

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION, Complainant,

vs.

MILWAUKEE BOARD OF SCHOOL DIRECTORS, Respondent.

Case 393
No. 60217
MP-3756

Decision No. 30201-A

Appearances:

Perry, Shapiro, Quindel, Saks, Charlton & Lerner, S.C., by **Attorney Barbara Zack Quindel**, 823 North Cass Street, P. O. Box 514005, Milwaukee, Wisconsin 53203-3405, appearing on behalf of Complainant.

Office of City Attorney, City of Milwaukee, by **Attorney Donald L. Schriefer**, 200 East Wells Street, Suite 800, Milwaukee, Wisconsin 53202-3551, appearing on behalf of Respondent.

ORDER INDEFINITELY STAYING PROCEEDINGS IN THIS MATTER
AND INDEFINITELY POSTPONING HEARING

On August 13, 2001, Milwaukee Teachers' Education Association (Complainant) filed a complaint with the Wisconsin Employment Relations Commission alleging that Milwaukee Board of School Directors (Respondent) was violating Sec. 111.70(3)(a)5 and 7, Stats., by refusing to implement the June 15, 2001 Arbitration Award of Arbitrator Peter E. Obermeyer. On August 14, 2001, the Respondent filed an action in Milwaukee County Circuit Court (Case No. 01-CV-007544) seeking vacation of the June 15, 2001 Arbitration Award of Arbitrator Peter E. Obermeyer. On August 24, 2001, Respondent requested the Wisconsin Employment Relations Commission to dismiss the complaint, without prejudice. On August 29, 2001, the

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Commission appointed Coleen A. Burns, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Secs. 111.70(4)(a) and 111.07, Stats. On September 7, 2001, the Examiner issued a Notice of Hearing on Complaint, scheduling a hearing for September 21, 2001. On September 10, 2001, Complainant filed its Opposition to Respondent's Motion to Vacate and Alternative Motion to Confirm the June 15, 2001 Arbitration Award of Arbitrator Peter E. Obermeyer in Circuit Court. On September 13, 2001, Complainant filed a Memorandum of the MTEA in Opposition to the MBSD's Request to Dismiss Complaint. Based upon the arguments of the parties and supporting documents, it is hereby

ORDERED

1. That the proceedings in this matter are hereby indefinitely stayed pending the conclusion of the judicial proceedings in Milwaukee County Circuit Court Case No. 01-CV-007544.

2. That the hearing previously scheduled for Friday, September 21, 2001, is hereby indefinitely postponed.

Dated at Madison, Wisconsin, this 17th day of September, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

MILWAUKEE PUBLIC SCHOOLS

**ORDER INDEFINITELY STAYING PROCEEDINGS IN THIS MATTER
AND INDEFINITELY POSTPONING HEARING**

BACKGROUND

On August 13, 2001, Milwaukee Teachers' Education Association (Complainant) filed a complaint with the Wisconsin Employment Relations Commission alleging that Milwaukee Board of School Directors (Respondent) was violating Secs. 111.70(3)(a)5 and 7, Stats., by refusing to implement the June 15, 2001 Arbitration Award of Arbitrator Peter E. Obermeyer. On August 14, 2001, the Respondent filed an action in Milwaukee County Circuit Court (Case No. 01-CV-007544) seeking vacation of the June 15, 2001 Arbitration Award of Arbitrator Peter E. Obermeyer. On August 24, 2001, Respondent requested the Wisconsin Employment Relations Commission to dismiss the complaint, without prejudice. On September 10, 2001, Complainant filed its Opposition to Respondent's Motion to Vacate and Alternative Motion to Confirm the June 15, 2001 Arbitration Award of Arbitrator Peter E. Obermeyer with the Circuit Court. On September 13, 2001, Complainant filed a Memorandum of the MTEA in Opposition to the MBSD's Request to Dismiss Complaint.

ARGUMENT OF THE PARTIES

Respondent

Respondent argues that the Complaint should be dismissed, without prejudice. Respondent argues that Complainant is attempting to preempt the Respondent from exercising its Chapter 788 rights by persuading the Commission to order the Respondent to comply with the Arbitration Award before the Court, as authorized in Chapter 788, determines whether or not the Award is valid. Respondent acknowledges that Secs. 111.70(3)(a)5 and 7, Stats., require employers to accept and implement arbitration decisions, but avers that MERA does not trump the procedures set forth in Chapter 788 for confirming or vacating arbitration awards.

Respondent argues that the Complaint is premature because the Circuit Court must first determine whether or not a valid Arbitration Award exists. According to Respondent, a violation of Sec. 111.70(3)(a)5 and 7, Stats., may not be claimed until after Respondent has refused to accept or implement a valid Arbitration Award.

Respondent requests the WERC to advise the MTEA that it does not have concurrent jurisdiction with the Court to perform a Chapter 788 review. Respondent further requests the WERC to advise the MTEA that the WERC is disinclined to disrupt the review procedures established by the Legislature in Chapter 788.

Complainant

Complainant asserts that courts and the WERC have long held that the Commission and the Circuit Court have concurrent jurisdiction to examine an arbitration award under Sec. 788.10, Stats. Citing ROCK COUNTY, DEC. NO. 25610-A (SCHIAVONI, 12/88), AFF'D DEC. NO. 25610-C (WERC, 3/90), the Complainant argues that it is unequivocal that concurrent jurisdiction does not mean that the Circuit Court has primacy under Chapter 788 over a WERC proceeding under Sec. 111.70, Stats.

Complainant argues that, by seeking to vacate the award, Respondent has disputed the terms of the Arbitrator's final and binding award and refused to pay the teachers the amount ordered by the Arbitrator and, thus, refused to implement the award under Sec. 111.70(3)(a)5, Stats. Complainant denies, therefore, that the Complaint is premature.

Complainant argues that the WERC offers the Respondent the same opportunity to litigate the issue it seeks to raise under the same statutory standards that would be used in Respondent's Circuit Court action and that each forum provides Respondent with the remedial relief it seeks. Complainant asserts that the issue of appropriate forum for enforcement of the Arbitration Award presents an issue of comity. Thus, Complainant argues, the principles of comity, and not Respondent's unsupported declaration of the WERC's lack of jurisdiction, should be the basis for determining the forum in which this matter is litigated.

Complainant argues that, when the court and WERC have concurrent jurisdiction, the court has discretion to decide whether to retain jurisdiction or to defer to the agency. Complainant requests that the WERC deny Respondent's request to dismiss the Complaint. Complainant further requests that the WERC assert concurrent jurisdiction of this matter, but hold further action in abeyance until the Circuit Court determines whether it wishes to exercise its discretion to defer the matter for determination to the WERC or take action on the motion to vacate.

DISCUSSION

In its Complaint, Complainant alleges that Respondent has violated Sec. 111.70(3)(a)5 and 7, Stats., by refusing to implement an arbitration award. Neither party disputes the fact that the Commission has jurisdiction to determine violations of Sec. 111.70(3)(a)5 and 7, Stats.

Respondent argues, however, that, in the present case, the Commission should not assert jurisdiction over Complainant's Sec. 111.70(3)(a)5 and 7 claims because they are premature in that the Circuit Court has not yet decided Respondent's Chapter 788 Motion to Vacate. According to Respondent, assertion of Commission jurisdiction would disrupt the review procedures set forth in Chapter 788.

By requesting the WERC to order Respondent to cease and desist from refusing to implement the arbitration award, Complainant is seeking enforcement of the arbitration award. As Complainant argues, the WERC and the Courts have recognized that MERA and Chapter 788 provide alternative forums in which to seek enforcement of arbitration awards. DANE COUNTY V. DANE CTY. UNION LOCAL 65, 210 WIS. 2D 267, 565 N.W.2D 540 (CTAPP 1997); MADISON METROPOLITAN SCHOOL DIST. V. WERC, 86 WIS. 2D 249, 271 N.W.2D 314 (CTAPP 1978); STATE OF WISCONSIN (DOC), DEC. NO. 28379-B, 28415-B (GRATZ, 3/98), AFF'D BY OPERATION OF LAW (WERC, 3/98); ROCK COUNTY, DEC. NO. 25610-A (SCHIAVONI, 12/88), AFF'D DEC. NO. 25610-C (WERC, 3/90).

The Commission does not have jurisdiction to vacate an award under Chapter 788. JEFFERSON SCHOOL DISTRICT, DEC. NO. 13698-A (YAEGER, 1/76). It is well established, however, that the Commission applies Sec. 788.10, Stats., standards for vacating grievance arbitration awards in complaint cases seeking enforcement of arbitration awards. STATE OF WISCONSIN, SUPRA.; ROCK COUNTY, SUPRA. Thus, a resolution of the issues submitted to the Circuit Court in Respondent's Chapter 788 action to vacate the arbitration award, may also resolve the issues raised in the Complaint.

It is the Commission's policy not to assert its jurisdiction over issues that also have been submitted to a court, even though the Commission may have primary jurisdiction over the issue. Recognizing that, in such cases, it is for the court to decide whether to honor the Commission's jurisdiction, the WERC does not dismiss the complaint, but rather, holds the matter in abeyance pending the conclusion of the judicial proceedings. BURNETT COUNTY, DEC. NO. 28262-A (McLAUGHLIN, 5/95), AFF'D BY OPERATION OF LAW, DEC. NO. 28262-C (WERC, 6/96); CHIPPEWA COUNTY, DEC. NO. 28183-A (CROWLEY, 11/94); PIERCE COUNTY, DEC. NO. 16067 (1/78).

In summary, given the fact that the Commission does have jurisdiction to determine the prohibited practice claims raised in the complaint, it is not appropriate to dismiss the complaint without prejudice, as requested by the Respondent. For the reasons discussed supra, it is

appropriate to issue an order indefinitely staying proceedings in this matter pending the conclusion of the judicial proceedings. Accordingly, the Examiner has issued an Order Indefinitely Staying Proceedings in this Matter and Indefinitely Postponing Hearing.

Dated at Madison, Wisconsin, this 17th day of September, 2001.

Coleen A. Burns /s/

Coleen A. Burns, Examiner