

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION FOR REHEARING

In its Motion for Rehearing the Association contends that the Commission made a number of material errors of law, to wit:

- "(a) The Commission's Conclusion of Law...that the mediation-arbitration provisions contained in Section 111.70(4)(cm)6, Wis. Stats., are only applicable to deadlocks in the negotiations situations enumerated by the Commission therein.
- "(b) The Commission's ruling...that the County is not required to proceed to mediation-arbitration under the provisions of Section 111.70(4)(cm)6, Wis. Stats., on the deadlock in negotiations with the Association concerning the impact of the County's decision to terminate its special education programs on the wages, hours and working conditions of the employees represented by the Association.
- "(c) The Commission's conclusion...that the mediation-arbitration provisions of Section 111.70(4)(cm), Wis. Stats., were intended by the legislature to only apply, and are interpreted only to apply, to bargaining deadlock situations which occur in: (1) reopened negotiations under a binding collective bargaining agreement to amend or modify a specific portion of an existing collective bargaining agreement subject to a specific reopener provision; (2) negotiations with respect to the wages, hours and working conditions to be included in a successor collective bargaining agreement for a new term; or (3) negotiations for an initial collective bargaining agreement where no such agreement exists.
- "(d) The Commission's conclusion...that the mediation-arbitration provisions of Section 111.70(4)(cm), Wis. Stats., are inapplicable to bargaining impasses which may arise in other negotiations situations which may occur during the term of a collective bargaining agreement, including bargaining over proposed changes in wages, hours and working conditions of bargaining unit employees or the impact of management decisions on the wages, hours and working conditions of bargaining unit employees which are not governed by the terms of the agreement and are not subject to the unilateral control of the employer because of the existence of a waiver of the right to bargain, and that the legislature did not so intend the statutory mediation-arbitration provisions to apply.
- "(e) The Commission's conclusion...that the mediation-arbitration provisions of Section 111.70(4)(cm), Wis. Stats., are not applicable to the instant deadlock in negotiations between the Association and the County concerning the impact of the County's decision to terminate its special education programs on the wages, hours and working conditions of the employees represented by the Association.
- "(f) The Commission's Order of Dismissal...dismissing the Association's petition for mediation-arbitration...."

In addition the Association alleges that:

- "(a) In enacting Chapter 178, Laws of 1977, the Legislature, and the Senate Labor Committee, the Assembly Education Committee and the Joint Finance Committee which drafted and debated that statute, intended the mediation-arbitration provisions of Section 111.70(4)(cm), Wis. Stats., to apply to bargaining impasse situations in addition to those enumerated by the Commission in its Decision No. 17400.
- "(b) The Wisconsin legislature is currently in recess and will be reconvening on or about January 28, 1980, for its final floor period for action on legislation of the 1979-1980 Legislative Session.
- "(c) The Association is informed and believes that, upon its reconvening in regular session on or about January 28, 1980, the Wisconsin Education Association Council will seek the introduction and enactment of legislation which will clarify and authorize the applicability of the mediation-arbitration provisions of Section 111.70(4)(cm), Wis. Stats., to bargaining deadlocks in addition to those which the Commission has ruled are subject to the statute in its Decision No. 17400. The Association is prepared to submit affidavits to the Commission in support of this allegation, if so required."

The Association in its Motion asks that the Commission grant the Motion for Rehearing and establish a briefing schedule but to hold the schedule in abeyance for sixty (60) days following the reconvening of the Legislature on January 28, 1980. In the alternative, the Association asks that the Commission establish a briefing schedule now. In its letter of transmittal the Association asks that under "whatever procedure" the Commission determines to follow, it be given an opportunity to argue and/or brief the matters raised by the Association's Motion.

The County, which was served with a copy of the Motion, did not elect to file a reply as provided in Section 227.12(4), Wis. Stats.

DISCUSSION:

Section 227.12 Wis. Stats. provides in relevant part as follows:

227.12 PETITIONS FOR REHEARING IN CONTESTED CASES

(1) A petition for rehearing shall not be a prerequisite for appeal or review. Any party to a contested case who deems such party aggrieved by a final order, may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e).

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 20 days after it is filed. If the agency does not enter an order disposing of the petition within the 20-day period, the petition shall be deemed to have been denied as of the expiration of the 20-day period. (Emphasis added.)

A fair reading of the Association's Motion indicates that it alleges that the Commission's decision was affected by material errors of law. However, the only "grounds" for the relief sought set out in the Motion, which was not considered by the Commission when it decided the matter, is the fact that the legislature will be asked, when it reconvenes in January 1980, to "clarify" the law or authorize the application of the mediation-arbitration procedure to the facts here. 2/ We do not deem this to be an appropriate basis for granting the Motion.

Prior to our decision the parties were permitted to present evidence and argument with regard to legislative intent of the pertinent provisions. There are no grounds stated in the Motion which would indicate that the Commission's decision neglected to take into account any relevant argument regarding such intent. Any future action by the legislature attempting to clarify its intent would, in our view, be irrelevant to the question of whether we have correctly interpreted the legislature's intent as reflected in Chapter 178, Laws of 1977. 3/

2/ The Association did not accompany its Motion with any "supporting authorities" as required by subsection (1) of Section 227.12 Wis. Stats. Although the Association asks for the opportunity to argue and/or brief the matters raised in its Motion, we do not deem that the grounds stated in the Motion justify granting a rehearing for that purpose.

3/ In our view one legislature cannot retroactively bind a prior legislature to a particular interpretation any more than individual legislators or other persons involved in the drafting of legislation can do so. See State v. Consolidated Freightways 72 Wis. 2d 727, 738, 242 N.W. 2d 192 (1976); Wisconsin Southern Gas Co. Inc. v. Public Service Commission 57 Wis. 2d 643, 652, 205, N.W. 2d 403 (1973); Milwaukee County v. Schmidt 52 Wis. 2d 58, 69, 187 N.W. 2d 777 (1971); Cartwright v. Sharpe 40 Wis. 2d 494, 508, 162 N.W. 2d 5 (1968); In Re Matzke's Estate 250 Wis. 204, 26 N.W. 2d 659, 661, (1947); Moorman Manufacturing Co. v. Industrial Commission 241 Wis. 200, 5 N.W. 2d 743 (1942); Casper v. Kalt-Zimmers Manufacturing Co. 159 Wis. 517, 149 N.W. 754, 759 (1914). Accord: City of Los Angeles Department of Water v. Manhart 98 Sup. Ct. 1370, 1378 (1978); and Department of Energy v. Westland 565 F. 2d 685, 690 (3d Cir. 1977).

If the legislature passes amendatory legislation, such amendatory legislation would not serve as an appropriate basis for reviewing our decision here which was based on the statutes as they currently read.

Dated at Madison, Wisconsin this 10th day of December, 1979.

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner