

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
SCHOOL DISTRICT OF WISCONSIN RAPIDS : Case XVII  
Requesting a Declaratory Ruling : No. 24371 DR(M)-120  
Pursuant to Section 111.70(4)(b), : Decision No. 17877  
Wis. Stats., Involving a Dispute :  
Between Said Petitioner and :  
WISCONSIN RAPIDS EDUCATION ASSOCIATION :  
----- :

Appearances:

Melli, Shiels, Walker & Pease, S.C., Attorneys at Law, by  
Mr. James K. Ruhly, on behalf of the District.  
Mr. Bruce Meredith, Staff Counsel, Wisconsin Education  
Association Council, on behalf of the Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECLARATORY RULING

School District of Wisconsin Rapids having on April 5, 1979 filed a petition requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling, pursuant to Sec. 111.70(4)(b) of the Municipal Employment Relations Act, determining whether certain provisions in a collective bargaining agreement existing between it and the Wisconsin Rapids Education Association relate to permissive or mandatory subjects of bargaining; and the parties having waived hearing in the matter and having on February 8, 1980 filed a stipulation of facts in the matter; and the parties having filed briefs by March 21, 1980; and the Commission having considered the entire record and the briefs of the parties, makes and issues the following

FINDINGS OF FACT

1. That the School District of Wisconsin Rapids, hereinafter referred to as the District operates a public school system, and has its principal office in, Wisconsin Rapids, Wisconsin.
2. That the Wisconsin Rapids Education Association, hereinafter referred to as Association, is an employe organization representing all contract teaching employes, guidance personnel, librarians, special teachers and teaching principals (50% or more time teaching) employed by the District, excluding all other employes; and that the principal office of the Association is at Nekoosa, Wisconsin.
3. That at least since 1969 the District and the Association have been parties to various collective bargaining agreements, which consisted of provisions relating to wages, hours and working conditions of the employes represented by the Association; that the District and Association are parties to an existing collective bargaining agreement covering said employes, which agreement, by its terms, became effective on July 1, 1978, and said agreement continues in effect until June 30, 1980; that the following provisions, which were included in the collective bargaining agreements between the parties from at least 1969, were also included in the 1978-1980

collective bargaining agreement with an accompanying footnote that states: "the underlined phrase or sentence will be included or excluded in the agreement based on a WERC ruling" with the understanding that if the Wisconsin Employment Relations Commission ruled the underlined portion to be a mandatory subject of bargaining, it would be included in the agreement otherwise it would be excluded from the agreement.

ARTICLE I

RECOGNITION AND RIGHTS OF ASSOCIATION

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Section 103 - Association Right's

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103.3 -- A copy of the agenda of all public Board of Education meetings, and any related attachments, shall be given to the Association president prior to such meetings.

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ARTICLE III

EMPLOYEE RULES AND REGULATIONS  
AND TEACHER EVALUATIONS

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Section 302 - Teacher Evaluations

302.2 -- A teacher's work will be evaluated at least one time per year and a written report shall be made on each teacher by the principal, curriculum coordinator, or supervisor . . . . .

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ARTICLE VIII

WAGES AND HOURS

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Section 802 - Application of Salary Schedule

802.1 -- It is understood that the salary schedules contained in "Exhibits B" do not apply to non-contract, substitute or casual employees and the Board is free to adopt such salary schedules for these employees as it deems necessary from time to time. The Board agrees, however, that non-contract, substitute or casual employees will not be paid in excess of the ranges provided in Exhibits B".

4. That on April 5, 1979 the District filed a petition initiating the instant proceeding; that the District contends, contrary to the Association, that the underlined portions of the contractual provisions in issue relate to permissive, rather than to mandatory subject of collective bargaining.

5. That the 1978-1980 collective bargaining agreement also contains among its provisions a provision permitting bargaining unit employees two days of personal leave per year, and that the cost of a substitute teacher to replace the teacher taking such leave is deducted from the pay of the teacher on such leave.

6. That all public meetings of the Board of the District is for the purpose of providing the public to the fullest and most complete information regarding the affairs of the District as is compatible with the conduct of the District's business; and that representatives of the District have no duty to bargain collectively with any representative of its employees at such public meetings.

7. That the identity of the individuals who will evaluate teachers in the bargaining unit represented by the Association does not primarily affect the wages, hours or working conditions of said teachers.

8. That the Association is not the collective bargaining representative of non-contract, substitute or casual employees in the employ of the District.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. That public meetings of the Board of School District of Wisconsin Rapids are subject to the provisions of Subchapter IV of Chapter 19, Wis. Stats., and therefore the Wisconsin Rapids Education Association, the bargaining agent of contract teachers, guidance personnel, librarians, special teachers and teaching principals (50% or more time teaching) in the employ of said District, is not entitled to a more timely or to a more detailed notice thereof than is the general public, and therefore the provision in the collective bargaining agreement between the parties, as set forth in Section 103.3 relates to a non-mandatory subject of collective bargaining within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act.

2. That the identity of the evaluators of teachers in the employ of the School District of Wisconsin Rapids, as set forth in Section 302.2 of the collective bargaining agreement existing between said District and the Wisconsin Rapids Education Association, relates to a non-mandatory subject of bargaining within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act.

3. That the Wisconsin Rapids Education Association is not the collective bargaining representative of non-contract, substitute or casual employees in the employ of the School District of Wisconsin Rapids within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act, and, therefore Section 802.1 of the collective bargaining agreement existing between the District and Association, where said section specifically pertains to the wages of non-contract, substitute or casual employees, relates to a non-mandatory subject of bargaining, within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, with respect to Association.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and enters the following

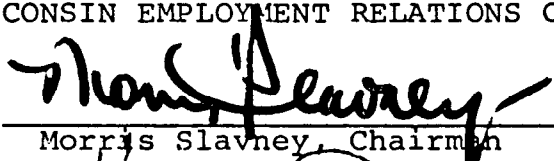
DECLARATORY RULING

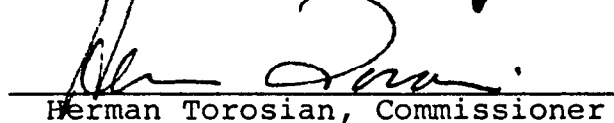
1. That since Sections 103.3, 302.2, and the pertinent portions of Section 802.1, as included in the 1978-1980 collective bargaining agreement existing between the School District of Wisconsin Rapids and the Wisconsin Rapids Education Association, relate to non-mandatory subjects of bargaining, and that the District has no duty to bargain collectively with respect to said underlined portions of the contract provisions in Findings of Fact number 3 above.


Given under our hands and seal at the  
City of Madison, Wisconsin this 12th  
day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
\_\_\_\_\_  
Morris Slavney, Chairman

  
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Herman Torosian, Commissioner

  
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Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECLARATORY RULING

Pursuant to agreement, the District and the Association, in their negotiations leading to their 1978-1980 collective bargaining agreement covering teaching personnel in the employ of the District, agreed to include three provisions in their agreement, subject to the underlined phrase or sentence being included or excluded based upon a Wisconsin Employment Relations Commission declaratory ruling regarding the mandatory or permissive nature of said provision. The provisions in issue are set forth fully in the Findings of Fact. Said provisions have been included in previous collective bargaining agreements between the parties, going as far back as 1969.

The District contends that the three provisions relate to non-mandatory subjects of bargaining. The Association claims otherwise. It is well established that the inclusion of permissive subjects in previous collective bargaining agreements does not convert such subjects to mandatory subjects of bargaining.<sup>1/</sup> The provisions in issue herein were included in the existing collective bargaining agreement in order to expedite the termination of negotiations, with the understanding that a declaratory ruling would be sought from the Commission as to the mandatory or non-mandatory nature of the subject matter of the provisions involved.

The Provision Relating to Public Board Meetings

The District contends that the provision involved relates to educational policy and school management, that the meetings involved are required by law to be noticed to the public and generally are to be open to the public, unless under a specific exemption for not holding a public meeting, and further there is no evidence that the receipt of information desired by the provision has an impact on the wages, hours or working conditions of the employees represented by the Association. The Association argues that the provision relates to matters which the District must provide under conventional labor law, the State "open meeting" law, more specifically Sections 19.81 and 19.21, Wis. Stats., and the District's past practice has been to make such information available to the Association at the times requested.

Public meetings of the District's Board cannot be considered part of the collective bargaining process, except for the final ratification or approval of a collective bargaining agreement,<sup>2/</sup> and therefore data with respect to the agenda for such meetings are not required to be furnished the Association under the provisions of the Municipal Employment Relations Act (MERA). The "notice" provisions under the "open meeting" statute, Section 19.84, Wis. Stats., does not require that the collective bargaining representative of any municipal employer receive a broader notice or more data than is given to the public. As we indicated earlier the inclusion of the provision involved in past collective bargaining agreements does not convert the subject matter into a mandatory subject of bargaining.

The Provision Relating to the Identity of Evaluators

In support of its contention that the identity of teacher evaluators concerns a non-mandatory subject of bargaining the District cites our Supreme Court decision in Beloit Education Assn. v. WERC<sup>3/</sup> wherein said court held that "proposals involving the selection and qualifications of evaluators" are non-mandatory subjects of bargaining. The Association states that the District is construing the entire provision involved in a too limited manner.

1/ City of Wauwatosa (15917) 11/77; Greenfield Education Assn. (14026-A) 10/76

2/ Sec. 19.85(3), Wis. Stats.

3/ 73 Wis. 2d 43, 242N.W. 2d 231 (1976)

The Association claims that it has stated that it does not interpret the provision as preventing the District from utilizing any person who is not in the bargaining unit to evaluate unit employees, and that the Association is merely seeking to protect bargaining unit employees from being required to perform non-bargaining unit work. Finally the Association urges that the language involved had little impact on the District's ability to effectuate school policy.

The plain reading of the provision involved does not provide for the interpretation as contended by the Association. To the contrary, on its face it clearly attempts to dictate to the District as to the personnel to be selected as evaluators. The provision falls within the above decision of our Supreme Court, and therefore we have concluded that said provision, as written, pertains to a non-mandatory subject of bargaining.

The Provision With Respect to Restriction on Pay of Non-Contract, Substitute or Casual Employees

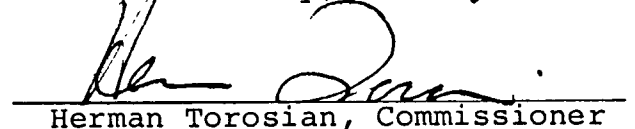
It is the position of the District that this provision directly relates to non-bargaining unit employees, and therefore it has no duty to bargain over same with the Association, since the latter organization does not represent non-contract, substitute or casual employees. The Association admits that ordinarily it has no such authority or status, however, it argues that the intent of the provision is to protect the wages of the employees in its bargaining unit, since the amount of pay to such non-unit employees is deducted from the salaries of bargaining unit employees who take such leave, and therefore has a direct impact on wages of such employees. There is no doubt that deductions from salaries of unit employees has an impact on their wages. However, the provision involved goes beyond bargaining unit employees. The plain meaning of the provision restricts the amount of pay which the District can make to non-unit employees. The Association has no standing to bargain collectively with the District over wages of non-unit personnel, and therefore the provision as written relates to a non-mandatory subject of bargaining.

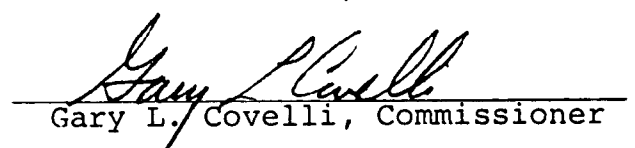
Dated at Madison, Wisconsin this 12th day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

For purposes of Chapter 227.10, the only persons who appeared at the hearing and are parties to this dispute were:

Appearing on behalf of the School District of Wisconsin Rapids

James K. Ruhly  
Melli, Shiels, Walker & Pease, S.C.  
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