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

IN THE MATTER OF THE FACT FINDING CASE  
PURSUANT TO PUBLIC ACT 176 of 1939, AS AMENDED

BETWEEN

**MENOMINEE AREA PUBLIC SCHOOLS**

**Employer**

**-and-**

**MICHIGAN EDUCATION ASSOCIATION**

**Employee Organization**

**FACT FINDER: Roger N. Cheek**

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MERC CASE NO.: L13 A-0018

This case originated as a result of a Petition for Fact Finding, pursuant to Act 176 of 1939, as Amended, filed by the Menominee Area Public Schools after collective bargaining with the Michigan Education Association<sup>1</sup>, followed by two

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<sup>1</sup> Throughout this report, the Menominee Area Public Schools will usually be referred to as "District" and sometimes as "Administration", "Schools", "Board" or "MAPS". The Michigan Education Association which is sometimes recorded in documents as "Menominee City District Educational Association" or "Upper Peninsular Education Association" is usually referred to as "Association", and sometimes as "teachers", "Union", "employees", "MEA", or "MCDEA".

State-supervised mediation sessions, failed to produce a successor labor agreement covering the district's teaching personnel.

The petition further states that the contract to be replaced had an expiration date of June 30, 2012, and that at the time of its filing there were 93 people in the bargaining unit.

Michigan's collective bargaining law states that when a bargaining impasse is reached, the matters still in disagreement between the parties might be more readily settled if the facts were determined and made publicly known. For the purpose of determining the facts, by letter dated January 29, 2013, the Michigan Employment Relations Commission (MERC) appointed the undersigned fact finder, Roger N. Cheek, to serve on its behalf. The fact finder is required to conduct a hearing, determine the facts, and make written findings with respect to all material issues presented in the hearing. The fact finder is then required to set forth the reasons and basis for his findings of facts, conclusions, and recommendations. Finally, the law requires that the findings so made must be made public but shall not be binding upon the parties.

Since the outcome of the fact finding will not be binding on the parties, this means that after the fact finding process is concluded, the employer and employees will still be required to fulfill their original joint obligation to reach a mutually agreeable labor contract. Therefore, following issuance of this report, the parties will be required to return to the bargaining table in accordance with

the law and the MERC's rules, in order to continue their negotiations for a successor agreement.

The required fact finding hearing was conducted in Menominee, Michigan, on July 10 and 11, 2013. It was a meeting open to the public.

Mr. Robert Witter, an outside private consultant to the School District, was the principal presenter of Menominee's case. Mr. Craig Culver, MEA Research Consultant, was the principal presenter of the Association's case. Both of these gentlemen were exemplary advocates who advanced well-argued comprehensive cases. During the approximately 10 hours of total hearing time over the two days, they provided the vast amount of oral commentary for their respective parties, and introduced the approximately 800 pages of exhibits. Reference to a number of these exhibits occurs throughout this report.<sup>2</sup>

Finally, fact finding hearings are not conducted under the strict rules of evidence, and the law does not require that an official verbatim record be made unless one or both parties request such a record and covers the cost of the court reporter's services. Neither party requested such a record be made.

#### FINANCIAL CONDITION of MENOMINEE AREA PUBLIC SCHOOLS

The District currently has a budget deficit. Its poor financial condition began its decline back in 2008. The following figures taken from Association

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<sup>2</sup> A reader of this report who is in possession of a copy of the exhibits books that were exchanged by the parties and presented to the fact finder, can examine the exhibit directly by finding it as follows: the fact-finder has assigned all *District exhibits* an *alpha-numeric* designation (examples: [A1], [C3], [G25], etc.) as this corresponds to that book having been organized behind alphabetical tabs, with the numeric part indicating the exhibit's sequential placement in the alpha section. In similar fashion, all *Association exhibits* have been assigned a *numeric-alpha* designation (examples: [1A], [3C], [7Y], etc.), as this corresponds to that book's contents being organized behind numbered tabs, with the alpha part indicating the exhibit's sequential inclusion (A to Z) in the numeric section.

Exhibit 25A show the steady reductions in State revenue received for operating the public schools in Menominee since the 2008-2009 school year:

	<u>Total Revenue from State</u>	<u>Reduction from Prior Year</u>
2008-2009	\$12,904,473	(\$122,520)
2009-2010	\$12,703,283	(\$201,190)
2010-2011	\$12,465,074	(\$238,209)
2011-2012	\$11,451,304	(\$1,013,770)
2012-2013	\$10,864,801	(\$586,504)

This steady decline of the District's major source of revenue, plus some periodic budget modifications that were called for over time, but that were *not* made, a point that voluntarily admitted by Superintendent Randy Neelis during the hearing, has left the District with its last audited fund deficit of \$129,286 at the end of 2011-2012. Going into 2012-2013 a budget deficit was expected on June 30, 2013, but the audited result has not yet been determined.

The bottom line is that the record made in this case, by both parties, shows that the parties do not have a meaningful dispute about the current financial condition of the Menominee School District. Both recognize that a deficit situation exists and that it needs to be addressed, yet despite the Association's overall acceptance of the need to repair the District's finances, it obviously opposes some of the supposed cost reduction changes in the labor agreement that have been proposed by the District during bargaining.

Near the start of the hearing, as the District was entering background economic facts into the record through some articles taken from the local newspaper, the *EagleHerald Marinette & Menominee*, Mr. Culver, made the



relevant and timely observation that such articles could cause some concerns about foundational and hearsay issues. And although he did not formally object to the newspaper articles being included in the record, he urged me to be cautious and remain cognizant of such concerns. Specifically, he alluded to what he said were sometimes self-serving quotes made specifically for inclusion in news reports purposely intended to promote a party's stance taken at the bargaining table. My experience allows me to know that he had touched on a valid point of concern for *both* parties. I assured them that such caution was indeed called for and that I would remain alert to block the entry into the record of any material that would be improper and unable to assist in the proper administration of the case. In sum, looking back over the entire record, I believe the commitment that was made to the parties was fulfilled.

Now that the record is closed, I also feel confident in saying it appears that the record is fully reflective of the general progression of economic events and material facts as they existed and changed over time from 2008 to the present, and particularly with respect to what occurred during the 2012-2013 school year.

Synopses of nine (9) of those District-entered background exhibits of newspaper articles are provided below, along with two (2) other District-entered background exhibits:

[Menominee] District faces \$1 million deficit; EagleHerald Marinette & Menominee 6/7/12. The Board is looking at three options. All three would include cuts in teaching and administrative staff and athletics. The "lightest" would save

\$839,000, which is less than the projected deficit of \$915,631. The heaviest would \$1,257,500 which includes cutting 14 educators which would increase class sizes and cut some academic course offerings. [Ex. B8]

Teacher layoffs likely—Menominee school leader explains how system works; *EagleHerald Marinette & Menominee*, 6/28/12. It reports that it costs \$75,000 to run the district each day, the enrollment is expected to drop by 70 students, and a \$140,000 surplus for 2012-2013 is expected. [Ex. B10].

School staff cuts proposed —Menominee panel recommends 12 cuts or reductions; *EagleHerald Marinette & Menominee*, 7/18/12. Projected deficit as of close of 2011-2012 school year is \$900,000. This led to planning for four (4) outright staff cuts and eight (8) jobs substantially reduced for the 2012-2013 school year. [Ex. B9].

District must make more cuts—State intervention seen as possible; *EagleHerald Marinette & Menominee*, 10/19/12. Karen Kerber of Kerber Rose and Associates, S.C., reported review of budget audit for 2011-2012 that district lost \$939,000. Neelis, who was not Menominee superintendent when the budget was approved, said the problem was \$665,000 that it was “dreadful, disastrous, disheartening, devastating’...most cut staff or wages. [Ex. B11].

MAPS budget in the black; *EagleHerald Marinette & Menominee*, 6/21/13. Neelis said that from the \$663,000 deficit start for the budget it is now \$205,000 because of some positive changes that included some one-time events, additional State money, and some reductions in expenditures. [Ex. B13]

MAPS showing some financial progress–District still faced with \$200,000 deficit; *EagleHerald Marinette & Menominee*, 10/19/12. “...MAPS remains one of many school districts across the state being closely monitored by Lansing under the state Deficit Elimination Plan” requirements. [Ex. B14]

Board OKs plan to get rid of deficit–State approval awaited; *EagleHerald Marinette & Menominee*, 10/19/12. Deficit now projected at \$388,951 to end 2012-2013 school year, \$129,000 of which was carried over from 2011-2012. [Ex. B12]

A District-written paper titled “FACTS” in what is captioned a “Fall 2012 letter from the Board on Bond Proposal” relates a short history of what it describes as the “stall” and the reductions in school finances during the past 10 years and describes certain cost-savings measures that have been taken. It also asserts that union employees and administrators have had at least two no-raise years, and that wages and benefits represent 86% of the budget. It specifically observes that “[t]he administrative staff has salaries that are in the middle of state averages and some below the middle.” [Ex. B16]

A District-written communication dated 5/28/13 to members of the Menominee City District Education Association claims that since 2009, the district has lost a total of \$2,624,174 in what it characterizes as “available funds”. This is said to consist of the following components: \$796,000 in reduced annual funding by the State; \$1,424,468 less per-student funds due to 203 students lost, and increases in the district’s teacher retirement contributions from 16.94% to 25.36% which is said to represent \$403,706.

The communication further states that on 6/30/12 there was a Fund Equity deficit of \$129,286 and expectation of a 2012-2013 additional \$303,638 deficit budget result, consequently the District was required to file a Deficit Elimination Plan with the State.

The communication concludes saying the District has made many cost containment proposals but no such proposals have been agreed to by the parties and thus, while “[t]he District takes no pleasure in having to [do it]” its salary and/or benefits reduction proposals must continue to be advanced. [Ex. B17]

A letter to the MCDEA dated 6/3/13, authored by Ken Pulver, Board President, but indicating it was written “as an individual only” in which he expressed some frustration due to the MCDEA’s reaction (apparently quite negative) to the issuance of the letter that is Exhibit B17 described above. In one portion of the letter he observed that while the base pay for the ‘teachers has remained essentially the same (0.5% increase) in the past two contracts” those who were eligible for moving up in the steps and lanes received those increases and thus teachers “have not taken cuts/freezes in pay similar to other units.” He observed, however, that because of passage of Public Act 54 of 2011 there has been a freeze on steps and lanes raises after the contract expires. The letter acknowledged that the District’s contract proposal has not changed since it was first put on the table in May 2012, and it claims that the District’s financial condition has actually worsened compared to what the original proposal was based on. The letter also says the Board agrees that they are “partially responsible for getting the District into this situation and it is their responsibility to get us out.” [Ex. B19]

Furthermore, the District pointed out that Federal funds being sent to Michigan have also been reduced during the last several years. Some of those dollars would have meant additional federal dollars for the State's school districts. The title and contents of the following article attests to the reduction:

"Decades population decline of 54,804 will cost Michigan federal funding" by Scott Davis; *Lansing State Journal*, 12/22/10. The article also observed that at that time the State budget deficit was projected at \$1.7 billion. [Ex. C26]

As stated earlier in this report, Mr. Neelis, who became District Superintendent during the 2012-2013 school year, opined that Menominee's deficit situation had partially grown more severe because the District had not made some critical budget reduction changes that were called for in past years. He identified three of the reasons as being: the general reduction in the funding for schools by the State of Michigan, losses in student population in the Menominee District, and increases in employer-required contributions to the State-run retirement system.

At one point the Association complained that the District's bargaining positions never changed since they put them on the table at the start of bargaining in May, 2012, even though the initial revenue and expenditure numbers in the 2012-2013 budget have shown some improvement. In other words, it is believed—even though no audited results have been received—that the amount of revenue received during the year was higher than originally expected and the costs that were incurred were less than what had originally been estimated. Specifically, the Association theorized that \$435,086 more

“uncommitted” dollars had become available in 2012-2013, and offered Exhibit 37 to explain it. In like fashion, it offered Exhibit 38 which set forth a companion analysis projected to the end of the 2013-2014 school year, which asserts that \$418,416 more revenue will likely exist at the end of that school year than what the Deficit Elimination Plan (which will be explained later) was predicting. Recognition of a likely improved economic condition was also acknowledged by Superintendent Neelis in the following quote contained in the newspaper on 6/12/13:

MAPS budget moving toward the black,; *EagleHerald Marinette & Menominee*, 6/21/2013; by Clinton Lang, staff writer . “Fortunately...the MAPS...budget situation is showing signs of breaking in a positive direction. Mr. Neelis, Interim Superintendent, was quoted as saying: ‘Financially speaking, the past few years...have been tough...We had a pretty good year. We’re definitely headed in the right direction. I didn’t think we’d be here eight months ago....To get in a positive position there’s gotta be some biting the bullet—right or wrong—that’s the way it is unfortunately . Now I don’t think the biting the bullet is going to be as bad as anticipated, but it’s still gotta happen.” [Ex. 40]

Notwithstanding this apparent improvement, the District stuck with its original proposal to the teachers. Mr. Culver revealed that some members of the bargaining unit were expressing surprise about that. But such indignation may not be merited. After all, consider the “big picture” which shows that Menominee requested wage freezes and cost constrictions for all groups of employees, and the mid-year improvement

may be nothing more than those efforts paying off because other groups signed up to the cost reducing proposals. That should not trigger a withdrawal of the District's cost reducing proposals that were still unresolved in the teachers' negotiations. The teachers did not undertake any actions to merit such favor as compared to other employees. Indeed, If such goings-on were to occur in the District, it is almost certain that would lead to resentments between employee groups, accusations of betrayal, claims of favoritism, etc., throughout the entire school district. Great damage would be done to relationships throughout the organization.

#### DEFICIT ELIMINATION PLAN (DEP)

When a local unit of government ends a fiscal year with a deficit, it is required to formulate and file a deficit elimination plan with the Michigan Department of Treasury within 90 days after the beginning of the next fiscal year. The law says that such a plan usually is for one (1) year but in no case for more than five (5) years. The applicable law is Public Act 140 of 1971.

A copy of the latest-filed DEP for the Menominee School District was given to the Association during the fact finding hearing. [Ex. G11]. An audited deficit of \$129,286 existed when the 2011-2012 school year ended. The resulting amended DEP covers the five-year period 2012-2013 through 2016-2017. It begins with the budget the District adopted for 2012-2013, which itself first accounts for ("pays off") the prior year's ending deficit. The DEP anticipates that 2012-2013 was going to end

with a fund deficit of \$205,012. For the following year, 2013-2014, the DEP shows an expected fund deficit of \$129,092; for 2014-2015, a surplus of \$15,031; for 2015-2016, a surplus of \$142, 292; and for 2016-2017, a surplus of \$157,899.

The DEP shows that the revenue received from State of Michigan sources is the lion's share of the District's revenue, and that in 2011-2012 the total revenue received from the State was \$10,377,161. For 2012-2013 the DEP estimates state revenue of \$9,794,983; for 2013-2014 it is 9,556,644; for 2014-2015 it is \$8,957,598; for 2015-2016 it is \$8,752,685; and for 2016-2017 it is \$8,590,517. [Ex. C11]

#### COMPARABLE DISTRICTS.

##### Mutually-proposed comparables:

Several weeks before the fact finding hearing convened, the fact finder and the parties had a conference by telephone to conclude discussion of certain preliminary matters. Each party expressed a desire to make Act 312-like identification of comparable school districts. The following districts ended up being mutually proposed: Breitung Township, Calumet, Gladstone, Manistee, and Negaunee. The full set of criteria that the parties used to reach their decision to jointly propose having these districts serve as comparables was not discussed with me, but it was clear that a major consideration was the total student enrollment in each district.



That particular decision struck me as very practical since about 75% to 77% of public school districts' resources come from the state government's per-pupil funding policy. This is illustrated in the following two comparisons:

District-provided exhibit titled: "Student Enrollment Blend FTE—Fall 2012" [Ex P1].

Manistee	1,694
Breitung	1,661
MENOMINEE	1,559
Negaunee	1,550
Gladstone	1,510
Calumet	1,491
<i>AVERAGE</i>	<i>1,557</i>

Association-provided exhibit titled: "Comparable District Total General Fund Revenue (2012) (& avg.)" [Ex. 10B]

Manistee	\$14,090,887
Breitung	\$13,222,750
MENOMINEE	\$13,182,351
Calumet	\$12,695,890
Negaunee	\$12,304,227
Gladstone	\$11,790,707
<i>AVERAGE</i>	<i>\$12,881,121</i>

Manistee is the only one of these districts located in the Lower Peninsula and it is notably more miles distant from Menominee than the other districts. However, in light of the more relevant reason explained below, I find that these two differences are inconsequential for purposes of this fact finding case.

The fund balances on June 30, 2013, for all of these mutually-proposed districts, show that they all have surpluses as follows: Negaunee has a \$1,619,476 surplus, Breitung a \$1,081,661 surplus, Manistee a \$955,621

surplus, Calumet a \$859,614 surplus, and Gladstone a \$777,836 surplus. It is doubtful any of these figures is an audited number at this point, so their final amounts may change. Consistent with what would be expected, the record shows that four (4) of these proposed comparable districts, all with budget surpluses, were not among the 55 districts operating under a DEP and being monitored by the State as of June 30, 2013. And although the record does not indicate whether that is also true for Manistee, it seems likely to be true and I do not know anything that suggests it is not.

Menominee, of course, per the DEP, is expected to have a \$205,012 deficit as of June 30, 2013. This difference in the “economic condition” of the fund balances of Menominee (deficit), versus the five mutually-proposed districts (surpluses), may cause some users of this report to question the wisdom of my acceding to the parties’ proposed “comparables” designation. But I remind such users that all six (6) of the districts began with virtually identical per-pupil funding and thus they had comparable total yearly revenue to operate their schools, and almost certainly were charged with trying to accomplish similar educational goals. Thus, it was expenditures in Menominee versus expenditures in the comparable districts that left Menominee with a deficit and the others with surpluses. And since each district’s expenditures are greatly influenced by the requirement to fulfill their labor agreement commitments, then comparing the Menominee parties’ proposed new contract provisions with the corresponding provisions contained in the contracts of those other districts that do *not* have deficits, is a valid exercise for the purpose

of meeting the objectives inextricably tied to this fact finding case; i.e., getting the District's finances back in order and eliminating its deficit.

So if the analyses that have been provided so far still leaves some skepticism among users of this report, I point out again, that the parties *freely and mutually* proposed these five (5) districts to be used as comparables and, as I explained earlier, I am comfortable using the examples they provide for helping me to decide which of the competing proposals the parties should agree to for inclusion in their successor labor agreement.

Menominee's unilaterally proposed comparables:

In addition to the mutually-proposed comparable districts, Menominee also unilaterally asserted that three (3) other districts are comparables. Those districts are: Durand Area Schools, Hancock Public Schools, and North Dickinson School District. Hancock and North Dickinson are further characterized as "U. P. Deficit District Comparables" [Ex. P1].

The record does not offer a specific explanation for why Menominee has asserted that these are also comparable districts, but I suspect that Durand is offered because student enrollment there is 1,615, and that is relatively close to the figures for the mutually-proposed group of districts. Also, the Durand district, like Manistee, is located in the Lower Peninsula and is about the same distance from Menominee as is Manistee. Had there not been a sufficient number of mutually-proposed comparable districts to rely upon, Durand appears to have had a chance to be accepted as a comparable, depending on its similarity in all other selection criteria the parties may have used.

Hancock and North Dickinson, on the other hand, have student enrollments of only 831 and 390, respectively. They nonetheless have been characterized by Menominee as being comparables, probably because both districts are located in the Upper Peninsula and currently have deficits. Of course, those are two characteristics that also apply to Menominee. (See, article from the *Escanaba Daily Press*, dated 6/7/13, titled 55 Schools Have Deficits? in which it reported that these were the three Upper Peninsula districts with deficits.)

If my above guess is correct about why Hancock and North Dickinson were asserted as comparables, I rule it is not sufficient for at least one big reason. Namely, that this fact finding case is much too concerned about district funding levels and their related total expenditures and spending patterns, both of which are greatly determined by total student enrollment. And with Hancock having only about one-half (1/2) and North Dickinson only about one-quarter (1/4) of the average enrollments in the mutually-proposed districts, I can also reasonably conclude that those two districts' yearly total revenues are similarly less than Menominee's and the other comparables. That is just too much less revenue than Menominee and the other comparable districts have available to run their schools. In conclusion, Hancock and North Dickinson also cannot be accepted as comparables for this fact finding case.

Therefore, the bottom line is that although all of the information received on all eight (8) districts was examined, the information reporting on what is going on in the five (5) mutually-proposed comparables was given a higher

degree of relevancy and persuasiveness during my assessment of the proposals. This may disappoint the Menominee administrators who offered the other three districts. However, that does not take away from the fact that the five districts *that were used* as the comparables had also been freely proposed by Menominee for *the very purpose they actually served*.

## OPEN ISSUES AND RECOMMENDATIONS

### **Teaching Personnel Salaries/Compensation & Contract Duration:**

The Association proposes a contract that will not expire until after the 2016-2017 school year ends. [Ex. 17] The school District is proposing a contract that will cover 2012-2013.

The School District proposes a general wage freeze for 2012-2013. It also proposes a freeze on the contract's customary lanes and steps salary progressions which apply individually, teacher by teacher based on the teacher's particular job histories and teaching qualifications. Furthermore, the District proposes general wage rate reductions of 5% for 2011-2012, which of course would continue to apply during the proposed 2012-2013 wage freeze.

The School District also proposes establishing a new 5% lower salary schedule for teachers that are newly hired after June 30, 2012. Further, it proposes terminating the voluntary retirement plan, as well as modifying the extracurricular pay provision by adding out-of-school rallies and playoff games to the current list.

The Association's wages position for 2012-2013 is for a 0% *increase* above the "un-lowered" 2011-2012 salary schedule, plus accepting the steps and lanes freezes that were proposed by the District.

For both 2013-2014 and 2014-2015, the Association's position is that its members should receive a wage increase amount to be established as a result of "continued spending on total compensation costs commensurate with recent and longstanding average spent by the district". The Association says it anticipates that for 2013-2014, the above "continued spending" formula will cost \$183,000 more than a 0% increase plus the increases paid for the normal lanes and steps progressions that would be due individual teachers. For 2014-2015 the Association proposes use of the same "continued spending" formula as for 2013-2014 and expects it will cost \$82,000. The Association pointed out that the exact amount of the increases under their proposed formula will be based on the actual audited results of revenue for the applicable school year.

The Association opposes the district's proposed 5% lower salary schedule for new teachers.

The Association proposes wage negotiations reopeners for the 2015-2016 and 2016-2017 school years.

Fact finder's recommendations on wages and contract duration:

I recommend that the parties try to achieve a settlement in the near future that will remain in effect until the end of the 2014-2015 school year. Further, the agreement should contain a firm agreement on the teachers'

wages to be paid throughout the entire period. I am particularly hopeful that the wage reopener concept can be avoided since a great deal of uncertainty about compensation has existed for a considerable amount of time already, and I believe having as long a time frame as possible when wage rates are firmly known will be beneficial for interpersonal relationships among all personnel employed in the District.

I recommend the wage settlement for both 2013-2014 and 2014-2015 be wage freezes at the “un-lowered” 2012-2013 frozen rate, but with the customary lanes and steps progression increases being paid. The deficit situation will almost certainly still exist when the 2014-2015 school year begins, and the settlement I am proposing will probably keep the teacher’s on par with what other groups of Menominee employees have accepted or have been asked to accept.

However, since the current DEP shows the expectation of a small surplus for 2014-2015, if the parties actually agree to the recommended wage freeze for that year, then whatever amount of surplus does accrue—and soon after that is definitely known—then I recommend that the parties immediately enter into a special mid-term “deficit eliminated re-opener” to celebrate that good news. Agreement should be reached on the basis of the amount of total compensation increase that is consistent with the concept contained in the Association’s “continued spending” formula. I am strongly urging use of this special re-opener regardless of what the actual original 2014-2015 negotiated wage settlement was, because I feel there has been a lot of sacrifice and there is only

so much a school district can expect its employees to endure without experiencing unwanted staff departures and other noticeable negative results in school operations.

With regard to comparables' wage rates, I believe that despite the recent constriction in wage increases for the teachers, the wage rates for Menominee's teaching staff continue to be within the range established by the highest to the lowest salary schedules of the mutually-proposed districts. I expect that will continue to be the case even if some of the additional "lean" settlements being contemplated are eventually agreed to.

The contract duration term that is being recommended, i.e., two (2) years *forward* until June 30, 2015, is closer to the average length of the durations of the comparable contracts, than is the District's position for a one (1) year duration (*backwards* for 2012-2013), and the Association's position for a lengthy contract duration through 2015-2016.

I recommend that the parties agree to the District's proposed new 5% lower salary schedule for new hired teachers, however, that change should be limited to a duration period that terminates when the deficit situation no longer exists. My recommendation is that at the start of the first school year when no deficit exists, the teachers under that 5% reduced-salary schedule should be moved into the applicable lanes and steps salary schedule covering the veteran teachers. Eliminating this two-tier situation will lessen the possibilities of resentments developing between the "new" teachers and the veterans. For, if it lasts too long, then some of the "new" teachers may begin to regard their



situation as one of “equal qualifications, equal work, equal responsibilities, but not equal pay.” That would be bad for the organization.

I recommend extracurricular compensation remain unchanged

Finally I recommend that if the District’s proposed termination of the early retirement option is to be adopted, the parties should consider not having it take effect until some future time when the current teachers who may be making plans to take the option, have had a reasonable amount of time to retire under the rule.

**Medical Insurance Benefits.**

The District is proposing that no change be made in current benefits offerings. This will allow the MESSA Choices II plan, or employer contributions to the medical benefits plans in keeping with the annual cost limitations for calendar year 2013 (dated September 18, 2012), i.e., the Act 152 “hard cap” amounts as shown below.

Beginning 1/1/ 2012: \$5,500 single coverage  
\$11,000 individual & spouse  
\$15,000 family coverage.  
Beginning 1/1/ 2013: \$5,692.50 single coverage  
\$11,385 individual & spouse  
\$15,525 family coverage  
*(This represents the State’s required law-calculated 3.5% increase.)* [Ex. 18]

The Association is proposing to maintain the current plan until 12/31/13. Beginning 1/1/14 an option originate allowing staying with the

current plan or switching to MESSA ABC Plan 1 which includes a \$1,250/\$2,500 deductible with an HAS option. Those selecting the MESSA will receive \$1,000 for single and \$2,000 for employee & spouse or family, into their HSA. For those opting to stay out of the MESSA ABC Plan 1, the Teachers 2012-2013 and 2013-2014 position matches the District “hard-cap” position. [Ex.19]

Similarly (if not identically) the Association is proposing that part-time teachers’ current health care coverage benefits continue until 12/31/13. Beginning 1/1/14 they are proposing they get the option to stay with the current plan or switch to MESSA ABC Plan 1 which includes a \$1,250/\$2,500 deductible with an HAS option. Those selecting the MESSA will receive \$1,000 for single and \$2,000 for employee& spouse or family, into their HSA. For those opting to stay out of the MESSA ABC Plan 1, the Teachers 2012-2013 and 2013-2014 position matches the District “hard-cap” position. [Ex. 19A]

All the various details of complex and comprehensive offerings of health care benefits is always difficult to compare and measure accurately both within the organization and from one employer’s plan to another employer’s plan. Nonetheless, I made by best effort at such an assessment and I conclude that the settlement proposed by the Association is more consistent with what several of the mutually-proposed comparables offer their teachers and I recommend it be the basis for the parties’ resolution of this issue.

**Non-Medical Plan Benefits.**

The District is proposing that no changes be made in current non-medical benefits levels, which means it will pay 20% of non-medical benefits premiums for all teachers, for both those who choose medical and those who do not. Furthermore, the District proposes no change in the amount of the CIL payment which is as follows:

If less than 5 opt out, CIL to be \$2,000 per year;

If 5, 6 or 7 opt out, CIL to be \$3,400 per year;

If 8 or 9 opt out, CIL to be \$3,800 per year;

If 10 or more opt out, CIL to be \$4,800 per year.

The Association is proposing the same medical benefits plan as the District is proposing and the same 20% payments responsibility for non-medical benefits premiums. However, it is proposing changing the CIL payment to \$4,800, irrespective of how many teachers opt-out of medical benefits. Thus, the proposals are identical except for the CIL payment amount.

The Association observed that as of 4/10/2013, nine (9) employees are accepting the current CIL payment. Ex. 20]

The CIL payments being made in the mutually-proposed comparable districts vary greatly. The benefits the employees are receiving for the CIL because they "opted out" are complex, and none of the districts seem to offer the same level of benefits. The CIL payment amounts vary considerably, from three (3) of the districts paying lesser amounts than Menominee (\$1,200, \$2,400, and \$3,500 per year) and two (2) of them paying more (\$7,174 and \$10,081 per year). [Ex. 20 and CBAs]. Those two higher amounts represent

percentages of the cost of one of the the “regular” coverages offered in the labor agreement and are subject to change year to year, whereas Menominee and Breitung pay static amounts that will remain unchanged throughout the life of the contract. The bottom line is that I find it nearly impossible to use the comparison information to confidently assess the merits of the parties’ competing proposals.

In conclusion, it’s a close call in light of everything. The total cost difference is likely to be negligible, yet probably in favor of the District’s “no change” position. In light of so much uncertainty on this issue, it seems best to leave things unchanged rather than to adopt a change that will yield less than 9 members a chance of receiving \$1,000 to \$2,800 more in CIL payments and about 82 members possibly wondering how that change may have negatively impacted them. I recommend the parties agree to the District’s position of “no change to the CIL” payments.

**Tuition Reimbursement.**

The District is proposing to reduce the maximum payment allowed from \$700 to \$500 and to change the time for getting approval to take a reimbursable course to “prior to May 15<sup>th</sup>”.

The Association is also proposing to reduce the maximum payment allowed from \$700 to \$500, but it proposes retaining the current contract provision that allows the teacher to seek approval by any date, so long as it is done prior to registering for the course. [Ex. 11]

I recommend the Association's position on this subject be adopted, even though the District indicates it wanted to make the change to the approval date so as to better allow it to manage and plan for its cost obligations. That is certainly a laudable goal, but what the District is proposing seems like it would be quite a change and very restrictive on the teachers. Finally, none of the comparable districts have a rule as limiting as the one being proposed by the District.

**Earned Comp Time for Excessive Parent/Teacher Conferences.**

The teachers' association is proposing to raise the requirement to receive this compensation from 22 to 26 students. The rate of compensation is proposed to remain the same.

B. Quaak and J. Wurth, both who are teachers, testified in support of the proposal and observed that elementary grades teachers schedule "one-on-one" conferences, whereas secondary grades teachers have an "open" meeting with all parents and that means the elementary teachers have a greater workload with respect to the amount of time that must be committed to parent/teacher conferences.

The administration is proposing to raise the requirement to receive compensation from 22 to 35 students and is proposing the rate be 15 minutes of compensation for each student over 35 students.

The contracts in the comparable districts do not have any provisions covering the issue. (Note: Based on the importance this subject seems to have in Menominee, I suspect that the absence of this subject in the other districts'

labor agreements may not mean that such compensation is not paid in other districts. Also, several different qualifying-for-pay rules may exist apply. Regardless, I have not allowed my speculation about this to influence my recommendation.)

I recommend that the Association's proposal be adopted. The testimony provided by the two teachers has left me believing the workload created by this teaching requirement can be substantial that this is an important issue for elementary school teachers who can spend considerable time in such conferences. Yet despite that, if adopted, the Association's proposal likely will reduce its member's compensation earning possibilities and resultant District costs, (although probably not as much as the District's would have reduced costs). The recommendation for the parties to accept the Association's position seems like a "reasonable compromise" position for the parties to work together on.

**Absences for M.E.A. Conferences (Association Days).**

The District is proposing the elimination of these days while the Association is proposing that no changes be made to the contract provisions.

Teacher B. Quaak testified on this issue. She indicated that the District's practice of covering for absent teachers by using substitute personnel lowers costs. She said the total cost of the benefit is about \$12,000 per year.

Most of the comparable districts allow more days to be used than Menominee, with the average number being noticeably higher.

I recommend the current provision be maintained.

**Telephone Facilities.**

The Association proposes that private telephones, with long distance capability, be made available to conduct school business. It proposes that three (3) such phones be made available in Central, three (3) in Blesch, and five (5) in the high school. [Ex. 14].

The District agrees with the need for private telephones and seems to agree with the type of usage rules the teachers are envisioning, but it does not agree that the District should be required to provide the number of telephones proposed by the teachers.

I have no doubt that both parties want to resolve this issue with a number of phones that will assure that the high quality of education in Menominee is not harmed. Still, there is no agreement on what that number of phones should be.

So, recognizing that the number of telephones installed in District buildings is a logistics and cost concern for the Administration, and because I do not believe the District will unreasonably scrimp on the number of telephones it thinks are needed by teachers to do their jobs effectively, I recommend that the parties agree to language that allows the District to determine what is the "reasonable" number of telephones to be supplied for use at each location. Then if later there is a need to resolve a dispute on this subject, the "reasonable" standard will be what an arbitrator, mediator, or judge would apply.

**Compensation for Non-School Hour Duties.**

The District proposes that all compensatory time be converted to personal leave time and used before the end of a school year or then get treated in the same way as personal leave in contract Section 14.2.

The Association proposes that no change be made in the current practice. [Ex. 15]. Brenda Quaak, teacher, testified in support of the Union's position.

Two (2) of the comparable districts do not have contract provisions addressing comp time for such duties. The other three (3) comparables have varying rules, but all permit them to be built-up and be carried over to a future school year.

I recommend that the current rule be retained. [Ex. 15]

**Class Size Limits Compensation:**

The District is proposing:

“Article 7.1 Class Size Limits: It is recognized by the Board and the local Association that the pupil-teacher ratio is an important aspect of an effective program. Therefore, they agree that every effort will be made to keep class sizes as an acceptable number in accordance with district administrative regulations and as dictated by the financial condition of the district, the building facilities available, and the best interest of the district as deemed administratively feasible.

“The number of students in a learning lab will not exceed the reasonable capacity of a double classroom.”

[Ex. N1.12]



The Association is proposing:

“Article 7.1 Class Size Limits: The School District will meet pupil to professional ratios of 24 to 1 in grades DK-4; and 25 to 1 in grades 5-12. For the purposes of class size limits, all co-taught/cooperative teaching projects will be recognized as a single professional staff. Class sizes including high school learning labs, will not exceed 27 to 1 as of the start of each semester Physical education will not exceed a daily load of 170 students. Class size limits in the following areas will be: Junior High School Band – 90, High School Band – 90; Junior High School Chorus – 80; High School Chorus – 100; Junior High PE – 55. When it becomes apparent that the exception to this limitation may be requested, the District will convene a meeting of a committee consisting of the Superintendent, the Building Principal, and leadership of the Association.

“In the event that Class Size limits are exceeded as specified, and agreed upon by the Association, the teacher will be given a choice of the following remedies:

1. An instructional aide will be assigned for the class period where the student count is in excess of the limits stated.
2. A teacher will earn 1 period of comp time for every 3 periods they are assigned where the student count is in excess of the limits stated.
3. A teacher will be paid a premium of \$12 for each period they are assigned where the student count is in excess of the limits stated in Article 7.1. The premium will be discontinued when the amount of funding the district receives from the state for the student equals the premium paid to the teachers(s). Once the funding ceiling is reached, a teacher shall not be entitled to the other remedies.

“Until the end of the 2016-17 school year, “remedy options” 1 and 3 shall be suspended.”

The Association points out that its proposal suspends remedy options #1 and #3 which it claims are the two most expensive.

The District's proposal is quite similar to what the Breitung district's contract provides, but the Association's proposal is more consistent with what the majority of the comparable contracts provide.

I recommend the parties adopt the Association's proposal, including the temporary suspension of the remedies as indicated. I find that asking the teachers to change from hard and fast rules about class size limitations, and what will be done when they are being exceeded, to a general statement of intent to address excesses, is asking the Union to accept too big a difference from the rule that now exists.

**Miscellaneous Provisions:**

The District is proposing two modifications in contract Article 23 "Miscellaneous Provisions". The first is:

Article 23.3 "Provision Contrary to law: If any provision of this agreement or any application of this Agreement to any employee or group of employees **or to the District** shall be found contrary to Law, then such provision or application shall not be deemed valid and subsisting except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect." [Ex. N1.14]

I find that adding the proposed words "or to the District" is language that could be helpful to the parties in resolving a dispute that may arise. I recommend the parties adopt the District's proposed language.

The second is:

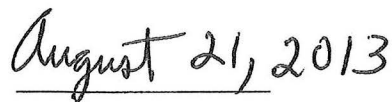
Article 23.8 “Effective Date”: It is understood that all provisions of this contract become effective on **the date that both parties have signed the “Duration of Agreement” page in the Master Agreement after ratification by both parties, and with respect to retroactivity of any of the provisions from the date the “Duration of Agreement” page is signed, those provisions that are governed by Public Act 54 of 2011 and Public Act 103 of 2011: Section 15 (3)(i) the District will be in strict compliance of these Public Acts. July 1, 2008, retroactively from the date of ratification by Menominee Area Public Schools Board of Education.**

Since this is the first labor agreement the parties will be entering into since the big changes in labor laws contained in PA 54 and PA 103 were passed, I believe I understand the goal of the District’s proposal in this “Effective Date” paragraph. If I am correct, I think it has merit. Nonetheless, I find the proposed language is excessive, somewhat confusing, and superfluous in some spots.

I believe the two changes are clear and almost certainly will be properly applied by any arbitrator or judge, therefore, I recommend that the parties simplify the language that the District is proposing by merely adding a phrase to the old provision, such as: “subject to the limitations imposed by PA 54 of 2011 and PA 103 of 2011”.



Roger N. Cheek  
Fact Finder



Date