STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
WAUKESHA COUNTY EMPLOYEE LOCAL UNION NOS. 1365, 2490 and 2494, DISTRICT COUNCIL 40, AFSCME, AFL-CIO	Case L No. 22649 MED/ARB-48 Decision No. 16515
To Initiate Mediation-Arbitration Between Said Petitioners and	
WAUKESHA COUNTY	

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER DENYING MOTION TO DISMISS

The above-named labor organizations filed a petition on February 14, 1978, requesting the Commission to initiate mediation-arbitration "to proceed under its authority . . . and conduct an investigation and certify the result thereof and determine whether mediation-arbitration should be initiated" between said organizations and the above-named Municipal Employe as regards an alleged impasse in collective bargaining between said parties concerning the wages, hours and other conditions of employment of employes in certain bargaining units of non-law enforcement and non-fire fighter personnel of said Municipal Employer. During the course of the informal investigation of the matter by Commission staff member Sherwood Malamud, the Municipal Employer filed a motion requesting an order dismissing the petition. By agreement of the parties, initial and supplemental affidavits and briefs and reply briefs were exchanged in lieu of a formal hearing in the matter of said motion. The Commission has reviewed the record so developed and has considered the written arguments of the parties, and, being fully advised in the premises, makes and issues the following.

FINDINGS OF FACT

1. Waukesha County Employee Local Union Nos. 1365, 2490 and 2494 affiliated with District Council 40, AFSCME, AFL-CIO, which locals are jointly referred to herein as the Union, are labor organizations and the certified representatives of certain bargaining units of municipal employes in the employ of the Municipal Employer. The Union's mailing address is c/o Robert W. Lyons, W177, N9114 St. Francis Drive, Menomonee Falls, Wisconsin 53051.

2. Waukesha County, referred to herein as the Municipal Employer, is a Municipal Employer with a mailing address of 515 W. Moreland Road, Waukesha, Wisconsin 53186.

3. On February 14, 1978, the Union filed the instant petition after the three bargaining committees representing its respective locals met jointly with representatives of the Municipal Employer on eight previous occasions, one of which was mediated by a Commission staff member.

posals on all issues in dispute. The Municipal Employer's representative orally stated that its last stated bargaining position (revealed to the Union for the first time on April 17 and containing improvements not theretofore offered to the Union) would be its final offer if and when provided either the Union membership or bargaining unit members rejected same after presentation thereof by the Union bargaining committee, with or without recommendations. The respective Union bargaining committees rejected said offer as a basis for a tentative agreement and refused to make the proposed presentations, with or without recommendation. The Union committee thereupon submitted a final offer to the investigator with a request that he not reveal the contents thereof to the Municipal Employer until the Municipal Employer submitted its final offer to the investigator, and subsequently (on May 3, 1978) the Union executed and submitted to the investigator a written stipulation of all matters which, in its view, were unconditionally agreed upon for inclusion in the successor agreement. On and after April 17, 1978, the Municipal Employer has failed and refused either to submit to the investigator a written final offer not subject to the condition that it first be submitted for a vote as noted above, and has refused to execute a written stipulation on matters agreed upon as called for by the investigator.

5. On April 28, 1978, with the investigation remaining unclosed, the Municipal Employer filed a motion with the Commission requesting dismissal of the instant petition on the following grounds:

> "1. The Petition was filed prior to the parties becoming deadlocked and there is a continuing impasse where the membership has never been given an opportunity nor expressed a desire to reject the final offer of the County.
>
> 2. The Union has failed and refused to present the County's final offer to the employees it represents or to its membership for consultation and vote of its membership thereby failing to exhaust all reasonable attempts to reach agreement in accordance with its duty of collective bargaining and the conditions precedent to the utilization of Sec. 111.70(4)(CM) [sic] of the Wisconsin Statutes.
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> 3. In failing to present the County's final offer to its membership for consultation and vote, the Union has denied and is denying the employees' right to bargain collectively through representatives of their own choosing in breach of the Union's duty of fair representation.
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> 4. In failing and refusing to present the County's final offer to its membership or the employees it represents, it is denying such employees the right to express his or her views on essential matters with the effective deprivation of the employees' and the employer's right of free speech.
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> 5. Because one of the essential issues outstanding is 'Fair Share', and the Union in failing to determine that at least 50% of the employees affected even want the initiation of a fair share agreement, it has failed to comply with Sec. 111.70(2) of the Wisconsin Statutes."

Based upon the foregoing Findings of Fact, the Commission issues the following

CONCLUSION OF LAW

In the above-noted circumstances, the Union's refusal to present the Municipal Employer's April 17 offer either to its local memberships or to the members of the bargaining units it represents neither creates a legal impediment to "impasse" or to the issuance of "an order requiring mediation-arbitration" within the meaning of those terms in Section 111.70(4)(cm)6.a.,

Stats., nor does said refusal of the Union excuse the Municipal Employer's failure to submit to the Commission investigator "in writing its single final offer containing its final proposals on all issues in dispute" and "a stipulation, in writing, with respect to all matters which are agreed upon for inclusion . . ." in the successor agreement noted above, within the meaning of Section 111.70 (4)(cm)6.a., Stats.

Based on the foregoing Findings and Conclusions, the Commission issues the following

ORDER

That the motion to dismiss filed by the Municipal Employer in the above matter be, and the same hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER DENYING MOTION TO DISMISS

The instant motion to dismiss the Union's petition for mediation-arbitration was filed by the Municipal Employer during the course of the informal investigation of the petition. The record was developed by affidavits and counter-affidavits which revealed no material factual dispute 1/ and which formed the basis for the parties' briefs and reply briefs on the issues raised by the motion. Specifically, the motion seeks dismissal of the petition because the Union bargaining committee 2/ refused to submit either to its local memberships or to the members of each bargaining unit the terms of the Municipal Employer's April 17, 1978 offer that was rejected at the bargaining table by the Union's bargaining committee.

POSITION OF THE MUNICIPAL EMPLOYER:

The five grounds stated in the motion to dismiss are quoted in Finding 5, above. In its briefs, the Municipal Employer argues as follows:

The Municipal Employer's April 17 offer constitued a significant improvement in its position over to its prior offers, which improvement the employes, except those who were on the Union bargaining committee, had never considered. The Union's response to that offer--rejection, refusal to recommend, refusal to submit to membership of locals or of units, and proceeding with immediate submission of final offers--is inconsistent with each of the following:

a. the underlying purposes of the mediation-arbitration statute and rules, to wit, exhaustion of all reasonable steps toward voluntary settlement before resort to compulsory mediation-arbitration 3/;

b. the Union's good faith bargaining obligation--fulfillment of which must be demonstrated by a petitioner for an impasse to be found 4/ -- which obligation entails a willingness to exhaust all reasonable steps toward voluntary settlement before resort to compulsory mediation-arbitration;

c. the Union's duty to fairly represent non-members of the Union in the bargaining unit, which duty entails permitting such individuals notice and opportunity to participate in

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1/ It was unclear from the record whether the Municipal Employer sought Union submission of its April 17 offer to the locals' memberships or to the unit memberships or to one of the two at the Union's option. Because both parties have argued as if the Municipal Employer had proposed the option of one or the other submission, we have fashioned our Findings of Fact accordingly. By so doing, we avoid further delay and avoid any uncertainty that might otherwise develop that our conclusions herein apply to only one of the two options.

2/ Each of the three Union locals was apparently separately represented at the bargaining table and the investigation sessions by its own bargaining committee, which committees met jointly with the Municipal Employer's representatives and the investigator but which apparently voted separately on all matters. Since each committee took identical actions in all material respects, herein, the three committees are jointly referred to herein as the Union bargaining committee.

3/ Citing, Milwaukee Deputy Sheriff's Association v. Milwaukee County, 64 Wis. 2d 651 (1974).

4/ Citing, Hawaii Board of Education v. Hawaii Public Employment Relations Board, 528 P. 2d 809 (1974).

decisions adversely affecting only them such as the Union's decision to seek a fair share agreement by mediation-arbitration; 5/

d. the limits of the authority actually granted to the Union bargaining committee by the Union membership, which authority can only be interpreted as limited to proceeding to the mediation-arbitration at the committee's discretion if, but only if, the municipal employer did not improve its position;

e. the rights of employes as citizens to express their views to the Municipal Employer in public meetings of the Municipal Employer 6/, which right is effectively nullified if the employes are not apprised of the status of issues of concern such as fair share and given time to make statements at meetings of the Municipal Employer thereafter;

f. the right of the Municipal Employer to communicate directly to the bargaining unit concerning the status of bargaining and the latest offer submitted by the Municipal Employer to the Union 7/, which right is made illusory if the Union is permitted to force submission of final offers (which are thereafter unamendable without mutual consent) before the Municipal Employer has an opportunity to communicate to the employes the bargaining table developments of which the Union has not informed them.

g. the right of employes to bargain collectively through their chosen representative, a right which such employes will not be able to exercise unless their representative or the Municipal Employer informs them of developments and permits them to determine the proper course of action for the representative to take.

No one knows how the members of the locals or of the units would respond to the significantly improved monetary offer of the Municipal Employer. The Municipal Employer's request that said offer be submitted to one of those groups before the Union utilizes the compulsory mediation-arbitration process could result in an overall settlement or in a narrowing of the issues in dispute--the object of the regulatory scheme. At worst, the proposed procedure would effect a short delay while the Union holds the vote (at a pace it may choose) and thereafter refiles the petition without prejudice and proceeds without further delay to mediation-arbitration. Such an approach avoids utilization of mediation-arbitration to permit a minority of a unit to make decisions for the majority thereof--especially on an issue such as fair share. Moreover, such an approach is consistent with the private sector union practice of submitting employers' last offers to employes before resorting to a strike. Here, mediation-arbitration is a statutory strike-substitute and should be preceded by a parallel procedure.

5/ Citing, Wayne County Community College Federation of Teachers, Local 2000, Michigan Employment Relations Commission, Case CU 74 J-29 (6-6-75); Teamsters Local 315, 217 NLRB No. 95, 89 LRRM 1049 (1975); and Clark v. Hein-Warner, 8 Wis. 2d 264 (1959).

The Municipal Employer's request that the Union follow the above procedure of submission to one of the two sets of groups does not constitute a prohibited practice. For, the Municipal Employer has not conditioned any aspect of the fulfillment of its duty to bargain on Union compliance with the request; instead, it has merely sought a Commission ruling that the Union must do so in order to process a viable mediation-arbitration petition. Moreover, the Municipal Employer has not directed or sought to direct communications to bargaining unit employes with regard to any offers or proposals which were not previously presented to the Union thus, the Municipal Employer has not bypassed the Union or otherwise committed a refusal to bargain.

While the motion would have the Commission condition the petitioning Union's access to mediation-arbitration upon a reallocation of decision-making within the Union, such would not be an impermissible incursion into internal Union affairs in the instant circumstances since the Union decision involved herein bears directly on the collective bargaining stance taken by the Union. 8/

For all of the foregoing reasons, the Commission should conclude that a labor organization should not be allowed to utilize mediation-arbitration upon the facts of this case where it refuses to submit the last offer of the Municipal Employer as requested. Hence, the motion to dismiss the petition should be granted.

POSITION OF THE UNION:

Before the April 17 investigation meeting, the memberships of the Union locals voted to authorize the Union bargaining committee to proceed to final offer submission and mediation-arbitration or to reach tentative agreement as that committee deemed appropriate. Such authority is within those memberships' prerogatives to delegate. 9/ MERA neither authorizes Municipal Employers to condition submission of their final offers on Union member or bargaining unit referenda, nor permits Municipal Employers to obstruct the investigation process by insisting on same. 10/ Instead, MERA and the Union's exclusive bargaining representative status protect the employes' right to bargain collectively through the Union, their chosen representative, 11/ and foreclose Municipal Employer bypassing of that representative to bargain directly with the employes individually or otherwise. The proposed referenda constitute interference with the Union's right to pursue the mediation-arbitration process interference in the Union's internal affairs 12/, and a refusal to bargain by bypassing and otherwise denigrating the status of the Union as the representative 13/, all in violation of MERA. Moreover, the Municipal Employer's attempt to enfranchise non-members of the Union in Union decision-making is clearly without merit. 14/

8/ Citing, Wayne County, above, note 5.

9/ Citing, North Country Motors, 146 NLRB 671, 55 LRRM 1421, 1423 (1964).

10/ Citing, Globe Gear Co., 189 NLRB 56, 76 LRRM 1685 (1971); and NLRB v. Darlington Veneer Co., 236 F. 2d 85, 38 LRRM 2574 (CA4, 1956).

11/ Citing, Whitehall School District, (10268-A) 8/71.

12/ Citing, NLRB v. Wooster Division of Borg-Warner Corp., 356 US 342 (1958) and American Seating Co., 176 NLRB 111, 71 LRRM 1346 (1969).

13/ Citing, General Electric Co., 150 NLRB 36, 57 LRRM 1491 (1964).

14/ Citing, NLRB v. Corsicana Cotton Mills, 178 F. 2d 344, 24 LRRM 2494 (CA5, 1949).

The Union has fully cooperated in the processing of the petition in the manner prescribed by law, whereas the Municipal Employer has obstructed that processing by seeking a referendum. To grant the instant dismissal or to otherwise condition mediation-arbitration on submission to a referendum would enable an abusive employer to require such a referendum after each employer modification of position--clearly undercutting the organization's representative status and frustrating the legislative dispute settlement purposes by interrupting the investigation with a series of delay-producing referenda.

For those reasons, the motion should be dismissed.

DISCUSSION:

We have denied the motion because we conclude that in the instant circumstances the Union's refusal to present the Municipal Employer's April 17 offer to either its locals' or its units' members neither created a legal impediment to an impasse and mediation-arbitration nor excused the Municipal Employer's refusals to submit a final offer and to execute a stipulation of agreed-upon matters.

Consistency of Union Conduct with Good Faith and the Purposes of the Mediation-Arbitration Statutes and Rules

The referendum procedure proposed by the Municipal Employer is not specifically required of a majority representative petitioning for mediation-arbitration under the applicable statutes and rules; and, in our view, such a procedure would be inconsistent with the overall regulatory scheme for dispute settlement.

Such a requirement appears nowhere in the description of circumstances permitting a petition to be filed as set forth in Section 111.70(4)(cm)6 15/, nor in the Section 111.70(4)(cm)6.a. criteria for Commission determination of readiness of a dispute for the initiation of mediation-arbitration 16/, nor in the condition precedent to closing of investigation provided in Commission Rule ERB 31.09(2) 17/.

Contrary to the Municipal Employer's contentions, we find the Union's conduct entirely consistent with a good faith effort at resolution of the instant dispute in the manner contemplated by the regulatory scheme. For, in that scheme, the investigator is authorized, inter alia, to decide when to require the parties to stipulate to agreed-upon matters and when to require them to exchange contemplated final offers. The scheme provides for the investigator to continue such an exchange of contemplated final offers until neither party, with knowledge of the final offer of the other, chooses to modify its offer further. Neither party is permitted to unilaterally modify its final offer once the investigation is closed. Thus, the investigation is designed to encourage voluntary settlement and dis-

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15/ Those circumstances include the absence of a settlement, after a reasonable period of negotiation, after exhaustion of subd. 3 mediation and of voluntary dispute settlement procedures, and a deadlock over mandatory subjects of bargaining to be included in a new agreement.

16/ Those criteria include the existence of an "impasse", and (if found likely to be promotive of a settlement) compliance with the procedures for "notice of commencement of contract negotiations", "Presentation of initial proposals; open meetings", "Mediation", and "Voluntary impasse resolution procedures" set forth in Sections 111.70(4)(cm)1, 2, 3 and 6, respectively.

17/ WIS. ADM. CODE, May, 1978 ("The commission or its agent shall not close the investigation until . . . satisfied that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer.")

courage resort to the mediator-arbitrator by encouraging each of the parties (preferably during the course of an uninterrupted "showdown" session) to reveal its best offer to the other party and the investigator, by successive approximations if necessary.

In practice, investigators' efforts to achieve a narrowing or settlement of disputes are sometimes frustrated by the reluctance of a party--until it has had an opportunity to seek guidance or further authority from its principals--to make a decision, e.g.: to submit, modify or decline to further modify a contemplated final offer; to unconditionally agree to items in a proposed stipulation; or to reach tentative agreement on all matters in dispute. The extent to which requests for delays for further "base touching" by a party will be accommodated during the investigation is a matter within the judgment of the investigator, based on his or her assessment of the reasonableness of the request in all of the circumstances, and of whether the resultant delay may or may not contribute to the settlement or narrowing of the issues in the dispute. The parties should know--and are ordinarily informed by the investigator before or during the first investigation meeting--that they should be prepared to submit their final offers and stipulation of agreed-upon items at some point during the investigation. In any event, therefore, it is clear that where bargaining teams obtain the authority to make the above decisions on their own in response to developments during the investigation, such a delegation of authority is promotive of the purposes of the investigation intended by the Legislature and the Commission in fashioning and implement the regulatory scheme.

Conversely, while the procedure proposed herein by the Municipal Employer could promote settlement or narrowing of issues in some cases, it would do so at the expense of, and in a manner incompatible with the above-noted purposes of the investigation. For, if available, that procedure would enable a Municipal Employer to halt the investigation for purposes of the vote, thereby greatly reducing the investigator's ability to impress both sides with the immediate need to maximally moderate their position before the close of the investigation. Moreover, if the vote produced a change in the Union's offer but not an overall agreement, the Municipal Employer could exercise its ERB 31.02(9) right to modify its contemplated final offer further and the cycle of interruption, delay, vote, etc., could repeat itself. Therefore, the Municipal Employer's proposed procedure is, on the whole, inconsistent with means selected by the Legislature and Commission for attaining the overall objective of maximized voluntary settlement and minimized resort to mediation-arbitration.

In sum, neither a Union delegation to its bargaining committee of ultimate investigation decision-making authority nor Union refusals to follow the referendum procedure proposed by the Municipal Employer would indicate that the Union has not pursued settlement in good faith and in a manner consistent with that contemplated in the applicable statutes and rules.

Union Conduct as Inconsistent with Right of Municipal Employes to Bargain Collectively Through Chosen Representative (Including the Right to be Fairly Represented)

A Union delegation of ultimate investigation decision-making to its bargaining committee and consequent committee refusals to submit decisions for employe vote, as proposed by the Municipal Employer, would not coerce or intimidate any bargaining unit employes in the enjoyment of their Section 111.70(2) right ". . . to bargain collectively through representatives of their own choosing . . .". 18/ Nor would such Union actions other-

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18/ See, Section 111.70(3)(b)1, Stats.

wise frustrate the relationship between municipal employes and their majority representative contemplated by the Legislature in drafting MERA. For in MERA, the majority representative is granted exclusivity of bargaining representative status 19/ (subject to the duty of fair representation discussed below) and Municipal Employer refusals to ". . . bargain collectively with a representative of a majority of its employes . . ." are expressly prohibited. 20/ Thus, the Municipal Employer's duty to bargain runs to the majority representative, herein the Union, and it is with that representative--and not with individuals or groups of employes directly--that the Municipal Employer is permitted and required to bargain collectively under MERA.

In addition, we find no merit in the Municipal Employer's contention that the Union violated its duty to fairly represent non-Union members of the bargaining units by deciding to pursue fair share as a top priority bargaining demand without their knowledge or participation in that decision which affects only them. If (as the Municipal Employer argues could be the result of the Union's conduct) a minority succeeds in imposing a fair share agreement not supported by a majority, the law provides a method for the dissatisfied employes to deauthorize a fair share agreement by forming or seeking the assistance of a labor organization, or of the Municipal Employer, which, in turn, is entitled to petition for a secret ballot referendum as provided in Section 111.70(2). The Union is not, however, duty bound to conduct its own pre-contract referendum on the fair share issue. For, the development of bargaining priorities and strategies or the delegation of such decision-making to agents is a matter for the members of the organization certified or recognized as the majority representative, here the Union, unless a broader voting enfranchisement is effected in the documents (e.g. constitution and by-laws) governing the Union's operations. And, the Municipal Employer's citations of authority do not persuade us that our role in the enforcement of the proper scope of the duty of fair representation warrants our or the Municipal Employer's intrusion into that area of internal Union affairs in the instant circumstances. 21/

Hence, the Legislature has, by the MERA provisions noted above, effectively denied the Municipal Employer the right to insist that the Union submit the Municipal Employer's April 17 offer to a vote of either Union or unit members. The Municipal Employer is therefore not privileged, by the Union's refusals to conduct such a vote, to fail or refuse to engage in the final offer exchange and written stipulation of agreed-upon items

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19/ Section 111.70(4)(d)1, Stats.

20/ Section 111.70(3)(a)4, Stats.

21/ Both the Teamsters Local 315 and Wayne County cases, above, note 5, extended the duty of fair representation to the mode of decision-making selected by the labor organization involved, but in each case the decision was held to have unfairly affected a group of union members. Neither case stands for the Municipal Employer's contention that non-members of the Union must be granted a vote in Union decisions regarding the Union's structuring of bargaining priorities and strategies in general or in circumstances such as those herein. The Hein-Warner case, above, note 5, held that the Union's failure to notify an affected employe group of the pendency of an arbitration made the resultant award unenforceable. That case, however, involved grievance arbitration concerning a vested contract right of the affected employes, and the Court evidently sought to establish a means by which such individuals could attempt to make known their views to the grievance arbitrator determining matters affecting them. Here there is no vested contract right at stake and, for that matter, no third party decision-maker appointed.

procedures when called upon to do so by the investigator during the course of the investigation. 22/

Thus, even if, as the Municipal Employer contends, a mediation-arbitration petitioner must demonstrate its good faith before it may utilize mediation-arbitration, the Union's refusal to submit the April 17 offer for a vote as requested by the Municipal Employer would not prevent the Union from using the mediation-arbitration process. For, the Union's conduct herein in refusing to follow the proposed referendum procedure is not inconsistent with its duty to bargain in good faith or with its duty to fairly represent the employes in the bargaining units.

Union Conduct as Interference with Employe or Municipal Employer Free Speech

The Union's refusals to submit the matter to a vote of the local memberships or of the units do not constitute a violation of free speech rights of either the Municipal Employer or the employes in the unit. For, the Union's actions have not prevented agents of the Municipal Employer or any employe from speaking on any subject to any group at any time. Our recognition in Ashwaubenon 23/ that MERA does not prohibit Municipal Employers from noncoercively communicating to the employes in the bargaining unit concerning the status of bargaining does not guarantee that the Municipal Employer will be permitted an opportunity to do so before any particular development occurs in bargaining or the processing of a petition for mediation-arbitration. Nor does that case establish a requirement that the Union or the Commission must pace its mediation-arbitration petition processing in such a way as to assure the Municipal Employer a meaningful opportunity to communicate directly with the employes in that way.

Furthermore, the U.S. Supreme Court's holding in Madison Schools 24/ that MERA may not be applied so as to preclude a Municipal Employer from interacting with employe-citizens at public meetings on such subjects as the desirability or undesirability of its granting fair share, is not a basis for concluding that the mediation-arbitration investigation process must be structured so that such employe-citizen imputs can be made after each modification of the Municipal Employer's position or at any time prior to the close of the investigation. MERA provides for public input into the dispute-settlement process at other times, to wit, at the outset of negotiations and (upon the petition of five citizens of the jurisdiction) at the parties' first gathering with the mediator-arbitrator.

Consistency of Union Conduct with Pre-Strike Practices of Private Sector Unions

The Municipal Employer's brief makes the following assertion: "In the private sector one notes that before resorting to a strike, a union will submit the employer's final offer to the employees to obtain a vote and acceptance or rejection and then a formal strike vote . . . .". Based

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22/ Moreover, a Municipal Employer runs a risk of being found to have attempted to subvert the authority and status of the majority representative and to have intruded into its internal affairs and its relationship to its members by insisting that said representative submit the municipal employer's offer to some or all of the employes represented.

23/ Above, note 7.

24/ Above, note 6.

on that assertion, the Municipal Employer criticizes the Union herein for not following the same practice before resorting to the strike-substitute or the possible strike-prelude, mediation-arbitration.

The Union is not bound to follow patterns of conduct traditional among other organizations except to the extent that it is required by law to do so. We note that private sector employes and their labor organizations subject to the Wisconsin Employment Peace Act provision in Section 111.06(2), Stats., are prohibited from ". . . engaging in, promoting or inducing . . . a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike." Since there is no parallel requirement in MERA before a majority representative resorts to mediation-arbitration or a lawful strike under MERA, we find that the Legislature intended no such requirement.

Consistency of Union Bargaining Committee's Actions with Extent of Actual Authority Delegated to it

The Municipal Employer, in its brief, cites the Affidavit of Union business representative Robert Lyons and asserts that each of the three Union locals ". . . voted to vest its respective bargaining committee with the authority to submit a final offer to the County under the mediation-arbitration process, if and when, in the judgment of the committee there appeared to be no other means to resolve 'the bargaining impasse'." The Municipal Employer contends that once it modified its offer by communicating the one of April 17, any previously existing impasse to which the Union locals' resolutions were addressed was broken such that the bargaining committee authority referred to was void.

We have not endeavored to interpret the extent of the enabling resolutions of the Union locals because, in our view, the Municipal Employer lacks proper standing herein to question the faithfulness which the Union bargaining committee has followed its principals' directions. Since a labor organization's bargaining team may reasonably be presumed to come to a pre-mediation-arbitration investigation with the authority to bind its principals to any final offer and stipulation of agreed-upon items it submits, the Union's bargaining team was clothed with such apparent authority herein. Hence, the Union would be bound by its submissions to the investigator even if such were beyond the actual delegation of authority granted by the Union membership. 25/ Thus, the Municipal Employer would not be adversely affected by the alleged ultra vires nature of the Union committee's actions that it alleges, and the Municipal Employer therefore lacks standing to assert same herein.

CONCLUSION:

For the foregoing reasons, we have rejected each of the arguments presented in support of the Municipal Employer's motion to dismiss, and accordingly we have denied said motion.

We are instructing our investigator to proceed with the investigation, including (at such time as the investigator deems appropriate) his calling for a reduction to writing of any items unconditionally agreed upon by the parties and for the exchange (in the manner provided for in ERB 31.09[2]) of contemplated final offers to the end of either resolving all remaining

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25/ Accord, Sheboygan County, (15380-B) 5/78, pending review before Dane County Circuit Court (failure of the Municipal Employer to effect ratification in accordance with its own procedures therefor does not excuse it from executing therms previously unconditionally agreed upon by its bargaining team during pre-interest-arbitration investigation.)

issues in dispute or of closing the investigation following the identification of the final offer of each party in the manner prescribed in said rule.

Dated at Madison, Wisconsin this 25th day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian, Commissioner

Marshall L. Gratz, Commissioner