

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

AMERICAN FEDERATION OF TEACHERS, LOCAL
212, WFT, AFL-CIO

To Initiate Mediation-Arbitration
Between Said Petitioner and

MILWAUKEE AREA BOARD OF VOCATIONAL,
TECHNICAL & ADULT EDUCATION DISTRICT
NO. 9

Case LXXIX

No. 24935 MED/ARB-352

Decision No. 17131-A

ORDER TO SUBMIT SINGLE FINAL OFFER

American Federation of Teachers, Local 212, WFT, AFL-CIO, herein-after Petitioner, having on April 10, 1979, filed a petition to initiate mediation-arbitration pursuant to Section 111.70(4)(cm)6, Stats., to resolve an alleged impasse existing between said Petitioner and Milwaukee Area Board of Vocational, Technical & Adult Education District No. 9, hereinafter MATC; and an informal investigation on said petition having been conducted on May 30, 1979, and June 7, 1979; and the parties having exchanged initial final offers on June 14, 1979; and Petitioner having, on June 21, 1979, filed written objection to MATC's final offer as not being a proper final offer under Section 111.70(4)(cm), Stats., because it contains three separate wage proposals expressed in the alternative to be selected at the option of the Petitioner or the mediator-arbitrator; and the Commission having, on July 12, 1979, ordered MATC to show cause why it should not be required to modify its final offer so as to eliminate said alternative proposals; and MATC having on July 4, 1979 filed its response to said order; and the Petitioner having failed to file any further arguments in the matter; and neither party having requested an evidentiary hearing in the matter; and the Commission having considered the matter and being fully advised in the premises;

NOW, THEREFORE, it is

ORDERED

That MATC, on or before August 31, 1979, or within any extension granted by the Commission's investigator, submit a single final offer, so as to eliminate its alternative proposals on the issue of wages.

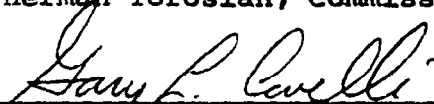
Given under our hands and seal at the
City of Madison, Wisconsin, this 21st
day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

No. 17131-A

MILWAUKEE AREA BOARD OF VOCATIONAL, TECHNICAL & ADULT EDUCATION DISTRICT
NO. 9, LXXIX, Decision No. 17131-A

MEMORANDUM ACCOMPANYING
ORDER TO AMEND FINAL OFFER

On July 10, 1979, Petitioner requested the Commission to either direct MATC to select one of its three (3) wage proposals contained in its final package as its final offer, or treat the subject application as a request for a declaratory ruling that alternative proposals do not constitute a final offer. Pursuant to said application we issued our Order to Show Cause on July 12, 1979. Thereafter, on July 24, 1979, MATC filed its response in opposition to Petitioner's aforesaid application.

MATC first takes exception with the manner in which we have proceeded herein. It claims there is not presently a proper proceeding pending before the Commission that justifies the issuance of our Order to Show Cause, inasmuch as the only procedure enunciated in the statutes or our rules pertains to petitions for declaratory ruling to determine whether a particular proposal is a mandatory subject of bargaining. In this connection, MATC points out that the subject dispute does not concern the question of mandatory subjects of bargaining, nor is there a petition for declaratory ruling presently pending before the Commission. Furthermore, MATC maintains we lack authority, either statutory or pursuant to our rules, to order a party to change the form of its final offer.

With respect to the merits of the dispute, it is MATC's position that alternative proposals may be included in final offers under the mediation-arbitration procedure. MATC contends that it is a common bargaining and mediation technique to use alternative proposals as a means of obtaining voluntary settlements. Although binding arbitration has been adopted as a dispute resolution procedure, the fundamental objective of the Municipal Employment Relations Act, it is argued, is still to promote voluntary settlements. Moreover, there is nothing in the language or policy of the mediation-arbitration procedures of Section 111.70(4)(cm)6 that precludes the use of a final proposal in the alternative on any particular issue. MATC claims further that its offer is unconditional and sufficiently specific to enable it to be implemented by an arbitration award.

Last, although the language of Section 111.70(4)(cm)6, Stats., requires the parties submit a "single final offer" MATC claims the legislative history is clear that the reference to "single" was intended to foreclose arbitration on an issue by issue basis. The reference to "single" however, was not intended to preclude the use of alternative proposals on any particular issue, and thereby stifle efforts to arrive at voluntary solutions. MATC, therefore, concludes that its final offer is lawful, proper and in conformity with the policies and purposes of the Act.

Administration of MERA, including paragraph (cm) of subsection 4, is the responsibility of the Commission. This necessarily includes insuring compliance with the procedures outlined in the Act and construing the language thereof should a dispute arise. In some instances, we have adopted rules 1/ relative to the exercise of our authority to administer MERA. In others, while we have adopted no specific rule setting forth the procedure for resolution of a particular dispute, we

1/ Section 111.70(4)(cm)8 and Section 111.71, Wis. Stats.

have fashioned a procedure which we deemed to be a reasonable and expeditious manner in which to carry out our responsibility to insure compliance with the dictates of MERA. Clearly, we have the authority to order a party to comply with the requirements of MERA as a prerequisite to our ordering mediation-arbitration. This conclusion is further reinforced by the language of subdivision 6.a. of paragraph (cm).

If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering mediation-arbitration.

The following final offer, disputed by Petitioner as not being in conformity with MERA, was presented to Petitioner on June 14, 1979.

1. Salary for 1979-1980 school year:

At the option of the Union or the arbitrator, MATC offers:

- a. Increase each step of the 1978-1979 salary schedule by 6 1/2%; each teacher will remain at the same step of the schedule as the previous year, resulting in a 6 1/2% salary increase for each teacher, or
- b. Increase each step of the 1978-1979 salary schedule by 4 1/2%; each teacher may move one step upon the salary schedule if qualified under the 1978-1979 contract requirements, or
- c. Increase steps 0 through 10 of the 1978-1979 salary schedule by 5 1/2%; eliminate all steps above step 10 from the salary schedule; all teachers presently at steps 0 through 9 on the salary schedule may move one step upon the salary schedule if qualified under the 1978-1979 contract requirements; each teacher presently at steps 10 or above on the salary schedule shall receive a 6% increase above present salary, except that a teacher at step 10 or above who would qualify to move to a higher class of the salary schedule shall also receive an additional salary increase at the time such change becomes effective based upon an increase of \$654 in the annual salary rate.

2. Lay Off/Seniority

No change in current Agreement.

Petitioner is objecting to that portion of the offer dealing with the proposed salary for the 1979-1980 school year as not being a "single final offer" within the meaning of Section 111.70(4)(cm)6.a., Wis. Stats.

We do not agree, as argued by MATC, that "single final offer" as it is used in MERA, contemplates use of alternative proposals on any one or more of the issues in dispute at the time of the final offer. An offer containing such alternative proposals is not "one" or a "single" offer, but rather multiple offers. Thus, depending upon how many issues are in dispute and, of those, how many have been dealt with through alternative proposals, there could be a myriad of combinations, packages or alternative "final offers" resulting. Each such "final offer" would

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require comparison by the arbitrator regarding its relative merits under the statutory criteria. The implications of this are obvious and clearly not what the legislature intended as evidenced by its reference to "single final offer". 2/

While we do not disagree that the use of alternative proposals can be an effective technique to achieve voluntary settlements in negotiation or mediation, we do not agree it was the intent of the legislature that it also be available in arbitration, unless the parties agree that it should be. The reference to "single final offer" clearly prohibits its use pursuant to the mandated procedures. However, MERA, at subdivision (cm)5, does make allowance for parties to agree to "voluntary impasse resolution procedures", and thus the parties could voluntarily agree to a process allowing for proposals in the alternative.

Consequently, because mediation-arbitration sought herein is pursuant to the mandated provisions of Section 111.70(4)(cm)6, Wis. Stats., we are today ordering MATC to submit a single final offer, so as to eliminate its alternative salary proposals.

Dated at Madison, Wisconsin this 21st day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

2/ The provision for the utilization of alternative final offers, like the provision for the use of issue by issue selection, is a variation on the basic concept of final-offer arbitration that could have been adopted by the legislature, but was not. For example, the City of Eugene, Oregon, which adopted the first final offer law in the form of an ordinance (#16298), specifically provided for the right to propose one alternative final offer. See Clifford B. Donn's article, "Games Final Offer Arbitrators Might Play," in the October, 1977 issue of Industrial Relations, pp. 306-314.