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FERRIS STATE COLLEGE
BIG RAPIDS, MICHIGAN

and

LOCAL UNION 1609
AMERICAN FEDERATION OF
STATE, COUNTY & MUNICIPAL
EMPLOYEES, AFL-CIO

Thomas LoCiero

Ferris State College

FACT-FINDER'S REPORT
AND RECOMMENDATIONS

The undersigned Fact-Finder, appointed by the Michigan Labor Relations Commission, met with the above-named parties' relative to the remaining unresolved issues for changes in their collective bargaining agreement covering the College's non-teaching staff. The contract, scheduled to expire June 30, 1969 had been extended to July 2, 1969, but no further extensions had been agreed upon and, as a consequence, there were no further check off deductions made to date.

Although this item was not cited as an issue, I am compelled to comment that, in my judgment, the mutual extension of a bargaining contract until agreement is reached on all issues, with the understanding and agreement that all agreed-upon changes will be retroactive to the normal expiration date is the most important agreement that will help resolve

other issues. The use of this policy by this Fact-Finder over a period of many years has resulted in no strikes to date. To make this issue a matter of argument simply hardens the attitudes of both parties' and is a stumbling block to the resolution of the important issues. After all, such an extension will cost no more than what the cost would have been if agreement had been reached prior to the date of expiration.

It is therefore my strong recommendation that in future negotiations, the parties promptly agree to an automatic extension of the contract, with retroactive pay, and a continuation of discussions until agreement is reached. If final agreement cannot be reached, fact-finding is still available to help settle the remaining questions.

The unresolved issues submitted for fact-finding recommendations are the following.

1. Agency Shop.
2. Pay for grievance adjustment time after working hours.
3. Use of student help in performing bargaining unit work.
4. Subcontracting work out to independent firms.
5. Scope of Grievances.

6. Interpretation of Vacation clause.

7. Wage increases.

These will be taken up in order with recommendations on each issue as reviewed.

1. Agency Shop

The Union desires to gain greater security (and income) through the requirement of an agency shop whereby an employee is free to join the Union and pay dues, or not to join and instead pay the Union a service fee equal to dues. It points out that of thirteen (13) state colleges all have a union security clause (though not all the same) except Ferris State College. Its membership in the Union is only 81 per cent of the total eligible, 305 members, and 45 to 50 non-members. It is further agreed that it is unfair that non-members should enjoy all the benefits of unionism, but not share the cost of achieving these benefits; and that this unfairness generates confusion and animosity and results in non-members bragging about escaping such cost.

The College points to the growth in Union membership, 63 per cet in November, 1967, constantly increasing to 82 per cent of these eligible in June, 1969; that especially public employees must have freedom of choice in joining or

not; that forcing one to pay money is force nevertheless and the State cannot involve itself by compelling a public employee to join an organization he does not want to join and it is claimed that this is violative of the 14th Amendment on freedom of association. Finally, the College indicates that it is located in a rural community where unionism is not as well understood as in industrial areas, and, perhaps, not as well accepted; that from the beginning, the College has placed no impediment to employees joining the Union, but that it must respect and protect the beliefs and wishes of some long-service employees who do not wish to be involved in union activity.

FINDINGS

It is clearly established that the Agency Shop clause has been and is being more and more accepted in many contracts. However, I believe that such acceptance does not alone require the College to accept it in this contract. The concept of agency shop has not been found to be illegal and therefore must be presumed to be constitutional and valid. To my knowledge there has been one decision to date holding the agency shop clause valid. This was recently held by

Circuit Judge Edward S. Piggins of Wayne County involving employees of the City of Detroit. That same decision held the negotiated contract to be ineffective until approved by the Civil Service Commission.

Public employees are permitted by Act 379, P.A. 1965 to organize and select their representative, by majority vote, as their exclusive bargaining agent. It follows that such a bargaining agent must be permitted to do its job and it cannot do so unless it is financially supported. Thus, the issue is one of economics, not whether an employee must join the Union; because the law does not compel him to join if he doesn't want to do so. The economic issue, whether or not a non-member should be required to contribute to the cost of obtaining employment benefits, in my judgment, must be answered in the affirmative. It is not economically fair to his fellow-employees who vigorously and to the full extent of their legal rights labor to obtain such benefits should alone bear not only the effort, but the cost of obtaining such benefits for all the employees in the bargaining unit. Such inequality does create resentment and discord and is sure to adversely affect morale among the employees. How many employees would remain out of the Union if it were possible to extend the

benefits to Union members, but not to non-members?

At the same time, I must also respect the rights and wishes of those employees who came into the service prior to the time when any such payment or contribution was a condition of employment. No such condition should be imposed retroactively to an employee who became employed in the College without knowing that he would be required to contribute money to an organization he did not care to join. For those who apply after such a condition is established no valid argument can be made. He knew before hand just what he would be required to do, to the same extent as he knew what kind of work, what hours and what pay he would work under. My recommendation is therefore based upon these premises.

RECOMMENDATION

A clause should be incorporated in the contract to provide:

1. All employees within the bargaining unit who were members of the Union on July 1st, 1959 or who became members thereafter, shall remain members during the term of the contract.

2. All employees hired in the future but after the date on which this agreement is signed to positions within

the bargaining unit may or may not become members of the Union as they may choose; but if they do not, must contribute an amount equal to the dues of the Union.

3. No employee within the bargaining unit who is not a union member and who was hired prior to the date of signing this agreement shall be subject to any payment to the Union, nor to any discipline for failing so to do.

2. Pay for Time Spent in Adjusting Grievances after Working Hours

The second dispute revolves around the question of whether union-member employees who must spend time after working hours in grievance meetings with the employer should be paid for such time. Time and one-half is not requested, but it is argued that since the grievances and disputes are caused by the employer, time spent after work-hours should be paid for.

The College's position is that grievance meetings should be held during work hours and has agreed "not to force union representatives to attend meetings after working hours."

The Union now suggests that such meetings be scheduled prior to 1:00 P.M. so as to provide sufficient time for settlement.

The College believes this is not practicable because

some employees work late in the afternoon and evenings, and, therefore, would involve an unbudgeted expense, and, further would be conducive to unnecessary lengthy meetings. It is pointed out that this problem has been minimal and that no meetings have been knowingly scheduled during an employee's work-hours.

The hearing of grievances is a necessary part of operating under a collective bargaining contract and, therefore, such time must be spent as will assure that a reasonable solution will be made thereof. To provide a system under which such meetings would be unnecessarily lengthy, is not good, and, I am sure neither the College nor the Union would feel otherwise. Yet, payment for such time, does encourage an occasional individual with strong opinions to take all the time he believes necessary and can be abused. At the same time, the non-payment for such after-work-hour time may encourage the termination of a hearing or meeting earlier than reasonably necessary.

This problem is one of acting in good faith and mutual respect for time. No evidence was presented nor argument made that either party has abused its responsibilities.

RECOMMENDATION

I therefore believe and recommend that the past practice be continued and that when insufficient time is provided on one day during work-hours, another meeting be provided at a subsequent time during work-hours so that no loss of pay will be suffered.

3. Use of Student Help

The Union requests agreement that no student employee will be used to replace a regular employee or to fill a vacancy within the bargaining unit. It argues that the unit had 330 employees last year, but in spite of an increase in number of students, (the unit now employes 300). It claims that student help is being used to erode the bargaining unit. It further argues the reduction is due to a policy of replacing regular employees with student labor who are employed at lower pay rates. The demand therefore is made that when a regular unit employee is terminated, his position will not be filled with a student, but with another permanent employee.

The College charges this is completely untrue; that the policy of the college is to educate students, not to provide them with jobs; that its students come from lesser-income families and therefore are more dependent on a job to remain

in school; and that the rural community surrounding the school area cannot supply work for many students.

Exhibits were presented which indicate that hardly any of the regular employees who have terminated their employment with the school has been replaced by a student employee. The College represents that the occupancy of dormitories is substantially lower, - (men: 2707 in June, 1969, as against 3903 in September, 1968; - women: 1498 in June, 1969 as against 1935 in June, 1968) - that the budget for student help required in housing has been below capacity, and that meals served in the dormitories has been far short of capacity, all factors indicating a lesser use of facilities and a lesser use of student help. A special point is made by the College that at Perris, where 2-year curricula are more common than at other schools, greater job-opportunities must be provided to students; that the school cannot bind itself to a restriction which might curtail these opportunities in the future.

I cannot find from the evidence presented that the College has abused the use of student labor to take jobs previously held by bargaining unit employees. Further, it is mutually recognized that the College is and must be committed to a policy of providing work opportunities to its students and

that this policy must be applied reasonably from time to time as needs require. Until a serious abuse is shown or danger to the Union is threatened, there is no need to make any change in the contract.

RECOMMENDATION

I recommend that the current policy relating to the use student labor be continued and that no contract change be required at this time.

4. Subcontracting Work to Outside Labor

Again in this subject, the demand seems based on a fear rather than a threat or change of policy by the College.

No showing is made by the Union that unit work has been or will be subcontracted to outside firms to the loss of unit jobs. Yet, it is proposed that no employee will work less than forty (40) hours per week or lose wages because work of the unit is subcontracted.

The College believes that among its management rights, it has the right to determine when and under what conditions it should subcontract work out to outside firms. Thus, it says that sometimes the snow removal job must be contracted out to get it done on time and in the most economical manner.

I do not find any evidence that the College has

contracted any unit work to others at the expense of unit jobs or time, nor that it intends to do so. Yet, it is common to provide that no work will be subcontracted for the purpose of eliminating unit work or for the purpose of accomplishing a reduction in the pay of unit employees.

RECOMMENDATION

Under the facts before me, I do not believe that the Union is now threatened, nor should it fear that it will be threatened in the future, no more than in the past. I therefore recommend this issue be by-passed this year with the traditional recommendation to the College that any change in policy or proposal which would involve a loss of unit jobs be first discussed with the Union with a view to handling the problem in the most equitable manner.

5. Grounds for Grievances

The Union wants to change the definition of a grievance to include disputes other than alleged violations of the contract or interpretation thereof. It acknowledges that the College has the right, unilaterally, to make rules and regulations relating to the operation of the school, but claims any complaint should be treated as a grievance under the procedure of the contract.

The College asserts that the Recognition clause and Management clause of the contract cover this question adequately.

I believe the problem arises because rules and regulations promulgated by the College are not subject to review by the Union. The right to establish rules and regulations should remain with management but before they are made effective, the Union should be afforded an opportunity to pass on them. Once they are approved, they become as binding as terms of the contract, and the subject of a grievance if violated.

RECOMMENDATION

I recommend the inclusion in the contract of a provision that rules and regulations may be proposed by the College, but must be approved by the Union before becoming final. In this manner the question arising on any alleged grievance is whether or not the rule has been followed and to that extent would be a grievance.

6. Interpretation of Vacation Clause

A dispute arose over the College's interpretation of the clause on vacations. It reads:

"Length of Continuous Service as of July 1st	Vacation
6 months but less than 1 year	Prorated portion of 1 year benefit
1 year through 5 years	12 working days
6 years through 10 years	15 working days
11 years through 16 years	18 working days
17 years or more	20 working days

The Union claims that an employee with 5 1/2 years of service is given a vacation benefit of 12 working days, but should be given 15 working days.

Since no proofs were offered, although requested, as to what the intention of the parties was last year, I am only interpret the language as is. "Through 5 years" means "not less than 6 years" which is the usual language used in vacation clauses. To interpret it to mean anything less than 6 years would leave a gap in service for which no credit would be given. This certainly was not intended by the parties. Simarly at the 10 year and 16 year levels, "Through 10 years" means "not less than 11 years"; "Through 16 years" means "not less than 17 years".

RECOMMENDATION

The language of this clause should be revised to read "not less than" instead of "through".

7. Wage Increases

The Union has requested an increase which the College calculates to be an increase of 12.3 per cent the first year. It has offered a two or three year contract with additional costs and conditions.

The College offers an increase of 6.9 per cent on the existing scale, this being the percentage increase allowed by the legislature to all colleges in this year's appropriations.

There is no need to discuss anything more than a one-year contract since the College believes a multi-year contract to be illegal. I do not agree that such contracts are invalid even though the money has not yet been appropriated for subsequent years. In fact, it is my belief that at least three year contracts are a "must" and will become common, as it has in private industry. It is unreasonable and a waste of time and effort for both parties to be required to bargain a contract annually.

Both parties have done a fine job of presenting facts and figures to the Fact-Finder. I do not believe in compromise by recommending a point mid-way between the positions of the parties. A recommendation should be based on a reasonable calculation of meeting this year's increases in the

area and an ability to meet the cost thereof.

The College admits that in considering an increase for bargaining unit employees, it must also provide a similar increase for other non-academic employees and, that in doing so, a 6.9 per cent increase amounts to $92,997.35 for bargaining unit members plus $74,875.72 increase to the others.

Additional proofs are to the effect that Ferris is 13th in appropriations based on 9350 full year equated students, as calculated by the legislature, receiving $1,342.37 for each student, while Wayne State University received $2,190.32, U. of Michigan $3,000.47, Central Michigan $1,356.43 etc.; that the College has to spend a larger percentage of its budget for other required services because its two-year technical programs require much more supervision and individual training, in addition to additional types of equipment and materials; that it is third highest in the percentage allotted to service staff personnel, while it is 12th in faculty salaries; that it has had to increase its housing rates, but cannot use such money for state operations and that it cannot increase tuition because any such increase will reduce the state appropriations.

The Union replies that other colleges and universities have negotiated increases of more than 6.9 per cent, such as at Western Michigan University and Michigan State University; that the Union is opposed to a percentage increase because it increases the differentials between employees on different wage levels in the same classification. Its proposal contemplates reducing the number of different rates paid, now at four levels to two levels.

In considering this question I am faced with the fact that within a classification, employees are paid at four different rates, having been reduced from six rates last year. These differences arose because prior to the Union, employees had been paid at different rates, which differentials have since been continued.

It is my belief that another step should be taken and can be to obtain more uniformity of pay within classifications. Schedule A attached hereto sets forth what I believe to be an equitable, yet realistic wage pattern. In applying it, however, these principles should be followed:

1. For present employees, those whose pay rate is in the first column of the Salary Range will be adjusted to the first column of the schedule and those whose pay rate is in

the second column will be adjusted to the second column of Schedule "A". Those in the third and fourth columns will be adjusted to the third column of Schedule "A".

Schedule "A" reflects rates which are close to those requested by the Union, and at the same time close to the rates which result from an application of the 6.8 per cent formula. The total cost, I calculate to be about 7 1/2 per cent, and should be within the means of the College. Although the amount of increase for individual employees varies widely, it is no more so than that suggested by the Union. This device is a necessity in order to bring rates within classifications closer together. It is suggested that at some time, when the cost of doing so is more feasible than now, the first column be deemed the hiring rate and the second and third columns rates after 90 days and six months service, respectively.

CONCLUSION

I trust that I have fully appreciated the positions of both parties and that the foregoing recommendations are realistic and acceptable to both. Of course, variations can be made as the parties may agree would be more satisfactory to them.

DATED:
September 22, 1969

Respectfully Submitted,

Thomas V. Lo Cicero

Thomas V. Lo Cicero
Fact-Finder

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	I	II	III
FSW I, Housekeeper			
Current rate	$1.91	$2.06	$2.12 - $2.32
Proposed rate	2.10	2.20	2.35
FSW II			
Current rate	2.01	2.15	2.37 - 2.54
Proposed rate	2.20	2.50	2.70
Cook I, Baker I			
Current rate	2.15	2.32	2.43 - 2.54
Proposed rate	2.40	2.50	2.70
D.M.O., Cust. B, Grounds, Rec. Clerk			
Current rate	2.27	2.43	2.49 - 2.60
Proposed rate	2.45	2.60	2.75
Cust. A, Stockroom Clk., Inv.Clerk, Mail Clerk			
Current rate	2.37	2.53	2.61 - 2.80
Proposed rate	2.55	2.70	2.90
Cook II, Baker II			
Current Rate	2.35	2.54	2.62 2.80
Proposed rate	2.60	2.75	3.00
Bus Driver			
Current rate	2.50	2.68	2.80 3.00
Proposed rate	2.80	3.00	3.20
Maintenance B			
Current rate	2.57	2.76	2.85 3.10
Proposed rate	2.90	3.10	3.35
Firemen			
Current rate	2.70	2.90	3.10 3.25
Proposed rate	2.90	3.20	3.50
Maintenance A			
Current rate	3.05	3.26	3.43 3.60
Proposed rate	3.20	3.50	3.80