

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
BOARD OF EDUCATION OF THE
WHEATLAND CENTER SCHOOL
Requesting a Declaratory Ruling
Pursuant to to Section 111.70(4)(b),
Wis. Stats., Involving a Dispute
Between Said Petitioner and
WHEATLAND CENTER EDUCATION
ASSOCIATION

Case IV
No. 31926 DR(M)-320
Decision No. 21972

Appearances:

Mulcahy and Wherry, S.C., Attorneys and Counselors at Law, 815 East Mason Street, Suite 1600, Milwaukee, Wisconsin 53202-4080, by Mr. Robert H. Buikema, on behalf of the Board.
Mr. Michael L. Stoll, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, on behalf of the Association.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER DISMISSING PETITION FOR DECLARATORY RULING

On July 15, 1983, the Board of Education of the Wheatland Center School filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., regarding its duty to bargain with the Wheatland Center Education Association over certain portions of the parties' 1982-83 collective bargaining agreement between those parties. The matter was thereafter held in abeyance pending the parties efforts to settle their dispute. Through a January 27, 1984 letter, the Board notified the Commission that the parties had reached an agreement on a 1983-1984 collective bargaining agreement. The Board further informed the Commission that the parties, as a part of their 1983-1984 contract, had agreed that certain language from the 1982-1983 contract would only be included in the 1983-1984 agreement if held mandatory by the Commission in the instant proceeding. Through an April 10, 1984 letter, the Association notified the Commission that it did not believe that the declaratory ruling petition should continue to be processed. The Association thereafter filed a Motion to Dismiss the petition and the parties filed written argument as to the merits of said Motion. Having considered the parties positions, the Commission makes and issues the following.

FINDINGS OF FACT

1. That the Board of Education of the Wheatland Center School, herein the Board, is a municipal employer which operates a public school system and has its principal offices at 6606 - 368th Avenue, Burlington, Wisconsin 53105.
2. That the Wheatland Center Education Association, herein the Association, is a labor organization which functions as the exclusive collective bargaining representative of certain professional employees of the Board and has its principal offices at 202 East Chestnut Street, Burlington, Wisconsin 53105.
3. That the Board and the Association were parties to a 1982-1983 collective bargaining agreement which established the wages, hours and conditions of employment of those professional employees employed by the Board and represented by the Association.
4. That on July 15, 1983 the Board filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., regarding the Board's duty to bargain with the Association as to certain portions of the parties' existing 1982-1983 collective bargaining agreement.
5. That during bargaining after the filing of the petition for declaratory ruling, the parties reached agreement on a successor collective bargaining

agreement having a term of August 15, 1983 through August 14, 1984. A portion of said agreement specified:

All alleged permissive subjects of bargaining will be removed from the 1983-84 contract temporarily. . . .

WERC Declaratory Ruling Proposal

When the WERC ruling is issued we will:

1. immediately delete from the contract all issues declared permissive;
2. add the issues declared mandatory, as they are now worded, onto the contract as addendum #1;
3. negotiate in 1984-85 the issues ruled mandatory by the WERC.

Procedure:

1. type the contract minus the WERC issues in question.
2. when the ruling is issued, the mandatory issues will be added as addendum #1 to the 1983-84 contract.

Pursuant to the above-quoted provision, the parties' 1983-1984 contract does not include the provisions challenged by the Board in its declaratory ruling petition.

6. That after the ratification of the parties' 1983-1984 contract, the Association notified the Board that the Association (1) unconditionally agreed to the deletion from the 1983-1984 agreement of the language challenged by the Board in its declaratory ruling petition; (2) was not proposing and would not propose that the Board bargain over the inclusion of any of the challenged language during bargaining over a successor to the 1983-1984 agreement; and (3) does not contend that the Board has any present duty to bargain over those challenged provisions.

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

CONCLUSION OF LAW

That there is no "dispute" within the meaning of Sec. 111.70(4)(b), Stats., between the Board of Education of the Wheatland Center School and the Wheatland Center Education Association with respect to the parties duty to bargain over the language challenged in the Board's July 15, 1983 petition for declaratory ruling.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

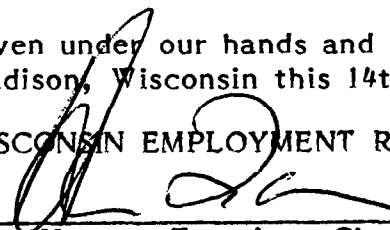
ORDER 1/

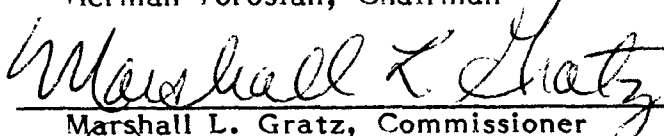
That the Board's petition for declaratory ruling be, and the same hereby is, dismissed.


Given under our hands and seal at the City of
Madison, Wisconsin this 14th day of September, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

(See Footnote 1 on Page 3)

- 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER
DISMISSING PETITION FOR DECLARATORY RULING

The issue for the Commission is whether there is a "dispute . . . concerning the duty to bargain" within the meaning of Sec. 111.70(4)(b), Stats., which warrants the issuance of a declaratory ruling and, even if no such "dispute" exists, whether the Commission should nonetheless issue a declaratory ruling on the challenged language because of the provision contained in the parties' 1983-1984 contract.

POSITIONS OF THE PARTIES

In support of its Motion to Dismiss, the Association argues that the Board's right to obtain a declaratory ruling under Sec. 111.70(4)(b), Stats. exists only with respect to those situations in which there exists a "dispute" between the Association and the Board over the "duty to bargain". The Association asserts that there is no such dispute here because: (1) the Association has notified the Board that it is willing to allow the parties' 1983-1984 contract to continue without the inclusion of any the provisions challenged by the Board; and (2) the Association is not proposing and will not propose that the Board bargain over the inclusion of any of the challenged provisions during negotiations over a successor to the 1983-1984 collective bargaining agreement. Given the absence of any "dispute" the Association asserts that the Board has no legal right to obtain a declaratory ruling from the Commission and the Commission has no statutory authority to issue such a declaratory ruling. The Association further argues that dismissal of the Board's declaratory ruling petition would not violate the portion of the parties' 1983-1984 agreement which deals with the instant petition, since the Association's agreement to permanently delete the contract provisions challenged as permissive by the Board has the result of giving the Board the entire and complete benefit of the parties agreement with respect thereto. The Association asserts that the Board will not be harmed or prejudiced in any way by the dismissal of the petition and that continued litigation of the petition is unnecessary and will needlessly waste resources of the parties and the Commission.

The Association submits that this case is governed by the analysis and decision of the Commission in Menomonee Falls School District, Dec. No. 21199 (WERC, 11/83). As there is no "dispute", and since the parties' 1983-1984 agreement cannot bestow jurisdiction upon the Commission to issue a declaratory ruling where a "dispute" does not exist, and since the Board has obtained all of the benefits which it could conceivably receive through enforcement of the parties' agreement, the Association respectfully requests that the Commission dismiss the Board's petition for declaratory ruling.

Initially, the Board contends that there is indeed a "dispute" with respect to the parties duty to bargain over the challenged provisions. It argues that if the Association chooses not to include challenged provisions in a successor collective bargaining agreement but no decision is rendered as to the mandatory/permissive nature of the provisions at issue, a "dispute" remains between the parties as to the mandatory/permissive nature of the provisions and the parties' future obligations regarding said issues. The Board submits that a declaratory ruling is necessary to clarify the status of the deleted provisions and that, absent a ruling, the parties are left with no way to determine their respective continuing rights and responsibilities as to the challenged language.

The Board further argues that if the Commission were to dismiss the petition, the Commission would in essence be denying enforcement of an agreement to one of the parties thereto. Thus, even if the Commission were to conclude that there is no "dispute" pursuant to the reasoning in the Menomonee Falls decision, the Board submits that the Commission should not dismiss the petition. The Board submits that refusal by the Commission to enforce the parties agreement will inhibit voluntary settlement of collective bargaining agreements and may compel employers to take the position that they will not collectively bargain during the pendency of declaratory ruling petitions. The Board therefore requests that the Commission deny the Association's Motion to Dismiss.

DISCUSSION

The undisputed facts presented to us make it clear that there is no "dispute" between the parties concerning their present duty to bargain over the language challenged in the Board's petition for declaratory ruling. The Association has agreed not to pursue inclusion of the challenged language by operation of the parties' 1983-1984 agreement and not to propose inclusion of the challenged provisions during negotiations over a successor contract. Thus we are satisfied that there presently is no dispute between the parties as to any duty to bargain over the former contract language in question. As the Association has argued, in Menomonee Falls, supra, we concluded that where there is no dispute between the parties as to their present duty to bargain on any subject, there is no "dispute" which warrants exercise of the Commission's jurisdiction under Sec. 111.70(4)(b), Stats. to issue a declaratory ruling.

More difficult, in our view, is the question of whether, despite the absence of such a "dispute", we should nonetheless procede to issue a declaratory ruling because of the specific terms agreed upon by the parties as a part of their 1983-1984 collective bargaining agreement.

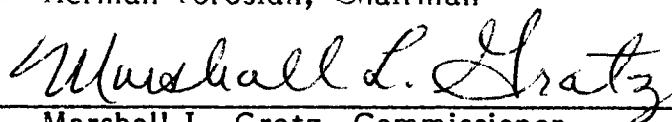
While Sec. 111.70(4)(b), Stats., requires the presence of a "dispute", Sec. 227.06 Stats. gives the Commission discretionary jurisdiction to issue declaratory rulings as to the statutes it administers. 2/ If we were satisfied the parties 1983-1984 agreement clearly contemplated issuance of a declaratory ruling under all circumstances, including those before us herein, we would be willing to entertain and decide the merits of the dispute raised by such a Sec. 227.06 petition. 3/ Although arguably wasteful of scarce resources such a response would serve the overriding interest of enforcing a valid agreement reached by the parties. However, in this case, we do not interpret the parties agreement as clearly contemplating issuance of a declaratory ruling under the instant circumstances. We conclude the parties struck a bargain premised upon Commission resolution of a dispute which no longer exists and, in the absence of which, no agreement upon the need for a decision would have been reached. We would therefore decline to exercise our Sec. 227.06 jurisdiction regarding the matters at issue herein even if a petition were filed.

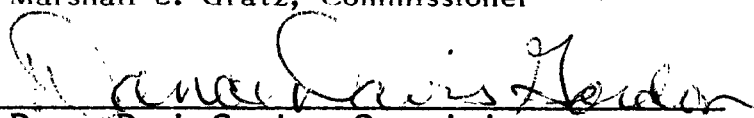
In any event, having concluded that a declaratory ruling under Sec. 111.70(4)(b), Stats. is not warranted in these circumstances, we have granted the Association's Motion to Dismiss.

Dated at Madison, Wisconsin this 14th day of September, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 2/ Milwaukee Board of School Directors, Dec. No. 17504 (WERC, 12/79) and Menomonee Falls, supra. While the Commission did not exercise its discretionary jurisdiction in these cases, it did so in Ashwaubenon School District No. 1, Dec. No. 14774-A (WERC, 10/77).
- 3/ For example, the parties could have specifically agreed to jointly request a declaratory ruling and to continue to pursue that request regardless of subsequent developments in their bargaining.