STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

OAK CREEK EDUCATION ASSOCIATION, WISCONSIN EDUCATION ASSOCIATION COUNCIL, Petitioners,	#144-473
vs.	MEMORANDUM DECISION
WISCONSIN EMPLOYMENT RELATIONS COMMISSION, Respondent.	Decision No. 11827-E

Plaintiff Oak Creek Education Association (Association), a teachers' labor group, seeks review of certain portions of a declaratory ruling by the Wisconsin Employment Relations Commission (WERC) regarding a dispute between the Association and the Oak Creek-Franklin Joint City School District No. 1 (District).

The factual background of the case is as follows: In February of 1973, the Association submitted a number of proposals to the District for bargaining, to be included in the agreement between the District and Association for the 1973-74 school year. On April 18, 1973, the District informed the Association of its belief that subjects embodied in certain of the Association's proposals were reserved to "the direction and control" of the District and therefore not subject to mandatory bargaining requirements under Wis. Stats. 111.70. Among the proposals which the District refused to bargain were those which related to: (1) class size, (2) contact hours, and (3) curriculum preparation. The Association disputed the District's contention that those proposals were not subject to mandatory bargaining.

On April 19, 1973, the District filed a petition for a declaratory ruling with WERC. WERC conducted a hearing, and, pursuant to Wis. Stats. 111.70, ruled that the District had no duty to bargain on the proposals related to class size, contact hours, and curriculum preparation. WERC held that the District did possess a duty to bargain the effects of decisions in those subject areas on the wages, hours, and working conditions of the teachers employed by the District. The Association subsequently moved for reconsideration, and the Commission confirmed its declaratory ruling in all respects.

Preliminarily, we must set out the standard for our review of the WERC ruling. WERC is charged with the application of the Municipal Employment Relations Act, Wis. Stats. 111.70, et seq., which governs this case. The construction and interpretation given a statute by the administrative agency charged with its application is entitled to great weight. Libby, McNeill and Libby v. Wisconsin E. R. Comm., 48 Wis. 2d 272, 280 (1972). The test was set out in Milwaukee v. Wisconsin E. R. Comm., 43 Wis. 2d 596 (1969):

> "While we agree that the city's argument leads to a reasonable application of the statute, the WERC's determination is neither without reason nor inconsistent with the purposes of the statute. Since that is the ultimate test, the circuit court's decision affirming the determination of the WERC will be affirmed." (at p. 602)

We conclude that the WERC decision below must be upheld unless it is (a) without reason or (b) inconsistent with the purposes of Wis. Stats. 111.70, et seq.

Central to this case is Wis. Stats. 111.70(1)(d), which reads in pertinent part:

"'Collective bargaining' means the performance of the mutual obligation of a municipal employer and the representatives of its employes, to meet and confer at reasonable times in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement. . . . The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes. In creating this subchapter, the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit, and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitutions of this state and of the United States and by this subchapter." (Emphasis added.)

The statute creates a distinction between a public employer's decisions which relate primarily to "wages, hours and conditions of employment" and decisions "reserved to management and direction of the governmental unit." The employer is required to negotiate the former, but not the latter. The Association contends here that WERC erred in determining that the Association proposals embodied subjects "reserved to management and direction" of the District.

The test by which disputes of this nature between school boards and their employees are to be resolved was set out in Joint School Dist. #8 v. WERC, 37 Wis. 2d 483 (1967) and applied in City of Beloit v. WERC, Dane County Circuit Court, No. 144-472, March 31, 1975. If the subject in dispute relates primarily to "basic educational policy," it is "reserved to management and direction of the governmental unit." If the subject relates primarily to "wages, hours and conditions of employment," it must be bargained. Joint School Dist. #8, supra. In determining whether a subject relates primarily to "basic educational policy" or "wages, hours and conditions of employment," one must measure and weigh the relative impact of the subject in each of those areas. The task is not an easy one. As this court, speaking through Judge Currie, stated in City of Beloit, supra:

> "Whether a subject falls in the category of management and direction of the governmental unit...or one of wages, hours, or conditions of employment, requires striking a proper balance. These categories are not neat and separate because of the complex interrelationship between them." (At p. 4)

We will examine each of the contested proposals in turn.

I. Curriculum Development.

There is little doubt that determinations as to the contents of a school curriculum are more closely related to "basic educational policy" than to "wages, hours, and conditions of employment." As the court said in Joint School District No. 8, supra:

> "Subjects of study are within the scope of basic educational policy and additionally are not related to wages, hours and conditions of employment." (At p. 492)

The Association contends that its proposals would not "dislodge the employer's authority over the contents of the curriculum.... They merely attempt to deal with the hours during which required curriculum work will be done and the compensation teachers will receive from doing required curriculum work."

If that characterization of the Association's curriculum preparation proposal were accurate, its effects would be primarily felt in "wages, hours and conditions of employment" rather than "educational policy." But the proposal encompasses much more than hours and rate of compensation.

The proposal would set out, among other things: (1) the minimum number of curriculum committees; (2) the composition of each curriculum committee ("at least 5 teachers and 1 administrator"); (3) the existence and composition of a steering committee ("not more than 3 administrators and not more than 5 teachers," including "at least one member of the Elementary, Junior and Senior High levels") which would determine, among other things, the "number and names of teachers" to be involved in curriculum studies, the subjects of study for each curriculum committee and the duration of study for each subject.

The selection of the means by which one obtains input to be used in making decisions is part and parcel of the power to make decisions. Admittedly, the Association proposal would leave final curriculum decisions to the District. But those decisions are, for the most part, the product of the work of the curriculum committees. (It appears that the District depends on the curriculum committees to provide it with much of the input on which curriculum decisions are made.) The proposal here, by prescribing a specific modus operandi for curriculum committee work, would delimit the means by which the District would obtain curriculum input. Therefore, the curriculum-related proposal would intrude on an area in which the District is not required to bargain--the determination of the contents of the curriculum.[1]

Accordingly, the WERC decision on the curriculum development proposal is supported by reason and within the purposes of the statute.

II. Class Size.

The Association's proposals here provide that class sizes shall not exceed certain specified limits, but that, in the event such limits are exceeded, teachers in those classes are to receive increased compensation.

In City of Beloit, supra, this court, speaking through Judge Currie, found that "[WERC] could rationally conclude that a school board's prerogatives in making educational policy include the power to decide that class size does affect the quality of education and to set class size accordingly...." (At p. 21)[2]

We also note that the New York Court of Appeals and the South Dakota Supreme Court, in resolving similar labor questions, have concluded that class size is a subject falling within the protected parameters of educational policy. Teachers Association v. Helsly, 87 LRRM 2618 (N.Y. 1974), Aberdeen Education Association v. Board of Education, 85 LRRM 2801 (S.D. 1974).

Therefore, we conclude that WERC acted reasonably in ruling that decisions as to class size are immune from the bargaining requirements of Wis. Stats. 111.70, but that the effects of those decisions on the "wages, hours and conditions of employment" of teachers must be bargained.

III. Contact Hours.

The third proposal submitted by the Association would reduce the number of "contact hours" (ie., hours of contact with students) required of each teacher. The proposal would also establish the number of daily "preparation periods" allowed a teacher and the number of different "ability levels" which a teacher could be called on to teach without being freed from certain supervisory tasks.

---

[1] As WERC stated in the memorandum accompanying its decision on the Association's motion for reconsideration, at p. 4:

"Further, it [the Association] argues that the 'guts' of its proposal is to change the hours of curriculum work from being performed in the regular school year to the summer months, and to make such participation voluntary, and to establish a rate of pay for such work. We view the 'guts' of the proposal as requiring the involvement of teachers in curriculum studies and planning by establishing the number of committees, and the number of teachers on such committees, and, therefore, we stand by our initial determination."

[2] We take judicial notice of the authorities cited by Judge Currie which support his conclusion (p. 21 of that opinion), particularly the pamphlet entitled "Class-Size--Does It Make a Difference?" published and distributed by the Division for Planning Services, Wisconsin Department of Public Instruction.

The Association points out that the number of hours a teacher spends in contact with students, in "preparation periods," and in work on different "ability levels" directly affects the number of hours which a teacher must work each day. Thus, the Association characterizes the subject of this proposal as one of "work-load."

We recognize that the subjects of the proposal here may have a significant effect on a teacher's total workload. But one could also look at the proposals from another perspective: The Association's proposals relate to the allocation of a teacher's work day. The allocation of the time and energies of its teachers is a consequence of basic educational policy decisions on the part of the District. It is not without reason to conclude that those decisions significantly affect the quality of education offered in the District.

Again, as noted by WERC, the effects of the District's allocation of teacher time on the wages, hours, and conditions of employment of the teachers must be bargained.

The ruling of WERC is affirmed in all respects.

BY THE COURT:

Dated: November 25, 1975.

William C. Sachtjen /s/

William C. Sachtjen, Judge