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THE STATE OF MICHIGAN

DEPARTMENT EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact-finding between

TEAMSTER'S LOCAL 214, STATE, COUNTY,
AND MUNICIPAL WORKERS, LABOR ORGANIZATION

-and-

LAKELAND LIBRARY COOPERATIVE,
PUBLIC EMPLOYER

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Lakeland Library cooperative

MERC-Appointed Fact Finder:

MERC Case #G95
G-4013

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REPORT AND RECOMMENDATIONS
OF THE FACT-FINDER

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SECTION A

THE PROCEDURAL BACKGROUND & QUESTIONS BEFORE THE FACT FINDER

This is the parties first attempt to negotiate a collective bargaining agreement. When concluded, the agreement will cover four individuals employed as drivers by the Employer. Mediation failed to result in a collective bargaining agreement being signed between the parties. Procedurally, therefore, this case is before the Fact Finder as a result of a Petition filed by the Local on or about November 25, 1996. Henry J. Sefcovic, Esq., was thereafter appointed by the Michigan Employment Relations Commission to serve as the Fact Finder.

At the time of filing the Petition for Fact Finding, there were two issues that remained unresolved: placement of employees on a proposed wage scale and a "just cause" disciplinary standard. At a hearing held on August 6, 1997, in Grand Rapids, Michigan, the Local agreed to the Employer's wage proposal, thereby significantly reducing the number of issues that had previously separated the parties to only a "just cause" disciplinary standard.

SECTION B.

BRIEF HISTORY OF THE PARTIES

The Lakeland Library Cooperative is a service organization which provides support services to participating libraries. These services include coordinating, cataloging and distributing the collections between the various participating libraries, and therefore facilitate the sharing of resources between the cooperating libraries.

The Library Cooperative is supported by State revenues on a per capita basis determined by the number of people within the jurisdictions of the cooperating libraries. Obviously, if cooperating libraries choose to no longer participate in their proportionate revenues are lost to the Cooperative.

Teamsters Local 214 represents a group of four van drivers who distribute books and other materials between the various cooperative libraries. There are three full-time and one part-time drivers. Historically, these drivers, along with all other employees of the Cooperative, have been at-will employees. This status was explicitly stated when the Cooperative issued its Personnel Manual in July of 1994. The relevant and disputed portion of that Manual is as follows:

"Termination of Employment.. The Cooperative reserves the right to terminate an employee for any reason not prohibited by law that is appropriate in its judgment. Applicants for employment will sign a disclaimer acknowledging their understanding of the at-will nature of their employment should an offer of employer be made. A signed disclaimer shall be kept on file for each employee."

"Nothing in this Personnel Manual is intended to alter the at-will relationship in any way. This includes, without limitation, the policies on employee conduct, grounds for dismissal, disciplinary procedures, evaluation, grievance procedures, and alternative dispute resolution."

The Cooperative wishes to retain this language in any collectively bargained agreement. The Union wishes to delete this language in its entirety. Further, the Union wishes to expand the arbitration provision to include any time off with pay or dismissal, rather than the current provision which limits arbitration to termination of employment for unlawful reasons.

SECTION C.

THE LOCAL'S PROPOSAL

The Local proposed that any new collective bargaining agreement between the parties contain the following language:

Disciplinary Procedures

Non-probationary employees covered by this agreement shall not be disciplined or dismissed without just cause. Disciplinary action shall include:

- 1) oral counseling;
- 2) written warning;
- 3) disciplinary suspension; and
- 4) dismissal.

In each situation, the Cooperative will determine an appropriate disciplinary penalty, taking into account the seriousness of the employee's misconduct or performance problem, the employee's prior work record, and other relevant considerations. Ordinarily, an employee will not be dismissed unless the employee has first received a written warning and a disciplinary suspension. However, Lakeland Cooperative Library reserves the right to deviate from these guidelines when appropriate in its judgment. If an employee is placed on a disciplinary suspension due to unsatisfactory performance, a statement should be placed in the employee's personnel file indicating the length of the disciplinary suspension and the specific improvements necessary to meet expected work standards.

Grievance Procedure

If an employee disagrees with any decision that has been made with respect to his/her employment, including any dispute regarding discipline, the employee may file a grievance. An employee wishing to file a grievance must submit the grievance, in writing, to his/her supervisor within 30 days after the complained of decision or action. The supervisor will discuss the grievance with the Administrator and report the decision to the employee. If the employee wishes to appeal the decision, a written appeal shall be filed within 5 days to the Personnel Committee of the Cooperative Library Board, who shall schedule a meeting with the employee as soon as possible within 30 days. During a meeting with the Personnel Committee, the employee will be given an opportunity to present evidence and

arguments offered against him/her. At this meeting, the employee, if he/she so desires, may be represented by the Local Union's Business Representative. The Personnel Committee will report its action to the employee and the Cooperative Library Board. Except as provided below, the decision of the Personnel Committee will be final and binding. If the grievance involves time off without pay, the first step will be the appeal to the Personnel Committee. The appeal must be filed in writing within five (5) days after the employee is notified that he/she will be given time off without pay or is notified that he/she is dismissed.

Arbitration

If the grievance involves time off without pay or dismissal and the employee does not agree with the action of the Personnel Committee, the employee may request arbitration of the grievance. A request for arbitration must be made, in writing, within 10 days after the Personnel Committee has reported its action to the employee and to the Cooperative Library Board. The arbitration will be conducted pursuant to the rules of the American Arbitration Association. The losing party will pay the fee of the American Arbitration Association, including the Arbitrator's fee. The Arbitrator's decision shall be final and binding upon the employee or employees involved, the Local Union, and the Lakeland Library Cooperative. Judgment may be entered upon the award rendered by an Arbitrator in any court having jurisdiction thereof.

SECTION D.

THE EMPLOYER'S PROPOSAL

The Employer proposed that the following language from its personnel policies be included in any collective bargaining agreement.

Disciplinary Procedures

Disciplinary actions shall include:

- 1) oral counseling;
- 2) written warning;
- 3) probation; and
- 4) dismissal

In each situation, the Cooperative will determine an appropriate disciplinary penalty, taking into account the seriousness of the employee's misconduct or performance problem, the employee's prior work record, and other relevant considerations. Ordinarily, an employee will not be dismissed unless the employee has first received a written warning and has been placed on probation. However, Lakeland Cooperative Library reserves the right to deviate from these guidelines when appropriate in its judgment. If an employee is placed on probation due to unsatisfactory performance, a statement should be placed in the employee's personnel file indicating the length of probation and the specific improvements necessary to meet expected work standards.

Grievance Procedure

If an employee disagrees with any decision that has been made with respect to his/her employment, including any dispute regarding termination of employment, the employee may file a grievance. An employee wishing to file a grievance must submit the grievance, in writing, to his/her supervisor within 30 days. During the meeting with the Personnel Committee, the employee will be given an opportunity to present evidence and arguments in his/her favor and will be given the opportunity to rebut the evidence and arguments offered against him/her. The Personnel Committee will report its action to the employee and the Cooperative Library Board. Except as provided below, the decision of the Personnel Committee will be final and binding.

If the grievance involves termination of employment, the first step will be the appeal to the Personnel Committee. The appeal must be filed in writing within 5 days after the employee is notified of the termination decision.

Arbitration

If the grievance involves termination of employment and the employee does not agree with the action of the Personnel Committee, the employee may request arbitration of the grievance. However, this arbitration procedure applies only to situations where the employee is claiming that the reason for the termination is unlawful. In all other situations, the decision of their Personnel Committee will be final and binding. A request for arbitration must be made, in writing, within 10 days after the Personnel Committee has reported its action to the employee and to the Cooperative Library Board. The arbitration will be conducted pursuant to the rules of the American Arbitration Association. The Cooperative will pay the fee of the American Arbitration Association, including the Arbitrator's fee. Judgment may be entered upon the award rendered by an Arbitrator in any court having jurisdiction thereof.

SECTION E.

STATUTORY PROVISIONS

Fact finding in the State of Michigan is defined under the applicable provision of the Labor Relations and Mediation Act (Act 176 of the Public Acts of 1939, as amended), and the general rules and regulations of the Michigan Department of Labor/Employment Relations Commission. The administrative rules pertaining to the fact finding are found in part 3 of the Administrative Rules and Regulations, R423.421 through R423.435.

Although the statutes and rules of the Department of Labor and Employment Relations commission do not provide the fact finder with guidelines under which to reach findings of fact, conclusions of law and recommendations, many fact finders look to the legislative

intent contained in Act 312 of the Public Acts of 1969, as amended. Further, Section 9 of Act 312 (MCLA 423.239) sets forth the public policy of this State relating to public sector labor disputes and the criteria to be followed by a State-appointed arbitrator in rendering his or her report. Therein, the factors to be considered are:

423.239 findings and orders; factors considered

Sec. 9 Where there is no agreement between the parties or where there is an agreement but the parties have begun negotiations or the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer;
- (b) Stipulations of the parties;
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;
- (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of their employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities;
 - (ii) In private employment in comparable communities;
- (e) The average consumer prices for goods and services, commonly known as the cost of living;
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and other excused time, insurance and pensions, medical and hospitalization

benefits, the continuity and stability of employment, and all other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

(g) Changes in an foregoing circumstances during the pendency of the arbitration proceedings; and

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

SECTION E.

NON CONTROVERTED FACTORS OF SECTION NINE (9)

There are certain factors illuminated in section 9 of the act that have no or little bearing on this case. They are:

- 1) The lawful authority of the employer;
- 2) Stipulation of the employees;
- 3) Financial ability of the unit of government to meet the cost question;
- 4) The average consumer price for goods commonly known as the cost of living;
- 5) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, benefits, the continuity and stability of employment, and all other benefits saved;

- 6) Changes in any of the foregoing circumstances during the pendency of the arbitration (fact-finding) proceedings.

SECTION G.

CONTROVERTED FACTORS OF SECTION NINE OF PERA

It appears to the fact-finder that the following factors illuminated section 9 of the act does bear on the fact-finder's mission. They are: 1) The interest and welfare of the public; 2) A comparison of the condition of employment of employees involved in the fact-finding proceedings with the conditions of employees performing similar services with other employees generally: in public employment in comparable communities; and in private employment in comparable communities; and 3) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hour, and conditions of employment to voluntary collective bargaining, mediation, fact-finding arbitration or other lines between the parties in public or private employment.

1. Interest and Welfare of the Public

Factor C of MCLA 423.239 states as follows: "The interest and welfare of the public and financial ability of the unit of government to meet those costs" in this case, there is no argument of any financial ability or inability of the Cooperative to meet interest and welfare of the public at large. It is clear that the public at large would be best served by a Cooperative in which there are few grievance strikes, slowdowns, stick-outs, etc., one in which there is labor tranquility. One in which the employees are secure in their employment relationship; and not burdened down by excessive circuit court and court of appeals litigation. All of these labor, unrest and litigation would clearly result in a situation in which a union contract agreed to had no meaningful arbitration. Therefore the

best interest of the public is to have a grievance procedure ending in arbitration based on just cause.

2. The Comparison of Condition of Employment

Section 9 (d) of the act provides for a comparison of the conditions of employment with other employees in comparable communities performing similar services in public employment and in private employment. The Employer argues that when one views the many small Library Cooperatives most do not have arbitrators as a right. The Union argues that when one views a union contract, it is almost universal, that a right of arbitration is found. When interpreting this factor in public employment the fact finder believes that if one were to look at drivers working for a unit of government, they are unionized and do have arbitration rights. If one were to look at the driver in private industry one would see the many who are not unionized but have a high percentage of drivers who are highly regulated by State or Federal governments. It is the fact finders opinion that viewing public employment clearly favors the union position and when one views private employment its a much closer call and Max also favors the unions position.

3. Other Factors

Section 9 (h) provides that the fact finders view such other factors not confined to the above portions of section 9 which are normally or traditionally taken into consideration in determining conditions of employment in the collective bargaining and mediation, fact finding, arbitration or otherwise between the parties in public service or in private employment. Clearly factor in the dispute that the parties bring to the Fact Finder is a Mandatory Subjects of negotiation. It is a matter which the collective bargaining process universally grant to union employee, and secondly, it is an issues which is fundamental to reaching a union contract. The fact finder believes that it would be a huge mistake for the Library Cooperative to stop the union contract because it does not want a commonly accepted grievance procedure. Before the Fact Finder became fact finder he was in charge of the labor relations section for a county and the labor relations department

for a city. It was the desire of politicians the Fact Finder served to treat all employees fairly. This is extremely difficult to do when employees are not unionized and very simple thing to do when they are. The employer simply states its position in front of an impartial arbitrator the employer never finds it self with the political problems saying you treated him right and me wrong and rarley finds itself in front of an agency such as the E.E.O.C or Michigan Civil Right Commission, or various other bodies for violation of handicap rules, civil rights or other rules and regulations that are almost always avoided through the union grievance process and the employee. In conclusion other factor (section 9 (h)) also favors inclusion of just cause grievance procedure.

SECTION H.

CONCLUSION

Lastly this fact finder would like to quote a section from fact finding of the Teamsters Union Local 214 vs Meadowbrook Medical Care Facility MERC case#G95G4008. This opinion was written by fact finder Jamil Akhatar and the quote is as follows:

"Binding Third Party Grievance Arbitration:"

"The Employer wishes to eliminate binding arbitration as a terminal step of the grievance procedure. On the other hand, the Union wishes to continue the current grievance arbitration provision in the collective bargaining agreement."

"Arbitration as the terminal step of the grievance procedure is well established in our society and it is difficult to understand why the Employer would make such a proposal. Without grievance arbitration, an employee would be left with virtually no recourse if the Employer violated the terms and conditions of the collective bargaining agreement, or, if the employee was terminated without just cause."

"In Michigan, an employee who seeks to file a lawsuit alleging breach of contract must first allege and prove his Union breached its' duty of fair representation. Absent a grievance procedure which terminates in binding arbitration, an employee would be without recourse. Public employees would be placed in virtually at-will employment relationships-which the Public Employment Relations Act sought to

eliminate when enacted by the Michigan legislature in the late 1960's. Without further comment, this Fact Finder recommends the existing contract language be maintained."

In conclusion this fact finder agrees with Fact Finder Akhtar.

For the State of Michigan,
Department of Labor,

Dated: January 16, 1998

Henry J. Seftovic