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STATE OF MICHIGAN  
BEFORE THE DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

RECEIVED  
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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
DETROIT OFFICE

IN RE:

DOWAGIAC EDUCATION ASSOCIATION

-AND-

DOWAGIAC UNION SCHOOL DISTRICT

Walter Nussbaum

Michigan State University  
LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

FACT FINDING RECOMMENDATIONS

Fact finding hearings were held on the above captioned matter at the Courthouse, Cassapolis, Michigan on November 8th and 9th, 1973, and at the Department of Labor, Lansing, Michigan on November 16th, 1973, in accordance with the Department's initiation of fact finding procedures.

Representing the Collective Bargaining Unit were:

Ron Latourette and Esther Stanley as Co-Chairman of the Local Bargaining Committee, as well as James Boerma, Michigan Education Association staff, and Michael Stephens, MEA staff.

Representing the School Board were:

Mr. Joe Mosier of the office of Miller, Canfield, Paddock & Stone, and Lionel J. Stacy, Superintendant Dowagiac Union Schools, Dowagiac, Michigan.

Several members of the Board of Education including the President of the Board and several members of the Collective

Dowagiac Union School District

Bargaining Representative observed the proceedings.

During the course of the hearing, the following matters were adjusted between the parties in private negotiations during recesses in the formal hearings. These matters have not been refined to precise contract language, but the parties have indicated that there is approval in principle of each of the said items and that should any questions arise as to the final contract text, the matters will be referred to the Fact Finder through the Michigan Employment Relations Commission for more specific language.

#### Article VII - Teaching Hours

Section 1      The teaching day for all teachers shall be a seven and three-quarter hour time span. On Fridays and days preceding holidays teachers may leave the building fifteen (15) minutes after the student day, provided students have cleared the premises.

All teachers shall be entitled to a duty free lunch period of not less than thirty (30) minutes.

All teachers shall be expected to be present for staff meetings deemed necessary by the building principal. Such meetings will be scheduled on Tuesdays and may last for one hour after the student day. Teachers will keep Tuesday after school free for such purposes. Notice of other meetings that might extend beyond the normal workday shall be given at least forty-eight hours in advance except in a crisis situation.

Teachers shall be expected to attend grade level or departmental meetings, and other committee meetings scheduled with the teachers involved with said committee.

The Board may schedule up to six (6) evenings during each year by building, or systemwide, for parent teacher conferences, open house and/or student achievement nights. These meetings will not be scheduled to start before 7:00 o'clock

P.M. and not go beyond 10:00 P.M. All staff members are required to be in attendance unless excused by the building administrator. When parent teacher conferences are scheduled in that building those students and their teachers shall be released from school no later than the start of the student lunch period.

Kindergarten pre school conferences shall be scheduled during the normal teacher day hours in the spring.

It is recommended that teachers attend regularly scheduled PTA/PTO meetings scheduled for their buildings.

Individual teacher exceptions to this section shall be obtained from the building principal.

Section 2      It is understood by the parties that Art, Music, Physical Education are a part of the elementary preparation time. Should the financial conditions in the District eventuate a curtailment of any or all of these programs, the DEA agrees to waive this clause. Each elementary teacher shall be assigned a maximum of 25 hours of classroom teaching and a minimum of 5 hours of conference, preparation or evaluation time per week subject to the above.

#### Article VIII - Compensation

Section 3      Both parties agree that some programs within the overall system may require more time than is scheduled for the regular school year. Among these programs but not wholly inclusive are guidance, library, and vocational agriculture. Teachers of such courses and programs may have their teaching contracts extended for the number of days required to properly complete the activity as determined by the Administration. Extensions beyond 185 days does not include fringe benefits such as sick leave unless contract is extended for entire staff. This is not to be construed as summer school programs.

#### Article IX - Paid Leaves of Absence

Section 1      Ten (10) days sick leave per year with full pay shall be granted in case of necessary absence

due to personal illness of the teacher.

Section 3      Personal Leave: Three (3) days per year of the accumulated sick leave days may be used for a personal day after one (1) semester of teaching in the Dowagiac School System for personal business affairs which cannot be taken care of outside of regular school hours, which in the judgment of the Superintendant are necessary.

Section 9      Any teacher who is absent because of an injury or disease compensable under Michigan Workmen's Compensation law shall receive from the board the difference between Workmen's Compensation and the regular salary, to the extent and until such time as such teacher shall have used his sick leave allowance.

#### Appendix "A"

Section 2      In accordance with the above schedule-indexes, and where that teacher adds additional hours to that advanced degree, he shall receive \$175.00 for each additional ten (10) semester hours up to, but not to exceed (40) semester hours of credit beyond the degree.

Section 3      Remuneration shall be made for mileage expenses incurred by teachers while traveling on school business at a rate of 10 cents per mile or such additional amount as the board shall determine.

Section 4      The board shall pay each teacher who retires under the Michigan Teacher Retirement Fund Program and who has been in the system fifteen (15) years or more, the sum of \$1,000.

#### Section 6

Schedule for work over and above the normal teaching load, in accordance with the job description for each position.

#### GROUP I (\$100)

Sophomore Class  
\*Senior Class (2) (1 to include  
    (Mother-Daughter Tea)  
French Club  
Spanish Club

#### GROUP V (\$250)

Dept. & Grade Level Chairmen (24)  
Jr. High Cheerleaders  
Ass't. Baseball  
Debate  
Foreign Exchange Club

National Honor Society  
Jr. High Ski Club  
Sr. High Ski Club

\*\$200 if combined into 1 sponsor

GROUP II (\$150)

\*Jr. Class (2) (1 to include  
Magazine Sale)  
Elementary Intramurals (24)

\*\$300 if combined into 1 sponsor

GROUP III (\$175)

Activity Chaperones (6)  
Art Club  
Jr. High Audio Visual  
Sr. High Audio Visual  
Future Teachers of America  
Plays, Each (2)  
Elementary Safety Patrol, Each 4  
Jr. High Science Club  
Sr. High Science Club  
Jr. High Student Council  
Sr. High Student Council  
Ushers Club  
Future Homemakers of America

GROUP IV (\$200)

Jr. High Intramurals (3)  
Sr. High Intramurals (3)  
Varsity Club  
Sr. High Majorettes &  
Instructor

GROUP IX (\$450)

Cross Country  
Golf  
Tennis  
Track

Girls Athletic Association  
Jr. High Golf  
Jr. High Tennis  
Ass't. Jr. High Wrestling  
Jr. High Yearbook  
Ass't Sr. High Girls Basketball  
Ass't Jr. High Track

GROUP VI (\$300)

Sr. High Cheerleaders  
Jr. High Newspaper or  
Literary Publications  
Jr. High Track  
Ass't. Varsity Track  
Senior High Volleyball  
Senior Hi. Girls Track

GROUP VII (\$350)

Jr. High Band  
Jr. High Vocal  
7-8 Basketball (2)  
7-8 Football (2)  
Senior High Girls Basketball  
Sr. Hi. & Jr. Hi. Girls Softball (2)

GROUP VII (\$400)

Future Farmers of America  
Sr. High Newspaper  
9th Grade Basketball  
9th Grade Football (2)  
Jr. High Wrestling

GROUP XIII (\$800)

J. V. Basketball  
Ass't. Varsity Football (4)

GROUP XIV (\$900)

Sr. High Band

GROUP XV (\$1,000)

Head Wrestling

GROUP X (\$500)

Auditorium Supervisor  
Head J. H. Football  
Sr. High Yearbook

GROUP XVI (\$1,400)

Head Basketball  
Head Football

GROUP XI (\$600)

Head Basketball  
Ass't. Varsity Wrestling

GROUP XII (\$750)

Sr. High Vocal

Elementary Vocal Music (2) \$35 per Public Program; Maximum 2 Programs per Building.

Any additional administratively approved activity, Group I or an amount mutually agreed to by the Board and the DEA.

All of the foregoing resolutions by the parties have been reviewed by the Fact Finder and the Fact Finder finds that they are consistent with the best interests of both parties, that they are sufficiently clear to advise the parties of the legal obligation, and that they should be included in a final contract between the parties.

Upon the conclusion of the proceedings there remained ten (10) issues which were referred to the Fact Finder for determination and these issues are described and can be summarized as follows:

1. Agency Shop
2. Equalization of elementary class size
3. Substitutions by the regular staff by utilization of short blocks of time during the work day which was allocated for preparation time to the proposed substitute
4. Sick leave days accumulation
  - (a) Sick leave days expenditure

5. The duration of the contract
6. Insurance
7. Salary
8. Professional growth
9. Summer school salary
10. Association business and/or union time

The formal hearings took place with the cooperation of both parties between 7:00 P.M. on November 8th, 1973, and 3:00 A.M. of November 9th, 1973, and between 9:00 A.M. on November 16th, 1973, and 7:20 P.M. of the same date. Interspersed in the hearings were a considerable number of bargaining sessions in which the parties proceeded in the direction of attempting to find solutions to the problems in the absence of the Fact Finder. The Fact Finder has thoughtfully considered all data submitted by the parties to date. Testimony, documents, arguments, off the record submissions made by both parties, each with the knowledge of the other, and the parties have asked the Fact Finder to consider certain contract provisions which have been proposed by the parties during the course of the fact finding hearings, both formal and informal. The Fact Finder has complied with the request of the parties and has measured each of the proposals against the standards which are defined as follows:

1. The position of the Collective Bargaining Representative and its membership;
2. The position of the management group; and
3. The public interest.

1. Agency Shop. The Fact Finder finds that the parties have a long history of Agency Shop relationships. That the relationship has caused a minimum amount of inconvenience to the management, but that management has a legitimate concern over certain aspects of the agency clause. The Fact Finder therefore recommends that the usual Agency Shop Clause be incorporated in the final contract between the parties in the form in which the parties have customarily included it. The Contract may contain, as well as the usual:

" . . . shall as a condition of employment pay as a representation fee an amount certified by the Association as the non-member's proportionate share of the cost of negotiating and administering this agreement, provided, however, . . ."

And, that an additional provision substantially as follows shall also be included:

"The Association will save the Board harmless from any and all costs including witnesses and attorneys fees or other incidental costs of prosecution or defense or any liability resulting from the prosecution or defense of any action which may be brought or asserted against the Board as a result of the enforcement of the provisions of this contract relating to Agency Shop."

2. Elementary Class Size. The parties have presented proofs which would indicate or tend to indicate that for reasons which are peculiar to the method of organization of this particular school district, the physical conditions and the geographic conditions, that there are significant discrepancies in class size of the elementary school. That the Board of Education has recognized this fact and has instituted programs preliminary to curing this situation. The Fact Finder therefore recommends that inclusion of the following language in the final contract to be concluded between



the parties relating to elementary class size:

"The Board agrees to continue its effort to keep class sizes at an acceptable number as dictated by the financial condition of the school district, the building facilities available, the availability of qualified teachers, and the best interest of the district as deemed administratively feasible; and the Board agrees to initiate a reasonable program to balance elementary class sizes within a three (3) year period."

3. Substitutions by the regular staff during short blocks of time available during the work day.

The parties recognize that the short period substitution factor, and the evidence so discloses, is a voluntary program in which a teacher may participate or not participate as he chooses. The Fact Finder further finds that no economic dislocation is suffered by any member of the staff desiring to volunteer. Therefore, the Fact Finder recommends that the following language be included in a final collective agreement between the parties:

"When a regular staff member substitutes during his preparation period for an absent teacher he shall be paid the sum of Five (\$5.00) Dollars for each classroom period of substitution."

4. Sick leave days accumulation and sick leave days expenditure.

The parties have presented significant position statements relating to the knotty problems relating to the amount, accumulation, useage of sick leave time. The Fact Finder recommends:

(A) Unused sick leave days shall be allowed to a maximum of 120 days;

(B) That up to a total of five (5) days per incident of the accumulated sick leave may be used for absence due to serious illness in the immediate family. The immediate family to include such persons as were included under the terms of the contract which previously existed between the parties;

(C) The Fact Finder recommends that with reference to Article IX, Section 5, that last year's language be incorporated in the new contract and that with regard to Section 3, the language agreed upon between the parties on October 31st should be incorporated in the contract;

(D) With regard to Section 7, modifications as noted between the parties on their approved documents should be incorporated in the final document and the same comment should be made with regard to Sections 8 and 10 inclusive, and the approved language of Section 9 should, of course, be incorporated.

Attached to these findings, the Fact Finder has included an Appendix which will incorporate reproductions of the handwritten documents and modified printed documents which represent the parties agreement on language other than that language specifically found

to be employed by the Fact Finder.

5. Duration of the Contract. The Fact Finder finds that because of the onerous burdens placed upon both the Board and the Collective Bargaining Representative in the bargaining process considering their respective sizes and because almost one-half of the school year has elapsed before the conclusion of the fact finding proceedings, that the interests of both parties would be best served by a multi-year contract. Accordingly, the Fact Finder recommends that the following language should be incorporated in substance in the final contract to be concluded between the parties:

"This agreement shall be effective July 1, 1973.

The agreement shall remain in full force and effect for a full term of thirty six (36) months extending to midnight June 30, 1976. If, by January 15, 1975, either party signifies its desire to modify, amend, or adjust Appendix A relating to wages and salaries or insurance provisions and provisions relating to pay for extra curricular responsibilities, notice must be given to the other party in writing. Notices to be effective under this Section shall be post-marked no earlier than January 1, 1975, nor later than January 15, 1975, if mailed. If hand delivered, delivery shall be had between the period of January 1, 1975 and the close of business on January 15, 1975.

"No other provision of this contract shall be re-opened

except by mutual consent of the parties. This agreement may not be extended by any oral understanding of the parties, nor shall any of its provisions be changed in the implementation except as has been specifically provided for by the terms of those sections of the agreement providing for amendment, modification, alteration or change."

6. Insurance. The parties extensively argued and presented significant proofs on the issues relating to the procurement of health insurance together with certain optional riders for life and other coverage thereto. The proofs presented knotty problems in which the obligations of the Board in relation to preservation and use of public funds, as well as the relative merits of the program and the teachers' rights to negotiated benefits, were all placed in issue. The Fact Finder recommends that the following language be incorporated in the final contract document between the parties:

Appendix A, Section 5, shall read,

"The Board shall pay each month an amount per teacher equal to 70% of the full family MESSA Super Med 1 or S E T Ultra Med Insurance at the option of the teacher but not to exceed the monthly sum of Thirty Five and 35/100 (\$35.35) Dollars retroactive to July 1, 1973. Teachers not wishing full family health care insurance may apply an amount not to exceed Twenty Five (\$25.00) Dollars per month toward the selection

option package available through MESSA Super Med I or S.E.T Ultra Med as spelled out in respective brochures. The employer shall not be obligated to make a cash grant in lieu of insurance coverage."

7. Salary. The parties have presented evidence concerning an appropriate range of salaries. The Fact Finder has reviewed the data submitted by the parties including a document which had heretofore been initialed and marked "TA" reading "Page 5 of Appendix A of the Board Proposal." A review of that document together with Appendices thereto, would indicate that that document is appropriate and sets forth a scale which meets the needs of the parties in accordance with their understanding. Also attached to that document is a further document dated 11/15/73 reading "1973-74 Staff Moved Up one Step For 74-75 At the Following Schedule" which is also approved and recommended as being appropriate to the needs of the parties. I therefore recommend that the salary schedules aforementioned be incorporated in a final contract between the parties.

8. Professional Growth. The Fact Finder has considered a multitude of data submitted to him both formally and informally by the several parties and is satisfied that in the area of professional growth the only recommendation which he can make is that those proposals which were tentatively approved by the parties be incorporated in the final contract. It is the Fact Finder's recommendation that the increments related to and in connection with additional compensation for hours beyond the Masters Degree and the minimum of three (3)

semester hours in each five (5) years for professional advancement would be appropriate. The language being language of art, which is more particularly suited to preparation by those in the educational field should be drafted by the parties. The principal is appropriate and can be recommended.

9. Summer Teaching. The parties have brought to the attention of the Fact Finder matters relating to conflicts which have existed both as to compensation and posting of job openings. It is the Fact Finder's recommendation that the following language be incorporated in the final contract between the parties:

"Pay for approved summer instructional activities shall be determined by pro-rating the BA base for instructional time only. The hourly rate shall be determined by dividing the BA base by one thousand three hundred forty (1,340) hours."

10. Association Business. The parties were in sharp conflict in this area, both as to who should bear the economic burden for attendance of association business by designated association representatives and the number of days to be involved. The Fact Finder has very carefully considered the arguments of the parties and makes the following recommendation based upon the stated position of the parties, as well as on an examination of the data furnished relating to neighboring school districts which has been received by the Fact Finder in evidence. This recommendation is that the following

language be incorporated in the contract:

"The Board shall grant leave for attendance at association activities for appropriate association representatives not to exceed eight (8) days total for each school year with the prior notification to the Superintendent. The association will submit to the Superintendent a tentative calendar and names of representatives for Michigan Education Association activities by September 15th of the contract year. The association shall be entitled to make reasonable modifications to the tentative calendar. The association shall be responsible for the teachers' per diem salary, mileage and activity expense. The Board shall be responsible for paying for any substitute teacher necessitated by attendance upon said meetings."

**Supplement:**

One of the areas which appeared to be quite knotty related to maternity leave. And, although there was no special or formal submission in this area, Fact Finder feels it is incumbent upon him to make a recommendation and recommends incorporation of the following language:

"Maternity leave without pay may be granted by the Board of Education for the remaining portion of the school year. The teacher must notify the Board of

her pregnancy by the fourth (4th) month of pregnancy and a mutually acceptable date for commencing leave will be determined based upon her physician's statement. The continuity of the educational process shall be a consideration with respect to the leave. The teacher must notify the Board in writing on or before April 1 of her intention to return to work beginning the following school year, if that is her intention.

In the event a teacher desires to use accumulated sick leave days instead of taking maternity leave of absence, she must be absent for not longer than a one (1) month period. The accumulated sick leave pay within this period for days actually disabled shall be retained until she resumes her teaching duties."

The parties have informally requested the Fact Finder to consider language regarding the relationship of the Board and the Collective Bargaining Representative in the area of ethics. The Fact Finder accordingly recommends the inclusion of the following language in any final contract:

"The DEA shall establish an ongoing ethics committee. The committee shall hear and evaluate the possible violations or abuses of the teacher contract and/or the NEA code of ethics.



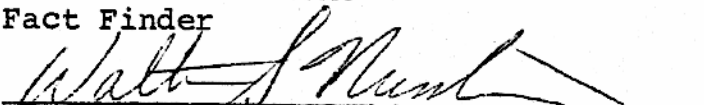
"The ethics committee shall make recommendations to the Superintendent of schools and to the DEA executive board regarding disposition of each case."

The above findings have been tested against the argued interests of each party and the public interest. The Fact Finder finds the compelling and overwhelming interests of both parties and the public would be served by inclusion of the recommended provisions in the final collective bargaining agreement between the parties and urges early ratification of the same. The Fact Finder is not unaware that adoption of a contract containing these provisions requires the parties to some extent recede from their original positions, but he is firmly convinced that both parties have gained in the creation of an atmosphere conducive to better working relationships than have heretofore existed.

Both parties have been patient with the Fact Finder. The representatives of each party have worked exceedingly hard. The hearings and ancillary proceedings have demanded long hours and great patience for which the Fact Finder is grateful. The Fact Finder retains jurisdiction as to all matters covered by these findings.

Respectfully submitted,

WALTER S. NUSSBAUM  
Fact Finder

  
20833 Southfield Road, Suite 100  
Southfield, Michigan 48075  
355-0200

Dated: November 19, 1973

## Code of Ethics

a

The DEA shall establish an ongoing ethics committee. The committee shall hear and evaluate possible ~~violations~~ violations or abuses of the teacher contract and/or the NEA code of ethics.

The ethics committee shall make recommendation to the superintendent of schools and to the DEA Executive Board regarding disposition of each case.

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## Jury Duty

It is understood between the Delaware Education Association and the Delaware Board of Education regarding teachers being notified of selection and or service for jury duty, that said teachers shall:

1. Present the written notice to the superintendent's office within two working days following receipt of such notification.
2. Cooperate and work with the administration in all efforts to be released from said jury duties.

Wherein such actions shall prove successful, the teacher shall be paid his regular pay rate minus any stipend granted him by the court.

Provided numbers one and two above have been complied with, such required service on jury duty shall not count against any leave previously accumulated by said teacher.

F. J. Fatorpette "1/8/73  
Local Secy

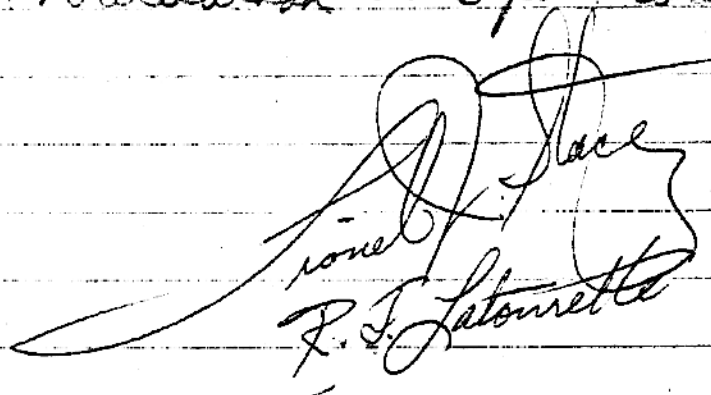
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~~Art VII Sec 1 - Teaching time~~  
~~The teaching day for all teachers~~

~~In the event that music & phys ed~~  
~~must be excluded on financial reasons~~  
~~to any period of time assigned periods~~  
~~will become part of the teaching time.~~

Art VII Sec 2

It is understood, by the parties, that  
~~Art, music, phys ed.~~ are a part of the elementary  
prep time. Should the financial condition  
in the District eventuate a curtailment  
of any or all of these programs, the DEA  
consents to waive this clause. Each elementary  
teacher shall be assigned a maximum of  
25 hours of classroom teaching and a  
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R. F. Latourrette 11/8/73