

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON TEACHERS INCORPORATED,	:	
	:	
Complainant,	:	
	:	Case 180
vs.	:	No. 40052 MP-2062
	:	Decision No. 25397
MADISON METROPOLITAN SCHOOL DISTRICT and the BOARD OF EDUCATION OF THE MADISON METROPOLITAN SCHOOL DISTRICT,	:	
	:	
Respondents.	:	
	:	

Appearances:

Ms. Susan Hawley, Labor Contract Manager, 545 West Dayton Street, Madison, Wisconsin, 53703, on behalf of the District.
 Kelly & Haus, Attorneys at Law, by Mr. Robert C. Kelly, Lake Terrace, 121 East Wilson Street, Madison, Wisconsin, 53703-3422.

ORDER HOLDING UNIT CLARIFICATION PETITION IN ABEYANCE AND ORDER DENYING MOTION TO HOLD COMPLAINT IN ABEYANCE

Madison Teachers Incorporated, herein MTI, having on January 22, 1988 filed a complaint with the Wisconsin Employment Relations Commission alleging that the Madison Metropolitan School District and its Board, herein the District, had committed certain prohibited practices within the meaning of Sec. 111.70(3)(a), Stats., by refusing to arbitrate a grievance pursuant to the terms of the parties' grievance-arbitration procedure; and the District having on March 14, 1988 filed a petition to clarify bargaining unit with the Commission along with a motion asking that the above noted MTI complaint be held in abeyance pending issuance of a Commission decision as to said petition; and MTI having filed a written response in opposition to said motion on March 28, 1988; and the Commission having considered the matter and concluded that the District's motion should be denied and that the District's unit clarification petition should be held in abeyance;

NOW, THEREFORE, it is

ORDERED

1. That the District's motion to hold complaint in abeyance is denied.
2. That the District's unit clarification petition shall be held in abeyance pending disposition of the MTI complaint and any resultant arbitration proceedings.

Given under our hands and seal at the City of Madison, Wisconsin this 26th day of April, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
 Stephen Schoenfeld, Chairman

Herman Torosian
 Herman Torosian, Commissioner

Henry Hempe
 Henry Hempe, Commissioner

MADISON METROPOLITAN SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER HOLDING UNIT CLARIFICATION
PETITION IN ABEYANCE AND DENYING MOTION TO
HOLD COMPLAINT IN ABEYANCE

In its affidavit filed in support of its motion, the District asserts that it is refusing to proceed to arbitration because the employees at issue in the grievance are not included in the MTI unit. The District submits that its unit clarification petition should resolve the unit status of the disputed employees and that the MTI complaint should be held in abeyance pending the Commission's decision.

MTI responds by arguing that the parties' grievance arbitration procedure is fully capable of resolving the unit status of the disputed employees and that the underlying grievance also raises issues which a unit clarification proceeding will not resolve.

The grievance which MTI seeks to arbitrate necessarily raises the issue of whether certain employees are included in the unit. The District's Motion is implicitly premised upon the proposition that the Commission is the most appropriate forum for resolution of unit inclusion issues, and that an arbitrator ought not make such a determination. However, where, as may be the case here, the parties have voluntarily agreed to contractual language to describe the present scope of their unit; the Commission has not been adverse to allowing the arbitral forum make such unit determinations, where appropriate. Thus, in Stoughton Joint School District, Dec. No. 15995 (WERC, 12/77), the Commission held a unit clarification petition in abeyance pending an arbitrator's determination as to whether certain positions were included in the unit. The Commission stated:

On the face of the documents presented it appears that the question posed to the grievance arbitrator is the inclusion or exclusion of certain positions from the collective bargaining unit. Petitioner contends that such issue belongs within the exclusive jurisdiction of the Commission, that arbitration should be stayed and that the Commission should decide the question.

Although the legislature has empowered the Commission to make unit determinations, nothing in the Municipal Employment Relations Act prevents parties from voluntarily defining the appropriate unit, with certain exceptions. For example, professionals and non-professionals cannot be co-mingled in a single unit without an appropriate vote, and in no event can supervisors be included within a bargaining unit of the persons he/she supervises. It may be that the parties have in their collective bargaining agreement agreed to include the positions which the Petitioner asks the Commission to exclude. The Commission's long-standing policy is to honor these agreements unless it is shown that such agreements frustrate the purposes and policies of the Municipal Employment Relations Act.

The first question, then, is whether the parties have so agreed to include such positions. The question goes to the interpretation of the agreement, which must be left for the arbitrator.

The second question is whether the inclusion of these positions in the unit frustrates some policy of the law. There is no way to prejudge that question from the face of the documents presented. Further, there may be no need to address that question if the arbitrator concludes that the positions are excluded. The policy favoring arbitration of disputes compels that the Commission abstain from intervention in the arbitral process without prejudice to the Petitioner's right to argue later that the results of the arbitration contravene the policy of the law.

To conclude at this juncture that the arbitrator's decision will frustrate the purposes of the law would be speculative. As the Commission stated in Lisbon-Pewaukee: 1/

Such speculation does not defeat the duty to arbitrate. If and when such speculation materializes the respondent (petitioner here) could raise the question of the enforceability of the award.

Accordingly, the Commission has denied the motion to stay the arbitration proceedings and will hold the petition for unit clarification in abeyance pending the outcome of the arbitration proceedings. If the decision of the arbitrator contravenes the Commission's policies regarding unit determinations, the Commission will not be bound by his award, and will proceed to determine the issue presented in a manner that is consistent with said policies.

1/ Dec. No. 13404-B (WERC, 9/76).

Given the foregoing, 1/ we hereby deny the District's request that the complaint proceedings be held in abeyance and will instead hold the unit clarification petition in abeyance pending the outcome of the complaint proceeding and any arbitration proceeding which may result therefrom.

Dated at Madison, Wisconsin this 26th day of April, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Mempe
A. Henry Mempe, Commissioner

1/ See also Milwaukee District Council 48 v. Milwaukee Sewerage Commission, 107 Wis. 2d 590 (Ct. App., 1982).