STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO, and its affiliated LOCAL 587 Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and MILWAUKEE AREA VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT	Case CXXX No. 28951 DR(M)-216 Decision No. 19216

Appearances:

Mr. Joseph Robison, Executive Director, Milwaukee District Council 48, AFSCME, AFL-CIO, 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208, for the Union.

Quarles & Brady, Attorneys at Law, by Mr. James A. Urdan, Esq., 780 North Water Street, Milwaukee, Wisconsin 53202, for the District.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Milwaukee District Council 48, AFSCME, AFL-CIO having on November 6 and 16, 1981, filed a petition and an amended petition respectively requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling with respect to whether a certain proposal included in the amended final offer of the Milwaukee Area Vocational, Technical and Adult Education District and proposed to be submitted to mediation-arbitration for inclusion in a new collective bargaining agreement covering the wages, hours and conditions of employment of those employes of the District in the collective bargaining unit represented by the Union constitutes an appropriate "single final offer" within the meaning of Section 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA) and the parties having waived a hearing and briefs on the matter, 1/ and the Commission, having considered the matter and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 587, hereinafter jointly referred to as the Union, are labor organizations and have their offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

2. That the Milwaukee Area Vocational, Technical and Adult Education District, hereinafter referred to as the District, is a municipal employer and has its principal offices located at 1015 North Sixth Street, Milwaukee, Wisconsin.

1/ The District did, however, submit its letter of September 3, 1981 to the investigator, as a statement of its position.

3. That at all times material herein the Union has been, and is, the exclusive collective bargaining representative of certain operations, maintenance, technical and clerical employes of the District; and that in said relationship the Union and the District have been parties to a collective bargaining agreement, which by its terms covered the period from July 1, 1979 through June 30, 1981.

4. That during the course of negotiations on provisions to be included in a successor collective bargaining agreement, the Union filed a petition to initiate mediation-arbitration; that during the course of the mediation-arbitration investigation the District submitted an amended final offer containing provisions which the District proposed to be submitted to mediation-arbitration and to be included in a new collective bargaining agreement covering the wages, hours and conditions of employment of those employes of the District in the collective bargaining unit represented by the Union; that on November 6, 1981 the Union filed a petition requesting a declaratory ruling with respect to whether the District's amended final offer satisfied the requirements of Section 111.70(4)(cm)6 of MERA and that on November 16, 1981 the Union amended said petition and requested a declaratory ruling with respect to whether subsection 5 b. of the District's proposal, as set forth below, satisfies the requirements of said statutory provision: 2/

5. Salaries:

a. Except as provided in subsection b., 8% across-the-board increase in 1980-1981 salary schedule, effective July 1, 1981 and 8% across-the-board increase in 1981-1982 salary schedule, effective July 1, 1982.

b. Salary adjustments for each contract year for the classifications of clerk II, clerk III, clerk IV, clerk-stenographer I, clerk-stenographer II, clerk-stenographer III, clerk-typist II, clerk-typist III, telephone operator, and key punch operator II shall be determined by arbitration subject to the following procedures and limitations:

(i) Salaries for such classifications may be increased in any amount as determined by the arbitrator but not in excess of an increase of 8% above the salary for the same classification for the prior contract year. Salaries may not be reduced below the level for the prior contract year. The salary adjustment shall be such amount as the arbitrator shall determine to be an equitable adjustment in light of the present disparity by which the salary rates for these classifications exceed comparable rates for employees of Milwaukee County, City of Milwaukee and the Milwaukee Public Schools as well as comparable rates for employees in the private sector in the metropolitan Milwaukee area.

2/ The District first proposed the subsection 5, b. presently before the Commission as a possible amendment to the District's final offer in its September 3, 1981 letter to the investigator. The District formalized that proposal on November 25, 1981.

(ii) Such arbitration shall be conducted under the regular contract arbitration procedure except that the arbitrator shall be selected from a panel of private arbitrators furnished by the WERC.

5. That the District's subsection 5 b. proposal to determine the salaries for certain clerical classifications by submitting such issues to a contractual arbitration procedure does not constitute a "single final offer", but rather is a "voluntary impasse resolution procedure".

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

CONCLUSION OF LAW

That the District's subsection 5 b. proposal to determine the salaries for certain clerical classifications by submitting such issues to a contractual arbitration procedures does not constitute a "single final offer" within the meaning of Section 111.70(4)(cm)6 of MERA but rather constitutes a "voluntary impasse resolution procedure" within the meaning of Section 111.70(4)(cm)5 of MERA and therefore is a permissive subject of bargaining.

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

DECLARATORY RULING

That the Union has no duty to bargain collectively with the District with respect to the proposal of the District regarding a "voluntary impasse resolution procedure" to be utilized by the parties to determine the salaries of employes in certain clerical classifications and that, due to the objection of the Union, said proposal cannot be included in the final offer of the District for the purposes of mediation-arbitration within the meaning of Section 111.70(4)(cm)6 of the Municipal Employment Relations Act.

Given under our hands and seal at the City of Madison, Wisconsin this 18th day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

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Morris Slavney, Commissioner

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Herman Torosian, Commissioner

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

During the course of a mediation-arbitration proceeding on a successor agreement to the 1979-1981 collective bargaining agreement between the Union and the District, the parties exchanged "final offers" through the Commission's investigator. The Union objected to a section of the District's final offer that provided for the determination of salaries of certain clerical classifications by a contractual arbitration procedure and subsequently filed a petition for a declaratory ruling resulting in the instant proceeding.

Although both parties waived a hearing and the filing of briefs in this proceeding the District submits its letter of September 3, 1981 to the staff investigator as argument in support of its position.

In its letter of September 3, 1981 the District raised a number of procedural issues challenging the Commission's authority to review the contents of the District's final offer and to direct it to change such final offer. Those issues were adequately addressed by the Commission in an earlier proceeding involving these same parties, 3/ and for the sake of brevity the discussion in that case will not be repeated here. The Union, however, has made such issues moot by filing its objection and subsequent petition for declaratory ruling with respect to the District's final offer. Therefore, the Commission clearly has the statutory authority to hear and resolve the matter.

The District contends that its proposal, whereby the salaries of certain clerical employes would be determined by a contractual arbitration procedure, complies with the requirements of Section 111.70(4)(cm)6 of MERA as well as the Commission's interpretation of those requirements. We cannot agree with the District's contention. Said statutory provision requires the parties to submit a "single final offer" containing a single specific proposal on each unresolved issue which the mediator-arbitrator must consider in light of the statutory criteria set forth in Section 111.70(4)(cm)7 of MERA. The District's salary proposal, as set forth in subsection 5 b. of its final offer, does not meet those requirements since it is not a definite and certain wage proposal which can be measured and evaluated in light of the statutorily established criteria. Furthermore, the mediator-arbitrator could not, from the District's proposal, establish a specific wage increase for the classifications involved should the District's "final" offer be accepted by the mediator-arbitrator. Finally, the District also contends that its proposal is similar to a provision that has been in the parties agreement and thus that its proposal is simply an extension of a concept which already exists. 4/ We would only note that the provision alluded to is not before us, and further, that the Commission is not bound in this proceeding

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3/ Milwaukee Area Board of Vocational, Technical and Adult Education District No. 9 (17131-A) 8/79.

4/ Article XVIII - Saving Clause

. . .

The Board shall negotiate in good faith and attempt to reach an agreement with the Union (prior to implementation) on all matters concerning hours, wages, and working conditions in regard to the creation of a new

by the fact that the parties have previously agreed to include an allegedly similar provision in their agreement. Moreover, unlike the proposal before us, that provision pertains to the resolution of possible future impasses that might occur under specific conditions during the term of the agreement.

We have therefore concluded that subsection 5 b. of the District's "final" offer does not meet the "single final offer" requirement of Section 111.70(4)(cm)6 of MERA. Rather, subsection 5 b. provides for the resolution of an "interest" dispute, i.e. the wages of employes in certain clerical classifications to be included in a successor agreement, by a procedure other than mediation-arbitration. As we noted in our decision in City of Milwaukee, such a proposal constitutes a "voluntary impasse resolution procedure" within the meaning of Section 111.70(4)(cm)5 of MERA., and, as such, is a permissive subject of bargaining. 5/ Therefore, the Union has no duty to bargain with the District regarding that proposal and the District's final offer may not contain such a proposal so long as the Union objects to its inclusion.

Dated at Madison, Wisconsin this 18th day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

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Morris Slavney, Commissioner

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Herman Torosian, Commissioner

4/ (continued)
classification or a reclassification resulting from the creation of a new operation, a new installation, or new equipment. If the parties are unable to reach agreement on the adjustment to wages, hours, and working conditions as a result of such new equipment, operations, or installation, the Board may implement such change, provided, however, that the Union may utilize the regular grievance-arbitration procedure (except that the arbitrator shall be selected from a panel of private arbitrators furnished by the WERC) to review whether the failure of the Board to adjust the salary schedule for any affected position is arbitrary and inequitable, and if the arbitrator so determines, the remedy may include establishment of the appropriate salary schedule for the position with retroactivity to the extent determined appropriate by the arbitrator and not necessarily limited to the date of complaint.

5/ (19091) 10/81: See our discussion at pages 8-9. We also would distinguish between the District's proposal in this case and the proposal of AFSCME in City of Milwaukee regarding the purchase or rental of side loader trucks. AFSCME's proposal in that case was deemed to be a mandatory subject of bargaining since it was a specific reopener on a future issue that might arise during the term of the agreement. It was determined that a dispute arising within the context of such a reopener would be subject to mediation-arbitration pursuant to Section 111.70(4)(cm)6 of MERA, and our decision in Dane County (17400) 11/79. Unlike AFSCME's proposal, the District's proposal regards an issue now pending in negotiations on terms to be included in a successor agreement and proposes an alternative procedure to mediation-arbitration for resolving the issue.