STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
PRAIRIE DU CHIEN EDUCATION ASSOCIATION	Case III No. 25585 MED/ARB-590
To Initiate Mediation-Arbitration Between Said Petitioner and	Decision No. 18101
PRAIRIE DU CHIEN SCHOOL DISTRICT	

Appearances:

Mr. Karl Monson, Consultant, Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Madison, WI 53703, appearing on behalf of the District and

Ms. Judith Neumann, Staff Counsel, Wisconsin Education Association, 101 West Beltline Highway, P.O. Box 8003, Madison, WI 53708.

Mr. Paul R. Bierbrauer, Executive Director, South West Teachers United, Route 1, Barber Avenue, Livingston, WI 53554, appearing on behalf of the Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CLARIFYING APPLICATION OF MEDIATION-ARBITRATION PROCEDURES

Prairie du Chien Education Association having on January 9, 1980, filed a petition requesting the Wisconsin Employment Relations Commission to initiate mediation-arbitration over a dispute which had arisen in negotiations with the Prairie du Chien School District; and the Commission having designated Timothy E. Hawks of its staff to act as Investigator; and said Investigator having met with the parties on March 6, 1980 and April 11, 1980; and the District having, by letter dated March 6, 1980, requested that the Commission conduct a formal hearing in order to determine which, if any, of the issues in dispute were subject to the mediation-arbitration procedures set out in Section 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA); and the parties having agreed that since none of the material facts were in dispute the matter should be decided on the basis of stipulated exhibits and oral arguments; and hearing having been held on April 11, 1980, at Madison, Wisconsin before Chairman Morris Slavney and Commissioner Gary Covelli wherein the parties were permitted to present exhibits, statements of position and arguments; and at the conclusion of said hearing the Commission having issued a bench decision and indicated its intent to confirm said decision with a written decision.

NOW, THEREFORE, the Commission issues the following

FINDINGS OF FACT

1. Prairie du Chien School District, hereinafter referred to as the District, is a city school district operating a public school system in Prairie du Chien, Wisconsin, where it has its offices.

2. That Prairie du Chien Education Association, hereinafter referred to as the Association, is a labor organization and is the voluntarily recognized collective bargaining representative of all employes of the District engaged in teaching, including classroom teachers, librarians, and guidance personnel, but excluding administrators, principals, director of pupil services, social workers, paraprofessionals, teacher aides, nurse, office, clerical, maintenance and

operating employes.

3. That for a number of years prior to the 1978-1979 school year the District and the Association annually engaged in collective bargaining and reached agreement upon wages, hours, and working conditions governing the employes in the bargaining unit represented by the Association and such agreements were annually reduced to writing;that although there had been, on some occasions, discussions of the possibility of negotiating a "multi-year" agreement, the parties had never agreed to a collective bargaining agreement containing a salary schedule or calendar for more than one school year.

4. That in negotiations taking place during 1978 the parties exchanged proposals concerning changes in their collective bargaining agreement to be effective during the 1978-1979 school year and reached tentative agreement in November of 1978; thereafter the Association members ratified said agreement and the District's Board, at a meeting held on December 21, 1978, ratified said agreement; that the minutes of the Board entered at said meeting reflect the following action:

> Mr. Walz and Miss Stemper, members of the Education Association, were present and reported to the board that the contract as presented was ratified by the members of the Prairie du Chien Education Association.
>
> After discussion, motion was made by Mrs. Finn seconded by Mr. White that the board ratify the salary agreement which had been tentatively approved at the negotiation meeting held November 9, 1978. Motion carried unanimously upon roll call vote.

5. That the collective bargaining agreement reached in November, 1978 was executed by the parties on December 12, 1978 and contained the following provisions relevant herein:

> 1978-79 TEACHER CONTRACT
> PRAIRIE DU CHIEN SCHOOL DISTRICT
>
> . . .
>
> PRAIRIE DU CHIEN PUBLIC SCHOOLS
> SCHOOL CALENDAR - 1978-79
>
> Wednesday, August 23 . . . . . In-Service
>
> . . .
>
> Thursday, May 31 . . . . . Last day of school - dismiss in a.m.
> High School Commencement
> 4th Quarter ends
> 180 school days - 4 in-service days
>
> . . .
>
> XIX
>
> Teacher's Salary Schedule - 1978-79
>
> . . .

XXX Payment of Special Education Teachers
Special Education teachers hired before the 1977-78 contract will continue to receive an additional $600 while they remain in a Special Education position in the Prairie du Chien system. Special Education teachers hired on the 1977-78 contract and thereafter will not receive the additional $600.

. . .

This teacher contract and salary schedule is hereby approved and adopted by the Prairie du Chien Board of Education and the Prairie du Chien Education Association.

6. That notwithstanding the above references to dates contained in said agreement, the agreement contained no specific dates referring to its duration, nor did it contain any provision with regard to the right of either party to reopen negotiations as to any specific term thereof, or to negotiations generally, or with respect to the termination of said agreement; that the Association and District agree that it was their intent in entering into said agreement that said agreement would not terminate at the conclusion of the 1978-1979 school year but would continue until replaced by a successor agreement; and that however, the District contends, contrary to the Association, that said agreement was not intended to be a "one year agreement" but was intended to be a contract of indefinite duration limited only by law, if at all.

7. That, consistent with the past practice of the parties, Eric F. Temte, Chairman of the Association's negotiating committee, on or about February 12, 1979 verbally requested that the District agree to reopen negotiations; that thereafter the parties entered into negotiations over wages, hours and working conditions to be included in a new collective bargaining agreement; that on April 5, 1979 the Association presented its initial proposals with respect thereto; that said proposals included a new salary schedule and proposed to bargain a new school calendar and contained a number of proposed changes in the existing agreement, and new proposals on items not currently contained in the existing agreement such as binding arbitration and fair share; that thereafter the District made its initial proposals in bargaining which were identified as "proposed language changes to the 1978-1979 labor agreement . . ." and were generally limited to the continuation of or changes in, provisions contained in the existing agreement; that thereafter the parties met in negotiations on numerous occasions, discussing said proposals prior to the filing of the petition herein by the Association; and that at no time during said negotiations and prior to the filing of the instant petition, did the District allege that the Association had no right to bargain with regard to any of the proposals it had made in said negotiations, nor did it contend that the above-described collective bargaining agreement precluded the Association from seeking to submit any of its proposals to mediation-arbitration.

8. That the collective bargaining agreement entered into between the parties in November, 1978 and executed on December 12, 1978, by its terms and the understanding of the parties, was intended to establish the wages, hours and working conditions for covered employes of the District during the 1978-1979 school year and was intended to continue thereafter until such time as the parties agreed on changes or additions to said agreement to be effective during the 1979-1980 school year or subsequent school years; that the terms of said agreement, including

the unwritten understanding of the parties as to its duration, do not include any limitation on the right of either party to reopen negotiations concerning any proposal dealing with wages, hours or working conditions for the 1979-1980 school year or subsequent school years; and that the proposals of the parties for changes and additions to be made in said agreement are proposals with respect to wages, hours and working conditions to be included in a new, successor collective bargaining agreement; and that, by entering into said agreement the Association did not waive its right to make any proposals for changes and additions in said agreement to be included in a new, successor collective bargaining agreement.

Based on the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That the 1978-1979 collective bargaining agreement existing between the parties contains no provision which precludes the Prairie du Chien Education Association from bargaining on any matter contained therein pertaining to mandatory subjects of bargaining for the purpose of either continuing or changing the provisions therein for incorporation in a successor collective bargaining agreement, and therefore the 1978-1979 collective bargaining agreement does not limit the subject matters to be included in a mediation-arbitration proceeding pursuant to Section 111.70(4)(cm)6 of MERA.

2. That the dispute between the parties herein involves an alleged deadlock over wages, hours and conditions of employment to be included in a new collective bargaining agreement within the meaning of Section 111.70(4)(cm)6 of the MERA, and therefore all of the proposals of the parties which relate to wages, hours and working conditions and which are mandatory subjects of bargaining are subject to the procedures set out in Section 111.70(4)(cm)6 of the MERA.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission enters the following

ORDER

That the procedures for mediation-arbitration set out in Section 111.70(4)(cm)6 of the Wisconsin Statutes are applicable to the alleged deadlock with respect to the dispute between the District and the Association over the wages, hours and working conditions to be included in a new collective bargaining agreement to succeed the existing collective bargaining agreement described in Findings of Fact No. 4, 5 and 6 above.

Given under our hands and seal at the City of Madison, Wisconsin this 30th day of September, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Gary L. Covelli
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CLARIFYING APPLICATION OF MEDIATION-ARBITRATION PROCEDURES

As noted in the preface to our Findings of Fact, Conclusions of Law and Order Clarifying Application of Mediation-Arbitration Procedures, there is no factual dispute presented herein other than the ultimate factual dispute over the question of whether the parties negotiations relate to wages, hours and conditions of employment to be included in a new collective bargaining agreement within the meaning of Section 111.70(4)(cm)6. It is undisputed that the parties have for a number of years entered into annual negotiations for the purpose of negotiating with regard to changes in their agreement. Said negotiations and the agreements reached have been, by the parties own admission, informal and unsophisticated. It is also undisputed that the parties have agreed and continue to agree that the terms of the existing agreement should continue pending the outcome of negotiations for any changes in that agreement. The District, contrary to the Association, contends that this fact evidences an intent to enter into an agreement of indefinite duration. The Association, on the other hand, contends that the latest agreement entered into was intended to cover the 1978-1979 school year only and continues only until such time as an agreement is reached for the 1979-1980 school year or possibly additional years if the parties were to agree to a multi-year contract.

The District's position is somewhat unique and difficult to articulate, however, based on its presentation at the hearing, it is the Commission's understanding that the District's position is essentially as follows:

a. The existing agreement is of indefinite duration, however, because of statutory limitations cannot exceed three years in duration. Since it was the alleged intent of the parties that the agreement would take effect upon execution on December 12, 1978, 1/ the maximum duration of the agreement would extend to December 12, 1981.

b. Under the terms of the agreement, which admittedly contains no specific reopener provision of a limited or general nature, either party may reopen and enter into mandatory bargaining over those provisions which are "dated" such as the salary schedule and school calendar. Such right of reopener according to the District must be implied from the dates provided. However, neither party may reopen for purposes of mandatory bargaining over any other subject matter covered by the agreement or proposals relating to matters not covered by the agreement. Any such bargaining including that which has taken place since February, 1979 is permissive. The District would also imply a right on the part of either party to give timely notice of its intent to terminate the agreement but neither did so in this case.

1/ The Association may dispute this claim and we make no finding as to the parties intent in this regard.

c. Consistent with its position that neither party has the right to reopen negotiations except as to "dated items" and that bargaining with regard to all other issues, whether contained in the agreement or not, is a permissive subject of bargaining, the District maintains that the Association, by its conduct of dropping certain proposals during the 1978 negotiations such as fair share, has waived its right to mandatorily bargain regarding such proposals during the "term" of the existing agreement.

In support of its theory that the agreement is of indefinite duration and has the above described effect on the parties bargaining obligations, the District drew the Commission's attention to certain facts including the following:

1. The agreement has no specific beginning date or ending date and contains no specific reopener provision;

2. The board's ratification referred to a "salary agreement" and "not a 1978-1979 collective bargaining agreement";

3. The signature page attached to the agreement refers to "this teacher contract and salary schedule"; (emphasis supplied); and

4. Even though Temte allegedly stated that he desired to reopen negotiations for a "successor to our 1978-1979 collective bargaining agreement" at the board meeting on February 12, 1979, the Association filed no notice of the commencement of negotiations as required by Section 111.70(4)(cm)1 of MERA.

The Association takes the position that the agreement in question was intended by the parties to be effective during the 1978-1979 school year and that, notwithstanding the absence of any specific dates as to its effective term or the right of either party to reopen negotiations, either party was free to seek to negotiate changes in wages, hours and working conditions to be included in a new agreement to succeed said agreement after the end of the 1978-1979 school year. Contrary to the position taken by the District, the Association contends that the dispute herein falls squarely within one of the three circumstances described by the Commission in its Dane County decision. 2/ Specifically the Association contends that the negotiations herein involve wages, hours and working conditions to be included in a successor collective bargaining agreement for a new term.

The Association also contends that the District's position herein is frivolous and argues that, because there is no good faith basis in law for its position, the Commission should require that the District pay reasonable attorney's fees in the amount of $150.

2/ Dane County (Handicapped Children's Education Board (17400) 11/79; affirmed sub nom. Dane County Special Education Association v. WERC (80-CV-0097), June 9, 1980.

At the conclusion of the hearing herein we entered a bench ruling to the effect that the existing agreement did not bar either party from making proposals on wages, hours and working conditions to be included in a new agreement whether they were covered in the existing agreement or not and that if the parties failed to reach agreement on a new collective bargaining agreement and continue negotiations under the petition, either party could be ordered to submit any of its proposals on wages, hours and working conditions which were still in dispute to mediation-arbitration. The Commission denied the Association's request for attorney's fees noting that the dispute in this case arose primarily out of the nebulous agreement under which the parties have heretofore operated rather than bad faith.

We have herein reaffirmed our ruling at the hearing. While the agreement in question has been referred to as a "salary agreement" by the District's Board and contains no specific dates of duration, the undisputed facts disclose that the parties have treated their agreements as one year agreements which by their (unwritten) terms continue until such time as a new one year agreement is reached. The provisions of Section 111.70(4)(cm)6 were clearly intended to cover negotiations such as that which have occurred prior to the initiation of this proceeding. If the Commission were to conclude, as the District would have us conclude, that the negotiations herein involved a dispute arising "during the term of an existing collective bargaining agreement" we could only do so if we were to imputeunwritten provisions to the agreement which provisions fly in the face of the parties actual conduct during these negotiations and all prior negotiations. Further, such a conclusion would require an unwarranted interpretation or extension of existing decisions of the Commission.

The District apparently relies on the Commission's decision in the Oak Creek - Franklin School District case 3/ in support of its position. In its Oak Creek - Franklin decision, which was rendered prior to the passage of the mediation-arbitration law, the Commission held that since neither party gave timely notice of its intent to terminate the agreement and both parties merely sought to modify the agreement, it continued by the terms of its duration clause and therefore certain provisions which were permissive subjects of bargaining continued in the new agreement absent an agreement that they should be excluded. Subsequently, in the Madison Schools case 4/ the Commission held that a written duration clause, having much the same effect as the unwritten duration clause in this case, did not preclude the district from objecting to the continuation of certain allegedly non-mandatory subjects of bargaining in the new agreement if the parties were unable to voluntarily agree to the terms of the new agreement and resort was had to the compulsory processes of mediation-arbitration. The allegedly permissive items of bargaining therefore continued in the Madison agreement, as they did in the Oak Creek agreement, until such time as the parties reached agreement on the terms of a new agreement or resorted to the compulsory processes of mediation-arbitration.

3/ Decision No. 14027-B, December 29, 1977. At the hearing the District's representative actually referred to our decision in a related case involving the Greenfield School District, Decision No. 14026-B, November 18, 1977.

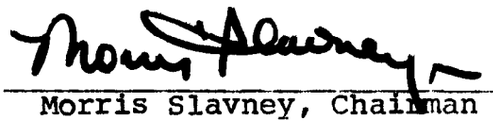
4/ Decision No. 16751, January 9, 1979.

If we were to conclude, as the District would have us conclude, that the continuation of the existing agreement precludes either party from submitting proposals dealing with "undated" mandatory subjects of bargaining we would effectively covert an agreement intended to lend stability to the bargaining relationship during negotiations for a successor agreement, into an agreement that would practically dispense with the bargaining obligation itself. We intended no such absurd result in the above cases.

Similarly, the District's related waiver argument is without merit. When one party to negotiations drops a proposal in bargaining, such conduct will, in appropriate circumstances, support a finding that such party has waived the opportunity to bargain concerning that proposal until such time as negotiations for a new agreement are properly commenced. Since we have found that negotiations could be properly commenced for a new, successor collective bargaining agreement, if follows that the Association has not waived its right to make proposals for inclusion in said agreement merely because it may have sought to include such proposals in the 1978-1979 agreement.

Dated at Madison, Wisconsin this 30th day of September, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Gary L. Covelli, Commissioner