

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
MILWAUKEE PUBLIC SCHOOLS	:	
To Initiate Mediation-Arbitration	:	Case 170
Between Said Petitioner and	:	No. 35990 MED/ARB-3632
	:	Decision No. 23689
MILWAUKEE TEACHERS'	:	
EDUCATION ASSOCIATION	:	

Appearances:

Perry, First, Reiher, Lerner and Quindel, S.C., Attorneys at Law, by Mr. Richard Perry, 1219 North Cass Street Milwaukee, WI 53202, appearing on behalf of the Milwaukee Teachers' Education Association.

Mr. Stuart S. Mukamal, Assistant City Attorney, City of Milwaukee, Room 800, City Hall, 200 East Wells Street, Milwaukee, WI 53202, appearing on behalf of the Milwaukee Public Schools.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER DENYING MOTION TO DISMISS PETITION
FOR MEDIATION-ARBITRATION

Milwaukee Public Schools having, on November 7, 1985, filed a petition with the Commission for Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act, herein MERA; and the Milwaukee Teachers' Education Association having, on November 13, 1985, filed a motion with the Commission to dismiss said petition; and hearing with respect to said motion having been held on March 12, 1986, before Lionel L. Crowley, a member of the Commission's staff; and the parties having submitted briefs which were exchanged on April 24, 1986; and the Commission having considered the record and the positions of the parties and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Milwaukee Public Schools, hereinafter referred to as the District, is a municipal employer which operates a public school system in Milwaukee, Wisconsin and its offices are located at 5225 West Vliet Street, Milwaukee, Wisconsin 53208.
2. That Milwaukee Teachers' Education Association, hereinafter referred to as the Association, is a labor organization and is the certified exclusive bargaining representative for all regularly employed substitute per diem teachers and its offices are located at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.
3. That the District and the Association were parties to a collective bargaining agreement covering substitute teachers for the period January 1, 1983, to December 31, 1985.
4. That on or about September 8, 1985, the District and the Association exchanged proposals to be included in a successor agreement to the 1983-85 agreement; and that thereafter the parties met on October 2, October 16, and November 6, 1985.
5. That on November 7, 1985, the District filed a petition with the Wisconsin Employment Relations Commission alleging that the parties had reached an impasse after a reasonable period of negotiation and requested the Commission to conduct an investigation and certify the result thereof and determine whether mediation-arbitration should be initiated.

6. That prior to any action by the Commission, the Association filed a motion to dismiss the District's petition on the grounds that: 1) there has been no mediation by the Commission; 2) there has not been a reasonable period of negotiation and 3) the parties are not deadlocked and have not reached impasse in negotiations.

CONCLUSION OF LAW

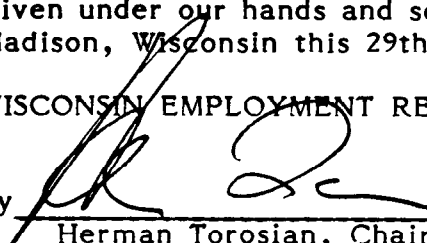
1. That pursuant to Sec. 111.70(4)(cm)6.a., Stats., and ERB 31.08, Wis. Adm. Code and under the circumstances set forth above, the Commission has the authority to make an investigation to determine whether an impasse exists and whether the procedures set forth in Sec. 111.70(4)(cm), Stats., have been complied with and to appoint an investigator to make said investigation who shall set a date, time and place to meet with the parties and conduct said investigation.

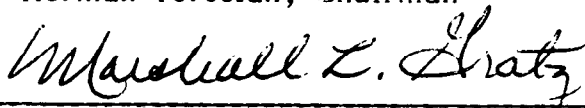
ORDER

That the motion to dismiss filed by the Milwaukee Teachers' Education Association in the above matter be, and the same hereby is, denied.

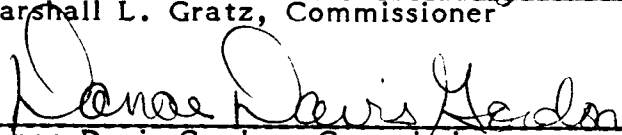
Given under our hands and seal at the City of
Madison, Wisconsin this 29th day of May, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman



Marshall L. Gratz, Commissioner



Danae Davis Gordon, Commissioner

MILWAUKEE PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER DENYING MOTION TO DISMISS
PETITION FOR MEDIATION-ARBITRATION

In the instant motion to dismiss the District's petition for mediation-arbitration, the Association alleged that the District has not complied with the requirements of Sec. 111.70(4)(cm)6, Stats., and the petition must therefore be dismissed. The District asserts that the requirements of Sec. 111.70(4)(cm)6, Stats., are not applicable to the commencement of an investigation or the appointment of an investigator, and consequently, the motion must be denied.

Association's Position

The Association contends that Sec. 111.70(4)(cm)6, Stats., requires a reasonable period of negotiation, mediation by the Commission under subsection 3 and impasse as prerequisites for the filing of a petition for mediation-arbitration. It submits that upon objection by one party, the Commission must require compliance with Sec. 111.70(4)(cm)6. It claims that in the instant case, there has been no reasonable period of negotiations because, while the parties met three times, the first two meetings were merely explanations of demands where no give and take occurred, and the third meeting, which did involve give and take, was short and abruptly ended when the District was displeased with the Association's reaction to the District's proposal for a "tentative agreement."

It maintains that the Association wished to continue negotiations and to have further sessions but that the District refused and prematurely filed its petition. It argues that the District made a complex medical insurance cost containment proposal which required further study by the Association before it could respond, and also the District asked the Association to abandon a large number of its proposals without any discussion in bargaining. It submits that, in light of these circumstances, the District's petition has not met the requirements of Sec. 111.70(4)(cm)6, Stats., and should, therefore, be dismissed.

District's Position

The District contends that the Association's motion to dismiss the petition for mediation-arbitration is contrary to law and to past practice. It submits that the issue to be decided is a question of law and not of fact and the facts adduced at the hearing are not pertinent to this matter. The District argues that a particular course of bargaining such as attainment of an impasse is not a prerequisite to the appointment of an investigator. It asserts that the Association is confused between the commencement of an investigation and the commencement of mediation-arbitration proceedings after certification of an impasse. It notes that the investigation is to determine whether the parties have reached impasse; whereas, mediation-arbitration is to resolve a deadlock after impasse has been reached. It claims that the Association is attempting to place the preconditions of mediation-arbitration on the investigation, thereby eliminating its purpose. The District takes the position that under Sec. 111.70(cm)6.a., Stats., the Commission must automatically make an investigation upon the filing of a mediation-arbitration petition. It refers to the Commission's rules in support of this position. Additionally, it asserts that to hold otherwise would sanction "surface bargaining" and would permit a recalcitrant party to delay negotiations and effectively defeat the purpose of the mediation-arbitration law. It contends that the Association's motion must be denied as a matter of law.

The District further contends that the facts of this case support its filing of the petition. It asserts that the Association by its conduct made it clear that this unit would not settle before the teachers unit settled, and despite the District's attempt to get things moving, the Association showed no intention of making significant movements toward settlement. It claims that it fulfilled the requirements for the filing of its petition for mediation-arbitration.

The District argues that the Association's position is against public policy as it is unnecessarily destructive of mediation-arbitration because it in effect eliminates the need for the investigation and would permit recalcitrant parties to evade the effect of the mediation-arbitration process and to allow "bad

faith" bargaining tactics including "surface bargaining." It requests the Association's motion to dismiss be denied and an investigator be appointed forthwith.

Discussion

Section 111.70(4)(cm)6, Stats. provides, in part, as follows:

6. Mediation-arbitration. If a dispute has not been settled after a reasonable period of negotiation and after mediation by the commission under subd. 3 and other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement, either party, or the parties jointly, may petition the commission, in writing, to initiate mediation-arbitration, as provided in this section.

a. Upon receipt of a petition to initiate mediation-arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether mediation-arbitration should be commenced. If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering mediation-arbitration.

The basis of the Association's motion is that the requirements set forth in subsection 6 have not been met and the petition must be dismissed. Our reading of subsection 6.a. indicates that the Commission shall make an investigation to determine whether the procedures set forth in subsection 6 have been complied with, and if they have not been complied with, then it may order such compliance prior to ordering mediation-arbitration. Thus, it seems clear that one of the purposes of the investigation is to determine whether the requirements of a reasonable period of negotiation, as well as mediation, and other settlement procedures, established by the parties, have been exhausted. Therefore, we conclude that these requirements are not prerequisites for the initiation of an investigation, but rather, as argued by the District, are prerequisites to any order for mediation-arbitration.

In practice, upon receipt of a petition for mediation-arbitration, the Commission assigns an investigator who weighs the various factors in a given case, including the extent of prior negotiations, in determining how best to process the petition toward the objectives of voluntary settlement, avoidance of undue delay, and effective use of agency resources. Unless the matter has been previously mediated or the parties have formally agreed to waive Commission mediation, the investigator will ordinarily endeavor to mediate the dispute as a part of the investigation, giving consideration to the extent of prior negotiations and other factors in making judgments about when to meet with the parties, when to call for final offer exchanges, and when to draw the investigation to a close. The Commission relies heavily on the investigator's professional assessment of each situation based upon the investigator's discussions and meetings with the parties. Where the Commission or the investigator have reason to believe that a mediation effort is or would be premature, it may be suggested to the parties that they engage in further unmediated negotiations; and, in extreme situations, the investigator may recommend that the Commission formally order further unmediated negotiations as a condition precedent to an order initiating mediation-arbitration in the matter.

For the foregoing reasons, we conclude that the assignment of an investigator to weigh the various factors and determine the most appropriate course of action in a given investigation is both a more practical approach and one more conducive to reaching a prompt resolution of the parties' negotiations than is a procedure entitling the parties to a formal hearing and determination as to whether a reasonable period of negotiations has preceded petition filing.

Our conclusion in that regard appears more likely to promote the prompt resolution of disputes subject to mediation-arbitration. A contrary conclusion would permit a non-cooperative party to delay the investigative process by

insisting on a hearing on a motion to dismiss for failure to negotiate for a reasonable period of time and then later insisting on a hearing on a motion to dismiss because of no mediation under subd. 3, and then still later challenging whether impasse exists. We wish to make it clear that we are not questioning the Association's sincerity in bringing its motion in this case, but we note the amount of delay experienced in this matter from the filing of the petition for mediation-arbitration to this date as illustrative of the potential for deliberate delay.

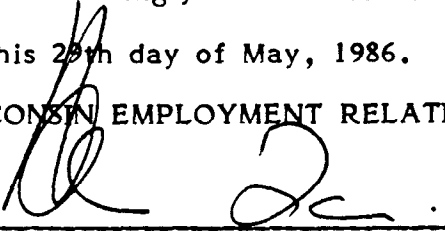
We have not considered the factual underpinnings of the Association's argument because we are of the opinion that, as a matter of policy as stated above, the appropriate method for resolving the instant dispute between the parties is through an investigation. In short, the appropriate forum for the Association's raising its claim of a lack of a reasonable period of negotiations is in the investigation rather than through a motion to dismiss the petition.

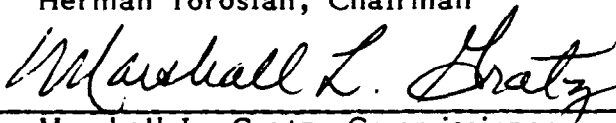
For the foregoing reasons, we have rejected the arguments in support of the Association's motion to dismiss, and accordingly have denied said motion.

Dated at Madison, Wisconsin this 29th day of May, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner