the President Release time, the costs shall remain at the current 65% District provided, 35% Association provide ratio, as is detailed in this Article.*

2. The Association President and the District shall schedule any Association work for times that the President is not assigned to his/her normal assignment.

3. The twenty hours (13 paid by the District and 7 paid by the Association) for the President's Release time shall continue on a 52-week basis and shall be paid at the Technical

Assistant rate of pay for these 20 hours. The President's other remaining assignment, shall be based on the hours/week requirement of the position(s).

4. The Association President shall be reassigned to a vacant bargaining unit position upon the earliest of the following contingencies: termination of his/her term of office, or at his/her request. At the time of reassignment, the Association President may select from among bargaining unit vacancies for which he/she is qualified or exercise their staffing rights to bump the appropriate person as defined in this contract.

3. Excused time and leave for union representatives, shop stewards, etc., to attend to union business (e.g., participating in union related inquiries, investigating grievances, etc.) is a common allowance in many union shops. In the instant case, there was testimony that although membership in the Union has declined, the involvement of Union representation in contract issues with Human Resources has not proportionately diminished. The Employer seeks to discontinue excused Union Leave Time apparently for the sole beneficiary of the current contract provision, the Union President. Given the benefit of prompt response to issues of contract interpretation and management's exercise of control in the workplace, the ability for at least one Union member to assist both their member and Human Resources with a prompt and meaningful appearance and knowledgeable intervention may help resolve a number of disagreements at their source, using less time and expense for both management and labor than might otherwise occur.
4. Recommendation on Issue #5: Although capable of further modification to garner acceptance by the Employer, the Union's proposal in this regard seems to better fit the notion of amending past practice, while still retaining a prompt method of resolving dilemmas that would otherwise become subject to a more involved, time consuming, and expensive protocol for resolution.

6. **SUMMARY OF RECOMMENDATIONS**

ISSUE	RECOMMENDATION
Wages	1% for year 1, 1% for year 2, & step increases for year 3
Employer's Insurance Contribution	Employer's Proposal with Modification
Right of Assignment	Employer's Proposal with Modification
Compensable Leave Cap & Pay Out	Employer's Proposal with Modification
President's Release Time	Union Proposal with Modification Possible *

* corrected 12-11-17

The parties in this case were well prepared and well represented. Their arguments did not conflict with their clear intention to provide an exemplary educational experience and afford opportunities to those students in their system to surpass all measurable goals in their education. The Fact Finder has made his best effort to sow seeds of settlement. Beyond that he can do no more. It is now up to these good people to determine how best to settle their differences and proceed with a clearer course in their mission.

As a reminder and opportunity to do that, the parties are to meet and bargain at least once the after the Fact Finder issues this report and recommendation. This is the final mandatory opportunity for these parties to resolve their contract issues. If the parties are unable to resolve their differences at the final mandatory bargaining session, or in subsequent voluntary negotiations (which are always encouraged), the public employer may implement the terms of a contract. Public school employers have what may be the ultimate tool to end an impasse, the option to unilaterally impose their position on unresolved issues. Imposed terms are combined with previously agreed upon terms to create the parties' "contract."

Both parties should consider the challenges presented by forced implementation of a contract after an impasse. While some public employers may view this as an opportunity to have the last word, there will undoubtedly be consequences in employee morale or performance and additional labor strife. That combination can convert a public previously in favor of conservative administration of school tax dollars into something else.

The undersigned respectfully thanks all involved for their professional demeanor, forthright presentations and testimony. You have my profound hope that the issues in controversy will be settled by you in short order. This Report is intended to assist you to that end.

It has been my distinct privilege and honor to serve.

Sincerely and respectfully yours,



Ralph L. Maccarone
Ralph L. Maccarone
Fact Finder

Dated: Friday, December 8, 2017

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

MERC CASE NO.: L16 K-1040

Appendix A

Tentative Agreements

Article 1 Recognition Clause 8/23/17

Article 2 Security 7/18/17

Article 3 Dues 1/13/17

Article 7 Working Conditions 6/13/17

Article 8 Seniority Classifications 7/18/17

Article 8 Filling Leaves 6/7/17

Article 8 Responsibilities After Leaves 6/13/17

Article 13 General Purpose Leave 11/28/16

Article 17 Vacations 8/29/17

Article 25 Duration 1/3/17

Appendix A Classifications 6/13/17

Appendix B Camp/Furlough Day 11/14/16

July 18, 2017 District's Counter Proposal

Article I: Recognition

A. Recognition. Pursuant to and in accordance with all applicable provisions of Act 379 of the Public Acts of 1965, as amended, the Board does hereby recognize the Michigan Education Association/National Education Association (MEA/NEA), through its local affiliate, the Lansing Educational Assistants (LEA), as the exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment pursuant to and in accordance with all applicable provisions of Act 379 of the Public Acts of 1965, as amended. For the term of this Agreement of all employees of the Board included in the paraprofessional (LEA) bargaining unit are described below and in Appendix A:

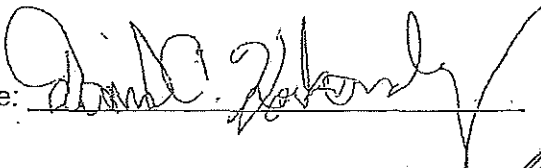
1. School Support Assistants
2. Student Support Assistants
3. Specialized Assistants (*through attrition, this classification will become obsolete)
4. Technical Assistants
5. Interpreters

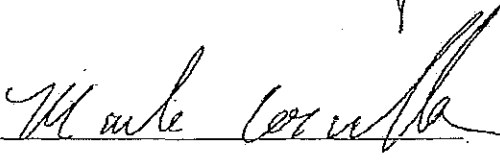
B. Excluding:

1. All Supervisory Personnel
2. All other Lansing Board of Education employees, including student employees.
3. Substitute Assistants and Volunteers

The terms LEA and/or Association shall refer to the above-named organization. The terms "Assistant" and/or "Paraprofessional" may be used interchangeably by the parties to refer to employees in the bargaining unit described above.

The Board of Education does not discriminate on the basis of race, color, national origin, sex, (including sexual orientation and transgender identity), disability, age, religion, height, weight, marital or family status, military status, ancestry, genetic information or any other legally protected category, (collectively, "Protected Classes"), in its programs and activities, including employment opportunities.

LEA Representative:  Date: 8/23/17

LSD Representative:  Date: 8/29/2017

July 18, 2017 District's Counter Proposal

Article II: Security

- A. Article eliminated
- B. New contract language – see below
- C. Article eliminated
- D. New contract language – see below
- E. Article eliminated

B. The District shall provide each such employee that is processed in the Human Resources Department the LEA membership packet at the time of hire or rehire. LEA will note on the outside of the packet "The District is distributing this packet on behalf of the LEA. Joining is voluntary and it is not a condition of employment".

D. The District will provide the LEA with a monthly list of all Assistants, the date of employment, place of employment and the employee's employee ID number.

LEA Representative:

David C. Hendry

Date:

7/18/2017

LSD Representative:

Mark Lavelle

Date:

7/18/2017

TAS

Article III Dues

LEA accepts the District's Proposal dated 12/19/16.

For the LEA: David C. Hinkley 1-3-17

For the District: Mark L. Smith 1-3-17

June 2, 2017 District's Counter Proposal

Article VII: Working Conditions

- I. Volunteer Programs: The Board shall notify the Association of any anticipated volunteer programs and volunteer usage within the District buildings.

LEA Representative: Dorel C. Hakaday Date: 6/7/17

LSD Representative: Mark Latta Date: 6/13/17

June 2, 2017 District's Counter Proposal

Article VIII: Seniority

C. Classifications. For purposes of this provision, it is understood that all bargaining unit members are in one or more of the following Classifications based on their current assignment(s):

School Support Assistants
Student Support Assistants
Specialized Assistants (thru attrition, this classification will become obsolete)
Technical Assistants
Interpreters

However, computer entries may continue to record current assignment title(s).

E. Multiple Classification Assignments: Article eliminated

LEA Representative:

Paul C. Horvath

Date:

7-16-2017

LSD Representative:

Mark [unclear]

Date:

7-18-2017

June 2, 2017 District's Counter Proposal

Article XIII

K. The Board reserves the right to fill an opening created by a leave of absence with a substitute.

LEA Representative: David C. Hochstetler Date: 6-7-17

LSD Representative: Mark Caswell Date: 6-13-17

June 2, 2017 District's Counter Proposal

Article XIII—Assistant's Responsibilities Upon Return From, or Seeking Extension Of, A Leave of Absence

I. An Assistant returning from or requesting an extension, in writing, submitted to the Human Resources Office, of a leave of absence must notify the Human Resources Office no later than thirty (30) days prior to the expiration date of the leave.

Assistants shall be placed in the first opening available for which they are qualified in the same classification in the building where they formerly worked. An Assistant that takes a health, maternity, parental or adoptive leave of one (1) semester or less shall have the right to return to his/her position, or an equivalent position, unless such a position no longer exists.

Those Assistants taking leaves of more than one (1) semester but no longer than one (1) year shall have the right to return to an equivalent position, consistent with their seniority, at the beginning of the school year following the end of the Assistant's leave, unless such a position no longer exists.

LEA Representative:

David C. Holaday

Date:

6/7/17

LSD Representative:

Mark Cook

Date:

6-13-17

Article III: District's Proposal – December 12, 2016

ARTICLE III: LEA DUES

- ~~A. Payment by Check Off. Employees shall authorize deduction of monthly membership dues or Representation Fees by signing the Authorization for Check off of Dues/Representation Fees Form.~~
- ~~B. Check Off Form. During the life of this Agreement and in accordance with the terms of the form of authorization of Check off of Dues/Representation Fees hereinafter set forth, the Employer agrees to deduct only LEA membership dues/Representation Fees from the pay of each employee who executes or who has executed the following Authorization for Check off of Dues/Representation Fee Form and filed the same with the employer. The employer shall not be required to make any check off for LEA dues/Representation Fees if the employee's pay is not sufficient to cover the dues in any pay period.~~
- ~~C. When Deductions Begin. Check off of deductions under all properly executed Authorization for Check off of Dues/Representation Fees shall become effective at the time the authorization is signed by the employee and shall be deducted from each pay period thereafter.~~
- ~~D. Remittance of Dues/Representation Fee to Treasurer. Deductions for any calendar month shall be remitted to the Treasurer of LEA, with a list of Assistants from whom dues and Representation Fees have been deducted as soon as possible following the pay period but not more than fifteen (15) calendar days following the end of the pay period.~~
- ~~E.A. Termination of Check Off. An Assistant shall cease to be subject to check off dues/Representation Fees for this unit beginning with the month immediately following the month in which the Assistant is no longer a member of the bargaining unit. The LEA will be notified by the Employer of the names of such employees following the end of each month in which the termination took place.~~

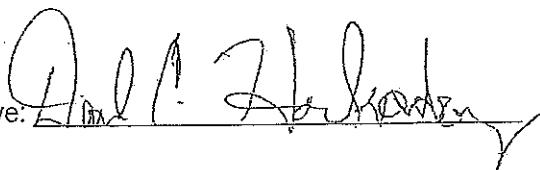
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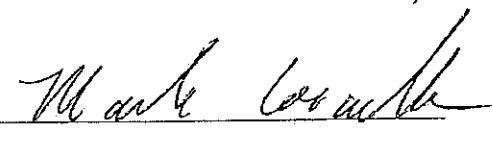
OK?

July 18, 2017 District's Counter Proposal

Article XVII: Vacations

- A. No change in contract language
- B. No change in contract language

LEA Representative:  Date: 8/23/17

LSD Representative:  Date: 8/29/2017

Article XXV: District's Proposal -- December 19, 2016

ARTICLE XXV: DURATION OF AGREEMENT

~~Article II and Article III, as supplemented in the attached, shall be effective immediately upon ratification of this agreement and shall continue in full force and effect until August 15, 2016.~~

~~All economic language shall be effective July 1, 2013, and continue in full force and effect until August 14, 2016.~~

~~All non-economic language shall be in full force and effect from August 16, 2013, through August 16, 2016.~~

This Agreement will be effective as of the _____ day of December, 2016, and continue in effect through the 31st day of December, 2019.

If an Emergency Manager is appointed by the State under PA 4 of 2011, (Fiscal Accountability Act) the emergency manager may reject, modify, or terminate the Collective Bargaining Agreement in accordance with law. This clause is included in this agreement because it is legally required by state law and not as a result of agreement of the parties.

OK ?

TA Article XIII.F & G

XIII

The parties agree to eliminate all of Article XII.F (Education Leave) from the CBA and add the title Education Leave to the heading for Article G. The new heading shall be labeled;

"General Purpose Leave and Education Leave"

For the LEA:

David L. Harkerby 11-14-2016

For the District:

Mark Lawrence 11-28-16

ARTICLE XIII: LEAVES OF ABSENCE

- A. Health Leave. After one (1) year of service with the Lansing School District, an Assistant may be granted, upon written application to the Human Resources Office, a leave of absence without pay for reasons of health which, in accordance with general school laws, may not exceed one year from the date granted by the Board. A physician's statement verifying the need for a leave should accompany the request.

Prior to return, the Board may require the Assistant to provide a certificate of good physical and/or mental health. The Board reserves the right to have Assistants returning from such a leave promptly examined by a physician of its choice at Board expense.

- B. Maternity Leave.

1. If the Assistant desires a maternity leave of absence without pay, the Assistant must file a written request with the Human Resources Office at least thirty (30) days prior to the anticipated date of such leave.
2. Any leave of absence shall be for the duration of the pregnancy and extended no longer than through the post-natal examination period (usually six [6] weeks after termination of the pregnancy).
3. Upon returning from leave of absence, her physician must certify that she is physically sound and able to perform all duties of her position and that she is not an industrial risk. The Board may choose at its option and expense to have the Assistant examined by the Board's physician prior to the Assistant's return to work.

- C. Parental Leave. A parental leave of absence without pay may be granted, upon written request submitted to the Human Resources Office, to Assistants with at least one (1) year of service who become parents of a newborn, for a period up to but not exceeding one (1) year. (Assistants with less than one (1) year of service may request such leave for a period not to exceed their length of credited service with the District.) Such leave must be requested, in writing, prior to the six (6) week post-natal examination, but not less than thirty (30) days prior to the date such leave is to become effective.

- D. Military Leaves of Absence. Assistants who have been inducted or enlisted for military duty in any of the armed forces of the United States shall be granted leaves of absence without pay for a period not to exceed three (3) months beyond their honorable discharge date, upon written request submitted to the Human Resources Office. Full credit toward advancement on the salary schedule shall be granted and all accumulated compensable leave acquired prior to entry into the service will be reinstated. Military leaves of absence, and credit on the salary schedule, shall not be extended beyond the initial enlisted or induction period. A dishonorable discharge from above services does not obligate the Board for future employment. At Board discretion a certification of physical and/or mental capability may be required as a condition of re-employment. The provisions set forth in other sections of this Article shall not be applicable to this section.

- E. Adoptive Leave. Any Assistant may apply to the Human Resources Office in writing for an adoptive leave without pay. When first notified of acceptance as an adoptive parent by the adoption agency, the Assistant desiring adoptive leave shall apply to the Human Resources

Office for an adoptive leave which shall commence when the Assistant assumes custody of the child and shall continue for the duration of the school year. (Unless the Assistant has less than one (1) year of credited District service, in which case the Assistant may request a leave not to exceed his/her length of service.) Upon request of the Assistant the leave shall be extended for an additional school year.

F. Educational Leave

1. ~~An Assistant who has been on the staff of the Lansing School District for a minimum of three (3) years, and has a record of satisfactory service, shall be eligible for a study leave for a period of up to two (2) years, provided said Assistant states an intent to return to the Lansing School District for a minimum period of one (1) year. Assistants with two (2) years of service are eligible to request study leave for a period not to exceed one (1) year, with the understanding that they will return to the District for a minimum period of one (1) year.~~
2. ~~Written application shall be filed with the Consultant in the Human Resources Office by the end of the first semester for leave beginning the following September. For leave beginning in February, the application shall be filed by the end of the preceding June. Leaves must be for semester durations.~~
3. ~~An Assistant requesting a leave of absence for study, shall be required to take at least ten (10) semester hours per semester, or ten (10) term hours per quarter in an accredited university, college or community college.~~
4. ~~Study leave shall be leave without pay.~~
5. ~~An Assistant being granted a leave of absence for a course of study related to student instruction and/or work within the bargaining unit shall advance on the salary schedule as the Assistant would have advanced had the Assistant been employed in the Lansing School District, provided a transcript is filed indicating the required credits have been earned. A determination shall be made prior to the commencement of the leave as to whether it meets the study requirement of this subsection. Such determination shall be made by mutual agreement of the parties.~~
6. ~~Exceptions to the above limitations may be made by mutual agreement between the District and the Association.~~

G.F. General Personal Purpose Leave and Education Leave. Upon written application submitted to the Human Resources Office, and after one (1) year of service with the District, an Assistant may be granted a General Personal Leave of Absence of up to one (1) year, without pay. Said leave is renewable upon the written request of the Assistant and the approval of the District.

H. Association Office Leave. A leave of absence of up to three (3) years, without pay, shall be granted upon written application submitted to the Human Resources Office for the purpose of serving as an officer of the Association, or an officer in its state or national affiliate. Said leave of absence is renewable upon the written request of the leave holder. Return from such leave must correspond with the beginning of the school year. At least sixty (60) calendar days prior to the expiration of the leave the leave holder shall notify the District of his/her intent to return or extend the leave.

I.G. Assistant's Responsibilities Upon Return From, or Seeking Extension Of, A Leave of Absence. An Assistant returning from or requesting an extension, in writing, submitted to the Human Resources Office, of a leave of absence must notify the Human Resources Office no later than

thirty (30) days prior to the expiration date of the leave.

Assistants shall be placed in the first opening available for which they are qualified in the same classification in the building where they formerly worked. An Assistant that takes a health, maternity, parental or adoptive leave of one (1) semester or less shall have the right to return to his/her position, or an equivalent position, unless such a position no longer exists. Those Assistants taking leaves of more than one (1) semester but no longer than one (1) year shall have the right to return to an equivalent position, consistent with their seniority, at the beginning of the school year following the end of the Assistant's leave, unless such a position no longer exists.

J.H. Leaves For Other Purposes.

1. Jury Duty. The Assistant who receives a jury duty interview and appearance notice must notify the Human Resources Office in writing within one (1) school day of such notice. If Assistants are summoned and report for jury duty, they shall be paid the difference between the amount they receive as a juror and their normal week's pay, provided they make themselves available for work within their regular work schedule when not occupied for jury duty. It is understood and agreed that Assistants shall be required to report to work on any and all days when they are not sitting as a juror. To be eligible for jury duty pay differential, Assistants must furnish the Employer with a written statement from the appropriate public official listing the amount and the dates they received pay for jury duty. Any Assistant found abusing this privilege shall not be entitled to the pay differential and will be subject to disciplinary action.
2. A leave of absence with full pay not chargeable against the Assistant's sick leave shall be granted for court appearance when subpoenaed as a witness in any case connected with the Assistant's employment or the school, provided the Assistant pays to the school district any sums received as subpoena fees. This provision shall not apply to employees who are plaintiffs in civil suits against the District.

K.I. The Board reserves the right to fill an opening created by a leave of absence with a substitute or temporary assistant.

L.J. Family and Medical Leave Act of 1993.

1. The District will extend such additional considerations and benefits to Assistants as are required by the Family and Medical Leave Act (FMLA) of 1993. The District and the LEA agree that it may be necessary to temporarily reassign an employee to accommodate intermittent usage of the leave or to facilitate a transition for returning to his/her regular position. Such temporary assignment shall be for the same number of work hours as that held by the employee prior to the leave and shall be at the Assistant's regular rate of pay (or higher rate if required by the classification of the temporary position).
2. The Assistant shall have the option of using accumulated compensable leave, accumulated and accrued vacation, and/or personal leave during the leave of absence. The remainder of any leave will be unpaid.
3. Health benefits will be continued during the leave under the same conditions and at the same level as if the Assistant was still at work.
4. Seniority shall continue to accrue during the leave.

5. The Assistant shall have the right to take the leave on a reduced or intermittent schedule, if allowed by law.
6. Whenever practicable, the Assistant will provide the Employer at least thirty (30) calendar days' written notice of the request for the leave. It will include the reason for the request; the expected beginning date; the expected ending date; and whether or not the employee intends to use paid leave for any part of the leave. The Assistant should also provide the District with appropriate medical documentation. If the District should require additional medical information, the District will put in writing to the physician what additional information is needed.
7. The District retains the right to deny a request to return from leave to an "instructional" position, consistent with the law, during the final weeks of a semester.
8. For purposes of crediting and fulfilling unpaid leave entitlements under the provisions of this Agreement, any contractual unpaid leave which would also qualify under the provisions of FMLA will run concurrently with the FMLA to the extent permitted by the Act and its implementing regulations.
9. Under the provisions of Section 825.213 of the Act (recovering costs for maintaining benefits during FMLA leave), the District may require an Assistant who fails to return from an unpaid leave, during which he/she received FMLA leave paid benefits, to repay the District the amount it paid for the continuation of said benefits. The terms of repayment shall rest solely between the Assistant and the District. The District shall hold the Association harmless in any matter related to the implementation of this section.

M.K. Military Reservist. In the event bargaining unit members, who are military reservists are called to active duty, the District and the LEA, upon LEA request, shall meet to discuss insurance and salary transition impact.

Article XXV Duration of Agreement

LEA accepts the Districts proposal with an adjustment to the actual "effective" date to reflect the actual date of completed ratifications of the agreement.

For the LEA: David A. Whiting 1-3-17

For the District: Mark Corbett 1-3-17

June 2, 2017 District's Counter Proposal

Appendix A: Assistant Classifications

It is understood that the previous 43 positions and 12 classifications are now vested within the five (5) new classifications. The parties recognize that there is no intent to diminish bargaining unit work for LEA members through this classification change. This change in classification is organizational in nature and reorganizes the former positions with the five (5) classifications defined:

1. School Support Assistants
2. Student Support Assistants
3. Specialized Assistants (*thru attrition, this classification will become obsolete)
4. Technical Assistants
5. Interpreters

*The bargaining unit employees currently identified as being in specialized positions shall remain in the "specialized" classification as long as they remain in their current position, for the remainder of their employment with the District. If a bargaining unit employee moves to a different position, they will no longer retain the "specialized" classification. Likewise, if a position becomes available because a "specialized" bargaining unit member transfers, resigns, retires or otherwise is separated from the District, the position will revert to the appropriate remaining classifications and will not remain in the "specialized" classification as a "specialized" position.

LEA Representative: _____

David A. Hochstadt

Date: _____

6-7-17

LSD Representative: _____

Mark Lusk

Date: _____

6-13-17

TA on Appendix B.7A Camp Pay and Furlough Days:

- A. All Assistants that participate in overnight and/or field trip experiences associated with their jobs, that include time periods outside their normal work schedules, shall be paid their negotiated hourly rate or a daily stipend equal to the minimum wage times the number of hours worked, whichever is lesser.

*(Current daily rate of \$200.00 will increase as minimum wage increases over time.)

- B. Strike Section 12 (Furlough Days) from contract.

For the LEA: David C. Heckman 11/14/2016

For the District: Mark Lencucha 11-28-16

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

MERC CASE NO.: L16 K-1040

Appendix B

Comparables

LEA - Comparisons of Wages of Area Schools 2016-2017

Instructional Paraprofessional Wages

District	Beginning Wage	Maximum Wage
Ann Arbor (Gen. Education Assist)	15.12	17.69
Ann Arbor (Special Ed Assist)	17.27	19.99
East Lansing (Step 1-2, Category 2)	11.03	16.43
Grand Blanc	9.37	13.22
Grand Ledge (Pre-School, Teacher, Bus Assistants)	10.50	13.25
Grand Ledge (Health Care Assist) (comparable to LEA Specialized Paras)	14.99	16.71
Grand Rapids (Paraprofessionals)	10.37	15.71
Holt (Spec Ed & Title I Paraeducators)	12.07	16.18
Holt (Overload Paraeducators)	10.23	10.23
Kalamazoo***	\$13,840/1302hrs(186daysx7hrs)= \$10.63	\$21,706/1302hrs(186daysx7hrs)= \$16.71
LEA (SPECIAL EDUCATION)	12.98	15.57
Mason (Class 3-Spec Ed Assistants) **	9.22	11.17
Mason(Class 4-Spec Ed Interpreters)**	10.61	12.56

**Appendix A reflects 2013-14 rates of pay, this in the 2015-17 CBA

***Kalamazoo Paraprofessional salary schedule reflects a yearly wage, instead of an hourly wage.

Historical Perspective on Wages

The Lansing Educational Assistants (LEA) was established in 1965.

It has been in place for 52 years.

The last time that the LEA membership experienced a salary schedule increase was in 2012. They have begun their 6th year of work without any increase in of wages.

The example below is the difference of a Lansing Special Education/BA/BS Degreed LEA member's hourly wage with 29 years of Lansing Educational Assistant experience in the bargaining unit.

	<u>Year 1</u>
Wages in 2012	\$12.98
Wages in 2017	\$12.98
Difference	\$0.

Below is an example of a Lansing Special Education/BA/BS Degreed hourly wage and the changes over the last six years

2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
\$12.98	\$12.98	\$12.98	\$12.98	\$12.98	\$12.98

Minimum wage increased \$1.50 over this time period while the Lansing Educational Assistant wages experienced no increase.

LEA - LANSING SCHOOL DISTRICT (LSD) COMPARABLES - Wage Increases	
ASSOCIATION	WAGE INCREASES
Lansing Educational Assistants (LEA)	Steps and Wages Frozen since 2012.
Lansing School Safety Officers	.75% on schedule @ year (2015-16), (2016-17), (2017-18)
Lansing Association of Educational Secretaries (LAES)	Steps for (2015-16), (2016-17), (2017-18) 1% aggregated on schedule = to \$430/member (2016-17 yr only) No Steps for 2016-17 or 2017-18
Lansing Schools Education Association (LSEA)	1% aggregated on schedule = \$850/member(2016-17) \$500 off schedule lump sum payment (2017-18) No Steps for 2016-17 and 2017-18
Lansing Association of School Administrators (LASA)	1% aggregated on schedule (2016-17) \$500 off schedule stipend (2017-18), (2018-19) \$3000 Stipend (2016-17) \$2000 Stipend (2017-18) (2018-19) for 52 week employee
Lansing School District Meet & Confer	1% aggregated on schedule (2016-17) \$500 off schedule stipend (2017-18), (2018-19)

LANSING SCHOOL DISTRICT (LSD) COMPARABLES/STATE HARD CAP RATES

ASSOCIATION	STATE INSURANCE HARD CAP RATES
NO "ME TOO" CLAUSE FOR ANY UNIT BELOW	
Lansing Educational Assistants (LEA)	LSD PROPOSED 2016 HARD CAP FOR THE 3 YEAR CONTRACT 2016 HARD CAP FOR YEARS, 2016/17, 2017/18, 2018/19, 2019/20 -(4 YEARS)
LANSING SCHOOL SAFETY OFFICERS	COMMENCING 07.01.2016 THROUGH 06.30.2018, DISTRICT CONTRIBUTES THE MAXIMUM ALLOWED BASED ON STATE HARD CAP
Lansing Association of Educational Secretaries (LAES)	UPON INFORMATION & BELIEF, DISTRICT CONTRIBUTES THE MAXIMUM, ALLOWED BASED ON THE STATE HARD CAP
Lansing Schools Education Association (LSEA)	DISTRICT CONTRIBUTES THE MAXIMUM, ALLOWED BASED ON STATE HARD CAP
Lansing Association of School Administrators (LASA)	DISTRICT CONTRIBUTES THE MAXIMUM, ALLOWED BASED ON STATE HARD CAP
Lansing School District Meet & Confer	NO MENTION OF HARD CAP MINIMUMS OR MAXIMUMS IN THE HANDBOOK

LEA - AREA DISTRICTS COMPARABLES		
ASSOCIATION	ASSOCIATION RELEASE TIME	RIGHT OF ASSIGNMENT
These are all Paraprofessional Units		
ANN ARBOR	8 HOURS/MONTH TO PRESIDENT OR DESIGNEE.	REASSIGNMENT IF POSITION ELIMINATED, QUALIFICATIONS, SATISFACTORY EVALS, ARE DETERMINING FACTORS & SENIORITY
EAST LANSING	5 DAYS TO PRESIDENT OR DESIGNEE	QUALIFICATIONS - SENIORITY
GRAND BLANC	2 DAYS TO PRESIDENT OR DESIGNEE	QUALIFICATIONS - SENIORITY - SOLE RESPONSIBILITY OF BOARD RE: TRANSFERS ASSIGNMENTS &/OR PROMOTIONS
GRAND LEDGE	NOT APPLICABLE - NO LOSS OF PAY FOR PROCESSING/ATTENDING GRIEVANCES, ARBITRATIONS, NEGOTIATIONS	QUALIFICATIONS - SENIORITY
GRAND RAPIDS	NO DEFINED ASSOCIATION TIME -ALLOWED TIME OFF W/PAY FOR CONTRACT MATTERS 10 DAYS TO ATTEND ASSOCIATION CONFERENCES & CONVENTIONS	QUALIFICATIONS - SENIORITY - LACK OF CPI, CPR, FIRST AID TRAINING WILL NOT DETERMINE QUALIFICATIONS IF EMPLOYEE IS WILLING TO OBTAIN APPROPRIATE CERTIFICATION

ASSOCIATION	ASSOCIATION RELEASE TIME	RIGHT OF ASSIGNMENT
KALAMAZOO	DISTRICT FUNDS 15 DAYS WITH PAY OF CONFERENCE, MEETINGS & WORKSHOPS. THE ASSOCIATION MAY AUTHORIZE UP TO 25 ADDITIONAL DAYS AT THE COST OF THE ASSOCIATION. ALLOWS FOR NEGOTIATIONS WITH NO LOSS OF PAY	QUALIFICATIONS BEING RELATIVELY EQUAL, SENIORITY WILL BE THE DETERMINING FACTOR
LANSING	<u>GENERAL ASSOICATION RELEASE TIME:</u> TOTAL OF 300 HOURS/YR. (43 days/yr) WITHOUT PAY FOR LEA BUSINESS	QUALIFICATIONS - SENIORITY
	<u>FULL TIME RELEASE PRESIDENT :</u> 40 HRS/WK -25 HRS PD BY LSD -15 HRS REIMBURSED BY LEA	
MASON	NOT APPLICATABLE - NO LOSS OF PAY FOR PROCESSING/ATTENDING GRIEVANCES	QUALIFICATIONS-SENIORITY, EMPLOYER RESERVES ASSIGN OR TRANSFER
		Page 6

LANSING SCHOOL DISTRICT (LSD) COMPARABLES/SICK COMPENSABLE LEAVE CAP/60 DAY PAYOUT

ASSOCIATION	SICK DAY COMPENSABLE LEAVE CAP/60 DAY PAYOUT
Lansing Educational Assistants (LEA)	LSD has proposed to cap days at 60 - LSD proposes to pay 20% of an employees wages for days in excess of 60 days - one time payout
Lansing School Safety Officers	2016-2018 CBA-currently have a maximum accumulation of 60 days w/payout
Lansing Association of Educational Secretaries (LAES)	NO SICK DAY PAYOUT - 08.2016 - TA
Lansing Schools Education Association (LSEA)	NO SICK DAY PAYOUT - 08.2016 - TA
Lansing Association of School Administrators (LASA) **ME TOO clause if any group is more than \$40/day**	YES - OVER 60 DAYS - \$40/DAY - 08.2016 - CBA
Lansing School District Meet & Confer	YES - OVER 60 DAY - \$35/DAY - 08.2016 - CBA

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY: Lansing Public Schools

and

RESPONDING PARTY: Lansing Schools Educational Assistants, MEA/NEA

MERC CASE NO.: L16 K-1040

FACT FINDER'S REPORT

Appendix C

Right of Assignment

Current Contract Language

Employer Proposal

ARTICLE X (VACANCIES AND TRANSFERS/RIGHT OF ASSIGNMENT)

1. Current Contract Language:

- A. Posted Vacancy Positions. A *vacancy* is an unoccupied position in the bargaining unit, which the Board intends to fill and for which there are no unassigned or laid-off, qualified Assistants.
1. Any Assistant may apply for a posted vacancy.
 2. The application shall set forth the reasons for the request, the school and job sought, and the applicant's qualifications which support the request.
 3. Applications must be received by the Human Resources Office within ten (10) calendar days from the date of posting.
 4. The Board may fill the vacancy on a temporary basis as necessary. Positions which are funded for less than a semester shall be posted at the discretion of the Board. The Board will not use temporary employees for the purpose of delaying the regular vacancy posting process.
 5. The Board shall post all new and vacant positions. For positions which may be dependent upon Fall enrollments, the Board will post vacancies no later than forty-five (45) calendar days after the initial student count date, unless an extension is mutually agreed upon. For all other vacated positions and any new positions created after the initial student count date and prior to April 15, the District shall to post the positions within twenty (20) working days of being declared vacant and/or created.
 6. Vacancy postings shall be placed in a conspicuous place in each building of the District for a period of ten (10) calendar days.
 7. Vacancy postings shall contain the following information, if known:
 - a. type of work
 - b. location of work
 - c. starting date
 - d. rate of pay
 - e. hours to be worked
-

- f. classification
 - g. minimum requirements
8. Interested Assistants must apply in writing to the Human Resources Office by the end of the posting period.
- B. Selection Process.
- 1. Applicants shall be evaluated based upon experience, competency, qualifications and seniority. When experience, competency and qualifications are relatively equal, the applicant with greater seniority shall be given preference. For purposes of selection of bargaining unit vacancies other than Supervision Assistants, the term "relatively equal" shall mean that the combined total point value of the Applicant Screening Grid and the interview (averaged for panel interviews) between the candidates shall be less than ten (10) percentage points different.
 - 2. The Association shall have pre-interview access to the applicant screening grids.
 - 3. An Assistant will be given at least forty-eight (48) hours prior notice as to when his/her interview is scheduled.
 - 4. The Board will strive to make selection decisions and advise the applicants within fourteen (14) Calendar days from the expiration of the posting period.
- C. Voluntary Transfer Limitation. An Assistant who voluntarily applies, and successfully competes, for transfer shall relinquish the right to other voluntary transfers within the unit until the beginning of the next school year. Exceptions to this limitation may be made upon mutual agreement by the Board and Association.
New hires shall not be eligible to compete with other bargaining unit members for transfer until they have completed ninety (90) days as a member of the bargaining unit. No member of the bargaining unit may compete with other bargaining unit members for transfer within the same school year of being transferred. Bidding on summer positions is not construed as bidding on a school year position. Exceptions to this provision may be made by mutual agreement between the Board and the Association.
- D. Involuntary Transfers. Employees who will be affected by a change in assignments during the school year will be notified and consulted by their building principal as soon as practicable. The Superintendent of Schools, or a designee, has the sole right to assign Assistants to positions for which they are qualified within the school district.
- E. Twenty-day Trial Period. In the event of transfer from one Classification or position to another, the Assistant shall be given a twenty (20) work day trial in which to show his/her ability to perform on the new job. If the Assistant needs additional time in the trial period, another twenty (20) Working days shall be granted. The Employer shall give the transferred Assistant reasonable assistance to enable him/her to perform up to the employer's standards on the new job. If the Assistant is unable to demonstrate ability to perform the work required during the trial period or at the option of the affected Assistant, the Assistant shall be returned to his/her previous assignment. If the Assistant, within the previous six (6) months, had accepted a transfer he/she will not have the voluntary option to return to his/her previous assignment at the end of the trial period.
- F. Seniority Status. Employees shall retain their seniority as a result of any consummated transfer.
- G. Salary Schedule Adjustment. If the transfer of an Assistant qualifies him/her for a different salary schedule track, the Assistant's salary placement shall be at the first step on the new schedule which is higher than his/her prior salary (actual hourly rate), providing there is a step available.
- H. Substitute Assignments.

1. In Lieu of Regular Assignment. Any Assistant who, at the Employer's request, temporarily assumes the duties of another bargaining unit member instead of his/her normal duties for a minimum of one (1) hour will be paid the regular rate for those duties. An Assistant's pay rate shall not be reduced as the result of any Employer initiated temporary change in duties.
2. Additional Hours. If an Assistant works as a Substitute Assistant in addition to the employee's regular assignment, he/she shall be paid the current Substitute Assistant rate plus \$.60 per hour for the temporary work.
 - I. Affect of Layoff and Recall. The provisions of Article X are subservient to the provisions of Article IX - Layoff and Recall.
- J. Multiple Regular Assignments. Effective June 30, 1994, if an Assistant holds more than one (1) assignment (Example: Instructional Assistant and Lunch Supervision Assistant), he/she shall be paid at the appropriate level of each assignment salary schedule, and not at the higher rate for both assignments. Such differential pay rates shall not apply to dual or multiple assignments posted as a joint assignment. (See Letter of Agreement re: Joint Committee to Address Multiple/Joint Regular Assignments).
- K. Article X Committee. The parties agree that a committee comprised of an equal number of LEA and district representatives will be formed. The charge of this committee will be to explore the possibility of language changes to Article X of the contract and the feasibility of reducing the number of LEA lunch assistant positions throughout the District.

Employer Proposal

LEA RIGHT OF ASSIGNMENT PROTOCOL

The Association recognizes the exclusive right of the Board to determine monetary savings to be achieved by reduction in personnel and/or operations and the exclusive right to determine the area in which such reductions will be made.

Right of Assignment:

The District shall have the right to assign or reassign any Assistants to positions, duties or additional duties and to make changes in responsibilities, work or transfers, at any time during the school year. Additionally, School Administrators may request assignment trades between staff in their school at any time to the Human Resources Department. The District shall consider goodness of fit, experience, educational preparedness and competency, qualifications, past evaluation ratings, school contributions, attendance and disciplinary record when determining an Assistants assignment.

Seniority shall not be a factor in a personnel decision. However, if that personnel decision involves 2 or more employees and all other factors distinguishing those employees from each other are equal, then seniority may be considered as a tiebreaker.

Open Positions:

If the vacancy occurs during the school year, the District may determine whether to fill it temporarily for the remainder of the school year with an outside applicant or involuntary transfer. If the District elects to make a temporary placement in the vacancy for the remainder of the school year, it shall be posted for the following school year and filled in accordance to this Article.

Before considering a current Assistant for an open position, the District may assign all displaced, laid off or employees returning from a leave of absence first. When a position becomes available at a school, the School Administrator may move any current, qualified Assistants for reassignment to the open position before the position is posted as a vacancy. Prior to notifying the affected Assistant, the School Administrator shall submit their transfer request to Human Resources in order to double check that the employee meets the minimum qualifications for the position.

Voluntary Transfers:

Effectiveness and goodness of fit will take priority over seniority for any voluntary transfer requests. An employee will not be allowed to transfer if the person is on any improvement plan or had discipline in that school year. An Assistant who voluntarily applies and successfully receives a new assignment, shall relinquish the right to other voluntary transfers within the unit until the beginning of the next school year. An Assistant will be allowed one voluntary transfer per school year.

Involuntary Transfers:

Employees who will be affected by a change in assignment during the school year will be notified by the school administrator or Human Resources Department as soon as practicable. The Superintendent, or designee, has the sole right to assign Assistants to positions for which they are qualified for within the school district. No employee shall be involuntarily transferred from a benefit eligible position to a non-benefit eligible position.

Class or Program Transfer:

In the event of a program or class moving to a new location, the employee assigned to that assignment shall follow the program or class.

Probationary Employees:

All new Assistants in the unit shall be probationary Assistants until they have completed ninety (90) workdays of employment. The purpose of the probationary period is to provide the Board with an opportunity to determine whether Assistants have the ability and other attributes which will qualify them for regular Assistant status. During the probationary period, Assistants may be terminated at any time at the sole discretion of the Board. Grievances for terminating a probationary employee are not permitted.

If the Board determines that additional time is necessary to assess whether a probationary Assistant has the ability to earn regular Assistant status, it may extend the probationary period once for an additional thirty (30) work days.

Probationary Assistants shall have no seniority until the completion of the probationary period, at which time their seniority shall revert back to their first day of work in the unit.

Displacement & Layoff:

A displacement shall be defined as a necessary reduction in the work force beyond normal attrition or a modification of assignment, which meets any of the following criteria:

1. A position, currently occupied by a bargaining unit member, is eliminated, or
2. An Assistant's normal weekly hours are reduced by thirty percent (30%) or more
3. The change in hours will make the Assistant become ineligible for benefits.

To the extent reasonably possible, the Assistant affected by the position elimination or significant hour reduction will be determined by using the following guidelines (in order):

1. Overall evaluation/Performance
2. Work with students
3. Goodness of fit
4. Work with adults

Except as otherwise provided in this Article, seniority shall not be a factor in a personnel decision. However, if that personnel decision involves 2 or more employees and all other factors distinguishing those employees from each other are equal, then seniority may be considered as a final tiebreaker.

Prior to notifying the affected Assistants, the Association will be notified of reductions in staff by the Human Resources Department. This communication may come in the form of an email, letter or meeting. The Association will have 3 business days to submit any recommendations to the District. The District will determine which positions the affected Assistants are qualified for and assign accordingly. The qualified employee with the greater goodness of fit, definable skills (e.g. bilingual, interpreter, nurse assistant) or relevant special training, higher evaluation rating shall be given preference.

If there are no open positions that the District deems the employee is qualified for or the District determines the employee is not a good fit for a certain position, the employee will receive a 7

day layoff notice. Probationary employees and/or employees with the lowest evaluation ratings, in the same classification, will be laid off first. The District may exclude Assistants with technical or definable skills from the layoff procedure.

Employees laid off through the procedures set forth in this Article shall be retained on a recall list for a period of twelve (12) months. With the exception of probationary employees, laid-off bargaining unit members shall accrue seniority during the period of layoff.

The Human Resources Department will be responsible for all assignments to schools. Central office Administrators and School Administrators will be consulted to assist in determining appropriate placement.

Recall from lay off:

Prior to posting any vacancy to consider for outside applicants, the District will fill vacancies by recalling laid off bargaining unit members based on classifications and qualifications. When qualifications are relatively equal, the Assistant with the greater performance rating/evaluation fit will be recalled first. Seniority shall not be a factor in a personnel decision. However, if that personnel decision involves 2 or more employees and all other factors distinguishing those employees from each other are equal, then seniority may be considered as a tiebreaker. Notice of recall shall be sent by mail and electronically to the last known address as shown in the District's records. It is the Assistant's responsibility to keep the District personnel office advised of any change in address while on layoff.

Recall notices shall state the time and date on which the bargaining unit member is to report back to work, and the location and number of hours per week of the assignment. Recall notices shall be provided at least seven (7) calendar days' notice of return to work. Employees that are unable to return as detailed in the notice must contact the personnel office before the recall effective date to see if alternate arrangements can be made. The District may fill vacancies on a temporary basis, pending return of the recalled bargaining unit member.

An Assistant is obligated to accept recall to a position that the District deems they are qualified for. If the Assistant declines recall, he/she forfeits all seniority rights and will be considered a voluntary resignation. If the Assistant does not return on the day specified in the communication, he/she forfeits all seniority rights and will be considered a voluntary resignation.

Interviews

LEA can observe interviews that include bargaining unit members only; but will not score or have input in the selection process. The Association will not be allowed to retain a copy of the interview questions. It is the sole discretion of the District to interview any internal applicants or if a position will be filled with an external applicant.

Assistant Screening Grid:

When determining which Assistant may be transferred, displaced, laid off, recalled from lay off or receives a position they interviewed for, The District may use (but is not required to use), the following Assistant Screening Grid. (**See grid below**)

**ASSISTANT SCREENING GRID
LANSING SCHOOL DISTRICT HUMAN RESOURCES OFFICE**

Name: _____

Position Vacancy: _____

Rating Scale: 5=Outstanding, 4=Very Good, 3=Average, 2=Poor, 1=Unsatisfactory

Interview Screening Grid

1. Application, Cover Letter and/or Resume	1	X	=
2. Educational Background & Training	1	X	=
3. Related Work Experience	2	X	=
4. Recommendations/References	1	X	=
5. Program or School Goodness of Fit	3	X	=
6. Points from Interview	1	X	=

Total: _____

Screener: _____ Date: _____

General Screening Grid

1. Program or School Goodness of Fit	2	X	=
2. Related Work Experience	2	X	=
3. Recommendations from Current Supervisor	1	X	=
4. Attitude and Work Habits	2	X	=
5. Cooperation and Dependability	2	X	=
6. Past Performance Evaluation	3	X	=
7. Attendance	2	X	=
8. Disciplinary Record	1	X	=

Total: _____

Screener: _____ Date: _____

In the event of a tie breaker for internal candidates, the screener may add the following points for seniority:

- | | |
|----------|--------------------------------|
| 5 Points | 10 or more years of seniority |
| 4 Points | 8-9 or more years of seniority |
| 3 Points | 6-7 or more years of seniority |
| 2 Points | 4-5 or more years of seniority |
| 1 Points | 1-3 or more years of seniority |

0 Points

Less than 1 year of seniority

Note: The general screening grid may be used for any transfers, displacements, layoffs, or recall from layoffs. Both screening grids are to only be used as a tool of discussion for the screeners. The person with the most points, may or may not receive the position or transfer.