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AWD. 4/30/98

STATE OF MICHIGAN

COMPULSORY ARBITRATION

In the Matter of:

CITY OF BELDING,

Employer,

-AND-

THE PUBLIC EMPLOYEES' UNION, LOCAL 586,

Union.

MERC Act 312 Arbitration

Case No.: L97 E-6026

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Belding, City of

OPINION AND AWARD

GEORGE J. BRANNICK
Impartial Chairman

Dated: April 30, 1998

This is a Compulsory Arbitration matter pursuant to Act 312 of the Public Acts of the State of Michigan, 1969, as amended MSA 17.455(31) et seq.; MCLA 423.231, et seq., (hereinafter the Act).

The members of the Arbitration Panel are:

GEORGE J. BRANNICK
Impartial Chairman

JOHN PATRICK WHITE
Employer Delegate

JAMES SHELTON
Employee Union Delegate

JURISDICTION

An issue has been raised relative to whether or not agency fees are a mandatory subject of bargaining, and the same has been submitted to this Arbitrator. However, the City of Belding did reserve ". . . its right to pursue this jurisdictional issue through other appropriate venues".

The question of mandatory arbitrability of various issues has been the subject of much litigation. A review of such litigation, however, reveals that the general principles that govern the question seem to rest on the source of the Arbitrator's authority. By and large that authority is usually found in the Collective Bargaining Agreement, or the document by which the Arbitrator is chosen or appointed.

In the instant case there is no Arbitration clause in the Agreement, and the Arbitrator derives his authority from the Act. Further, since there is no unadulterated stipulation of the parties

granting this Arbitrator authority to decide the issue, but rather a submission subject to appeal, I must then decide the issue and leave the parties to their right to pursue such remedy as they deem appropriate in the venue of their choice.

I do find and decide that agency fees are a mandatory subject of bargaining in the same respect that dues withholding has also been considered a mandatory subject of bargaining.

My authority is based upon the Act which provides, in Section 14, that it is ". . . deemed supplementary to Act No. 336 of the Public Acts of 1947. . ." [The Public Employment Relations Act (PERA)] supports this conclusion in the proviso to Section 10, paragraph 1, which provides as follows:

> That nothing in this act **or in any law of this state** shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in section 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representatives a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

That Section was amended in fulfillment of the Act's declaration of policy as set forth as the Preamble to the Act.

> An Act to prohibit strikes by certain public employees, to provide review from disciplinary actions with respect thereto, to provide for the mediation of grievances and the holding of elections, to declare and protect the rights and privileges of public employees, and to prescribe a means of enforcement and penalties for the violation of the pursuance of this Act.

The fact that the Agency Shop is specifically approved in the

statute gives strong testimony to the fact that the Legislature considered it important in effectuating the policy of the PERA quoted above.

That conclusion is buttressed by the Michigan Court of Appeals in a 1980 case, Eastern Michigan University Chapter of the American Association of University Professors v. Morgan, wherein the Court discussed the history of Section 10 and the amendment thereto, which Act was amended subsequent to the Michigan Supreme Court's Decision in Smigel v. Southgate Community School District, 388 Mich 531 (1972). The Appellate Court notes that the Legislature reaffirmed public policy in Section 2 of the cited statute stating,

> It is the purpose of this amendatory act to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

Thus, there is a legislative purpose that stability of labor relations depends upon the exclusive bargaining representative having sufficient means by which to perform its collective bargaining duties.

Having thus decided that the issue of Agency Shop is a mandatory subject of bargaining, that then brings that matter before this Arbitrator, since Act 312 is a continuation of the bargaining process after there has been a breakdown, and because of

the prohibition against strikes, the bargaining continues before the Arbitrator.

STANDARDS FOR DECISION

The Legislature has provided with the Act the method of Decision, Section 8, requiring "Written Findings of Fact", and "A written Opinion and Order upon the issues presented to it and upon the record made before it". Further, the Act mandates that "the findings, opinion and order shall be just and reasonable and based upon the factors prescribed in Section 9".

Those factors set forth in Section 9 are:

> Where there is no agreement between the parties, or when there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (a) The lawful authority of the employer.
>
> (b) Stipulations of the parties.
>
> (c) The interests and welfare of the public and financial ability of the unit of government to meet those costs.
>
> (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
>
> (i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

A review of the evidence submitted at the hearing, both testimonial and documentary disclose that there is no question regarding criteria (a), (b), (e), (f), and (g) with respect to the issues presented, which are: Agency Shop and Arbitration.

I shall first address the issue of Agency Shop.

The Employer's Exhibits disclose that of the comparable townships, only Cannon Township has an Agency Shop Agreement, however, of the other townships mentioned, there is no Union representation.

Jess Harwood, testifying on behalf of the Union, testified

that, "the body of the members, excluding one, want to have a closed shop, we have one person that is opposed to the Union in the City of Belding". This testimony was disputed, but after an off-the-record discussion it was determined that while three members had not signed authorization cards previously, that in the coming year there would be only one person not authorizing the deduction.

Mr. Vance Ishler, the City Manager, testified that, if dues were required, the pool of part-time firefighters may dwindle if they are required to pay dues and relied upon the fact that, "the City feels that this is really not a positive asset of becoming a part-time firefighter, there is a matter of freedom of choice here."

There was further testimony with respect to the utilization of the dues, however, that issue has been addressed by the Courts and those decisions do not need repeating here.

Since the issue of representation apparently has already been determined by either recognition of the Union, or by certification under PERA, the issue of employee concern regarding freedom of choice has already been determined. That having been determined, the question now becomes how is the issue of representation to be supported and that can only be by Union dues, or agency fees, as the case may be.

Since the unchallenged testimony indicated that only one member was opposed out of approximately 15, and since the issue of whether or not it would diminish the pool is speculative, this Arbitrator finds that the Union's Last Best Offer regarding the

issue of agency fees is accepted and becomes the opinion and order of this Panel as to Agency Shop.

We now address the second issue of Arbitration.

The evidence submitted indicates that the current Contract has no Arbitration Clause. The comparables, Norton Shores, Cannon Township, Muskegon Township, have Arbitration Clauses, whereas the City of Greeneville and the City of Belding do not have Arbitration Clauses.

The testimony of Mr. Ishler indicated that the City has had a Contract with its full-time employees for many years and the full-time firefighters do not have an Arbitration Clause in their Contract.

Further, Mr. Ishler testified that he was not aware of any outstanding grievances or problems that exist that have not been dealt with.

Mr. Jess Harwood, testifying on behalf of the Union, testified that there was a Grievance Procedure within the current Contract and when asked if the procedure had been used, he stated that it had been used in the last month. The question was asked, is there internal grievance procedure within the Fire Department, and the answer was, yes. The question was, have the part-time firefighters ever used the procedure and Mr. Harwood responded, not to his knowledge.

He further testified that there were no problems that had not been resolved within the current Grievance Procedure.

A reading of PERA, which is referenced into the Act, provides,

in Section Seven (7) that ". . . the commission shall forthwith mediate grievances, [when properly presented]". Under the evidence presented at the hearing, I see no compelling necessity for an Arbitration Clause at this time. I cannot speculate that under the testimony there have been no issues either in the Full-time Firefighters' Agreement, or under the Part-Time Firefighters Agreement that would require the utilization of an Arbitrator.

Accordingly, with respect to that issue, the Last Best Offer of the Employer is accepted by this Impartial Arbitrator and becomes the Opinion and Award.

Accordingly, the Award is as follows: The Last Best Offer of the Union with respect to agency fees becomes a part of the Contract and is so decided; and, with respect the matter of Arbitration, the Last Best Offer of the City becomes the Union Contract.

Finally, in keeping with the Commission's Rules and Regulations, the Panel determines that all other items not specifically mentioned herein, which are set forth in the predecessor Contract, are incorporated in the new Agreement achieved by this Arbitration Proceeding.

Dated: April 30, 1998

GEORGE J. BRANNICK
Impartial Chairman

CONCUR:

John Patrick White

CONCUR:

James Shelton