

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

RANDALL CONSOLIDATED SCHOOL JOINT  
DISTRICT NO. 1

Requesting a Declaratory Ruling Pursuant to Section  
227.41, Wis. Stats., and ERB 33.16 Involving a  
Dispute Between Said Petitioner and

SCHOOL PROFESSIONAL AND EMPLOYEES  
ASSOCIATION OF KENOSHA COUNTY

Case 20  
No. 53172 DR(M)-568  
Decision No. 28734

Appearances:

Mr. David R. Friedman, Attorney at Law, 30 West Mifflin Street, Suite 202, Madison, Wisconsin 53703, for the District.

Ms. Melissa A. Cherney, Staff Counsel, and Ms. Kira Zavorski, Associate Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, for the Union.

FINDINGS OF FACT, CONCLUSION OF LAW  
DECLARATORY RULING

On September 29, 1995, the Randall Consolidated School Joint District No. 1 filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 227.41, Stats., and ERB 33.16 seeking a declaratory ruling that certain portions of the final offer of School Professional and Employees Association of Kenosha County were economic issues which could not proceed to interest arbitration.

Following successful efforts by the parties to narrow the scope of their dispute, hearing was ultimately held on December 15, 1995, in Madison, Wisconsin, before Examiner Peter G. Davis.

The parties thereafter filed briefs, the last of which was received on February 9, 1996.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

No. 28734

## FINDINGS OF FACT

1. The Randall Consolidated School Joint District No. 1, herein the District, is a municipal employer having its principal offices at Highways O and F, Bassett, Wisconsin 53101.

2. The School Professional and Employees Association of Kenosha County, herein the Union, is a labor organization representing certain professional employees of the District for the purposes of collective bargaining. The Union has its principal offices at 124 South Dodge Street, Burlington, Wisconsin 53107.

3. During collective bargaining for a 1993-1995 agreement, the Union made the following dues deduction and fair share proposal and grievance procedure proposal which the District asserts constitute economic issues:

### DUES DEDUCTION

Upon receipt of a written authorization from a bargaining unit member, the District agrees to deduct from the salary the amount of dues that such authorization empowers the District to forward to the Association. These dues shall be deducted from the 1st through the 20th payroll checks during the school year beginning with the first pay period in September. The dues so deducted shall be forwarded to the Association treasurer by the 15th of the month. The Association shall notify the District of the name of the Association treasurer to whom such dues deduction monies will be transmitted. The District will provide the Association with a check equal to the total amount of the dues deduction remittance. Any changes in the staff that affect the above remittance will be noticed to the Association in writing along with each remittance. Any dues deduction executed in excess of rightfully determined amounts will be directly reimbursed to the employee by the Association if the District cannot subsequently otherwise correct the wrongful deduction.

Each deduction shall be authorized by providing the District with a copy of a signed membership application.

To be effective, the Dues Deduction Authorization must be filed at the main office of the District no later than September 1 of any school year except that with a Dues Deduction Authorization filed

by a bargaining unit member employed by the District after September 1, such authorization shall be effective with the dues deduction being prorated over the remaining number of these pay periods in the school year other dues are normally deducted.

#### FAIR SHARE

- A. Effective July 1, 1995, all employees in the bargaining unit shall be required to pay, as provided in this Article, their fair share of the costs of representation by the Association. No employee shall be required to join the Association, but membership in the Association shall be available to all employees who apply, consistent with the Association's constitution and bylaws.
  
- B. The District shall deduct in equal installments from the monthly earnings of all employees in the collective bargaining unit, except exempt employees, their fair share of the cost of representation by the Association, as provided in section 111.70(1)(f), Wis. Stats., and as certified to the District by the Association. The District shall pay said amount to the treasurer of the Association in the same manner as dues are deducted and transmitted; however, all employees, except exempt employees, shall be required to pay their full fair share assessment regardless of the date on which their fair share deductions commence. With the first deduction, the District will provide the Association with a list of employees from whom deductions are made. Thereafter, any changes in staff that affect the above remittance will be noticed to the Association in writing along with each remittance.
  1. For purposes of the Article, exempt employees are those employees who are members of the Association and whose dues are deducted and remitted to the Association by the District pursuant to the Dues Deduction or paid to the Association in some other manner authorized by the Association. The Association shall notify the District of those employees who are exempt from the provisions of this Article and shall notify the District of any

changes in its membership affecting the operation of the provisions of this Article.

2. The Association shall notify the District of the amount certified by the Association to be the fair share of the cost of representation by the Association and the date for the commencement of fair share deductions prior to any required fair share deduction.
- C. The Association agrees to certify to the District only such fair share costs as are allowed by law, and further agrees to abide by the decisions of the Wisconsin Employment Relations Commission and/or courts of competent jurisdiction in this regard. The Association agrees to inform the District of any change in the amount of such fair share costs.
  - D. The Association shall provide employees who are not members of the Association with an internal mechanism within the Association which is consistent with the requirements of state and federal law and which will allow those employees to challenge the fair share amount certified by the Association as the cost of representation and to receive, where appropriate, a rebate of any monies to which they are entitled. To the extent required by state or federal law, the Association will place in an interest-bearing escrow account any disputed fair share amounts.
  - E. The Association, (and the Wisconsin Education Association), does (do) hereby indemnify and shall save the District harmless against any and all claims, demands, suits, or other forms of liability, including court costs, that shall arise out of or by reason of action taken or not taken by the District, which District action or non-action is in compliance with the provisions of this Article, and in reliance on any lists or certificates which have been furnished to the District pursuant to this Article; provided that the defense of any such claims, demands, suits or other forms of liability shall be under the control of the Association and its attorneys. However, nothing in this section shall be interpreted to preclude the District from participating in any legal proceedings challenging the application or interpretation of this Article through representatives of its own choosing and at its own expense.

ARTICLE III GRIEVANCE PROCEDURE

- A. Purpose - The purpose of this procedure is to provide an orderly method of resolving differences arising during the term of this Agreement. A determined effort shall be made to settle any such differences through the use of the grievance procedure, and there shall be no suspension of work or interference with the operations during the term of the Agreement.
- B. Definition - For the purpose of this Agreement:
1. a ~~A~~ grievance is ~~defined as~~ any complaint regarding the interpretation or application of a specific provision of this Agreement.
  2. **A grievant may be an employee, or a group of employees, or the Association.**
- C. Grievances shall be processed in accordance with the following procedure:

STEP 1

- a. An earnest effort shall first be made to settle the matter informally between the ~~teacher~~ **grievant** and the Educational Administrator.
- b. If the matter is not resolved, the grievance shall be presented in writing by the ~~teacher~~ **grievant** to the Education Administrator within 15 school days after the facts upon which the grievance is based first occur or first become known. **A meeting will be held within ten (10) calendar days between the Administrator and the grievant.** The Educational Administrator shall give his/her answer within 15 school days of the time the grievance was represented to him/her in writing. **A copy will be provided to the SPEAK President or his or her designee within a reasonable time.**

## STEP 2

- a. If not settled in Step 1, the grievance may, within 10 days, be appealed to the Board of Education. The Board shall give a written answer within thirty (30) days after receipt of the appeal. **Within twenty one (21) days after appeal of the grievance to the Board of Education, the Board shall meet with the grievant to consider the grievance.**
- D. The parties agree to follow each of the foregoing steps in the processing of a grievance. If the employer fails to give a written answer within the time limits set out for any step, the employee may immediately appeal to the next step. Grievances not processed to the next step within the prescribed time limits shall be considered dropped.
- E. The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issue involved, the specific section(s) of the Agreement alleged to have been violated, and the relief sought.
- F. The employee representative may assist in processing the grievance at any step.
- G. Saturdays, Sundays, and legal holidays shall be excluded in computing time limits under this article.
- H. Further procedures of grievance shall be processed as outlined in Section 111.70 of the Wisconsin Statutes.

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

### CONCLUSION OF LAW

1. The Union proposals set forth in Finding of Fact 3 are not economic issues within the meaning of Sec. 111.70(1)(dm), Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the

Commission makes and issues the following

DECLARATORY RULING

Because the Union proposals set forth in Finding of Fact 3 are not economic issues, the Union can utilize the interest arbitration process under Sec. 111.70(4)(cm)6, Stats., to seek inclusion of these proposals in the 1993-1995 contract.

Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of May, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

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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 page 8)

(footnote 1 continued from page 7)

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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.

RANDALL CONSOLIDATED SCHOOL  
JOINT DISTRICT NO. 1

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSION OF LAW  
DECLARATORY RULING

POSITIONS OF THE PARTIES

The Union

The Union asserts that its grievance procedure proposal extends existing rights to file grievances under the contract to include the Union, or a group of employees. The Union contends this proposed modification of the grievance procedure is not an "economic issue" within the meaning of Sec. 111.70(1)(dm), Stats.

The Association notes that grievance procedures are not contained in the statutory list of economic issues set forth in the text of Sec. 111.70(1)(dm), Stats. Inasmuch as a grievance procedure is a common component in virtually every bargaining agreement, the Union asserts that the absence of any reference to grievance procedures in the text of Sec. 111.70(1)(dm), Stats., is significant. The Union also argues that it would be an absurd reading of the provisions of 1993 Wisconsin Act 16 to conclude that a union cannot seek to use the interest arbitration process to acquire the right to enforce its own collective bargaining agreement. Because a grievance procedure relates to a union's ability to function as the collective bargaining representative of the employees and not to the level of pay or benefits payable by the employer to the employees, the Union asserts that the grievance procedure proposal is not an economic issue.

The Union asserts that its dues deduction and fair share proposal goes to the very heart of its ability to fulfill its obligations as the collective bargaining representative of the employees and is not an economic issue within the meaning of Sec. 111.70(1)(dm), Stats.

The Union urges the Commission to reject the District's contention that dues deduction and fair share provisions relate to "salary." The Union argues the District is not required to increase or decrease salary as a result of this proposal. The Union contends the District is improperly attempting to control the use of teacher salaries.

The Union also urges the Commission to reject the District argument that a proposal becomes an economic issue simply because it may impose some incidental administrative expense on an employer. The Union argues that such an extension of the meaning of Sec. 111.70(1)(dm), Stats., would lead to absurd results and certainly is not the outcome intended by the Legislature. The Union argues that if it was the Legislature's intent to consider incidental administrative costs, there would have been no need to define the meaning of "economic issue" because any new contract provision will result in some increased administrative cost and potential litigation expenses.

Given the foregoing, the Union requests the Commission render a declaratory ruling that

these two proposals can proceed to interest arbitration.

### The District

The District argues that the Association's grievance procedure proposal creates a new or increased financial liability upon the District and implicates or relates to the enumerated listing of economic issues contained in Sec. 111.70(1)(dm), Stats. The District contends it would be ironic if the various issues listed in Sec. 111.70(1)(dm), Stats., cannot be arbitrated but the contract provision allowing enforcement of these issues can be arbitrated.

As to the Union's dues deduction and fair share proposal, the District argues that these proposals relate to salary and would increase District expenses if the proposal were to become part of the collective agreement.

The District asserts that when money is involuntarily deducted from an employee's salary, there can be no doubt that the amount of salary the individual employee receives is reduced. Like the employer proposal found to be economic in La Crosse School District, Dec. No. 28462 (WERC, 11/95), the District argues that a salary reduction pursuant to a dues deduction/fair share proposal should also be found to be an economic issue. The District also contends that the Association's proposal would increase its administrative and litigation costs and thus increases the District's financial liability within the meaning of Sec. 111.70(1)(dm), Stats.

Given the foregoing, the District asks the Commission to find the proposals in question to be economic issues which cannot proceed to interest arbitration.

### DISCUSSION

Section 111.70(1)(dm), Stats. provides in pertinent part:

**(dm)** "Economic issue" means any issue that creates a new or increased financial liability upon the municipal employer, including salaries, overtime pay, sick leave, payments in lieu of sick leave usage, vacations, clothing allowances in excess of the actual cost of clothing, length of service credit, continuing education credit, shift premium pay, longevity pay, extra duty pay, performance bonuses, health insurance, life insurance, vacation pay, holiday pay, lead worker pay, temporary assignment pay, retirement contributions, severance or other separation pay, hazardous duty pay, certification or license payment, job security provisions, limitations on layoffs and contracting or subcontracting of work that would otherwise be performed by municipal employees in the collective bargaining unit with which there is a labor dispute.

The statute does not list grievance procedures as an economic issue. In our view, this is so because a grievance procedure does not independently create any new or increased financial liability upon a municipal employer. The procedure simply serves as a contractual mechanism by

which disputes over the interpretation of a collective bargaining agreement can be resolved. While the District argues that it would be ironic for the Commission to conclude that a wage provision in a collective bargaining agreement constitutes an economic issue while a dispute resolution mechanism as to the meaning of the same provision is not, we are satisfied that is precisely what the Legislature intended. The presence of an expanded grievance procedure does not in and of itself create any new or increased liability within the meaning of Sec. 111.70(1)(dm), Stats. Therefore, we are satisfied that the Union's grievance procedure proposal is not an economic issue and can proceed to interest arbitration.

Turning to the Union's dues deduction/fair share proposal, we again note that the definition of an economic issue found in Sec. 111.70(1)(dm), Stats., does not contain dues deduction or fair share or a generic reference to "union security provisions." The District argues that to the extent union security payments are deducted from salary, the dues deduction/fair share proposal is a "salary" proposal and thus an economic issue. We find the Union's response to this argument to be persuasive. Unlike the employer proposal in La Crosse, the dues deduction/fair share proposal does not increase or decrease the District's obligations as to teacher salaries. Rather, it creates a mechanism by which the Union can acquire payment of dues and fair share deductions from employees it is obligated to represent.

We also reject the District argument that the potential for increased administrative costs provides a basis for finding a proposal to be an economic issue. As persuasively argued by the Union, if this argument were to be accepted, there would be no need for any statutory delineation of economic versus non-economic issues because all new contract provisions share the potential cited by the District. Thus, we are persuaded that it was not the Legislature's intent to look at administrative costs but rather to focus on the question of whether a proposal impacts on monies the District is obligated to pay employees. Here, as argued by the Union, the financial transaction in question is between the employee and the Union. The District is simply a conduit.

Given all the foregoing, we are persuaded that both proposals are not economic issues and can proceed to interest arbitration.

Dated at Madison, Wisconsin, this 22nd day of May, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner