

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case V  
No. 17050 MP-268  
Decision No. 12073-C

No. 12073-C

NICOLET JOINT UNION HIGH SCHOOL DISTRICT NO. 1 SCHOOL BOARD, V, Decision  
No. 12073-C

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

In its petition for review the Complainant takes exception to that portion of the Examiner's decision wherein he concluded that Articles I, XXIII and XXIV of the collective bargaining agreement existing between the parties indicated that the Complainant waived its right, and the Respondent's duty, to bargain collectively with respect to salaries for teachers who taught during the summer school session for the Summer of 1973, and, therefore, the Complainant contends that the Examiner incorrectly concluded that the Respondent, in that regard, did not commit a prohibited practice in violation of Section 111.70(3)(a)4 of the Municipal Employment Relations Act.

The Complainant, in its brief filed in support of its petition for review, argues that, although the Examiner set forth the general rule with regard to waiver of bargaining, i.e., "that there must be a clear and unmistakable expression of mutual intent in sufficiently specific contract language to constitute an effective waiver," the Examiner misapplied said rule in concluding that the above-noted provisions of the collective bargaining agreement constituted such a waiver.

The "general rule" referred to by the Complainant has been developed by the National Labor Relations Board in interpreting collective bargaining agreements existing between non-public employers and labor organizations representing their employees. This agency is not bound by precedents established by the National Labor Relations Board in the application of the federal labor relations statute administered by it, nor by court decisions relating thereto. Indeed, we do not agree with certain aspects of some of the cases cited by Complainant. Furthermore, our agency, in determining the effect of provisions relating to the alleged contractual waivers of the duty to bargain, as well as "management rights" provisions in collective bargaining agreements covering municipal employees, must not only interpret the Municipal Employment Relations Act, but also, in this proceeding, the various school statutes, for our Supreme Court has stated that "construction of statutes should be done in a way which harmonizes the whole system of law of which they are a part, and any conflict should be reconciled if possible." 1/ The school statutes in existence in this State imposes a duty upon school boards to establish compensation to be paid to their employees. 2/ In private employment employers have an inherent right to establish employee wages; however, such right is tempered where there exists a collective bargaining statute requiring collective bargaining with the representative of a majority of the employees in an appropriate collective bargaining unit on wages, hours and conditions of employment of employees in said unit. Therefore, as set forth in the Complainant's brief, supra, it may be appropriate to place certain stringent rules of construction on bargaining duty waivers in the private sector, that would be inappropriate in the public sector.

In the instant matter, in light of the general school statutes, as well as our general determination to distinguish our policies from those of the NLRB, and the language contained in the material provisions

---

1/ Muskego-Norway Consolidated Schools Joint School District No. 9 v. WERB (1967) 35 Wis. 2d 540.

2/ Section 118.21 Wisconsin Statutes.

of the collective bargaining agreement involved herein, we deem that the Complainant, by Articles I, XXIII, and XXIV of the collective bargaining agreement, did with sufficient clarity waive its right, and the Respondent's duty to bargain with respect to summer school salaries. Such a conclusion is consistent with the principle of harmonizing the general school statutes with the provisions of the Municipal Employment Relations Act and the agreement in effect between the parties.

Dated at Madison, Wisconsin this 27th day of October, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Herman Torosian  
Herman Torosian, Commissioner