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George T Roumell Jr.
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STATE OF MICHIGAN

DEPARTMENT OF LABOR

LABOR MEDIATION BOARD

LABOR RELATIONS DIVISION

In re:

NEW BUFFALO SCHOOL DISTRICT

and

REGION 43, INTERNATIONAL UNION
OF DISTRICT 50, UMWA

New Buffalo School District

REPORT OF FACT FINDER

Appearances for the Employer:

Thomas L. Combs, Attorney
Myron H. Reyher, Superintendent of Schools

For the Union:

Vertis Arnett, International Representative, District 50, UMWA
Dorothy Kail, Bargaining Committee
Elinor Killingbeck, Bargaining Committee
Agnes Conway, Bargaining Committee

In order to properly evaluate the situation in which the parties now find themselves, it is essential that the background leading up to the present situation be completely understood.

Since at least the spring of 1966, the New Buffalo Area Schools' Board of Education (Board) recognized the New Buffalo Employees Association (Association) as the collective bargaining representative of its non-teaching personnel. The Board and the Association entered into two contracts of a year duration each, one for the period ending June 30, 1967 and one for the period ending June 30, 1968.

In the spring of 1968 the Board and the Association began negotiating for a new contract. An offer, including economic benefits, was made to the Association. By letter dated June 25, 1968, the Association rejected the offer.

Thereafter, on or about August 26, 1968, District 50, United Mine Workers of America, filed a petition with the Labor Mediation Board seeking certification as a collective bargaining representative of the employees previously represented by the Association. The Board answered the petition and raised the question of whether or not the existing contract between the Association and the Board constituted a contract bar. There also were questions raised as to the eligibility of certain employees.

A hearing was held on October 23, 1968, and thereafter on or about December 3, 1968, the Board issued a decision and direction of election.

The election was held on January 17, 1969 and District 50, United Mine Workers of America, was subsequently certified as the collective bargaining representative of the employees previously represented by the Association.

On February 25, 1969, District 50 (the Union) and the Board met to negotiate a contract. Subsequently, on March 24, 1969, the Board and the Union met with State Mediator, Everett Wilkes. The Union claims that at this point collective bargaining had broken down. The Board had indicated it would not move from its original positions.

On April 1, 1969, the Union filed a petition for fact finding and the undersigned by letter dated May 8, 1969 was appointed fact finder. A hearing on the issues was held on May 29, 1969 in New Buffalo, Michigan.

In addition to the above background it should also be noted that the Board did present a completely typed prepared contract

to the Association and subsequently to District 50, which was marked and admitted as Board Exhibit No. 1. The Board still maintains that it is willing to sign said agreement. This agreement was supposedly to be from July 1, 1968 through June 30, 1969. It was never signed.

The situation is further complicated by the fact that if this agreement is now signed, there would be less than one month left in the life of the agreement; that as a matter of fact the parties would be negotiating a new contract beginning July 1, 1969 as it has been the practice both with the non-teaching personnel and the teaching personnel for the Board to negotiate one-year contracts because of budgetary reasons. There is also the very critical fact that for almost a full year the non-teaching personnel have received no raises in pay though, in fact, the teaching personnel did receive the pay increases beginning with the school year in September 1968.

In the background, there has also been the offer to the custodian employees of retroactivity of wages if they were accepted. This offer was made some time ago. The custodians did not accept the offer of the Board. There is also the further complication that on April 1, 1969, the Board did initiate unilaterally the raises that it offered in June of 1968. District 50 has filed an unfair labor practice concerning this unilateral wage raise. Thus, as the fact finder enters this situation, the wages have been increased to those proposed in Board Exhibit No. 1 as of April 1, 1969, apparently over the objections of District 50.

ISSUES

As indicated in the petition for fact finding, there are six issues:

1. Wages.
2. Grievance Procedure - namely, the question of whether the arbitration clause should be permissive or mandatory.
3. Check-off of dues.
4. Agency shop.
5. Paid sick days.
6. Paid vacations.

There was a seventh issue raised at the fact finding hearing which was not in the petition for fact finding. The Employer raised objections on jurisdictional grounds for considering this seventh issue. The fact finder agrees with the Employer as to the jurisdictional point but because the matter is easily resolved on these facts, the fact finder will make the recommendation concerning same.

CONCLUSIONS AND RECOMMENDATIONS

The fact finder is put into what seems to be an impossible situation. If a contract had been entered into last June, 1968, it would expire within thirty (30) days of this report. Thus, in theory, any recommendation made by the fact finder would seem to suggest that it would only be good for the next twenty (20) to twenty-five (25) days. In addition, on April 27, 1969, the citizens of the school district voted down the radial operational millage. Another millage vote is scheduled for June 9, 1969, and at this writing the result of that millage vote is unknown. Obviously the District is in serious financial plight.

On the other hand, the thirty-three (33) non-teaching employees who constitute this unit have gone without a raise since June, 1968. The teachers, in September, 1968, did receive wage raises. It is well-known that the cost of living has gone up. On

at least one occasion the Board to some of the employees, has offered retroactivity and did in fact, on April 1, 1969, initiate the increases that it offered in June, 1968. At the present time the Board says it has no funds to give retroactive pay increases.

The fact finder believes that what is essential here is the establishment of a sound collective bargaining relationship between District 50 and the School Board. It took approximately six (6) or seven (7) months to get the relationship established. Because of the time of the year and because of the obvious bugetary problems even after District 50 was certified, it was difficult for the parties to establish a bargaining relationship.

The recommendations contained in this report are designed to establish this much needed sound bargaining relationship. It is important from both the Board's and District 50's point of view.

The first step towards establishing this relationship is to look at Board's Exhibit No. 1, the contract that was partially agreed upon. District 50 has suggested that with the exception of the economics, the lack of an agency shop and the question of mandatory arbitration, the agreement as such and its language is satisfactory to the District. It is, therefore, my first recommendation that the agreement as such except as I shall subsequently recommend modifications, will be adopted by both the Board and District 50 and shall be a two-year contract effective July 1, 1968. My recommendations further will provide, as will be set forth below, that on June 30, 1969 the contract shall be automatically reopened for economics and other items that I will set forth below.

As to the precise issues raised above, I have the following recommendations for the following reasons:

Grievance Procedure

I have listened with care to the arguments of both the Board and District 50 concerning the grievance procedure. The language of the grievance procedure is acceptable to both sides except Section 6, FOURTH STEP, at page 6 of Board Exhibit No. 1. It is my recommendation that the first paragraph of that language be amended to read as follows:

> "If the grievance has not been settled in the Third Step, the grievant and/or District 50 may submit such grievance to arbitration, provided such submission is made within ten (10) school days after receipt of the Third Step answer."

Paragraph 6(a) would remain as same.

Although the Board argues that mandatory arbitration would seemingly take away certain powers from the Board, I do not agree with this argument. One must recognize that there is a belief that under the applicable statute, public employees cannot engage in strikes. Regardless of this statute, Board Exhibit No. 1 provides for a no strike clause. It is well recognized, at least by the Supreme Court of the United States, that a no strike clause, for that matter, a statutory provision eliminating the right to strike, is the "quid pro quo" for a no strike clause. United Steel Workers of America v. American Manufacturing Company, 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2nd 1403 (1960).

Even closer to home, Circuit Judge Byrns of the Berrien County Circuit Court, has held in a widely cited decision that Boards of Education can agree to mandatory binding grievance arbitration. Local 953, International Union of American Federation of State, County and Municipal Employees v. School District, 66 L.R.R.M. 2419, 216 GERR E-1 (1967).

Both by the contract language (Board's Exhibit No. 1) and apparently by statute, these employees cannot strike, at least during the term of the contract. If they have a grievance that they believe is legitimate, these employees should have the right if the oard and the employees cannot agree on the disposition of the grievance to submit it to a third party impartial arbitrator. Particularly with small groups of people, it has been the experience in the private employment sector that arbitration is not frequently used. During the three years of relationship between this unit of employees with their predecessor union and now District 50, the Board has only had one grievance and this has been resolved mutually. The representative of District 50 made it very clear at the hearing that it was the policy of his District not to encourage arbitration but to try to find mutual solutions to any grievance that may arise.

By making this recommendation, I am not asking the New Buffalo Board of Education to be a trailblazer. I am only suggesting to the Board that it adopt a well established procedure in labor relations, namely, mandatory, final and binding arbitration; a procedure that has been recognized by Berrien County's own Judge Byrns and which has been recognized by the Supreme Court of the United States as well. I again emphasize that to expect public employees not to strike necessitates availability of other safety valves. I believe that final binding mandatory arbitration is fair and that neither side will be harmed by such a provision.

Check-Off

Though the petition for fact finding did indicate that check-off was an issue, at the hearing it became clear that the parties were very near agreement on this point. Article I, Section 4 deals with check-offs. The issue involved is the last

sentence which now reads: "Such sum shall be deducted as dues from the regular salaries of all employees more than once during the school year." I would recommend and apparently it is agreeable to both parties, the following language: "Such sum shall be deducted as dues from the regular salaries of all employees each month they are employed during the year." I assume that custodians work all year round and this is the reason why I have not limited this provision to the school year.

Agency Shop

District 50 presents a strong argument supporting an agency shop. The concept of agency shop in the public employment field has been developing. The unions argue that it offers union security plus the fact that the benefits that the union does seek and obtained for the employees in the unit for which it is certified should be paid for by all employees receiving the benefits. This argument is indeed persuasive. In addition, the Circuit Judges of Michigan have been upholding the validity of agency shops. See City of Warren v. Local No. 1382, International Association of Fire Fighters AFL-CIO (No. S67-311), Clomatt v. Warren Consolidated School District, 68 L.R.R.M. 2996.

The argument for agency shop with District 50 becomes even more persuasive when District 50 is willing to indemnify the School Board from any claims of illegality that may be raised in the event the clause is put in the contract.

However, as I indicated previously, the main purpose of these recommendations is to establish on a sound basis a collective bargaining relationship between the Board and District 50. In establishing this relationship and in attempting to prepare recommendations that can be accepted by both sides, one has to

consider whether or not the parties would accept the recommendations and what the results would be if the parties went out on strike.

Under all the circumstances, it is my recommendation that the Board Exhibit No. 1 not contain an agency shop but that the issue of agency shop would be automatically reopened on June 30, 1969 and would be subject to negotiations between the Union and the Board along with negotiations over economics. It is my further recommendation that in the event the Board does give an agency shop to the Michigan Education Association who are negotiation for the teachers, then such a clause shall automatically be part of Board Exhibit No. 1. But even if the Board does not give such clause to the teachers this will not bar District 50 from negotiating at their reopening time for an agency shop clause.

I may suggest that in line with the cases indicated above and the tendency to give agency shop in Michigan that the Board give serious consideration to giving an agency shop in this situation at the time of the reopening of negotiations.

Library Clerk Typist

An issue was raised at the fact finding concerning the classification of Betty Haemker who is now classified as a librarian clerk typist. This employee apparently desires to be classified as an assistant to the librarian. As indicated above, there is a serious jurisdictional question as to whether I can consider this matter in view of the fact that it was not raised in the petition for fact finding. Nevertheless, I am willing to make a recommendation. I am impressed with the Board's argument that if the classification name was changed there is a possibility that the employee would in effect be ruled out of a job because of the requirement of the North Central Association and other certifying agencies that would require anybody designated as

an assistant to the librarian to have some college training if not a degree. I feel that I cannot put the employee in this position, Therefore, under the circumstances, I recommend that the employee's present classification "library clerk typist" remain unchanged.

Economics

Under this category I group the three items referred to in the petition for fact finding as wages, paid sick days and paid vacations. In making the recommendations in these areas which I have termed "Economics", I suggest the following additional comments. District 50 has made demands substantially higher than the Board's offer of June, 1968. District 50 subsequently modified its damands. Though I sympathize with District 50's position and recognize that it desires to obtain a better economic package for its members than previously offered, I believe that at this juncture this is not possible. The millage has just been defeated. It is now up for another vote on June 9, 1969. The Board is not sure what funds it will receive from State Aid. The Board, in all sincerity, is probably not ready to negotiate future economic benefits until sometime after June 30, 1969 when the results of the millage will be known and the results of State Aid will be known. Under these circumstances it is very difficult to make an economic projection at this present time.

On the other hand, it must be recognized that these employees have not received a raise for approximately eight (8) months, though in fact the teaching personnel did receive their raise in September, 1968. The Board may very well argue that this fact of life is not its fault. Yet it is not the fault of the employees. They legitimately had the right and did in fact change bargaining representatives and they should not be penalized for this.

The Board argues that it no longer has the money that it once had and once provided to give the wage increases it proposed in June, 1968. Yet, I am not convinced of this. After all, the Board did agree to make the raises effective April 1, 1968, and did so unilaterally. Thus, we are in effect only talking about a period from June 30 to April 1. The budget given to the fact finder showed that the Board had budgeted a $55,000.00 balance. It may be true that since budgeting is not an exact science, there may be no balance and the Board may be very tight for funds. However, as I see it, the Board at one time was willing to grant retroactivity and certainly did so in effect as of April 1, 1969. I believe that the Board can find the money and that the amount involved is roughly between ten to fifteen thousand dollars.

The Union may be disappointed by the fact that I am not recommending any increases over and above the increases offered by the Employer as of June, 1968. But again I emphasize that I am attempting to put the parties in a sound bargaining relationship. In view of the uncertainty of the Board's financial position, it would seem that if the parties were put in a reasonable financial position that they could then be in a position to begin bargaining on June 30, 1969 for the future economic benefits. It would seem that the best way that this could be done is to re-establish the rates that were offered on June 30, 1968 and for the parties to go from there. These rates, of course, as I would recommend, would be retroactive.

The Board may be concerned about the concept of retroactivity. They may feel that the fact finder is awarding the employees for switching union affiliations and may be suggesting that I have awarded the so-called "waiting in the bush" to see what develops. Such a conclusion would not be justified. By limiting my recommendation to the wages that were offered in June, 1968, I am honoring the Board's position that it has no more

funds and that it is in a precarious economic situation because of the millage defeat, the forthcoming millage vote and lack of knowledge as to what funds will be available from the State. As I indicated in the paragraph immediately above, what I am attempting to do is put the parties on a sound basis so that they may go forward.

If I did not recommend retroactivity I believe this situation would be intolerable from both the Board's and District 50's point of view. After all, none of these employees went on strike. May I remind the Board that only recently the bus drivers in the Bloomfield Township School District staged a refusal to work. This has not happened in New Buffalo. I am not suggesting that the employees should be awarded for not going out on strike because apparently state law would prohibit strikes to begin with. However, I think the fact that they did not go on strike would indicate strong justification for the retroactivity.

Admittedly, there has been a hiatus in this situation. I believe what I am about to recommend as to wages will bring order to what apparently is a chaotic situation.

Apropos to what I have said about wages, I also suggest the same about the paid vacations and sick leave.

Thus what I recommend is that the wages as set forth in Board Exhibit No. 1 be retroactive to June 30, 1968 and be paid forthwith to the employees and that the sick leave provisions in Board Exhibit No. 1 correspond identically to the previous contract negotiated and signed for the 1967-1968 school year. Thus in Appendix C, Section 6, the maximum sick leave will be eighty (80) days rather than the proposed thirty (30) days and the maximum sick leave in Section 4, Appendix E will be eighty (80) days rather than the proposed thirty (30) days and that in Appendix F, Section 8 the maximum sick leave will be eighty (80) days rather than the proposed thirty (30) days. I assume that the vacation proposal

in Board Exhibit No. 1 is identical to the vacation set forth in the previous contract for the school year 1967-1968. Therefore, I recommend that the vacation schedule in Board Exhibit No. 1 be accepted.

Reopener

I am recommending that there be a two-year contract. On June 30, 1969, there shall be an automatic reopener without notice on the part of each party as to all economic issues including wages, sick leave, vacations, and any other economic issues. In addition, the reopener shall also cover the question of agency shop. With these exceptions, no other matter in the contract will be subject to negotiations.

SUMMARY

In summary, therefore, my recommendations are as follows:

1. Enter into a two-year contract as of June 30, 1968, with an automatic reopener on June 30, 1969 for all economics including wages, sick leave, vacations, as well as the issue of agency shop.

2. The contract, including the wage package recommended, be retroactive to June 30, 1968.

3. That the contract contain a mandatory binding arbitration clause.

4. That the contract contain a monthly check-off provision.

5. That the job description of library clerk typist remain as is.

I made no recommendation as to the pending unfair labor practice concerning the April 1, 1969 wage increase. However, if this recommendation is accepted by both parties consideration should be given to withdrawing the charge.

George T. Roumell, Jr.
Fact Finder

Dated: June 3, 1969.