

FF 3/15/79

IN THE MATTER
OF
FACT FINDING

Southwestern Michigan College

Michigan Employment
Relations Commission

-and-

Case No.: L77 L794

Local 586 Service Employees
Industrial Union

APPEARANCES

For the College

David Briegel, Vice President for Business Affairs

For the Union

James Shelton, Local 586 S.E.I.U.

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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Southwestern Michigan College
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Date:
March 15, 1979

S. Eugene Bychinsky
Fact Finder
SS # 368-14-1758

Michigan State University
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Following the notice of appointment of Fact Finding Hearings Officer by the Bureau of Employment Relations, a hearing was held on January 9, 1979, at which time Southwestern Michigan College and Local 586 S.E.I.U. were represented, and both sides presented evidence and supporting facts as well as arguments on all issues that were set forth in the petition for Fact Finding that was filed by the S.E.I.U., as not as yet resolved.

The unit description includes:

"All maintenance and custodial employees, security employees, and clerical employees, cashier, evening custodial, supervisor, and secretaries for the President's Assistant, Assistant Dean of Student Services, and Dean of Continuing Education."

At the hearing it was represented by the Union that this unit description encompassed approximately 24 positions. While the unit was certified by the Michigan Employment Relations Commission in 1977, as yet no contract had been agreed upon. While there have been numerous bargaining sessions and the assistance of a State Mediator was obtained, the parties had not been able to reach agreement on the issues that were identified in the petition for the Fact Finding hearing. The Union pointed out that a sizable turnover since certification of approximately 35% of the incumbents in these various positions, had also hampered their efforts to obtain a contract.

The issues that were identified as remaining to be resolved between the parties included the following.

1. Union Security and Dues Check-Off
2. Grievance Procedure
3. Seniority
4. Lay-off and Recall
5. Wages

They will be dealt with in that sequence in this report.

1. Union Security and Dues Check-Off

The Union seeks to obtain a Union shop wherein all bargaining unit members will be obliged to join the Union in order to maintain their employment with the College. In pressing for its position, the Union has pointed out that it must represent all bargaining unit members equally and must be compensated for such representation. It is further argued that the Law in the State of Michigan says that a Union shop is legal, and that therefore, the College should recognize this enactment as State policy and agree to a Union shop. As an alternative the Union proposes that an Agency Shop be established. Namely, one in which a bargaining unit member may or may not join the Union, as the individual member sees fit, but must nevertheless, pay a representation fee for the services rendered on behalf of that member by the Union. The College for its part recognizes that it must negotiate in good faith with the Union and believes that it has done so, but it doubts if the Union is a representative of a majority of the current incumbents

in the bargaining unit, because of the rather substantial annual turnover that this unit has experienced since 1977 when the unit was certified. While it recognizes that individual members may or may not join the Union, the College cannot see that the best interest of the people who are in the bargaining unit would be served by forcing them to become members of a Union which they may or may not desire. The College position is that if the individual members of the bargaining unit desire to become a member of the Union, they may do so. The College had declined to enter into a contract which would force this position upon all members of the bargaining unit. Additionally, the College feels that the collection of Union dues through a payroll deduction plan increases the workload and responsibility of the College, and that collection of dues from Union members is the responsibility of the Union. They further argue that collection of Union dues is non-productive in terms of cost benefits to the College.

The Union proposal that the employee select whether or not they want to join a Union, coupled with the requirement that those who do not select membership in the Union, must pay a representation fee for the services provided by the Union, is of course, very commonplace in Labor Management Contracts throughout the State of Michigan. However, it must be kept in mind that almost two years have elapsed since this unit was certified. In that time, approximately one-

third of the membership have been replaced with new people.

It is the recommendation of this Fact Finder that from the Union prospective, the first step in obtaining a contract is to secure a written document embodying as much of the issues in dispute as can reasonably be obtained at this time, and that future negotiations be concerned with effecting what the Union may regard as a more normal level of acceptable provisions including possibly the Agency Shop. If in the long run, during the negotiations on a succeeding contract, it is evident that the Union has, in fact, the strength in its membership to better serve its members by an Agency Shop provision, then the College may well want to consider yielding at that point in time, on this Agency Shop issue.

2. Grievance Procedure

The Union has proposed that a grievance procedure terminating in binding arbitration become a part of the contract. The College, has declined the effecting of a grievance procedure that would allow the Grievant the right to proceed with an appeal to any point beyond the Board that controls the College. In pressing for its position, the College maintains that the constitution of the State of Michigan (Section 7, Article 8) places the sole responsibility to supervise and control the institution in the hands of a locally elected Board of Trustees.

Furthermore, the College maintains that the constitution provides the Local Board of Trustees with the sole right and responsibility for the decisions and actions of the institution. The Board further contends that the constitution does not provide for Board authority or responsibility to be delegated to an arbitrator. The College states that until such time as the State laws and the State constitution are changed to provide that the State or an Arbitrator be held responsible for decisions made by an Arbitrator, it would be irresponsible if not malfeasance in office, for the Board of Trustees to negotiate away its authority.

The position of the Board in this respect evidences a misunderstanding of the role of an Arbitrator. The constitution of the State of Michigan does not place the College as final arbitor in any dispute under any of the contracts entered into by the College and any of its suppliers, employees, or any other entity. While it is not difficult to understand the position of the College with respect to agreeing to binding arbitration on the establishment of the terms of a contract, the extension of that logic to the College's current position on the enforcement of an existing contract, is lacking. This Fact Finder does not recommend that binding arbitration be entered into between the College and the Union that would set the terms of a contract between the two parties. However, if at any time the College does enter into any form

of any contract with any Union, any individual, or any other party, it should be obvious that the Board of Trustees is not the last word in the interpretation of the terms of that contract, should a dispute arise. It is the Courts of the State of Michigan (and/or Federal Courts) that have authority to interpret an existing contract, in the event a dispute arises. There is a patent misconception in the College position with respect to what the Union seeks to arbitrate. It is this Fact Finder's understanding that the Union, following certification, seeks to obtain a contract for the bargaining unit members that have been certified under State law as a collective bargaining unit. If and when, a contract is effected between this identified and certified bargaining unit, and the College, the Union seeks to obtain binding arbitration on alleged breaches of the portions of that agreement that may occur during the life of that agreement. The College arguments strongly imply that no one, not even the Courts can interpret an executed contract if the College is a party to that contract. It would seem that a reappraisal of the College position, in this respect, is very much in order.

This Fact Finder felt compelled to comment on the College position because it tended to cloud the issue at hand. The issue at hand is not whether binding arbitration is legal, for we know that it is. The issue at hand is should there be binding arbitration to resolve alleged breaches

of a contract that may eventually ensue?

At the hearing, no evidence was supplied by the Union of any grievance that has been taken up to the Board and dealt with in an unsatisfactory manner in-so-far as the Union is concerned. Ordinarily, some form of binding arbitration is the quid pro quo for a no strike clause in a contract. However, as this is the first proposed contract between parties, it is the recommendation of this Fact Finder, that a grievance procedure be instituted for alleged violations of the terms of a contract that hopefully, (on the Union's part). will be entered into between the parties, but that for the duration of this initial contract the grievance procedure terminate in Board Action. If in ensuing negotiations, between the parties, it is evident that Board action has not provided a fair and equitable relief for alleged violations of a contract, then it would be appropriate to consider some form of external device, such as litigation in the Courts, or binding arbitration to resolve such disputes.

3. Seniority

The Union has proposed a definition of seniority as being the length of service since the last date of hire. It also proposes that a probationary period for newly hired employees be sixty (60) calendar days but may be extended with mutual agreement, to a maximum of ninety (90) days. Further, the Union would identify in the contract that there would be no responsibility for reemployment of employees if

they are laid off or discharged for any reason during a probationary period. The Union language would also identify the conditions under which seniority rights would be lost and would include the situation that would arise if the employee quits or is discharged for just cause - lay-off for over one year (or the length of seniority) whichever is least - absence for three (3) consecutive working days without leave, or retirement. The Union further asks that a seniority list by classification be maintained and published each three (3) months.

The College on the other hand feels that loyalty to an organization as exemplified by years of service is only one factor in evaluating an individual. The College maintains that overriding importance in any evaluation is the achievement in meeting work objectives while communicating with fellow employees and supervisors. It is further argued by the College that the quality and quantity of the work in relation to outlined objectives and responsibilities is vastly more important to upgrading and salary determinations than simply the tenacity of an individual in retaining a job at whatever level. The College further points out that upgrading opportunities and salary considerations are founded upon individual performance and that hiring and evaluation of employees is a management prerogative that will not be relinquished to the Union.

It is interesting to note that these positions are not at all opposed to each other. What the Union seeks is the identification of seniority as a factor and not the final factor.

First, let it be pointed out that identification of seniority in given classifications will in this bargaining unit have rather limited effect. There are but five (5) full-time Secretaries, a maintenance staff of varying degrees of competencies and skills of nine (9) to ten (10) people, a security person, a bookstore manager, an assistant bookstore manager, a cashier and a receptionist. Lay-off provisions in a situation like this of necessity will have limited application. However, limiting the discussion under this paragraph to the establishment of seniority lists, as proposed by the Union, this Fact Finder can take no objection. Neither can this Fact Finder object to any of the operative uses that management wants to take with respect to measuring of performance of these employees with respect to their job mission. The only issue seems to be the length of a probationary period. The College seeks a six (6) month probationary period, and the employee Union a sixty (60) day extendable to ninety (90) day period.

Recognizing not the application of seniority, but merely its recognition, it is recommended that a seniority list by classification be maintained. However, a six (6) month probationary period for most clerical, custodial, and similar positions such as security, cashier, reception-

ist would appear too long. It is recommended that a three (3) month probationary period be observed by the parties.

4. Lay-Off and Recall

The Union seeks a Lay-off and Recall provision to be arranged by seniority within a department, and secondly within the bargaining unit. The College on the other hand, wishes to maintain its current posture of determining the number of employees that it needs for fulfillment of its current requirements and to layoff and recall employees as it sees fit.

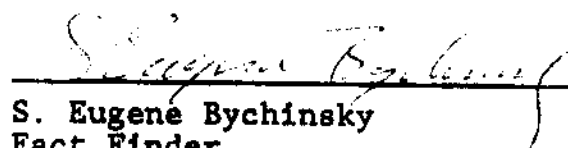
It is noted that in only two (2) of the categories could seniority have any application in the present bargaining unit. Those positions are in the secretarial force of five (5) people, and in the maintenance staff, where there are nine (9) or ten (10) people. I don't perceive that the Union maintains that a cashier, or receptionist, or a security person should be allowed to bump into a secretarial or maintenance spot. The peculiar needs of a Community College, which are quite volatile and are dependent on current community requirements, compels us to conclude that maximum flexibility must be allowed to the College with respect to its right to layoff, as the needs of the College appear or disappear. However, where a person has completed a probationary period, which in this case is recommended to be three (3) months, and is then laid off, some recall rights for that same responsibility ought to be

recognized. It would seem just and equitable that a person, following completion of a probationary period, have a recall right of not more than one (1) year nor greater than the length of their seniority. Thus, a secretary who is hired and fulfills the probationary period of three (3) months but works on for an additional three (3) months would have recall rights for a total period equivalent to their total seniority of six (6) months. However, in drafting any language to fulfill this requirement, it is a basic assumption that the duties for the recalled position would be the same as that which occasioned the layoff.

5. Wages

The Board of Trustees of Southwestern Michigan College granted a salary increase of 6.9%, and increased fringe benefits by 11.1% to all members of the S.E.I.U. on August 21, 1978. This increase represented a total increase in compensation of approximately 8%. This increase brought the annual compensation for S.E.I.U. members during the 1978-79 fiscal year to be within the range of \$8,730 to \$12,901 per year. The Union had sought a \$1.00 across the board increase per hour for all of its employees. This \$1.00 across the board increase would have amounted to approximately a 20% increase for many of the categories that are included in the Union. No comparative data showing area salaries or compensation was submitted by either side. Accordingly, one cannot attach too much significance to the Union demand, or for that matter,

establish the equitability of the College position with the respect to the Last Best Offer which they implemented last fall. About the only fact that appears bothersome, is the fact that there has been approximately a third turnover in the workforce comprising this bargaining unit. However, this Fact Finder notes that in many Community Colleges, the workforce is made up of a combination of local and career people, and in many instances employment is provided to deserving student spouses, etc., as an aid to assist them in obtaining education. In one institution in which this Fact Finder is intimately associated, a 30% turnover is the average turnover, because employment is in part employed as a financial aid device for students. However, in the case at hand, and in the absence of the showing that the rates of the various categories are inequitable, this Fact Finder will note that approximately 8% increase in benefits for the current year would appear to be quite equitable in terms of what other Community Colleges, State Colleges, and the like, have accomplished for similar employees. Accordingly, no further action in this regard is recommended.


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SS # ~~333-44-4444~~

Date: March 15, 1979