

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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In the Matter of the Petition of :

MADISON TEACHERS INCORPORATED :

To Initiate Fact Finding :
Between Said Petitioner and :

JOINT SCHOOL DISTRICT NO. 8, :
CITY OF MADISON, ET AL. :

Case II
No. 10904 FF-108
Decision No. 7768

-----:
Appearances:

Mr. Robert J. Cameron, Attorney at Law, for Madison Teachers
Inc.

Mr. Edwin C. Conrad, City Attorney, by Mr. Bruce K. Kaufmann,
Assistant City Attorney, for Jt. School District No. 8,
City of Madison, et al.

FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION,
AND ORDER INITIATING FACT FINDING

Madison Teachers, Inc. having filed a petition with the Wisconsin Employment Relations Board to initiate fact finding pursuant to Section 111.70 of the Wisconsin Statutes on behalf of the nonsupervisory teachers employed by Joint School District No. 8, City of Madison, et al.; and a hearing having been conducted on the matter on July 12, 1966, at Madison, Wisconsin, before Commissioner Arvid Anderson; and the Board having reviewed the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law, Certification, and Order Initiating Fact Finding.

FINDINGS OF FACT

1. That Madison Teachers, Inc., hereinafter referred to as the Teachers, is a labor organization within the meaning of Section 111.70, Wisconsin Statutes, and has its offices at 411 West Main Street, Madison, Wisconsin.

2. That Joint School District No. 8, City of Madison, et al., hereinafter referred to as the School Board, is a municipal employer within the meaning of Section 111.70, Wisconsin Statutes, and has its offices at 545 West Dayton Street, Madison, Wisconsin.

3. That at all times material herein said Teachers has been, and is, the exclusive collective bargaining representative for the nonsupervisory teachers in the employ of the School Board in an appropriate collective bargaining unit.

4. That prior to March, 1966, Teachers had submitted to the School Board proposals for wages, hours and conditions of employment covering teachers in the employ of the School Board for the school year 1966-1967; that on March 3, 1966 representatives of the School Board and Teachers met in their initial collective bargaining session with reference to the working conditions of teachers for the 1966-1967 school year; that during said meeting the School Board, by its Superintendent, presented to representatives of the Teachers a calendar which the Superintendent indicated he intended to propose to the School Board for its adoption, reflecting the various classroom days, teachers' meetings, convention days, holidays and vacation days, for the school year 1966-1967; that at the time the Superintendent indicated that he did not consider his proposed calendar to be a matter for collective bargaining, and that he was submitting same to the Teachers for their review and reaction, and at that time he invited Teachers to suggest to the School Board changes in the proposed calendar.

5. That on March 10, 1966, after reviewing the Superintendent's proposed calendar, Teachers prepared and submitted a proposed calendar to the administrative officers of the School Board; that in the afternoon of March 21, 1966, representatives of the Teachers and School Board again met in negotiations; and that at said meeting representatives of the School Board submitted a revised proposed 1966-1967 calendar to representatives of Teachers; that on the evening of March 21, 1966, at a regular School Board meeting, the matter of the 1966-1967 calendar was made a matter of business, in that a motion was presented for the approval of the calendar as prepared and revised by the Superintendent; that representatives of the Teachers were present and were requested by the School Board to comment on the proposed calendar; that thereupon a representative of Teachers requested that the School Board consider the calendar as a negotiable item; that the School Board thereupon set aside further action on the calendar and postponed to a subsequent meeting; that at a subsequent meeting held on March 25, 1966, members of the School Board reached an impasse among themselves with respect to the issue as to whether the matter of the calendar was subject to collective

bargaining between the School Board and Teachers; and that thereupon the School Board determined to seek a legal opinion from the City Attorney with respect to the matter.

6. That on April 4, 1966, after having received a legal opinion from the City Attorney, wherein the City Attorney advised that the matter of the school calendar was not a subject matter of collective bargaining, the School Board, without further conferences or negotiations with the Teachers, adopted the school calendar as revised by the Superintendent, with a slight modification.

7. That the School calendar proposed by the Teachers for the year 1966-1967 differed in various aspects from the original and revised calendars prepared by the Superintendent and adopted by the School Board; and that representatives of the Teachers and the School Board have been, and continue to be, deadlocked with respect to the 1966-1967 school calendar after a reasonable period of negotiations.

On the basis of the above and foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. That the issue as to whether the calendar setting forth the school year, teaching days, teachers' meeting days, convention days, holidays, vacation days and the like, is a subject matter of collective bargaining within the meaning of Section 111.70 of the Wisconsin Statutes.

2. That a deadlock within the meaning of Section 111.70(4)(e) of the Wisconsin Statutes exists between Madison Teachers, Inc. and Joint School District No. 8, City of Madison, et al. with respect to the 1966-1967 school calendar, affecting teachers in the employ of said Municipal Employer, who are represented by said Labor Organization.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Board makes the following

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of fact finding, as required by Section 111.70(4)(e) of the Wisconsin Statutes, have been met.

NOW, THEREFORE, it is

ORDERED


1. That fact finding be initiated for the purpose of recommending a solution of the dispute between Madison Teachers, Inc. and Joint School District No. 8, City of Madison, et al. with respect to the 1966-1967 school calendar.

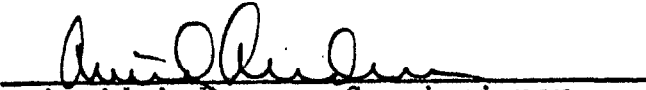
2. That the designation of the fact finder who will conduct a fact finding proceeding herein, pursuant to Section 111.70(4)(e) of the Wisconsin Statutes, be held in abeyance for a period of 30 days, for the purpose of granting the parties an opportunity to resolve their dispute through collective bargaining, and that should no resolution of said dispute be forthcoming during said period, the Board shall designate the fact finder, unless notified otherwise by Madison Teachers, Inc.

Given under our hands and seal at the
City of Madison, Wisconsin, this 14th
day of October, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By


Morris Slavney, Chairman


Arvid Anderson, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS
OF LAW, CERTIFICATION AND ORDER INITIATING
FACT FINDING

Section 111.70 of the Wisconsin Statutes grants to municipal employees, including teachers, the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employer, including school boards, on questions of wages, hours and conditions of employment. Said statute also provides that, in the event of a deadlock or a refusal to negotiate in a bona fide effort to resolve a dispute between the certified or recognized representative of the employees and the municipal employer, such representative shall have the right to petition the Wisconsin Employment Relations Board to initiate a fact finding proceeding to recommend a solution to the dispute.

Madison Teachers, Inc. is the certified exclusive collective bargaining representative for the nonsupervisory teachers employed by Joint School District No. 8, City of Madison, et al. The Teachers filed a petition for fact finding, alleging that a deadlock existed over the question as to whether the 1966-1967 school calendar was a proper subject for negotiation.

The School Board raises three defenses to the proceeding herein. It contends that the Board should dismiss the fact finding petition for the reason that (a) the petition does not contain a clear and concise statement of the facts alleging the deadlock, (b) that there is no allegation as to the duration of the negotiations, or that the demand was made in a timely fashion, or that the parties agreed to

negotiate on the matter alleged to be in deadlock, and (c) that there was no reasonable period of negotiations on the matter in issue.

The statement attached to the petition as a statement of facts constituting the alleged deadlock, is quite precise and definite. Even had not this statement been attached, the School Board's relief would have been a motion to make the petition more definite and certain for the reason that the Board does not make its final determination on the allegations in a fact finding petition, but rather after the Board has conducted an informal investigation, or a formal hearing.^{1/} The statement attached to the petition is clear and precise, and significantly, the evidence introduced at the hearing establishes the allegations contained in the statement.

The School Board's second ground for the dismissal of the petition contends that the fixing of the school calendar is a legislative function^{2/} of the School Board which cannot be delegated to other parties or procedures, including negotiations with the majority representative under Section 111.70 of the Wisconsin Statutes. The position of the School Board with respect to the negotiability of the calendar is based on an extensive legal opinion submitted to it by the City Attorney prior to the adoption of the calendar, in April, 1966. The opinion was made an exhibit during the course of the hearing.

In his opinion, the City Attorney states, in part, as follows:

"It is very apparent that very definite limitations are placed upon the Board of Education in respect to the various duties that they are to carry out. Moreover, the statutes specifically spell out the power of the Board with reference to the school calendar, one of the keystones in the education process. While it may be argued that the concept of the school year is somewhat vague and nebulous, nevertheless within the framework of the statutes the Board of Education has a legislative function of establishing the school year and delineating the structure of such year. If the school year were made a subject of bargaining, then the Board of Education would be delegating its statutory duty of setting the school year and, thus, abrogating the powers which it has under the statute. The fixing of the school year is in my opinion analogous to the adoption of the budget. This is a power which, despite bargaining, is still vested

^{1/} ERB 14.04.

^{2/} ss. 40.22(12), 40.45, 40.67(1)(c).

in the Common Council and cannot be the subject of negotiation. The Board may, for its own reasons, determine that the best interests of the City dictate a certain calendar year and that as a matter of fact it is under a duty under the statute to make such determination independently of any negotiation with a bargaining unit. Of necessity, by fixing the school year together with its integral parts, the school board must determine the composition of the school year. The adoption of the school year may likewise indirectly affect salaries and wages. But the Board's duty still remains and it must maintain this legislative function so that it can best carry out its ideas as to what is for the best interests of the district. To this extent the Board of Education must retain control of the school year so that it can act in the best interests of the district.

While the fixing of the school year may have an effect on wages, hours, and conditions of employment, in my opinion the legislative act of fixing the school calendar concerns the public at large, and the citizens of the district and is not within the phrase 'wages, hours and conditions of employment'. To illustrate the decision to close a manufacturing plant is legislative in nature and such decision will directly affect wages, salaries and conditions of employment. Nevertheless, such judgment is not a bargainable item as a question concerning 'wages, salaries or conditions of employment'.

It is, therefore, my considered opinion that this Board cannot delegate the power of fixing the school year, together with the composition of its parts, to bargaining committees of the bargaining units and the school board."

This Board recognizes the legal responsibility and authority of the School Board, not only with respect to salaries, hours and conditions of employment of those in its employ, but also with respect to the establishment and implementation of its educational policy. We also recognize that the School Board is required to exercise its responsibilities over certain matters which are not subject to collective bargaining or matters which may be permissive subjects of collective bargaining. It is impossible to completely isolate matters affecting salaries, hours and working conditions from the duties and responsibilities of the School Board in administering an educational program. We conclude that where any phase or portion of the legislative responsibilities of the School Board have a direct and intimate affect upon salaries, hours and working conditions of its employes, then those matters are subject to collective bargaining within the meaning of Section 111.70 of the Wisconsin Statutes, and any refusal to negotiate and bargain on such items, or

any deadlock with respect to issues on those items, after a reasonable period of negotiations, are subject to fact finding under the statute.

The school calendar affecting teachers in the employ of the School Board has a direct and intimate relationship to their salaries and working conditions. The calendar establishes the number of days and duties of the school year, the number of and date of active teaching days, the number of dates of teacher meetings days which teachers are required to attend, the number of and dates considered holidays, the number of and dates considered convention days, and the like. It is obvious that if teachers are to be paid by the school year for the total number of days considered to be school days, as affected by holidays and vacations, etc., the calendar has a direct and intimate relationship to the salaries received by the teachers as well as other conditions of their employment.

The opinion of the City Attorney concedes that the fixing of the school year is analogous to the adoption of the budget. In other words, we assume that he means that the School Board cannot delegate its authority with respect to the adoption of the budget. However, the opinion acknowledges that the matter of wages and salaries to be paid by the School Board is a subject of collective bargaining. The opinion would destroy the analogy with respect to collective bargaining on the school calendar. The ultimate determination of the conditions of employment must be fixed by the School Board, but this does not mean that negotiations may not take place prior to the final determination by it. Whether the School Board's decision as to the school calendar is a ratification of a negotiated agreement between representatives of the School Board and the Teachers, or is a unilateral decision by the School Board, in the event no agreement has been reached in negotiations, the legislative authority remains in the School Board to fix and adopt the school calendar.

Counsel for the School Board equates the right to negotiate over wages, hours and conditions of employment with a duty to agree, thus resulting in a delegation of the legislative function vested in the School Board. Negotiations on matters subject to collective bargaining do not require either party to reach an agreement. Negotiation contemplates that the parties will make a mutually genuine effort to arrive at an agreement, but failing such agreement they have the recourse in municipal employment to fact finding with

recommendations. Again, the fact finding procedure is advisory and non-binding, and, therefore, does not result in a delegation of the legislative function. In summary, negotiation is a different act than the legislative function of finally establishing the conditions of employment.

A learned commentator has recently written about this specific matter:

"An appreciation of the principles (collective bargaining) set forth help to give realistic meaning to the term good faith collective bargaining and has convinced certain courts and legislative bodies that permitting public school employees to bargain collectively does not invade school board authority. Essentially this is because even though collective bargaining does place certain responsibilities upon the employer, there is nothing in the principle stated which forces capitulation to demands. It does not, therefore, appear accurate to assert that school boards, are forced to delegate away authority."

* * *

"In the public employee field if legislative bodies decree ... collective bargaining, it represents a decision just as it did in the industrial field, that employee relations will be benefited. It does not appear that this decision can be logically frustrated by the argument that the provision results in forcing a school board to delegate away its authority."^{3/}

We conclude that the school calendar is a condition of employment which the exclusive collective bargaining representative has a right to negotiate with the School Board in accordance with the policy and procedures of Section 111.70.

As a third ground, the School Board further argues that the Board should dismiss the petition for the reason that there has been no reasonable period of negotiations on the school calendar, contending that there were only two meetings at which the calendar was discussed prior to its adoption by the School Board.

As indicated in the Findings of Fact, the Superintendent of Schools had submitted his proposed calendar to the Teachers for their review and invited Teachers to make suggestions with regard thereto. This resulted in a proposed calendar by the Teachers, which was submitted to the administrative officers of the School Board.

^{3/} Reynolds C. Seitz, "Legal Aspects of Public School Teacher Negotiating and Participating in Concerted Activities, 49 Marq. L. Rev. 487 (1966), P. 493.

Subsequently, the Superintendent revised his original calendar, which was adopted with a minor modification by the School Board at its regular meeting.

The Board has reviewed the three calendars involved. Originally the Superintendent proposed 180 classroom days, commencing September 7 and concluding June 9. The Teachers proposed 174 classroom days, commencing September 1 and concluding June 9. The calendar, as adopted, provided for 179 classroom days, commencing September 6 and concluding June 9.

The Superintendent's initial calendar proposed September 1 as the date for an all-staff meeting, and the adopted calendar changed such date to September 2. The Teachers had proposed that such meeting occur on August 31.

The Superintendent's initial calendar proposed September 6 as a so-called readiness day, and the adopted calendar reflected a change of this day to September 2. The Teachers' proposal did not set forth any readiness day.

The Superintendent's initial calendar established the first semester falling between September 6 and January 27. The Teachers' proposed that the first semester fall between September 1 and January 27. The adopted calendar reflected the first semester to be the period between September 7 and January 27. The second semester in the original proposed calendar would commence on January 30 and conclude on June 9. The final calendar adopted said period. The Teachers' proposed calendar was identical with respect to the second semester as adopted.

The Superintendent's initial calendar proposed that November 3 and 4 and February 24 be considered as convention dates. These dates were incorporated as convention dates in the adopted calendar. The Teachers' proposed calendar set forth the same convention dates.

The initial calendar proposed November 24 and 25, December 22 through January 2, March 24 through March 29 and May 30 as vacation days. The Teachers proposed that November 25, December 19 through January 2, and March 24 through March 31 as vacation dates. The adopted calendar reflects November 24 and 25, December 22 through January 2, March 24 through March 31 and May 30 as vacation days.

Neither the original nor adopted School Board calendars established any holidays, as such. The Teachers proposed that

November 24 and May 30 be considered holidays. The latter dates were included as vacation days in the School Board's original and adopted calendars. It should be further noted that the Teachers had also proposed that November 11 be considered an inservice day. No such designation was made in either of the calendars of the School Board. However, it is also significant that the Teachers proposed that August 31, in addition to being a meeting of all the staff, should also be designated as an inservice day.

While requesting the Teachers to review the originally proposed calendar, and while requesting suggestions and comments thereon, and while the School Board permitted representatives of the Teachers to comment on the proposed calendar at the School Board meeting, there was no give-and-take collective bargaining with respect to the calendar. This failure was due to the School Board's determination that the matter of the school calendar was not bargainable under the statute. The School Board cannot now, after closing the door to further negotiations on the calendar, contend that there was no reasonable period of negotiations with respect thereto. The detailed resume of the three calendars reflects the areas of disagreement with regard to the calendar as proposed by the Teachers and as adopted by the School Board. The calendar was adopted without negotiations and without a mutual agreement thereon. The parties are deadlocked with regard to that issue, and therefore, we have determined that the conditions for fact finding exist.

The Board does not wish to be understood as disapproving or approving the judgment of the School Board with respect to the school calendar which was adopted for the year 1966-67. We recognize that in fixing the school calendar, that the School Board considers certain factors mentioned by the City Attorney including the problems associated with police and special patrols at school crossings, building and school bus contracts, as well as whether school shall start before or after Labor Day, the fixing of school vacation periods and holidays, and budget and tax revenue problems and the like. The existence of the above factors should also be considered by the negotiators, and are likely to be considered by a fact finder, but that fact does not bar negotiations over the school calendar.

However, we have delayed designating the fact finder in order to give the parties an opportunity to attempt to negotiate the deadlock over the school calendar.

Dated at the City of Madison, Wisconsin, this 14th day of October, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By

Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner