

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MILWAUKEE TEACHERS' EDUCATION
ASSOCIATION

Requesting a Declaratory Ruling
Pursuant to Sec. 111.70(4)(b),
Wis. Stats., Involving a Dispute
Between Said Petitioner and

MILWAUKEE BOARD OF SCHOOL
DIRECTORS

Case 167
No. 35462 DR(M)-381
Decision No. 23208

Appearances:

Perry, First, Reiher, Lerner and Quindel, S.C., Attorneys at Law,
by Mr. Richard Perry, 1219 North Cass Street, Milwaukee,
Wisconsin 53202-2770, for the Milwaukee Teachers' Education
Association.

City Attorney, City of Milwaukee, by Assistant City Attorney
Stuart S. Mukamal, 800 City Hall, 200 East Wells Street,
Milwaukee, Wisconsin 53202-3551, for the Milwaukee Board of
School Directors.

ORDER DENYING MOTION TO STRIKE AND MANDATING
COMPLIANCE WITH ERB 18.02(4) AND ERB 18.03

On August 8, 1985, the Milwaukee Teachers' Education Association (MTEA) filed a petition pursuant to Sec. 111.70(4)(b), Stats., with the Wisconsin Employment Relations Commission seeking a declaratory ruling with respect to certain matters arising during collective bargaining between MTEA and Milwaukee Board of School Directors (Board). The Board filed a Motion to Strike with the Commission on September 12, 1985, seeking dismissal of certain portions of the MTEA petition. The parties filed written argument as to the Motion, the last of which was received on October 9, 1985. Although the parties have discussed possible informal resolution of the issues in this proceeding as a part of ongoing mediation efforts, they have been unable to reach agreement in that regard. Having considered the parties' positions and the applicable statutes and administrative rules, the Commission makes and issues the following

ORDER

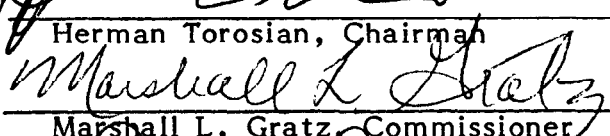
1. That the Motion to Strike is hereby denied.
2. That as to the matters subject to the Motion to Strike, on or before January 31, 1986, MTEA shall comply with ERB 18.02(4) by placing a statement in support of petition in the U. S. mail addressed to both the Commission and the Board.
3. That as to the matters subject to the Motion to Strike, on or before February 24, 1986, the Board shall comply with ERB 18.03 by placing a statement in response to petition in the U. S. mail addressed to both the Commission and the MTEA.
4. That a hearing in this matter shall be held beginning on March 3, 1986, as further provided in the Notice of Hearing issued in the matter.

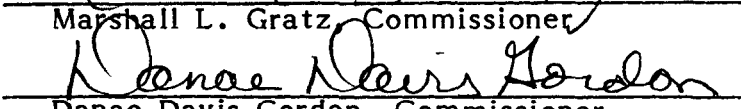
Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of January, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO STRIKE AND MANDATING
COMPLIANCE WITH ERB 18.02(4) AND ERB 18.03

The Petition

In its August 6 petition MTEA asserts that during bargaining with the Board over a successor to the teacher contract which expired June 30, 1985, disputes concerning the duty to bargain arose with respect to the following matters.

1. 49 provisions of the expired contract which the Board claims are permissive subjects of bargaining.
2. 66 MTEA proposals which the Board claims are permissive subjects of bargaining whereby MTEA seeks changes from the language of the expired contract.
3. 2 Board proposals which MTEA claims are permissive or illegal subjects of bargaining whereby the Board seeks changes from the language of the expired contract.
4. The scope of the Board's obligation to bargain over the decision to self insure group health and dental insurance benefits.

The Motion to Strike

On September 12, 1985, the Board filed a Motion to Strike certain portions of the MTEA declaratory ruling.

As to the portion of the declaratory ruling dealing with the provisions of the expired agreement, the Board moves that 29 of the 49 provisions be stricken because:

1. MTEA has not complied with ERB 18.02(3)(e) because it has not provided "a clear and concise statement . . . as to whether or not the parties are under a duty to bargain on the subject or subjects set forth in the petition."
2. MTEA has not complied with ERB 18.02(4) because it has not provided a "clear and concise statement of the facts and arguments relied upon by the petitioner in support of the position taken by the petitioner."
3. The MTEA's contention that the Commission has not previously ruled on the mandatory or permissive nature of the proposal does not form a sufficient basis for invocation of the Commission's jurisdiction under Sec. 111.70(4)(b), Stats.
4. Further processing of the petition as to the 29 proposals referenced in this portion of the Motion would be a waste of the Commission's and Board's resources and would impair the parties' ability to bargain in good faith for a successor contract.

As to the portion of the declaratory ruling dealing with new MTEA proposals, the Board moves that 63 of the 66 proposals be stricken. The Board reiterates the arguments which are recited above with reference to the provisions of the expired agreement and further asserts that this portion of the petition was filed in bad faith because MTEA has admitted to the Board that the proposals are permissive. In this regard, the Board also contends that the MTEA is aware that the subject matter of the MTEA proposals has been determined by numerous prior Commission rulings to be permissive and/or illegal subjects of bargaining.

As to the portion of the declaratory ruling dealing with Board proposals and the self-insurance issue, the Board moves that one of the two alleged proposals and the self-insurance issue be stricken. The Board asserts that MTEA has failed to comply with ERB 18.02(3)(d) because it has not recited the text of any alleged Board proposal or the nature of any "dispute" between the parties. The Board

contends that absent a proposal or a "dispute," the Commission lacks jurisdiction to issue a declaratory ruling. Lastly, the Board reiterates its contention that further processing would constitute a waste of time and resources.

MTEA Response to Motion

In response to the Board's contention that it has failed to comply with ERB 18.02(3)(e), MTEA asserts that it has in fact complied. It argues that where, as here, the Board asserts certain proposals are permissive and MTEA does not agree with that assessment, there continues to be a duty to bargain concerning said proposals, absent a Commission ruling that the proposals are permissive. Given the foregoing, MTEA alleges that its statement in the petition that:

The MTEA takes the position that the mandatory or permissive nature of the foregoing has not been determined by the Commission and requests a Commission decision.

does comply with applicable Commission rules.

MTEA disputes the Board's contention that the Commission has already determined that certain MTEA proposals are permissive. It argues that the Board argument regarding the waste of resources which would be caused by further processing of the petition should be rejected as it is supported only by the previously enunciated invalid propositions of the Board.

As to the Board's contention that MTEA has acknowledged to the Board that certain proposals are permissive, MTEA argues that MTEA's position is that set forth herein and not the out-of-context bargaining table comment relied on by the District.

As to the self-insurance issue, MTEA contends that during bargaining the Board has asserted that the decision to change from a private insurance carrier to a system in which the Board self-insures is a permissive subject of bargaining. MTEA disagrees and argues that the parties clearly do have a dispute as to the duty to bargain over the issue of self-insurance.

As to the Board's contention that one of the two alleged Board proposals should be stricken because no Board proposal is recited, MTEA sets forth the specific Board proposal which it argues is an illegal subject of bargaining. Asserting that the Board has taken the position that the proposal is mandatory, MTEA contends that there is a clear dispute between the parties as to whether the proposal is a mandatory subject of bargaining.

Discussion

Section 111.70(4)(b), Stats., ERB 18.02, and ERB 31.11(1)(a) clearly establish the right of MTEA to seek a declaratory ruling from this Commission to resolve the dispute between the parties over the scope of the duty to bargain as to certain matters. 1/ The Board's claim that processing of the MTEA petition

1/ Section 111.70(4)(b), Stats., provides:

(b) Failure to bargain. Whenever a dispute arises between a municipal employer and a union of its employees concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for a declaratory ruling. The decision of the commission shall be issued within 15 days of submission and shall have the effect of an order issued under s. 111.07. The filing of a petition under this paragraph shall not prevent the inclusion of the same allegations in a complaint involving prohibited practices in which it is alleged that the failure to bargain on the subjects of the declaratory ruling is part of a series of acts or pattern of conduct prohibited by this subchapter.

(Footnote continued on Page 4)

wastes resources and impairs bargaining must be rejected given the right to a ruling referenced above. We are similarly unpersuaded by contentions that the petition was filed in bad faith. As to the Board's argument that the subject matter of certain proposals has previously been ruled upon by the Commission thus removing the need for decision, we note that it is the meaning of the words actually utilized in a proposal and not its generic subject matter which is determinative. We therefore reject these Board arguments in support of the Motion to Strike.

We agree with the Board that MTEA has failed to comply with ERB 18.02(4) as to the matters which are subject to the Motion to Strike. However, at least at this point in the processing of MTEA's petition, it is our view that said non-compliance does not warrant depriving MTEA of its right to a decision. Nonetheless, because compliance with ERB 18.02(4) is important to the interests of the Commission and the parties in an efficient and productive hearing and in a decision which is as complete, correct and enduring as possible, 2/ we have ordered MTEA to comply with ERB 18.02(4) on or before January 31, 1986. A failure by MTEA to comply with our order in that regard may result in MTEA being deemed to have waived or forfeited its right to a ruling as to any matters as to which it remains in non-compliance after January 31, 1986. The Board will have until February 24, 1986, to file its statement in response as mandated by ERB 18.03.

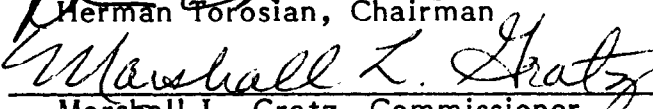
The obvious legislative intent for prompt resolution of duty to bargain disputes, as evidenced by Section 111.70(4)(b), Stats., has caused us to schedule hearing for March 3 - 7, 1986. We are satisfied that this time frame will provide both parties with the opportunity to adequately prepare. While we are aware that the parties are currently scheduled to litigate other matters before this agency during February, we are confident that if the parties' needs for preparation time require postponement of the litigation of these other disputes, such postponements will be requested and granted.

Dated at Madison, Wisconsin this 17th day of January, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

1/ (Continued from Page 3)

ERB 18.02 provides:

ERB 18.02 Petition. (1) Who May File. A petition for the determination of a dispute concerning the duty to bargain on any subject may be filed by a municipal employer or by a labor organization which has been certified or recognized as the exclusive collective bargaining representative of municipal employees.

ERB 31.11(1)(a) provides:

(a) During negotiations, mediation or investigation. Should either party, during negotiations or during commission mediation or investigation raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, either party may commence a declaratory ruling before the commission pursuant to s. 111.70(4)(b), Stats., and chapter ERB 18, Wis. Adm. Code seeking a determination as to whether the proposal or proposals involved relate to a non-mandatory subject or subjects of bargaining.

2/ See, Richland County, Dec. No. 23103 (WERC, 12/85).