



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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I—01—09

James Zylstra
Vice President - Finance
Wisconsin Technical College System
4622 University Avenue
P.O. Box 7874
Madison, Wisconsin 53707-7874

Re: WTCS Certification MOU

Dear Mr. Zylstra:

You ask whether “the WTCS Board has the authority to require technical college districts entering into articulation agreements with local secondary school districts to obtain authorizing signatures for such agreements from WEAC and AFT-WI representatives, as collective bargaining agents for district personnel.” In my opinion, the answer is “no.” The WTCS Board has neither express nor fairly implied authority to impose such a requirement, particularly since technical college districts have independent authority (and responsibility) to bargain collectively under MERA.

BACKGROUND

Since 1992, the Wisconsin Technical College System (WTCS) Board has entered into a Memorandum of Understanding (MOU) that extends WTCS certification to K-12 secondary school teachers who provide introductory-level technical college occupation and occupationally-related course instruction. The MOU was developed to accommodate differences in licensing/certification requirements between Department of Public Instruction licensure and WTCS certification. The parties to the MOU are WTCS, the Department of Public Instruction (DPI), Wisconsin Education Association Council (WEAC), and the American Federation of Teachers – Wisconsin (AFT-WI).

The MOU purports to be authorized by Wis. Admin. Code § TCS 3.03(9), which provides:

CERTIFICATION OF NONDISTRICT EDUCATIONAL STAFF. . . .

(b) K-12 school districts may request certification from the board for secondary school instructors Eligibility for certification . . . shall be determined by the board based on consideration of factors including the secondary instructor's current certification by the department of public instruction; a determination that the high school course for which certification is sought is technical college introductory level occupational or occupational related; and a determination that enrollment in the course is limited to secondary students who have demonstrated a mastery of relevant prerequisite competencies. **The certification eligibility factors shall be demonstrated in articulation agreements between the technical colleges and the secondary school.** Certification granted shall be for one academic year, or portion thereof, and may be renewed.

(Bold added).¹

The MOU requires that the articulation agreements developed between a technical college and a K-12 district must be authorized by the signatures of (1) the secondary school and technical college instructors who have agreed as to course content, (2) technical college and secondary school administrators, and (3) WEAC and AFT-WI representatives as collective bargaining agents for district personnel. Finally, the MOU provides that “[a]ny provision of the MOU that conflicts with existing state or federal law shall be void.”

One of the purposes of the WTCS is to “[c]oordinate and cooperate with secondary schools to facilitate the transition of secondary school students into postsecondary technical college education through curriculum articulation and collaboration.” *See* Wis. Stat. § 38.001(3)(a)2; *see also Educ. Ass’n v. Public Instruction Dept.*, 154 Wis. 2d 655, 662-663, 453 N.W.2d 915 (Ct. App. 1990). This statutory authorization plainly provides a basis for the promulgation of Wis. Admin. Code § TCS 3.03(9).

Technical college districts are “quasi-municipal corporations” (“public agenc[ies] created or authorized by the legislature to aid the state in, or take charge of some, public or state work . . . for the general welfare”), *see* 63 Op. Att’y Gen. 187, 190 (1974), and have long been considered to be municipal employers for purposes of the Municipal Employment Relations Act (MERA), *see* Wis. Stat. §§ 111.70-111.77. As municipal employers, technical college districts have the duty to bargain collectively with the representative of a majority of its employees in an

¹ An “articulation agreement” is “an agreement between the school district offering a secondary course and a technical college district through which postsecondary credit may be applied toward advanced standing.” *See* Wis. Admin. Code § TCS 9.02(2).

appropriate collective bargaining unit, with respect to wages, hours, and conditions of employment. *See* Wis. Stat. §§ 111.70(1)(a) and (3)(a)4. The technical college districts do not have a duty to bargain, however, on subjects reserved to management and direction of the districts except insofar as the manner of exercise of such functions affects the wages, hours, and conditions of employment of the municipal employees in a collective bargaining unit. *See* Wis. Stat. § 111.70(1)(a).

On October 9, 2008, an attorney for a technical college district expressed the opinion that insofar as the MOU requires the signatures of WEAC and AFT-WI representatives of “district personnel”² on an articulation agreement, it is not authorized by Wis. Admin. Code § TCS 3.03(9). In addition, the attorney opined that an articulation agreement relates to the educational mission of the district, that it is a permissive subject of bargaining under MERA, and that while the district must bargain the impact of the educational decision to enter into an articulation agreement, the district does not have to bargain the decision to enter into the articulation agreement in the first instance and therefore does not have to make WEAC or AFT-WI a signatory to an articulation agreement.

On October 20, 2008, the WTCS president solicited reactions to the attorney’s opinion from WEAC, AFT-WI, and the state Superintendent of Public Instruction. On November 26, 2008, WEAC and AFT-WI submitted a joint response. WEAC and AFT-WI initially noted that an administrative agency has not only those powers which are expressly conferred, but also those which are fairly implied from the four corners of the statute under which it operates. *See State (Dept. of Admin.) v. ILHR Dept.*, 77 Wis. 2d 126, 136, 252 N.W.2d 353 (1977). WEAC and AFT-WI then opined that the provisions of the MOU, including the requirement that articulation agreements be signed by WEAC and AFT-WI collective bargaining representatives for district personnel, are within the implied authority of the WTCS Board, particularly Wis. Stat. § 38.001(3)(a)2 which provides for “coordination and cooperation with secondary schools to facilitate the transition of secondary school students into postsecondary technical college education through curriculum articulation and collaboration,” and Wis. Stat. § 38.04(4) which requires the WTCS Board to approve the “qualifications of educational personnel . . . in district schools.”

² The MOU uses the words “district personnel” but it is unclear whether the words apply only to technical college district personnel or to K-12 school district personnel as well. For purposes of this opinion, it will be assumed that the words at least apply to technical college district personnel, but it does not affect the conclusion reached if the words also apply to K-12 school district personnel.

ANALYSIS

Although both Wis. Stat. § 38.001(3)(a)(2) and Wis. Admin. Code § TCS 3.03(9) clearly empower the WTCS Board to require technical college districts to enter into articulation agreements with K-12 school districts, and to impose requirements regarding eligibility for teacher certification, adequacy of high school courses, level of preparation of secondary students, and cooperation between a participating technical college instructor and a K-12 secondary school instructor, nothing in those provisions or in Wis. Stat. § 38.04(4) (which authorizes the WTCS Board to approve qualifications of educational personnel in district schools) either expressly or impliedly authorizes the WTCS Board to require that articulation agreements bear the signatures of WEAC and AFT-WI representatives, as collective bargaining agents for district personnel. An administrative agency has only those powers which are expressly conferred or which are fairly implied, and any reasonable doubt of the existence of an implied power of an administrative agency must be resolved against the exercise of such authority. *See State (Dept. of Admin.)*, 77 Wis. 2d at 136. In addition, without commenting on the scope of bargaining with respect to articulation agreements, a technical college district, as a “municipal employer” within the meaning of MERA, has independent authority (and responsibility) to bargain collectively and to determine the scope of its bargaining obligation under MERA, which cannot be usurped by the WTCS Board. *See* Wis. Stat. § 111.70(1)(a) and (j).

CONCLUSION

In summary, the WTCS Board does **not** have the authority to require technical college districts entering into articulation agreements with local secondary school districts to obtain authorizing signatures for such agreements from WEAC and AFT-WI representatives, as collective bargaining agents for district personnel.

Sincerely,



J. B. Van Hollen
Attorney General