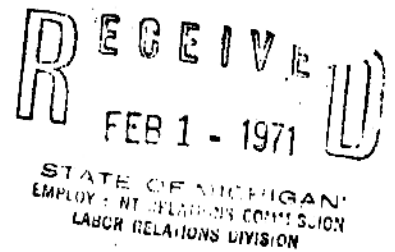


1/28/71 FF



STATE OF MICHIGAN  
DEPARTMENT OF LABOR

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding  
between Hurley Hospital

- and -

Locals 1603, 1603B and 825,  
Council 29, American Federation  
of State, County and Municipal  
Employees AFL-CIO

Michigan State Department of  
LABOR AND EMPLOYMENT  
RELATIONS DIVISION

George Roumell  
1/28/71

FACT FINDER'S REPORT AND RECOMMENDATIONS

Appearances:

For The Employer:

Robert E. Weiss, Esquire,  
City Attorney for the City  
of Flint

George M. Maurer, Jr., Esquire  
Attorney for the Unions

THE BACKGROUND

Hurley Hospital is one of the institutions that has made Flint, Michigan outstanding. Having over 750 beds, it is the third largest hospital in Michigan. It is a modern facility which has added to Michigan's fame as a state having among the very best medical facilities in the country. The citizens of Flint, Hurley's management and Hurley's employees are proud of the hospital as they have all contributed to its stature. This was evident to the Fact Finder in the hearings. It is recited here for

*Hurley Hospital*

the purpose of underscoring the labor problems faced by the parties and their desire to mutually establish a new labor relations pattern that will bring peace and harmony to the parties and avoid recurrences of the strike of approximately four weeks that shut down an institution of which all are proud.

It is hoped that this Fact Finding Report and its Recommendations will lead the way to this new pattern.

With the exception of registered nurses and the medical staff, most of the employees of Hurley Hospital for some time have been represented by Locals 1603, 1603B and 825, Council 29, American Federation of State, County and Municipal Employees, AFL-CIO (sometimes hereinafter referred to as the "Unions").

Local 1603 represents a number of employees in various classifications ranging from dietary, housekeeping, laundry, nurse's aides, clerks to numerous other employees. Local 1603B represents X-ray technicians, laboratory technicians and inhalation therapists. Local 825 represents Hurley's Licensed Practical Nurses.

In July, 1967 the three Locals entered into separate collective bargaining contracts with the Hospital for a three year period respectively, expiring June 30, 1970. Each of the contracts provided for a wage reopener in March of each successive year, (1968-1969) to be effective beginning July 1st of each of those years.

The reopener for 1968 gave the first signs of labor relations difficulties between the parties. It resulted in a short work stoppage. An agreement was only reached after the efforts of Robert Howlett, Chairman of the Michigan Employment Relations Commission, State Mediator Robert Blackwell and the Hon. Stewart Newblatt, then Genesee County Circuit Judge, who all

served as mediators. As the result of the efforts of these outstanding labor relations experts the Unions and Hurley Hospital reached agreement covering both the 1968 and 1969 fiscal years.

Prior to the expiration of the Unions' contracts on June 30, 1970 the Unions and Hurley Hospital began negotiating for a new contract. The June 30, 1970 expiration date passed without agreement being reached.

The parties apparently bargained all summer long. The basic issues were economics plus a condition of employment which has economic ramifications, namely, the question of a color coded uniform policy.

Negotiations deteriorated to the point that in late September, 1970, the Unions and the membership chose to strike the Hospital. The wisdom of this action on the part of the Unions is questionable. Obviously Hurley Hospital represented an essential service to the public. The resulting four weeks strike deprived the public of much needed essential services from a great medical center. The action ignored the fact that the employees were public employees and as such ignored a public policy established by the legislature discouraging public employee strikes. However, in making the last comment, it is acknowledged that the Michigan Supreme Court has recognized limitations to the no public employee strike policy. School District of the City of Holland v. Holland Education Association 380 Mich. 314 (1968); Crestwood School District v. Crestwood Education Association 382 Mich. 577 (1969).

Finally, the strike ignored a tool available under Michigan law to the public employees at Hurley Hospital which they chose not to use, namely, "Fact Finding".

The purpose of Fact Finding is to serve as a possible substitute for a strike in the public sector and to pave the way for settlement of a dispute without the disruption of essential public service by a strike.

Not only did the Unions have Fact Finding available to them, a tool which they did not avail themselves of, but as a result of the strike, the Hospital had to reduce its services. This in turn caused certain problems in the recall of employees after the strike was over. This again emphasizes the need for developing a better labor relations pattern to avoid such difficulties in the future.

In early October the Union did go on strike, causing Hurley to cut its operations and reduce its services.

Thereafter, the city petitioned for Fact Finding and the undersigned was appointed Fact Finder by the Michigan Employment Relations Commission.

The Fact Finder initially held a pre-trial conference with the parties to set the procedure for the Fact Finding hearing. It was recognized by all parties that because of the issues and their complexities lengthy hearings and detailed analysis were necessary in order for a reasonable Report and Recommendations to be made by the Fact Finder. This could not be done instantaneously. There was also the need to restore services at Hurley Hospital and to facilitate the immediate return to work of the employees on strike.

To the credit of the Hurley Hospital management and its negotiators, and the leadership of the Union, both the Unions and Hurley Hospital agreed to binding Fact Finding in order to give the Fact Finder time to hear all issues in dispute and to render a Report and Recommendations.

The Agreement for binding Fact Finding signed by all parties was as follows:

"On this 3rd day of November, 1970, it is agreed by and between the Board of Hospital Managers of the City of Flint, a Municipal Corporation, hereinafter referred to as the Employer, and Local 1603, Chapter B Local 1603, and Local 825, Council 29, American Federation of State, County & Municipal Employees, hereinafter referred to as the Unions, that the Employer and the Union shall henceforth participate in fact-finding before George T. Roumell, Jr., and that the said parties shall be bound by the results of such fact-finding, results of same being incorporated into a collective-bargaining agreement between the Employer and Union, and the Unions shall instruct their membership to return to work at Hurley Hospital at the opening of the first shift, Thursday, November 5, 1970, subject to the following conditions:

1. Any and all civil or punitive civil action initiated or contemplated, including but limited to discriminatory or retaliatory action by either the Employer or the Unions, as of this date, shall be discontinued and dismissed.

2. Employees shall be recalled in accordance with seniority in their area assignment on October 1, 1970, subject to, for purposes of orderly and effectively controlled recall procedures, stewards and/or committeemen whichever term is applicable to the bargaining unit, being recalled immediately as their area of stewardship opens, to perform their assigned hospital duties and to handle problems of communication.

3. The bargaining committee members of the above Unions shall be permitted to participate in the impasse procedure taking place herein in accordance with Section 11 of the contract relative to negotiations between the parties which expired June 30, 1970.

4. During the pendency of these proceedings, the contract which expired June 30, 1970, shall remain in full force and effect except as to the application of any economic benefits pending before the fact-finder.

"5. During the pendency of these proceedings, any dispute or grievance which may arise relative to the interpretation or implementation of this agreement shall be presented to the Fact Finder for disposition, which disposition shall be binding on the parties.

BOARD OF HOSPITAL MANAGER  
S/Thomas Kay

S/Milton Sacks

LOCAL 1603  
S/John Shivers  
S/Edith McEwen

CHAPTER B LOCAL 1603  
S/Sam W. Blevins

LOCAL 825  
S/Alberta Storrs  
S/Alice M. Shearer"

Again, the parties are to be complimented for this action for, as it turned out, numerous hearings were held. Subsequently, the parties submitted certain grievances resulting from the recall procedure to the Fact Finder for resolution. It was agreed that the Fact Finding Report would not be rendered until these grievances were ruled upon by the Fact Finder. A further delay was necessary because of one unresolved grievance. The parties have notified the Fact Finder that they desire that the Report and Recommendations be issued without the resolution of this one grievance. They further have agreed that the Fact Finder shall keep jurisdiction as to the one grievance if it is not resolved.

After being so notified the Fact Finder has proceeded forthwith, pursuant to the agreement of the parties to render this Report and his Recommendations.

#### ISSUES

As set forth in the Hospital's petition for Fact Finding which was later confirmed at the hearing, the issues in dispute between the parties are as follows:

1. Basic hourly wage increases.
2. Increase in cost of living payments.
3. Implementation of sickness and accident insurance program.
4. Increase in third shift night bonus.
5. Retroactive payments for employee benefits.
6. Implementation of a color coded uniform policy.

#### FACT FINDING CRITERIA

Fact Finding is not an abstract concept designed to permit an individual to give his personal opinion concerning a situation. Rather, as in any new concept, there have emerged certain standard criteria used by Fact Finders which, when applied to a given set of facts in a given situation lead to certain logical conclusions that can lead to and result in reasonable recommendations.

Among these standard criteria applied by Fact Finders applicable to the issues between the Unions and the Hospital are the ability to pay, comparison with other communities, past bargaining history, present bargaining history, the standards in the community, cost of living criteria and the applicable private sector experience. The same criteria can also be used in considering the issue of the implementation of a color-coded uniform policy.

These various standard criteria have been recognized as such. See the criteria set forth in Act 312 of Michigan Public Acts of 1969, better known as the Michigan Firemen and Policemen Compulsory Arbitration Act; Stern, Fact Finding in Wisconsin,

(third edition, 1966); Collective Bargaining For Public Employees (Practising Law Institute, 1968).

These various criteria will be discussed and applied when applicable as the issues between the parties are considered in this report.

### THREE YEAR CONTRACT

At the threshold of the difficulties between the parties is the necessity of arriving at a formula which will stabilize the labor relations between the parties. As noted above, two years ago these same parties encountered a short work stoppage. Two of the nation's best known experts in public employment labor relations, Michigan Employment Relations Commission Chairman Robert Howlett and Mediator Robert Blackwell, assisted by Judge Stewart Newblatt, were able to bring about a solution to the issues separating the parties and an end to the work stoppage. Yet, despite the expert guidance of these individuals, two years later a four week strike developed at Hurley Hospital. This clearly indicates a lack of stability in labor relations.

Using the criteria of standards in the community and noting the fact that the Hospital is located in Flint, Michigan, whose major employer is one of the nation's largest corporations, the General Motors Corporation, it becomes obvious that one place to look for stabilized labor relations is towards General Motors Corporation and the principal representative of its employees, the United Automobile Workers of America. General Motors and the UAW have developed a formula, despite a recent strike, in establishing stable labor relations. This has been done through the use of collective bargaining contracts of three years duration without economic reopeners. This is a standard in the community, as General Motors employs in excess of 40% of all the wage earners in Flint.



A three year period allows the parties to build the bridges between them that can provide peaceful resolution of problems not only resulting from contract negotiations but from day to day grievances as well. It permits the employer to adjust finances over a longer period of time. This is particularly important in public employment. Yearly contracts do not permit public employers to plan their finances. There is frequently a cry among public employers that they do not have the finances to meet increased wage demands, particularly the type of wage demands that are negotiated in the private sector between such parties as General Motors and the UAW. A three year period permits the employer to make economic re-evaluations and to look to new sources for increased revenues.

In Flint this takes on added importance. When there is a General Motors strike, as there was in the Fall of 1969, there are economic repercussions which do affect both the revenue of the city and Hurley Hospital. Thus, if the employees of Hurley Hospital are going to gain increased economic benefits they must in turn be willing and able to permit their employer to have the opportunity to engage in the same type of long range financial planning that General Motors, the biggest employer in town, does.

It is for these reasons that the Fact Finder is recommending three year collective bargaining contracts without reopeners and has placed his entire recommendation on the basis of three year collective bargaining agreements, effective July 1, 1969 and expiring June 30, 1972.

## WAGES

The basic hourly rate and cost of living allowance are the prime economic issues separating the parties.

If one remembers that the collective bargaining contract between these parties was expiring on June 30, 1970 when the Big Three automobile negotiations loomed large, that the city was vitally affected by such negotiations, and that there was clearly an inflationary trend in the United States, with an annual cost of living increase of 6%, it should then come as no shock to either party when the Fact Finder suggests that there was a certain unrealism to the offers that were proffered across the bargaining table. The initial Union demands, when one considers the past bargaining history of the parties and what has been happening in other public employment contracts throughout the state, was indeed high. Likewise, Hurley's offer was very low, in fact, it was based upon increases of a few pennies per hour. Such an offer was indeed unrealistic in view of the year, time and place.

By the time the matter had come to Fact Finding and after the strike was almost three weeks old, a certain amount of realism had set in. As reported in the city's petition for Fact Finding, which on this point was not contested, the parties' position was stated as follows:

"The Unions' most recent demand has been for a basic wage increase of \$.25 per hour per employee for the first year and an additional \$.25 per hour to become effective July 1, 1971.

The City has offered a base wage increase of \$.10 immediately; \$.04 effective January 1, 1971; \$.12 effective July 1, 1971."

At the actual hearing, the chief negotiator for Hurley Hospital, Thomas Kay, City Manager of the City of Flint, testified that the offer on the table at the time by Hurley Hospital was \$.15 an hour effective immediately; \$.12 for 1971 plus a cost of living with a \$.10 cap, with a .04 increase in the index equalling \$.01

cost of living adjustment. The cost of living provision in the previous contract had an \$.08 cap on the same index.

This offer of the city was much more realistic than the offer previously made. Nevertheless, this offer fell short of the applicable Fact Finding criteria, such as comparisons.

The Union argued that its \$.25 an hour demand was within the comparison and was indeed realistic. There is some merit to these arguments. But, as will be explained herein, the \$.25 offer, considering all factors, was still high.

The hallmark of a discussion of any wage rates in any collective bargaining contract in the city of Flint, covering the last part of 1970 and thereafter, is the GM-UAW 1970 settlement. Under the standards of the community criteria this hallmark cannot be overlooked.

The Union advanced to the Fact Finder this settlement which, to recap, was approximately \$.52 an hour increase the first year, \$.11 an hour increase the second year and \$.11 an hour increase the third year, plus an unlimited cost of living. The increase the first year included some factoring of previous cost of living increase into the base rate.

In response to the GM settlement argument, the Hospital argues that it is not General Motors, one of America's largest and most profitable corporations. The hospital pointed out that not only did it receive its income from patient charges but also received funds from the City of Flint. It is a city owned hospital. What the hospital was suggesting is that not only should the Fact Finder consider the standards of the community, but he should also consider the basic ability of the hospital to pay. Such an argument is persuasive to an extent because the standards of the community are somewhat weighted in that they are set by a single affluent corporation.

This standard of the community criteria must be considered along with the ability to pay criteria, the comparison criteria, the past collective bargaining history criteria, and the cost of living criteria.

The past collective bargaining history criteria is most helpful in evaluating the effect of the General Motors settlement. In 1967 GM, just as it did in December, 1970, gave a substantial "front-end" increase and then gave increases the second and third year of the 1967-1970 contract of \$.10 each year. The record here reveals that in 1967 the Unions did not receive the same increase as General Motors. As a result of the mediation efforts discussed previously, the Union did receive \$.20 as of July 1, 1968; \$.05 as of January 1, 1969; \$.10 as of July 1, 1969 and \$.05 as of January 1, 1970. Thus, the Unions' second and third year increases were actually higher than GM, but the Hurley 1967 increase was not as high. Comparing the 1967-70 contract of these parties with the GM contract it is clear on the record that there was still a gap between the GM worker and the Hurley worker. The parties obviously, through collective bargaining and subsequently through mediation and a short work stoppage, recognized that Hurley was not GM and that there would be some gap between the wages of the two employers.

It should never be said though that the Union in any way short-changed their membership by recognizing such a gap. Many private employers, including suppliers of GM, have wage rates that do not come up to the GM standard because of their relative lack of financial resources and affluence when compared to GM. The GM settlement may set the standard but it does not necessarily mean that other employers are expected, even by their unions and their membership, to equal that settlement. What the GM settlement does do for a smaller, private employer or for a public employer like

Hurley Hospital is to tend to pull the wage level upwards.

This is exactly what has happened in the past with Hurley Hospital employees represented by these unions. One of the criteria mentioned is comparisons. The proper comparisons here are other hospitals in the Flint area and in nearby cities. Since we are dealing here with a rather large hospital with more resources than a small hospital, the comparisons should include hospitals in the larger cities in southeast Michigan such as Pontiac, Ann Arbor and perhaps Detroit. Even the Union admitted on the record that the Hurley Hospital rates have been traditionally higher in comparison. It is quite obvious that this tradition is the result of the GM wage-rate syndrome as discussed above.

Although the Union admitted that Hurley Hospital employees fared better in wages than many hospitals, it presented evidence that numerous hospitals were granting hourly increases substantially more than that offered by Hurley. For example, union witness Bernard Henders, President of the local union representing the employees at Flint Osteopathic Hospital, pointed out that wage increases there were 10%. Union witness, Ralph Liberato, testified that at the Martha Teaberry Medical Facility in Macomb County (a 220 bed hospital) a two year contract was negotiated November 1, 1970 with minimum increases of \$.30 per hour the first year and \$.20 an hour the second year. Testimony was also elicited showing that the Pontiac General Hospital just negotiated a \$.20 an hour across the board increase.

Based upon this testimony it would seem that the city's last offer of \$.15 the first year and \$.12 the second year is low whereas the union's demands at \$.25 an hour may be a little high. This particularly follows when one considers that the \$.20 an hour agreement at Pontiac did not include any provision for a cost of living clause whereas <sup>at</sup> Hurley there is a cost of living clause, albeit with a cap.

The argument of Hurley is that even with some of these increases of \$.20 to \$.25 at the various hospitals, employees in those hospitals would not be as well paid as Hurley employees. At first blush, this is most meritorious, because \$.15 increase at Hurley, plus a \$.12 the following year, would still keep Hurley a leader in pay rates.

The flaw in this argument of the city is its past bargaining history. Apparently influenced by the General Motors pattern Hurley Hospital employees have been leaders in their pay. Thus, when the evidence shows that other hospitals in the area and in nearby cities are granting increases in the neighborhood of \$.20 to \$.25 an hour, it would seem reasonable that similar increases would be apropos at Hurley. This particularly follows in view of the past history which shows that Hurley has always been a leader. Previously, in 1968 and 1969 the total wage package was \$.25 the first year and \$.15 the second year spread over four increases.

However, in arriving at this observation it must also be noted that it does not necessarily follow that Hurley has to grant a \$.25 an hour increase. The fact that some nearby hospitals have, only indicates that these hospitals have to pay more per hour in order to attempt to reach the leader, Hurley Hospital.

Considering all these factors, it would seem, and the Fact Finder will so recommend, that the wage increase should be \$.20 a year for each of three years for a total increase of \$.60 per hour over a three year period. If this is compared with the GM wage package it is quite clear that the package is very similar over the total period to the GM package which is slightly over \$.74. Admittedly, it does leave a gap, but this gap is of the same range as the gap left in 1967-1970 between the Hurley

employees and the GM employees. It is consistent with what other hospitals are paying and, as will be explained, it is consistent with Hurley's ability to pay.

Specifically the recommendation is \$.15 an hour retroactive to July 1, 1970; \$.05 an hour retroactive to January 1, 1971; \$.15 an hour effective July 1, 1971; \$.05 an hour January 1, 1972; \$.15 an hour July 1, 1972; \$.05 an hour January 1, 1973.

This recommendation, of course, is predicated upon the basic recommendation of a three year contract. It is recognized that the parties were negotiating on a two year contract basis. However, as pointed out above, stability of labor relations at Hurley Hospital requires a three year contract.

#### COST OF LIVING

Coupled with the above recommendation is a recommendation as to cost of living. Again, we cannot overlook the effect of General Motors settlements on the Hurley cost of living clause, both in previous settlements at Hurley Hospital and in the current situation.

In 1967 General Motors negotiated a cost of living clause with an \$.08 cap. Hurley Hospital in 1967 also negotiated a contract with a cost of living adjustment based upon the General Motors formula with an \$.08 an hour cap. The difference between General Motors and Hurley was that the Hurley cost of living allowance was factored into the base rate of each employee every six months.

In 1970 the employees of General Motors including a substantial number of the wage earners in Flint, Michigan participated in a strike in excess of fifty days to establish certain principles involving the cost of living adjustment including elimination of the cap. The employees of Hurley Hospital made the same demand.

Hurley Hospital recognized to some extent the problem of the cost of living adjustment and offered a new cap of \$.10 an hour provided that there was yearly factoring.

The basic problem here is that Hurley Hospital, to some extent, has in the past followed General Motors in regard to the cost of living adjustment. However, it is a public employer, with limited resources as compared to General Motors Corporation.

The Hospital points out that many of the hospitals to which it is being compared in the Flint area, in Oakland County, Macomb County and even Wayne County, do not necessarily provide for cost of living at all. This is true at Grace, Harper and Metropolitan hospitals in Wayne County. It is true at Pontiac and Pontiac Osteopathic in Pontiac, Michigan. It is true at University Hospital. The same can be said about St. Joseph Mercy, Saginaw General, Bay City Mercy, Midland Hospital, St. Lawrence Hospital and Sparrow Hospital in Lansing. Genesee Memorial and Flint General do have cost of living, but no cap. Apparently the cost of living allowance has been available there for some time. Yet the record indicates that the base rates in those hospitals do not equal Hurley's.

Considering the past bargaining history and the present bargaining history as to what the Hospital was willing to offer in terms of a larger cap, and recognizing that two hospitals in Genesee County do have cost of living adjustments, the Fact Finder makes the following recommendations as to the cost of living:

1. That a .04 increase in the Bureau of Labor Statistics Cost of Living Index will result in a \$.01 an hour increase.

2. That from January 1, 1971 through June 30, 1972 the maximum possible quarterly increase shall be \$.025 per hour with an annual maximum of \$.10 an hour. Effective July 1, 1972 the maximum quarterly increase shall be \$.03 per hour with an annual maximum of \$.12 an hour.

3. That the cost of living adjustments shall be factored into the base rate of all employees as they were in the 1967-70 contract



semi-annually on June 30 and December 31 with the maximum semi-annual factoring effective January 1, 1971 being \$.05 and effective July 1, 1972 being \$.06.

4. That from the period from July 1, 1970 to December 31, 1970 the \$.08 cap and the factoring pursuant to the practice of the parties shall apply retroactively.

5. The six month requirement of employment to be eligible for the cost of living adjustment as set forth in the previous 1967-70 contract shall also be applicable in the 1970-1973 contract.

The parties are directed to draft suitable language to accomplish the above recommendations. If there is a dispute as to implementation of the above recommendation the Fact Finder will determine the language to be used upon submission to him of the respective proposed language.

The Fact Finder has set caps on the cost of living. He has already stated his reasons for doing so. He does, however, point out that the \$.12 cap in the third year to some extent is the same type of inflation protection as the no cap provision of the General Motors contract. He also points out the advantage of the semi-annual factoring feature.

Admittedly, the arbitration panel in the Firemen's dispute awarded an unlimited cost of living adjustment following the General Motors formula. But as already suggested there are features in the Hurley plan such as the factoring which makes the Hurley plan comparable with either the Fireman's or General Motors no cap provisions. More important is that the cost of living adjustment meets the comparison standards with other hospitals which, as noted above, for the most part do not have cost of living. Where they do, the wage structures are/as attractive as those of Hurley.

Of course, underlying the above recommendations as to wages and cost of living is the strike criteria. This criteria as

indicated centers around a judgment as to what the parties would have arrived at if, in fact there had been a strike and it had continued until there was settlement reached through bargaining between the parties. The theory of the strike criteria is that Fact Finding for public employees is supposedly a substitute for a strike. Therefore, it is reasonable for a Fact Finder to consider what result the parties may have reached if there had been a strike or a continuation of a strike. This criteria, of course, has some speculative qualities about it. Sometimes it can be used rather exactly by comparing the situation with a similar situation nearby where there has been a strike and a settlement, or by comparison with a strike and a settlement in the private sector. Here the General Motors strike does indicate that there was some change in the cost of living formula. This criteria would dictate a change as to the cap in cost of living, and the recommendations reflects this. The strike at General Motors would indicate that there would have to be substantial wage increases. A \$.60 increase over three years is a substantial increase. Finally, Hurley did have a strike and it was quite clear that on November 3 the employees were not prepared to return to work on a \$.27 an hour base wage offer over two years. Something more was required. The recommendation recognized this something more.

From the Hospital's standpoint the recommendations must be measured against its ability to pay. But before considering the ability to pay criteria, a note of caution should be sounded.

Many employers have a tendency to hide behind the ability to pay criteria claiming they have no ability to pay. They ignore an equally important criteria, the comparison criteria, or, namely, what the market place is paying. We have already examined the comparison criteria and Hurley's position in the market place. We are satisfied that the recommendations are on target with the comparison criteria, and, quite frankly, unless there is an unusual situation making the ability to pay paramount, recommendations consistent with the comparison should not be disturbed.

There are no such unusual circumstances here.

To understand the financial situation at Hurley, one must examine the hospital's income, revenue and expense summaries for each of the last fiscal years (June 30 - July 1) which are set forth as follows:

(See Figure 1, Page 21)

This recap reveals an interesting situation. From 1968 to 1970, the hospital's revenues from patients has increased \$16,000,000 to almost \$21,000,000. In the same period the hospital has gone from a profit of \$132,000 in its operations to a loss of \$174,000. This indicates that with increased patient revenues, the hospital is finding itself faced with increased costs, causing it to operate at a loss. The hospital does receive other revenues from such sources as interest from savings accounts, U. S. Treasury notes and tuition from its nursing school. During the last three years this has increased. The hospital does receive an appropriation from the City of Flint general fund. However, the recap does indicate that in 1968, the hospital had a profit of \$292,000 before the appropriation. By 1970 this had dropped to approximately \$47,000. The appropriations from the City of Flint in 1968 and 1969 hovered around \$1,250,000. However, in 1970, this appropriation was cut in half to \$670,500. The total net income of the hospital in 1968 was \$1,542,000, but, by 1970, it dropped to \$717,000.

FIGURE 1

Year ending (June 30)	Gross Revenues From Patients	Profit Or Loss From Operations	Other Revenues	Income Before Appropriation from the General Fund of the City of Flint	Appropriation From City of Flint General Fund	Net Income
1968	16,323,877.37	132,791.62	159,704.03	292,495.65	1,250,000	1,542,495.65
1969	17,674,110.77	(39,328.84)	203,041.77	163,712.93	1,289,622	1,453,334.93
1970	20,963,313.29	(174,870.34)	221,698.04	46,827.70	670,500	717,327.70

The net income was put into a fund which the hospital is accumulating for needed building expansion.

With this background, it is necessary to analyze the current situation. Originally, the hospital projected the following summary of budgeted income and expenses for the fiscal year, 1970-71:

Operating Revenue		\$21,548,660
Less: Adjustments to Operating Revenue		
Discounts and Allowances	\$(435,210)	
Provision for Uncollectible and Indigent Accounts	<u>442,000</u>	<u>6,790</u>
		\$21,541,870
Add: Non-Operating Revenue		<u>637,715</u>
Total Adjusted Income		\$22,179,585
Less: Total Operating Expense		<u>24,119,011</u>
City Appropriation Requested		\$ 1,939,426

It is noted that in the 1970-71 budget projection, the hospital is making a city appropriation request of \$1,939,000. In each of the last three previous fiscal years, the hospital has never received an appropriation in this amount. In fact, as has already been indicated, the appropriation from the city has been halved.

The above-mentioned proposed 1970-71 budget does not take into account the city's own 1970-71 budget. As originally presented the city had budgeted expenditures of \$22,107,000, including \$600,000 for Hurley Hospital. The city had anticipated income of approximately \$21,523,000 and was anticipating making up the difference of about \$900,000 from its unused fund balances.

The GM strike took place in the beginning of September, 1970. By November 3, 1970 (in/<sup>a</sup>period when the strike still was not over), the city anticipated a \$2,394,000 drop in the city income tax receipts below the original estimate because of the strike and the general economic slowdown. The city income tax is an important part of the city's revenue, bringing in more revenue than the property tax and salestax combined. Thus, the city was faced with a projected income of only \$19,129,000. To balance its budget, it would then be necessary to take from unused fund balances \$3,278,000.

As indicated, the strike continued. A review of the city's budget was made. On November 10, 1970, the city manager proposed to the city commission that the city's appropriation to Hurley Hospital be reduced to \$251,000.

Now note what has happened. If the original budget figure of \$600,000 had remained, Hurley Hospital, based upon its current operating cost and its current gross revenue from patients, would have suffered a decrease in net yearly income. It only had net income before the appropriation from the city in 1970 of \$46,000; \$117,000 less than the previous year. The appropriation as originally proposed for 1970-71 showed a dropped in appropriation of \$70,500 which, assuming the same pre-appropriation net as the previous year, would mean a decrease in total net of almost \$188,000.

With an appropriation now proposed of \$251,000, this means a drop in appropriation from the previous year of \$420,000. Assuming that pre-appropriation net remained the same, Hurley's net income position at the end of fiscal 70-71 would be \$1,036,000 poorer than it was at the end of fiscal 1968-1969.

This is not the end of the serious problem faced by Hurley Hospital. Again, this Fact Finder cannot overlook the opportunity to point to the unions and their membership that it was indeed unfortunate that the unions and the members chose to strike particularly when they had the avenue of Fact Finding available. As a result of the strike the hospital has lost additional revenues which further limits its ability to pay.

The strike began on or about October 1, 1970. Hurley Hospital had anticipated that for the month of October, November, December, and January, 1970-71, it would have an average of

approximately 600 patients per month. When over 1,200 employees walked out, obviously this 750 bed hospital could not operate at full capacity. In fact the number of patients dropped dramatically to less than 100 a day during the strike period. Even with the strike ending in November, there was a catch up period during which the hospital had to build up its patient count. Obviously, the hospital because of this has lost needed income. The actual net operating loss due to the strike and rebuilding period, calculated at the rates of pay in the 1967-70 contract, was \$686,000. After considering the total financial structure, the hospital incurred a net loss for this four month period of \$35,701, whereas the hospital had anticipated a net income of \$81,311 for the same period.

The above figures are calculated on 1969-70 contract wage rates and not on increased rates resulting from the hospitals last offer or any recommendations in this report. Based upon the hospital's last wage offer, the accountants for the hospital have projected net losses as a result of the strike anywhere from \$347,000 to \$589,000 depending on when the wage rates were implemented. This additional loss would drive the hospital into a overall net loss position, even after a city appropriation of \$250,000.

As just portrayed, the financial picture of the hospital is somewhat dismal. There is no question that the General Motors strike, the economic slowdown and the strike of Hurley Hospital employees has seriously curtailed the ability of the hospital to pay. Furthermore, the hospital obviously is in a period of readjustment. With increased cost, it must arrange its affairs so that it can continue to produce an operating profit as it did in 1968 as contrasted to the substantial operating loss of 1970. This curtailment



in the ability to pay has had some influence on the Fact Finder. It has been responsible for the Fact Finder recommending the 60¢ wage package over three years based upon a 15¢ and 5¢ yearly formula and the cap on the cost of living provisions. He made this recommendation because he believes it is consistent with the comparisons, but he has tempered it because of the Hospital's curtailed ability to pay.

The Hospital may argue that it is quite clear that it had very limited ability to pay and that therefore its offers were indeed fair. Such an argument ignores one salient point. This discussion of the hospital's finances began with the suggestion that there were no unusual circumstances financially speaking which would prompt the Fact Finder to ignore the comparison criteria or to refuse to apply it in this situation. The point is that we are in a period of inflation. Public employees have made great strides in attempting to bridge the gap in their wages between those of the private sector and themselves. Such an attempt becomes even more dramatic in a city like Flint where a large percentage of the work force is employed by an employer paying very substantial wages, namely the General Motors Corporation. What private employers have been finding is that because of increased wage demands they have been faced with a profit squeeze. It has caused reappraisals in management techniques in order to continue to produce profits. Such an approach should also occur in public employment. This is particularly so when dealing with a hospital that does have sources of revenues over and above taxing powers. Bluntly put, Hurley Hospital must act like any other employer in recognizing inflationary trends and the normal request for wage increases that are occurring all over the country and meet these increases by a review of its labor needs

and its management techniques. For the reasons just discussed, the Fact Finder stands by the recommendations he has previously made herein as to the wage settlement.

The recommendations as to the wages are consistent with the ideas expressed by the Firemen's Arbitration Board headed by Prof. Russell Smith, who recently analysed the City of Flint budget and awarded appropriate wage increases for the Fire Department. The question of the uniform pay plan ordinance did appear in this hearing. However, since there was no evidence as to the wage increases of other city employees, it was unnecessary for the Fact Finder to consider the uniform pay plan ordinance and its validity.

#### Sickness and Accident

#### Income Insurance Program

One of the issues presented to the Fact Finder was the implementation of a sickness and accident income insurance program. As matters finally turned out, it appeared that the parties were not very far apart on this issue. The basic reason why there was no agreement on this issue was because unions believe that the basic wage offer of the hospital was inadequate and therefore they were unable to make the ultimate suggestion that they made at Fact Finding concerning the insurance program. It was the union's position that they would be willing to take part of the money

granted in the basic wage increases and apply them to a union administered insurance program. The Unions wanted to do this but believed they could not because there was not enough money to do so.

At the Fact Finding hearings both the Hospital and the Unions agreed as follows:

Agreed that \$.02 of the Union's second year hourly wage increase will be deducted and remitted to the Union, commencing 7/1/71 for the purpose of health and accident program to be financed and administered by the Union..

As the Fact Finder understands the above stipulation, 2¢ of the wage package each year will be deducted from the actual wage increase and turned over to the union for an insurance fund which it will administer. The Fact Finder understands that this will be effective July 1, 1971. The Fact Finder understands that during the first year, there will be no such deductions. The Fact Finder, based upon these understandings and the above stipulation, incorporates said stipulation as his recommendations as to implementing a sickness and accident income insurance program.

#### Shift Premium

Under the present contract, Hurley Hospital is paying employees on both the second and third shift a 6.5% premium. By using a percentage shift premium formula, the shift premium automatically increases with each base salary increase. Thus, on the

recommendations as to base salary set forth herein, the Hurley Hospital employees have automatically received increases in their respective shift premiums.

The union contends, however, that the premium for the third shift should be 8%. In supporting their position the unions introduced testimony through a witness, Charles McGraw, an employee of Buick Motor Division and an official of UAW Local 599, who testified that the shift premium at Buick, Flint largest employer, was 5% on the second shift and 10% on the third shift. There was also evidence that St. Joseph's Mercy Hospital paid 7% on the third shift, and that Flint General Hospital paid 5% on the second and 10% on the third. Flint Orthopedic Hospital paid 7% on the second and 10% on the third, and McLaren General paid 7% on each of the two shifts. On the other hand, Genesee Memorial paid less than Hurley, to-wit: 6%. There is evidence that Sparrow Hospital in Lansing, St. Lawrence Hospital in Lansing and Bay City General paid less than Hurley's 6.5%.

Furthermore, the record reveals that particularly in so far as the membership of Local 825 is concerned, namely Licensed Practical Nurses, there are promotional opportunities available on the third shift that are not necessarily available on the second shift. These are the opportunities to be promoted to Level 16. Therefore, there is an incentive to work the third shift in order to obtain level 16. In other words, there is actually no need for additional premium incentive beyond 6.5% to obtain third shift employees.

The Fact Finder has just used the comparison criteria and the standards of the community criteria to gauge the validity of the unions' claim for an 8% third shift premium.

The Hurley premium of 6.5% is below some hospitals and above others. As far as General Motors is concerned, the Hurley 6.5% is a compromise, for Hurley is paying 6.5% on the second shift as compared to General Motors 5%, whereas on a third shift, General Motors is paying 10%. In addition, there apparently is not an overriding need for an extra-incentive to obtain third shift employees because there is a built-in incentive for at least some employees, as the third shift does provide promotional opportunities not available on the other shifts.

The strike criteria is applicable in evaluating the request for an increased third shift premium. The Hurley Hospital employees went out on strike. They were out for approximately four weeks. They were concerned with wage increases, the implementation of a color coded uniform policy, a change in the contracts' cost of living provisions and an increase in the third shift premium. It does not necessarily follow that employees who go out on strike will gain everything they are demanding. This point was best illustrated by the recently concluded General Motor's strike where not all of the original demands of the UAW were met in the settlement reached. The strike criteria recognizes that Fact Finding is a substitute for a strike. A Fact Finder can use the criteria as a prediction as to what the parties would have settled for if in fact there had been a strike or the strike continued until there was a settlement.

It is the considered opinion of the Fact Finder that assuming the employees received a base wage increase above that offered by the city (which the Fact Finder is recommending), assuming they received a revised cap on their cost of living allowance (which the Fact Finder is recommending), further assuming that they received a sickness and accident insurance program (which the Fact

Finder is recommending), there is some question as to whether or not they would have received the requested 8% third shift premium. After all, the settlement of a strike is a give and take proposition. Considering that the Hurley shift premium program is not out of line with the comparisons, does approximate the standards of the community, that there is a hidden incentive to work on the third shift in order to get promotion, and that the premium is based on a percentage which automatically means a raise with each raise in the base salary, it is most doubtful that the settlement of the strike would have been delayed because of a refusal of the Hospital to increase the third shift premium.

For these reasons, the Fact Finder is recommending that the 6.5% shift premium for the third shift remain for the first two years of the contract he is recommending. However, the Fact Finder is recommending a three year contract. Because there is a growing tendency among Flint area hospitals to pay more than a 6.5% third shift premium, and the parties could have very well recognized this tendency if they were negotiating for a contract beginning July 1, 1972, he is recommending that there be an 8% third shift premium, beginning with the third year of the contract.

#### RETROACTIVITY

So that there will be no questions, although this Report already indicated that there shall be retroactivity, the Fact Finder is recommending that the wage increases recommended herein be retroactive; that the first 15% increase be retroactive to July 1, 1970, that the first 5% increase be retroactive to January 1, 1971, and

that the new cost of living cap take effect beginning January 1, 1971. Retroactivity is recommended because there must be a method to encourage parties in the public sector, when they cannot reach agreement at the table, to use the facilities of Fact Finding rather than strike so as to avoid the interruption of public service. If this Fact Finder were not to grant retroactivity here, he would be discouraging the use of Fact Finding in preference to a strike.

No one needs to remind the parties of the potential and actual disastrous effects of a strike in a hospital situation. The parties are well aware of this.

#### COLOR CODED UNIFORMS

Explicitly stated, the color coded uniform policy means that registered nurses and licensed practical nurses would wear white colored uniforms which signify the nature of their duties. Other employees, such as nursing assistants, ward clerks, housekeeping employees and dietetic aides would wear non-white uniforms, to-wit, nursing assistants (blue), ward clerk (pink), housekeeping (light yellow), dietetic aide (light green). The purpose of the color coding is so that in a 750 bed, 1500 employee hospital, the medical staff (which includes most of the practising physicians in Flint) as well as the patients will be able to identify, particularly in emergencies, whether or not a given employee has the necessary professional competence to assist in emergencies.

The basic position of the hospital is that as part of the management rights which are specifically set forth in its contracts with the union (Section 55, Local 1603, Article 3, Local 1603B and Section 56, Local 1825) it has a right to set policy designed for the efficient operation of the hospital. The hospital maintains that the color coded uniform policy is such a policy. In addition, as stated by city attorney Weiss in the application for Fact Finding:

"It is the City's position that the color coding of uniforms was developed through negotiations with the Unions; was agreed upon; and was the subject of an arbitration case during the late months of 1969 and early months of 1970 in which the Hospital position was upheld."

The parties must recognize that we are dealing here not with the implementation of a previous agreement, but are trying to arrive at a new one. Care must be exercised to differentiate the use of the concept of management's rights in contract implementation and arbitration from its proper use in negotiation and Fact Finding. A management's rights clause in a contract saves for management the right to make decisions which are not limited by the contract or its application.

In essence, every concession won by a union from management is an "invasion of management rights", because management would have the right to act differently if the contract were not in effect. In contract arbitrations, the arbitrator is frequently called upon to determine not whether the union is attempting to invade management's rights, but whether the attempted invasion is one sanctioned by the contract, or unsanctioned and left entirely to management.

Here we are not attempting to interpret an existing agreement, but to formulate a new one. The question before us is not whether the union is attempting to limit management rights. Obviously, they are, as the whole contract limits those rights. Rather the question is whether or not this particular invasion is in an area appropriate for bargaining, and therefore appropriate for decision by the Fact Finder. The broad general threshold test in such a case is whether or not the subject matter of the demand concerns wages, hour, or terms and conditions of employment. The unions have



argued that color coded uniforms represents a working condition with economic ramifications. Not only have the unions made the question of color coded uniforms a "gut" issue, but the evidence clearly reveals that it was this issue that was substantially responsible for the strike. We must find that the type of uniform that an employee wears can be a working condition, particularly when the employee must at his own cost purchase his or her own uniform. As the unions explained, a change over to color coded uniforms would mean that some employees would have to reinvest money in new uniforms. A further difficulty was pointed out in that a color coded uniform policy might hinder promotional opportunities for employees being promoted to other classifications who, though getting a raise, may immediately be faced with the prospect of purchasing a new uniform wardrobe at a cost possibly equaling the effective increase due from their job promotion.

In addition, during the term of the previous contract, there was an arbitration over color coded strips on orderly uniforms. The issue was submitted to Robert B. Blackwell, arbitrator. As already noted Mr. Blackwell served as mediator in the 1968 reopener dispute. Subsequent to his role as a State mediator, Mr. Blackwell was elected Mayor of the City of Highland Park, Michigan, where he has served with distinction. Thus, he came to the arbitration with a great deal of experience both as a mediator and as a municipal manager.

Arbitrator Blackwell denied the grievance and held that "the hospital's application of the uniform rule was reasonable" when applied to orderlies. This Fact Finder took a tour of the hospital and found that the orderlies were abiding by the Arbitrator's rule which provided for a blue stripe on the pants and on their sleeve.

However, in the same arbitration, Arbitrator Blackwell stated: "I am reluctant to grant concessions to either party which they are unable to secure at the bargaining table through the process of the grievance procedure".

Here is recognition by an expert in labor relations who has had experience as a manager in public employment as (a city mayor) that a uniform coding policy is a working condition particularly when coupled with financial considerations which are the subject of negotiations.

Inasmuch as the evidence clearly indicates that there is economic impact in the color coding policy, this Fact Finder must hold that it is a proper subject for negotiation by the union, and therefore a proper subject for Fact Finding on the merits of the parties' position.

The professional witnesses presented by the hospital clearly underscored the desirability of a color code policy. Miss Jean Scott, Hurley's director of nursing, who has had a distinguished and varied career in nursing, testified that of the various hospitals she has worked in only one did not follow the color coded uniform policy. She emphasized that a color coding system allowed the medical staff to tell at a glance in an emergency whether nearby employees were trained to give emergency aid. Dr. Robert E. James, M.D., Chief of Staff of the Hurley Medical Staff, testified that in another Flint hospital, St. Joseph Mercy, where color coding is enforced, he was able to save a patient in an emergency room, in a bleeding situation, because at a glance he could tell that a nearby female employee was a registered nurse which enabled him to give her instructions in a situation where seconds made a difference. The record also indicates that there are a number of hospitals in Southeast Michigan who do have color coded uniforms including Genesee Memorial Hospital, McLaren and St. Joseph Mercy Hospital, all in the Flint area.

Of course, not all employees are affected by the color coding proposal. Of some 1,400 employees, approximately 780 are affected, to-wit: employees in housekeeping, dietetics, ward clerks and certain nursing employees. The record reveals that during the term of the just expired contract, there were negotiations for a color coding provision which at one time the union agreed to but which subsequently was rejected by its membership. As a result of these negotiations, new employees were required to follow the color coding policy.

Based upon the testimony on this record, there is no question that the uniform color code is most desirable at Hurley Hospital. If this was the only factor for the Fact Finder to consider, he would not hesitate to recommend the adoption of the uniform color code. But there are other factors which must be considered before a recommendation can be made as to this issue.

Despite that fact that there may have been evidence that the union during the term of the previous contract may have made concessions on a uniformed color coded policy, the fact is they have made it a "gut" issue at these negotiations. The rejection of a previous proposal indicates strong sentiment against color-coding among the membership.

In this situation, the paramount criteria to be applied is the strike criteria. The union did go out on strike. The employees were out of work for four weeks. But for Fact Finding, they might be out over what the Fact Finder believes was a paramount issue to these employees, namely, the color coded uniform policy. The Fact Finder is frank to say that he questions the wisdom of making this a paramount issue. The Fact Finder is frank to say that he believes that at some time in the future color coding at Hurley may become a reality.

The Fact Finder is not going to recommend the adoption of a color coded uniform policy as proposed by the hospital. He is not going to recommend it because as a matter of fact, the parties would have had a longer strike if the condition of ending the strike was the adoption of the uniform color coded policy than they would have if it was not. It is suggested that the hospital would have conceded on this point in order to get the hospital back in operation. It is no different than the General Motors Corporation conceding on the cost of living formula in order to end its strike.

The strong application of the strike criteria to this factor can again be tested against two other factors or criteria. The past history of the relationship of the parties would indicate that several years previously the hospital did have a color coded uniform policy. Subsequently, the hospital reverted to the white uniform policy and the present policy of certain employees wearing a colored patch identifying their classification on the uniform. This indicates that in the past the hospital has been flexible on this policy. Apparently, the hospital went to the white uniform

policy because its then director wanted a more "professional" looking hospital. This past history of the uniform color coding policy at Hurley Hospital serves to support the judgment that in the final analysis, to settle the strike, Hurley Hospital would have compromised on the color coded uniform question.

Furthermore, the testimony revealed that even the policy which is acceptable to the union, namely, housekeeping employees wearing yellow aprons with their uniforms, and dietetic employees wearing green aprons, has not been enforced by the supervision of the hospital. This alone if in force would remove some of the need for a color coded uniform policy. Furthermore, if the need for more distinctive identification is present, it can be done by making the shoulder patches more distinctive in color. The union had no objection to this.

In making the above analysis, the Fact Finder does recognize that there is some element of speculation, as there inevitably is in determining the hypothetical outcome of a strike. He has, however, tried to take as much of the element of speculation out as possible by setting forth the surrounding facts in context affecting the uniform color code issue. The Fact Finder recognizes that the hospital tried to ease the economic burden of the color coded uniform policy by offering to extend the time of the change-over from the present system to a complete color coded policy and by offering some remuneration to help defray the expense of the change-over. These offers were unacceptable to the union either because they were not sufficient or because the timing of the offers was inappropriate.

Had the hospital made sufficient economic offers and been able to dispose of the other issues between the parties at or about the time of the contract expirations, the hospital might have been successful in negotiating a color coded uniform policy. The Fact Finder arrived on the scene October 26, 1970. There has been a four week strike.

The Fact Finder is convinced that at this time the position of the union's membership has been so hardened by the course of events that there is no chance that they would accept the hospital's offer as an alternative to a prolonged strike .

For the above reasons the Fact Finder is recommending the following insofar as the issue of uniform color coding is concerned:

1. That the applicable language of the contract covering the period from July 1, 1969 through June 30, 1973, including the management's right clause of the contract be interpreted to implement the decision of arbitrator Robert Blackwell insofar as uniforms of orderlies are concerned.

2. That said language be interpreted to mean that the hospital will change the policy which was in existence at Hurley Hospital prior to the existing dispute over the change to color coding. In other words, white uniforms may be worn using a color patch designation and (where applicable in the past) aprons.

These uniform recommendations can be considered as incorporated in the contract by reference or the parties may submit language for approval by the Fact Finder to be incorporated in the contract which encompasses these recommendations.

The Fact Finder recognizes that the recommendation herein as to color coded uniforms may cause some consternation among management. It is, however, pointed out that there are some hospitals right in Flint that do not have color coding including Flint Osteopathic Hospital and Flint General Hospital. Pontiac General Hospital does not have color coding, nor does Harper Hospital in Detroit. This only verifies that the Fact Finder's recommendations are not contrary to all reason or comparisons.

### CONCLUSION

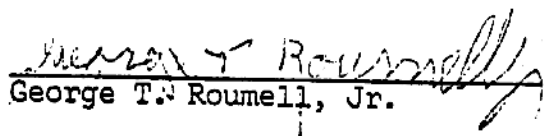
The recommendations on the issues before the Fact Finder have been set forth in the body of the report. From the viewpoint of the employer there is provided the opportunity of long range economic planning in that a three year contract is established without reopeners. The report is within the economic means of the hospital and is consistent with the various comparisons with other hospitals in Southeast Michigan. It also recognizes as the hospital itself has recognized the influence of the General Motors Employment in Flint on hospital employees. These recommendations are what in fact the parties should have been able to negotiate at the bargaining table.

From the point of view of the employees the employees have established a potential wage package of \$.92 over three years represented by a fixed \$.60 hour increase plus cost of living adjustments if inflation continues. It also provides a hedge for future inflation by providing an increase cap in the cost of living adjustment in 1972-73. These recommendations are consistent with what the employees have bargained for in the past and they make the Hurley Hospital employees continue to be among the better paid hospital employees in Southeastern Michigan.

Finally, it puts to rest the color coding issue for the time being although there is recognition that this may be a factor in the next negotiation, and the parties should look forward to resolving it, with more finality than this report.

The Fact Finder will keep jurisdiction of this matter to handle any grievances that arose as a result of the recall or any questions concerning the interpretation of this report and the recommendations herein.

DATED: January 28, 1971

  
George T. Roumell, Jr.