

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

HARTFORD EDUCATION ASSOCIATION,
W.E.A., N.E.A.,

Complainant,

vs.

HARTFORD UNION HIGH SCHOOL DISTRICT,
and the BOARD OF EDUCATION OF HARTFORD
UNION HIGH SCHOOL DISTRICT,

Respondents.

Case VI
No. 15595 MP-136
Decision No. 11002-B

ORDER AMENDING EXAMINER'S FINDINGS OF FACT, AFFIRMING
CONCLUSIONS OF LAW AND ORDER, AND AMENDING
MEMORANDUM ACCOMPANYING EXAMINER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

Examiner George R. Fleischli having, on February 1, 1974, issued Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, in the above entitled proceeding, wherein the above named Respondents were found to have committed, and were committing, prohibited practices within the meaning of Sections 111.70(3)(a)⁴ and 111.70(3)(a)1 of the Municipal Employment Relations Act, and wherein the Respondents were ordered to cease and desist therefrom and to take certain affirmative action with respect thereto; and the Respondents, by their Counsel, on February 19, 1974, having timely filed with the Wisconsin Employment Relations Commission a petition requesting the Commission to review the Examiner's Findings of Fact, Conclusions of Law and Order; and the Respondents, by their Counsel, on March 6, 1974, having filed with the Commission an amended petition for review, and on April 8, 1974, Counsel for the Respondents having filed a brief in support thereof; and on June 7, 1974, Counsel for the Complainant having filed a written statement in support of the Examiner's Findings of Fact, Conclusions of Law and Order; and the Commission, having reviewed the record, the Examiner's Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, the petition and amended petition for review, and the brief in support thereof, as well as the written statement in support of the Examiner's decision, being fully advised in the premises and being satisfied that the Examiner's Findings of Fact be amended, that the Examiner's Conclusions of Law as well as the Order be affirmed, and that the Memorandum Accompanying same be amended;

NOW, THEREFORE, it is

ORDERED

1. That the Examiner's Findings of Fact be amended as follows:

(a) That paragraph 11 of the Examiner's Findings of Fact be amended to read as follows:

"11. That thereafter at a meeting on December 8, 1971, the Respondent Board approved a maternity leave provision for inclusion in the master agreement and took action to have the 'master agreement' reviewed by the Wisconsin Association of School Boards which action is reflected in the following extract from the official minutes of said meeting:

'Master Contract

The Negotiation Committee presented a working draft of the extended leave time provision of the master contract for completion. After some discussion the appropriate wording of the maternity leave of absence for pregnant teachers was agreed upon. This item completed the master contract agreement. The administrator was requested to present the now completed master contract to the WASB for review.';

and that this action was taken although on December 8, 1971, a tentative agreement existed between the bargaining teams of the Complainant and the Respondent Board on all terms to be included in the 1971-72 collective bargaining agreement, except for possible minor changes in language, not affecting any substantive provisions thereof."

(b) That paragraph 17 be renumbered as paragraph 18 and that the following paragraph 17 be inserted in the Findings of Fact:

"17. That members of the Complainant's bargaining team were aware by July 1971, at the earliest, that the bargaining team of the Respondent Board would submit the tentative agreement reached between said bargaining teams to the Wisconsin Association of School Boards for 'review' prior to action thereon by the Respondent Board; that, however, there was no agreement between the members of said bargaining teams, or any understanding on the part of the Complainant's bargaining team, that such a review would result in substantive proposed changes to the collective bargaining agreement tentatively agreed upon between said bargaining teams; and that Complainant's bargaining team tentatively agreed to the collective bargaining agreement on the basis of their understanding that the substantive provisions thereof only required formal action by the Respondent Board, and not the approval of substantive provisions thereof by the Wisconsin Association of School Boards, or on any input from the Wisconsin Association of School Boards on substantive matters not set forth in the tentatively agreed collective bargaining agreement."

2. That, pursuant to Section 111.07(5) of the Wisconsin Statutes, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Conclusions of Law and Order issued in the above entitled matter as its Conclusions of Law and Order, and, therefore, the Respondents, Hartford Union High School District and the Board of Education of Hartford Union High School District, shall notify the Wisconsin Employment Relations Commission within ten (10) days of the receipt of a copy of this Order as to what steps it has taken to comply therewith.

3. That the Memorandum accompanying the Examiner's Findings of Fact, Conclusions of Law and Order is amended in the Memorandum accompanying the instant Order.

Given under our hands and seal at the
City of Madison, Wisconsin, this 12th
day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AMENDING EXAMINER'S FINDINGS OF FACT, AFFIRMING
CONCLUSIONS OF LAW AND ORDER, AND AMENDING
MEMORANDUM ACCOMPANYING EXAMINER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

In its petitions for review and briefs in support thereof the Respondents contend the Examiner failed to consider and incorporate into his Findings uncontroverted material facts:

- "A. That Complainant knew and agreed that bargaining proposals and tentative agreements were subject to review by Respondents' attorney and/or Wisconsin Association of School Boards.
- B. The Hartford Education Association not only did not object to Respondents' submitting of proposals and tentative agreements to the Wisconsin Association of School Boards for review but said Education Association did itself submit matters under negotiation to the Wisconsin Education Association for review.
- C. Subsequent to July 7, 1971, the Association agreed that changes could be made in matters that had previously been tentatively agreed to and that changes to the aforementioned matters were made and mutually agreed to by the Association and Respondents."

The Respondents, therefore, contend that the failure of the Examiner to consider and incorporate into his Findings of Fact the above noted alleged material facts caused the Examiner to erroneously reach his Conclusions of Law. The Respondents' conclusionary argument is set forth as follows:

"THE EXAMINER'S CONCLUSIONS OF LAW AND ORDER RAISE SUBSTANTIAL QUESTIONS OF LAW AND ADMINISTRATIVE POLICY CONCERNING RESPONDENTS' RIGHT TO ENTER INTO TENTATIVE AGREEMENTS AND ITS UNILATERAL RIGHT TO MAKE SUCH AGREEMENTS SUBJECT TO FINAL APPROVAL OF COUNSEL AND CONCERNING RESPONDENTS' CONTRACTUAL AND BARGAINING OBLIGATIONS PRIOR TO THE AMENDMENT OF SECTION 111.70 OF THE WISCONSIN STATUTES IN NOVEMBER OF 1971.

- A. That Respondents had entered into a 'tentative collective bargaining agreement subject only to ratification by the Complainant's membership and approval by the Respondents' Board at an open meeting held pursuant to the requirements of Section 66.77 of the Wisconsin Statutes.'
- B. The Respondent Board has not violated Sections 111.70(1)d, 3(a)4 or (3)(a)1 of the Municipal Labor Relations Act by its failure and refusal to conduct an open meeting pursuant to Section 66.77 of the Wisconsin Statutes for the purpose of considering, approving and adopting the collective bargaining agreement allegedly reached between the Complainant and its bargaining team.

- C. Respondents had no duty at law to bargain or enter into a contract with Complainants prior to the amendment of Section 111.70 of the Wisconsin Statutes in November of 1971."

With respect to the Respondents' contention that the tentative agreements were subject to review, it is to be noted that the Examiner's Findings in paragraph 11 set forth that the Respondent Board "took action to have the 'master agreement' reviewed by the Wisconsin Association of School Boards." The Commission has amended the Examiner's paragraph 11 to set forth the understanding between the parties as to the nature of the review of the Respondents' tentative agreement by the Wisconsin Association of School Boards.

Paragraph 7 of the Examiner's Findings of Fact again sets forth that "the Respondent Board's bargaining team advised the Complainant's bargaining team of its intent to consult with its 'attorney' or the 'Wisconsin Association of School Boards.'"

The contention of the Respondents that the Findings of Fact did not reflect that the Complainant submitted matters under negotiation to the Wisconsin Education Association is deemed not material to a determination of the issues involved since the tentative agreement reached by the Complainant was only subject to ratification by the membership of the Complainant, and not by the review or approval by the Wisconsin Education Association after the Complainant's bargaining team had reached a tentative agreement with the bargaining team of the Respondent Board.

With respect to the contention of the Respondents that the Examiner did not incorporate facts to reflect that after July 7, 1971, the Complainant agreed that changes could be made in matters that had been previously tentatively agreed upon, and that some changes were made and were mutually agreed upon, it is to be noted that such matters are set forth in paragraph 16 of the Examiner's Findings of Fact. We have amended the Findings of Fact to include a new paragraph 17 (renumbering the Examiner's paragraph 17 to paragraph 18) to set forth that there was no agreement reached between the parties or any understanding on behalf of the members of the Complainant's bargaining team that the review of the Wisconsin Association of School Boards would result in the subsequent proposed changes to the collective bargaining agreement subsequently agreed upon.

With regard to the arguments of the Respondents concerning the alleged erroneous Conclusions of Law of the Examiner we wish to note that the Examiner, in his Memorandum, discussed the argument that prior to November 11, 1971, the Municipal Employment Relations Act imposed no duty upon municipal employers to bargain or enter into collective bargaining agreements, if such an agreement was reached during collective bargaining.

We conclude that the Examiner did not err in his Conclusions of Law. We also would add to the Examiner's Memorandum set forth in his decision as follows:

The decision of the Commission herein is not to be interpreted as preventing either party from seeking advice or counsel from others during their negotiations on a collective bargaining agreement. As a matter of fact, professional expertise at the bargaining table is likely to assist the collective bargaining process rather than impede it. However, the timing of seeking such advice and counsel may very well be determinative of whether the parties seeking such advice and counsel are bargaining in good faith as contemplated in the Municipal Employment

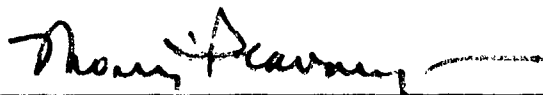
Relations Act. If such advice and counsel is sought after the parties have reached a tentative agreement on substantive proposals submitted by both parties during the course of negotiations, as was done in this case, the Commission must find that the party seeking such advice and counsel, at such time, had not bargained in good faith where new issues are created by such advice and counsel and said party thereafter insists upon the implementation of the advice. Various concessions made by either party, prior to reaching tentative agreement, may not have been made had the party making such a concession been aware that new substantive issues would be introduced into the negotiations following the tentative agreement between the bargaining teams involved. To interject new issues following the tentative agreement would open a Pandora's box in the collective bargaining process.

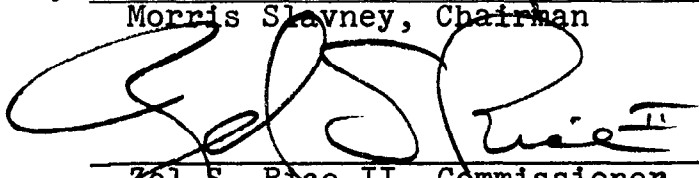
If either party intends to have a tentative agreement reviewed for both language changes and substantive proposals, it has the duty to so advise the other party prior to reaching a tentative agreement on all issues. Good faith bargaining does not contemplate advice and counsel in absentia after the parties have reached a tentative agreement on all proposals presented at the bargaining table.

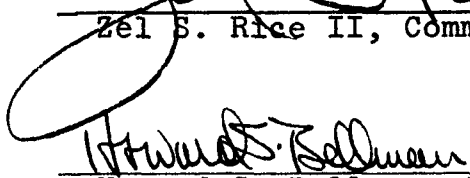
Dated at Madison, Wisconsin, this 12th day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner