

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Motion of

WEST CENTRAL EDUCATION ASSOCIATION

Requesting a Review of Implementation Pursuant to ERC 33.10(6)
Involving a Dispute Between the Association

and

RIVER FALLS SCHOOL DISTRICT

Case 41
No. 60601
INT/ARB-9460

Decision No. 30563

Appearances:

Attorney Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Room 500, Madison, Wisconsin 53703, appearing on behalf of River Falls School District.

Mr. Brett J. Pickerign, Executive Director, West Central Education Association, 105 21st Street, North, Menomonie, Wisconsin 54751, appearing on behalf of West Central Education Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On July 19, 2002, the West Central Education Association filed a motion to review implementation with the Wisconsin Employment Relations Commission pursuant to ERC 33.10(6). The motion asserts that the River Falls School District will be improperly implementing a qualified economic offer by failing to maintain a retirement fringe benefit that was in effect on the 90th day prior to the expiration of the parties' 1999-2001 bargaining agreement. The District asserts that it has no obligation to maintain the fringe benefit in question.

On September 23, 2002, the parties filed a stipulation of facts.

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The parties thereafter filed written argument -- the last of which was received December 23, 2003.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The River Falls School District, herein the District, is a municipal employer having its principal offices in River Falls, Wisconsin.
2. The West Central Education Association, herein the Association, is a labor organization serving as the exclusive collective bargaining representative of certain school district professional employees of the District.
3. The District and the Association were parties to an August 15, 1999-August 14, 2001 collective bargaining agreement that included the following Letter of Agreement:

LETTER OF AGREEMENT

This Letter of Agreement entered into between River Falls Board of Education (hereinafter referred to as the School District) and the West Central Education Association-River Falls (hereinafter referred to as the Association) as follows:

1. The School District and the Association are parties to a two-year collective bargaining agreement, covering the period August 15, 1999 through August 14, 2001 bearing the same date as this Letter of Agreement.
2. Among other things, the collective bargaining agreement contains a severance grant provision as Article VIII.
3. The parties to the collective bargaining agreement have agreed to this Letter of Agreement to provide a window period of enhancement in the provisions of Article VIII to encourage retirement for eligible employees prior to the expiration of the collective bargaining agreement covering the period August 15, 1999 through August 14, 2001. The enhancements as agreed to by the parties are as follows:

- A. During the window period as provided in this Letter of Agreement, Article VIII, Paragraph A, shall be modified to reduce the service requirement from twenty-five (25) years of service to fifteen (15) years of service and the calculation related to the grant shall be reduced from 75% of the employee's daily rate to 50% of the employee's daily rate at the time of retirement and the grant for which the employee is eligible as provided herein shall be paid out over a three-year period in equal annual installments.
- B. The age requirement of 57 as referred to in Article VIII, Paragraph B.2 shall be reduced to 55, and the limitation of sixty (60) months shall not apply to employees who retire during the window period as outlined in this Letter of Agreement. Such an employee shall be eligible for the benefit until the employee becomes eligible for Medicare/Medicaid, or age 65, whichever occurs first.

In addition, the obligation to select either the retirement benefit in Article VIII, Section A or Article VIII, Section B as provided in Article VIII, B.1 is suspended during the window period and eligible employees who retire under the enhanced provisions of Article VIII during the window period as provided in this Letter of Agreement will receive both the benefits as outlined in Paragraphs A and B.

- C. Those employees eligible for the enhanced provisions of Article VIII as provided in this Letter of Agreement who retire at the end of the 1999-2000 school year or the end of the 2000-2001 school year shall be eligible for the Employer contribution dollar amount for health/dental/long-term care insurance in effect at the time of their retirement and the dollar limitation of \$350 per month shall not apply to employees who retire during the window period as outlined in this Letter of Agreement.
- D. The provisions of Article VIII in the collective bargaining agreement, not modified in this Letter of Agreement, shall remain in full force and effect for employees taking enhanced early retirement under the provisions of this Letter of Agreement.

4. The window period as referred to in this Letter of Agreement shall apply only to those employees otherwise eligible for Article VIII who make application and retire at the end of the 1999-2000 and 2000-2001 school years and the provisions of this Letter of Agreement shall be of no force and effect except for those employees who have submitted their request for early retirement at the end of the business day on April 15, 2001. Any employee who retires after the window period as defined herein shall be subject to all provisions of Article VIII of the collective bargaining agreement and shall not be entitled to any of the provisions of this Letter of Agreement.
 5. The District agrees that it will conduct a study of the fiscal impact of the changes in the early retirement benefit program as outlined in this Letter of Agreement during the next two years of this contract and the District shall share the results of such study with the Association.
 6. Except as otherwise provided herein, and for the specific window period as described, the terms of the collective bargaining agreement, for the period August 15, 1999 through August 14, 2001 shall remain in full force and effect.
4. The District advised the Association that it intended to implement a qualified economic offer that did not include the fringe benefits set forth in the Letter of Agreement.

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

CONCLUSIONS OF LAW

1. The benefits created by the Letter of Agreement set forth in Finding of Fact 3 are “fringe benefits provided to the municipal employees in a collective bargaining agreement, as such . . . benefits existed on the 90th day prior to expiration of” the parties’ 1999-2001 collective bargaining agreement within the meaning of Sec. 111.70(1)(nc)1.a., Stats.

2. A labor organization can waive its statutory right to require that a school district **implement** a qualified economic offer that complies in all respects with Sec. 111.70 (1)(nc), Stats.

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

ORDER

Within 15 days of the date of this Order, the River Falls School District must either: (1) request an evidentiary hearing as to whether the West Central Education Association waived its right to require that the District implement a qualified economic offer that includes maintenance of the fringe benefits in the Letter of Agreement; or (2) advise the Association and Commission that it will maintain the fringe benefits in the Letter of Agreement when implementing a qualified economic offer; or (3) advise the Association and Commission that it will not maintain the fringe benefits in the Letter of Agreement and thereby withdraws its qualified economic offer.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of February, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

River Falls School District

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

BACKGROUND

The Association's motion raises the question of whether the District must maintain certain retirement benefits created by the Letter of Agreement if the District wishes to properly implement a qualified economic offer within the meaning of Secs. 111.70(1)(nc) and 4(cm)5s, Stats.

The District contends that evidence of the parties' intent as to whether the benefits in the Letter of Agreement must be part of an implemented qualified economic offer is relevant when answering this question. The Association disagrees. To potentially expedite resolution of their dispute by avoiding the need for an evidentiary hearing, the parties agreed that the Commission should proceed to decide the dispute based on a factual stipulation. Should the Commission conclude that the parties' intent is relevant to resolution of the dispute, the parties reserve the right to present evidence as to their intent before the dispute is ultimately resolved.

DISCUSSION

Both parties agree that if the District wishes to make a "qualified economic offer" as defined in Sec. 111.70(1)(nc)1.a. Stats., 1/, the District must offer to maintain all fringe benefits in effect on the 90th day prior to the expiration on the 1999-2001 contract. Both parties agree that the retirement benefits in the Letter of Agreement are fringe benefits within the meaning of Sec. 111.70(1)(nc)1.a., Stats. The parties disagree over: (1) whether the Letter of Agreement fringe benefits "existed" on the 90th day prior to expiration; and, if so, (2) whether the parties could nonetheless agree that these fringe benefits need not be maintained if the District were to implement a qualified economic offer. We proceed to resolve those disagreements.

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(nc) 1. "Qualified economic offer" means an offer made to a labor organization by a municipal employer that includes all of the following, except as provided in subd.2:

a. A proposal to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs as determined under sub. (4)(cm) 8s., and to maintain all fringe benefits provided to the municipal employees in a collective bargaining unit, as such contributions and benefits existed on the 90th day prior to expiration of any previous collective bargaining agreement between the parties, or the 90th day prior to commencement of negotiations if there is no previous collective bargaining agreement between the parties.

As to the question of whether the Letter of Agreement fringe benefits “existed” on the 90th day prior to expiration of the 1999-2001 contract, the District contends that the benefits did not exist because teachers giving notice of intent to retire on the 90th day prior to contract expiration would be too late to take advantage of the Letter of Agreement benefits. The Association counters by pointing out that the Letter of Agreement has a duration which parallels that of the 1999-2001 contract and thus argues that the fringe benefits clearly existed on the 90th day prior to expiration of that 1999-2001 contract.

We conclude the Letter of Agreement fringe benefits “existed” on the 90th day prior to expiration of the 1999-2001 contract. The Letter of Agreement created the fringe benefits in question and the Letter of Agreement existed on the 90th day prior to contract expiration. Although eligibility for those fringe benefits expired prior to the 90th day, the benefits remained and “existed” on the 90th day for anyone who had previously met the eligibility requirement.

Given our conclusion that the Letter of Agreement fringe benefits “existed” on the 90th day prior to expiration of the 1999-2001 contract and given the parties’ accurate assessment that Letter of Agreement fringe benefits are “fringe benefits” within the meaning of Sec. 111.70(1)(nc)1.a., Stats., we are satisfied that the District must offer to maintain the Letter of Agreement fringe benefits if it wishes to **implement** an enforceable qualified economic offer **unless**, as argued by the District, the Association can waive this statutory requirement. 2/ We turn to a consideration of that issue.

2/ Although the parties have framed their argument as to this issue in terms of the relevance of evidence as to their intent regarding the relationship between the Letter of Agreement and implementation of a qualified economic offer, the issue is best framed in terms of the waiver of a statutory right. If the right cannot be waived, then intent is irrelevant. If the right can be waived, then intent is relevant.

We have held that rights created by the statutes we administer can be waived but that any such waiver must be established by clear and unmistakable evidence. CITY OF EAU CLAIRE, DEC. NO. 27941 (WERC, 2/94); WEST ALLIS-WEST MILWAUKEE SCHOOLS, DEC. NO. 23805-C (WERC, 11/87); WAUPUN SCHOOL DISTRICT, DEC. NO. 22409 (WERC, 3/85); CITY OF GREEN BAY, DEC. NO. 12411-B (WERC, 4/76). Thus, we conclude that the law allows the Association to waive its right to insist that the Letter of Agreement benefits be implemented as part of a qualified economic offer.

Our administrative rules regarding implementation of a qualified economic offer explicitly permit a school district to implement fringe benefits that differ from those contained in a qualified economic offer but only if both parties so agree. ERC 33.10(5) 3/ specifically

provides that a qualified economic offer may be implemented consistent with the terms of that offer “or as otherwise agreed to by the parties.” Moreover, allowing the parties to so agree is consistent with the Declaration of Policy contained in Sec. 111.70(6), Stats. 4/ that encourages voluntary settlement of labor disputes and gives parties desirable flexibility when they seek voluntary solutions to the difficult problems they confront.

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- (5) *IMPLEMENTATION OF A QUALIFIED ECONOMIC OFFER. (a) After a reasonable period of negotiations and an investigation by the commission or its investigator, if the parties are determined to be deadlocked in their negotiations, the municipal employer may implement its qualified economic offer if no collective bargaining agreement is in effect and it maintains all other economic provisions contained in the predecessor agreement (or, where the parties are negotiating a reopener under an existing agreement, if it maintains all other economic provisions of the existing agreement) except as modified only by the terms of the salary and fringe benefit qualified economic offer or as otherwise agreed to by the parties. (emphasis added)*

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- (6) *DECLARATION OF POLICY. The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Accordingly, it is in the public interest that municipal employees so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representative of the employees' own choice. If such procedures fail, the parties should have available to them a fair, speedy, effective and, above all, peaceful procedure for settlement as provide din this subchapter.*

We should emphasize that a union has an absolute right to insist on strict implementation of a qualified economic offer. Any waiver of that right by the Union is strictly voluntary. As noted earlier, a party seeking to establish that such a waiver occurred will not succeed unless it has clear and unmistakable evidence of waiver.

Much of the argument presented to us by the Association goes to the question of whether the Letter of Agreement fringe benefits are part of a qualified economic offer. We have found that Association argument persuasive. As to the question of whether the Association waived its right to insist that the Letter of Agreement fringe benefits be implemented if the District implements a qualified economic offer, the parties have agreed that any litigation of that question must follow an evidentiary hearing. As indicated in our Order, if the District believes that it has clear, unmistakable evidence of waiver, it can request a

hearing. In the alternative, the District must advise the Association and the Commission whether it will implement a qualified economic offer that includes the fringe benefits in the Letter of Agreement or whether it withdraws its qualified economic offer because it is not willing to maintain said benefits.

Dated at Madison, Wisconsin, this 26th day of February, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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