STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 2477, IAFF, AFL-CIO, Complainant, vs. TOWN OF ALLOUEZ, Respondent.	:	Case XVII No. 29867 MP-1342 Decision No. 19711-B

Appearances:

Lawton & Cates, Law Offices, 110 East Main Street, Madison, Wisconsin 53703-3354, by Mr. Richard V. Graylow, appearing on behalf of the Complainant.

Condon, Hanaway, Wickert, Fenwick & Strong, Ltd., Attorneys at Law, 801 East Walnut, P. O. Box 1126, Green Bay, Wisconsin 54305, by Mr. David J. Condon, appearing on behalf of the Respondent.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Dennis P. McGilligan having issued his Findings of Fact, Conclusions of Law and Order in the above-entitled matter on February 9, 1983 wherein he determined inter alia that Respondent Town of Allouez had committed a prohibited practice within the meaning of Sec. 111.70.(3)(a)5 Stats. by refusing to proceed to arbitration; and Respondent Town of Allouez having on February 28, 1983 timely filed a petition accompanied by supporting written argument with the Commission seeking review of Examiner McGilligan's decision pursuant to Sec. .111.07(5) Stats., and the parties having elected not to file further written argument; and the Commission having reviewed the record and the petition for review and, concluded that the Examiner's Findings of Fact, Conclusions of Law and Order should be affirmed;

NOW, THEREFORE, it is

ORDERED 1/

That the Examiner's Findings of Fact, Conclusions of Law and Order are hereby affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 18th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

See Footnote 1 on Page 2

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person 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). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

TOWN OF ALLOUEZ, Case XVII, Decision No. 19711-B

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Examiner's Decision:

At issue before the Examiner was whether the Respondent refused to proceed to arbitration over a claimed failure to abide by the cost of living provision of the parties' 1981 agreement. The Examiner first concluded that at all times material herein there was a collective bargaining agreement in effect, and second, that the Respondent violated the terms of said agreement when it refused to submit to arbitration Complainant's grievance alleging that the Respondent violated the parties' collective bargaining agreement by not granting employes in January 1982 a wage adjustment allegedly called for by the COLA provisions of said agreement.

The Examiner further concluded that the Respondent did not commit any prohibited practices in violation of Sections 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act and that Complainant did not refuse to bargain collectively with the Respondent over a successor collective bargaining agreement and, therefore, did not commit any prohibited practices in violation of Section 111.70(3)(b)3 and (c) of the Municipal Employment Relations Act.

The Petition for Review:

Respondent petitioned the Commission for review on the basis that the Examiner erroneously (1) found ". . . that the Town refused to arbitrate the Union's grievance that the COLA clause was applicable after the term of the Labor Agreement;" (2) concluded ". . . that the collective bargaining agreement remained in full force and effect as to all of its provisions after its specified termination date; and (3) ordered ". . . the Town to cease and desist from failing to proceed to arbitration, and which required the Town to immediately proceed to arbitration regarding the disputes involving the COLA payments."

Respondent's position with respect to the Examiner's dismissal of Complainant's and Respondent's allegations, respectively, alleging violations of Sections 111.70(3)(a)1 and 4 and 111.70(3)(b)3 and (c) of the Municipal Employment Relations Act is that the Examiner should be affirmed.

Complainant did not respond to the petition for review.

Discussion:

In determining if Respondent refused to proceed to arbitration as alleged by Complainant, the Examiner was faced with a threshold issue of whether there was in force and effect a collective bargaining agreement between the parties. Based on the interpretation of Article 8 of the agreement, the Examiner concluded there was such an agreement.

Respondent's position in support of its petition for review is based primarily, if not exclusively, on its misplaced reliance on William Houlihan's 2/ May 7, 1982 letter wherein he advised the parties that the Commission would not take any further action on the Complainant's request for arbitration since the Respondent would not concur in such request claiming that the Wisconsin Employment Relations Commission lacked jurisdiction. Respondent concludes from said letter that Houlihan presumably had a copy of the parties' collective bargaining agreement at the time and by finding that there was no concurrence he thereby also found that the portion of the agreement requiring arbitration was not in force and effect and accordingly that the Wisconsin Employment Relations Commission lacked jurisdiction to proceed to arbitration. Therefore, the Respondent argues, it did not refuse to proceed to arbitration. 3/

2/ A staff member of the Wisconsin Employment Relations Commission.

3/ Respondent takes this position, notwithstanding its admission, by Answer, to Complainant's allegation contained in paragraph 6 of its complaint which alleges that "The Town refused and continues to refuse to proceed to arbitration."

This same agreement was presented to the Examiner. The Examiner concluded, in material part, as follows:

> "That on or about April 13, 1982, the Complainant filed a request to initiate grievance arbitration with the Commission concerning the above grievance; that by letter dated April 16, 1982, the Respondent refused to proceed to arbitration over the aforesaid dispute; that in said letter, the Respondent took the position that the Commission did not have jurisdiction over the dispute due to the expiration of the 1981 contract; . . . that based on the Respondent's failure to concur in the Complainant's request for girevance arbitration in the aforesaid dispute the Commission refused to take any further action in the matter; and that the Commission's decision not to process the Complianant's request for grievance arbitration over the aforesaid dispute was not based on any evidentiary hearing or on any conclusions with respect to the procedural or substantive claims concerning the grievance but rather said decision was based solely on Respondent's failure to concur in proceeding to arbitration over same." 4/
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> Further, in his Memorandum, the Examiner stated as follows:
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> ". . . It is undisputed that the Complainant filed the grievance; processed same through the grievance procedure without resolution; and requested arbitration of the dispute from the Commission. Contrary to the Respondent's contention that the Commission made a determination that it was without jurisdiction in the matter, the Commission merely failed to proceed with said request based on the Respondent's failure to concur in same.
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> In view of all of the above, the Examiner finds that by failing to proceed to arbitration on the aforesaid grievance noted in Finding of Fact Number 5, the Respondent violated Section 111.70(3)(a)5 of MERA." 5/

Said conclusion was based on the Examiner's conclusion that ". . . the Respondent refused to proceed to arbitration in the aforesaid dispute based on the mistaken belief that the Commission lacked jurisdiction over same due to the expiration of the parties' collective bargaining agreement." 6/

We agree and affirm.

Pursuant to Section 111.70(4)(c)2, of MERA, the Commission will arbitrate disputes if the disputants agree to same. The instant matter was not further processed by the Wisconsin Employment Relations Commission because there was a dispute over whether such an agreement to arbitrate existed. In other words, contrary to Respondent's perception, the Wisconsin Employment Relations Commission when requested to arbitrate a particular dispute does not in such a setting make legal determinations regarding the rights and obligations of the parties. Thus, the Commission, by letter, without hearing, and without concurrence to proceed to arbitration, will not make a jurisdictional determination based on an interpre-

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4/ Finding of Fact 8, page 3.

5/ Memorandum, page 8.

6/ Memorandum, page 9.

tation of the agreement. Where a union's request for arbitration is not concurred to by the employer, the Complainant, as here, may properly file a prohibited practice complaint alleging a refusal to proceed to arbitration in violation of Section 111.70(3)(a)5 of MERA. 7/

Having affirmed the Examiner's finding that Respondent refused to proceed to arbitration as alleged, we now turn to Respondent's claim that the Examiner erred in finding that the 1981 agreement remained in full force and effect beyond its designated termination date, December 31, 1981. It is argued that such a finding is specifically contrary to the terms of the agreement itself, which provides that it will be renewed only by the signatures of the parties.

The language at issue reads as follows:

> "The contract shall renew itself automatically under the same terms and conditions until renewal thereof, by the authorized signatures of the parties to the agreement." (Emphasis added).

Respondent argues that the Examiner must have interpreted the contract terms of "renew" and "renewal" to mean "extend" and "extension," which Respondent contends is not a proper interpretation. Renew means to begin again, to recommence, to reinstate, to repeat, to state again, Respondent contends, as contrasted to extend, which means to increase the length of, to lengthen and to enlarge the term of. Respondent argues that the contract does not provide that it is to continue as to all of its terms and conditions until it is supplanted by a new contract. Instead Respondent contends the above language means the agreement will not be renewed except by the signatures of both parties i.e., that the contract is to terminate on December 31, 1981, unless renewed by the signatures of both parties.

We disagree and affirm the Examiner's conclusion and rationale in that regard. While the Respondent correctly points out the definitional difference between "renew" and "extend," and while the language in question could have been more clearly and artfully written, the parties intent, nevertheless, is sufficiently clear.

Contrary to the effect of the Respondent's interpretation, we must give meaning, as much as reasonably possible, to all of the words of the language in issue. Thus, the sentence in issue must be reasonably interpreted to give meaning to the words "automatically" and "until." Nothwithstanding the use of the word renew instead of extend, if the parties did not intend that the expiring agreement would continue in effect automatically to cover the hiatus until a successor agreement was reached, then why did they use these words? If the signatures of both parties are required before the specific expiring agreement can be renewed, as is the Respondent's position, then there is no automatic continuance or renewal of the agreement which is contrary to the clear language in issue. Simply stated, there is nothing automatic in terms of renewal if the agreement of both parties is required. Further, if the parties intended the language to mean what is argued by the Respondent, then why did they use the word "until"? If signatures were intended to be required to cover the hiatus period, the parties could have provided same by simply using the word "by" instead of "until," which then would convey the intent now argued by the Respondent.

Lastly, had the parties intended to state that the expiring agreement could only be continued by the signatures of both paties, as contended by Respondent, they could have easily provided same by placing the word "only" after the word "thereof". They did not. Without the word "only" the language in issue simply cannot reasonably be interpreted to mean what is argued by Respondent.

Based on the above, we are convinced the most reasonable interpretation of the disputed language is that the parties intended the agreement to continue in full force and effect until a successor agreement was agreed to and signed by the parties, as was concluded by the Examiner.

7/ Contrary to Respondent's contention, the Complainant is not limited to the declaratory ruling procedure in seeking a determination of whether Respondent is obligated to proceed to arbitration under the terms of a collective bargaining agreement.

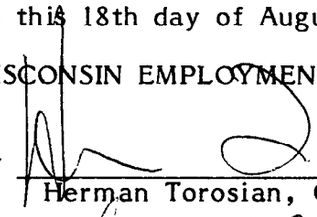
Finally, Respondent argues that the Examiner, by deciding that the 1981 collective bargaining agreement was in full force and effect in 1982, has improperly performed the arbitrator's function and pre-empted the need to arbitrate the Complainant's grievance over the applicability of the COLA clause by deciding that there was a multi-year agreement such that it would necessarily follow that the COLA clause does apply and was violated.

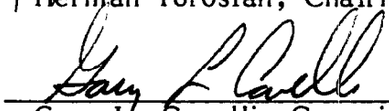
In our view the Examiner did not improperly exercise the jurisdiction of the Commission in this matter. It was necessary for the Examiner to determine whether the agreement was in effect during the time the alleged violation thereof took place in order to determine the central question raised by the complaint in this case: has the Respondent violated its promise to arbitrate disputes concerning the meaning and application of the agreement? Without determining the term of the agreement, the Examiner could not have determined the existence or non-existence of a duty to arbitrate the alleged agreement violation involved. Moreover, we note that the Respondent at no point in the proceedings before the Examiner requested that the Examiner defer the interpretation of the contract duration provision to arbitration. Rather, the Respondent refused to proceed to arbitration on the grievance and thereby refused to proceed to arbitration with respect to any substantive arbitrability defense that it may have had to the grievance, as well.

For the foregoing reasons, we have affirmed the Examiner's decision in this matter in all respects.

Dated at Madison, Wisconsin this 18th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner