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FACT FINDING PROCEEDINGS

BETWEEN

MARTIN EDUCATION ASSOCIATION

AND

BOARD OF EDUCATION
MARTIN PUBLIC SCHOOLS

REPORT OF FACT FINDER

DUDLEY E. WHITING, HEARINGS OFFICER

APPEARANCES

FOR THE BOARD

Robert D. Brandon
Dale Williams
Harry Morrell

FOR THE ASSOCIATION

Patrick Dolan
Darwin Evers
Herbert Johnson
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Martin Public Schools; Board of Education

REPORT OF FACT FINDER

Pursuant to an application by the Association, the undersigned was appointed by the Labor Mediation Board as its hearings officer to conduct a fact finding hearing and make a report, with recommendations, upon the matters in dispute.

Accordingly a hearing was held on December 3, 1968 at the Martin High School in Martin, Michigan. Both parties were represented and afforded opportunity to present evidence and arguments.

THE ISSUES

The matters in dispute are:

1. Teacher Salary Schedule.
2. Request for Insurance Subsidy.
3. Request for Agency Shop.
4. Extra Duty Pay.
5. Provision Respecting Class Size.
6. Provision Respecting Employment Qualifications.
7. Request for Terminal Pay.

FINDINGS AND COMMENTS

1. SALARY SCHEDULE

The 1967 agreement between the parties provided a salary schedule for teachers with bachelor's degree of $5,800.00 the first year - plus ten annual increments of $200.00 to a maximum of $7,800.00, and for teachers with a master's degree of $6,150.00 the first year plus eleven annual increments of $200.00 to a maximum of $8,350.00.

The Association proposed a salary schedule for teachers with a bachelor's degree of $6,300.00 the first year plus twelve annual increments of $252.00 to a maximum of $9,324.00, and for teachers with a master's degree of $6,700.00 the first year plus the same annual increments to a maximum of $9,724.00.

The Board proposed a salary schedule for B.A. of a minimum of $6,200.00 plus twelve increments of $245.00 to a maximum of $9,140.00, and for M.A. a minimum of $6,600.00 plus the same increments to a maximum of $9,540.00. This proposal was rejected by a vote of the teachers. At the hearing the Board representative referred to it as withdrawn, but there was no evidence of withdrawal, only of rejection. Thereafter the Board made other proposals varying the base and the increments but involving the same over all cost.

In the Petition for Fact Finding, as amended, the Association proposed, in the alternative, a two year agreement based upon the best proposal of the Board for the current year with a salary schedule for 1969-70 of $6,800.00 to $10,138.00 for B.A. and $7,344.00 to $10,850.00 for M.A. in ten annual increments.

The Board says that, while it might be expedient for the present to accept this alternate proposal, to do so might adversely affect the prospects of securing approval of the necessary millage to finance the second year. It appears that the authorization for five mills of the present fourteen mill operating tax expires before the 1969-70 school year and that the salaries proposed for that year would require an additional twelve mills to balance the budget. Under these circumstances such a proposal cannot be reasonably recommended.

The original proposals of the parties were so close that it is surprising and most unfortunate that agreement was not reached. The maximum difference is $184.00 a year. Even if all forty four teachers received that maximum difference it would amount to approximately $8,000.00. The Board estimated that its offer would result in a budget deficit of approximately $8,000.00, so the Association schedule would double the deficit.

There is no question that the salary scales proposed by the Association are not higher than and within the range of the salaries paid in neighboring and comparable school districts. Evaluation of the proposal thus becomes a matter of the weight to be accorded to the ability of the Board to pay within a reasonably balanced budget.

The legislature saw fit to extend to public employees the right to engage in collective bargaining without, however, establishing any criteria or guidelines for evaluation of the ability of the public employer to pay the wages sought. Hence, the only guide for impartial evaluation thereof is the weight given to that factor by public employers and employee organizations in reaching agreements. To the best of my knowledge this factor has influenced economic settlements only in extreme cases and, even then, in but few instances.

It is certain that if, for example, an operating millage proposal were defeated by the electors in a district, which was necessary to enable the payment of requested salary increases, one would have to say that the voters had decided to take the chance of being able to obtain or retain suitable personnel at the existing rate. Since the voters have the last word in public spending, that would end the matter.

In this case it does not appear that any millage proposal has been defeated in recent years and this year none was made, probably because of the situation confronting the Board next year. As noted above, next year's millage problem affords a reasonable basis for declining to recommend a two year agreement, but is wholly conjectural now and so is not a valid factor in evaluating this year's agreement terms. Whether or not a salary scale adopted now can be met in subsequent years is a matter for bargaining at that time.

Under these circumstances I am constrained to recommend adoption of the Associations proposal for this year.

2. REQUEST FOR INSURANCE SUBSIDY

The 1967 agreement contained no provision for employer payment of employee insurance premiums. The Association proposed payment of $10.00 per month or $120.00 per year for hospital and medical insurance. The Board offered $7.00 per month or $84.00 per year.

The evidence shows that an increasing number of teacher collective agreements are making provision for some employer payment of health insurance premiums. This benefit is almost universally provided in collective agreements in private employment. In the beginning employers usually paid only part of the premium, frequently one-half, and the employee paid the remaining cost. It appears that such sharing of costs exists in some of the teacher agreements in comparable districts.

In accordance with the trend such a benefit should be inaugurated here but, in view of the fiscal situation, a premium sharing arrangement is an appropriate way to start it. Under the circumstances the proposal of the Board should be adopted.

3. REQUEST FOR AGENCY SHOP

The basic issue is of "legality". The Association relies upon Labor Mediation Board Case No. C66 F-63 and Clampitt vs. Warren Consolidated Schools in the Macomb County Circuit Court.

The Labor Mediation Board held that an agency shop provision is not prohibited by the Public Employment Relations Act. Its decision was not in a school case and did not consider the effect, if any, of the teacher tenure act. The Macomb Circuit Judge indulged in some dicta respecting the legality of an agency shop provision in a teacher contract, but the essence of his decision was that he was without jurisdiction because the plaintiff had not exhausted his administrative remedies. Obviously that decision is not a determination of legality.

As yet there has been no definitive determination by the State Tenure Commission or the Courts as to whether the dismissal of a teacher for refusal to comply with an agency shop contract provision constitutes a discharge "for reasonable and just cause" within the meaning of the Teacher Tenure Act, although there are pending cases raising that issue. Certainly I am without authority to make such a final determination. Hence an employer acting in conformity with an agency shop provision does so at the peril of liability for pay under the Teacher Tenure Act and the expense of litigating this question.

No valid reason appears for requiring the employer to assume such contingent liabilities and this has been recognized by the Michigan Education Association, because many of its recent agency shop provisions contain some provision for relief therefrom or

elleviation thereof. Some of those provide for an agency shop provision to be effective when such is determined to be legal by a court of competent jurisdiction. This type of contract clause eliminates the legal cost and pay liability contingencies and, in my opinion, would obviate the objections of the Board in this case. Accordingly I find this to be an appropriate and reasonable solution to this issue.

4. EXTRA DUTY PAY

The Association proposed the addition to Schedule B of the contract of Girls Basketball, Cheer Leading and Girls Athletic Association at $100.00 each and a change in compensation for selling or taking tickets and acting as chaperone on bus trips to $2.00 per hour without limitation. The 1967 contract provided $1.50 per hour with a $5.00 maximum.

The Board agreed to add the Girls Basketball Coach to Schedule B at $100.00 but questions the need for the other additions proposed, although expressing a willingness to discuss them. It also offered $1.75 per hour with a limit of $5.00 per evening for miscellaneous extra duties, which are allocated on a voluntary basis.

I do not have sufficient factual data to evaluate the extra duty pay requests for cheer leading or girls athletic association and, since I have recommended the full pay scale sought by the Association and, since the budget is in a deficit condition, I am constrained to recommend adoption only of the Board proposals on these fringe cost items. Certainly this is appropriate in connection with the proposal for miscellaneous duty pay, because such duty is entirely voluntary.

5. PROVISION RESPECTING CLASS SIZE

Article IV of the 1967 agreement contained the following provision:

> "Section I. Because the pupil-teacher ratio is an important aspect of an effective educational program, the parties agree that class size should be lowered whenever possible. It is recommended that a level of 25 pupils per elementary classroom be the goal of the school system."

The Association has not proposed any change in language, but seeks to "enforce the provision". The Board shows that there was agreement on March 18, 1968 to retain the same provision in the 1968 agreement.

The problem arises primarily because fifth grade classes have 36 pupils each and sixth grade classes have 37 and 39 pupils. There is however a teachers aid assigned full time to each grade.

This contract provision expresses a goal of 25 pupils per elementary class and agrees that class size should be lowered "whenever possible". Whether a class size reduction is possible involves several factors, e.g., available space, available competent teaching personnel, and available funds for an increase in personnel. The Association here requests enforcement upon a showing only that class size exceeds 25 pupils. There is no evidence respecting the other factors, except the financial data that the budget is in deficit, which negates the availability of funds for an increase in teaching personnel. Thus it appears that this proposal should be withdrawn.

6. PROVISION RESPECTING EMPLOYMENT QUALIFICATIONS

Article V of the 1967 agreement provided in part:

> "Section I. No new teacher shall be employed by the Board for a regular teaching assignment who does not have a bachelor's degree from a college or university.
>
> Section II. The employment of teachers upon special certificates is to be permitted only in cases of absolute necessity or where the teacher has outstanding credentials and the Association shall be so notified in each instance."

The Association "seeks to maintain and enforce" this provision and it appears that there has been agreement to continue this provision in the 1968 contract.

It appears that in the fall of 1968 the Board hired a teacher upon special certificate without notice to the Association. The Board justifies the failure to notify on the basis that the former agreement had expired and a new one had not been consummated. This position could only be the result of inexperience.

Courts and arbitrators have viewed collective labor agreements as continuing documents, because ordinarily the parties simply propose modifications at terminal or anniversary dates with unaffected portions to continue in their previous form. Seldom are such contracts actually terminated. This view of the collective agreement is particularly appropriate in the public employment sector because employees strikes are unlawful.

In any event the Board and the Association will have to live together, probably through many contracts, and will find communication advisable whether the contract has expired or not. Under the circumstances I do not find any formal recommendation either necessary or appropriate on this subject.

7. REQUEST FOR TERMINAL PAY

The Association proposed a provision for terminal pay of $500.00 upon retirement after having taught at least fifteen years in the Martin school district.

The Board is opposed to terminal pay because it contributes nothing to education and because of an Opinion of The Attorney General that school boards are without authority to make such payments.

In any event I have felt that the most urgent economic problem was salaries and having recommended the Association's proposal thereon in a budget deficit situation, it is my judgment that other economic proposals should be withdrawn, unless there has been agreement or some real inequity is shown. Certainly there is no room in this years budget for a proposal of such dubious legality.

RECOMMENDATIONS

1. The 1968 agreement should provide a salary scale of $6,300.00 minimum to $9,324.00 maximum in twelve annual increments of $252.00 for teachers with a B. A. degree, and of $6,700.00 minimum to $9,724.00 maximum in twelve annual increments of $252.00 for teachers with an M. A. degree.
2. The 1968 agreement should provide for payment by the employer of $7.00 per month or $84.00 per year on account of health insurance premiums.
3. The 1968 agreement should provide for an agency shop to be effective only upon a final administrative or judicial determination that discharge pursuant thereto is not inconsistent with the provisions of the Teacher Tenure Act.

4. The proposals of the Board with respect to extra duty pay should be adopted.

5. The proposal of the Association respecting enforcement of the class size provision should be withdrawn.

6. The proposal of the Association respecting terminal pay should be withdrawn.

Dated at Detroit, Michigan this 10th day of December, 1968.

Dudley E. Whiting

DUDLEY E. WHITING, HEARINGS OFFICER