STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration of a Dispute between SUPERIOR FEDERATION OF TEACHERS LOCAL 202, WFT, AFT, AFL-CIO and SUPERIOR BOARD OF EDUCATION	Case XV No. 16012 MA-210 Decision No. 11286-A

ORDER SETTING ASIDE APPOINTMENT OF ARBITRATOR

Superior Federation of Teachers, Local 202, WFT, AFT, AFL-CIO, having requested the Wisconsin Employment Relations Commission to appoint an impartial arbitrator to determine a dispute existing between said Petitioner and the Superior Board of Education, Superior, Wisconsin; and following concurrence of said request by said Municipal Employer, the Commission on September 13, 1972, appointed John T. Coughlin, a member of its staff, as the impartial arbitrator to determine the dispute; and hearing in the matter having been conducted by said Arbitrator on September 21, 1972, during the course of which it was disclosed that, pursuant to the collective bargaining agreement existing between the parties, the jurisdiction of the Arbitrator was limited to the issuance of an advisory award, and further one of the two issues involved an interpretation of a portion of final and binding recommendations issued by Fact Finder Edward B. Krinsky, which recommendations were incorporated in the collective bargaining agreement existing between the parties; and the Commission being satisfied that it would not effectuate the policies of the Municipal Employment Relations Act for a member of its staff to issue an advisory arbitration award;

NOW, THEREFORE, it is

ORDERED

That the appointment of John T. Coughlin as Arbitrator in the instant matter be, and the same hereby is, set aside. 1/

Given under our hands and seal at the City of Madison, Wisconsin, this 31st day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Jos. B. Kerkman, Commissioner

1/ The Commission is today issuing an Order remanding the matter on one issue to the Fact Finder.

MEMORANDUM ACCOMPANYING
ORDER SETTING ASIDE APPOINTMENT OF ARBITRATOR

Pursuant to the request of the Union, and the concurrence of the Municipal Employer, the Commission appointed a member of its staff as an Arbitrator to resolve a dispute between the parties. During the course of the hearing, it was determined that the jurisdiction of the Arbitrator was limited to the issuance of an advisory award, which would be binding upon the parties only if they agreed. The parties had not agreed that the award would be binding but merely advisory.

Two issues were presented to the Arbitrator for his advisory award. The first involved an issue as to the proper salary step of a particular teacher, and the second involved the interpretation of a portion of the Fact Finder's Award, which the parties had agreed would be final and binding upon them, and which the parties included in their collective bargaining agreement. The latter issue specifically dealt with the question as to whether "a Study Hall Assignment" was a teaching period within the meaning of the Fact Finder's recommendation. A summary of the Fact Finder's report, material to this specific issue, was included in the collective bargaining agreement as follows:

"Junior High Workloads

For Math, Science, Language Arts, Social Studies Classes

1. Maximum 35 students per class
2. 165 students per day
3. 7 period day
4. 5 teaching periods
5. Core curriculum teachers: 6 teaching periods in 1971-72
   5 teaching periods in September, 1972"

Section 111.70(3)(a)5 of the Municipal Employment Relations Act provides that it is a prohibited practice for an Employer to violate the terms of a collective bargaining agreement. Generally, the Commission will not process a complaint alleging a violation of a collective bargaining agreement where the parties, in their agreement, have set up therein a procedure for the final resolution of disputes arising over the interpretation or application of their collective bargaining agreement. Here, while the parties have provided for arbitration, the award of the Arbitrator is not binding upon the parties, but merely advisory. Should the Arbitrator issue an advisory award which is not acceptable to the Union, there would be nothing to prevent it from filing a complaint alleging a violation of the agreement. If the advisory award were acceptable to the Union but not to the Employer, under such circumstances the Union could file a complaint alleging that the Employer has violated the agreement, and thus committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

The Commission believes it would be an abuse of the Commission's procedures to have one of its staff members issue an advisory award, and if not implemented by the parties, to be required to proceed in a prohibited practice complaint on the same issue involved in the advisory arbitration. Regardless of the provisions of the collective bargaining agreement, the Commission will not appoint any member of its staff or Commission to issue advisory arbitration awards since such awards are not final and binding upon the parties, for the reason that

under the present law, such procedure would provide the parties with "two bites at the apple". The parties should either agree to final and binding arbitration or the party claiming that the agreement has been violated may proceed in a prohibited practice complaint proceeding before the Commission.

Furthermore, one of the issues involves the interpretation of a fact finder's recommendations. Even had the parties agreed to final and binding arbitration herein, the Commission does not deem it proper to second guess the fact finder where his recommendations were accepted as final and binding upon the parties. One issue involved herein did not concern itself with the application of the Fact Finder's recommendations, but rather with the interpretation thereof. If a fact finder's recommendations, which the parties have agreed should be final and binding upon them, are not clear to the parties, thus resulting in a dispute as to the interpretation of said recommendations, the fact finder should resolve that issue. We are, therefore, today also issuing an Order remanding the issues concerning the interpretation of the Fact Finder's recommendations to the Fact Finder.

Dated at Madison, Wisconsin, this 31st day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Jos. B. Kerkman, Commissioner