STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION, Complainant, vs. MILWAUKEE BOARD OF SCHOOL DIRECTORS, Respondent.	Case 198 No. 38947 MP-1989 Decision No. 24729-B

Appearances:

Perry, First, Lerner, Quindel & Kuhn, S.C., by Mr. Richard Perry and Ms. Barbara Zack Quindel with Ms. Judith E. Kuhn on the brief, 823 North Cass Street, Milwaukee, Wisconsin 53202, appearing on behalf of Milwaukee Teachers' Education Association.

Mr. Grant F. Langley, City Attorney of the City of Milwaukee, by Mr. Stuart S. Mukamal, Assistant City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, appearing on behalf of Milwaukee Board of School Directors.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT CONCLUSION OF LAW AND ORDER

Examiner Marshall L. Gratz having, on May 5, 1988, issued a Findings of Fact, Conclusion of Law and Order in the above-entitled matter wherein he found the above named Respondent to have committed certain prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 1, Stats., by imposing certain pre-conditions on the above named Complainant's access to certain information from Respondent; and the Respondent having, on May 20, 1988, filed a petition with the Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and Sec. 111.70(4)(a), Stats.; and the parties having filed written argument in support of and in opposition to the petition, the last of which was received on July 5, 1988; and the Commission having reviewed the record and the parties' argument and, being fully advised in the premises, makes and issues the following

ORDER 1/

That the Examiner's Findings of Fact, Conclusion of Law and Order are hereby affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 20th day of September, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

A. Henry Hempe, Commissioner

(Footnote 1/ on page 2)

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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. 227.57 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.

MILWAUKEE BOARD OF SCHOOL DIRECTORS

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint, the MTEA asserted that the Board violated Secs. 111.70(3)(a)4 and 1, Stats., by conditioning the Board's release of certain information relating to bargaining unit employes' salaries, benefits and absence records to the MTEA upon Board receipt of a written employe request for release of the information which would state: that the employe had previously contacted the Board directly for the information; that the employe was dissatisfied with the information provided in response; the name of the Board representative contacted for the information and the reason why the employe was dissatisfied with the Board's representative's response to the employe's request. The Board, in its answer, admitted that it had imposed the conditions specified above upon its release of certain information to the MTEA but denied that the information is either relevant or necessary to the MTEA's representational functions and asserted that the information was sought by the MTEA only for the MTEA's own institutional and public-relations purposes unrelated to representation of bargaining unit members.

The Examiner's Decision

In his decision, the Examiner found that the Board's issuance and application of a policy which placed certain pre-conditions upon the release of certain information to the MTEA violated Sec. 111.70(3)(a)4 and derivatively Sec. 111.70(3)(a)1, Stats. The Examiner ordered the Board to take certain appropriate remedial action which included recission of the policy in question.

In his decision the Examiner made the following Findings of Fact:

> 6. Since the issuance of Neudauer's February 19, 1987 letter, above, MBSD's Department of Labor Relations personnel have followed the policy set forth therein with respect to all MTEA representatives and all MTEA bargaining units, refusing to provide MTEA representatives with answers to employe questions concerning matters such as salaries, benefits and absence records unless the MTEA representative provides a signed employe statement meeting the requirements set forth in the letter quoted in Finding of Fact 4, above.
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> 7. The information to which MBSD had addressed and applied its information release policy, above, constitutes information about questions arising under a collective bargaining agreement. That information is both relevant and reasonably necessary to MTEA's functioning as exclusive representative of the bargaining unit of the MBSD employe involved in the inquiry, including but not necessarily limited to MTEA's functions of policing MBSD's collective bargaining agreement compliance as a part of MTEA's contract administration role.
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> 8. It has not been shown herein that MBSD's motivation in imposing the above information release policy was other than to relieve its office personnel of what is perceived to be the unnecessary and unproductive time spent in response to MTEA information requests over and above what MBSD perceived would be spent if the employes submitted their requests to MBSD directly in the first instance and then pursued the inquiry through MTEA only if dissatisfied with MBSD's response.
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> 9. It has not been shown herein that MTEA's requests for the information described in Finding of Fact 6 were made in bad faith or that MTEA's primary purpose for requesting said information was other than to provide answers to inquiries from employes in bargaining units it represents concerning whether the employe was receiving the proper wages, benefits or rights to which he/she was entitled under the applicable collective bargaining agreement.

10. There has been no showing herein that requiring MBSD to respond to MTEA's requests for the information described in Finding of Fact 6, without the pre-conditions contained in MBSD's information release policy, has been or would be unduly burdensome on MBSD.

11. By conditioning its release to MTEA of the information described in Finding of Fact 6 as stated in its February 19, 1987 letter, MBSD has failed and refused, upon request, to supply MTEA with information relevant and reasonably necessary to MTEA's functioning as exclusive collective bargaining representative of the bargaining units of the employes involved.

12. By conditioning its release to MTEA of the information described in Finding of Fact 6 as stated in its February 19, 1987 letter, MBSD has engaged in conduct the reasonable tendency of which is to interfere with the right of MTEA-represented employes to bargain collectively with MBSD through MTEA and to interfere with the right of MTEA-represented employes to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection.

The Positions Of The Parties On Review

The Board

The Board asserts that in this case the Examiner was so convinced at the outset of the MTEA's purported "right to information" that he failed to consider the unique and unprecedented elements of this case, failed to adequately analyze applicable law, and failed to give any weight to the interest of the Board in connection with the issues raised by this preceeding. The Board contends that the central error committed by the Examiner lies in his failure to distinguish between the types of information to which the MTEA demands "free access" in this case from those categories of information that labor organizations legitimately require in the course of their performance of responsibilities related to collective bargaining and contract administration. The Board asserts that the information at issue herein is outside the legitimate perview of the MTEA's interest as a collective bargaining representative because the informational requests arise merely from an individual employe's inquiry at a point in time when there is no actual or potential "dispute" or "controversy" between the employer and the employe. The Board alleges that none of the cases cited by the MTEA or the Examiner concern information pertaining to "routine" salary or benefit matters and thus that the precedent cited in the Examiner's decision is irrelevant and inapplicable.

The Board asserts that the Examiner erred by inventing a "right" of individual employes to make "routine" salary and benefit information inquiries through the MTEA. The Board asserts that this is an entirely new "right" finding no support in applicable of law and which is contrary to establish principals of labor relations. The Board contends that an employe's preference to deal with the MTEA rather than to deal directly with the employer is completely irrelevant. The Board alleges that the MTEA does not have the right asserted by the Examiner. The Board contends that this is particularly true given the fact that the evidence is completely devoid of any indication of Board negligence or wrongdoing in the conduct or administration of its informational functions.

The Board alleges that a third fundamental error committed by the Examiner was in his failure to grasp that this case primarily relates to matters of Board internal office administration. The Board alleges that the Examiner gave this Board interest no weight in his decision and instead applied a one-sided, "result-oriented" analysis entirely focused upon the MTEA's interests. The Board asserts that the Examiner seemed exclusively preoccupied with the alleged "burdensome" nature of the Board's conditions of release of information to the MTEA while exhibiting no concern over the nature and extent of the burdens that would be imposed upon the Board and its office employes in connection with the MTEA's demand of "free access" to the information in question.

Lastly, the Board asserts that the Examiner erred by disregarding the impact of the MTEA"s institutional interest and ulterior motives in obtaining the right to "free access" to information in response to a "routine" informational inquiry by an individual employe. The Board alleges that the Examiner's unwarranted assumption of MTEA "good faith" obviously heavily influenced his decision, and for that reason, his assumptions in this regard should be addressed by the Commission upon review. The Board further argues that an understanding of the MTEA's ulterior motives and the potential for MTEA harassment of the Board created by the Examiner's decision will assist the Commission in differentiating this case from previous cases involving the employer's duty to furnish information in a legitimate "representational" context.

Given the foregoing, the Board respectfully submits that the Examiner erred and asks that the Commission reverse the Examiner's Conclusion of Law and Order in their entirety and dismiss the complaint.

The MTEA

The MTEA argues that the Board's attempt to distinguish "routine" requests for information from "representational" or "collective" requests is unsupported by the law. The MTEA argues that the Board's position would effectively reduce the policing function of the exclusive bargaining representative to one which exists only after the union has determined a grievance must be filed. The MTEA argues that this circular and restrictive interpretation of the policing function of the collective bargaining agreement is completely unsupported by any precedent.

The MTEA contends that the Board provided no evidence to prove that the MTEA's informational requests were in any way burdensome. Furthermore, even if it could be proven that the Board's efficiency was hampered by the MTEA's request, the MTEA asserts that such efficiency may not be fostered through the abrogation of the obligation to provide information to the exclusive bargaining agent. The MTEA asserts that efficiency in administration cannot be used as a basis for ignoring the MTEA's and the employes' statutory rights.

The MTEA argues that the Board has made unsupported claims that the MTEA is engaging in inquiries in bad faith. The MTEA asserts that the fact that the MTEA's performance in policing its contract earns them the respect of their members is hardly a basis for claiming bad faith. Given the foregoing, the MTEA urges the Commission to affirm the Examiner.

Discussion

The Examiner's decision thoughtfully and thoroughly analyzes the various arguments presented by the Board in support of its assertion that its actions herein were not violative of Secs. 111.70(3)(a)4 and 1, Stats. On review, the Board essentially argues that the Examiner's analysis in response to the various Board arguments presented to him was erroneous. We disagree. As we can do no better than the Examiner in expressing the appropriate basis upon which he correctly rejected these various arguments, 2/ we will not attempt to do so herein. Thus, we affirm and adopt his Findings of Fact, Conclusion of Law, Order and Accompanying Memorandum without further comment.

Dated at Madison, Wisconsin this 20th day of September, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

A. Henry Hempe, Commissioner

2/ Pursuant to the Board's expressed interest that we pay particular attention to the Examiner's "good faith" assumptions regarding the MTEA, we will specifically note that we have done so and find the Examiner to be correct.