

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

- - - - -
In the Matter of the Petition of :
GRAFTON SCHOOL DISTRICT :
Requesting a Declaratory Ruling : Case 10
Pursuant to Sec. 111.70(4)(b), Stats. : No. 50065 DR(M)-533
Involving a Dispute Between : Decision No. 27935
Said Petitioner and :
GRAFTON PARAPROFESSIONAL AND :
AIDES ASSOCIATION :
- - - - -

Appearances:

vonBriesen & Purtell, S.C., Attorneys at Law, by Mr. James R. Korom,
Ms. Melissa A. Cherney, Staff Counsel, Wisconsin Education Association

411 Ea
Counci

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECLARATORY RULING

On November 12, 1993, the Grafton School District filed a petition with the Wisconsin Employment Relations Commission requesting a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to certain issues related to the District's collective bargaining with the Grafton Paraprofessional and Aides Association. On December 1, 1993, the Association filed a statement in response to the petition and the parties thereafter filed additional written argument, the last of which was received January 11, 1994.

Having considered the positions of the parties, the Commission makes and issues the following

FINDINGS OF FACT

1. The Grafton School District, herein the District, is a municipal employer having its principal offices at 1900 Washington Street, Grafton, Wisconsin 53024.

2. The Grafton Paraprofessional and Aides Association, herein the Association, is a labor organization having its principal offices at 550 East Shady Lane, Neenah, Wisconsin 54956.

No. 27935

3. During collective bargaining between the District and the Association, the District asserted that it did not have a duty to bargain with the Association over certain Association proposals. The parties thereafter resolved their dispute as to certain of these proposals, but there remains a dispute as to whether the District has a duty to bargain with the Association over the following proposal:

11.0 REDUCTION IN PERSONNEL, LAYOFF AND RECALL -

11.1 When the District eliminates a job or reduces hours of employment because of reduced workloads, budgetary or financial limitations, or for reasons other than performance or conduct of the employee, the following procedure shall be used:

11.1.1 To the extent feasible, a reduction in staff shall be accomplished through normal attrition or through a voluntary waiver of seniority rights.

11.1.2 Thereafter no employee shall be laid off pursuant to a reduction in the work force unless said employee shall have been notified of said layoff at least sixty (60) days prior to the effective date of the layoff. In the event of a reduction in work force, the District shall identify the specific position(s) to be eliminated within each classification and shall notify the employee(s) in those positions. Employees whose positions have been eliminated due to reduction in work force, or who have been affected by a layoff/elimination of position, shall have the right to assume a position or portion of a position in their classification(s) for which they are qualified, which is held by a less senior employee. In no case shall a new employee be employed by the District while there are laid-off employees who are qualified for vacant or newly-created positions. Employees are prohibited from assuming a position within a classification in which they have accrued no seniority.

11.2 In the event of a reduction in the work force within a position, an employee with the greater seniority in that classification may use the same to maintain his/her normal work schedule by displacing employees with less seniority on the work schedule. In no case shall a reduction in any employee's work hours take effect until ten (10) workdays after written notice to the affected employee is given by the District.

11.3 Laid-off employees may continue their health, dental, and life insurance benefits by paying the regular monthly per-subscriber group-rate premium for such benefits to the District after the first thirty (30) days of such layoff, during which time all fringe benefits will be continued by the District. Laid-off employees shall be recalled in order of seniority, with the most senior being recalled first, to any position for which they are qualified. Any employee who has served more than thirty (30) working days in a position shall be deemed qualified. Notices of recall shall be sent by certified or registered mail to the last known address as shown on the District's records. The recall notice shall state the time and date on which the employee is to report back to work. It shall be the employee's responsibility to keep the District notified as to his/her current mailing address. A recalled employee shall be given ten (10) calendar days from receipt of notice, excluding Saturdays, Sundays and holidays, to report to work. The District may fill the position on a temporary basis until the recalled employee can report for work, providing the employee reports within the ten (10) day period. Employees recalled to full-time work for which they are qualified are obligated to take said work. An employee who declines recall to full-time work for which he/she is qualified shall forfeit his/her seniority rights. Employees on layoff shall accrue seniority during the period of such layoff. The recall period shall be two (2) years from the date of layoff.

Article 11.0 shall become effective upon ratification by both parties of the Collective Bargaining Agreement or receipt of the interest arbitrator's award, except that the provisions of Section 19.5 shall apply according to their terms.

4. The proposal set forth in Finding of Fact 3 is primarily related to wages and conditions of employment.

5. In the District's petition for declaratory ruling, it asks the following additional questions:

1. In light of the fact that Act 16 changed the definition of "collective bargaining unit" pursuant to Section 111.70(1)(b), (defining such unit as including either professional employees or non-professional employees), and because Act 16 further created a definition of professional employee in Section 111.70(1)(ne) as those individuals for whom the Department of Public Instruction requires certification, does the previously recognized mixed unit of professional and non-professional employees retain bargaining unit status and the right to negotiate pursuant to Section 111.70 Wis. Stats.?

2. Assuming a combined unit of professional and non-professional employees is appropriate under the changes to Section 111.70 Wis. Stats. which are mandated by Act 16, have the stipulated changes in the makeup of this unit between the time of recognition and the present time destroyed any presumption of majority status which might otherwise exist?

3. Assuming the District has a continuing duty to bargain with a combined unit of professional and non-professional employees under the facts of the case, what impasse procedure applies to that combined unit, the procedure applicable to professional units or non-professional units pursuant to Act 16? Specifically, will the submission of a qualified economic offer by the District exempt the parties from the obligation to pursue interest arbitration over economic issues? Furthermore, may the District arbitrate a duration clause providing for an ending date on the contract of anything other than June 30, 1995?

4. Assuming the WERC is obligated to created [sic] two separate units of professional and non-professional employees pursuant to Act 16, does the District have an automatic duty to bargain with the two separate units, or must an election or voluntary recognition first occur in these two new bargaining units under the unique facts in this case?

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The proposal set forth in Finding of Fact 3 is a mandatory subject of bargaining.

2. The questions raised by the District as set forth in Finding of Fact 5 are not all appropriately resolved through a petition for declaratory ruling filed under Sec. 111.70(4)(b), Stats.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DECLARATORY RULING 1/

The District and the Association have a duty to bargain within the meaning of Secs. 111.70(1)(a) and (3)(a)(4), Stats. over the proposal set forth in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 4th day of February,
1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

- 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.

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

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.

GRAFTON SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECLARATORY RULING

The Layoff/Recall Proposal

The District acknowledges that the subjects addressed by this proposal are normally mandatory subjects of bargaining. However, the District argues that in this case, a contrary conclusion should be reached because the Association is seeking to illegally provide benefits to its supporters at the expense of those employees who are not supportive of the Association. The District contends that it cannot voluntarily be compelled to bargain over this proposal until the Commission concludes that the Association's motives in advancing the proposal are not illegal.

The Association asserts that its proposal is totally neutral. It argues that it would be remiss if it did not seek to acquire some rights for bargaining unit employees who have been laid off. The Association contends that the proposal is not rendered discriminatory simply because many of those employees on layoff are Association supporters.

We are satisfied that the proposal in dispute is a mandatory subject of bargaining primarily related to wages and conditions of employment. 2/ The language on its face does not create differing rights depending upon the support an individual provides to the Association. 3/ Further, in our view, the question of whether the Association's supporters would in fact be the proposal's primary beneficiaries is irrelevant to a determination of whether the proposal is mandatory. Given the foregoing, we conclude that the proposal is a mandatory subject of bargaining and that the District has a duty to bargain over same.

Additional Issues

2/ See Beloit Education Association v. WERC, 73 Wis. 2d 43 (1976); West Bend Education Association v. WERC, 121 Wis. 2d 1 (1984); and School District of Janesville, Dec. No. 21466 (WERC, 3/84) for the applicable analysis of layoff proposals as mandatory subjects of bargaining.

3/ See Racine Schools, Dec. No. 23380-A (WERC, 11/86) at 30-31 for the proposition that a proposal's mandatory status is determined by the language on its face.

As set forth in Finding of Fact 5, the District has raised additional issues in this petition beyond its duty to bargain over specific proposals. The Association has objected to the litigation of these issues in the instant forum arguing that a Sec. 111.70(4)(b), Stats. declaratory ruling is reserved for duty to bargain disputes over specific subjects. The District concedes that the instant forum may not provide the perfect vehicle for resolution of the issues it has raised. However, if the Commission concurs with the Association's position, the District asserts it is entitled to know how it can receive answers to the questions it has posed.

We concur with the Association's view that the instant forum is not appropriate for resolution of all of the various additional issues raised by the District. Given the nature of those issues, we conclude that a petition for declaratory ruling filed pursuant to Sec. 227.41, Stats., would be an appropriate vehicle for a party to use in seeking resolution of these issues. Under Sec. 227.41, Stats., the Commission answers inquiries of state-wide interest about the laws we administer.

Dated at Madison, Wisconsin this 4th day of February, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

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