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BY APPOINTMENT OF

THE

EMPLOYMENT RELATIONS COMMISSION

STATE OF MICHIGAN

In the Matter of Fact Finding Between:

EAU CLAIRE PUBLIC SCHOOLS

-and-

LABOR AND INDUSTRIAL
RELATIONS DIVISION
MICHIGAN DEPARTMENT OF
LABOR

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 547, AFL-CIO

Robert Bowers

INTRODUCTION

The undersigned was appointed by the Employment Relations Commission as its Hearings Officer and Agent to conduct a fact finding hearing relevant to the matters in dispute between the above parties, pursuant to Section 25 of Act 176 of Public Acts of 1939 as amended. The appointment was made on June 4, 1970. Upon due notice, a hearing with the parties was held on June 30, 1970 at the Eau Claire High School, in Eau Claire, Michigan. Mr. Sheldon Rosenberg represented the School District and Mr. Robert Inman represented the Union. A post-hearing brief was submitted by the Union on July 9, 1970.

Eau Claire Public Schools

At the time of the hearings, the following issues were unresolved and were submitted for fact finding: 1. Agency Shop; 2. Contractual Work; 3. Paid Leave; 4. Vacations; 5. Termination, Change or Amendment;

6. Wages.

Issue No. 6. Wages, was withdrawn from fact finding. The parties agreed to negotiate on wages after the State School Aid Bill has been passed.

POSITION OF THE UNION

1. Agency Shop

The Union proposes an agency shop clause which requires that all employees of the bargaining unit who are not union members must pay to the Union a service charge as a contribution toward the administration of this Agreement in an amount equal to initiation fee and dues as charged all members of the Union. The Union holds that the legality of the agency shop is not at issue. By refusing to agree to the agency shop, the Board completely disregards the desires of the majority of the employees in the bargaining unit in regard to this non-cost proposal. The Union maintains that the law states that the Union must represent all of the employees in the unit; therefore, the will of the majority must rule and there must be equal treatment for all. According to the Union, 60 school districts in Michigan include the agency shop in their agreements. In the immediate area, such districts as Paw Paw, Niles, St. Joseph, Benton Harbor, Three Rivers and New Buffalo have such a clause.

2. Contractual Work

The Union proposes the following provision in regard to the contractual work:

The right of contracting or subcontracting is vested in the Employer. The right to contract or subcontract shall not be used for the purpose of undermining the Union nor to discriminate against any of its members nor shall it result in the reduction of the present work force as outlined

in the Schedule nor in the event of extension of service shall it be used to avoid the performance of work covered under this Agreement.

The Union contends that this clause would still allow the Board to contract the jobs in the school system that are not normally performed by the employees in the bargaining unit and would not detract in any manner whatsoever in regard to the operation of the school system.

3. Paid Leaves

The original proposal of the Union was that paid leave should accumulate at the rate of 15 days per year to a maximum of 75 days. It later suggested that 12 days per year with a limit of 75 days accumulation would be a reasonable compromise. Paid leave would be for the purposes of sick and funeral leave and personal business.

4. Vacations

The Union proposes the following vacation schedule:

After one year of service - two weeks

After five years of service - three weeks

After ten years of service - four weeks

Bus drivers are excluded from this schedule. The Union maintains that three weeks after five years of service is found generally in most school systems, and would apply only to seven employees in the bargaining unit out of a total of 19. The Union estimates that the additional cost to the Board would be a total of \$500 per year.

5. Termination, Change or Amendment

The Union proposes a three-year contract running from July 1, 1970

to June 30, 1973, with a reopener for economic issues annually. The Union maintains that it has never changed its position on the proposal. The Union contends that there is a mutual benefit to both parties in not having to re-negotiate annually.

POSITION OF THE BOARD

1. Agency Shop

The Board of Education is opposed to any form of agency shop even if the fees paid by the employees are donated to a welfare fund. The Board holds that such a procedure restricts the religious, political and personal rights of the individual.

2. Contractual Work

The Board believes that the prohibition of being able to contract work out would take from the Board a right that could at times prove to be quite valuable. The Board has the responsibility to the taxpayer of spending public money reasonably and economically. The contracting of services either in bus operation, maintenance, or custodial services might result in substantial savings to the school district. However, the Board strongly emphasizes that such procedures should not be used to reduce the staff or cause any employees to be laid-off.

3. Paid Leaves

The Board proposes that paid leave should accumulate at the rate of one day per month of employment to a maximum of 75 days to be used for the purposes of sick and funeral leave and for personal business.

4. Vacations

The Board maintains that the vacation schedules for full time union employees should be comparable to the schedules covering other employees in the school district. The Board proposes the following schedule:

After one year of service - one week

Two to ten years of service - two weeks

After ten years - three weeks

5. Termination, Change or Amendment

The Board agrees with the Union's original proposal for a one-year contract. The Board maintains that since this is a first contract it may be advisable to negotiate certain items other than economics at the end of one year to make the agreement more operable to both parties. The contract should run from July 1, 1970 to June 30, 1971.

RECOMMENDATIONS

1. Agency Shop

Recommendation: An agency shop is not recommended at this time.

It should be noted that the type of union security provision which the Union is requesting is not a union shop but an agency shop. Under an agency shop clause an employee is not forced to join the union, but he is compelled to pay a monthly fee for the services rendered by the Union on his behalf.

In the consent election conducted on October 6, 1969, 15 employees out of 18 in the bargaining unit voted. Out of these 15, 12 voted for the

Union and 3 voted against. The Union thus was and is supported by two-thirds of the employees. This modest support is somewhat explained by the fact that the union has been in existence for less than a year and is still in the process of negotiating its first contract. The Union thus has not had the opportunity to stabilize its position either with the employees or the Board. More time is needed by the Union to establish itself as the effective representative of the bargaining unit. After the Union has had this opportunity then the union security issue should be reassessed.

2. Contractual Work

Recommendation: That the provision on contractual work proposed by the Union be adopted.

This clause gives the Board the right to contract work out but protects the jobs of the bargaining unit. The Board states that its intention is not to use such a procedure to reduce the staff or to cause any employees to be laid-off. After living under this provision for the term of the agreement, the parties may want to reevaluate its effect.

3. Paid Leaves

Recommendation: That all employees shall accrue paid leave on the basis of one day per month of employment but not to exceed an accumulation in excess of twelve (12) days per year nor a maximum accumulation of seventy-five (75) days. These days can be used in the event of illness, funeral or for personal reasons.

While different amounts of annual accumulation were suggested at various times throughout the negotiations, the parties were in agreement on the twelve-day amount at the hearings.

4. Vacations

Recommendation: All twelve-month employees who have completed one year of service shall receive two weeks of vacation, and after ten years of service shall receive three weeks.

While there are various patterns of vacation periods, this schedule appears to be in line with several other school districts in the area.

5. Termination, Change or Amendment

Recommendation: That the agreement be in force until June 30, 1972, subject to an annual reopener on economic clauses.

If this Agreement were to run from July 1, 1970 (the proposed starting date) for 12 months the parties would have to start renegotiating the renewal within a ten-month period. This would add unnecessarily to the negotiating expense. I agree with the Board that a shorter period than three years will permit the parties to test some of the provisions and make modifications if necessary.

July 20, 1970
Kalamazoo, Michigan

Robert S. Bowers
Robert S. Bowers
Fact Finder