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LABOR AND INDUSTRIAL

Michigan State University

\*\*\*\*\*  
IN THE MATTER OF  
REPUBLIC-MICHIGAMME SCHOOLS NO. 13  
AND  
REPUBLIC-MICHIGAMME EDUCATION ASS'N.  
\* \* James T. Deane \* \* \*

FACT FINDER'S REPORT AND RECOMMENDATIONS

The undersigned was appointed Fact Finder in a dispute between the above parties by Robert G. Howlett, Chairman, Employment Relations Commission. Notice of such appointment, dated January 7, 1972, was served by Chairman Howlett on the parties.

Pursuant to the above appointment and notice, hearing was held on January 31, February 21, and March 6, 1972 in the Board Room of the School District.

In its initial application for Fact Finding, the items in dispute were listed. Together with the Board's position thereon these items follow:

- "ASSOCIATION'S POSITION:
- 1) Wants binding arbitration language in the contract.
  - 2) Reduction of staff and rehiring based on longevity, certification, and qualifications.
  - 3) Increase in salary for the audio-visual director from \$100 to \$300.
  - 4) Salary - the only matter in contention is the base salary - association is requesting \$8200.

Republic - Michigamme School

## BOARD's POSITION:

- 1) Rejected binding arbitration proposal.
- 2) Wants its language on reduction of staff and rehiring.
- 3) States this will not be a problem if other items are worked out.
- 4) Wishes to retain the current salary base of \$7400."

Prior to hearing, in a letter dated January 26, 1972, addressed to Chairman Howlett, the Association asked that the original list of items be amended to include "unpaid compensation for increments and hours earned." That letter in its entirety follows:

"January 26, 1972

Mr. Robert G. Howlett, Chairman  
Michigan Employment Relations Commission  
932 Michigan Trust Building  
Grand Rapids, Michigan 49502

Dear Mr. Howlett:

SUBJECT: Republic-Michigamme Education Association  
Fact Finding Hearing, January 31, 1972

Please add to the list of issues the following: unpaid compensation for increments and hours earned.

The board is not paying several teachers for college credits earned as provided for in the 1970-71 agreement. Furthermore, the board is not paying teachers for increments. In both instances the schedule referred to is the salary schedule on which teachers are currently being paid.

The relief sought is immediate payment of such sums due plus one percent interest per month or major fraction of a month from the date wage board regulations as administered by the Internal Revenue Service declared such sums as due and payable.

Yours very truly,

Arnold J. Korpi  
Executive Director

st

cc: Mr. James Dunne, Factfinder, MERC  
Mr. Oliver Voegtline, President, Republic-Michigan  
Board of Education  
Mr. Clyde Pohlman, Superintendent, Republic-Michigan  
Schools"

### Preliminary Findings

This dispute arose out of negotiations for a new contract which began in or about May, 1971. Its terms were and are to cover the current 1971-72 school year which, as of the date of this Report, is nearly two-thirds completed.

The Employer School District concedes that at the expiration of the 1970-71 contract it did not pay hours and increment increases during the 1971-72 school year which would have been due under the preceding year's salary and increment schedule. This is the cause of the Association's amended application as contained in the January 26 letter above quoted.

At the outset of the hearing, the Fact Finder called a short recess suggesting to the parties that they meet privately to attempt to resolve this matter between themselves without the necessity of its becoming a part of this report. They were unable to resolve the matter, and it will therefore become a part of this report and recommendations.

It appears to be the position of the District that there is some doubt as to its obligation to pay such increment increases during the current 71-72 school year for the reason that the 70-71 contract had expired and was therefore not a continuing obligation of the District absent a new agreement affirming this obligation and establishing a base salary and increment schedule from which the amount payable was determinable. It is a fact, however, that the District continued to pay each teacher on

the basis of the 70-71 salary base of \$7400 at his 70-71 increment as established by the "expired" contract. There was no claim made by the District that it was not at least obligated to do this despite the claimed effect of "expiration" of the 70-71 contract.

These are the facts concerning the non-payment incorporated in the Association's amendment to its application. It conceded that had the old base (\$7400) been applied to the teacher's new position on the 70-71 increment and hours schedule the sum of the increases so computed for all teachers for the full 71-72 school year would have been approximately, if not exactly, \$7935.73. It is the Association's position that this total amount will have become due and payable by the end of the current 71-72 school year, and that since it should have been paid by pay periods throughout the year, the teachers have been damaged so as to be entitled to interest on the unpaid money at the rate of 1% interest per month for the period of such non-payment.

This entire matter will become a part of the Recommendations of the Fact Finder at the conclusion of this Report.

#### Issue 1--Wage Base Increase

There was no dispute during negotiations as to the increment and hours index schedule in effect during the 70-71 school year being appropriate. Thus, the only dispute on the wage schedule was as to the base. The Association asked for an \$8200 base, while the District insisted upon retaining the 70-71 base of \$7400. There was one point fairly early in the negotiations when in response to the Board attorney's suggestion that there

be a quick resolution of the wage matter, the Association offered to settle for \$7800. The Board attorney responded that he felt this was a reasonable compromise and would recommend it to the Board. He later reported to the Association, however, that it was unacceptable to the Board. No counter proposal was made beyond the Board's insistence upon a continuation of the existing \$7400 base. At that point, the Association reverted to its original demand, and there was no movement prior to Fact Finding by either party.

Almost, if not exactly, one-half of the 28 teachers in the District have ten or more years of teaching service credited by the District for pay purposes. There are only seven with less than five years teaching service.

Association Exhibit #1 discloses the following B.A. Minimum or Base for the years 70-71 and 71-72 in assertedly comparable districts in Marquette County where the Republic-Michigamme District is located:

	<u>1970-71</u>	<u>1971-72</u>	<u>Increase</u>
Gwinn	\$7800	\$8200	\$400
Marquette-Alger	7775	8150	375
Negaunee	7550	7850	300
Ishpeming	7425	7833	408
Republic-Michigamme	7400	--	-
Marquette	7350	7800	450
Champion	7350	7700	350
National Mine	7200	7600	400
Ishpeming Township	7300	7500	200

This indicates that in 1970-71 the subject district's base ranked 5th or squarely in the middle of these 9 districts. It also indicates that if it is to retain that same ranking for

1971-72 a base of at least \$7800 would be required for this District. The average gain in base of the eight districts excluding Republic-Michigamme for 1971-72 over 1970-71 is \$374, while the average of the 1971-72 base of these eight districts is just under \$7817.

As for the B.A. Maximum, Republic-Michigamme was, in 1970-71, again ranked 5th or squarely in the middle of these same nine districts. For 1971-72, the gain in the other eight districts was to an average salary of \$11,570.50. To retain its relative ranking in this category, the Republic-Michigamme B.A. Maximum should be at just about that figure or a little less. The average gain in the remaining eight districts in the B.A. Maximum is \$537. (Ass'n. Exhibit 2)

In the M.A. Minimum category, Republic-Michigamme ranked third among the same nine districts in 1970-71. The average gain for 1971-72 among the other eight districts was \$389, which if added to the Republic-Michigamme M.A. Minimum for 1970-71 would just maintain third position in the ranking in this category. (Ass'n. Exhibit 3)

In the M.A. Maximum category, Republic-Michigamme ranked in 4th position among the same nine districts in 1970-71. The remaining eight districts averaged a gain in this category of \$577 in 1971-72. To retain its same rank position in this category, the average gain in the other districts would have to be applied to the Republic-Michigamme 1970-71 M.A. Maximum (Ass'n. Exhibit 4).

On the above comparisons, the accuracy of whose figures the District did not dispute, it would appear that the base

(B.A. Minimum) would have to be increased by at least \$400 to maintain the same relative position among the other districts compared for the 1971-72 school year.

The Association invites numerous other comparisons only one of which will here be used, however, for the sake of brevity. For the 1971-72 school year, the median increase in the base (B.A. Minimum) of 37 Upper Peninsula Districts is \$325. This is also almost the exact average for the 35 of these 37 districts for which figures were available. (Ass'n. Exhibit 8).

As to the District's financial position, the Association makes the following points:

1. Revenue	Budget 1970-71	Actual 1970-71	Budget 1971-72
Current Property Taxes	\$144,428	\$131,595	\$151,000
Delinquent Taxes	13,200	12,608	10,000
Interest--Delinquent Taxes	850	844	600
Taxes--Republic Mine	233,925	235,988	240,000
Total Local Revenue	\$395,653	\$383,503	\$404,450
Total Intermed. Rev.	2,500	1,539	2,000
Total State Revenue	198,988	186,376	190,700
Total Federal Rev.	7,652	7,652	8,000
Total Incoming Transfers	1,600	1,523	1,500
Cash in Bank	30,073		(11,000)
Current Loans	55,000	95,000	100,000
Food Services	7,000	6,000	6,000
Student Body	0	431	300
Total Revenues	\$698,466	\$682,024	\$701,950

(All of the above figures taken from school records)

The Association concludes from the above that the District will be receiving almost \$20,000 in new revenue for the 1971-72 year.

- Despite the above, the District is budgeting for Salaries, Regular Teachers (Elementary) almost \$24,000 less for 1971-72 than its actual disbursement for this same item in

1970-71; and for Salaries, Regular Teachers (Secondary) the District is budgeting over \$6000 less than its actual expenditure for 1970-71. As shown in its General Fund Budget, the above are itemized as follows:

<u>Acct. No.</u>	<u>Account</u>	<u>Budget 1970-71</u>	<u>Actual 1970-71</u>	<u>Budget 1971-72</u>
1103 (Elementary)	Salaries, Reg. Teachers	\$152,892	\$168,986	\$145,000
1203 (Secondary)	Salaries, Reg. Teachers	184,800	162,132	156,000

If for 1970-71 the above actual vs budget figures are any criterion, it is clear that the budget figures for 1971-72 for these same items is wholly unrealistic, says the Association.

3. If the District has gotten itself into a cash predicament, this has occurred, says the Association, for the following reasons:
  - a) Although the District has been authorized for years to levy 22 mills on property tax for operating purposes, it has consistently refused to levy up to the authorized amount. This has resulted in a substantial loss.
  - b) One of the principal sources of revenue is the specific tax from the Republic Mine. Principal and interest on bonded indebtedness has for years been paid from this source thus reducing the General Fund equity. (See Annual Report to taxpayers from School Board for 1968-69.) Operating funds have been drained to a considerable extent per year to pay for building. Two mills were authorized for this purpose, but levied



for only the last two years--1970-71 and 1971-72.

These two factors, claims the Association, have combined over time to reduce substantially the amount which would now be available for operating purposes.

#### District's Response on Salary

The District presented its audited report for the year ended June 30, 1971. This shows a total of General Fund Revenues of \$600,131.27 and total Expenditures (General Fund) of \$626,875.43 or an excess of expenditures over revenues of \$26,744.16. It argues that no matter how it got to this point, the District was faced with a minus position going into the 1971-72 school year. Whatever contributed to this is in the past, it says, and that the District was and is faced with a "here and now" situation. It agrees that increase in revenue could be and was anticipated for the year 1971-72, but that in view of its just past year, it had to budget realistically. This, it claims, meant no increase to teachers for the 1971-72 school year. It concedes that the budget figures presented by the Association were correct and that less was budgeted for teachers' salaries for 1971-72 than for 1970-71 despite the fact that for most other significant items the budget amount was greater.

The Board's feeling is that in general the teachers of the District are well paid. It does not seriously argue with the salary comparisons invited by the Association, but does feel that there should have been included certain other lower paying districts. Compared to them, its teachers are well paid.

The District presented as an exhibit a Memorandum put out by the Michigan Association of School Boards which explains and then

incorporates Attorney General's Opinion #4673. This Memorandum is "relative to a local board adopting a deficit budget and operating at a deficit." The District argues that to have agreed to the teachers' demands on wages would have meant operating at a deficit. (Fact Finder's Note: No claim was made by the District that this board made an effort to obtain approval to borrow in anticipation of tax collection for the year 1971-72; nor was there a showing that a deficit budget was in fact adopted.)

The District produced a cost estimate for teachers' salaries (1971-72) for each \$100 increase in base. According to this, an increase from the present \$7400 base to \$7500 would cost \$4,169.98; \$7600 base \$8,339.96; \$7700 base, \$12,509.94; \$7800 base, \$16,679.92.

#### Wages--Fact Finder's Recommendation

##### Item 1--Non-Paid Increment and Hours 1971-72

There can be no reasonable justification for the failure or refusal to pay the teachers in accordance with the increment and hours index at the old base for the year 1971-72. There was no dispute coming to fact finding concerning the index; the District at least recognized that it could not reduce the \$7400 base, and it continued to pay salaries based thereon, but without crediting for pay purposes the year's advance in service on the index or for credit hours earned by reason of additional college post-degree work. This was in fact a cut in wages. The District's argument that without a completed negotiated agreement the increases were no longer due under the index is fallacious. In the first place, the District wanted to and did retain the \$7400 base. In the second place, the District did not raise an issue concerning the

existing index. It is illogical to use the \$7400 base which equally "expired" (on the District's argument) with the 1970-71 agreement for 1971-72 pay purposes while refusing to use the same index for 1971-72 pay purposes which was not in dispute in connection with the 1971-72 negotiations. It is the Fact Finder's conclusion that this was used as much for a bargaining lever as for any other purpose.

It is the Fact Finder's recommendation that the index in effect for several years and not in dispute at the beginning of the 1971-72 school year, be applied for advanced service and extra credit hours to wages paid at the \$7400 base during the year 1971-72 subject only to applicable Federal Law. It is also recommended that interest at the rate of 6% per year be added to any such increase as damages for unpaid wages.

#### Item 2--Salary Base

It is the Fact Finder's recommendation that the base be increased for the 1971-72 year by \$300 to \$7700. It is clear that the District has been in part at least responsible for its current problem, but it would be unrealistic not to recognize the fact that it currently is in a difficult position. This increase will keep the teachers in a relatively level position with other districts, especially in view of the advantageous compounding 4% index which they enjoy. There is, however, no issue before the Fact Finder concerning the index.

This increase shall be retroactive to the beginning of the 1971-72 school year subject only to applicable Federal Law and approval for all or any part of such increase for all or part of the school year by appropriate Federal authorities administering the law.

The teachers' demand for an \$8200 base is rejected as is the District's insistence upon no increase from the 1970-71 base. As noted above, the District computes the cost of a \$300 increase in base for the 1971-72 school year at \$12,509.94. The anticipated increase in major General Fund operating revenues for 1971-72 over actual 1970-71 revenues exceeds \$29,000. This should be adequate to manage the proposed \$300 increase in base for 1971-72. This proposed increase in base, it should be noted, is just over 4% and thus well under the Phase 2 five and one-half percent permissible Federal standard.

#### Item 3--Salary Increases for Audio-Visual Director

The Association requests that the present \$100 per year added compensation for this position be increased to \$300 for the 1971-72 school year. It makes this request primarily on the ground that maintenance of equipment has been added to this position and that in the past several years this equipment has become increasingly sophisticated.

The District does not disagree with the Association's rationale for the proposed increase. It has consistently taken the position that this matter can be resolved on the Association's demand if all other matters are settled.

#### Recommendation of Fact Finder.

It is recommended that the requested increase from \$100 to \$300 per year for the Audio-Visual Director be put into effect for the entire 1971-72 school year, subject only to applicable Federal Law.

#### Item 4--Binding Grievance Arbitration

The parties presently have "advisory" arbitration as the terminal point in their grievance procedure. The Association now requests that this be changed to final and binding arbitration for the settlement of grievances. It argues that this is the only way of assuring prompt and final resolution of grievances. Since the State has announced in a Policy Statement dated March 21, 1969, that it will no longer, except in rare and unusual cases, allow the fact finding procedures to be used for grievance settlement, the Association argues that it has become essential that there be a binding arbitration step available if grievance settlement cannot be had by the usual process of discussion and negotiation. The process has been upheld in State Courts (Oakland County Sheriff's case).

There are presently 29 school districts in the Upper Peninsula which have contracts with the Association for final and binding grievance arbitration. This is a significant number of the total districts in the U.P.

The Association's request is confined to arbitration of disputes over the interpretation and application of existing terms of the collective bargaining agreement, not substantive or interest arbitration.

The District's opposition to this request was not clearly spelled out. To the extent the Fact Finder could understand the District's opposition, it appeared to be on philosophical grounds and on some fear that an arbitrator would exceed his jurisdiction or fail to read the agreement in the light of existing law.

### Recommendation of Fact Finder

Since the U.S. Supreme Court's decision in Lincoln Mills interpreting Section 301 of the Federal Labor Management Relations Act, there has been widespread recognition that binding grievance arbitration confined to the interpretation and application of the collective bargaining agreement is the sensible solution to such disputes. It is likewise clear that if an arbitrator does indeed exceed the jurisdiction allowed him by the parties, his award can be set aside by the courts.

For these reasons, this Fact Finder believes the District is unrealistically in fear of the binding arbitration process. Therefore, he recommends that final and binding arbitration confined to grievance disputes concerning the interpretation and application of the contract is appropriate. He further recommends that appropriate language be included in the parties' contract making provision therefor.

### Item 5--Staff Reduction

At the present time, there is no provision in the agreement which gives any assurance that in the event of staff reduction and recall a teacher's length of continuous service in the District will be given any consideration. It therefore asks that the following be included in the contract between the parties:

"Section 10G, (Add) In the event that a reduction of personnel shall become necessary, the Board shall first retain those teachers possessing current teaching certificates with the longest period of continuous service in the school district who are qualified to teach in those areas or disciplines to be preserved.

1. In the event of lay-off, the Board will make every

effort to insure that separated personnel may be placed in other teaching situations.

2. In the event of lay-off, the Board will institute a recall procedure which, when implemented will insure teachers that they will be recalled in the reverse order of lay-off. Recall will be initiated immediately upon resolution of any crises which may have precipitated the necessary reduction in personnel."

The District did not quarrel with the above suggested addition in language. In fact, it put in no facts in opposition to or by way of modification of the proposed addition or concept.

#### Recommendation of Fact Finder

The Fact Finder observes that this is not an unlimited seniority proposal. Length of service is qualified by (a) the "teachers possessing current teaching certificates" and (b) that they must be "qualified to teach in those areas or disciplines to be preserved." Only if these conditions are met does length of service play a part in reduction and recall procedure.

The Fact Finder recommends that the above proposed language or its mutually agreed equivalent be incorporated in the parties' agreement.

March 17, 1972  
Date

James T. Dunne  
James T. Dunne, Fact Finder