STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS, Complainant, vs. CHETEK JOINT SCHOOL DISTRICT NO. 5, Respondent.	Case II No. 17540 MP-315 Decision No. 12418-D

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, AND REVERSING CONCLUSIONS OF LAW AND ORDER

Examiner Marvin L. Schurke having previously issued Findings of Fact, Conclusions of Law and Order in the above entitled matter, wherein he found, among other things, that a notice sent by Northwest United Educators on October 11, 1973, to Chetek Joint School District No. 5, was insufficient so as to prevent the automatic renewal of the 1973-74 collective bargaining agreement existing between the parties to at least June 30, 1975, and that as a result, the Examiner concluded that Chetek Joint School District No. 5 did not commit a prohibited practice by failing to engage in negotiations with Northwest United Educators, leading toward a collective bargaining agreement for the school year 1974-75, and as a result, the Examiner dismissed the complaint filed herein; that thereafter, following a motion filed by Northwest United Educators, requesting that the hearing be reopened to permit Northwest United Educators to introduce additional evidence, claimed to be newly discovered; and the Examiner having denied said motion; and, thereafter, Northwest United Educators having timely filed a petition for review with the Commission, pursuant to Section 111.07 of the Wisconsin Statutes; and the Commission having reviewed the decision of the Examiner, including his Order denying motion to reopen the hearing, the briefs filed by Northwest United Educators in support of its petition for review, and the briefs filed by Chetek Joint School District No. 5 in support of the Examiner's decision, being satisfied that the Findings of Fact issued by the Examiner be affirmed, but, that, however, the Examiner's Conclusions of Law and Order be reversed;

NOW, THEREFORE, it is

ORDERED

A. That the Findings of Fact issued by the Examiner herein be, and the same hereby are, affirmed.

B. That the Examiner's Conclusions of Law and Order be, and the same hereby are, reversed, and that said Conclusions of Law and Order shall now read as follows:

"CONCLUSIONS OF LAW

1. That the letter of Northwest United Educators to Chetek Joint School District No. 5, dated October 11, 1973, constituted sufficient notice to prevent the operation of the automatic renewal provision of the 1973-1974 collective bargaining agreement existing between the parties.

2. That, by refusing to meet with Northwest United Educators for the purpose of negotiating modifications or amendments to the 1973-1974 collective bargaining agreement to be included in a collective bargaining agreement for 1974-1975, Chetek Joint School District No. 5 has refused to bargain collectively with Northwest United Educators, and in that regard, Chetek Joint School District No. 5 has committed, and is committing, a prohibited practice within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

ORDER

IT IS ORDERED that Chetek Joint School District No. 5, its officers and agents, shall:

1. Cease and desist from refusing to bargain with Northwest United Educators with respect to wages, hours and working conditions covering all regular full-time and regular part-time certificated personnel (50% or more) in its employ, for the year 1974-75.

2. Take the following affirmative action necessary to effectuate the policies of the Municipal Employment Relations Act:

   (a) Upon request, bargain with the Northwest United Educators with respect to wages, hours and working conditions covering the employes set forth in Paragraph 1 hereof, for the school year 1974-75, and if agreement is reached, reduce same to writing.

   (b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the receipt hereof as to what steps have been taken to comply herewith."

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney, Chairman

Herman Torosian, Commissioner

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

The Examiner's Decision:

The Commission has affirmed the Findings of Fact contained in the decision of the Examiner. Following the issuance of the Examiner's decision Northwest United Educators, hereinafter referred to as NUE, filed a motion to reopen the hearing, with a supporting affidavit, requesting that the hearing be reopened to adduce evidence establishing the fact that a meeting between representatives of the parties had been held on the third Thursday in October, 1973. 1/ The Examiner denied such motion on the basis that the affidavit did not establish that the evidence desired to be adduced was "newly discovered evidence" within the meaning of ERB 12.08 of the Wisconsin Administrative Code. The Examiner determined that the notice sent by NUE dated October 23, 1973, was insufficient to prevent the operation of the automatic renewal provisions of the collective bargaining agreement existing between the parties and that, therefore, the 1973-74 agreement automatically renewed itself through at least June 30, 1975. The Examiner further concluded that Chetek Joint School District No. 5, hereinafter referred to as the School District, by failing to meet with NUE for the purpose of negotiating changes in wages, hours and working conditions for the school year 1974-75 did not refuse to bargain collectively within the meaning of Section 111.70(1)(d) and 111.70(3)(a)4 of the Municipal Employment Relations Act. Based on such conclusions the Examiner dismissed the complaint.

The Petition for Review:

In its petition for review NUE stated the following grounds for seeking a reversal of the Examiner's decision:

"1) That the examiner based his decision upon a conclusion of law that the Board did not have adequate notice of NUE's desire to negotiate a new contract.

2) That this conclusion of law is based on an erroneous finding of fact: that there was no communication between the parties during the month of October, 1973, other than a possibly misleading letter of October 23, 1973.

3) That this finding of fact is based on an erroneous presumption that a contractually mandated meeting between the parties did not occur on the third Thursday of October.

4) That application of the correct presumption will compel a decision contrary to that of the examiner."

In its briefs the NUE, in addition to setting forth argument with respect to the Examiner's alleged erroneous Findings of Fact to the

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1/ The Examiner, in para. 5 of his Findings of Fact, found that there was no evidence establishing that a meeting was held between the parties on the third Thursday of October 1973, or that the parties had attempted to schedule or postpone such a meeting.

effect that the record did not indicate that a meeting was held between the parties on the third Thursday of October, 1973, also argued that the NUE letter of October 23, 1973, was sufficient notice of NUE's desire to negotiate a successor collective bargaining agreement, and, therefore, by failing to bargain with respect to such an agreement, the School District committed a prohibited practice.

The School District, in its briefs, argues in support of the Examiner's findings and conclusions.

The Examiner's Order Denying Motion to Reopen the Hearing

As indicated previously herein the Examiner denied a motion filed by NUE to reopen the hearing in order to adduce evidence to establish that a meeting was held on the third Thursday of October 1973, contrary to a finding of fact, based on inference, by the Examiner. We affirm the Examiner's ruling on said motion, since such evidence could have been readily adduced during the course of the hearing and "was not newly discovered evidence", as contemplated in ERB 12.08 of the Wisconsin Administrative Code.

THE EXAMINER'S DECISION

The Material Rationale of the Examiner

In support of his determination that the NUE failed to timely notify the School District so as to prevent the automatic renewal of the collective bargaining agreement existing between the parties, thus resulting in the extension of the 1973-1974 collective bargaining agreement through June 30, 1975 2/, the Examiner, in interpreting the NUE letter of October 23, 1974 concluded that the "word reopen, coupled with the words for the 1973-74 contract term very clearly communicates a request for re-negotiation of the existing agreement", and therefore the Examiner found that the October 23 letter did not "on its face constitute a sufficient notice to prevent the operation of the automatic renewal provision . . ." While conceding that there might have been possible ambiguity in the letter of October 23, the Examiner discussed Section C, of Article IV, after indicating that there was no evidence adduced that NUE made "no effort to following through on a meeting on such third Thursday in October," which fell on October 18, 1973. Based on such a finding, the Examiner concluded that such inaction "would tend to support a conclusion that NUE did not intend to negotiate a successor agreement."

The Examiner also discussed the "intent" of the NUE in submitting the October 23 letter to the effect that the testimony of NUE's witnesses indicated that the letter was intended to notify the School District of a desire to negotiate a successor agreement, while the School District indicated that no such intent was communicated to its representatives during the timely notice period; and further that with respect to the delayed response of the School District to the October 23 letter the Examiner, in his Memorandum, stated as follows:

> "There is no actual evidence of any effort by the Municipal Employer to conceal its interpretation of the October 23, 1973 letter from NUE until after the end of the timely notice period. NUE permitted 23 days to pass out of the contractual 30 day period before it acted, and permitted two likely opportunities for notice (one of those being the occasion when the agreement was executed and the

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2/ Such a conclusion was the basis for the dismissal of the complaint.

other being the meeting called for by the agreement on the third Thursday in October) to pass without any effort to give notice."

DISCUSSION:

The lack of a meeting on the third Thursday of October, 1973, throws no light on the intent of the October 23 letter for an obvious reason, namely the "notice" of October 23 was sent after such Thursday, which fell on October 18. Assuming arguendo, that the parties had met on October 18, but did not discuss an intent by the NUE to serve a notice that it desired to commence negotiations on a successor agreement, the failure of such a discussion would not, under the terms of the 1973-1974 agreement, prevent the NUE from thereafter and at least to and including October 31, 1973, to give a written notice of such an intent to the School District. Furthermore, Section C, of Article IV merely refers to "informally discuss any current or foreseeable problems," and not to any negotiations with respect to an existing or "successor agreement". Therefore we conclude that the lack of such a meeting throws no light on the issue as to whether the notice of October 23 prevented the automatic renewal of the existing agreement.

With respect to the Examiner's rationale pertaining to the "delayed response" 3/ of the School District to the October 23 letter, it should be emphasized that the 1973-1974 agreement was executed on October 11, eleven days within the 30 day period set forth in the pertinent article. It seems unlikely that any responsible employe organization would, on the same date that it and the Municipal Employer had executed a collective bargaining agreement, serve a written notice of a desire "to modify or amend 4/ this agreement.", which had just been executed. Be that as it may, the NUE had 30 days after October 1, to notify the School District of its intent.

We conclude that the intent of the notice of October 23 must be determined by the content thereof and whether the language set forth therein constitutes the type of notice contemplated in Section A, Article IV in order to prevent the automatic renewal of the 1973-1974 agreement. In that regard we note that the contractual language, in part, reads as follows:

". . . wishes to modify or amend this agreement . . ."

The October 23 letter, in part, states as follows:

". . . wishes to serve notice that we desire to reopen negotiations of the Master Contract for the 1973-1974 contract term."

The language in the provision refers to "modify or amend". The language in the latter states "reopen negotiations." While the words are different, it is apparent that the NUE desired to negotiate changes in provisions appearing in the 1973-1974 agreement. The primary interpretive issue then arises, and that is, whether the notice implies changes to be effective for the remainder of the 1973-1974 agreement, or changes to be incorporated in a successor agreement?

We then look to Section B of Article IV which states as follows:

3/ November 7th letter of School District, interpreting the October 23 letter as a request to negotiate changes during the 1973-1974 school year.

4/ Contractual language in Section A, Article IV.

"The association and the school board will meet and negotiate within 60 days following the above notice."

The October 23 letter, in part, further states the following with regard to an "initial bargaining meeting":

"It would be my feeling that the first two weeks in December would be the most appropriate."

It should be noted that any date within the "first two weeks in December" would fall within 6o days following the October 23 letter.

In examining the School District's interpretation of the October 23 letter we look to the pertinent language in Section B, Article XXI, which states as follows:

"B. This Agreement, reached as a result of collective bargaining, represents the full and complete agreement between the parties and supersedes all previous agreements between the parties. It is agreed that any matters relating to the current contract term, shall not be open for negotiations except as the parties may specifically agree thereto.

All terms and conditions of employment not covered by this agreement shall continue to be subject to the Board's direction and control providing that the Board is given the power to direct and control these terms and conditions by Wisconsin Statutes.

This Agreement shall be binding on the parties who are signatories thereto."

Nowhere in said section is there a requirement for a written notice to open the agreement for the purpose set forth in Section B, Article XXI. A notice requirement is set forth in Section A, Article IV. Furthermore it would appear to the Commission that, if the letter of October 23 was intended to open negotiation on matters relating to the current contract term, the NUE would not have desired to delay such negotiations for a period of at least five weeks. Furthermore, Section B, Article XXI requires agreement of the parties to negotiate changes during the 1973-1974 term. The October 23 notice makes no request for such an agreement. On the contrary, it requests dates to commence bargaining.

On the basis of the above discussion, and contrary to the Examiner, we conclude that the October 23 letter constituted sufficient notice to prevent an automatic renewal of the 1973-1974 agreement, and therefore the School District was obligated to bargain with the NUE on the terms and conditions of a collective bargaining agreement for the school year 1974-1975.

The Remedy:

We recognize the possibility that the parties, subsequent to the hearing before the Examiner, may have negotiated and executed a collective bargaining agreement for the school year 1975-1976. However, if that be the fact, said agreement does not expunge the prohibited practice found to have been committed by the School District. Therefore, in order to effecuate the policies set forth in the Municipal Employment Relations Act, we have ordered the School District, should the NUE so request, to bargain with respect to wages, hours and working conditions, affecting employes in the bargaining unit, for the school year 1974-1975.

Dated at Madison, Wisconsin this 4th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner