STATE OF WISCONSIN
CIRCUIT COURT BRANCH III CIVIL DIVISION
COUNTY OF DODGE

DODGELAND EDUCATION ASSOCIATION,

Plaintiff,

vs.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Defendant.

MEMORANDUM DECISION AND ORDER
Case No. 99 CV 41
[Decision No. 29490-A]
[NOTE: This document was re- keyed by WERC. Original pagination has been retained.]

This is a judicial review of an administrative decision made by the Wisconsin Employment Relations Commission (hereinafter referred to as WERC). This action was commenced by the Dodgeland Education Association (hereinafter referred to as the DEA). Joined with WERC as a respondent is the Dodgeland School District (hereinafter referred to as the District).

The relationship between the DEA and the District is regulated by Wisconsin law through the Municipal Employment Relations Act (hereinafter referred to as MERA). MERA was significantly amended in 1993 by the addition of provisions regarding qualified economic offers and spending caps. Those amendments will simply be referred to as the QEO amendments.

The evidence in this case indicates that for the 1995 to 1997 contract period the DEA and the District entered into a separate memorandum of understanding regarding teacher preparation time (hereinafter referred to as prep time). By its own terms, the memorandum of understanding would lapse or terminate at the end of that contract period, which would be in the spring of 1997.

The evidence indicates that for the contract period 1997 to 1999 the parties were unable

to reach an agreement. There was an impasse. Under MERA as it had existed from the early 1970's, the DEA could then force the District into binding arbitration on "mandatory subjects of bargaining". However, if the District made a qualified economic offer, then under the QEO amendments the District could not be forced to arbitration. The District made what it thought was a qualified economic offer, and then petitioned WERC for a declaratory ruling that in fact its offer was a qualified economic offer. WERC agreed with the District, and the commission issued a decision in favor of the District. That decision is being challenged in this lawsuit.

The principal contention of the DEA is that the proposed qualified economic offer of the District did not include any guaranties or provisions regarding prep time. It appears to the DEA that they lost the benefits provided by the memorandum of understanding which they had relied on for the 1995-1997 contract period.

The QEO amendments indicate that in order to constitute a qualified economic offer the offer must maintain all existing "fringe benefits" and provide for some percentage increase on those benefits and on the basic wages, the percentage increases to comply with percentages established in the QEO amendments. Apparently these amendments introduced the term "fringe benefits" for the first time into MERA. The issue brought before this Court is whether or not there was a reasonable basis for WERC to determine and conclude that prep time is not considered a fringe benefit for purposes of these statutes. The Court finds in fact that WERC did have a reasonable basis for making that determination, and the Court is therefore going to affirm that determination and dismiss this lawsuit.

To begin with, there is a significant dispute as to the weight to be given to WERC's decision. The various standards which might apply were recently discussed by the Court of Appeals in Madison Gas & Electric v. Department of Revenue, ____Wis.2d ____ (Ct. App. 1999). The Court of Appeals set forth the following discussion of those standards.

> The supreme court has established when deference to an agency's legal conclusion is warranted and how much deference reviewing courts should give. See UFE, Inc. v. LIRC, 201 Wis.2d 274, 284, 548 N.W.2d 57, 61 (1996) (citation omitted). An agency's interpretation or application of a statute may be accorded great weight deference, due weight deference or de novo review. See id. We will accord great weight deference only when all four of the following requirements are met: (1) the agency was charged by the legislature with the duty of administering the statute; (2) the interpretation of the agency is one of long standing; (3) the agency employed its expertise or specialized knowledge in forming the interpretation; and (4) the agency's interpretation will provide uniformity and consistency in the application of the statute. See id. (citing Harnischfeger Corp. v. LIRC, 196 Wis.2d. 650, 660, 539 N.W.2d 98, 102 (1995)). Under the great weight standard, "a court will uphold an agency's reasonable interpretation that is not contrary to the clear meaning of the statute, even if the court feels that an alternative interpretation is more reasonable." UFE, 201 Wis.2d at 287, 548 N.W.2d at 62.
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> We will accord due weight deference when "the agency has some experience in an area, but has not developed the expertise which necessarily places it in a better position to make judgments regarding the interpretation of the statute than a court." Id. at 286, 548 N.W.2d at 62. The deference allowed an administrative agency under due weight review is accorded largely because the legislature has charged the agency with the enforcement of the statute in question. See id. Under this standard, we will not overturn a reasonable agency decision that furthers the purpose of the statute, unless we determine that there is a more reasonable interpretation under the applicable facts than that made by the agency. See id. at 286-87, 548 N.W.2d at 62.
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> And finally, we will employ de novo review to the legal conclusion made by an agency if any one of the following is true: (1) the legal issue presented to the agency is one of first impression; (2) there is no evidence of any special agency experience or expertise in deciding the legal issue; or (3) when the agency's position on the legal issue has been so inconsistent as to provide no real guidance. See Coutts v. Wisconsin Retirement Bd., 209 Wis.2d 655, 664, 562 N.W.2d 917, 921 (1997) (citations omitted). Id. at ____.

WERC contends that this decision should be accorded "great weight" because of its expertise and experience in determining what matters are subject to collective bargaining, including fringe benefits.

The DEA argues that the Court should employ a de novo standard because fringe benefits has never been defined by any case law, and therefore this is a matter of first impression for the commission.

The Court agrees that the determination of what is or is not a fringe benefit under the QEO amendments is a relatively new issue, perhaps one of first impression. On the other hand,

the commission has great experience in determining what are mandatory subjects of bargaining versus what are permissive subjects of bargaining. The commission also has great experience in dealing with prep time and has on numerous occasions determined that it is a permissive subject of bargaining, but not mandatory. Under all of the circumstances, this Court has afforded the decision due weight, or the middle standard of deference to the agency.

The Court has every reason to believe that this decision is going to be appealed. The Court also understands that the appellate courts will not be reviewing my decision, but rather the decision of the WERC. Nevertheless, the Court will set forth some analysis as a springboard for the appeal in this case.

As the District has argued in its brief, the legislature did specifically delegate to WERC the authority to create forms for costing out "fringe benefits" under the QEO amendments. The legislature thereby recognized the special expertise that WERC has developed in this area.

There are a number of findings that the WERC decision is based on, and the DEA really does not challenge any of the underlying findings.

There is no dispute but that in every previous decision regarding prep time, it has been determined to be a permissive subject of bargaining and not a mandatory subject of bargaining. The WERC decision in this case allows the District to make a qualified economic offer without being forced to the bargaining table on the issue of prep time. Such a ruling is consistent with the previous decisions of WERC.

One of the principal purposes of the QEO amendments was to provide property tax relief to Wisconsin citizens. There is nothing in the amendments, however, which were intended to limit, restrict, or deny to school boards their authority in managing and making policy decisions appropriate for their district.

How a work force is paid is a bargainable issue. However, how the work force is

deployed is a policy issue. There is nothing in the QEO amendments which indicate any intention on the part of the legislature to remove policy issues from the sole jurisdiction and discretion of the school boards. There is also nothing in the QEO amendments which indicate that school boards which continue to exercise such discretion are not entitled to the protection of the QEO amendments.

Certainly policy decisions made by a district can have a financial impact on teachers. Teachers are permitted to bring such impact issues to the bargaining table. However, the fact that a district made such a decision should not deprive it of participation and protection under the QEO amendments. Under the DEA's interpretation of this law, if a school district already lacks the revenue to continue funding a policy choice that was previously in place, that district cannot use the QEO to prevent a further loss of funds. This is contrary to not only longstanding interpretations of MERA but also to the purposes for which the QEO was added to the act. Therefore, the Court agrees that there is no more reasonable interpretation of the QEO amendments under the applicable facts than that already generated by WERC.

The traditional, common sense, and dictionary definitions of "fringe benefits" have typically included things like health insurance, disability insurance, paid vacation, retirement benefits, and similar features of an employee's overall compensation package.

The DEA argues that the case of Brown County Attorneys Association v. Brown County, 169 Wis.2d 737 (Ct. App. 1992) establishes a definition for fringe benefits which is broad enough to include prep time.

The District argues that DEA's reliance upon Brown County Attorneys Association is misplaced. The District points out that the courts were interpreting a different statute in that case than MERA or the QEO amendments. The District also notes that all of the things which were determined to be fringe benefits in Brown County would in fact be mandatory subjects of

bargaining under MERA and not permissive subjects of bargaining. Since WERC has already clearly established that prep time is merely a permissive subject of bargaining, the logic of Brown County Attorneys Association does not apply here.

For all the reasons set forth above, the Court determines that the agency's decision furthers the purpose of the QEO amendments and that there is no more reasonable interpretation of what the legislature intended than that made by the agency in this case.

IT IS THEREFORE ORDERED that the decision of WERC is hereby affirmed and this case is ordered to be dismissed.

Dated this 21st day of December, 1999.

BY ORDER OF THE COURT:

Andrew P. Bissonnette /s/
ANDREW P. BISSONNETTE
CIRCUIT JUDGE, BRANCH III
DODGE COUNTY, WISCONSIN

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