7/9/84

1199

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF
THE FACT FINDING BETWEEN:

MERC Fact Finding
Case No: D83 L-2731

GRAND BLANC SCHOOL DISTRICT

-and-

SERVICE EMPLOYEES INTERNATIONAL
UNION # 591

Ildiko Knott

Grand Blanc Community Schools

INTRODUCTION

Pursuant to Section 25 of ACT 176 of Public Acts of 1939, as amended, and the Commission's regulations, a Fact Finding hearing was held regarding matters in dispute between the above parties on June 4, 1984, at the Grand Blanc School District Administration offices in Grand Blanc, Michigan. The undersigned, Ildiko Knott, is the Fact Finder herein.

The Grand Blanc School District shall hereinafter be referred to al the "District" and the Service Employees International Union # 591 as the "Union".

APPEARANCES

FOR THE DISTRICT:

Gary J. Collins, Esq.

John Goldner,
Asst. Superintendent

R. Harper

FOR THE UNION:

William Barrett,
President

Jeff Hillard,
Chairman

John Thompson,
Vice President

Clayton Neighbors,
Recording Secretary

Dave Landskoener,
Vice Chairman

BACKGROUND

The prior collective bargaining agreement between the parties expired on August 31, 1983. That bargaining agreement covered the periods of September 1, 1981, to August 31, 1983. An extension of that contract was agreed to and several subsequent extensions were signed, the latest one at the pre-hearing conducted by the Fact Finder on April 25, 1984.

Negotiations between the District and the Union began in September of 1983, after the first contract extension. One tentative agreement was signed in October. The last formal negotiation session took place on November 16, 1983, in which the District's final offer was rejected by the Union. The services

of a State Mediator were sought and a two hour mediation session took place on January 10, 1984, under the auspices of Mediator Leon Cornfield. The outstanding issues were not resolved and no further negotiations sessions took place with the parties declaring themselves at impasse. Due to the fact that the parties readily extended the contract, there was no threat of a strike in this case.

The Union filed a petition with the Michigan Employment Relations Commission for Fact Finding on February 8, 1984, listing as unresolved issues in dispute fourteen areas (attached later herein).

The Union, Local #591 of the Service International Union, AFL-CIO, represents 54 maintenance employees including Custodians I, II, III, Ground Crews, Warehouse Delivery, Pool Operators, Tradesmen, Mechanics, and Leaders.

A pre-hearing was scheduled in this matter and took place on April 25, 1984, at which agreement was reached with regard to the items which would be presented to the Fact Finder. The parties agreed to confine their presentations to the fourteen issues as enumerated by the Union in its petition for Fact Finding.

On June 4, 1984, a hearing was conducted to take testimony and evidence with regard to the disputed issues. Each side had full opportunity to be heard and to place on the record material and factual evidence to advance their case. The parties waived

post-hearing briefs and did not desire a detailed analysis of the reasons for findings and recommendations. The discussions and findings in this report are based on the material as presented.

SPECIAL NOTE ON CRITERIA USED

Fact Finding is most productive when the Fact Finder can reach objective results based on evidence marshalled and produced by the parties. It is incumbent on the parties and helpful to their cause to advance information in a variety of ways which have become widely accepted standards in Fact Finding. Some of these are comparison of prevailing practices, ability to pay, living standard, productivity, past practice and bargaining history. The burden falls on the participants to support their positions with materials such as these to enable the Fact Finder to formulate carefully weighed findings.

Claims of inherent equity of a position or demand are not very persuasive. It does a disservice to the parties if the Fact Finder is asked to speculate and operate in a vacuum. As this Fact Finder told the parties, she needed their help in order to make reasonable determinations.

There were several areas in this Fact Finding in which one or the other party did not adduce information or did not put forth supportive evidence to bolster their claim or demand. On the

other hand, several exhibits and claims were left unchallenged and this was also noted and taken into account by the Fact Finder where appropriate.

LIST OF ISSUES IN DISPUTE

1. Salary Schedule
2. Length of Contract
3. Promotion Procedure, Art. VII, sec. 3
4. Fringe Benefits:
   a. life insurance, Art. XII, sec. 4
   b. dental coverage, Art. XII, Sec. 2
   c. optical insurance, new demand
5. Union Representation, Art. V, sec. 3
6. Job Security
7. Welfare Volunteers under Youthcorps Program
8. Paid Vacation Schedule , Art. XIII, sec. 3
9. Monday through Friday Workweek
10. Sick or Disability Leave of Absence, Art. IX, sec.4
11. Weather Days, Art. X, sec. 12
12. Overtime Sheets, Art. X, sec. 1, e
13. Early Retirement Option, new demand
14. Terminal Leave Pay, Art. XV, sec. 2

1. Salary Schedule

Discussion:

At the heart of the District's position lies a claim of financial hardship. The District cites severe financial problems brought about by reduced student enrollment and the attendant loss of state aid. Such a reduction has resulted in curtailed educational programs, 20%-30% layoffs (with one third of the teachers laid off), and three out of eleven buildings closed in the last five years.

The District argues that sacrifices are needed in form of a one year freeze from all bargaining units (there are five). Such a freeze had already been obtained from the teachers, clerical, and food service units. In order to allow for a period of stability and labor peace after long negotiations, the District is also seeking a three year contract from the Maintenance Union.

The employer contends that the custodial group's salary schedule is very competitive when compared with similar units in the county; although, the District admits, they would not rank in the top grouping. Based on these factors, the District is seeking a one year freeze for 83-84, and is offering a 4.5% increase for 84-85, and again 4.5% for 85-86.

The Union's position is focused on equity and need to maintain their standard of living. It seeks a 3% increase in the first

year and a 5.5% increase the second year. It would accept a third year with a 6% increase.

In its arguments for equity, the Union points to the settlements of the other bargaining units in the District, specifically the teacher contract. It notes that even though the teachers did take a wage freeze during the first year of their agreement, this was balanced by the fact that they received increases in fringe benefits. The Union further believes that the increase it seeks will put it in line with other maintenance units in the county.

The Union did not challenge or rebut the employer's exhibits on county wide salary comparisons of custodial units and district contract settlements. Indeed, it agreed generally with the District's description of declining enrollment and resultant problems and offered little comment on the school district's budget (which the Fact Finder had requested). The Union did, however, call the Fact Finder's attention to the ability of the District to restore some previously suspended programs and the ability to offer salary and benefit increases to other bargaining units in the school system.

Resolution:

Based on the record, the Fact Finder would characterize the financial condition of the District as one of reduced ability to pay. It stands unrefuted that due to declining enrollments and decreased funding by the state, it is financially not as healthy

as it was the last time the parties concluded a Master Contract. Neither, however, are the current conditions as severe as they were one or two years ago.

Although the District is not operating under a deficit budget, neither does it have a showing of substantial funds (the 1984 estimated fund balance being $154,078). The District was successful, in February of 1984, in passing a 2.25 increase in their millage which, the Superintendent offered, would enable the District to restore approximately one half of the cuts previously made due to its financial exigency. This represents the first successful millage increase in several attempts in the past nine years. No further reductions or increases in revenues are anticipated.

The District has been able to grant 5% salary increases and new or enhanced benefits to several of its bargaining units and, as a spot check by the Fact Finder revealed, five per cent and above increases to its administrators.

The Union's reliance on the teacher contract (which was the Union's sole exhibit) in the salary as well as several other issues of benefits and working conditions weakens their case.

Neither the equal share or the equal sacrifice arguments are necessarily valid ones. Comparison of wages, hours, and working conditions are best made with employees performing similar services. Each bargaining unit, furthermore, has its own

rationale for wages and other determinations in collective bargaining. It is not the job of this Fact Finder to establish relative worth of one occupation vis a vis the other. What one bargaining unit might gain or not gain in their negotiations with the District will depend on the particular circumstances of their negotiations, their bargaining give and take, and their bargaining history which cannot be automatically transferred to another unit.

The comparison of one unit in the same district to another is valid only insofar as it can demonstrate if one unit is being asked to disproportionately carry the burden of declining resources and to indicate the ability of the District to pay.

The Fact Finder has thoroughly reviewed the financial information presented to her, which consist in the main of the District's exhibits and concludes that the District's offer is not sufficient.

Clearly the Union recognizes that settlements in the neighborhood of 9%, which were negotiated in the last contract, are not to be expected under current circumstances. When the District's offer of consecutive 4.5% raises for the second and third years of a contract are compared with the Union's demand for 5.5% in the second year and 6% in the third, it is obvious the parties are not that far apart for these years. When this is coupled with the District's demonstrated ability to grant consecutive 5%

raises to other individuals and units, the only salary issue of major contention is the first year freeze sought by the District.

During the past three years the wage rate of Grand Blanc custodians ranked 7th, 9th, and 8th respectively when compared to other maintenance units in the county. The proposed freeze would reduce their relative standing to 11th, while the Union's 3% demand would maintain an 8th place ranking.

But, it can also be recognized that a one year moratorium on raises combined with the stability gained by three year contracts could give the District the opportunity to regroup from economic contractions, to review its needs, and to plan a recovery.

The need is, then, to reconcile the erosion of the relative economic standing of a bargaining unit with the erosion of the economic resources of a school district.

It is, therefore, the recommendation of the Fact Finder that the Maintenance unit recognize the financial exigences of the District by accepting a wage freeze for 1983-84 contigent on the District recognizing the sacrifice of the Maintenance unit by granting its demands of a 5.5% wage increase for 1984-85 and a 6% wage increase for 1985-86.

2. LENGTH OF CONTRACT

Discussion:

The District seeks a three year contract from the Maintenance unit as it has sought from the other units. The Union has given de facto acceptance to the three year contract in seeking a 3%-5.5%-6% wage package.

Resolution:

Given the fact that the parties' contract expired in August of 1983, and contingent on the findings with regards to salary, a three year contract retroactive to September 1, 1983, and ending on August 31, 1986, is recommended to allow for a measure of labor relations stability.

3. PROMOTION PROCEDURE

Discussion:

The Union desires a change from current contract language in order to strengthen seniority as a consideration in promotion. Although it had sought a straight seniority system in its petition and at the onset of the hearing, the Union revised its position somewhat during the course of the hearing. Plainly put, it seeks the chance for its veteran employees to advance and

believes that under the current relative ability clause of the contract the opportunity to do so is too easily denied. Seniority, the Union argues, should be the first consideration and that which makes the employee eligible in order to avoid potential favoritism.

Qualification and the ability to do the job should be proven in a trial period, if necessary, as in the case of existing contract language relating to the position of Leader. The Union acknowledges that contract language change is sought as a result of two unsuccessful challenges it has taken to arbitration over the issue of promotion.

The District also has modified its original demand for the total elimination of seniority as a consideration in promotion and proposes to retain current contract language. It maintains that it has acted responsibly in those few cases where the junior person was promoted and offers that two arbitration awards have attested to their claim. The District believes that it must first weigh the qualifications of the candidates and determine the relative equality of these before seniority can be considered. For example, it does not wish to promote an employee with a bad work record even if he had the ability and was the senior employee. The District testified that a trial period in a small unit was impractical and risky and might pose a safety hazard. It is the District's conviction that its administrators

and supervisors are able to make sound judgements based on observation for promotion purposes.

Resolution:

The Fact Finder is fully cognizant of the significance of this classic confrontation between seniority rights and employer concern for quality performance and would like to balance the needs of the employer and the union's interests.

A promotion system must give fair opportunity to senior employees to enhance stability and loyalty in the system. The source of seniority is the contract. In this case it is a modified seniority clause which gives preference to the senior employee if his fitness and ability are relatively equal to the junior applicant. To quote from the contract:

> " The following factors will be considered in the selection of candidates: Training,work record, physical condition, and the ability to do the job requested. In the event these factors are relatively equal, the qualified candidate with the most seniority will be given first consideration."

While I cannot recommend a strict seniority or even a sufficient ability approach to promotion, it does not seem unreasonable to this Fact Finder that the <u>ability</u> to perform a job should best be tested by a trial or break-in period in those cases where it does not cause serious inconvenience or hazard. This is not to be interpreted to mean that the Fact Finder found anything on the record to suggest that the employer has acted arbitrarily or irresponsibly. However, a trial period concept is already found

in the contract and it retains management's discretion whether the employee remains in his new classification. Further, it is clear that the controversy on this issue is a longstanding one and has not been put to rest. Inasmuch as the arbitration awards dealt with temporary vacancies in which the employer needed to fill the positions urgently, they do not address all the factors and complexities of the promotion issue as brought before the Fact Finder.

It is therefore my recommendation that in cases where the question is solely one of ability to perform a specific job, a trial period concept in the spirit of Article VII, section 10, be developed by the parties to fill permanent vacancies. The specific length and nature of the trial period would necessarily depend on the job classification, and I defer to the parties to work out the details of an appropriate schedule.

4. FRINGE BENEFITS

Discussion:

a. Life Insurance:

The Union asks for an increase in life insurance from the present $10,000 to $25,000 to equal the teacher contract. [Note: Upon

examining the Union's contract, I find that effective September 1, 82, life insurance was in fact increased to $15,000.]

The District did not testify on this issue.

Resolution:

The Fact Finder did not receive sufficient information or rationale from the Union to determine what type of increase is being sought or to make a reasoned recommendation. I would note, however, that the Clerical and Teacher contracts do provide an additional $10,000 Term Life on dependents in lieu of health insurance. A cost comparison between term life insurance and health insurance convinces me that if the Union should seek such a trade, the District would most likely be favorably disposed given the potential savings involved.

b. Dental:

The Union desires Class III (orthodontic) benefits with a 75% co-pay by the District. The Union currently has Class I and II dental benefits and seeks the improvement to be on a par with the teachers.

The employer has offered the Union a 60% co-pay Class III benefit which it demonstrated would put the Grand Blanc Maintenance unit into the top in a 24 district comparison with only Bendle, Flint, Flushing, Lapeer, and Schwartz Creek providing better benefits.

Resolution:

Based on the unrefuted evidence before me, I find that the District's offer of 60% co-pay Class III constitutes a fair offer, and I recommend its acceptance.

c. Vision:

The Union is seeking a new optical benefit to be equal to that of the teachers. No further testimony was advanced.

The District offered no testimony on this demand.

Resolution:

The Fact Finder was not provided with sufficient information to warrant a recommendation to incorporate this new benefit into the Maintenance contract.

5. UNION REPRESENTATION

Discussion:

The Union proposes to have a Union representative called in at all disciplinary sessions. It argues forcefully that both employee and union rights need to be protected in such settings. The well recognized argument is put forth that employees are intimidated and too fearful to ask management for union

representation, and consequently their rights might be eroded. The Union also raised the issue of union liability.

The District believes that any further "Mirandarizing" of the disciplinary process runs counter to current legal rulings and, indeed, the current relaxation of standards. It maintains that the legal obligations to employees are met as the employee can request representation at disciplinary meetings. The District further argues that the requirement for automatic union presence in such meetings does not have a legitimate place in the contract,

Resolution:

Current contract language of Article V, section 3, states in part that "any employee who has been disciplined by a suspension or a discharge may request representation by the Union prior to leaving the premises. The supervisor, without delay, shall notify a steward."

The Fact Finder notes that some confusion seems to prevail as to existing representation rights under current contract language.

Giving a literal reading to V, 3, and absent any showing of past practices the parties might be operating under, the current language does not fulfill representation obligations under Weingarten [NLRB v. Weingarten 420 US 251 (1975)] in two respects. It limits representation to only suspension and

discharge cases even though the contract clearly contemplates other forms of disciplinary action. Further, the language guarantees representation only after the fact; in other words, after discipline has been administered.

It is a fact that Weingarten does not require automatic union presence in disciplinary meetings. However, it is recommended that in order to come into conformance with legal requirements and avoid potential liability by both parties, the current language be reformed. I would note that contrary to labor law being relaxed in this area, Weingarten rights have now been extended to the unorganized worker in Materials Research.

Although the District might give some thought to the benefits it might derive from union presence in all disciplinary sessions, I cannot recommend the step beyond Weingarten which is to require union presence absent request by the employee.

The Union has not demonstrated employer abuse in this area, and its fears regarding liability should at least be partially allayed by the implementation of the above recommendation. The Union might also give consideration to the fact that it has the means to alert its membership as to their rights in this matter.

6. JOB SECURITY

Discussion:

The Union objects to what it terms "open-ended" job classifications where the employer can assign duties as needed. It seeks a tightening of the job descriptions in the classifications.

The District did not put forth a position or response.

Resolution:

The Fact Finder was not provided with any information or background material to judge if a problem indeed exists here. No persuasive reasons were set forth to recommend alteration in the status quo.

7. WELFARE VOLUNTEERS

Discussion:

The District is seeking the Union's cooperation, and consent required by law, to resume the utilization of a Youthcorps program in the district. Management testified that it was anxious to restore the supplemental help which was available at no charge to the District under the program. The District

maintains that the volunteers perform miscellaneous tasks which otherwise would be left undone (e.g. pulling weeds, picking up garbage, shovelling snow,etc.).

In May of 1981, the Union had signed a Letter of Agreement allowing welfare recipients to do "miscellaneous chores requiring minimal skills in various areas of the district." It was also agreed in that same document that the volunteers would not be used to replace current employees but that the volunteers would assist regular employees in the performance of their duties.

Given the fact that the Union has experienced layoffs of its members since 1981, the Union has refused to sign a successor agreement and maintains that the volunteers had performed regular custodial work. Both parties agree that union consent is required under the Governor's program.

Resolution:

The concerns of a labor union, especially when some of its members are laid off, regarding the use of free labor in the performance of tasks which might erode, or is perceived to erode, the bargaining unit, are very real indeed.

However, I do not see it as part of my role as Fact Finder that I can compel, or even recommend, that the Union cooperate. Such cooperation can perhaps be best achieved by involving the Union in the details of the proposed utilization of Youthcorps

volunteers. Absent that, the proposal is likely to continue to invite criticism, negative reaction,and resistance.

I therefore refer the issue back to the parties for their consideration.

8. PAID VACATION SCHEDULE

DISCUSSION:

The Union is seeking an improvement which would provide for its members with fourteen years of seniority or more, four weeks of paid vacation time and all days between Christmas and New Year as paid vacation days. The Union asserted that supervisors enjoyed four weeks paid vacations after fourteen years and that other units have time off between Christmas and New Year as paid vacation days.

The District argues that four weeks vacation after 15 years had been granted as a major new benefit under the 1981-83 Maintenance contract and that this benefit compares very favorably with other comparable units in the county. The District also points out that contract language of other district units does not substantiate the Union's claim that other units enjoyed paid time off between Christmas and New Year, and that, in fact, Food Service and Bus Drivers had no vacation time at all.

Resolution:

Under the parties' current contract provisions, an employee receives 4 weeks paid vacation after 15 years of service.

There are only two districts, Fenton and Kearsley, out of twenty-five in the comparsion group that require longer service for 4 weeks paid vacation. There are, on the other hand, <u>eight</u> districts which require less longevity (most substantially less) to accrue 4 weeks time.

The Fact Finder recommends that the elgible bargaining unit members be granted 4 weeks paid vacation after 14 years of service commencing with the third year of the contract(1985-86). Even disregarding the possibility that other districts may negotiate improvements in this area, this recommendation will only place the Maintenance group into the mainstream of prevailing practices.

The Fact Finder did not have sufficient relevant data to recommend a change in the practice regarding the time period between Christmas and New Year's Day.

9. WORKWEEK

Discussion:

The Union alleges that the employer has deviated from past practices which under the 81-83 collective bargaining agreement defined the workweek as Monday through Friday with Saturday being paid at time and one half. A contractually recognized premium already exist for all hours worked on Sunday. The Union claims that since September of 1983, the District has altered the workweek in order to circumvent payment of overtime premiums. The Union also offers that other units have a Monday through Friday workweek.

The District did not address the issue of past practice raised by the Union. It did, however, advance the position that the workweek of maintenance and custodial employees is determined by the nature of their jobs, and that unlike teachers whose services are needed when students are in attendance, custodial services are needed throughout the week to maintain the district's buildings and grounds.

Resolution:

The arguments set forth by the representatives of the District in support of their needs for adequate coverage throughout the entire week are convincing and the Fact Finder cannot recommend the Union's position.

Concurrently, the Fact Finder notes that the District did not refute or contest the past practice claim of the Union. In other words, there is some indication that the District has gained flexibility and productivity in this area since September. This factor was taken into consideration as part of the total review of the record by the Fact Finder in making her salary recommendations.

10. SICK AND DISABILITY LEAVES OF ABSENCE

Discussion:

The Union proposes to extend the current maximum of one year sick leave of absence option to two years.

The District offered no testimony.

Resolution:

The current contract language provides for sick leave for an initial sixty day period. Thereafter, a verified sick leave can be extended, upon request, at the employer's discretion not to exceed one year. It may very well be that at some time in the future both parties might benefit from the added flexibility of removing the absolute maximum. In the meantime, however, absent evidence that a problem exists in this area, I am not persuaded to recommend altering existing contract provisions.

11. WEATHER DAYS

Discussion:

The Union is asking that its members not be required to report to work on inclement weather days, asserting that members of other units have weather days off. The Union further pleads that the safety of its members be considered in this regard.

The District contends, as it did on the issue of workweek, that it needs maintenance people on duty to ready the school to open after inclement weather, and that the unit members are needed precisely because of the nature of their jobs.

Resolution:

This is indeed a difficult area where legitimate employer needs and employee interest and safety must be balanced. As with police or road crews, the essential services of custodians require that they be on the job to make working conditions safe for the rest of us. However, recognition must be given to the fact that there might be certain weather conditions so severe that the custodian, just like anyone else, might not be able to get to work. And, he should not be penalized if such becomes the case. The Fact Finder's recommendation is that the parties continue to recognize that as part of the duties of maintenance personnel they are subject to be called on a weather day if the work is needed. At the same time, to recognize contractually,

that if it is verified that the employee cannot report to work due to weather conditions, that he be able to cover his absence by using a sick day, or emergency day, which shall be designated as "authorized."

12. OVERTIME SHEETS

Regarding this item, the parties agreed to jointly work out a system whereby standardized worksheets would be posted in the buildings to show overtime assignments made to members of the unit.

The parties asked the Fact Finder to defer to them in this matter. I am happy to comply.

13. EARLY RETIREMENT OPTION

Discussion:

The Union desires an early retirement option as was negotiated for the teachers. It believes that such a program would be beneficial to its members.

The District advances the argument that the $4000 lump sum early retirement payment constitutes an economic saving only as it

applied to senior teachers who earn substantially higher salaries than a newly hired teacher. Custodial employees do not have the equivalent salary spread from newly hired to those with longevity to make early retirement economically desirable for the employer.

Resolution:

Other than the fact that the new Teacher contract made early retirement possible, the Fact Finder was not provided comparisons with other custodial units in the county. As I already stated earlier in this report, the mere fact that another unit bargained for a benefit does not automatically bestow that benefit on others.

Based on these considerations, I cannot recommend the Union position.

14.TERMINAL LEAVE PAY

Discussion:

The Union is seeking an increase in the present terminal leave payment schedule to correspond to that of the teachers. This would mean that after twenty years of service, the amount of terminal pay would be $50 per year of service instead of the current $40 per year. There is also a cap of $1000 under both provisions.

The employer demonstrated through exhibits that Clerical, Maintenance, and Transportation units all were at $40 and that Food Services had no terminal pay. No comparison was offered to the county's comparable units.

Resolution:

The Fact Finder was not provided with sufficient evidence to warrant a recommendation to increase the terminal pay.

It is the sincere hope of the Fact Finder, that this report will serve to provide the basis for a settlement by the parties.

Ildiko Knott

Ildiko Knott
Fact Finder
July 9, 1984