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MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FACT FINDING BETWEEN:

VANDERBILT PUBLIC SCHOOLS

AND

VANDERBILT EDUCATION ASSOCIATION

MERC CASE

NO. G83J-1522

REPORT AND RECOMMENDATIONS

OF

FACT FINDER

CARL H. ALLDREAD

FACT FINDER

599 MERRITT LANE

BIRMINGHAM, MICHIGAN 48009

Vanderbilt Public Schools

The Fact Finding hearing between the Vanderbilt Public Schools and Vanderbilt Education Association resulted in the following facts in this unresolved dispute.

Association Position

The Association and the Board of Education did not begin negotiating until June of 1983 on a Successor Agreement which would replace their agreement due to expire on August 31, 1983. Both parties wanted to see the results of a special millage election.

Approximately ten bargaining sessions were held between the parties between June and late August resulting in all issues being tentatively agreed to by the parties with the exception of Agency Shop proposed by the Association.

The Association submitted three different Agency Shop proposals to the Board during the negotiations and all three were rejected by the Board.

The Successor Agreement has remained unsettled and the parties have been operating under the expired agreement although no formal signed agreement to this effect has been executed by the parties.

The Northern Michigan Education Association has thirty-four School Districts who belong to the Association and Vanderbilt District is a member.

The Association submitted an exhibit at the hearing showing that all thirty-four agreements negotiated by the Association contained Agency Shop except four and Vanderbilt is one of the four. It is their belief the large number of agreements that contain Agency Shop provisions establishes precedent for the Vanderbilt Board to agree to Agency Shop.

A special bargaining session was held between the parties on September 12, 1983. The Association thought the comments made by the Board members at this meeting indicated they were receptive to Agency Shop. The Superintendent, Mr. Mang, stated he was not in favor of Agency Shop and the Assistant Superintendent stated he was in favor of granting it. The Board decided to take an informal poll of its members regarding Agency Shop. The poll resulted in a tie of three and three. One Board member had to leave the meeting early so was not present when the poll was taken. The parties agreed at this meeting to meet the next week and attempt to resolve the remaining issue of Agency Shop because the informal poll indicated there was not a majority against Agency Shop. The meeting was held on September 18 but only two Board members showed up for the meeting and they were against Agency Shop so the Agency Shop issue remained unresolved.

The Association filed for Fact Finding on September 27, 1983 but were subsequently notified by the Labor Department they should pursue Mediation.

A Mediation meeting was scheduled and held on October 12, 1983 with State Mediator, Robert Rombouts in attendance. The parties were unable to reach agreement at this meeting. The Board voted on Agency Shop. Results - six against and one abstention.

The Association filed again for Fact Finding on November 3, 1983.

Board of Education Position:

Salaries negotiated for the Vanderbilt or other School Districts should not be brought into the Agency Shop issue by the Association as an argument in their favor for the Board to agree to Agency Shop in the agreement. Agency Shop is an entirely separate issue.

The Board has never stated or taken the position that Agency Shop in a contract is illegal.

The Board members have been consistent in their position against Agency Shop throughout the negotiations which has not changed.

Some of the Board members stated at the hearing they did not believe the Agency Shop proposal of the Association was such an important issue of the Association during negotiations. It did not seem to be a priority proposal in relation to the other Association proposals during the negotiations.

The Board members stated at the hearing they were somewhat surprised when told by the Association during negotiations they could not get a contract agreement without the Agency Shop and would prevent the parties from reaching final settlement of their contract prior to the start of school in September. The local bargaining team at that point had been able to reach a tentative agreement with the Board on some of their proposals which would be gains for them in the successor contract. The statement by the Association of no contract without Agency Shop came after the parties had reached tentative agreement on all issues other than Agency Shop.

The Superintendent, Mr. Mang, stated he was of the opinion the Board had been fair and reasonable with the Association in their negotiations during his employment since 1976 and that some of the Board members felt the Association was not fair in their current opposition to a contract without Agency Shop. He further stated that none of the four new teachers he employed this year had asked him anything about Agency Shop when they were interviewed. He also stated Agency Shop had not been a goal of the Association prior to the current negotiations.

Comments made by Board members at the hearing indicate the Board's current opposition to Agency Shop is largely one of principle on their part. Further comments indicated that members did not believe a teacher should lose her/his job because of failure to pay the Agency fee.

Recommendations:

The Board members should carefully evaluate their opposition to Agency Shop. This issue will not disappear and will continue to be a goal of the Association and problem for the Board in future negotiations until the Association obtains the Board agreement to include Agency Shop in the contract. Adherence to principle is certainly a commendable position for the Board but it should be evaluated in terms of the conditions and circumstances where it is applied. Continued opposition to Agency Shop could seriously alter the good relations that have been established by the parties in their collective bargaining relationship.

Recommendations (Cont.)

The Board should be aware that if they agree to Agency Shop now it will have no effect on the school's current teaching staff because all teachers are members of the Association. It can only affect the employment of any new employees. It is most unlikely that it would ever be a problem for the Board because teachers who are seeking employment are aware that nearly all School Districts have Agency Shop provisions in their contracts.

The parties should continue to explore in negotiations alternatives to paying the Agency fee to the Association if that is a problem for a teacher. The termination provision should be negotiated out as this is a problem for the Board members and what they object to in the proposed provisions.

It is recommended the parties give strong consideration again to the proposed MCLA agency provisions which they previously discussed and considered in negotiations. Agreement to these provisions would eliminate the requirement of termination. It could be a compromise and face saving solution for both parties and remove the last issue to a successor Agreement.

As Fact Finder I have no authority to require the parties to place Agency Shop provisions in their Agreement. I strongly believe however that all employees in a bargaining unit should share equally the cost of the services they all receive from the Association who they have selected as their exclusive representative. No employee should be allowed to receive the benefits of the representation without paying the same amount of fee paid by the other employees in the unit.

The Superintendent, Mr. Mang, remained firm in his opposition to Agency Shop throughout the negotiations although the Assistant Superintendent had been in favor of it. Superintendent Mang has retired since the hearing so his apparent personal opposition is no longer a factor in the current situation. It is possible that Superintendent Mang believed he should take the same position as the Board in their opposition because he represented the Board in negotiations. A Superintendent now in favor of Agency Shop might be able to bring about a change in the Board's opposition to Agency Shop. It's possible the Board's opposition previously was one of support for their Superintendent's opposition.

The parties at this time should realize their unyielding positions are not going to result in an agreement on a contract. The Association's security certainly isn't threatened at this time because all teachers are Association members and the Board has no problem with teachers who do not want to pay a fee. In my opinion neither party has very much to gain by holding on to their position. I would recommend that if some further negotiations cannot result in an agreement on Agency Shop the contract be executed without Agency Shop. The parties can pursue the Agency Shop problem again in negotiations on their next contract with both parties understanding it is a priority proposal. Economics is not a factor in this contract because salaries are frozen for this school year so it's in both parties best interest to secure a contract without a lot of further delay.