

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 :
 SHAWANO-GRESHAM SCHOOL DISTRICT : Case 12
 : No. 42615 INT/ARB-5337
 To Initiate Arbitration Between : Decision No. 26406
 Said Petitioner and :
 :
 SHAWANO-GRESHAM EDUCATION ASSOCIATION :

Appearances:

Mr. Ronald J. Bacon, Executive Director, United Northeast Educators, 1136 North Military Avenue, Green Bay, Wisconsin 54303, for the Association.
 Mulcahy and Wherry, S.C., Attorneys at Law, by Mr. Dennis W. Rader, 414 East Walnut Street, P.O. Box 1103, Green Bay, Wisconsin 54305-1103, for the District.

ORDER GRANTING MOTION TO REOPEN
INTEREST-ARBITRATION INVESTIGATION

The Shawano-Gresham School District having on July 20, 1989, filed a petition with the Wisconsin Employment Relations Commission wherein it requested that the Commission initiate interest-arbitration pursuant to Sec. 111.70(4)(cm)6, Stats.; and Raleigh Jones, a member of the Commission's staff, having conducted an investigation in the matter; and Jones, on December 6, 1989, having closed his investigation through submission to the Commission and placement in the U.S. mail to the parties of a document entitled, "REPORT TO COMMISSION AND NOTICE OF CLOSE OF INVESTIGATION"; and Jones having, on December 11, 1989, received an amended final offer from the Association; and prior to any further action by the Commission, the Association having filed a motion to reopen the investigation; and the Commission having advised the parties of its intention to take notice of pertinent documents, correspondence and offers in the matter; and the parties having waived hearing and expressed no opposition to the Commission's intent to take notice of certain matters; and the District having filed written argument which was received February 19, 1990; and the Commission being satisfied that it can rule upon the motion without hearing by taking notice of pertinent documents, correspondence and offers; and the Commission having considered the matter and being satisfied that the motion to reopen the investigation should be granted;

NOW, THEREFORE, it is

ORDERED

That the Investigator's NOTICE dated December 6, 1989 is set aside and the investigation is reopened.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of April, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
 A. Henry Hempe, Chairman

Herman Torosian /s/
 Herman Torosian, Commissioner

William K. Strycker /s/
 William K. Strycker, Commissioner

SHAWANO-GRESHAM SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER
GRANTING MOTION TO REOPEN
INTEREST-ARBITRATION INVESTIGATION

POSITIONS OF THE PARTIES

The Association asserts in its motion that the investigation should be reopened "because neither party had been given a timeline to out in final offers."

The District contends that the investigation was properly closed. It argues that after he received the Association's revised offer on December 6, 1989, the Investigator had no reason to believe that either party wished to further modify its final offer. Thus, the District alleges that the closure was in compliance with ERB 32.09(2). Citing Village of West Milwaukee, Dec. No. 17927-A (WERC, 9/80), the District also asserts that the Commission rely on its Investigator's professional judgment as to when an investigation should be closed.

DISCUSSION

The file reflects that following an October 16, 1989 meeting with Investigator Jones, the parties began to exchange final offers through the mail. By letter dated November 24, 1989, Jones exchanged the parties' final offers with a cover letter stating:

Please find enclosed a copy of the opposing party's final offer filed in the above matter.

On December 4, 1989, Jones received the following letter from the District:

The Shawano-Gresham School District does not choose to change its offer in the above captioned matter.

The Board does, however, object to the inclusion of the new article on professional dress code in the Union's offer. This offer is in direct violation of a ground rule agreed to by the parties when negotiations were first initiated in January, 1989.

Accordingly, it is the District's position that the Union's final offer is not bona fide and cannot be certified. Please note the ground rule dated January 31, 1989, with specific attention to item number ten. The District does not agree to the introduction of the professional dress code proposal.

If you have any questions regarding this matter, please feel free to contact me at your convenience.

On December 6, 1989, Jones received a revised final offer from the Association with a cover letter stating:

Please find enclosed a copy of the Shawano-Gresham Education Association's revised final offer in the above captioned matter. Please note that the association has removed its demand for a dress code in the final offer. This should satisfy the district's concern with respect to a change in the ground rules established by the parties at the beginning of the bargain.

Thank you for your continued interest in this matter.

On December 6, 1989, Jones closed the investigation.

We think it clear that Jones' closure of the investigation was premature. ERB 32.09(2) specifies in pertinent part:

. . . The commission or its agent may not close the investigation until the commission or its agent is satisfied that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer and that both final offers conform to the requirements of s. ERB 32.10(2) . .

This rule is intended to maximize the opportunity for the parties to voluntarily settle their dispute and to avoid the potential for parties to have differing expectations as to the circumstances under which the investigation would be closed. Under this rule, when the parties are exchanging final offers, the Commission's investigator has an affirmative obligation to satisfy him or herself that neither party desires to make any further change in offers before closing the investigation. Honoring this obligation is particularly critical when the final offers are being submitted through the mail. Under such circumstances, the potential for misunderstanding as to the parties' intentions and expectations is far greater than when the offers are being exchanged during the course of an on-site investigation.

Here, following receipt of the Association's revised final offer on December 6, 1989, Jones was obligated to contact the District and the Association to determine whether any further revisions were forthcoming. If both parties answered this inquiry in the negative, then the investigation could be closed consistent with ERB. 32.09(2).

The parties' own conduct herein supports our view of the actions the Investigator was obliged to take. The District itself advised Jones on December 7, the day after closure, that:

Please be advised that the District withdraws its objection to the Shawano-Gresham Education Association's final offer in the above captioned matter. This matter is no longer subject to challenge by the District because of the removal of the issue of dress code from the Union's final offer.

Accordingly, we trust that the final offers can be certified and that this matter can be expeditiously processed.

Through this letter, the District essentially advised Jones and the Association that it did not wish to modify its offer and wanted to have the investigation closed. By letter dated December 7, the Association subsequently advised Jones and the District that it wished to revise its offer.

Contrary to the District's contentions, the foregoing demonstrates to us that the parties did not anticipate closure of the investigation on December 6. If that had been the District's understanding, why would it have sent Jones its letter dated December 6? In any event, even if the District possessed such an expectation, ERB. 32.09(2) imposes an affirmative obligation on the investigator to contact both parties before closure to ensure that no further revisions of final offers are desired. As such contact did not occur herein, we are compelled to reopen the investigation. 1/

Dated at Madison, Wisconsin this 4th day of April, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/

1/ Our decision is not inconsistent with our continuing reliance upon and deference to the professional expertise of our staff when they function as investigators under Secs. 111.70(4)(cm)6 or 111.77, Stats. As noted in West Milwaukee, supra, such reliance is essential to the efficient operation of the interest-arbitration process. Our decision merely confirms the obligations imposed by ERB 32.09(2).

Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner