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MICHIGAN LABOR MEDIATION BOARD

FACT FINDING TRIBUNAL

In the Matter of the Contract Dispute

between

WATERFORD TOWNSHIP SCHOOL DISTRICT

and

WATERFORD EDUCATION ASSOCIATION

LABOR RELATIONS LIBRARY

before

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LABOR MEDIATION BOARD
LABOR RELATION DIV.

M. David Keefe, Arbitrator
(appointed by LMB as HEARING OFFICER)

PUBLIC REPORT DATED: December 9, 1968
Roseville, Michigan

COPY

December 11, 1968

COPY

Waterford Township School District

MICHIGAN LABOR MEDIATION BOARD, ADMINISTRATOR

BOARD APPOINTED FACT-FINDING TRIBUNAL

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In the Matter of the Contract Dispute between *

The Waterford Township School District *

- and - *

The Waterford Education Association *

* * * * * * * * * * * * * * *

OPINION & Recommendations of M. David Keefe, Arbitrator, Appointed Hearing Officer

Appearances:

Waterford Twp. Schl. Dist.	Waterford Educ. Assoc.
R. Higginbotham - Chairman	W. Parker, MEA Region #7
W. Aebersold - Comm Member	R. Crumpton - Exec. Sec. WEA
K. Montgomery - Comm. Member	J. Matteson - Pres. WEA
H. Bennetts - Comm. Member	L. Floyd - WEA Committee
C. Ruelle - Comm. Member	G. Bergsrud - WEA Committee
L. Blanchard - Comm. Member	J. Voelker - WEA Committee
Dr. Tatroe - Superintendent	M. Schwartz - WEA Committee

Prefatory Record of Hearings

On September 17, 1968 the Fact-Finder was duly appointed to conduct Hearings and to issue a Report, together with Recommendations, on the matters in dispute. This followed a joint request for fact-finding on said open-issues filed on September 13, 1968, and supplemented on September 16, 1968 with a statement setting forth the then current position of the parties on the areas of disagreement.

The Hearing opened in a joint session on October 2, 1968, in conference quarters of the District located at 1325 Crescent Lake Road, Pontiac, Michigan, continued in a separate session with the Waterford Township School Board on October 16, 1968 in conference quarters of

Jayson's Restaurant, located in Pontiac, Michigan, and concluded in a joint session on October 24, 1968 in the conference quarters utilized in the original meeting. The parties were allowed until November 11, 1968 in which to submit briefs at which point the Hearing was declared to be closed and this Report follows.

BACKGROUND TO & STATUS OF THE DISPUTE AS IT EXISTED AT THE ONSET OF FACT-FINDING

The parties are currently operating under a two year Agreement, dated 1 September 1967 - 31 July 1969 (Joint Ex. #1). Article XX, thereof, entitled "Duration of Agreement" reads as follows:

> "This Agreement shall be effective as of 1 September 1967 and shall continue in effect through 31 July 1969, provided that Teacher Protection, referred to in Article XI, will be reopened by 1 March 1968 for the purpose of renegotiating the Agreement with reference to this item only for the following year.
>
> "During the negotiations period regarding Article XI, the parties also agree to negotiate regarding Financial Responsibility and the Board Grievance provisions that were discussed but not agreed to in the first year of the contract.
>
> "The Summer Study and Summer School rate of pay shall survive this Agreement and not terminate until 1 September 1969."

The parties stipulated that there was no dispute between them on the first item negotiable under the reopener: Teacher Protection in Article XI. (This Article deals with Classroom Discipline, Workmen's Compensation, Non-Discrimination for or against Union membership or Union activities and, as a resolved problem is immaterial to this case.)

The parties reported that they had reached an impasse on the two remaining negotiable items under the reopener, specifically:

1 - Financial Responsibility, and

2 - Board Grievance Provisions.

EXPLANATION OF THE ISSUES

1 - The "Financial Responsibility" demand of the Association is, in plainer terms, an "Agency Shop" proposal which, in turn, is a modified form of Union Security.

2 - The "Board Grievance Provisions" were designed to give Management access to the grievance process, mainly for the purpose of filing protests against alleged violations of the Agreement, if so deemed to have occurred.

INITIAL POSITIONS PRESENTED TO THE HEARING OFFICER

It was immediately apparent that the purported impasse was not grounded on the bed-rock of exhausted bargaining movement but, rather, on the quick-sand of frivolous maneuvering for bargaining positions. The Hearing Officer consequently informed the parties that the first, and obvious, Fact which he found was that, in truth, an impasse did not exist. This, in this writer's opinion, was abusive of the intent and purpose of the procedure and, therefore, unnecessarily and improperly taxed the resources of the State of Michigan. In the writer's view, fact-finding is provided on an AD HOC per diem basis at the State's expense solely so that Recommendations might be forthcoming to provide the formula for resolving genuine deadlocks. The parties are primarily responsible to achieve their Agreements through direct negotiations. Mediation assistance should be reserved solely

for overcoming critical differences which might lead to an impasse but the Fact-Finder should be presented with nothing short of the final and frozen gulfs which the parties have, in good faith, been unable to bridge. Out of the many hearings this writer has presided over, not one springs to recall in which the parties had reached such an ultimate state of irreconciliation. In every instance, the initial uncompromising attitudes, when tested, proved susceptible to modification. In most instances, this resulted in agreement. There have been some exceptions, of which this case is an example.

With respect to the supposedly final position of the Waterford Education Association, it became obvious that there was no complete impasse, but merely a strategical disagreement to the Board's request for access to the Grievance Procedure. The parties were actually in full agreement on this issue but formalization of the understanding was being withheld by the Association as a bargaining ploy to generate pressure for wringing out concessions on Union Security. However, in Fact-Finding, bargaining is (or theoretically is supposed to be) completed. The Association, at the Fact-Finder's suggestion, recognized the unreality of its posture before the Hearing Officer and had the grace to cooperate by receding from its tactical stance of opposition. This removed this issue of Board access to the Grievance Process and reduced the disagreement to but one open issue: "Financial Responsibility" (or Agency Shop - the Union Security problem).

The Board of Education's proposal on this sole remaining

issue, dated May 22, 1968 (Association Ex. #D) was represented to the Fact-Finder as the Board's last and final offer. It reads as follows:

> "Inasmuch as the Association represents and provides services to all Teachers as defined in this Agreement between the Waterford Board of Education and the Waterford Education Association, the Board recognizes that all such Teachers have an obligation to support their elected bargaining agents in its negotiation expenses."

In view of the fact that the Board had voluntarily agreed, in Article XX, to actually reopen the agreement with one of the expressed purposes being specifically, "to negotiate regarding Financial Responsibility" (or Agency Shop - the Union Security protection) this pious, airy and empty observation was somewhat more than astonishing. As a proposed contract commitment it carefully left the Board of Education completely uncommitted. As the fruit of serious and good faith labor negotiations, it compared favorably only to the mountain which labored and gave birth to a mole-hill. The Fact-Finder, pointed out that the Board's agreement to reopen could only be construed as a declaration of intent to strive in good faith for agreement regarding an actual "Financial Responsibility" provision. Indeed, if such had not, in reality, been the Board's intention, then this deliberately misleading reopener could be characterized in terms no milder than deceitful. The Fact-Finder added that he would be most reluctant to comment in depth on this burlesque of a "Financial Responsibility" proposal. The Board, responding to this invitation to clarify its intent, sub-

stituted, instead, an eighteen page, legal-sized document as its substitute proposal. This will be dealth with, in detail, as providing the basis for resolving this dispute, based on Recommendations to rectify certain inconsistencies, contradictions and short-comings with which, in this Fact-Finder's opinion, it is beset. First, it seems timely to discuss the nature of the problem so that, more comprehendingly, appropriate solutions might appear apparent.

THE UNION SECURITY PROBLEM

Union Security is a contractual device, designed solely and simply to insure organizational survival It is peculiar to the American Labor Movement. In Europe where Labor's origins were, from the outset, politically oriented on a class basis, there is no question about the commitment of the workers to organization. This country evolved a society essentially, without such strict class distinctions. The fluidity of expansive growth and the historical outlook of our agricultural antecedents shaped concepts of "rugged individualism." The idea of organization was inherently in conflict with the basic dedication to personal independence which characterized the early American outlook on life and became ingrained in popular thinking.

Times changed. Industrialization and scientific progress made life complex. It was no longer possible to escape the hardships of economic servitude in urban areas simply by throwing the trusty axe into one's wagon, heading west with family and belongings, to chop down trees from which to build a home and start life over.

The frontier is gone - except in science which, like a cornucopia, spouts out an endless and engulfing tide of new products which changed - and changes constantly - our environment. No longer is it possible to exist in modern society in personal isolation and independence. The house in which we dwell, the furnishings and appliances with which we fill it, the clothes we wear, the food we eat, the transportation which we employ, the entertainment we enjoy, all are ours as the result of the organized, productive work of countless others than ourselves. Our ability to enjoy this vast and amazing variety of conveniences - now become necessities - depends not on our willingness to work so much as our opportunity to work. The willingness of the rugged individual avails him nothing in the complicated structure of today's society unless, first, opportunity exists. The entrepreneurs are numbered in their hundreds of thousands, the employees, in their hundreds of millions. Unless opportunity for equitable employment is assured, civilization, as we know it, collapses.

The organization of Unions in such a highly enmeshed, swiftly moving and viable society seems historically inevitable - if a proper balance was to be struck between the value of the goods produced and the workers' remuneration with which to consume them. Indeed, the law of the land recognized the necessity and inevitability of this evolution and provided for it with more advanced thinking than the sluggish recognition of reality on the part of many workers whom the Act was designed to protect. For well beyond a quarter of a century, it has been the policy of the National Government -

through both Democratic and Republican Administrations - to recognize and provide for the rights of employees (in Interstate Commerce) to organize into Unions for the purpose of protecting and advancing the legitimate aims of their conditions and welfare. The State of Michigan (in the area of Intra-State Commerce) has long had a similar Act. Now, since 1965, the State has extended the protection coverage of these widely recognized principals to Public Employment. The problems facing these new groups of organized workers are the same as those with which blue-collar unionization has long contended. Perhaps, the organization might call itself an "Association" but that is but its synonym for Union. Perhaps, as in this case, the issue might be defined as "Financial Responsibility" but that is just a newly coined synonym for Union Security. The problem is not new - nor are the arguments pro or con. However, laying aside the banalities, the overworked and worked over contentions, the philosophical and moral commentaries, from both sides, here is what this issue is all about:

Labor and Management, to co-exist cooperatively and productively, must equally respect each other. Respect for the other side is veritably the cornerstone on which the structure of the relationship is built. Unless this organizational respect is present, chaos will result.

Respect does not necessarily connotate liking. But it does equate with accepting. Accepting, in turn, is something more than recognizing. The law compels the employer to recognize the Union

(or Association). It cannot compel the employer to accept it. Such acceptance is voluntary acknowledgment of the organization's right to survive and to co-exist equally with the employer in the arena of their bargaining obligations. This can, and must, be achieved between the parties if they are to enjoy normal relations. It can be done, even without liking the other side.

The problem is that Labor-Management, co-existing equally in their relationship, MUST have organizational integrity. The employer is, by the very nature of being a management entity, completely organized. This is a natural attribute. Not so with the Union (or Association). Lacking a caste system heritage and, in many cases, even rudimentary understanding of the purpose of organization, large numbers of employees are content, if allowed, to sit-it-out. There is not any natural attribute of cohesiveness inherent to the Union's (or Association's) organization. Consequently, the Employer, who Recognizes the organization compulsively to comply with the law but withholds Acceptance by denying co-existence on an equal basis in the collective bargaining arena, CANNOT Respect the other side, which is inferior to his in the degree of its organizational unity. Result - a disturbed and potentially explosive relationship.

The writer holds this view to be true despite the evidence of strife which, from time to time, erupts in relationships where such full acceptance has long been accorded. There is no panacea for peace. It takes struggle, itself, to create peace - struggle for

restraint, reasonableness and self-control by each side. Peace, then, if worthwhile, is difficult of achievement. But economic war and discord are easy to promote. In every case where Unions determinedly seeking basic bargaining equality (without which bargaining proposals can be treated with disdain, rather than respect), are obdurately rebuffed, the strike which can be precipitated takes on the outward aspects of class warfare - although the violence of such conflicts should more properly be compared to the frenzied zeal of crusaders. These trikes, as deplorable as their cause and consequences might be, are symptoms of a sickness akin to a boil in the relationship. However, under PERA, public employees are interdicted from their only logical recourse to attain organizational equality. Instead of coming to a head, the sore festers inwardly, like a cancerous growth which eventually and inevitably will wither the basis of accord until it dies. The Teachers, rather than concentrating on their primary, all important task of educating our youth could be anticipated to be split in an internecine struggle to create unity through methods, at least, of ostracism, if not acrimonious and never-ending contention. The victims in this senseless brawl, precipitated by the obstinacy of the Board, would be the pupils, whose interests are the only reason for existence of either School Board or Teacher Profession.

Long since, this "place in the sun" problem has been dealt with and resolved in private industry. The Union Shop, Agency Shop, Maintenance of Membership (take your pick of the endless variety of Union Security clauses) is not REALLY sought for and justified on the

pretext that the "outs" should pay for the services performed by the "ins." The truth of the matter, despite whatever the expediency of the claim or denial, is the seeking after EQUALIZATION OF BARGAINING INTEGRITY by equalizing the degree of organizational unity.

This solution (created by involuntary compulsion on the non-member to support the organization) is simply another uniquely American solution, well-rooted in modern industrial history. It, certainly, cannot be more reprehensible than forcing recalcitrant employers (by involuntary compulsion) to recognize the Union. Both are evolutionary results of the growth of labor in America which, philosophically, seeks to solve its problems WITHIN the established structure of our society. This, the writer is convinced, despite the compulsions inflicted on Management Institutions to recognize and reluctant employees to support the certified bargaining agent, is far superior to the FREE WILL traditional support of European workers for Unions which, in their political orientation, seek to Socialize the structure of private enterprise society.

The writer's opinion is drawn from a career life-time at the Bargaining Table. These views are based partly on first-hand knowledge of Labor's problems, learned from representing Unions in an official capacity at the beginning of this career. They are reinforced partly from the consternating experiences, as Commissioner in the Federal Mediation & Conciliation Service, where the writer witnessed, on more than one occasion, the eruption of strikes on this "matter of principle." They are confirmed partly by research and compulsion towards

objectively rationalized thinking as an instructor on Collective-Bargaining for sixteen years at the U. of D. and, now, Wayne State University. It is conclusively determined by the addition of his years of experience in representing many managements and negotiating countless contracts, (including School Board Contracts where, to gain first-hand practical experience with the problems of Collective Bargaining in the public sector, he negotiated a series of First Agreements under PERA for School Management so that now, these views cannot be discounted as an "outsider's"). The distillation of these experiences and studies is that conceding the Union (or Association) organizational integrity, after recognition perforce through certification, is the first and most necessary move to bring to the fore constructive bargaining on the merits of the issues of costs, conditions and prerogatives, which go to the very guts of Management running an efficient operation.

In conclusion, there is one platitudinous argument invariably advanced to justify rejection of the Agency Shop on the grounds that it is morally objectionable. If this be true, then, indeed, this writer would wish to withhold endorsement of such an unethical and undemocractic demand. But, plainly, such is not the case and the argument must be countered, lest it mislead citizens of good conscience who are unfamiliar with the facts of Collective Bargaining life. The objection alleges infringement on the personal rights and freedom for decision-making by the affected individual. From this perspective, Union Security is viewed as a form of regimentation foreign to

American ideals and aspirations. It is nothing less than coercing the victim into an enforced condition, which he should have the right to escape, as the price of obtaining and maintaining employment opportunity. In spite of its surface persuasiveness, this is a specious argument. Admittedly, the proposition does impose mandatory qualification on the concerned individual as a condition for maintaining employment opportunity. However, it must be pointed out that NO EMPLOYEE ever gets a job ANYWHERE without first meeting arbitrarily imposed standards of acceptability which have no relationship whatsoever to the proficient discharge of the projected duties, For example, employers, generally, have upgraded hiring standards to require, at least, a high school education. Is this a logical, job related requirement for the applicant for the janitor's opening; or for a dock-man who simply loads and unloads trucks; or to be a common laborer, digging ditches? Such examples could be endlessly extended. Many other artificial criteria for evaluating the acceptability of a job applicant or upgrader could be advanced. But this could, then, turn into a full-blown treatise while, already, it is an exhaustive, if necessary, discussion. The writer sincerely is convinced that the arbitrarily imposed requirements to support the certified Bargaining Agent (which is totally unrelated to proficiency or qualifications to do the job) is absolutely not one whit less ethical and proper than to reject a really qualified applicant because certain arbitrarily established standards for hiring must be met which, while justified to imper-

sonally attain pre-determined, unilaterally imposed conditions, are, obviously, irrelevant to the individual's ability to perform. In fact, the writer can attest, from his own experience, to such a happenstance. After eleven years of continuous employment by the U. of D. as instructor in the Industrial Relations Department of the Evening College of Commerce & Finance, he was summarily dismissed. The parting was mutually on a most amicable and regretful basis. Indeed, the writer has a treasured citation of appreciation "for lecturing in the field in which he has gained prominence, the furtherance of the education of our students and his contribution to the educational standards of this school." The reason was that the College arbitrarily imposed a minimum requirement of Ph D (which the writer lacks) as the standard of acceptability for employment in conducting these specific courses. This was mutually recognized and accepted as the Institution's right, regardless of whether or not the affected individual fully qualified to proficiently and effectively discharge the actual duties involved. From all this, it must be apparent to the least discerning reader of this Report, that conditions of employment can arbitrarily be imposed, rightfully and ethically in the Labor Agreement to which the employer consents, which are dis-associated from ability, proficiency or, even, tenure.

"FINANCIAL RESPONSIBILITY" EXPERIENCE.

In approaching a study of this problem which so severely plagues these parties, the Fact-Finder sought to ascertain whether

or not the WEA was attempting to pioneer into unplowed fields by insisting on its demands. Cursory research revealed the following Public Employers have already granted this justifiable and normal request. Only two of these listed are not in School Board-Teacher relationships. These, the City of Detroit and Michigan State University, are cited only because they demonstrate that in major municipalities and institutions of higher education, the formula is also deemed both proper and acceptable. Further, it seems worthy of special note to point out that two of Waterford Township's neighboring Boards (Pontiac and Avondale) have also affirmed that the solution is desirable. At any rate, to dispel any misconception that the WEA is seeking satisfaction for a pie-in-the-sky objective, the following roster demonstrates that acceptance on this basic and necessary principle is state-wide among School Board-Teacher organizations.

Dearborn
Dearborn #8
Dearborn #7
Fairlane
Garden City
Grosse Ile
Lincoln Park
Livonia
Plymouth
South Redford
Trenton
New Haven
South Lake
Van Dyke
Ann Arbor
Ida
Reading
Dowagiac
Algonac

Coopersville
Godfrey-Lee
Kenowa Hills
Allen Park
Inkster
Taylor
Hamtramck
Roseville
Riverview
Northville
Southgate
Marlette
Ithaca
Goodrich
Arenac Eastern
Gerrish Higgins
Pine River
Tahquamenon
Richmond

Maple Valley	East Grand Rapids
Beecher	Clio
Jackson Northwestern	Fenton
Hastings	Grand Blanc
Lawton	Montrose
Anchor Bay	Mt. Morris
Capac	Swartz Creek
East Detroit	Akron-Fairgrove
L'Anse Creuse	Buena Vista
Lakeview	Merrill
Mt. Clemens	Saginaw
Romeo	Bay City
Utica	Posen
Warren	Benzie Central
Farmington	De Tour
Oxford	Sault Ste. Marie
Southfield	Breitung Twp.
Walled Lake	Champion-Humboldt
Escanaba	Flat Rock
Munising	

THE "FINANCIAL RESPONSIBILITY" ISSUE

Inasmuch as WEA is seeking and the School Board is conceding in this dispute, the writer has arbitrarily determined to structure his Recommendation on the current Board's proposal. Since this is such a lengthy document (18 legal-size pages) which surpasses what, to Management, is the core of its most precious possession (the Management's Rights provisions) which, in Article II (although also an extensively drawn provision) takes up something less than one (1) page of the Agreement (Joint Ex. #1), the Union Security proposal will have to be dealt with and commented on (with Recommendations) in segments or else it would be confusing, if not impossible, for understanding to be reached.

Item #1 - the Management Proposal reads:

"ARTICLE ____

AGENCY SHOP - PAY DEDUCTION

"A. Membership in the Association is not compulsory. Teachers have the right to join, not join, maintain, or drop their membership in the Association as they see fit. Neither party shall exert or pressure on or discriminate against a teacher as regards such matters.

Membership in the Association is separate, apart and distinct from the assumption by one of his equal obligations to the extent that he receives equal benefits. The Association is required under this Agreement to represent all of the teachers in the bargaining unit fairly and equally without regard to whether or not a teacher is a member of the Association. The terms of this Agreement has been made for all teachers in the bargaining unit and not only for members in the Association, and this Agreement has been executed by the Board after it has satisfied itself that the Association is the choice of a majority of the teachers in the bargaining unit.

Accordingly, it is fair that each teacher in the bargaining unit assume his fair share of the obligation along with the grant of equal benefit contained in this Agreement. If a teacher does not choose to become a member of the Association, then he should be willing to contribute toward the administration of this Agreement.

B. In accordance with the policy set forth in Section A above, and except as provided elsewhere herein, all full-time teachers in the bargaining unit shall, on the sixtieth (60th) day following the beginning of the school year, beginning their employment, or the execution of the Collective Bargaining Agreement, whichever is later, as a condition of employment or of continued employment, either....."

This statement of Policy, set forth in "A" above, expands and reiterates on the philosophical embracement of the principle as morally sound and acceptable. The first paragraph provides for teachers to slide in and out of membership as if the way in and out was made of goose-grease. Obviously, this view does not square up with the personal convictions as to equity in such a matter which this Hearing Officer has already expressed in his discussion of the Union Security Problem. However, the writer sits, in this instance, in the seat of Fact-Finder and it is not his objective, nor within the

province of this office, to implant the seeds of his own beliefs in someone else's vineyard. The sole purpose of this Report is to present Recommendations which the deadlocked parties should accept to overcome their impasse. Therefore, bending in the Board's direction to facilitate a solution, the Hearing Officer adopts the entire proposal in "A" as quoted in Item 1, above as his Recommendation for this portion of the Settlement.

Section B, partially included in Item 1, as already set forth, takes the pious, airy and empty froth of the Board's initial proposal, which was translated into a forthright enunciation of Board policy in "A" of Item 1 and begins to give it backbone. This quoted portion of "B" in Item 1, the Fact-Finder also adopts as his Recommendation for the Settlement.

Item #2 - The Management Proposal for implementing "B", as already quoted in Item #1 reads:

> "(1) Become members of the Association; or
>
> "(2) Pay to the Association an amount of money equal to the W. E. A. annual dues (excluding M. E. A. and N. E. A.)."

The Fact-Finder, continuing his effort to embrace all portions of the Revised School Board Proposal which squares-up with its own, voluntary statement of Policy (as quoted in "A", Item 1), adopts as his Recommendation the entirety of Paragraphs (1) and (2), as quoted in Item #2, except that, in the parenthesis at the end of Paragraph (2) which reads: "excluding M. E. A. and N. E. A.," the word "excluding" shall be deleted and the word "including" substi-

tuted therefore. The established fact is that present WEA members do, as a condition of membership, pay M. E. A. and N. E. A. dues. This peculiar method of organizational functioning is, in reality, the counter-part of the normal segmentation of the dues of the Blue Collar Worker. The Local collects its established dues, out of which it remits per capita to its International, to Regional Councils and to possibly other affiliates to which it is attached and which indirectly, or even remotely, contribute to the Local's bargaining effectiveness. Nowhere, to this Officer's knowledge, has this distribution of Agency Shop contributions been challenged or prohibited. The Union in this case calls itself an "Association." The Agency Shop which it seeks, it calls "Financial Responsibility." The remittance of dues which it proposes it channels in separated segments from the outset. The Fact-Finder can detect no difference in the end result of this approach from the end result of the distribution of Blue Collar dues under an Agency Shop. The problem in this case is one, first, of semantics (the orthodox terminology of the Labor Movement is restated in another nomenclature but with identical meaning) and, second, methodology (where the normal collection of Blue Collar dues is subject to later distribution through per capita taxes, in WEA this is accomplished through the unusual means of direct payment of the total dues on a segmented basis for distribution). Clearly, WEA derives services from both M. E. A. and N. E. A. in the accomplishment of its collective bargaining purpose. Indeed, one W. Parker, an M. E. A. Representative, participated in this very

Hearing. The writer, in other cases, has witnessed the participation of both MEA and NEA representatives directly at the conference table. Consequently, the conclusion must be that WEA dues, plus MEA dues, plus NEA dues (which is the burden which falls on all present members) is the only fair assessment through which the School Board could ethically implement its avowed policy. The Chairman of the Michigan Labor Mediation Board, Mr. Robert G. Howlett, wrote this incisive comment in deciding an arbitration dispute between the Warren Consolidated School Board and the Warren Education Association on February 12, 1967:

> "... study of the case leads me to the conclusion that the distinction made between teachers performing the same duties in the Warren Consolidated School System but receiving different compensation, is unreasonable and arbitrary."

This case, rather than being on point, is exactly at the opposite pole and it seems to the Fact-Finder appropriate to paraphrase Arbitrator Howlett by observing: "... study of this case leads me to the conclusion that the distinction made between teachers paying dues as members of the WEA and the dues-equivalency deduction proposed for non-members of the WEA by the School Board is unreasonable and arbitrary." Therefore, with respect to the word "excluding," the Fact-Finder reminds the Board that this crashes, head-on in to collision with its policy statement. The two are heading in opposite directions on the same track. The proposal, discriminatorily assessing a lighter weight against non-members, would actively be discouraging membership and encouraging non-member-

ship which, assuredly, violates the Board proposed pledge that, "Neither party shall exert or pressure on or discriminate against a teacher as regards such matters (as Membership)."

Perhaps, in the haste of drafting such a long proposal (18 legal size pages) the "excluding" was nothing more than a typographical error and the Board was not deliberately slipping in a proposal which would exert pressure on all teachers to become non-members. In any case, the Fact-Finder recommends that the word "including" be substituted for "excluding" where the latter inappropriate present participle appears. With this single modification, Item #2 is adopted by the Fact-Finder as his recommendation.

Item #3. The Board Proposal continues as follows:

> "C. The interpretation, application, administration, and enforcement of this Article shall be in accordance with the requirements of the Labor Management Relations Act of 1947, as amended, and constructed by the National Labor Relations Board and Federal courts, and to the extent that it does not conflict with any Federal or State laws.
>
> To this end, it is understood and agreed that the following items are necessary:
>
> (1) Grace Period - There shall be a grace period from date of employment, commencement of school year, or effective date of Agreement, whichever is later, for full-time teachers to evaluate the situation and to make their decision.
>
> (2) Majority Representative - The Association must represent a majority of teachers in the unit.
>
> (3) Availability of Membership - The Association must permit teachers to join the Association.

(4) Equal Membership - The Association must allow membership on an equal basis; full participation must be on an equal basis.

(5) Application of Membership - As a condition of employment, the Association cannot deny a teacher membership or the right to pay the service charge if he has tendered or offered to pay

(6) Dues and Fees - A teacher need only tender or offer to pay periodic dues or fees or service charge to retain his employment Assessments, fines, etc., are not considered within dues, fees or service charge."

Since this contract is negotiated in accordance with the requirements of PERA, rather than NLRA, the Fact-Finder is somewhat bemused by the surprising Interstate application of this Intrastate problem. Again pursuing the path of adopting any of the Board's proposals which measure up to its Policy statement (and on the assumption that the School Board neither intended nor inferred this unusual reference to be interpreted as a slur against the State of Michigan, its Public Employment Relations Act or its administrative agency, the Michigan Labor Mediation Board) the Fact-Finder adopts the entirety of the Board's proposal quoted in Item #3 as his Recommendation for the Settlement, with the sole exception of Paragraph (2) "Majority Representation" which, through this Recommendation, is to be deleted. In its Policy Statement (Item #1, above), the School Board declared, "this Agreement has been executed by the Board after it has satisfied itself that the Association is the choice of a majority of the teachers in the bargaining unit." Since there can be no doubt as to the majority status of the Association at the time of

execution of the Agreement, the Agreement must logically endure throughout the term of said Labor Contract and in future contracts unless modified or deleted, as long as the Association is not decertified as bargaining agent. Suggesting that the Association assume a burden of proving majority status in the absence of a legal challenge through decertification procedures of PERA is capricious and, in this writer's opinion, displays unwarranted effrontery.

Item #4 - The Board Proposal proceeds to state:

> "D. Exceptions to Section B above shall be:
>
> (1) Full-time teachers who have acquired tenure status and who are not members and were not members of the Association during the school year 1968-69, shall not be required to join the Association or pay a service charge thereto.
>
> (2) Temporary, part-time, or specially-certificated teachers shall not be required to join the Association or pay a service charge thereto.
>
> (3) Full-time teachers hired during the school year shall be required, as a condition of employment, to tender (through direct payment or deduction authorization) only a pro rata amount of the membership dues or service charge. Such pro ratum shall be based on a maximum of ten (10) months (school year) and the number of months remaining in the school year. (Within a month, it is the majority of days left that shall govern.)"

Little discussion need be wasted on D (1). It is self-evident that this exposes the fine Policy Statement as empty, insincere mouthings and emasculates the virility of Section B (which implements the Policy) to the vigor of a corpse. WEA, if its present members are not seduced out of belonging through the Board-proposed dues exemptions for non-members, and if therefore, WEA survives without decertification, it

will be reborn to vigor and enjoy a true Agency Shop status perhaps thirty years hence when turnover and attrition have removed those present non-member tenure teachers (who in action, the Board would protect from the dues offset) about which its policy statement said: "If a teacher does not choose to become a member of the Association, then he should be willing to contribute toward the administration of the Agreement."

The Fact-Finder feels that it would be grueling and pointless to pursue further point-by-point examination of the Board's proposal. Here is a document, in which to induce settlement, the Hearing Officer deliberately set out to embrace the proposal of the Board to the fullest extent possible, insofar as it reflected the Policy Statement in Item #1. However, it is clear that the Board spoke with a forked tongue. Out of the right cheek emerged voluntary statements of sound principle but out of the other cheek these principles were so buried under a pile of exceptions, reservations, escape clauses, etc., that they are no longer discernable.

The final Recommendation of this Fact-Finder is that the parties adopt those portions of the School Board proposal on which he has already given approval. From there on, let the Policy Statement in "A" of Item #1 be implemented by the enforcement provision of "B" in Item #1 without exceptions provided elsewhere. The Fact-Finder rejects the Board's exceptions as frivolous and capricious to the point of reducing the intent of Item #1 to a travesty of the Agency Shop which it purports to provide - but only in pretense - rather

than fact.

Unfortunately, under the present provisions of PERA, the Fact-Finder's Recommendations can be flouted and filed in the waste-basket. He has no authority to compel implementation. He appeals, then, to the conscience of the Waterford Township School Board to reappraise its position and relies on it as the force, when realization that contradictions, evasions and negations of its stated policy have peppered its implementation provisions like buckshot, which will cause rectification, the restructuring of implementation in line with the Policy which this writer still hopefully believes was the statement of a true intent which, somehow and unfortunately, went off the track.

M. David Keefe, Arbitrator
Appointed as Fact-Finder

Dated: December 9, 1968
Roseville, Michigan

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December 12, 1968