STATE OF WISCONSIN : CIRCUIT COURT : KENOSHA COUNTY

GATEWAY TECHNICAL EDUCATION ASSOCIATION and WISCONSIN EDUCATION ASSOCIATION COUNCIL,

Petitioners,

-vs-

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent,

-vs-

GATEWAY VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT, and GATEWAY EDUCATION DISTRICT BOARD and GATEWAY FEDERATION OF TEACHERS, LOCAL 1924, WFT, AFT, AFL-CIO,

Intervenors.

DECISION

File No. 84-CV-1306

Honorable Bruce E. Schroeder

Decision No. 20209-B

This matter comes before the Court on a request for administrative review pursuant to Section 227.15 Wis. Stats. It appears from the record that the Gateway Federation of Teachers (GFT) was certified as the exclusive bargaining representative of the instructional personnel employed by the intervenor Gateway VTAE District (Board) subsequent to its certification on June 29, 1976. As a result of that status, GFT and the Board entered into a collective bargaining agreement covering these personnel in 1981 which contained a term provision reaching from July 1, 1980 thru June 30, 1982. The agreement contained a provision that authorized a fair-share deduction upon favorable vote by 60 per cent of the personnel. A referendum on the fair-share provision of the contract

was conducted on April 29, 1981 and by certification of May 14, 1981, approval of the necessary personnel was noted and the fair-share agreement was implemented.

Subsequently, the Wisconsin Education Association Council (WEAC) petitioned for an election to determine the employee-desired bargaining agent. An election was held and by certification of March 16, 1982, WEAC was certified as the collective bargaining representative. WEAC then notified the Board that the collective bargaining business should be conducted in the name of WEAC by the GAteway Technical Education Association (GTEA) and further requested that all fair-share monies collected by the Board pursuant to the fair-share agreement then existing be forwarded to the GTEA. The Board refused stating that the funds would be collected and escrowed until it could be determined which employee group was lawfully entitled to the receipt of the funds. There is no doubt that subsequent to the certification date and prior to the expiration of the then-existing agreement, the WEAC and GTEA processed a number of grievances under the grievance-arbitration procedure and that considerable time and expense were devoted to these matters along with other representative business. Because the Board refused to pay over the monies which it was holding in escrow, the WEAC and GTAE filed a complaint of prohibited practice against the Board alleging various violations of state municipal employment law. The hearing was conducted and the complaint was dismissed on the basis that "the provisions related to the fair-share agreement were extinguished and not enforceable by the Wisconsin Education Association Council . . . " This decision was affirmed by the Wisconsin Employment Relations Commission with a modification

not here relevant.

This petition was filed with the court timely alleging that the Commission ruling was contrary to law.

As stated by the petitioner, the issue is whether a newly certified bargaining agent, obligated to enforce an existing contract, is entitled to fair-share monies authorized to be paid to it under that contract.

The basis for the decision of the hearing examiner, which was subsequently affirmed by the commission, was that the fair-share provisions of the agreement between GFT and the Board were extinguished and rendered unenforceable by the results of the 1982 certification election. The court approaches this conclusion cognizant of the established and commanding principle that interpretations of administrative agencies charged by law with applying statutes within their domain are entitled to "great weight" and that such determinations are to be upset by courts only when "irrational." Arrowhead United Teachers vs. WERC, 116 Wis. 2d 580, 593, 342 NW 2d 709 (1984). This standard applies when the agency's interpretation reflects a long continued, substantially uniform and unchallenged practice or position. If the question is one of first impression, the agency's interpretation is entitled only to due weight. Whether the question is one of first impression depends not on whether the agency has previously dealt with the situation in the past, but rather whether it has developed expertise through similar general determinations about application of the statute. Arrowhead, supra. Analyzing the issue in this case, the court is satisfied that the commission has indeed dealt with this type of situation in the past and that its expertise should be entitled to great deference from the court. Indeed, two

cases cited in the examiner's initial decision and which were noted also by the commission dealt with the very issue here in question. In City of Green Bay, Decision Number 6658, (11/63) and Merton Joint School District No. 9, Decision Number 12828, (6/74), the commission held that a newly elected bargaining representative which replaces another representative during the term of an existing agreement is obliged to enforce and administer the substative provisions of the agreement which inure to the benefit of the employees but that "any provision which runs to the benefit of the former bargaining agent will be considered extinguished and unenforceable." The examiner and the commission viewed the fair-share provision as a union security device and that it therefore was extinguished by the replacement of GFT as the bargaining agent. WEAC argues that no authority exists for the proposition that the fair-share agreement is extinguished by operation of law and further contends that the fair-share provision is not a union security provision. The court is of the opinion that WEAC is incorrect in both assertions. First, the Green Bay and Merton cases both clearly establish the precept that if indeed the fair-share provision is a union security device which by definition would run to the benefit of the union, it would extinguish by operation of law at the time of the replacement. Second, the court is of no doubt that the commission rightly concluded that the fair-share provision is a union security device. While the Supreme Court in Milwaukee Federation of Teachers vs. WERC, 83 Wis. 2d 588 (1978) may have distinguished fair-share agreements from "traditional union security devices," "substantially different" from the exclusive dues checkoff, they nevertheless remain union security devices which are intended to preserve the right of the employees to bargain

collectively through their chosen representatives. As such, they extinguish "by operation of law" upon the replacement of a collective bargaining agent by another. The reliance of the petitioners on the case of Hamilton School District (WERC), (Decision Number 15765 et Seq., 8/77 is in no respect inconsistent with the decision here made by the Employment Relations Commission. Hamilton involved a case where four employee groups merged into one and retained their officers and national affiliations. The commission determined that this was merely a merger and did not result in extinguishment of the provisions running in favor of the labor orgainization. That determination is surely distinguishable from the situation here where one bargaining agent has been replaced by a rival orgaization. The court sees no inconsistency between the decision in Hamilton and this case and therefore concludes that indeed the commission's interpretation in this area has been long-continued, substantially uniform and apparently generally unchallenged either by parties or the courts. It therefore qualifies for entitlement to great weight and the finding of the commission in this case will be disturbed only upon a finding that its interpretation is irrational.

Analysis of the case demonstrates that there is in fact no irrationality here. While the court might come to a conclusion different from that of the commission, it cannot be successfully asserted that the commission interpretation is lacking in merit. The commission has enumerated in its decision the factors it considers in these replacement cases and based upon those factors has reached the conclusion that the fair-share monies ought not be paid over to the petitioner. While convincing arguments can be advanced that a better policy would be to allow the petitioner to collect the funds, the court cannot find that the commission has made findings based upon improper

criteria. Indeed, one of the reaons why employees might reject a former bargaining representative and replace it with a new one is that the dues established under the collective bargaining fair-share provision were too high and it would be most inappropriate to reward a newly-certified bargaining agent by paying them the dues which resulted in their installation.

The decision of the examiner and the Wisconsin Employment Relations Commission are based upon a rational and consistent policy properly applied to the facts in this case. Accordingly, the decision of the WERC is hereby affirmed.

Done at the City and County of Kenosha this 9th day of November 1985.

BY THE COURT:

Bruce E. Schroeder
Circuit Court Judge
Branch 3

BES:mjh