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LABOR MEDIATION BOARD  
LABOR RELATION DIV.

FACT FINDING PROCEEDINGS

BETWEEN

CHIPPEWA VALLEY  
BOARD OF EDUCATION

AND

CHIPPEWA VALLEY  
EDUCATION ASSOCIATION

Michigan State University  
LABOR AND INDUSTRIAL  
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REPORT OF FACT FINDER

DUDLEY E. WHITING, HEARINGS OFFICER

APPEARANCES

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*Chippewa Valley Board of Education*

### REPORT OF FACT FINDER

Pursuant to an application by the Association, the undersigned was appointed by the Labor Mediation Board as its hearings officer to conduct a fact finding hearing and make a report with recommendations upon the matters in dispute.

Accordingly a hearing was held on September 19, 1968 at the office of the Board of Education at 19230 Cass Avenue, Mt. Clemens, Michigan. Both parties were represented and afforded opportunity to present evidence and arguments.

### THE ISSUE

The only unresolved issue is the proposal by the Association for an agency shop provision in the current agreement.

The basic contentions of the Association are (1) that such a provision is needed because of the persistent refusal of some teachers to join the Association, although sharing the negotiated benefits, (2) that such a provision has been held to be lawful, and (3) twelve of the nineteen school districts in the County of Macomb in which agreements have been concluded have provisions for an agency shop.

The basic contentions of the Board are (1) that the proposal is inconsistent with the Teacher Tenure Act and other statutes, (2) that under such act the Board is liable for pay to teachers discharged, unless shown to be for just cause, and the Board should not be required to assume this liability by agreement upon a provision of questionable legality under that act, (3) that it does not want to be forced to discharge good teachers, (4) that it does not want to fight the Association's legal battles, and (5) that it

considers requiring teachers to contribute to unwanted purposes or ideological causes of the Association to be inherently evil and unconstitutional.

#### ANALYSIS

The Michigan Labor Mediation Board in Case No. C66 F-63 held that an agency shop provision is not prohibited by the Public Employment Relations Act, and is a mandatory subject of bargaining.

There certainly has been widespread, if not almost universal acceptance of the union shop in private sector collective bargaining in this area and there is no doubt that union security is a primary goal of all unions. Hence it is not surprising that the demand for and the incidence of the form of union security permissible, agency shop, has been developing rapidly in public employment collective bargaining.

Union security is frequently considered to be a natural, if not essential, concomitant to the development of responsibility in employee collective bargaining representatives. The possible achievement of such responsibility more than offsets any conceivable infringement of individual rights involved therein.

It is clear that there has not yet been any definitive determination by the State Tenure Commission or the Courts as to whether the dismissal of a teacher for refusal to comply with an agency shop contract provision constitutes a discharge "for reasonable and just cause" within the meaning of the Teacher Tenure Act, and I am without authority to make such a final determination. Hence an employer acting in conformity with such a provision does so at the peril of

liability for pay under the act and the expense of litigating the question.

No valid reason appears for requiring the employer to assume such contingent liabilities. This has been recognized by the Michigan Education Association, because ten of the twelve Macomb County school district contracts, exhibited herein by the Association, contain some provision for relief therefrom or amelioration thereof. The Roseville district agreement provides for an agency shop provision to be effective when such is determined to be legal by a court of competent jurisdiction.

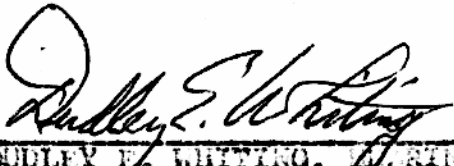
This latter type of clause eliminates the legal cost and pay liability contingencies for the employer and, in my judgment, would obviate those objections of the Board which have merit in the view of a reasonable person. Accordingly I find this to be an appropriate and reasonable solution to the issue presented and make my recommendation accordingly. Under this kind of recommendation the Association will have the burden of obtaining a prompt determination of the legal question involved at its own expense. This is reasonable and proper.

#### RECOMMENDATION

I recommend that the contract contain an agency shop provision, in accordance with the proposal by the Association, to be effective only upon a final administrative or judicial determination that

discharge pursuant to such a provision is not inconsistent with the provisions of the Teacher Tenure Act.

Dated at Detroit, Michigan this 4th day of October, 1968.

  
DUDLEY E. WHITINO, CHAIRMAN