

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**KETTLE MORAINÉ EDUCATIONAL SUPPORT STAFF ASSOCIATION**, Complainant,

vs.

**SCHOOL DISTRICT OF KETTLE MORAINÉ**, Respondent.

Case 31  
No. 63283  
MP-4019

**Decision No. 30904-E**

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**Appearances:**

**Rebecca Ferber Osborn**, Legal Counsel, Wisconsin Education Association Council, 13805 West Burleigh Road, Brookfield, Wisconsin 53005-3058, appearing on behalf of Kettle Moraine Educational Support Staff Association.

**Michael Aldana**, Quarles & Brady, LLP, Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of School District of Kettle Moraine.

**ORDER DENYING PETITION FOR REHEARING**

On April 12, 2007, the Commission issued its Order on Review of Examiner's Decision in the above-referenced matter, concluding, in the part that is pertinent to the instant Petition for Rehearing, that the District violated Secs. 111.70(3)(a)4 and 1, Stats., by unilaterally changing for an indefinite period of time the "regular work year" of full time bargaining unit members. However, the Commission also noted that the term "regular work year" is not an immutable guarantee and that the District lawfully could implement a change in the "normal work year" for a finite period of time (i.e., a year or a portion thereof) during a contract hiatus, as long as the change was "prompted by genuine legitimate needs." DEC. NO. 30904-D AT 22. Applying these concepts, the Commission concluded that the District's modification of the regular work year for the period between the November 2003 change and the end of the 2003-04 school year was lawful. *Id.* Thus, the Commission's remedy did not cover the time period between November 2003 and the end of the 2003-2004 school year.

On May 2, 2007, the Kettle Moraine Educational Support Staff Association (Association) filed a Petition for Rehearing in this matter, contending (in effect) that the Commission had erred in limiting its remedy for unilaterally and indefinitely changing the

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work year to a period of time beginning at the outset of the 2004-05 school year. The District submitted a response on May 24, 2007, indicating that, while it does not agree with certain of the Commission's findings and conclusions and order, and reserves its right to appeal same, the District "does not believe a rehearing or a modification of the award are necessary or appropriate."

The Association claims that the Commission erred in limiting its remedy for the unilateral change in the regular work year, on essentially two grounds. First, argues the Association, even if the District could have acted lawfully by limiting its unilateral change in the work year to only one year, the District in fact did not implement such a finite change, but instead implemented an indefinite change, which the Commission held to be unlawful. The appropriate remedy for the indefinite change, which was wholly unlawful, must cover the whole period of the indefinite and unlawful change. Otherwise, contends the Association, the District is receiving a benefit from its illegal action. Second, according to the Association, the Commission failed "to determine if the factual record supported that the District had a 'genuine legitimate need' to reduce hours during that [2003-04] timeframe." Petition for Rehearing at 3. The Association asserts that such "genuine legitimate need" must be "related to some specific economic exigency" or "necessity" (*Id. at 3-4*). Here, the evidence showed and the Commission found that the District recouped savings from its unilateral changes that exceeded the increased costs it had incurred as a result of the contract settlement and were not "necessary." *Id.*

The Association's request for rehearing is denied. The Commission acknowledges that the District did not implement its change in the "regular work year" expressly in the finite manner to which it was entitled, and that the District may have reaped some intangible benefit from having exceeded its lawful parameters, such as a potentially increased bargaining leverage over either this issue itself or the successor contract as a whole. However, because the District was entitled to make a finite change in the "normal work year," we concluded that the District did not act illegally for the finite period between the date of the change and the end of the first school year (2003-2004) during which the change was in effect. Thus, no remedy was appropriate for this period of time.

As to the Association's second argument, the Commission does not find and the Association has not cited any authority indicating that an employer must demonstrate "exigency" or "necessity" in order to depart for a finite period of time from a "normal" work year. To be sure, an employer must demonstrate some relationship between its legitimate business needs and the departure from the "regular work year." As discussed elsewhere in the Commission's decision, the District's claim of fiscal constraints "was borne out by the recent layoffs of nearly 10% of this bargaining unit and the general history of program reductions in

the District.” DEC. NO. 30904-D AT 14. The Commission is satisfied that the evidence regarding these fiscal constraints was sufficient, albeit perhaps minimally, to justify the District’s decision to save money by altering the normal work year of the paraeducators for a finite period of time.

For the foregoing reasons, the Association’s Petition for Rehearing is denied.

Dated at Madison, Wisconsin, this 31<sup>st</sup> day of May, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner