

STATE OF MICHIGAN
DEPARTMENT OF LABOR
LABOR MEDIATION BOARD

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RELATIONS DIVISION

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In the Matter of
SOUTHFIELD PUBLIC SCHOOLS,
Southfield, Michigan

-and-

EDUCATIONAL SECRETARIES OF SOUTHFIELD

On April 16, 1969 the undersigned, Leon J. Herman, was appointed by the Labor Mediation Board as its hearings officer and agent to conduct a fact finding hearing relevant to the matters in dispute between the above parties, pursuant to Section 25 of Act 176 of Public Acts of 1939 as amended, and the Board's regulations. Accordingly, and upon due notice, a hearing was scheduled and held on May 27, 1969 at the offices of the Southfield Board of Education, 24461 Lahser Road, Southfield, Michigan

Wolfgang Hoppe, Attorney; C. Keith Groty, Personnel Director and Jon Reynolds, Personnel Assistant, represented the Board of Education.

Warren Williams, Representative; Nancy Detert, President; Sandra Sandrock, Severance Committee Chairman; Ray Krieger, Past President; Marjorie Geisel, Vice President; Frances Dzendzel, Chairman Negotiating Committee; and Loretta Muir, Dorothy Bogatko, Betty Blaszek and Carole Zook, Committeewomen, appeared on behalf of the Association.

Educational Secretaries of Southfield is the bargaining agent for the secretaries in the Southfield, Michigan public schools. On behalf of 60 of its 82 members it filed a grievance, alleging that

Southfield Public Schools

Section H of Article 6 of the Agreement between the Board of Education and the Association had been violated on September 23 and October 2, 1968, in that the 60 secretaries had been laid off for those two days without pay. The grievance stated that "we feel the Board has failed to follow proper procedure in the reduction of personnel" and asked for back pay for both days for all secretaries improperly laid off.

Article 6, Section H reads:

H. In the event it is necessary to reduce secretarial personnel, the administration will notify the Association and the individual(s) involved, in writing, at least two weeks in advance of the scheduled reduction. A secretary laid off due to elimination of jobs or a reduction in the work force, may claim in writing within five (5) school days, after having been notified, seniority in her classification over the secretary who has the least system seniority in that classification. She may also claim system seniority over the last secretary hired in each lower classification. In the event a question arises concerning the secretary's ability and qualifications, a trial period of thirty (30) days will be granted to the employee upon request. At the end of the thirty days, she will be given the position on a regular basis or placed on the seniority-recall list. Movement to a lower classification shall be at the same experience step as presently occupied. Persons so displaced by other secretaries have the right to the procedures of Section H. Should there be no persons in lower classifications, the secretary shall be placed on the seniority-recall list.

The Board, by William R. Adcock, Jr., Associate Superintendent, replied to the grievance under date of October 9, 1968:

In regard to your grievance, filed October 4, 1968, concerning violation of Section H, Article VI of the contract between the Southfield Board of Education and the Educational Secretaries of Southfield, it is the opinion of the Administration that:

1. September 23 and October 2, 1968, were not reductions in work force or elimination of jobs but simply a scheduled non-operating day in certain areas of the district.
2. The School Board and Administration reserve the right to set work schedules, make assignments and in other ways affect the operation of the school district within the limits set out in the contract.
3. There is no guarantee or definition of the work year for secretaries in their contract. The Board and Administration can set any schedule of work for the year subject only to the provisions of Article III, Section G, Article IV, Section A.

It is, therefore, the opinion of the Administration that there was no violation of Section H, Article VI of the contract between the Southfield Board of Education and the Educational Secretaries of Southfield.

The answer was adhered to throughout the succeeding steps of the grievance procedure. Under the terms of the contract the parties agreed to submit the grievance for recommendation to a fact finder appointed by the Michigan Labor Mediation Board.

The basic facts leading up to the grievance are not disputed. On August 26, 1968, the Board of Education posted the school calendar for the year 1968-69. Thanksgiving Day, November 28, 1968 and the Friday after were marked no school. School was declared closed for the winter vacation on Friday, December 20, to resume Thursday, January 2, 1969. School was closed again for the spring vacation at the close of school on April 3 to resume on Monday, April 14. September 23 and October 2, 1968 were marked "insufficient membership -no school". These two dates coincide with the Jewish New Year and the Jewish Day of Atonement. The ethnic composition of the school district was such in 1968 that there was little likelihood that 60% of the students would attend on the last two mentioned days. As a consequence the days would not apply toward the 180 day calendar required for State Aid.

On September 17, 1968, the Board posted a notice to "all Elementary, Junior High and Senior High secretaries" with reference to the closure of schools on September 23 and October 2, 1968. The announcement reads:

All secretaries listed above shall not work or be compensated for the dates of school closure on September 23, 1968 and October 2, 1968 due to the fact that the schools will be closed due to insufficient membership.

The secretaries charged that they were laid off on those two days without proper notice under Section H of Article VI and demand that they be reimbursed for the two days. The School Board denies that there was a layoff but rather a calendar work day adjustment, which it has the right to do.

It is stipulated between the parties that the issues in this case are, 1. Were the secretaries laid off; 2. Was there a reduction in staff, and 3. If so, was proper notice given?

The parties also agreed that the Board has the right to fix the work schedule; that there is no precisely defined schedule; and that it may be adjusted from time to time as the Board sees fit. Secretaries are hired at an hourly rate for a ten month or twelve month year, depending upon the nature of the services required. Specifically, the Board's offices are open the entire year and the secretaries there work a twelve month schedule. Most of the other secretaries are on a ten month basis. On the two religious holidays in issue 60 secretaries working in the elementary, junior high and senior high schools and special departments were instructed not to report. Two high school secretaries were instructed to report those

days for data processing. The 18 secretaries employed in the Board of Education offices were also told to report. All secretaries were aware of the calendar posted on August 26. The notice which was mailed to the secretaries on September 17 did not reach the secretaries until September 19 and September 20. Both parties agree that the notice for both religious holidays was less than the two weeks specified in the contract.

It appears that the spring and winter closings were accepted by the secretaries without special notice and without payment. It has become an established practice to close the schools for those two periods every year and the secretaries have accepted them as an agreed period of time off without pay. As to other closing days there has been over the past years considerable confusion. May 31, 1967 was a day when the schools were closed but the secretaries worked. November 4 and 5 of 1965 and 1966 were MEA days on which no classes were held, but the secretaries were paid and either worked or for one of the two days attended their own secretarial conference in Oakland County. January 28, 1969 was a day of no classes when all secretaries worked. The same was true on January 26, 1968. The secretaries have worked when no teachers were on duty, although the janitors and administrators worked, and they worked on days when no teachers worked but administrators worked.

Because of the closing for the two Jewish holidays the MEA days were eliminated from the current calendar. The secretaries assumed that the Jewish holidays were in substitution for the MEA days and expected to be paid for those two days. The Board insists that it had no intention of substituting the two holidays for MEA days.

The inconsistency with respect to secretaries working on closed school days appears to extend to the practice of sending notices to secretaries. Apparently notices were sent in the past only when scheduling problems were indicated or when the administration received inquiries with respect to a prospective closing which it felt it should clarify by notice. It would thus appear that past practice, except for the spring and winter vacations, offers no help in determining the issues here involved.

The Board insists that this was not a layoff. Had it been such the secretaries would certainly have the right to bump into the jobs of those who were retained. It is agreed that the secretaries did not have five days notice in which to bump for September 23. They did have the five days to bump on October 2, but none of the secretaries made an attempt to do so. The Board suggests that presumably they did not consider this a layoff. The Board further argues that there was no reduction in forces since there was no lack of work. The schools were closed only because there were no students, and not because there was no work. It believes the contract terms offer an inference that a reduction in personnel means a long term situation, as where a number of employees are cut off from their jobs. It does not mean a one day situation such as the present case. It further argues that the calendar was sufficient notice and that the letter sent to the secretaries was solely for purposes of clarification. The Board refers to the definition of layoff in the Dictionary of Labor Law Terms as "A temporary, prolonged or final separation from employment, as the result of lack of work." It insists that the definition does not apply to the instant case.

The Board also refers to the January 9, 1969 Daily Labor Report A-3 in the Arbitration of American Bakery Union Workers and Drake Bakeries. In that case a riot in the area caused the employer to

close the plant for three days. The employees demanded pay for that period because the contract called for a week's notice of layoff, which was not given. The arbitrator in that case agreed that the list of exceptions in the contract did not include riots, but ruled the closing was not a layoff. It was, rather, a temporary cessation of operations due to a riot in the neighborhood. The Board feels that the cited case is analogous to the one in hand.

There is no provision in the contract for a temporary layoff of employees. To lay off a secretary requires that two weeks notice be given. In view of the unsettled past practice with respect to posted closings, with the exception, of course, of the spring and winter vacations, it cannot be said that the calendar of August 26 was a definite notification that the secretaries were not to work on that date. This is supported by the fact that 20 secretaries were instructed to work that day.

When the agreed facts show that of 80 secretaries 20 were directed to work and 60 were instructed not to report, it must be concluded that the secretaries were actually laid off on the two days in a reduction in force. They did not receive the two weeks' notice which the contract requires and must therefore be regarded as having been improperly laid off, unless they were at fault in failing to bump for the second holiday. I do not agree with the Board's contention that the secretaries had the right to bump. In order that that right obtain the secretary must first be given two weeks' notice, after which she may make written claim to the job of a secretary with less seniority. Not having received the proper notice, she was not required to bump to entitle her to payment for the two days.

Nor am I impressed with the argument that a layoff may be only for lack of work, and that these schools were closed not for lack of work, but because there were no students in attendance. This might be a stronger argument were the teachers themselves involved, but in either case I would be inclined to the opinion that, in the particular sphere of operation which this employer maintains, the students are the "work". If there are no students there is no work. If there is no work, and the secretaries are instructed not to report for that reason, then they have clearly and obviously been laid off.

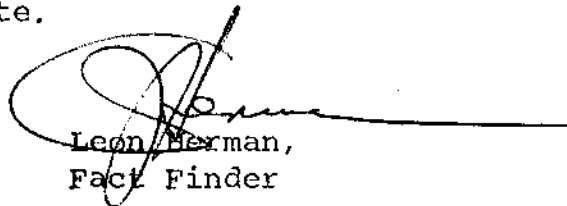
The cited arbitration is inapplicable, since the basic situation differs so radically. In that case all employees were laid off because it was dangerous to open the plant and unsafe for the employees to go to their jobs. In the instant situation, we have the ordinary, run of the mill case of part of the employees being laid off because of lack of work.

While these secretaries are hourly rated employees, in so far as their compensation is concerned, they are nevertheless hired for a full 10 month or 12 month period. They are granted privileges beyond those which the average hourly rated worker enjoys. Holiday pay, of course, is normal in industry, but in addition these secretaries are allowed leave days with pay for illness of their own or in their family, for observance of religious holidays and other reasons. They accumulate leave days much as teachers do without loss of pay. They may have leaves of absence without pay for a number of reasons. The only difference between secretaries in the school and the secretaries in a business office

is that the Board has the right to fix a schedule of work days to which the secretaries must adhere, and when work days are cancelled on due notice the secretaries do not get paid.

I find as a fact that the 60 secretaries in the Southfield school system were denied two days of work without proper notice. Specifically in disposition of the issues presented, (1) the secretaries were laid off, (2) there was a reduction in staff, and (3) proper notice was not given.

I recommend that the Board reimburse the 60 secretaries who were laid off on September 28 and October 2, 1968 for their pay for those days at their regular rate.



Leon Herman,
Fact Finder

Southfield, Michigan

June 30, 1969