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STATE OF MICHIGAN
LABOR MEDIATION BOARD
LABOR RELATIONS DIVISION

In re:

GLADWIN BOARD OF EDUCATION
-and-
GLADWIN EDUCATION ASSOCIATION

FACT FINDING OPINION AND RECOMMENDATIONS

George T. Roumell, Jr., Fact Finder

APPEARANCES:

GLADWIN BOARD OF EDUCATION

Dr. John Bruce, Superintendent of Schools
Bruce V. Lyon, Principal, Gladwin High School

GLADWIN EDUCATION ASSOCIATION

Ben Munger, Michigan Education Association
Bernice Ritchie, Gladwin Education Association
Raymond K. Many, Gladwin Education Association
Stanley Smith, Gladwin Education Association
R. William Dunham, President, Gladwin Education Association
Richard Johnson, Gladwin Education Association

On Petition filed by the Gladwin Education Association and granted by the Michigan Labor Mediation Board, the undersigned was appointed Fact Finder in the dispute between the Gladwin Board of Education and the Gladwin Education Association. At the hearing on the dispute, the parties stated that there were four issues involved in their dispute.

In an effort to resolve their dispute the parties at open hearing agreed to be bound by this fact finding report and recommendations prior to any knowledge as to its contents. Thus, the Board of

Gladwin Board of Education

Education of Gladwin has agreed to be bound by this fact finding report and recommendations and will follow same. Likewise, the Gladwin Education Association has agreed to be bound by this fact finding report and recommendations and agrees to follow same.

As to each of the four issues, I make the following findings and recommendations:

Binding Arbitration. The basic issue as to arbitration between the parties is the type of arbitration to have as a terminal point in the grievance procedure. The Board takes the position that there should be voluntary arbitration, whereas, the Association urges compulsory arbitration.

From the Board's point of view the Board feels that there should be certain Board prerogatives, and that compulsory arbitration deprives the Board of its prerogatives.

On the other hand, the Association argues that there must be an end to all grievances; that if either party believes strong enough in a grievance they should have the right without the veto of the other party to take the matter to compulsory binding arbitration. In support of their position, the Association submitted an exhibit listing some twenty school districts in the surrounding area, including Beverton, the only other school district in Gladwin County, having compulsory binding arbitration.

It is true that the Attorney General of the State of Michigan rendered Opinion dated May 26, 1967, Opinion No. 4578, which would seem to indicate that a public employer cannot agree to binding arbitration. But this Opinion has been challenged both in the courts and before the

Michigan Labor Mediation Board. In its famous case, Oakland County Sheriff's Department, CCH Labor Law Reporter, ¶49,912, the Labor Mediation Board unanimously rejected the contention that a public employer cannot agree to binding arbitration. In the Oakland County Sheriff's case, the Board made it very clear that as far as a grievance procedure is concerned binding arbitration is certainly permissible on the part of a public employer.

Not only is this the position of the Board but it is the position of a distinguished circuit court in Michigan, to-wit: the Berrien County Circuit Court. In Local 953, International Union of American Federation of State, County and Municipal Employees v. School District of City of Benton Harbor, 56 L. C. ¶51,775, Judge Byrnes, rejecting the Attorney General's opinion held that binding grievance arbitration was permissible. In so doing, Judge Byrnes said (at p. 65, 980):

> "The Attorney General in his said opinion states, '...it is abundantly clear that the Board of Education is not required by that Act to agree to a proposal or be compelled to make a decision.' This is what this court has just stated. But this applies before the contract, if any, is made. The Attorney General does not state whether once the concession is voluntarily made by the public employer, as was done by this defendant, that the concession (i. e., binding arbitration) is not enforceable. The Attorney General's opinion is as to conditions and rights before the contract, not after the contract itself is voluntarily made, which is this present cause."

As I read the Attorney General's Opinion, the Attorney General's Opinion is not addressing himself to compulsory binding

arbitration as a terminal step in a grievance procedure but rather is speaking of the foregoment of the basic right to bargain before the contract is entered into which is entirely different. Apparently, at least one circuit court and the experts of the Labor Mediation Board agree with this interpretation.

I go one step further. Compulsory binding arbitration has been favored by no less a body than the Supreme Court of the United States as a means of resolving industrial disputes arising from individual grievances. See the now famous trilogy, United Steelworkers of America v. American Manufacturing Company, 363 U. S. 564(1960); United Steelworkers of America v. Warrior & Gulf Navigation Company, 363 U. S. 574(1960); United States Steelworkers of America v. Enterprise Wheel & Car Corporation, 363 U. S. 593(1960).

As a matter of fact, it is my view as expressed by the Supreme Court of the United States as reiterated by the Labor Mediation Board and the Berrien County Circuit Court, that it is a matter of public policy to favor arbitration both voluntary and binding as a means of bringing an end to disputes.

This concept of compulsory arbitration is even more appropos in teacher contracts because by statute apparently (although I do not rule on this point) it is illegal for a teacher to strike. In the aforementioned trilogy of cases the Supreme Court said that a compulsory binding arbitration clause was the quid pro quod for a no strike pledge.

If teachers are prevented from striking, and they have a genuine grievance, this grievance should be processed through a grievance procedure that terminates in compulsory binding arbitration. Such a procedure is the quid pro quod for no strikes. By making this

statement I am passing no judgment on the negotiation procedures in negotiating a contract. I am speaking primarily about grievances that arise during the course of a contract.

Furthermore, as I indicated, private industry in many of their labor contracts favor compulsory binding arbitration as a way of resolving disputes peacefully without the resort to strikes and the loss of production. Likewise, compulsory binding arbitration should be a way of resolving disputes peacefully in public employment to avoid the shut down of schools and other public essential services.

Not only do I express the above basic philosophy but when compared with what other school districts are doing in the surrounding area it is inescapable that compulsory binding arbitration is nothing unique. Gladwin will not be pioneering in establishing such clause, but instead would be doing what the majority of school districts are now doing.

This becomes even more obvious when one considers the clause that the teachers have agreed to accept in mediation prior to fact finding. The clause provides that the initiator of the arbitration process pays all costs whether he wins, loses or draws. This factor alone will deter the use of the arbitration procedures. It will only make its use available under the most utmost and trying of circumstances. This procedure alone should alleviate any fears on the part of the Gladwin Board of Education that its prerogatives will be interfered with. It will be only under the most trying circumstances that an arbitration case will be brought to begin with. It is my doubt whether arbitration will be used during the first year of this contract because of the costs. Furthermore, it the Board is confident of its position in any given grievance it has

no fear of arbitration because arbitrators do not willy-nilly reverse school board positions. On the other hand, if the Board takes action that is out of line, so to speak, then they deserve to be reversed by an arbitrator.

I am sure that after a year's arbitration under compulsory binding arbitration the Board will realize that it does not infringe its prerogatives and is, in effect, a good safety valve that permits peaceful labor relations and the uninterrupted continuation of school. It is in the best interest of all parties concerned, it is consistent with the modern thinking in public employment labor relations and is consistent with a long standing position of most industry.

For the above reasons, I am recommending the following clause which I think is very favorable to the Board, but is a clause that the Education Association has agreed to:

> "In the event the grievance is not settled in Step 4, either party may, within fifteen (15) calendar days, request that the matter be submitted to an Impartial Arbitrator mutually selected by the parties in accordance with the rules of the Michigan Labor Mediation Board from a panel of arbitrators submitted by the Board. The decision of the Impartial Arbitrator shall be final and binding on both the parties. The Impartial Arbitrator shall have no right to amend, alter, or change the terms of the agreement. The fees and expenses, if any, of the Impartial Arbitrator shall be borne by the party initiating the request for arbitration."

The above language will replace Step 5 of the previous contract.

Pay Scale. Unlike some school board-teacher disputes that I have had the privilege of being involved, there is really no serious dispute as to pay scale between the Education Association and the Board. The only dispute is whether there should be a premium paid at the B. A. + 15 and M. A. + 15 steps. Previously there has been no B. A. + 15 and M. A. + 15 steps in Gladwin.

The Board argues that the reason for this is that it has an excellent pay scale for a school district of its size, and that with its present pay scale it should not be paying for the B. A. + 15 and M. A. + 15. The Association argues, that there are some school districts that do have a B. A. + 15 and M. A. + 15, including the nearby Beaverton system. But the fallacy of the Association's argument is that Beaverton's scale is less than that of Gladwin's. Furthermore, it is not universal that Board pay a B. A. + 15 step or M. A. + 15 step.

After weighing all the issues on this point I will recommend that the salary schedule as proposed by the Board be adopted in full.

Extra Curriculum Pay. The parties have agreed on all extra curriculum positions but two, to-wit: the band director and the student council advisor.

In regard to the band director, the Association seeks an increase from eight to ten percent of base salary. The argument is that the band director spends a great deal of extra curriculum time in his work, including time during the summer. Apparently band is a very important project in Gladwin. Not only is it an educational program, but it has certain civic value. In addition, in the past Gladwin has

had difficulty attracting a band director. Under these circumstances I believe that the request of the Association is fair, and, therefore, I shall recommend same as to the band director.

A request is also made to increase the student council advisor from three to five percent of his base salary on the grounds that he handles a great deal of money with the students and spends considerable time as advisor to the student council.

After listening to the Association explain the duties and responsibilities toward the student council, the need for developing the student council and the student responsibilities developed in such work, I am convinced that the modest increase proposed by the Association for the student council advisor is fair and justified, and, therefore, will so recommend it.

Retirement. The teachers have requested a retirement program based upon half of their accumulated sick pay leave when they retire from the system. Many districts do provide this method of a retirement program. Other districts argue, however, that this is not proper because sick pay is for sick pay purposes and not for retirement, and that there should be a separate retirement program. I give no opinion either way on this proposition. However, since the issue is so basic and is one that should be bargained out in collective bargaining, I am declining to recommend the Association proposal at this time. This is particularly true in view of the fact that there is a new administration at Gladwin, and it may be that after intensive collective bargaining next year the issue of retirement can be resolved. I think it is in the best interest of all that the issue of retirement be delayed for another year, but I do think that the parties should give serious

consideration at the next negotiations to developing an adequate retirement program because there is value in keeping experienced teachers.

George T. Roumell, Jr.
Fact Finder

Dated: October 1, 1968