STATE OF WISCONSIN CIRCUIT COURT RACINE COUNTY

RACINE EDUCATION ASSOCIATION,

Petitioner,

v.

Case No. 86-CV-2733

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Decision Nos. 23380-A
23381-A

Respondent.

NOTICE OF ENTRY OF DECISION AND ORDER

TO: Robert K. Weber
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PLEASE TAKE NOTICE that a decision and order, of which a true and correct copy is hereto attached, was signed by the court on the 27th day of August, 1987, and duly entered in the Circuit Court for Racine County, Wisconsin, on the 27th day of August, 1987.

Dated at Madison, Wisconsin, this 31st day of August, 1987.

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STATE OF WISCONSIN : CIRCUIT COURT : RACINE COUNTY
BRANCH II

RACINE EDUCATION ASSOCIATION,

Petitioner,

-vs-

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Memorandum Decision and ORDER

Case No. 86-CV-2733

Decision Nos. 23380-A
23381-A

INTRODUCTION

This matter comes before the Court on a Petition for Review brought by the Racine Education Association (REA) pursuant to Wisconsin Statutes, Section 227.52 to review the November 18, 1986, decision of the Wisconsin Employment Relations Commission (WERC) declaring that an hours of work proposal by the Racine Unified School District (Unified constituted a mandatory subject of bargaining within the meaning of Wisconsin Statutes, Section 111.70(1)(d).

STATEMENT OF FACTS

Unified and REA failed to reach agreement on a contract for the 1985-86 school term. REA petitioned for final offer binding arbitration under Wisconsin Statutes, Section 111.70(4)(cm). Proposals in a final offer are limited to items which constitute mandatory subjects of bargaining. Either party may challenge any part of the other's proposal as constituting a non-mandatory subject of bargaining, and

therefore, not properly included in a final offer. The WERC then makes a determination pursuant to Wisconsin Statutes, Sections 111.70(4)(cm)(6)(g) and 111.70(4)(b) and declares the questioned proposal either mandatory or non-mandatory. The WERC declared the following hours of work proposal by Unified constituted a mandatory subject of bargaining.

> "All teachers are expected to be in their respective rooms or assigned places at least fifteen (15) minutes before the time for the tardy signal. Teachers are expected to be present and performing their teaching duties during the time that pupils are required to be there according to the hours of school as presently established by the Board. Teachers shall be available for a period of at least fifteen (15) minutes after regular pupil dismissal."

ISSUE

Is there a rational basis for the WERC declaration that Unified's hours of work proposal is a mandatory subject of bargaining?

DISCUSSION

The appropriate standard of review is set forth by the Wisconsin Supreme Court in West Bend Education Association v. WERC, 121 Wis. 2d 1, 357 N.W. 2d 534 (1984) at pages 12-14.

> "The statutes, as well as the cases, caution that under certain circumstances a court should defer to the agency's conclusions of law. Sec. 227.20(10), Stats. 1979-80, provides that upon review of an agency's determination, 'due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved. . . .' Our cases similarly recognize that if the administrative agency's experience, technical competence, and specialized knowledge aid the agency in its interpretation and application of the statute, the agency's conclusions are entitled to deference by the court. Where a legal question is intertwined with factual determinations or with value

or policy determinations or where the agency's interpretation and application of the law is of long standing, a court should defer to the agency which has primary responsibility for determination of fact and policy. Nottelson v. ILHR Dept., 94 Wis. 2d 106, 115-118, 287 N.W. 2d 763 (1980). Thus, our cases describe various degrees of authoritative weight which may be given to an agency's interpretation and application of a law, depending on the circumstances.

In this case the question of law, which is the bargaining nature of the proposals, is intertwined with facts, values and policy. WERC, in contrast to the courts, has special competence in the area of collective bargaining and has developed significant experience in deciding cases involving the issues of mandatory bargaining. Under our cases, these factors argue in favor of giving 'great weight' to WERC's rulings on the bargaining nature of the proposals. Consequently we should affirm WERC's conclusions regarding the bargaining nature of proposals if a rational basis exists for them or, to state the rule in another way, if the agency's view of the law is reasonable even though an alternative view is also reasonable. This court should not apply the balancing test ab initio to determine the mandatory bargaining nature of the proposals in issue." (Footnotes omitted).

This standard was reaffirmed in School Dist. of Drummond v. WERC, 121 Wis. 2d 126, 358 N.W. 2d 285 (1984), where the court stated at pages 133 and 135:

"In any case where the commission is asked to determine whether a subject matter is mandatorily or permissibly bargainable, this court will apply the great weight--any rational basis standard to its 'primary relation' conclusion."

. . .

"The commission's interpretation of Section 111.70 Stats. must be affirmed if there is any rational basis to support it. Arrowhead, 116 Wis. 2d at 593; Beloit Education Asso., 73 Wis. 2d at 67."

The Municipal Employment Relations Act (MERA), Secs. 111.70-111.77, Stats., requires municipal employers and municipal labor organizations to bargain "with respect to wages, hours and conditions of employment." Sec. 111.70(1)(a), Stats. Employers are not required to bargain, however, "on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes." Id. The difficulty encountered in interpreting and applying MERA is that many subject areas relate both to "wages, hours and conditions of employment" and to "management and direction of the governmental unit." West Bend, 121 Wis. 2d at 8; Beloit Education Asso. v. WERC, 73 Wis. 2d 43, 52-53, 242 N.W. 2d 231 (1976); Unified S.D. No. 1 of Racine County v. WERC, 81 Wis. 2d 89, 95, 259 N.W. 2d 724 (1977).

In order to determine whether a proposed contract provision is a mandatory or permissive subject of bargaining under MERA, the WERC developed the "primary relationship test." The Wisconsin Supreme Court has approved the construction of MERA requiring the application of the primary relationship test to proposed subjects of bargaining in municipal sector labor relations. West Bend, 121 Wis. 2d at 8; Beloit, 73 Wis. 2d at 54; Brown County v. WERC, 138 Wis. 2d 254, ____ N.W. 2d ____ (1987); Madison Metropolitan School Dist. v. WERC, 133 Wis. 2d 462, 395 N.W. 2d 825 (1986).

Under the primary relationship test, collective bargaining is required with regard to subjects primarily related to wages, hours or conditions of employment. Bargaining is not required with regard to subjects primarily related to management and direction of a governmental unit. "Primarily" has been construed by the court to mean "fundamentally" or "basically" or "essentially." West Bend, 121 Wis. 2d at 8-9; Beloit, 73 Wis. 2d at 54; Unified S.D. No. 1, 81 Wis. 2d at 95-96, 102. See also, City of Brookfield v. WERC, 87 Wis. 2d 819, 275 N.W. 2d 723 (1979).

To determine whether the proposals are mandatory subjects of bargaining, the weight of the managerial interests of the public employer, together with any separate public political interest, must be balanced against the interests of the employes. West Bend, 121 Wis. 2d at 15. A review of the November 18, 1986, WERC decision demonstrates such balancing test was applied in this case. The decision at pages 14-16 refers at length to two previous decisions of the WERC relating to hours of work proposals, School District of Janesville, Dec. No. 21466 (WERC 3/84) and Racine Unified School District, Dec. Nos. 20652-A and 20653-A (WERC 1/84), Dec. No. 20653-C (WERC 5/84), aff'd Case No. 85-0158 (Ct. App. 3/86, unpublished), demonstrating how the balancing test is applied. The WERC cited the reasoning from Janesville as follows:

"As the Association has indicated, the Commission has previously found language which specified both the timing and length of the work day to be mandatory. Indeed, bargaining over 'hours' is a basic employe interest because the amount of time which an employe must work has an obvious and direct relationship upon the time which that employe has available for non-work related activities upon which the employe may well place far greater value in his or her life. In addition, there is the intimate relationship between the number of hours an employe works and the amount of compensation which the employe and the bargaining representative will seek as compensation. However, a close examination of those decisions reveals that in each instance the Commission was satisfied, when balancing the relationship of the proposal to hours and conditions of employment and to public policy concerns, that the proposal in question did not prevent the employer from providing the basic service for which it utilized the employes."

The WERC cited the reasoning from Racine as follows:

"As we noted in the quoted portions of our decision in Janesville, proposals establishing the length of the workday have a direct and substantial relationship to both "wages" and "hours." The length of the workday impacts upon a basic employe interest because the amount of time which an employe must work has an obvious and direct relationship upon the time which that employe has available for non-work related activities upon which the employe may well place far greater value in his/her life. There is also an intimate relationship between the number of hours an employe works and the amount of compensation which the employe and the bargaining representative will seek a compensation therefor. However, when analyzing workday proposals, the Commission must also ascertain whether the contractual provision would prevent the employer from providing the basic service for which it utilizes the employes.

. . .

As we have concluded that this proposal does not prevent the District from requiring employes to

perform duties, even on a daily basis, outside the length of the workday specified herein or outside the starting and ending times of the teacher workday which the District will unilaterally establish, and as we have concluded that the proposal bears a substantial and direct relationship to employe concerns as to 'wages' and 'hours,' we find the proposal to be mandatory subject of bargaining."

The WERC then concluded:

"Applying this analytical framework to the proposal before us, we view the District's proposal as establishing the parameters of the basic teacher workday in a manner which does not prevent the District from providing the basic service for which it utilizes employes. Thus, we find that the 'wages' and 'hours' aspects of the proposal predominate over any policy relationship and therefore the proposal is found to be mandatory.

Contrary to the Association's claim, the proposal does not constitute a waiver of the Association's right to bargain over hours. The proposal simply represents the District's view as to the manner in which it wishes to see a mandatory subject of bargaining addressed in the contract. The Association is, of course, free to propose that a different 'hours' proposal be included in the contract so long as the proposal primarily relates to wages, hours and conditions of employment.

As to the Association's contentions that the proposal is undesirable because the precise hours of work are subject to change, we concur with the District's assertion that such concerns go to the merits, but not to the mandatory or permissive status of the proposal."

CONCLUSION

The WERC determined that Unified's hours of work proposal was a mandatory subject of bargaining by properly balancing the

managerial interests of the public employer, together with any separate public political interest against the interests of the employes and concluding that the challenged proposal was primarily related to wages, hours or conditions of employment. Because a rational basis exists, as articulated in its November 18, 1986, decision, for such a conclusion, the declaration that the proposal is a mandatory subject of bargaining must be affirmed.

Therefore, it is ORDERED that the November 18, 1986, decision of the WERC declaring the hours of work proposal a mandatory subject of bargaining is AFFIRMED in all respects. The petition of REA is dismissed on the merits.

Dated at Racine, Wisconsin, this 27 day of August, 1987.

BY THE COURT:

Stephen A. Simanek
Circuit Court Judge
Branch II