

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
OAK CREEK - FRANKLIN JOINT CITY :
SCHOOL DISTRICT NO. 1 :
Requesting a Declaratory Ruling : Case III
Pursuant to Section 111.70(4)(b), : No. 16717 DR(M)-42
Wisconsin Statutes, Involving a : Decision No. 11827
Dispute Between Said Petitioner and :
OAK CREEK EDUCATION ASSOCIATION :
- - - - -

ORDER DENYING MOTION AND SETTING
HEARING ON DECLARATORY RULING

The Oak Creek - Franklin Joint City School District No. 1, having, on April 20, 1973, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to issue a Declaratory Ruling pursuant to Section 111.70(4)(b), Wisconsin Statutes, with respect to the duty of said Municipal Employer to bargain with the Oak Creek Education Association with respect to the following enumerated subjects:

- (a) Hiring and staffing;
- (b) Establishment of a pilot program;
- (c) Maintenance of standards for students;
- (d) Curriculum; and
- (e) Class size,

and in said petition, the Petitioner having taken the position that the above enumerated subjects are:

- (1) "Voluntary rather than mandatory" subjects of bargaining;
- (2) "Reserved to management and direction of the government unit" and do not constitute wages, hours or conditions of employment under Section 111.70(1)(b), Wisconsin Statutes;
- (3) Involve basic elements of educational policy determinable by school boards under specific school statutes;
- (4) Cannot constitutionally be required subjects of bargaining "because the legislative function of the School Board would otherwise be unconstitutionally delegated and surrendered;"
- (5) Several of said subjects do not involve bargaining unit personnel, and, therefore, "the Association cannot bargain concerning any matters not within its jurisdiction."

Prior to any action by the Commission the Oak Creek Education Association having on April 27, 1973, filed motions with the Commission (1) requesting the Commission to dismiss the petition because of the failure of the Petitioner to comply with the rules of the Commission

pertaining to petitions for declaratory rulings, (2) that the Petitioner be required to amend its petition to conform with the rules and (3) that the time for filing a response to the petition be extended from the receipt of a new petition or amended petition as ordered by the Commission; and the Commission, having reviewed the petition for Declaratory Ruling, the statement in support thereof, and the motions filed by the Oak Creek Education Association, being fully advised in the premises, and being satisfied that the petition for Declaratory Ruling, in all respects, is in substantial compliance with the rules of the Commission, and that the motions filed by the Oak Creek Education Association be denied and that hearing be set in the matter;

NOW, THEREFORE, it is

ORDERED

That the motions filed by the Oak Creek Education Association to dismiss the petition, or to require the Oak Creek - Franklin Joint City School District No. 1 to amend its petition for Declaratory Ruling be, and the same hereby is, denied; and that therefore, the Oak Creek Education Association shall file its response to the petition within seven (7) days of the receipt of a copy of this Order.

IT IS FURTHER ORDERED that hearing on the petition for Declaratory Ruling filed herein will be held on Monday, June 4, 1973, at 10:00 a.m., in Room 301-A, Milwaukee City Hall, Milwaukee, Wisconsin, at which time and place the parties have the right to appear in person or otherwise and give testimony.

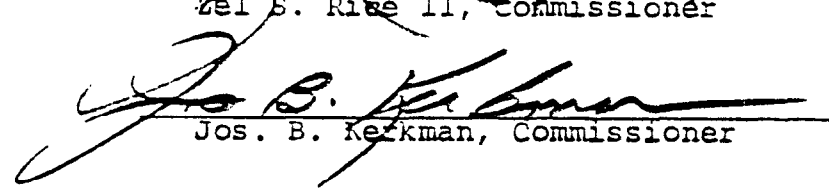
Given under our hands and seal at the City of Madison, Wisconsin, this 7th day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rise II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION AND SETTING
HEARING ON DECLARATORY RULING

In paragraphs 1 and 2 in its petition for Declaratory Ruling, the Petitioner identified the Petitioner as being the School Board, and further identified the Oak Creek Education Association and its principle representatives. Paragraph 3 of the petition described the bargaining unit involved and the number of certified teachers in said bargaining unit. Paragraph 4 of the petition alleged the dates on which the parties met in an attempt to arrive at a collective bargaining agreement to replace a present agreement which expires on August 14, 1973, and that in said paragraph the Petitioner also alleged that "little, if any, substantial progress has been made in the negotiations." Paragraph 5 contained an allegation to the effect that on April 18, 1973, the Petitioner advised the Association that certain items which the Association had proposed be included in the collective bargaining agreement were not subject to collective bargaining, while on the other hand, as alleged in the petition, the Association took the position that all such items were proper subjects for collective bargaining. (Such items are listed in the preface to the Commission's Order herein.) Furthermore, in its petition, as paragraph 7, the Petitioner set forth its position with regard to its contention that the matters involved were not mandatory subjects of bargaining.

Prior to any action on the petition, the Oak Creek Education Association, hereinafter referred to as the Association, filed a document with the Commission which contained three motions which are indicated in the preface to the Commission's Order. Specifically, the Association contended that the Petition was incomplete and did not conform to the requirement of the Commission's rules as set forth in ERB 18.02 in the following respects:

- "1. That the petition be dismissed for failure to comply with the rules of the Commission with respect to petitions for declaratory rulings.
2. (As an alternative to 1. above) That the petitioner be required to amend its petition to conform to the Commission's rules in the respects discussed above.
3. That the time for filing a response to the petition be extended to seven days from receipt of a new petition or amended petition which does not contain the deficiencies set forth above and complies with the Commission's rules."

The Commission deems that there is more than substantial compliance with the Commission's rules in that the petition for Declaratory Ruling sets forth the subject matters involved as well as the position of the Petitioner thereon. Compliance with the rules does not envision that the Petitioner set forth in detail every conceivable argument and authority in support of its particular position, and likewise ERB 18.03 relating to statements in the response to the petition for Declaratory Ruling also need not set forth every conceivable argument in support of

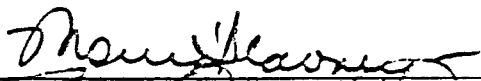
its response to the petition. Furthermore, details of the subject matters involved must be known to the Association, since the Association proposed such subjects for bargaining to the Petitioner. Therefore, we have denied the motions filed by the Association and have set the matter for hearing.

The Commission deems that the matters involved in this Declaratory Ruling proceeding are of state-wide concern, and, therefore, it will today issue a general Notice of Hearing herein and permit any party having an interest in the subject matter to intervene pursuant to the conditions set forth in said Notice.

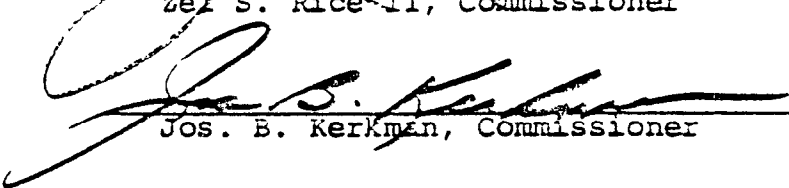
Dated at Madison, Wisconsin, this 7th day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Sawyer, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner