STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48, LOCAL 1486, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYES, AFL-CIO Complainant, vs. NICOLET HIGH SCHOOL DISTRICT, Respondent.	Case XIV No. 24847 MP-1001 Decision No. 17136-A

Appearances:
Podell & Ugent, Attorneys at Law, by Mr. Alvin Ugent, appearing on behalf of the Union.
Foley & Lardner, Attorneys at Law, by Mr. Herbert P. Wiedemann, appearing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Milwaukee District Council 48, Local 1486, American Federation of State, County, and Municipal Employees, AFL-CIO having, on July 2, 1979, filed a complaint with the Wisconsin Employment Relations Commission, alleging that the Nicolet High School District has committed a prohibited practice within the meaning of the Municipal Employment Relations Act; and the Commission having appointed William C. Houlihan, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided for in Section 111.07(5), Wis. Stats.; and a hearing on said complaint having been held before the Examiner in Milwaukee, Wisconsin, on October 4, 1979; and a transcript of said hearing having been prepared; and the Respondent having submitted a brief which was received on October 18, 1979; and the Examiner being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1) That Milwaukee District Council 48, Local 1486, American Federation of State, County, and Municipal Employees, AFL-CIO, hereinafter Union, is a labor organization within the meaning of Section 111.70(1)(j), Wis. Stats., and is the exclusive collective bargaining representative of all non-supervisory maintenance and custodial employes employed by the Nicolet High School District.

2) That the Nicolet High School District, hereinafter Employer, is a municipal employer within the meaning of Section 111.70(1)(a), Wis. Stats.

3) That since 1971, the Union and the Employer have been signatories to a series of collective bargaining agreements covering maintenance and custodial employes of the Employer.

4) That during March of 1979, the Union, by its staff Representative, Phyllis Torda, requested that the parties open negotiations for a labor agreement to succeed the 1977-79 agreement that existed between the Union and the Employer, through a simultaneous exchange of each party's initial proposed modifications.

5) That the Employer, by its attorney Herbert Wiedemann, agreed to open negotiations, but proposed that the Union first submit its proposals, to which the Employer would subsequently respond, as had been the parties' previous practice.

6) That the Union refused to do so and took the position that Section 111.70(4)(cm)2 Wis. Stats. requires a simultaneous exchange of initial proposals to modify a collective bargaining agreement.

7) That neither the Union nor the Employer would agree to the other parties' proposal relative to the method of exchange of initial bargaining proposals.

CONCLUSIONS OF LAW

1) That Section 111.70(4)(cm)2 Wis. Stats. does not require a simultaneous exchange of initial bargaining proposals.

2) That the Employer did not violate Section 111.70(3)(a)1 or 4, Wis. Stats. by refusing to agree to a simultaneous exchange of initial bargaining proposals.

ORDER

That the complaint be, and hereby is, dismissed.

Dated at Madison, Wisconsin this 2nd day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan
William C. Houlihan, Examiner

NICOLET HIGH SCHOOL DISTRICT, XIV, Decision No. 17136-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER

The parties involved in this action have been signatories to a series of collective bargaining agreements covering the maintenance and custodial employes of the Employer since 1971. Historically, the Union has submitted its proposed modifications of the contract to the Employer, and, following a review of those proposals, the Employer has responded with its own proposals.

During the early part of March, 1979, Phyllis Torda, Staff Representative of Milwaukee District Council 48, wrote a letter, on behalf of Local 1486, to the School District requesting a public meeting at which time the parties would simultaneously exchange proposals for modification of the then current collective bargaining agreement. The Employer, by its attorney, Herbert P. Wiedemann, responded to Ms. Torda's letter by a letter dated March 14, 1979. Mr. Wiedemann's March 14 letter pointed out that in the past, two initial meetings had been held; the first for the Union to present and explain its proposals, and, the second for the District to do the same. Mr. Wiedemann's letter went on to propose that this practice continue, and suggested possible meeting dates.

Ms. Torda responded to Mr. Wiedemann's March 14 letter by letter dated March 21, 1979, which letter is set forth below in its entirety:

Dear Mr. Weidemann:

AFSCME, Local 1486, AFL-CIO, affiliated with District Council 48 objects to the past practice you described for opening negotiations because it is inconsistent with the procedures outlined in Wisconsin Statutes 111.70(4)(cm)2. The intent of the recent revisions to the Municipal Employment Relations Act was to equalize the position of the parties engaging in collective bargaining and the Union, therefore, believes it is under no obligation to continue a past practice which deprives the Union of rights guaranteed by law.

The law provides that each party must submit initial bargaining proposals to the other party in writing. The parties then shall proceed to present the supporting rationale for the proposals, which may take more than one public meeting. The law specifies that initial proposals must be submitted in writing so that either party has the option of modifying its initial proposals in response to the initial proposals of the other side.

Local 1486 is eager to begin negotiations with the Nicolet High School District. We trust that the District intends to abide by the Wisconsin Statutes. If the District agrees that written proposals will be exchanged at the first public meeting, then I would suggest April 2, 4. 5. 9 or 12 as possible dates. The sooner the better, as far as the Union is concerned.

disagreed with the Union's above-noted statutary interpretation and renewed its previous suggestion to proceed as usual.

By letter of April 2, 1979, Ms. Torda suggested that the parties seek an informal ruling from the Wisconsin Employment Relations Commission with respect to statutary requirements for opening negotiations. The District responded to this suggestion by letter dated April 4, 1979, the relevant portion of which read:

> Dear Ms. Torda:
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> This will reply to your letter of April 2, 1979.
>
> As stated in my letter of March 14, 1979, it is the position of Nicolet High School that there should be two initial bargaining meetings, the first for the introduction of union proposals and the second for the introduction of district proposals. That procedure is in accord with past practice. Since the union is the moving party, it would seem that you would be willing to get underway on the basis the district has proposed. However, if you continue to feel that the Nicolet position is somehow in violation of law, it will be necessary for you to commence formal proceedings with the WERC in that regard. I have no knowledge of any statute or WERC ruling which contemplates "submission of briefs on the issue *** for an informal ruling."

The Union did indeed file a complaint alleging a violation of Section 111.70(3)(a)(1) and (4) Wis. Stats. The Union's contention is expressed in its letter of March 21, 1979, set forth above. The School District contends that the statutory provision in question in no way requires a simultaneous exchange of initial proposals. The District argues that the provision is meant to do no more than require that the submission and explanation of initial proposals be made in public, and leaves to the parties negotiation the exchange format.

In 1977,the Municipal Employment Relations Act was amended by chapter 178, Laws of 1977, which in part, added the following provision:

> 111.70(4)(cm)
>
> Methods for peaceful settlement of disputes. 1. "Notice of commencement of contract negotiations." For the purpose of advising the commission of the commencement of contract negotiations, whenever either party requests the other to reopen negotiations under a binding collective bargaining agreement, or the parties otherwise commence negotiations if no such agreement exists, the party requesting negotiations shall immediately notify the commission in writing. Upon failure of the requesting party to provide such notice, the other party may so notify the commission. The notice shall specify the expiration date of the existing collective bargaining agreement, if any, and shall set forth any additional information the commission may require on a form provided by the commission.
>
> 2. "Presentation of initial proposals, open meetings." The meetings between parties to a collective bargaining agreement or proposed collective bargaining agreement under this subchapter which are held for the purpose of presenting initial bargaining

> proposals, along with supporting rationale, shall be open to the public. Each party shall submit its initial bargaining proposals to the other party in writing. Failure to comply with this subdivision is not cause to invalidate a collective bargaining agreement under this subchapter.

Prior to the enactment of this provision there existed neither specific statutory language nor case law regulating the procedural format to be utilized in exchanging initial proposals to modify an existing collective bargaining agreement. The matter was historically left to the parties to negotiate.

An examination of the statutory language in question lends no support to the Union's position. The substantive heart of the "open meetings" provision of the Municipal Employment Relations Act is the single sentence contained in Section 111.70(4)(cm)2, Wis. Stats., which provides as follows;

> The meetings between parties to a collective bargaining agreement or proposed collective bargaining agreement under this subchapter which are held for the purpose of presenting initial bargaining proposals, along with supporting rationale, shall be open to the public.

On its face, this sentence does not appear to direct the parties to simultaneously exchange their initial proposed modifications. The sentence does refer to meetings in the plural, suggesting that the legislature contemplated the possibility that the parties might use more than a single meeting to present and explain their proposals. The format for such meetings is something the statute is silent on so long as they are conducted in public.

A review of the legislative history of the statutory amendments reveals that the legislature did specifically concern itself with the format of the initial bargaining session. Chapter 178 was born in the state Senate, originally surfacing as 1977 Senate Bill 15. As originally drafted, 1977 Senate Bill 15, had no provision dealing specifically with the presentation of initial proposals. This matter was first raised by Senate Substitute Amendment 5 to 1977 Senate Bill 15, offered by the Committee on Agriculture, Aging and Labor, which, when offered, on May 10, 1977 read as follows:

> 2. "Initial bargaining sessions." The initial meeting between parties to a collective bargaining agreement or proposed collective bargaining agreement under this subchapter concerning the negotiation of a new collective bargaining agreement, or the initial meeting called for the purpose of reopening an existing collective bargaining agreement under this subchapter, shall be open to the public. The purpose of the meeting is for the presentation of the initial bargaining proposals, along with rationale and supporting data of both parties. Failure to comply with this subdivision is not cause to invalidate a collective bargaining agreement under this subchapter. [LRB-4850/2]

While this language bears a strong resemblance to the eventual statutory language there is one particularly noticeable difference. The original language makes reference to "the initial meeting" called for presentation of initial bargaining proposals, rationale, and supporting data of both parties. This reference to a single meeting at which both parties would be expected to present proposals, rationale, and support

would seem to contemplate the parties exchanging their respective proposals at a single session. However, this single meeting concept was not ultimately incorporated into and made a part of Chapter 178.

Senate Substitute Amendment 6, offered by the Joint Committee on Finance, on June 21, 1977, contains the verbatim text of what ultimately was enacted into law.

On June 23, 1977, Senate Amendment 25, to Senate Substitute Amendment 6, was offered. The Amendment would have amended what was eventually enacted, in the following manner:

> At the initial meeting, the labor organization shall present its proposals. The municipal employer shall then present its counter offer at a meeting to be held within 14 days of the initial meeting. [LRB-6858/1]

Obviously, this Amendment was not successful.

An amendment, similar to that described above, was subsequently offered on June 23, 1977. Senate Amendment 32 to Senate Substitute Amendment 6, would have modified the present statutory language by adding the following:

> . . .Commencing contract negotiations, the party requesting negotiations shall present its intial bargaining proposals, specifying the issues to be negotiated along with supporting rationale; the other party to the negotiations shall respond with its bargaining proposals, specifying the issue to be negotiated within 10 days of this innitial meeting and initial presentation of bargaining issues. [LRB 6858/1]

This amendment also failed to find its way into Chapter 178.

The history suggests that the legislature considered, and rejected, a series of amendments which would have controlled the format of the exchange of initial proposals. Substitute Amendment 5, in particular, would seemingly have brought about the result the Union urges in this matter. The fact that the Legislature specifically rejected not only this specific format, but others as well, in favor of language which does not, on its face, address the format for exchange of initial bargaining proposals lends strong support to the Respondent Employer's contention that the provision serves only to require a public exchange and explanation of those initial proposals and leaves to the parties negotiation the format for that exchange.

It has been the policy of the Wisconsin Employment Relations Commission to encourage parties to bargain collectively on appropriate subjects. The waiver of this invaluable right is not a result arrived at lightly by the Commission. There is little evidence to support the contention that the Legislature intended to remove this subject from the parties negotiations by virtue of Chapter 178.

This case really boils down to a situation in which both the Employer and the Union sought to achieve an exchange format most suitable to their own particular needs and advantage. The law requires the parties to negotiate over the issue. The law does not require either party to agree to the other's proposal. In its complaint, the Union characterizes the Employer's conduct as conditioning bargaining upon acceptance of the Employer's format. While this was the obvious

result of the Employer's position, the Employer's position in that regard mirrored the position of the Union, which also conditioned bargaining on the Employer's acceptance of its format. The fact that bargaining was, in effect, conditioned on the resolution of the dispute is inherent in the nature of the dispute itself since without an exchange of proposals, bargaining cannot take place.

Dated at Madison, Wisconsin this 2nd day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSIO

By William C. Houlihan
William C. Houlihan, Examiner