

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

THE MILWAUKEE TEACHERS'  
EDUCATION ASSOCIATION

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

MILWAUKEE BOARD OF  
DIRECTORS  
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Case 194  
No. 38540 DR(M)-426  
Decision No. 24748

Appearances:

Perry, First, Lerner, Quindel & Kuhn, S.C., by Mr. Richard Perry, 823 North  
Cass Street, Milwaukee, Wisconsin, 53202-3908 for the Association.

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

ORDER DENYING MOTION TO DISMISS  
OR DEFER TO FEDERAL COURT JURISDICTION

The Milwaukee Teachers' Education Association having on March 19, 1987 filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b) Stats. seeking a declaratory ruling as to whether certain portions of a layoff and recall provision in a collective bargaining agreement between the Association and the Milwaukee Board of School Directors was an illegal subject of collective bargaining because said provision violated the constitutional rights of certain teachers represented by the Association; and the Board having, on April 30, 1987, filed a Motion to Dismiss or Defer to Federal Court Jurisdiction; and the parties having filed written argument as to said Motion the last of which was received on September 14, 1987; and the Commission having considered matter makes and issues the following

ORDER

1. That the Motion to Dismiss or Defer to Federal Court Jurisdiction is hereby denied.

2. That hearing on the petition shall be conducted within 60 days of the date of this Order.

Given under our hands and seal at the City of  
Madison, Wisconsin this 17th day of September,  
1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

MILWAUKEE PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING  
ORDER DENYING MOTION TO DISMISS  
OR DEFER TO FEDERAL COURT JURISDICTION

Much of the extensive argument submitted by the parties focuses upon the merits of whether the clause as to which the Association seeks a declaratory ruling is or is not unconstitutional and thus an illegal or prohibited subject of bargaining. However, the issue at present is simply one of determining whether the Association's petition raises a dispute concerning the duty to bargain which we are obligated to resolve under Sec. 111.70(4)(b), Stats. Because we conclude that the petition raises such a dispute, we have denied the Board's Motion.

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.

Here, the Association has advised the Board that it believes the clause in question 1/ is illegal and thus unenforceable and that pursuant to the Savings Clause 2/ in the parties' agreement, the Board must bargain a legal replacement provision. The Board has refused the Association's demand for bargaining. In such circumstances we think it is clear that there is "a dispute . . . between a municipal employer and a union of its employees concerning the duty to bargain . . . ."

As to the Board's contention that a "dispute" cannot exist until a factual context involving actual layoffs exists, we find such an argument misses the jurisdictional mark and is most appropriately considered as part of our determination on the merits of the dispute before us. The requisite jurisdictional factual context has been established by the Association's demand and the Board's refusal to bargain over the clause. We would also note that in the majority of instances in which our Sec. 111.70(4)(b) Stats. jurisdiction is invoked, we are asked to rule upon the parties' duty to bargain on proposals which one side or the other seeks to place in a collective bargaining agreement. In such instances, we are obligated to determine the parties' duty to bargain over contract language which may never be "applied" in a factual context because it may never even become part of a contract. Furthermore, it should be noted that the MTEA asserts that the manner in which the clause in question has been applied in the past provides ample guidance as to the clause's interpretation.

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1/ "all layoffs shall be based on inverse order of seniority within qualifications as set forth in the following procedures provided that the racial balance of schools is not disturbed."

2/ D. SAVING CLAUSE

If any part or section of this contract, or any addendum thereto, should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any part or section should be restrained by such tribunal, the remainder of this contract and addenda shall not be affected thereby, and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such part or section.

As to the Board's argument that this matter would be more appropriately deferred to the federal courts, we note that when we are confronted with contentions that a matter is a permissive or prohibited subject of bargaining, we are often of necessity obligated to examine external law, both statutory and constitutional, to resolve the dispute. 3/

Dated at Madison, Wisconsin this 17th day of September, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

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3/ School District of Drummond v. WERC, 121 Wis.2d 126 (1984); Teamsters Local No. 695 v. WERC, 121 Wis.2d 29 (1984) West Bend Education Association v. WERC, 121 Wis.2d 1 (1984); Milwaukee Board of School Directors, Dec. No. 23208-A (WERC, 2/87); Racine Unified School District, Dec. No. 20652-A (WERC, 1/84); aff'd (CtAppII) No. 85-0158 (3/86); Crawford County, Dec. No. 20116 (WERC, 12/82).