

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STOUGHTON AREA SCHOOL DISTRICT

Case XIII
No. 22345 ME-1497
Decision No. 15995

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING
ORDER HOLDING PETITION IN ABEYANCE
AND DENYING PETITION TO STAY ARBITRATION

The Stoughton Area School District, on December 12, 1977, filed a petition for a unit clarification. It simultaneously petitioned for a stay of grievance arbitration.

On the face of the documents presented it appears that the question posed to the grievance arbitrator is the inclusion or exclusion of certain positions from the collective bargaining unit. Petitioner contends that such issue belongs within the exclusive jurisdiction of the Commission, that arbitration should be stayed and that the Commission should decide the question.

Although the legislature has empowered the Commission to make unit determinations, nothing in the Municipal Employment Relations Act prevents parties from voluntarily defining the appropriate unit, with certain exceptions. For example, professionals and non-professionals cannot be co-mingled in a single unit without an appropriate vote, and in no event can supervisors be included within a bargaining unit of the persons he/she supervises. It may be that the parties have in their collective bargaining agreement agreed to include the positions which the Petitioner asks the Commission to exclude. The Commission's long-standing policy is to honor these agreements unless it is shown that such agreements frustrate the purposes and policies of the Municipal Employment Relations Act.

The first question, then, is whether the parties have so agreed to include such positions. That question goes to the interpretation of the agreement, which must be left for the arbitrator.

The second question is whether the inclusion of these positions in the unit frustrates some policy of the law. There is no way to prejudge that question from the face of the documents presented. Further, there may be no need to address that question if the arbitrator concludes that the positions are excluded. The policy favoring arbitration of disputes compels that the Commission abstain from intervention in the arbitral process without prejudice to the Petitioner's right to argue later that the results of the arbitration contravene the policy of the law.

To conclude at this juncture that the arbitrator's decision will frustrate the purposes of the law would be speculative. As the Commission stated in Lisbon-Pewaukee: 1/

"Such speculation does not defeat the duty to arbitrate. If and when such speculation materializes the respondent [petitioner here] could raise the question of the enforceability of the award."

Accordingly, the Commission has denied the motion to stay the arbitration proceedings and will hold the petition for unit clarification in abeyance pending the outcome of the arbitration proceedings. If the decision of the arbitrator contravenes the Commission's policies regarding

1/ (13404-B) 9/76.

unit determinations, the Commission will not be bound by his award, and will proceed to determine the issue presented in a manner that is consistent with said policies.

Dated at Madison, Wisconsin this 14th day of December, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner