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/Algonac Community Schools /
/ and /
/Local 516-M, SEIU, AFL-CIO /
/ Case No. D76 G-2352 /

~~Edward Simpkins~~ Edward Simpkins

FACT FINDER'S REPORT

I. Scope of the Fact Finding

The parties submitted nine issues to fact finding on February 7, 1977. The issues dealt with proposals on (1) final and binding arbitration within the contract, (2) premium pay for overtime work, (3) vacation pay, (4) bereavement, (5) hospitalization, (6) life insurance, (7) paid sick days, (8) contract length, and (9) the issue of wages.

II. Issues Resolved Through Conciliation

1. Premium Paid for Overtime

The Union proposed that double time payment be provided for work on Sunday and triple time payment for work on holidays. The employer proposed that double time be allowed for work on Sunday when Sunday is not a regular work day and double time payment for work on a holiday. It was resolved during the fact finding that the contract language would be based on the employer's submission and would provide for the payment of double time for work done on Sundays when Sunday is not a regular work day and also double time payment for work done on holidays.

2. Vacation

The Union proposed that there be an entitlement to vacation on a pro rata basis when less than six months have

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been worked by an employee. The employer proposed that there be vacation allowable on a pro rata basis when less than 1600 hours or 200 days have been worked by an employee. It was resolved during the fact finding that the employer's position would be adopted and incorporated into the contract.

3. Bereavement

The Union proposed that five days be deductible from sick leave for bereavement. The employer proposed that three days be deductible from sick leave for bereavement. It was resolved that the employer's position would be adopted and incorporated into the contract.

4. Hospitalization

The Union and the employer agreed that paid prescription drugs would be provided to employees and the employer would pay increases and hospitalization premiums. This agreement between the parties was entered into prior to the start of the fact finding.

5. Both the employer and the Union agreed that the employees would be entitled to \$4,000 life insurance.

6. The parties agreed that the contract would be in effect from July 1, 1976 through July 1, 1977.

Four outstanding issues remained to be resolved: (1) the issue of arbitration, (2) the issue of salaries, (3) the issue of the F C Rider, and (4) the issue of sick days.

Questions To Be Resolved
Through Fact Finding

Arguments were heard on the following questions:

1. Whether the grievance procedure should provide for final and binding arbitration as the last step;

2. Whether employees shall be entitled to twelve paid sick days and an additional two (2) personal leave days or whether a total of two personal leave days shall be deductible from an annual accumulation of twelve sick days;
3. the extent to which the costs of the F C Rider policy shall be borne by the employer and the extent to which it must be borne by the employees and finally
4. the extent to which the hourly rate is to be improved for the current contract year.

(1) Discussion and Finding: Binding Arbitration

The School Board argued that it currently engages in collective bargaining contracts with three bargaining agents of whom only the teachers have binding arbitration as the final step in their grievance procedure. Bus drivers and secretaries do not. It argues further that in one dispute between administration and bus drivers, it over-ruled its own top administrative staff in favor of the bus drivers. In another labor dispute arbitration was used and the Board of Education was awarded a decision by the arbitrator. The Board also argues that this is a first contract and that it prefers not to have binding arbitration as part of an initial Agreement. The Union argued comparability. Union Exhibit 3 shows that the Memphis Agreement provides binding arbitration for a comparable group of employees. Union Exhibit 4 shows that the East China Agreement provides for binding arbitration for a comparable group of employees. Other agreements showing the same are the St. Clair Intermediate School District Agreement; the Marysville Agreement; the East China Agreement

and the Port Huron Agreement.

The factfinder made the point during the proceedings that most contracts, approximately eighty-five percent in non-manufacturing, include binding arbitration as the final step in the grievance procedure. The factfinder is mindful of the employer's argument that the Board of Education can act as an impartial party and on one previous occasion over-ruled its management in favor of an employee at the final step of the grievance procedure. In no way does the Union's proposal on binding arbitration prohibit the Board from exercising that same authority. The Board would still be free to substitute its own judgment for that of its administrative staff or to sustain a decision of its administrative staff.

The factfinder is persuaded that the responsibility to preserve the integrity of the contract is a bilateral responsibility necessitating a full showing of proofs by both parties whenever an allegation arises as to contract violations. To permit one of the parties to make the determination unilaterally is to reduce the other to a status that is less than equal. The Board should, in the opinion of the factfinder, have a partial role to play in the administration of the contract. It is not a neutral body but it is the duly constituted authority which in a grievance dispute is charged by a Union with the failure to discharge its authority in a manner that is just, fair, equitable or consistent with its own rules, policies or procedures, including but not limited to those incorporated in the labor contract. The Board simply cannot be neutral in such a situation. When it finds that its agents have in fact wrongly exercised authority the Board may overturn the action but this is not an act of neutrality but of good government. Clearly such situations

should not be brought to arbitration because there is then a concurrence on the part of those who govern and those who are governed. It is only when there is an absence of such concurrence that a neutral party is needed. When an absence of such concurrence is found to exist it then becomes the responsibility of duly constituted authority to set forth its best case in defense of its actions. It has no concern for preserving an image of neutrality but is instead concerned with maintaining the rights accorded it by law to speak on behalf of the people.

Any grievance by a public sector Union is, in fact, a claim that duly constituted authority is not discharging its responsibilities in the interests of the people. It is based on the assumption that the people want any authority that operates in their interest to be just, fair, equitable and administratively competent -- promulgating rules and regulations and implementing and following procedures that are openly adopted and openly adhered to.

The converse of this stance is for the Union to argue that its parent body has the capacity to be neutral. Hypothetically a union might argue that if its parent body were made the final authority at the last step in the grievance procedure, there would be times when the parent body would rule in favor of the employer. It might even point to a case or two when local unions withdrew grievances consistent with the urgings of parent bodies. Should this be regarded as neutrality on the part of the parent body? The factfinder does not believe so.

Again, it is the opinion of the factfinder that there is no way for a public sector employer to adopt a stance of neutrality in the face of such a grievance. Nor is the factfinder persuaded that such equality between the parties

to the Agreement is reasonably subject to a time table that is known only to one of the parties, in this case the employer. The Union has shown that employees and employers in surrounding districts generally enter into Agreements that require final and binding arbitration as the last step in the grievance procedure. The matter of who shall determine whether a contract is or is not being violated is found to be sufficiently important as to be incorporated in most contracts. The factfinder is persuaded that this contract should be like most other contracts in that regard and recommends the following:

1. Recommendation. The final step in the grievance procedure shall provide for final and binding arbitration of the dispute.

(2) Discussion and Findings: Paid Sick Days

The Board has offered employees twelve (12) paid sick days per year, allowing them to deduct two for personal business. The Union would like to have the two (2) personal business days to be separate from and independent of the days which accumulate for sick leave.

Very little argument was heard on this issue and the factfinder is not persuaded that the positions are greatly different.

The finding is for the Board.

Recommendation: Employees shall accumulate twelve (12) sick days annually, two (2) of which shall be allowed for personal business under procedures to be developed by the Board in consultation with the Union.

(3) Discussion and Findings: F C Rider

The F C Rider, the factfinder is persuaded, has been paid for by the employer in the past. The Board argues that in its new contract it would like the additional rider

F C and the STGB (covering children ages 19-25 and other dependents over 25) to be paid for by the employee.

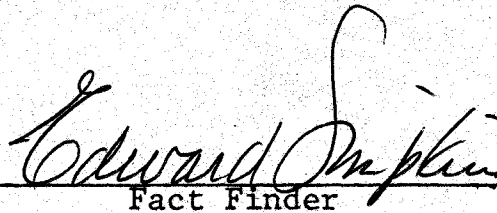
The Union argued that this issue was not raised until the day of the fact finding and the Board rebutted by pointing out that only very recently has an employee applied for this coverage. It appears further that the contract has not previously spoken to this question.

Although the factfinder does regard the matter as important, it is found to be untimely for these present negotiations and for these fact finding procedures. The factfinder is persuaded that the parties themselves have had insufficient opportunity to resolve this issue.

Recommendation: The matter is remanded to the parties for adjudication and for possible inclusion in a future Agreement.

4. Recommendation: Wages

The increase shall be 5.5%.



Fact Finder