

FF COPPER COUNTRY INTERMEDIATE
SCHOOL DISTRICT

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IN THE MATTER OF A DISPUTE BETWEEN*
*
COPPER COUNTRY INTERMEDIATE*
SCHOOL DISTRICT*
*
AND*
*
MICHIGAN COUNCIL #55 AFSC AND ME*
AFL-CIO*

James Dunne

FACT FINDER'S REPORT

The undersigned was appointed Hearing Officer and Agent of the Michigan Employment Relations Commission by its Chairman, Robert G. Howlett, to conduct a fact-finding hearing in the above titled matter pursuant to Section 25 of the Labor Relations and Mediation Act (Michigan State Ann. 17.454 (27); Michigan Comprehensive Laws 423.25 and Part Three of the Commission's General Rules and Regulations.

Pursuant to such appointment, dated September 12, 1975, the undersigned held a hearing in Hancock, Michigan, at the office of the Employer on Friday, September 25, 1975.

The parties were given full opportunity to specify the issues in dispute and to set forth such facts as they believed would support their respective positions on each issue.

PRELIMINARY FACTS

The parties are in negotiation for a first contract concerning a certified bargaining unit consisting of the following employees of the Employer.

"All full-time and part-time teacher aides, bus aides, media aides, vision or hearing technicians, clerical workers, maintenance personnel, caretakers, bus drivers, and food service personnel employed by the Copper Country Intermediate School District, excluding professional, confidential, supervisory, substitute and all other employees not specifically included as part of the bargaining unit above mentioned."

There remain fourteen issues in dispute. They are:

1. Agency Shop
2. The form which goes with Agency Shop
3. Check-off of Representation Fee.
4. Management Rights clause
5. Seniority
6. Strikes and Work Interruptions
7. Term of the contract
8. Workmen's Compensation supplement
9. Sick Leave
10. Holiday Provisions
11. Vacation Eligibility
12. Hospitalization
13. Snow Days
14. Classifications and Rates

The fact finder was advised by the Union representative at the outset of the recitation of the above issues that the Agency Shop was the biggest hang-up other than Classification and Rates. Indeed this fourteen item list of unresolved issues would tend to suggest that there had not been serious bargaining except for the fact that

this is a first contract involving this Employer and Union. There is no contract with any labor organization respecting professional personnel.

It should be stated that at the end of the hearing the Employer counsel stated that it could work out the issues respecting Management Rights, Strikes and Work Interruptions and Snow Days with the Union. Accordingly the undersigned will not deal with these issues in this report, without prejudice, however, to doing so at a later date should he be advised that the parties remain in dispute over any or all of these three issues. The fact finder has the facts concerning these three items in dispute and is prepared, if necessary, to render an amended report concerning them should the parties or either of them advise him in writing that such is required. This the fact finder does not anticipate since the Employer was quite affirmative in his statement that the issues as now posed or clarified should be and, he believed, would be settled in further discussion with the Union.

ITEM BY ITEM STATEMENT OF FACTS AND PARTIES' POSITIONS

Item 1-Agency Shop

The Union seeks the standard agency shop clause which contains only the obligation of bargaining unit employees to pay the equivalent of Union dues as a representation fee to defray the cost of the full collective bargaining

function required to be performed by the Union for all employees as a condition of continued employment. The Union states that "80% of the schools in the Copper Country with which we have contracts have agency shop clauses in their contracts." It appears that this is true of the Hancock Public Schools, the Calumet Public Schools and the Marquette Intermediate School District. These were the only contracts presented to the fact finder but the Union's claim that 80% of the schools in the area with whom it had contracts had such clauses was not specifically disputed by the Employer.

The Employer's position on this matter is purely philosophical. The Board is simply opposed to assisting the Union to the extent of lending its agreement to require as a condition of continued employment the payment of Union dues or its equivalent. The employer does not even argue the position that this being a first contract the matter is not yet a fair obligation to be imposed on all covered employees, members and non-members alike.

FACT FINDER'S RECOMMENDATION

There can be no doubt at this period in the history of collective bargaining that the cost of collective bargaining to a Union is high. It is also a matter of law that the Union is under a positive duty once it obtains bargaining rights to represent all employees in the bargaining unit

fairly and equally whether or not they are or choose to become members of the Union. Since all are the equal recipients of the benefits the Union can negotiate for everyone in the unit it seems only equitable that all should share alike in the cost of such Union representation provided no obligation exists to become members of the Union for those who for reasons of their own choose not to do so. Thus, because of the facts of common practice, non-requirement of Union membership, the equity of equal sharing in the cost of collective bargaining, the fact finder will recommend that a standard Agency Shop clause be inserted in the agreement between the parties. The fact finder suggests the parties consult the Marquette contract, Article 2.

Item 2-Form which goes with Agency Shop

This is an implementive matter only to item 1, Agency Shop.

Since the fact finder has recommended Agency Shop here he suggests the parties consult the language of Article 4, of the Marquette-Alger Intermediate School District contract for guidance as to language.

Item 3-Dues Check-Off

Almost as common as Agency Shop is the Dues Check-Off. This eliminates the friction of dues collection between the Union representatives and non-members who are obligated under

the Agency Shop requirement. The simplest means of avoiding such friction is the check-off by the employer of representation fee and remittance of same to the Union once each month. The fact finder recommends such method of collection, and suggests that the parties consult the Marquette-Alger Intermediate School District contract, Article 3, 4, and 5, together with the Authorization form immediately following Article 4 for proper and workable language to implement the Dues Check-Off.

Item 4

(Parties are settling this issue.)

Item 5-Seniority

The Union and Employer are in disagreement as to the seniority proposal only with respect to the following:

"c. Seniority shall be on an employee-wide basis in accordance with the employee's last date of hire."

The Union would apply this unit-wide clause to all reductions in force and recalls if the employee is able to "meet the minimum requirements of the job." The employer believes a unit-wide application is too broad and would cut across competency lines in all too many cases. Moreover, the Employer does not agree that it should have to train employees in a job to which they seek to exercise seniority in layoff and recall situations.

Both parties agree that there are some employees who have had prior experience in more than one type of job in the unit.

It is clear to the fact finder that the parties have not looked as carefully at the seniority application problem as they need to in light of the ability to perform problem. Obviously a straight district-wide system of seniority exercise would without some limitation ultimately run squarely into a senior employee having to be kept in a job he could not perform at least without extensive training. A moderate amount of training is one thing but extensive training is quite another in seniority layoff and recall situations.

There is a necessity to set up a seniority system so that the square peg in the round hole result does not occur. This could be done by simply saying that system-wide seniority will apply in all cases of layoff and recall provided the person exercising seniority is capable of performing the job. This is not satisfactory because many if not all job retentions become subject to a grievance. The employer must act to fill an open job and a person irrespective of ability to perform it may challenge it if he holds more system-wide seniority than the person placed on the open job.

The Union insists that the job posting and bidding

procedure meets this problem. The fact finder does not agree. Posting and bidding is normally applied to promotions or transfers to higher rated or more desirable jobs, whereas seniority application in layoff and recall is not normally regarded as involving more than retention in a layoff or reinstatement in a recall from layoff.

These parties need to examine the experience of each seniority employee to determine what other jobs in the unit he can do by reason of past experience or could reasonably be expected to do given a relatively short break-in time. Or the parties may discover that certain jobs are non-interchangeable on any realistic basis and seniority exercise should be restricted in layoffs and recalls to employees within such groups. Or there can be a combination of interchangeable and semi-interchangeable groups.

The fact finder is in no position to make a recommendation as to a workable seniority system and refers this matter back for a careful consideration of the above discussion as applied to the interchangeability of jobs in this unit. There is not so much a dispute between the parties as there is a requirement of attention to the kind of system which will give maximum protection to length of service employees while at the same time meeting the problem of job interchangeability or lack thereof.

At the hearing I suggested to the Board that it specify

what jobs present difficult or extended training problems for system-wide seniority application and then make an offer which would meet those special problems.

If the parties need assistance in this they may always obtain it from the State Mediator.

Item 6-Strikes and Work Interruption

The parties are settling this issue.

Item 7-Term of Contract

The parties are in tentative agreement on a one year contract even though there has been some discussion of a longer term.

After having heard the discussion the fact finder recommends a one year rather than a longer agreement since this is a first contract and as the undersigned only too well knows so many oversights or errors may occur in the negotiation of a first contract that it is probably best to have a "trial run" of a shorter rather than longer contract so that such imperfections will not persist without chance of correction for a multi-year period.

It would seem that the expiration date, whatever the term, should be sufficiently before the beginning of the school year to allow time for mature negotiations to take place. Some date after June 1, but before July 1, would seem reasonable for this purpose but the parties may well

decide upon a different date for reasons of their own not made known to the undersigned. There is no dispute on the balance of the proposal language.

Item 8-Workmen's Compensation

The Union's request in this item is that an employee injured on the job shall not suffer any loss in income by reason of his Workmen's Compensation being less than his normal earnings. The Board is requested to make up the difference in cash. At some point the Union offered to put a cap of \$2,000.00 on this benefit. The Union also asks that if the injured employee does not qualify for Workmen's Compensation benefits because of the "7-day off" requirement, that the Employer agree to pay all such lost time.

The Board asks that any benefits of the above kind come out of Sick Leave accrual or accumulation.

The fact finder observes that the Calumet agreement provides that such salary or wage supplementation by the Board shall be "sufficient to maintain his regular salary or wage for a period not to exceed the number of days in his sick leave accumulation." The Hancock provision is that the differential between Workmen's Compensation and regular salary or wage shall be made up by the Board "for the first 13 weeks of disability," and thereafter such differential "will be deducted from accumulated sick leave at

the rate of one-half day for each additional day's pay lost." The Marquette-Alger Intermediate School District agreement provides, "This amount (difference between regular pay and compensation benefit) shall be charged to the employee's accumulated sick leave pro-rated at one-third sick leave day for each day of Workmen's Compensation and terminated when sick leave is exhausted."

It would thus appear to the fact finder that the Union in the current negotiation for a first contract is attempting to get a greater benefit from this employer than it has been able in the past and up to now to negotiate with other area school district employers.

The fact finder does not know whether the employees in this unit have (before collective bargaining) had a sick leave benefit or not. He is aware that if they have not there could have been no accumulation of sick leave from which this particular benefit could be payable if it is to be from sick leave accrual. The fact finder does not believe this benefit should exceed that of the Calumet agreement since this is a first contract and the Calumet contract is not. However, if there has been no sick leave prior to these negotiations covering the employees in this unit then for the first year of this contract the fact finder recommends that a sick leave bank should now be established for each employee for the sole purpose of making possible the payment of this benefit and for no other purpose.

At the expiration of said first year said sick leave bank will be eliminated and the benefit will then be payable out of sick leave accrued by each employee during the first full year of this first contract. If, however, sick leave has been a benefit pre-existing collective bargaining then this benefit shall be payable out of such pre-existing sick leave accumulation, if any, up to the limits prescribed in the Calumet agreement (1974-1976, Article XVII, B).

Item 9-Sick Leave

There is no dispute as to the amount of sick leave to be accrued. This item has to do with how much if any unused sick leave accumulation is to become payable upon a unit employee's retirement, termination, or death. The Union believes and requests that all sick leave earned and not used or abused should become payable upon retirement, termination, or death on the theory that it has been earned by the employee for working and should to the extent not properly used for sickness become payable in these instances. The Union offers to put a cap of \$2,000.00 on any such benefit.

This is an economic benefit. A check of the Calumet contract reveals that if "service to the system is interrupted for any period beyond an approved leave accumulations

under this Article shall be forfeited," (Article XVII, D). Thus, the Union is here again asking for a benefit under a first contract that another area district with much longer bargaining history does not enjoy. The same is true of the Hancock agreement.

For these reasons the fact finder can find little justification for recommending the use of sick leave pay for the requested purposes at this early point in the parties' bargaining history.

Item 10-Holiday Provisions

The dispute here is over whether holidays should be paid to less than 12 month employees. In the past the employer has not paid for holidays to "school year" employees. Employer pays only for actual days worked to such non-full year (12 months) employees.

It appears that the parties have agreed on the paid holidays to be paid the 12 month employees.

The fact finder can find little justification for non-payment of holidays which would otherwise be work days to less than 12 month employees. This in effect would amount to a reduction in pay by reason of the occurrence of a holiday. However, since holidays and holiday payment normally connote a day of rest from work and payment therefor, it does not appear that less than 12 month employees should be entitled to holiday pay for holidays

which fall within a period which for them is a period of non-work.

The fact finder therefore does not recommend holiday payment to such employees for such holidays as fall within their non-work periods. These are not true holidays; and such a benefit is simply a form of featherbed payment which bears no relationship to a period of rest from work and compensation for the fact of the holiday's interruption of their normal schedule of days to be worked and paid for.

This is consistent with the Calumet and Hancock agreements in the area.

Item 11-Vacation

The Union has made the following proposal:

"An employee will earn credit toward vacation with pay in accordance with the following schedule:

One day for each month worked."

The Board is reconsidering its present proposal language on this item. It says there is a pro-rata problem on less than full eight hour day employees.

Since this benefit would be an uneven one if applied alike as the Union proposes to full-time (eight hour) and part-time (less than eight hour) employees, the fact finder recommends that the Union should entertain any reasonable pro-rata proposal that would make this benefit

equitable as between the two types of employees. Neither should receive less than his fair share of vacation accrual based on true periods of work. Vacations are earned by working and should be accrued on the basis of that portion of the full day they work.

Item 12-Hospitalization

There is a dispute over certain items in relation to the employer's proposal on Hospitalization. An undated Board Memo states that the "Board is authorized to offer to the Union at this point in time a .16 per hour increase in the cost of the wage package, which would include any one or combination of any of the following:

- State Retirement at 5%
- Hospitalization with or without the ML and
- Prescription Drug riders
- School year holidays
- Increase in hourly wages

The Hospitalization item in question seems to center around the identification of the Plan and the two riders (ML and Prescription Drug). The Union wants the plan specified with the benefits included, and seems to say that it wants a Blue Cross-Blue Shield Plan. The Board on the other hand, wants the plan agreed upon to be put out for bids. The Board of course should have the right to choose the carrier provided it is willing to guarantee that the benefits are identical and the delivery of care is the same. The fact finder, however, agrees with the Union that

it is entitled to know the plan identification and the benefits to be delivered. As matters stand now both parties are really talking about Blue Cross-Blue Shield plan and the e and f riders. There is however, a dispute as to the coverage being limited to "all full-time employees covered by the terms of the agreement." The Union believes also that premium payment by the Board for hospitalization should also be extended to retirees and their families and to employees laid off for a period up to four months.

As the fact finder understands it, the addition of the e and f riders plus the other items would cost the District an estimated \$2,586.00 annual total premium cost.

The fact finder recommends that since it is now common practice for the employer to pay the full cost of agreed hospitalization premiums if items of coverage are agreed upon, and since the items including the ML Rider and the Prescription Drug Rider have been offered by the District, such premiums should be paid for all employees full-time and part-time. The only proviso to this is that the parties agree upon the plan and the benefits other than the two riders. It would seem that since the "Rider" identification is to a Blue Cross-Blue Shield Plan there should be no problem in determining whether the reference is to the Master Medical Plan.

It is noted that the cost of the added items is relatively low for the bargaining unit as a whole. However,

the fact finder does not recommend that premiums be paid by the District for retired employees and their families unless this is included in the estimated cost of the premium (\$2586) per annum. But as for laid off employees the fact finder agrees that the premium be paid for laid off employees up to four months of any such layoff, if not disciplinary. The extension to retirees should be done later and in conjunction with Medicare so as to avoid overlapping coverage. This will require more mature thought than has apparently been thus far given to the matter by either party.

Item 13-Classifications and Rates

The Union proposed the following schedule of rates by classification and based upon years of service. It says it went to schedules of Calumet, Houghton, Hancock, and Marquette-Alger Intermediate School District for rate comparison purposes. It found that base rates in these districts for comparable work were substantially higher in the districts compared. It then, so it avers, established a schedule which in some cases gave no or very small increases for some classifications for the first or base year; it then increased the vertical or years of service columns in its proposed schedule by .15 per hour. The total schedule thus constructed by classification was

as follows:

Classification and rates

	YEARS 1	2-3	4-5	6-7	8-9	10 & over
Home programmers	3.80	3.95	4.10	4.25	4.40	4.55
Instructional aides	3.80	3.95	4.10	4.25	4.40	4.55
Program assistants	3.50	3.65	3.80	3.95	4.10	4.25
Vision and Hearing techs	4.10	4.25	4.40	4.55	4.70	4.85
Media aides	3.00	3.15	3.30	3.45	3.60	3.75
Maintenance	3.50	3.65	3.80	3.95	4.10	4.25
Bus drivers	3.50	3.65	3.80	3.95	4.10	4.25
Cook	5.00	5.15	5.30	5.45	5.60	5.75
Cooks helpers	3.00	3.15	3.30	3.45	3.60	3.75
Clerical	3.00	3.15	3.30	3.45	3.60	3.75
Secretaries	3.45	3.60	3.75	3.90	4.05	4.20
Teacher aides	3.50	3.65	3.80	3.95	4.10	4.25
Teacher aide Bus driver	3.50	3.65	3.80	3.95	4.10	4.25
Attendance officer	6.30	6.45	6.60	6.75	6.90	7.05

The Employer responds that the above schedule if adopted and applied to its current employees in their classifications and at their length of service would add 34% to its wage cost for this unit. Added to this the other economic demands would amount to another 10 to 11%.

In July, 1975, when the parties met, based on State Aid from last year of \$119,000 for the General Fund and \$441,000 for Special Ed against projections and the

history of State Aid the District would have had an 8% increase. This, however, did not materialize. Instead the day before this hearing the District was notified of the Governor's veto of the general fund allocations for Intermediate Districts. The effect of this if unchanged would be to reduce the general fund from \$119,000 to approximately \$42,000. While the District hopes there is a legislative remedy it cannot count on it. Consequently it is budgeting for a 30 day period in advance. If there is no change sharp reductions or entire elimination of staff and programs dependent upon State Aid will have to occur. Thus, any recommendations on wages must recognize the possibility of its being meaningless or relatively so.

The District originally offered .16 per hour to take care of all economics including wages. This was rejected by the Union. The District later and most recently raised its offer to .19 per hour. This too was rejected. In addition to this an additional 2½% increase in retirement cost becomes mandatory on January, 1976.

The District says in view of what has happened and without a remedy, it can make no better offer than it has made. And if there is a remedy any betterment of the District's offer would have to be tailored to the extent of such remedy and a possible reduction in staff.

The District does not agree with the Union's comparison with the Marquette-Alger Intermediate District revenue

and rates. Rather it believes comparisons with the Copper Country Districts are more appropriate.

There follows a listing of the current wage rates of unit employees together with their job classifications:

<u>NAME</u>	<u>HIRED</u>	<u>POSITION</u>	<u>74-75 PRESENT WAGE SCALE</u>
Shirley Kohler	9/64	Aide	\$4.22
Evelyn Titus	9/67	Aide	3.84
Cecile Pini	4/66	Aide	4.10
Bernice Aho	7/70	Aide	3.77
Joan Schutte	8/70	Aide	3.23
Nettie Bianchi	11/70	Aide	3.24
Agnes Fulayter	11/70	Aide	3.24
Mary Karvakko	9/71	Aide	3.12
Kenneth Richards	9/72	Aide	3.00
Reva Tuomikoski	10/73	Aide	2.81
Charlotte Brinkman	11/73	Aide	2.95
David Mulari	7/74	Aide	2.81
Linda Finout	9/74 (18)	Aide	2.81
Viola Brown	9/74 (24)	Aide	2.50
Kathleen O'Brien	11/74	Aide	2.81
Kris Waldren	7/74	Aide	2.81
Marie Halkola	10/67	Vision & Hearing	4.67
Mary Ann Anderson	3/74	Vision & Hearing	3.69
Carol Matthews	11/74	Clerk-Typist	2.72
Marianne Meneguzzo	6/75	Clerk-Typist	2.50
Janice Wanhala	7/75	Ass't Bkkg	2.72
Sandy Johnson	8/73	Ass't Bkkg	2.72
Gale Strzyzykowski	12/74	Ass't Bkkg	2.61
Judy Foreman	9/73	Secretary	2.61
Joyce Rowe	9/74	Secretary	2.72
Kathy Kariniemi	6/75	Secretary	2.61
Dean Korby	10/71	Maintenance	3.50
Clem Beaudoin	9/73	Maintenance	3.08
Evelyn Kaikkonen	9/73	Bus Driver	2.92
Albert James	9/74	Bus Driver	2.70
Albert LeClaire	3/74	Bus Driver	2.92
David Mulari	7/74	Bus Driver	2.81
Linda Finout	9/74	Bus Driver	2.81
Ed Mantila	10/74	Bus Driver	2.81
Colleen Mulari	7/74	Cook	2.50
Faber McCormack	11/74	Attendance Officer	

It is obvious that these rates in most, if not all, cases fall short of comparable classification rates in even area school districts and much lower than the scale by classification and length of service which the Union has requested.

In view of the fact that this is a first contract and the likelihood that a decent increase in hourly rate by employee cannot take into account a schedule based on length of service at this time, the most the fact finder can recommend is that the best flat increase in existing dollars and cents per hour per employee be negotiated once it is determined whether and to what extent relief is possible from State sources for operating purposes.

The fact finder has not recommended that other economic items the Union has requested be added to the Employer's cost. He feels that in the present circumstances the best possible flat cents per hour increase in individual wage rates is the best first approach to a bad economic situation.

The fact finder recommends that the District immediately notify the Union of any relief forthcoming from the State and that it thereupon make the best possible offer it can on a flat cents per hour wage increase. If then the Union wants to set aside certain portions of the increased amount for a partial rectification of inequities its requests should be given the most careful consideration.

The fact finder recommends that the District increase

its .19 per hour offer on wages to .30 per hour which is slightly more or less than 10% average increase per hour per employee or not much different than the BLS cost of living increase in the past year.

The present weighted average hourly rate for this unit is \$3.05. The increase of .19 per hour offered by the District would bring this average only to \$3.24 per hour. The recommended increase of .30 per employee per hour would bring the weighted average hourly rate to only \$3.35 which by almost any comparison these days is substandard. Based on a 40 hour week, 52 week year this produces only \$6,968 per year or just below the federal dividing line delineating substandard annual gross earnings. The fact finder can recommend no less regardless of the District's budget or financial condition. Priorities must at least allow for correcting substandard average hourly rates such as have existed in this District.

Oct 17 1975
DATE

James T. Dunne
JAMES T. DUNNE, FACT FINDER