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SCHOOLS AND SCHOOL DISTRICTS: Collective bargaining and deficit spending

A board of education lacks statutory authority to agree to binding arbitration of the terms of a collective bargaining agreement with a representative of its employees.

A board of education may not, despite an arbitration award establishing the economic terms of a collective bargaining agreement, incur an operating deficit.

Opinion No. 4946 February 20, 1976.

Honorable Alfred A. Sheridan
Honorable Richard A. Young
State Representatives
The Capitol
Lansing, Michigan

Both of you have requested my opinion on a question which may be phrased as follows:

> May a board of education that has agreed to binding arbitration of the economic terms of a collective bargaining agreement incur, as the result of the arbitration award, an operating deficit during the 1975-1976 fiscal year?

In the instant situation the agreement to arbitrate is not limited to arbitration of grievances arising under a collective bargaining contract mutually agreed to by the public employer and a collective bargaining representative of its employees. Rather, here the arbitration involves establishing the terms of a collective bargaining agreement. In short, the arbitrator does not interpret a contract, he makes one.[1]

The law is settled that boards of education have only such powers as are conferred upon them either expressly or by reasonably necessary implication by the legislature. *Jacox* v *Board of Education, Van Buren Consolidated School District,* 293 Mich 126; 291 NW 247 (1940). *Senghas* v *L'Anse Creuse Public Schools,* 368 Mich 557; 118 NW2d 975 (1962).

In *Rockwell* v *Crestwood School District Board of Education,* 393 Mich 616; 227 NW2d 736 (1975), the Michigan Supreme Court held that the courts lacked the power to order boards of education and the representatives of their employees to submit to compulsory arbitration of the terms of their collective bargaining agreements. In reaching that result, the Court stated the following:

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[1] OAG, 1967-1968, No 4578, p 47 (May 26, 1967), held that boards of education are without statutory authority to include provisions for compulsory arbitration in collective bargaining agreements with representatives of their employees. The *Kaleva-Norman-Dickson School District No. 6* v *Kaleva-Norman-Dickson School Teachers' Association,* 393 Mich 583; 227 NW2d 500 (1975), the Supreme Court, however, held that the employee grievance in question was subject to binding arbitration under the terms of the collective bargaining agreement between the board of education and the representative of its teachers, thus, overruling the Attorney General's opinion.

"The Constitution provides that it is the Legislature, not the judiciary, that has the power to 'enact laws providing for the resolution of disputes concerning public employees.' The Legislature has chosen to provide for the resolution of impasses in collective bargaining only in the case of municipal police and fire departments.[2] *Apart from that enactment, there is no statute for the resolution of impasses in either public or private collective bargaining.*" (emphasis added) [footnotes omitted] 393 Mich, at 645; 227 NW2d, at 749

". . . The Legislature has left the resolution of collective bargaining impasses in limbo and there the matter shall remain until it chooses to act."

393 Mich, at 646; 227 NW2d, at 749

The legislature has not authorized boards of education to agree to binding arbitration of collective bargaining agreements to resolve impasses in collective bargaining. Thus, it must be concluded that boards of education lack statutory authority to agree to binding arbitration of the terms of collective bargaining agreements with representatives of their employees.

Turning to the matter of deficit spending, it should be observed that in *Advisory Opinion re Constitutionality of 1973 PA 1 and 2*, 390 Mich 166; 211 NW2d 28 (1973), dealing with school district finance, the Michigan Supreme Court declared the following:

"The Legislature may impose whatever limitations it deems necessary to prevent deficit spending and the issuance of bonds and other evidence of indebtedness. . . .

". . . [S]tate constitutions are historically intended to provide limitations on an otherwise omnipotent Legislature and the Legislature in turn is expected to protect the people by appropriate legislation from deficit spending by local units of government."

390 Mich, at 184; 211 NW2d, at 34-35

The legislature has acted to prevent deficit spending by school districts in 1972 PA 258, § 102, as last amended by 1975 PA 335; MCLA 388.1202; MSA 15.1919(602), which provides, in pertinent part, as follows:

"(1) A district receiving moneys under this act shall not adopt or operate under a deficit budget and a district shall not incur an operating deficit in any fund in any fiscal year. Each district shall submit its adopted budget for the current fiscal year to the department before November 1. A district with an existing deficit or which incurs a deficit shall not be allotted or paid any further sum under this act until it submits to the department for approval a budget for the current fiscal year, and a plan to eliminate its deficit not later than the end of the second fiscal year after the deficit was incurred. Withheld state aid payments shall be released after the department approves the deficit reduction plan and ensures that the budget for the current fiscal year is balanced.

* * *

[2] See, *Dearborn Fire Fighters* v *Dearborn*, 394 Mich 229; 231 NW2d 226 (1975).

"(4) *The amount of the permissable deficit for 1975-76 and future fiscal years may not exceed the amount of state aid reduced by an executive order during that fiscal year.*" (emphasis added)

A plain reading of the above quoted statutory provisions makes it clear that the legislature has prohibited school districts from adopting a deficit budget for the 1975-76 fiscal year. Similarly the legislature has prohibited school districts from operating on a deficit budget during the 1975-76 fiscal year. The legislature has not provided an exception from either prohibition to cover the result of an arbitration award establishing the economic terms of a collective bargaining contract with the school district's employees.

Therefore, I am constrained to rule that a board of education may not, despite an arbitration award establishing the economic terms of a collective bargaining agreement, incur an operating deficit for the fiscal year 1975-1976 under 1972 PA 258, § 102, as last amended by 1975 PA 335, *supra.*

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Attorney General.

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MOTOR VEHICLE HIGHWAY FUND: Administration and Use

CORRECTIONAL INSTITUTIONS: Prison industries

Moneys received and collected for gasoline tax, license registration fees and under the motor carrier act are to be deposited in the state treasury to the credit of the motor vehicle highway fund after deduction of necessary expenses incurred in the administration of these acts.

Correctional institutions may not make a profit from the manufacture of products by correctional industries.

1¼% of state taxes collected on the sale of a propellant used in internal combustion engines, with the exception of use for airplane and diesel engines, are to be credited to state waterways fund.

Opinion No. 4948 February 23, 1976.

Mr. John P. Woodford, Director
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This is in response to your recent letter wherein you ask the following questions:

1. What is the extent of the State Highway Commission's authority and responsibility over the use of the motor vehicle highway fund for collection and administrative costs?

2. Is the Department of Corrections (Michigan State Industries) authorized to generate a profit from the sale of license plates?