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BY APPOINTMENT OF

THE

LABOR MEDIATION BOARD

STATE OF MICHIGAN

In the Matter of Fact Finding Between:

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 547, AFL-CIO

-and-

CASS CITY PUBLIC SCHOOL DISTRICT

David G. Neilbrun 9-17-69

Cass City Public School District

REPORT

Introduction

Based on the Union's application for Fact Finding, a hearing was held at the office of the Cass City Public School District on September 5, 1969. Mr. Joseph O. Jordan represented the Union and Mr. Alan Luce represented the School District.

The Union had been certified on March 12, 1968 as exclusive collective bargaining representative for a unit of Bus Drivers, Cooks and Custodians employed by the School District. This certification was based on a card check conducted by the State Labor Mediation Board showing that 21 of the 31 employees in the unit had submitted valid authorization cards.

A one year contract, which expired June 30, 1969, was reached between these parties. This contract contained a "Maintenance of Membership" clause which read:

> "An employee who is a member of the Union at the time this Agreement becomes effective shall as a condition of employment continue membership in the Union for the duration of this Agreement to the extent of paying an initiation fee and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union."

The issue presented for Fact Finding is the one remaining unsettled issue of the negotiations for a new contract; namely the proposal of Local 547 for full union security language and the counter-proposal of the School District to continue the Maintenance of Membership clause.

Facts and Contentions

The Union contends that its duty to provide equal and non-discriminatory representation to all members of the bargaining unit entitles it to compensation for the cost of such services by union security provisions requiring membership in the Union, or, in the alternative, payment of an amount equivalent to dues.

In adjoining public school systems in which Local 547 represents employees the following pattern of union security provisions exist:

Elkton-Pigeon-Bayport	Full Security
Bad Axe	Agency Shop
Marlette	Maintenance of Membership
Reese	Agency Shop
Lakeville	Maintenance of Membership
Mt. Morris	Agency Shop
Westwood Heights	Agency Shop

Of the 150 labor agreements entered into by Local 547, approximately 10 have "agency shop" provisions and the Union's experience has been that former non-members invariably join the Union once they become obligated, as a condition of continued employment, to at least pay an amount equivalent to dues. The Union believes that this fact exposes the objections to agency shop as economic, not philosophical.

The Union also compares union security provisions with the basic source of school board revenues by describing the imposition and collection of property taxes for school operation as akin to a condition attaching to the ownership of real estate.

The School District engages in collective bargaining with a teachers bargaining unit in which union security was sought in each of the last 2 years but was not granted.

The School District notes that the St. Charles school system is another nearby public employer adhering only to maintenance of membership provisions and that the union security provisions in effect in the Reese school system reflect the personal labor orientation of key officers and members of that board of education.

The Public Employment Relations Act is noted as providing for selection of a collective bargaining representative by free choice thus suggesting, the School District contends, that this free choice should be extended to the question of membership or non-membership (including equivalency payments) in a union.

The School District asserts that it must not be a party to forcing an obligation on any of its employees and that support of a union by a public employee should be a matter of individual decision.

It is sufficiently clear that the proposed union security language is a proper and mandatory subject for bargaining. In its opinion in Oakland County Sheriff Department and Oakland County Board of Supervisors and Metropolitan Council No. 23, AFSCME, AFL-CIO, Case No. C66 F-63, the State Labor Mediation Board stated:

> "I conclude that any agency shop provision in a collective bargaining agreement is not prohibited by the Public Employment Relations Act; therefore, the agency shop is a mandatory subject of bargaining. This is the type of contract provision whereby an employee in the bargaining unit chooses not to become a member of the labor organization which is the exclusive bargaining representative may be required, as a condition of employment, to pay to such labor organization an amount equal to the union membership fee and dues."

The more difficult question, and the one present in this Fact Finding, is whether such should be granted. National policy as reflected in Section 8(a)(3) of the National Labor Relations Act allows union security provisions to be agreed upon between employers and unions. The agency shop has specifically been upheld in the private sector by the U.S. Supreme Court in NLRB vs. General Motors Corporation, 373 U.S. 734. As a non "right to work" state it is typical to find full union security provisions in private labor agreements in Michigan. On the other hand Section 14(b) of the National Labor Relations Act exempts any state having a right to work law of which there are now approximately 20. Recent attempts to repeal Section 14(b) in Congress were notably unsuccessful. Furthermore arguments based on governmental sovereignity and the merit nature of public employment cast some doubt on whether principles of traditional labor law can be readily transferred to the public sector.

Recommendations

One of the most rapidly expanding doctrines in labor relations law is that of equal representation by unions. It is implicit in Local 547's certification that it provide fair and complete representation of all employees both in contract negotiations and contract administration.

Furthermore a stable bargaining relationship has been established between these parties with no sign of discord or any move toward decertification as allowed under Section 12 of the Public Employment Relations Act.

Union security provisions of at least the type sought in the alternative are common in school districts of the immediate area.

Upon consideration of all the facts here involved I believe the sharing of the expenses of representation by all members of this bargaining unit is both proper and desirable. The Union's alternate proposal of agency shop would result in such equal sharing while still allowing the public employee to decline becoming a union member if this was his wish. 2 years ago I recommended a qualified form of agency shop in a Fact Finding case (Bay City Public Schools and Bay City Education Association, Report dated September 4, 1967) and the intervening passage of time has only strengthened arguments favoring the agency shop in public employment (Southgate Public Schools, Wayne County Circuit Court Civil Action No. 118,812, decided November 22, 1968).

On the other hand the implementation of agency shop provisions is far from clear as a legal matter. For this reason I recommend that the Union agree to language saving and holding the School District harmless from any financial liability that might result from damages or back pay awarded to any person who successfully contested the agency shop clause. This indemnification should not extend to legal or representation fees incurred by the School District or to court costs or other expenses of litigation since the choice of whether, and to what degree, a contest of the agency shop provisions would be resisted should remain within the discretion of the School District. The Union's interest in not becoming liable could be thus preserved through its right to intervene as an interested party.

Finally I believe a transitional period should be allowed before agency shop provisions become effective in order that they be fully understood by affected employees and to permit those with strong personal convictions to the contrary to have the opportunity of fully considering their future course of action.

In summary I recommend that the parties conclude their current negotiations with a contract embodying an agency shop clause. This should require equivalency payments of dues and assessments commencing on or before the 31st day of employment or following the effective date of the clause, whichever occurrs later. The clause should be effective December 1, 1969. Discontinuance of services and dismissal from employment should be the consequence of an employee's failure to meet this condition. The Union should hold the public employer harmless for damages and back pay; provided the Union has received timely notice from the School District of the commencement of any action formally or legally contesting such discontinuance of services.

DAVID G. HEILBRUN
Hearings Officer

Dated at Southfield, Michigan

this 17th day of September, 1969.