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MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FACTFINDING PROCEEDINGS

In the Matter of:

HOUGHTON LAKE BOARD OF EDUCATION,

and

HOUGHTON LAKE EDUCATION ASSOCIATION.

Houghton Lake Board of Education

REPORT AND RECOMMENDATIONS OF FACT FINDER

Hearings Held: January 3, 1973 at Houghton Lake, Michigan.

Report Issued: January 12 , 1973.

Fact Finder: James R. McCormick

Representing Association: Peter Javoroski, Vice President; Warren E. Bailey, Executive Director

Representing Board of Education: Merle Grover, Management Consultant

I. STATEMENT OF THE CASE:

This matter came on for hearing before the undersigned pursuant to appointment as Factfinder by the Michigan Employment Relations Commission. The proceedings were conducted pursuant to Section 25 of the Labor Mediation Act, MSA 17.454(27); C.L.'48 Section 423.25 and Part 3 of the General Rules and Regulations of the Employment Relations Commission. A hearing was held in Houghton Lake, Michigan, on January 3, 1973, at which time both the Houghton Lake Education Association and the Houghton Lake,Board of Education had full opportunity to present all relevant facts and argument regarding a pending labor relations dispute. On the basis of the entire record of the matter, including testimony of witnesses, written statements and oral argument, the

undersigned makes the following findings and recommendations.

II. ISSUES TO BE RESOLVED.

The parties have been signatories to prior Collective Bargaining Agreements and the instant dispute concerns their inability to reach agreement on wages, fringe benefits and working conditions for a new Collective Bargaining Agreement. During the course of extended negotiations the parties did tentatively agree upon most outstanding issues but were unable to reach agreement upon three issues: agency shop, hospitalization, and the duration of the proposed agreement. The Association originally insisted upon a one year contract which would be applicable for the 1972-1973 school year. When its efforts to obtain counteroffers from the Board of Education for a one year contract received no response, the Association agreed to entertain counteroffers regarding a three year agreement. At all times the Board of Education has taken the position that there should be a multi-year agreement , and its counterproposals have been predicated upon the assumption that there would ultimately be a three year agreement. As a result, it is not certain that the Board of Education would have made whatever concessions they have made in the event that the final agreement should be applicable only for one year.

III. AGENCY SHOP:

The Association seeks a standard agency shop agreement which would require non-members to contribute the equivalent of Association dues. This type of Union security has become wide spread in Michigan although the legality of such arrangements has been placed in considerable doubt, to say the least, by the November 29, 1972 decision of the Michigan Supreme Court in the matter of Smiegel et al vs. Southgate Community School District et al. In that case the Supreme Court

declared that agency shop provisions violated the Public Employment Relations Act, P.A. 379 of 1965. While the precise interpretation of the Smiegel decision is the subject of continuing debate, it is fair to say that the traditional agency shop sought to be included in the new collective bargaining agreement in this case is almost certainly unenforceable under the Smiegel decision. The Association recognizes this and has modified its agency shop demand by requesting that the Factfinder recommend the inclusion of a traditional agency shop clause along with a proviso to the effect that said clause shall become effective only in the event a subsequent case, legislative enactment, or rehearing by the Supreme Court establishes its validity. The Board of Education maintains that it is "incredible" to ask for inclusion of a clause which is clearly illegal under existing court interpretation, particularly since the Board of Education deems it unlikely that the Supreme Court will reverse itself following a rehearing of the Smiegel case. In addition to debating the effect of the Smiegel decision on the agency shop clause, the parties also differ as to the desirability of agency shop as a matter of public policy. Each side adheres to the traditional arguments for and against Union security. These arguments are too well known to require detailed restating herein. Suffice it to say that the factfinder concludes it is unwise to include an agency shop clause in a contract at a time when the parties are faced with a recent Michigan Supreme Court decision declaring most, if not all, such arrangements illegal. Under the circumstances the Factfinder recommends that the agreement in this case include a provision allowing the Association to reopen the Agreement for the purpose of seeking to negotiate some form of financial security at such time as one or more forms of employee organization financial security become legal through either an amendment to PERA or a subsequent decision of the Michigan Supreme Court.

IV. HOSPITALIZATION:

After considerable discussion it became apparent to the Factfinder that the parties are not in substantial disagreement as to negotiated improvements in the Blue Cross Plan. During the course of bargaining the Board of Education tentatively agreed to make certain specific improvements in the Blue Cross Plan, effective as of the beginning of the second semester of the current school year. This concession was made on the assumption that there would be a three year agreement. In the event that the agreement should be of a shorter duration the concession made by the Board of Education as to Blue Cross would be considered as inapplicable. The parties did not discuss the nature of the improvements in question or the merits of the proposed improvement. On the basis of my recommendations with respect to duration, which follow hereafter, I see no real dispute with respect to hospitalization. The tentative agreement made by the Board of Education which would call for specific Blue Cross improvements beginning with the second semester of the current school year ought to be included in the agreement to be executed hereafter.

V. DURATION OF AGREEMENT:

As noted above, the Association feels strongly that there should be no more than a one year agreement. The Association notes that there are a number of areas which might well require contractual changes as "educational policy" and court decisions dictate. Among those areas the Association lists maternity leave, personal leave, Association time, no strike clause, unfair labor clause, past practice clause, and waiver clause. The Association feels that it is not possible to foretell the future sufficiently well for it to take its chances on future actions of the Board of Education beyond a one year period. The Association argues that the Board rights clause would result in the Board having unilateral power over many areas involving working conditions.

The Board replies that its original proposals and its concessions including provisions regarding class size, have been predicated upon a three year agreement. The Board therefore feels that an agreement of a shorter duration would undo the areas in which tentative agreement has been reached.

In support of its argument for a one year contract, the Association made the argument during the hearing that the lack of binding arbitration of grievances would put the teachers at the mercy of the Board of Education when grievances could not be resolved by agreement of the parties. Further probing on this issue, however, revealed that the Board of Education has no intention of striking the existing binding arbitration provisions from the Master Agreement. The Board merely suspended the binding arbitration provisions, along with dues checkoff, following an impasse in the bargaining. The spokesman for the Board of Education at the Factfinding hearing made it clear that the Board has no objection to continuation of the binding arbitration of grievances as it has existed in the most recent collective bargaining agreement.

As to maternity leave, the Association points out that recent court decisions regarding this matter necessitate that the maternity leave clause be subject to renegotiation at some time earlier than a three year contract would permit. The factfinder recommends that the parties include language in the new agreement permitting either party to reopen any clause in the event that a court decision has rendered it illegal. The Factfinder was given no substantial reason as to why the personal leave clause and Association time clause require reopening prior to the end of a three year contract. The only basis for objecting to a three year duration of the no strike clause would be the possibility that the Legislature might modify the statute to permit strikes under certain circumstances. The undersigned does not feel that this is sufficient basis for opposing a multi-year agreement. There is no con-

tractural prohibition on unfair labor practices at this time. The Association has not sought such a prohibition in the current negotiation but states that it would seek a strong prohibition, including penalties, in the event that this issue is open during negotiations for the next school year. Although the PERA provides remedial sanctions against public employers who commit unfair labor practices, the Association observes that these sanctions are weak and that meaningful penalties could be negotiated into a contract. Once again, the undersigned does not feel, on balance, that this is a sufficient basis for rejecting a multi-year agreement.

The Association is concerned that the strong clause, Article XXIII dealing with past practices, constitutes reason for fearing a three year agreement. The undersigned Factfinder has studied the past practice clause and does not deem it harmful to the best interest of the Associati Finally, the Association argues that Article XXIV, the Waiver clause, renders a multi-year agreement dangerous since Article XXIV contains "zipper" language prohibiting reopeners on any items whether or not contained in the contract and whether or not discussed at any time during negotiations. Under all the circumstances the undersigned is persuaded that the Board of Education ought to recognize the legitimate fears of the Association regarding Article XXIV. This "zipper" language appears in many collective bargaining agreements but is certainly not a universal form of collective bargaining agreement waiver. In the interest of obtaining a three year agreement, the Board of Education ought to agree to delete Article XXIV from the contract in its entirety. In doing so, the parties will simply be agreeing to accept the constructions typically placed on contract language by arbitrators. Elimination of Article XXIV will not automatically result in a situation wherein the Association shall be free to reopen the agreement on any issue at any time. The absence of a "zipper" clause has no such effect. Its

absence, however, will provide some assurance to the Association that it is not negotiating itself into an intolerable situation for three years.

In support of the three year contract requested by the Board of Education, I note that it is nearly time for beginning of negotiation for the 1973-1974 school year, a situation which must be depressing to these parties. Three year agreements frequently result in never-ending negotiations, a situation which is unhealthy. I also note that the three year agreement proposed by the Board of Education would include provision for automatic reopeners on issues involving salary, fringe benefits, school calendar and schedule B for the second and third years. Since the economic matters involving salary and fringe benefits are the most crucial portions of collective bargaining agreements, this agreement by the Board to allow reopening on economic items the second year and the third year of a three year agreement dissipates whatever grounds the Association may otherwise have for insisting upon a one year agreement.

Accordingly the undersigned recommends that a three year agreement be executed including the Blue Cross improvement which will be effective beginning with the second semester of the current school year. The only provision relative to agency shop should be the provision for a reopener under the conditions which I have spelled out above. The waiver clause, Article XXIV, should be stricken from the agreement as part of the price the Board should be willing to pay for obtaining its requested three year agreement.

The parties are urged to return to the bargaining table at once and compromise their dispute consistent with these recommendations.

Respectfully submitted,

James R. McCormick

JAMES R. McCORMICK, Factfinder