

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----	:	
	:	
In the Matter of the Petition of	:	
	:	
MENASHA TEACHERS UNION, LOCAL 1166,	:	Case XXXII
WFT, AFT, AFL-CIO	:	No. 26109 MED/ARB-696
	:	Decision No. 18056
To Initiate Mediation-Arbitration	:	
Between Said Petitioner and	:	
	:	
MENASHA JOINT SCHOOL DISTRICT	:	
-----	:	

ORDER GRANTING MOTION TO DISMISS
PETITION FOR MEDIATION-ARBITRATION

Menasha Teachers Union, Local 1166, WFT, AFT, AFL-CIO, having on April 30, 1980, filed a petition requesting the Wisconsin Employment Relations Commission to initiate a Mediation-Arbitration proceeding with respect to an alleged impasse existing in collective bargaining with the Menasha Joint School District involving co-curricular pay to be applicable to teachers in the employ of the District for the period from September 1, 1978 through August 31, 1980; and prior to any further action by the Commission and on May 8, 1980 the District having filed a motion requesting the Commission to dismiss the petition for the reason that it was filed during the term of a collective bargaining agreement existing between the parties; and the parties having filed briefs in the matter by June 11, 1980 indicating, among other things, that there is no dispute with regard to the facts material to the disposition of the motion; and the Commission, being fully advised in the premises and being satisfied that the conditions for Mediation-Arbitration, as set forth in Section 111.70(4)(cm) of the Municipal Employment Relations Act, do not exist with respect to the alleged impasse involved herein, makes and issues the following

ORDER

IT IS ORDERED that the petition for Mediation-Arbitration filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this *9th* day of September, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
 Morris Slavney, Chairman

Herman Torosian
 Herman Torosian, Commissioner

Gary L. Covelli
 Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING ORDER
GRANTING MOTION TO DISMISS
PETITION FOR MEDIATION-ARBITRATION

As indicated in the preface of our Order, the Union filed a petition with the Commission requesting the initiation of a mediation-arbitration proceeding to resolve an alleged impasse existing between it and the District, involving co-curricular pay applicable to teachers in the employ of the District for the period from September 1, 1978 through August 31, 1980. The Union is the collective bargaining representative of all certified full-time and part-time teachers, including guidance counselors, librarians, traveling teachers, dean of boys, and dean of girls.

The Union and the District, at least at the time of the filing of the petition herein, were parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees described above for the period commencing September 1, 1978 through at least August 31, 1980. The parties commenced their negotiations on said agreement back in February, 1978. One of the issues in said negotiations involved a proposal with respect to the payment to teachers for co-curricular duties performed by them. On June 6, 1978, since the parties had not reached an agreement in their negotiations, the Union initiated a mediation-arbitration proceeding by filing a petition therefor with the Commission. Following the appointment of the Mediator-Arbitrator, the parties met with said Mediator-Arbitrator on October 30 and November 3, 1978, and as a result of the mediation efforts of said Mediator-Arbitrator, the parties reached an apparent agreement, which was reduced to writing and signed. In December 1978 the Commission had been advised by the Mediator-Arbitrator that the parties had resolved their impasse with respect to negotiations on said collective bargaining agreement, and as a result, the Commission on December 21, 1978 issued an Order indicating that the Mediator-Arbitrator was not required to issue an award in the matter and that therefore the mediation-arbitration proceeding was deemed closed. 1/

It should be noted that the 1978-1980 collective bargaining agreement contained provisions relating to co-curricular payments. Prior to March 5, 1979 apparently an issue arose between the Union and the District as to the intent of the provisions relating to co-curricular payments. On March 5, 1979 the Union requested the Commission to direct the Mediator-Arbitrator previously involved to resolve that dispute. On March 8, 1979 the Commission informed the parties that since the mediation-arbitration proceeding had been closed the Mediator-Arbitrator no longer had jurisdiction in the matter.

On July 2, 1979 the Union filed a complaint with the Commission alleging that the District had violated the collective bargaining agreement by failing to make proper payments pursuant to the co-curricular duty provision. Following a hearing in the complaint case the Hearing Examiner appointed by the Commission issued a decision on April 8, 1980 wherein he concluded that the District did not commit any prohibited practice, within the meaning of the Municipal Employment Relations Act (MERA), with respect to the matter, inasmuch as the parties had made a mutual mistake during their negotiations and that the parties had not reached an agreement with respect to co-curricular payments. 2/ Neither party to the complaint proceeding

1/ Menasha Joint School District, XXIV, (16537-B)
2/ Menasha Joint School District, XXIX, (17138-C)

filed a petition with the Commission, pursuant to Section 111.07(5), Wis. Stats., requesting that the Commission review the decision of the Examiner, and therefore on April 30, 1980, the Commission issued a Notice indicating that, by operation of said statutory provision, the Examiner's decision in the complaint case became the decision of the Commission as of April 28, 1980.

Also on April 30, 1980, the Union filed the petition initiating the instant proceeding, and in its petition indicated "there is not an existing collective bargaining agreement on the issue of co-curricular pay." The Union sent a copy of its petition to the District, as well as to its counsel. On May 2, 1980, the Commission received a letter from the District's counsel objecting to the petition and requesting that the Union's request for mediation-arbitration be denied. Thereafter, the Commission advised the parties that it would treat the objection of the District as a motion to dismiss the petition, and counsel for the parties were afforded the opportunity to file briefs, and they did so, with respect to the matter.

Position of the Union

The Union contends that the Commission has ruled that the parties had failed to reach an agreement with respect to co-curricular pay and that the parties have reached an impasse on that issue. It thus allows that the prerequisites for mediation-arbitration have been met, since the parties erroneously believed that they had reached agreement on co-curricular pay during negotiations when they had reached agreement on all other issues relating to their 1978-1980 collective bargaining agreement. It further argues that the error was mutual and neither party should benefit therefrom. The Union avers that the impasse is over a portion of a "new collective bargaining agreement," even though the dispute did not arise until after the conclusion of negotiations, and that therefore, under such circumstances, the Union contends that the dispute related to the negotiation of the agreement. It urges the Commission to process the mediation-arbitration petition filed herein.

Position of the District

The District argues that the mediation-arbitration provisions of MERA are not applicable to resolve the dispute involving the co-curricular pay issue, since the dispute involved does not meet the conditions set forth in the statute for the initiation of a mediation-arbitration proceeding. In support of its position the District contends that the deadlock (1) does not involve negotiations for an initial collective bargaining agreement; (2) does not relate to negotiations on a successor collective bargaining agreement; and (3) does not relate to a matter covered by a reopener provision in an existing collective bargaining agreement.

The District further claims that it has a collective bargaining agreement, which is full and complete and that the co-curricular pay issue is a proper matter for grievance arbitration. The District would have the Commission dismiss the petition for mediation-arbitration.

Discussion

It is apparent to the Commission that under the petition filed herein the Union requests the Commission to appoint a mediator-arbitrator to attempt to either mediate a resolution of the dispute involving co-curricular pay, or, absent a failure to reach an agreement thereon, to issue a binding award, selecting either the Union's proposal or the District's proposal. It is quite clear that a collective bargaining agreement existed between the parties, at least at the time of the filing of the petition herein. Said agreement contains

provisions relating to co-curricular payments. During the course of the agreement the parties apparently disagreed as to the interpretation or the application of the co-curricular pay provisions of the agreement. The Union sought a resolution of the issue by filing a complaint, alleging that the District had committed a prohibited practice in violation of the collective bargaining agreement involving co-curricular pay to teachers. That issue was fully litigated in the complaint proceeding and neither party, in that proceeding, alleged that the matter should have been resolved in grievance arbitration. Therefore, the Examiner determined the merits of the complaint. In that regard, the Examiner concluded that during their negotiations with the assistance of the mediator-arbitrator they, in fact, did not reach an accord on the meaning of the co-curricular pay provisions, and that "there existed a mutual mistake which precluded a meeting of the minds with respect to this subject which, therefore, prevented the formation of a contract."

It is important to note that neither party here contends that this conclusion was intended by the Examiner to mean that the parties failed to reach agreement on the remaining terms of the 1978-1980 collective bargaining agreement, and a careful reading of the Examiner's decision discloses no intent to so find.

The Commission has previously set forth, in a decision involving Dane County, 3/ the types of deadlocks necessary to warrant the processing of mediation-arbitration petitions. Therein the Commission stated:

The mediation-arbitration provisions contained in Sec. 111.70(4)(cm)6, Stats., are only applicable to deadlocks in 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 or with respect to negotiations over the wages, hours and working conditions to be included in a successor collective bargaining agreement where no such agreement exists and that said provisions are, therefore, inapplicable to deadlocks which may arise in other negotiations which may occur during the term of a collective bargaining agreement.

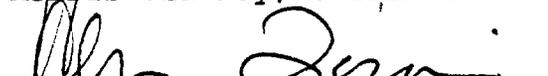
We are satisfied that the current dispute between the parties does not warrant the processing of the petition filed herein, since it does not involve an impasse under the conditions set forth in our Dane County decision. We are granting the motion of the District, and therefore we have dismissed the petition filed herein.

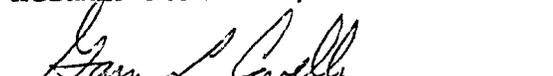
Dated at Madison, Wisconsin, this 9th day of September, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

3/ (17400) 11/79, (Aff. Dane Co. Cir. Ct., June 1980)