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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF

GRAND BLANC COMMUNITY SCHOOLS

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 591

CASE NO. D 78 H-2081

Daniel Kruger

HEARINGS OFFICER'S FACT FINDING REPORT

APPEARANCES

For the Union

Pattie Howe	Member
Arthur Mills	Vice President
Harold Stiles	Unit Chairman
Thomas Reid	Representative
Jeff Hilliard	Member
Floyd Tripp	President

For the Employer

Robert Harper	Supervisor, Buildings and Grounds
John Golner	Assistant Superintendent
Gary J. Collins	Labor Relations Consultant

INTRODUCTION

This is a fact finding report under the provisions of Section 25 of Act 176 of the Public Acts of 1939, as amended, which provides in part as follows:

> "Whenever in the course of mediation under Section 7 of Act No. 336 of the Public Acts of 1947, being Section 423, 207 of the Compiled Laws of 1948, it shall become apparent to the Board that matters in disagreement between the parties

Grand Blanc Community Schools

might be more readily settled if the facts involved in the disagreement were determined and publicly known, the Board may make written findings, with respect to the matters in disagreement. Such findings shall not be binding upon the parties but shall be made public ...."

In accordance with the Commission's Rules and Regulations relating to fact finding, the undersigned Hearings Officer was designated to conduct a hearing in the matter and to issue a report in accordance with Employment Relations Commission General Rules and Regulations 35. Briefly, this Rule states that the Hearings Officer will issue a report with recommendations with respect to the issues in dispute.

The Fact Finder, Daniel H. Kruger, was appointed by the Michigan Employment Relations Commission on January 3, 1979. Hearings were held at the Board of Education Building, Grand Blanc, Michigan, on February 1, February 2 and June 9, 1979.

ISSUES AT IMPASSE

At the initial hearing on February 1, 1979 the issues in impasse were identified. In subsequent hearings and bargaining sessions the issues were resolved except one, namely, the issue dealing with foremen and supervisors doing bargaining unit work. The provision of the Agreement in question is Article XVI GENERAL Section 1. Non-Unit Employees.

DISCUSSION OF THE UNRESOLVED ISSUE AND RECOMMENDATIONS

The language of Article XVI Section 1. Non-Unit Employees reads

"Nothing herein shall be construed to prohibit the employer from temporarily using qualified supervisors, or other qualified employees of the school district excluded from the bargaining unit for the performance of work usually performed by bargaining unit employees, for the purpose of training or instruction, in cases of emergency, or when an employee in the bargaining unit is absent; provided the performance of such work does not result in the layoff of bargaining unit employees, and further provided the performance of such work does not postpone, delay or otherwise interfere with the addition of manpower as deemed necessary by the employer for performance of bargaining unit work by bargaining unit employees."

Joint Exhibit #1, page 19.

This clause was first negotiated in the last agreement. There have been several grievances arising from this provision when foremen were performing bargaining unit work. Six of the grievances were combined and taken to Arbitration in 1978 (see AAA Case No. 54-29-1553-77). The Arbitrator held that these foremen were doing bargaining unit work in violation of Article XVI Section 1.

On the basis of these grievances, the Arbitrator's Award and the need for efficiency of operations, the Employer is seeking to change the language of Article XVI Section 1. to read:

Article XVI

"a) Nothing herein shall be construed to prohibit the employer from using supervisors to do bargaining unit work provided that such work does not result in the layoff of bargaining unit employees. Overtime shall be equalized with foremen consistent with Article X, Section 8."

Letter of June 11, 1979

There are ten (10) schools in the district, and there are fourteen (14) foremen and assistant foremen (Employer Exhibits #2 and #3). Some of the foremen in the elementary schools do not supervise anyone and therefore there is an overlap of work performed by these foremen and members of the bargaining unit.

The Employer contended that when this provision was first negotiated, it had verbal assurance from the Union that the configuration of the work force would be retained (i.e., the working foremen). Moreover the Employer's position is that it has the right of assigning work with the only restriction being "the performance of such work does not result in the layoff of bargaining unit employees" (see Article XVI Section 1. quoted above).

The Employer pointed out that no employee has been laid off because of the foremen doing bargaining unit work. The Employer moreover has proposed that overtime would be equalized between foremen and bargaining unit members to the extent possible and practical.

The Employer contended that additional employees would be needed if the foremen were not able to do bargaining unit work. The Employer stated that the Board of Education is not going to go to the voters of the school district to seek additional monies for operating the school system. Witness Goldner estimated that if foremen could not do bargaining unit work, and additional employees had to be hired, it would cost the district approximately two thirds of a mil. A mil in Grand Blanc produces $250,000 of tax revenue.

The Union wants to retain Article XVI Section 1. as worded. It disagreed with the Employer's contention that the parties had verbal agreement to retain the configuration of the work force when this provision was negotiated. The Union stressed that it wanted bargaining unit work to be done by bargaining unit members. Promotional opportunities in the district are limited and bargaining unit members want whatever overtime is available.

The Union stated that overtime to do bargaining unit work rightfully belongs to the bargaining unit and therefore it is opposed to any equalizing of overtime between foremen and bargaining unit members as proposed by the Employer.

The Union challenged the Employer's assertion that no one had been laid off. An employee, Roger Messerly, was laid off briefly. The Employer, however, pointed out that this employee, a handicapper, was employed under a special federal funded program and that the funds had run out. He was subsequently rehired.

The Employer pointed out that the Union had recently requested a unit redetermination from the Michigan Employment Relations Commission to determine the status of the working foremen and whether these working foremen should be included in the bargaining unit. The Union's position is that the Employer can designate whomever it wants to be foremen, but that the foremen are not to perform bargaining unit work.

The Employer called attention that other school districts in Genesee County do not have restrictions on foremen working except in emergency situations, in training of personnel, and when employees who normally perform such work are not available (see Employer Exhibits for Fact Finding, dated February 1, 1979). The Union contended that the contractual language regarding foremen doing bargaining unit work taken from these other agreements must be examined against the organizational structure of these schools. Grand Blanc, the Union contended, had a unique structure in that some of the foremen, especially those in the elementary schools,did not supervise any employees. These foremen usually worked the first shift, i.e., 7:00 a.m. - 3:30 p.m., whereas most of the custodial personnel, members of the bargaining unit, worked the second shift which ran from 3:00 p.m. to 11:30 p.m. It appears that during the first shift foremen are doing bargaining unit work and that foremen are being called upon to work overtime and during these overtime hours are doing bargaining unit work.

RECOMMENDATION

That the only issue in impasse is the question of foremen doing bargaining unit work attests to its importance to the parties. The Employer wants to change the language of Article XVI Section 1. because (1) of the grievances this provision has generated, (2) the Arbitrator's Award, and (3) the potential cost impact to the district if foremen could not perform bargaining unit work and the Employer had to hire additional employees. The Union, as noted, wants to retain the existing language of Article XVI Section 1.

In this Fact Finder's view, Article XVI Section 1. does give the Employer discretion in having the foremen perform bargaining unit work under the following specific situations:

1. for the purpose of training or instruction
2. in cases of emergency
3. when an employee in the bargaining unit is absent.

There is a further limitation that the performance of such work does not result in the layoff of bargaining unit employees.

At the hearings there was much discussion about overtime. The Union rightfully seeks to obtain available hours of overtime for its members; it does not want equalization of overtime, where possible and practical, between foremen and bargaining unit members. The opportunity for bargaining unit members to work overtime, the Union pointed out, does improve their earnings.

The Fact Finder strongly recommends that the language of Article XVI Section 1. (Joint Exhibit #1, page 19) be retained in the new agreement. He makes this recommendation on the basis of equity considerations. The parties negotiated in good faith this provision. The Union wants to protect its work and the work of its members. Historically Unions in the United States have sought to protect the job interests of their members. They want their members to share among themselves the overtime available for the performance of bargaining unit work.

The provision as negotiated in Joint Exhibit #1 gives the Employer limited discretion in utilizing foremen to perform bargaining unit work. The Employer pointed out the important role played by the foremen, and this Fact Finder agrees that foremen play an important role in the operating of the schools. A portion of their job duties does relate to their supervisory responsibilities and the Union has not challenged these supervisory responsibilities. The Union is only concerned with those instances and situations where the foremen are doing bargaining unit work.

One of the arguments used by the Employer for changing the language of Article XVI Section 1. was the potential economic impact. The Employer may want to give serious thought to restructuring and consolidating its supervisory staff in the campus complex as suggested by the Union. This restructuring may well bring about cost savings.

June 19, 1979

Daniel H. Krueger

Daniel H. Krueger, Hearings Officer