STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CAMPBELLSPORT SCHOOL DISTRICT

To Initiate Arbitration Between Said Petitioner and

CAMPBELLSPORT EDUCATION ASSOCIATION

Case 21
No. 59625
INT/ARB-9167

Decision No. 30585

Appearances:

Mr. Armin Blaufuss, Executive Director, Winnebagoland UniServ Unit-South, P.O. Box 1195, Fond du Lac, Wisconsin 54936-1195, appearing on behalf of Campbellsport Education Association.

Davis & Kuelthau, S.C., by **Attorney James R. Macy,** 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278, appearing on behalf of Campbellsport School District.

ORDER

On September 18, 2002, the Campbellsport Education Association filed a request asking the Wisconsin Employment Relations Commission to determine that the Campbellsport School District's proposed implementation of a qualified economic offer was improper because: (1) the parties are not deadlocked in their negotiations; and (2) the manner of the proposed implementation is contrary to applicable statutory and administrative rule provisions.

The parties subsequently agreed that the issue of whether the District implemented a qualified economic offer in a manner consistent with Sec. 111.70(1)(nc), Stats. would be held in abeyance pending the outcome of other litigation.

The parties further agreed that the Commission should proceed to decide the following issues:

1. When requested to do so by a party, does the Wisconsin Employment Relations Commission have jurisdiction to consider whether a Commission investigator correctly determined that a deadlock exists?

2. If so, did the Commission's investigator correctly determine that a deadlock existed at the time the District implemented its qualified economic offer?

The parties stipulated to a factual record to be used when the Commission decides these issues and filed written argument -- the last of which was received February 17, 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

ORDER

1. The Wisconsin Employment Relations Commission has jurisdiction to determine whether a Commission investigator correctly determined that a deadlock exists or continues to exist within the meaning of Sec. 111.70(4)(cm) 5s, Stats. and ERC 33.10(5).

2. Commission Investigator Sharon Gallagher correctly determined that a deadlock continued to exist at the time the Campbellsport School District implemented its qualified economic offer.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

Campbellsport School District

MEMORANDUM ACCOMPANYING ORDER

As reflected in the preface to our Order, there are two issues to be resolved at this time:

1. When requested to do so by a party, does the Wisconsin Employment Relations Commission have jurisdiction to consider whether a Commission investigator correctly determined that a deadlock exists?

2. If so, did the Commission's investigator correctly determine that a deadlock existed at the time the District implemented its qualified economic offer?

JURISDICTIONAL ISSUE

As to the jurisdictional issue, the District argues that we have no jurisdiction to review Investigator Gallagher's determination that the parties are deadlocked. The District asserts that under Sec. 111.70(4)(cm) 5s. Stats., the determination of deadlock is the Investigator's to make without potential Commission oversight. The District further contends that any such oversight is ill advised because it would undermine the Investigator's authority and discretion and place the Commission in a role that it will be factually ill equipped to handle.

The Association argues that the Commission does have jurisdiction to consider whether the Investigator correctly determined that the parties are deadlocked.

Both parties correctly agree that the Investigator's role includes a determination of whether "a deadlock exists between the parties with respect to all economic issues." 1/

1/ Section 111.70(4)(cm) 5s., Stats. provides in pertinent part as follows:

> ***5s. 'Issues subject to arbitration.' In a collective bargaining unit consisting of school district professional employees, the municipal employer or the labor organization may petition the commission to determine whether the municipal employer has submitted a qualified economic offer. The commission shall appoint an investigator for that purpose. If the investigator finds that the municipal employer has submitted a qualified economic offer, the investigator shall determine whether a deadlock exists between the parties with respect to all economic issues.***

The question posed here is whether the Commission has jurisdiction to consider a contention that the Investigator wrongly determined that a deadlock exists. We conclude that we do.

ERC 33.10(6) provides as follows:

> (6) COMPLIANCE. Any dispute that the salary and fringe benefits have been or will be implemented in a manner **consistent [with]** s. 111.70(1)(nc), Stats., **and this chapter** shall be filed by the labor organization with the commission as a motion to review implementation. Following any necessary hearing and receipt of any necessary written or oral argument, the commission shall issue a written decision determining whether the municipal employer's proposed or actual implementation is or was consistent with s. 111.70(1)(nc), Stats., and this chapter. (Emphasis added)

As is evident from the highlighted portions of ERC 33.10(6), the Commission has jurisdiction to resolve disputes not only as to the manner in which a qualified economic offer is/was calculated/implemented (s. 111.70(1)(nc), Stats. disputes) but also to resolve disputes over whether the implementation of a qualified economic offer was "consistent [with] . . . this chapter" (i.e. ERC 33 generally). ERC 33.10(5) parallels the statutory requirement that the parties be deadlocked in their negotiations before a qualified economic offer can be implemented. 2/ As argued by the Association, if the parties were not deadlocked, then the implementation of the District's qualified economic offer was not "consistent [with] . . . this chapter. Thus, we have jurisdiction to consider whether the Investigator correctly determined the parties were deadlocked at the time the District implemented the qualified economic offer.

2/ ERC 33.10(5) provides in pertinent part:

> ***(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. . . .***

We now turn to the issue of whether the Investigator correctly determined that the parties were deadlocked.

FACTS

By the following letter dated August 29, 2002, the District advised the Association that it had decided to implement a qualified economic offer.

. . .

> This letter is to inform you that on August 28, 2002, the Campbellsport School Board voted to implement a Qualified Economic Offer (QEO) pursuant to state law in order to resolve the 2001-03 Master Agreement between the Campbellsport School District and the Campbellsport Education Association (CEA).
>
> After a number of bargaining sessions and mediation, the parties unfortunately were unable to resolve their differences in resolving the 2001-03 Master Agreement. On August 21, 2001, Investigator Sharon Gallagher of the Wisconsin Employment Relations Commission (WERC) declared that the parties were "deadlocked."
>
> According to the WERC rules, the District is required to provide the CEA with at least 15 days' notice of the exact manner in which the Qualified Economic Offer will be implemented (ERC. 33.10(5)).
>
> Please be advised of the following:
>
> 1. It is the District's intention to offer and implement a Qualified Economic Offer pursuant to state law and the WERC's Administrative Rules. Pursuant to ERC 33.10(3), the District offers a QEO as follows:
>
> > (3) EXISTENCE. (1) A qualified economic offer exists if the municipal employer submits an offer to a labor organization which at least states the following:
> >
> > > 1. For any period of time after June 30, 1993, covered by the proposed collective bargaining agreement, the municipal employer shall maintain all fringe benefits and its percentage contribution toward the cost thereof as required by s. 111.70(1)(nc), Stats.

> 2. For each 12 month period or portion thereof which commences July 1, 1993, and is covered by this agreement, the municipal employer shall provide the minimum increase in salary which s. 111.70(1)(nc)1., Stats., requires for the purposes of a qualified economic offer, or may provide the decrease in salary which s. 111.70(1)(nc)2., Stats., allows for the purposes of a qualified economic offer.

The 2001-02 BA base will be $27,956 and the 2002-03 BA base will be $27,685 on the existing salary schedule structure. (See enclosed.)

The District will issue retroactive paychecks for the 2001-02 school year no later than October 31, 2002. The District will implement the 2002-03 salary schedule beginning with the November 5, 2002 payroll.

The Board takes this action reluctantly but with the hope that the parties can move on and approach the 2002-03 school year with a positive and renewed sense of purpose in creating opportunities for Campbellsport students to excel. The Board carefully considered its action and believes it to be in the best interests of the entire school community.

The District welcomes any further ideas or proposals from the CEA to resolve this contract. The Board and CEA share many common goals and the Board regrets that a voluntary settlement could not be reached.

Should you have any questions or wish to discuss this matter further, please feel free to contact me.

. . .

The Association responded to the District's August 29, 2002 letter with the following September 5, 2002 letters to the District and Investigator Gallagher, respectively.

. . .

Dear Mr. Campion:

I received the District's notice of intent to impose a Qualified Economic Offer for the 2001-2003 Master Agreement on Thursday, September 4, 2002. By separate letter dated today I have formally, on behalf of the Association, objected to such imposition. Your August 29, 2002 letter states –

> "The Board takes this action reluctantly but with the hope that the parties can move on and approach the 2002-2003 school year with a positive and renewed sense of purpose in creating opportunities for Campbellsport students to excel. The Board carefully considered its action and believes it to be in the best interests of the entire school community."

I can't speak for every member of the bargaining unit, however, the Board can't possibly believe that teachers will just "move on" with a "positive and renewed sense of purpose" as a result of the Board's decision to impose a QEO. The facts speak very loudly to just how unfair and unreasonable the Board's decision is.

- Campbellsport teachers were paid in 2000-2001 at least two years behind what teachers in area school districts were paid. The Board's settlement offers did not come close to addressing that disparity. The imposition of a QEO will only widen that gap. And each of the Board offers also required that teachers assume greater out of pocket costs for insurance.
- Quality Campbellsport teachers annually leave and go to these area District's (Fond du Lac and Lomira for example) for higher pay, better benefits and improved working conditions.
- None of the teachers in these area school districts will have a salary rollback such as will occur under the Board's imposed QEO. (This will certainly inspire "moving out" rather than "moving on").

The Board conveniently justified its settlement offers by pointing to its new athletic conference. Those districts, with the exception of Kewaskum and perhaps Plymouth have not been part of the so-called "comparables". The Board's unwillingness to make Campbellsport teacher salaries and benefits competitive with area teachers would be understandable if the District was in financial difficulty. This is certainly not the case.

- The District's levy rate when compared to others is low.
- The district could spend up to $1.5 million more without going to referendum. All of those monies would be aidable (approximately 50%) under the state funding formula.
- From 1993-94 through 2000-2001 the District's fund balance grew by over $1.6 million dollars, a whopping 136.44%. The fund balance grew as a result of the District not spending monies levied and received. (Doesn't it make some sense to spend some of this to attract and retain teachers and to reward those who have made a career of teaching in Campbellsport?)

While not pretending to speak for Campbellsport teachers, I think I can say for many that the Board's decision to impose a QEO will not lead to a "positive and renewed sense of purpose". It is well known that when you beat people down repeatedly they get up a whole lot slower.

You state the "Board welcomes any further ideas or proposals from the CEA..." The foregoing provides a host of ideas upon which to examine other proposals. If the Board is interested in doing so please contact Tina Trumbower. I can speak for Tina when I say she is interested in doing so.

. . .

Dear Ms. Gallagher:

The Campbellsport School District has advised the Campbellsport Education Association by letter dated August 29, 2002 and copied to you that it intends to impose a Qualified Economic Offer for the 2001-2003 term of the parties (sic) Master Agreement. In doing so the District cites your August 21, 2002 letter declaring "deadlock".

Enclosed is a formal District settlement offer dated June 20, 2002. The salary schedule and insurance proposal set forth in this offer is substantively much different than the District's prior formal offer dated May 24, 2001. While the Association membership has turned down the District's June 20, 2002 offer, the Association asserts that the June 20, 2002 offer is evidence that the parties are not "deadlocked".

The Association respectfully requests that you withdraw the finding of deadlock and contact the parties with respect to further negotiations.

Should you not grant the Association's request, the Association hereby goes on record objecting to the District's imposition of a Qualified Economic Offer for 2001-2003 based on the following:

1. As evidenced by the District's June 20, 2002 offer the parties are not "deadlocked", and
2. The District has not complied with the rules and procedures set forth in Section 111.70 of the Wisconsin Statutes and in related administrative rules and procedures.

The Association wishes to pursue review of its claims with the Commission.

. . .

By letter dated September 18, 2002, the District advised the Association and Investigator Gallagher as follows:

. . .

> This letter is in response to a letter sent by Mr. Armin Blaufuss, dated September 5, 2002, to your attention concerning the above-noted matter, As (sic) well as his letter dated September 16, 2002 to Mr. Peter Davis, General Counsel of the Wisconsin Employment Relations Commission, also concerning the above-noted matter. In the course of setting ground rules in negotiations between these parties, I was identified as the District's representative and chief spokesperson. I note that Mr. Blaufuss fails to communicate with me regarding this matter and these letters, a matter for consideration under Sec. 111.70 (3)(b)(2)(3) and Sec. 111.70(3)(c), Stats. While he complains in his letter to Mr. Davis that he has not received a response to his letter dated September 5, 2002, the District would be more aptly able to respond if Mr. Blaufuss obeyed the law and communicated with the District's representative.
>
> This matter was declared at deadlock over a year ago per your letter of August 21, 2001. I would note that Mr. Blaufuss put forth no appeal of that deadlock determination. In that regard, the Association has waived any right to challenge a consideration of deadlock now.
>
> As this Investigator also knows, the parties are obligated to continue discussions under Section 111 despite deadlock and despite the implementation of a Qualified Economic Offer. The District has done no more than to honor its obligations under the law.
>
> In addition to honoring its obligation under the law, the District offered the Association numerous dates over the past number of months to discuss the status of bargaining and to consider resolving this contract. The Association has refused to make itself available to meet, a matter to be considered under Sec. 111.70(3)(b)(3), Stats. In this regard, there has been no change in the deadlock. If the Association truly had a position that a deadlock did not exist, they would have been willing to meet with the District. As they have not, they are in no position to question deadlock now.
>
> We would note, however, that despite the Association's adamant position rejecting the District's offers to settle this contract, they have made no responsive offer to the District. In this regard as well, the deadlock continues. I would note that Mr. Blaufuss makes no offer to the District in either his letter of September 5, 2002 or his letter of September 16, 2002.

Finally, as the District has historically requested from the Association, the District once again requests that the Association identify specifically how and in what manner, if any, that the District has not complied with the rules and procedures set forth by law in implementing the QEO. Again, to date, the Association, has failed to identify any such specifics. Again, to date, the Association has failed to comply with the District's request for information, a matter to be considered under Sec. 111.70(3)(b)(3), Stats.

In total, we respectfully request that the Investigator honor the deadlock which has existed between these parties. In addition, we request information from the Association regarding its allegations concerning the implementation of the QEO.

Thank you for your assistance.

. . .

By letter dated September 20, 2002, Investigator Gallagher advised the District and the Association as follows:

. . .

I have received Mr. Macy's September 18, 2002 letter and I have considered it along with Mr. Blaufuss' September 5, 2002 letter and enclosures in crafting this response. I have also spoken with my supervisors at WERC about this case.

Our records show that the petition in the captioned case was filed on January 29, 2001; that the parties met with me for mediation on May 24, 2001; and that I sent my deadlock letter on August 21, 2001. I then closed the file in accord with Agency policy.

The Association has requested that I revoke or withdraw my declaration of deadlock because the District's offer of June 20, 2002 ". . . is substantively much different than the District's prior formal offer dated May 24, 2001 . . . ." and "is evidence that the parties are not 'deadlocked.'" However, in his September 5th letter, Mr. Blaufuss admits that the Association membership rejected the District's June 20th offer. In addition, there is no evidence based on the documents before me that the Association is willing to change its position, in any specific way based on the District's June 20th offer and Mr. Blaufuss has not identified or submitted to me any Association counter offer. Mr. Macy's

September 18th letter indicates that after the District made its June 20th offer to the Association, the Association made no movement from its prior position in bargaining and no discussions or meetings could be scheduled between the parties regarding the June 20th letter.

Based on the documents before me, I find no basis on which to withdraw or revoke my declaration of deadlock in this case. We at the WERC always stand ready to meet with the parties to assist them with contract disputes where the circumstances which brought forth a deadlock have changed substantially and there is reason to believe that further mediation will result in settlement. This is not such a case.

. . .

The Association responded to Investigator Gallagher through the following September 20, 2002 letter:

. . .

I just received the fax copy of your September 20, 2002 determination that "based on the documents before you, I find no basis to withdraw or revoke the declaration of deadlock in this case." I received Mr. Macy's September 18, 2002 letter yesterday and today had begun preparing a response. My response- had I had the opportunity to submit it you (sic)- asserted that Mr. Macy substantially misrepresented the "facts."

Mr. Macy states that the "Association refused to make itself available to meet." That is not true. Tina Trumbower, Association Negotiator and I both discussed meeting dates with District Administrator J.P. Campion. Tentative dates to meet in June were scheduled only to be cancelled when not all the principals could be present. Mr. Campion conveyed to Tina Trumbower that the Board was working with an insurance consultant and that after hearing what the consultant said would get back to the Association. On or about June 20 Mr. Campion provided Tina Trumbower with a settlement offer. Mr. Campion knew that she would be out of town through the 18th of July. The Association team met with me on July 29 to discuss the proposal. It was decided that the proposal would be put before the membership. I believe Tina Trumbower conveyed this to Mr. Campion.

On August 20 the proposal was put before the membership. It was turned down. Mr. Campion was informed of the membership's decision and that the Association had interest in meeting. On August 28 the Board voted to impose the QEO. Mr. Campion, not Mr. Macy, informed me of this in a letter dated August 29, 2002. (Enclosed.) I received this letter on September 3, 2002. On September 5, 2002 I wrote you requesting that you find the parties not "deadlocked". I also reserved the Association's right to challenge the QEO imposition. That letter was copied to Mr. Campion.

The Association asked me to respond to Mr. Campion. In his letter Mr. Campion stated that the "District welcomes any further ideas or proposals from the CEA to resolve this contract." On September 5, 2002 I responded to Mr. Campion. In my response I stated, "If the Board is interested in doing so [meeting] please contact Tina Trumbower. I can speak for Tina when I say she is interested in doing so." (Enclosed)

These are the facts upon which I made my request that you determine that a deadlock did not exist. Having not heard from you and having no knowledge of your conversations with Mr. Macy, I wrote to Mr. Davis on September 16, 2002.

I do not believe the parties are "deadlocked." Campbellsport is in the envious position of being able to spend an additional 1.5 million dollars over what it is has (sic) budgeted for the 2002-2003 school year without going to referendum. It is that far under revenue controls. I firmly believe that the parties can be brought together to find a mutually acceptable request.

Mr. Macy in his September 18 letter criticizes the Association for "Again" failing to provide specifics with respect to the Association's objection to the QEO imposition. The Association is obligated to provide that information after it is advised that the employer intends to impose a QEO. The Association's first objection is specific-the parties are not "deadlocked."

The Association is in the process of examining how the District intends to implement the QEO with respect to salary schedule vertical increments and salary schedule roll back. This is where the Association believes the District's QEO imposition is not in compliance with the statute and relevant administrative rules and procedures. I will provide a definitive statement of this part of the Association's objection to you by letter postmarked no later than September 27, 2002.

. . .

By letter dated October 1, 2002, the Commission's General Counsel asked Investigator Gallagher to do the following:

> Please advise the parties as to whether the content of Mr. Blaufuss' letter of September 20, 2002 (and any follow-up conversations with the parties you have had or elect to have based on his letter) causes you to reach a different conclusion as to "deadlock" than that expressed in your September 20, 2002 letter to the parties.

By letter dated October 4, 2002, Investigator Gallagher advised Davis, the Association and the District as follows:

> This is in response to your letter dated October 1, 2002. I have had no conversations with the parties regarding Mr. Blaufuss' letter dated September 20, 2002. I have studied Mr. Blaufuss' September 20th letter and attachments as well as his prior letter of September 5th and enclosures along with Mr. Macy's letter of September 18th. I find nothing in these documents that causes me "to reach a different conclusion as to 'deadlock'" in this case.

Through the following October 1, 2002 memo, the District advised employees represented by the Association as follows:

> On Wednesday August 28, 2002, the Board of Education voted to implement the Qualified Economic Offer for the Campbellsport teaching staff for the 2001-02 and 2002-03 contract period.
>
> As a result of this action the District will be issuing retroactive paychecks for the 2001-02 school year no later than October 31, 2002. The advice of deposit you receive on October 31 will summarize how the back pay total was calculated, plus indicate the step and lane at which you were paid. A copy of the 2000-01 and 2001-02 salary schedule will be included for your review.
>
> The new salary schedule for the 2002-03 school year will be implemented with the November 5, 2002 payroll. The advice of deposit you receive with that paycheck will summarize your new salary and the adjustment to be made on the checks for the remainder of the year. Included with this advice of deposit will be the 2002-03 salary schedule and updated copy of the salary worksheet page of your contract.
>
> If there are any questions please call the District Office. You can also direct email inquires to superintendent@csd.k12.wi.us.

The District implemented its qualified economic offer consistent with this October 1, 2002 memo.

DISCUSSION

The term "deadlock" is not defined by statute or administrative rule. However, we view "deadlock" as being akin to the term "impasse" which is a traditional labor relations term of long-standing. The question of whether an "impasse" exists involves a consideration of bargaining history, the good faith of the parties, the length of the negotiations, the importance of the issue or issues that remain unresolved and the contemporaneous understanding of the parties as to the state of the negotiations. RACINE SCHOOLS, DEC. NO. 29659-B (WERC, 4/00); CITY OF EAU CLAIRE, DEC. NO. 22795-B (WERC, 3/86).

As reflected in Investigator Gallagher's letters of September 20 and October 4, 2002, the facts which we have recited above did not lead her to conclude that the deadlock she had declared in August 2001 had dissolved. We concur with her judgment in this regard. Contrary to the Association's view, the fact that the parties both expressed an ongoing interest in returning to the bargaining table and reaching a voluntary settlement did not dissolve the deadlock. 3/ In the context of the facts before us, the critical question is whether there had been sufficient substantive movement on unresolved economic issues to warrant a conclusion that the deadlock had been dissolved. The facts before us 4/ do not establish that such movement was present. Thus, we conclude that Investigator Gallagher correctly determined that a deadlock existed at the time the District implemented its qualified economic offer.

3/ The Association also cites GLENDALE RIVER HILLS SCHOOL DISTRICT, DEC. NO. 29932 (WERC, 6/00) in support of its position. However, as pointed out by the District, that decision involved a circumstance in which the party filing the interest arbitration admitted that the parties were not at impasse. Thus, GLENDALE does not provide support for the Association position.

4/ The Association asks that we consider post-implementation comments by District and Association representatives reflecting the parties' ongoing interest in reaching agreement on a 2001-2003 contract. As previously discussed, without sufficient substantive change in position on economic issues, such expressions do not dissolve a deadlock. Further, because these comments occurred after implementation, they are not relevant to the existence of deadlock at the time implementation occurred -- the issue before us.

Dated at Madison, Wisconsin, this 26th day of March, 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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