STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ASHLAND TEACHER'S FEDERATION LOCAL 1275, WFT, AFT, Complainant, vs. ASHLAND UNIFIED SCHOOL DISTRICT NO. 1, Respondent.	Case XIX No. 16780 MP-236 Decision No. 11861-A

Appearances:

Mr. William Kalin, Director of Organization, appearing on behalf of the Complainant.
Mr. Charles Ackerman, Labor Consultant, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Ashland Teacher's Federation Local 1275, WFT, AFT, having filed a complaint alleging that Ashland Unified School District No. 1 has committed prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes; and the Commission having appointed Herman Torosian, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.70(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Ashland, Wisconsin, on June 12, 1973, before the Examiner; and the Examiner having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Ashland Teacher's Federation Local 1275, WFT, AFT, hereinafter referred to as the Complainant, is a labor organization and at all times material herein the exclusive bargaining representative of teachers employed by Ashland Unified School District No. 1.

2. That Ashland Unified School District No. 1, hereinafter referred to as the Respondent, is a municipal employer within the meaning of Section 111.70(1)(2) of the Wisconsin Statutes, with its principal office at Ashland, Wisconsin; and that Respondent is engaged in the provision of public education in its district.

3. That at all times material herein Harvey Johnson has been the Superintendent of Schools for Respondent School District.

4. That Warren Clow has been at all times material herein a public school teacher employed by Ashland Unified School District No. 1; and that the last individual teaching contract offered to Clow and signed by Clow was for the 1972-1973 school year.

5. That at all times material herein Complainant and Respondent have been signators to a collective bargaining agreement with an effective term from August 26, 1972, through August 25, 1973, covering the wages, hours and working conditions of teachers employed by Respondent, and that said agreement, in material part, contains the following provisions:

"ARTICLE II

GRIEVANCE PROCEDURE

A. Definition

1. A 'grievance' is defined to be a complaint concerning the interpretation or application of any of the terms of this written agreement establishing policies or practices effecting the conditions of employment, salaries, or hours of the employees of the Board of Education for whom the Union is the negotiating representative.

2. Wherever the term 'school' is used, it is to include work location or functional division or group in which a grievance may arise. Wherever the term 'principal' is used, it is to include the admistrator (sic) of any work location or functional division or group. Wherever the term 'Superintendent of Schools' is used, it is to include the superintendent or any designee of the superintendent upon whom the superintendent has conferred authority to act in his place. Wherever the term 'teacher' is used, it is to include the members of the bargaining unit. Wherever the term 'Union Building Representative' is used, it is to include the union building representative or his union teacher designee.

B. Procedure

1. The Union shall have the right to present, process, or appeal a grievance to the superintendent of schools in its own behalf.

2. The grievance procedures provided in this agreement shall be supplementary or cumulative to, rather than exclusive of, any procedures or remedies afforded to any teacher by law.

3. No decision or adjustment of a grievance shall be contrary to any provision of this agreement existing between the parties hereto.

4. Failure at any step of this procedure to communicate the decision on a grievance within the specified time limit shall permit the Union to submit an appeal at the next step of this procedure.

5. The time limits specified in this procedure may be extended in any specific instance by mutual agreement in writing.

6. Principals shall make arrangements to allow reasonable time without the loss of salary for the Union president or his designee to investigate grievances. In the event clarification is necessary as to what constitutes reasonable time, the Superintendent, after consultation with the Union, shall make the final determination.

C. Procedure For Adjustment of Grievance

Step I.

An aggrieved party should attempt to resolve minor complaints informally by oral discussion with the principal or principals or supervisers (sic) of such aggrieved party to allow speedy and informal solution of grievance at this step.

Step II.

In the event the matter is not solved informally the grievance stated in writing must be submitted within three school days to the principal and the Union representative following the act or condition which is the basis of the grievance.

(1) Within three school days after the grievance the principal shall communicate his decision in writing, together with the supporting reasons.

(2) He shall furnish one copy to the teacher who submitted the grievance and two copies to the Union representative.

(3) The teacher shall have the right to be representated (sic) by counsel or any two persons he deems necessary at this step or following steps in this procedure.

Step III.

If the grievance has not been solved satisfactorily within three school days after receiving the decision of the principal, the aggrieved teacher and/or the Union may appeal from the decision at STEP II to the superintendent of schools. The appeal shall be in writing and shall accompany a copy of the decision at STEP II.

(1) Within five school days after the receipt of the appeal the superintendent shall hold a hearing on the grievance.

(2) The aggrieved teacher, the Union representative, the principal and the chairman of the Union Grievance Committee or his Union designee shall be given at least two school days notice of the hearing.

(3) The aggrieved employee shall be present at the hearing except that he not attend where it is mutually agreed that no facts are in dispute and that the sole question before the superintendent is one of interpretation of a provision of any written agreement between the parties thereof or of what is established policy or practice.

(4) Within five school days after the hearing on the appeal, the superintendent shall communicate his decision, in writing, together with the supporting reasons to all parties present at the hearing.

Step IV

Within five school days after receiving the decision of the superintendent, aggrieved teacher through the Union, or the Union in its own name may appeal the decision directly to the Board of Education. The appeal shall be in writing and shall be accompanied by a copy of the Decision at STEP III. The Board may waive this step in the procedure and proceed directly to arbitration.

(1) No later than ten school days after receipt of the appeal the Board of Education shall hold a hearing on the grievance.

(2) The aggrieved teacher, the Union representative, the principal, the chairman of the Union Grievance Committee, the superintendent, and the President of the Union (local) shall be given at least two school days notice of the hearing.

(3) Within five school days after the hearing on the appeal the Board of Education shall communicate its decision in writing, together with the supporting reasons to all parties present at the hearing.

Step V.

If the decision rendered is unsatisfactory, within ten school days after receiving the decision of the board of education, the Union may appeal the decision of the Board directly to the Wisconsin Employment Relations Commission for arbitration.

(1) Proceedings of the arbitration shall be conducted pursuant to Chapter 1.11:70 (sic) Wisconsin Statutes.

(2) The decision of the arbitrator shall be in writing and shall set forth his opinions and conclusions on the issues submitted to him at the hearing or in writing.

(3) The Decision of the arbitrator shall be final and binding on all parties except as forbidden by law.

(4) Nothing in the foregoing shall be construed to empower the arbitrator to make any decision amending, changing, subtracting from or adding to the provisions of this agreement.

. . .

ARTICLE VIII.

DISMISSAL POLICY

Rule 1. A teacher shall not be refused employment, dismissed, suspended or transferred except for cause.

. . .

Rule 4. If the teacher and/or the Union are not satisfied that fair and equitable procedures have been followed or that the decision as to the teacher was not entirely an impartial judgement, the teachers, and/or the Union shall have the right to appeal the decision to arbitration."

6. That pursuant to, and in compliance with, Section 118.22 of the Wisconsin Statutes, Warren Clow in early 1972 was advised by letter, that his teaching contract would not be renewed for the 1973-1974 school year due to a decrease in enrollment in Respondent School District.

7. That Complainant, by letter dated April 17, 1973, over the signature of William Kalin, Director of Organization, sent the following letter to Superintendent Johnson on behalf of Warren Clow:

"Dear Mr. Johnson:

The Ashland Teachers Federation submits this letter in accordance with Article II, B, 1, requesting a hearing at Step III of Article II, C, regarding the non-renewal of Warren Clow, instructor in the Ashland Public School and the discrimination of the Ashland Board of Education against Mr. Clow.

I request that the establishment of the time and place of the hearing be made in cooperation with the parties representatives. Mr. Clow's representative in this matter is William Kalin, 810 North 22nd Street, Superior, Wisconsin 54880, Phone 715-392-1016."

8. That in reponse to said letter, Superintendent Johnson on April 24, 1973, sent the following letter to Kalin:

"Dear Mr. Kalin:

Mr. Ackerman indicated the following as an answer to your letter dated April 17, 1973:

He can see no grievance as defined by our negotiated contract in the matter of Mr. Clow, and therefore, the question is mute.

Would you call or write Mr. Ackerman at Bruce, Wisconsin, Telephone 715-868-4745 to inform him exactly what violation is involved."

9. That as directed in said April 24 letter, Kalin contacted Ackerman on May 6, 1973 by telephone; that in said conversation Ackerman advised Kalin that Respondent would not allow the grievance of Warren Clow to be processed through the grievance procedure and that Kalin would have to file a prohibited practice with the Wisconsin Employment Relations Commission if he (Kalin) wanted to pursue the Clow grievance.

10. That Respondent refused to process the Warren Clow grievance through the grievance procedure including final and binding arbitration claiming that Clow's non-renewal for 1973-1974 due to a decrease in enrollment of students in Respondent School District does not constitute a grievance within the meaning of the provisions of the 1972-1973 collective bargaining agreement.

11. That the dispute between Complainant and Respondent, with respect to the non-renewal of Warren Clow's teaching contract for school year 1973-1974, concerns the interpretation and application of certain terms of the 1972-1973 collective bargaining agreement then existing between Complainant Association and Respondent Employer.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the dispute between Complainant, Ashland Teacher's Federation Local 1275, WFT, AFT, concerning the grievance of Warren Clow, claiming that the non-renewal of Clow's teaching contract violates the collective bargaining agreement arises out of a claim which, on its face, is covered by the terms of the August 26, 1972-August 25, 1973 collective bargaining agreement which existed between the parties.

2. That the provisions contained in Articles II and VIII of the August 26, 1972-August 25, 1973 collective bargaining agreement are not in conflict with or prohibited by the provisions of Section 118.22 of the Wisconsin Statutes and are valid and enforceable before the Wisconsin Employment Relations Commission pursuant to its powers to enforce the provisions of collective bargaining agreements voluntarily entered into between labor organizations and municipal employers pursuant to the provisions of the Municipal Employment Relations Act.

3. That Ashland Unified School District No. 1 by its refusal to process the grievance of Warren Clow through the grievance procedure and refusing to proceed to arbitration in the matter, wherein it is claimed that the non-renewal of Clow's teaching contract by the Board violates the collective bargaining agreement, has violated and is violating the terms of the August 26, 1972-August 25, 1973 collective bargaining agreement which existed between it and Ashland Teacher's Federation Local 1275, and by such refusal has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Examiner makes the following

ORDER

IT IS ORDERED that Ashland Unified School District No. 1, its officers and agents, shall immediately:

1. Cease and desist from refusing to submit the grievance concerning Warren Clow to arbitration.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:

(a) Comply with the arbitration provisions of the August 26, 1972-August 25, 1973 collective bargaining agreement which existed between it and Ashland Teacher's Federation Local 1275, with respect to the grievance of Warren Clow and Clow's claim therein that Respondent's refusal to renew his teaching contract violated the terms of the collective bargaining agreement.

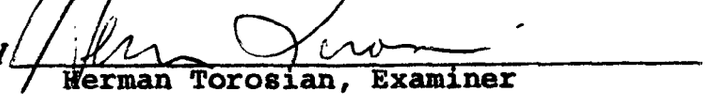
(b) Notify Ashland Teacher's Federation Local 1275 that it will proceed to such arbitration on said grievance and issues concerning same.

(c) Participate in the arbitration proceeding before the arbitrator so appointed, pursuant to Article II, Step 5 of the August 26, 1972-August 25, 1973 collective bargaining agreement on the grievance and the issues concerning same.

(d) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days of the date of this Order what action has been taken to comply herewith.

Dated at Madison, Wisconsin this 30th day of November, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On May 9, 1973, Complainant filed a complaint with the Commission alleging that Ashland Unified School District No. 1 had committed a prohibited practice within the meaning of Section 111.70 of the Wisconsin Statutes by refusing to proceed through the steps of the grievance procedure, which provides for final and binding arbitration, on the grievance filed on behalf of Warren Clow. Said grievance concerns the non-renewal of Warren Clow's teaching contract for the 1973-1974 school year.

Respondent did not file an answer to the instant complaint but from the record it is clear Respondent's position is that Warren Clow was not offered a teaching contract for school year 1973-1974 due to a decrease in enrollment of students; that Clow's grievance concerning said matter is not a grievance which can be processed through the grievance procedure of Article II of the parties' collective bargaining agreement and, therefore, is not an arbitrable matter. Respondent made it quite clear to Complainant that it would not proceed to arbitration over the Clow grievance in a telephone conversation on May 6, 1973, when Complainant, by its Consultant, informed William Kalin, Director of Organization, WFT, that it would not process the Clow grievance through the grievance procedure and furthermore, Complainant would have to file a prohibited practice complaint with the Wisconsin Employment Relations Commission if it intended to have the matter considered as a grievance.

The issue then, is whether the grievance of Warren Clow is arbitrable under the terms of the existing collective bargaining agreement.

The U.S. Supreme Court, in what is now commonly referred to as the triology cases, 1/ stated that arbitration provisions in collective bargaining agreements will be given their fullest meaning and that the function of the courts in cases seeking to enforce arbitration provisions in agreements is to ascertain whether the parties seeking arbitration are making a claim which, on its face, is governed by the collective bargaining agreement.

The Wisconsin Employment Relations Commission adopted said federal law as the policy of the Commission in the Seaman-Andwall Corporation case, 2/ and has consistently applied said policy in numerous cases since that time. 3/ Therefore, the question before the Examiner, more specifically, is whether the Complainant is making a claim which, on its face, is governed by the collective bargaining agreement.

In this regard Article II of the collective bargaining agreement defines a grievance as follows:

"ARTICLE II

GRIEVANCE PROCEDURE

A. Definition

1. A 'grievance' is defined to be a complaint concerning the interpretation or applicaiton of any of the terms of this written agreement establishing policies or practices effecting the conditions of employment, salaries, or hours of the employees of the Board of Education for whom the Union is the negotiating representative."

1/ Steelworkers v American Mfg. Co., 363 U.S. 564 (1960); Steelworkers v Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

2/ Decision No. 5910, 1/62.

3/ Oostburg Joint School District No. 14, Decision No. 11196-A, B (12/72), and cases in Sec. 1573.1.3. in Digest of Decisions, Wisconsin Employment Relations Commission.

The collective bargaining agreement contains the following pertinent provisions concerning dismissals:

"ARTICLE VIII

DISMISSAL POLICY

Rule 1. A teacher shall not be refused employment, dismissed, suspended or transferred except for cause.

. . .

Rule 4. If the teacher and/or the Union are not satisfied that fair and equitable procedures have been followed or that the decision as to the teacher was not entirely an impartial judgement, the teachers, and/or the Union shall have the right to appeal the decision to arbitration."

Complainant argues that when Warren Clow was not offered a teaching contract for school year 1973-1974 for the stated reason that said non-renewal was due to a decrease in enrollment, he was refused employment within the meaning of Article VIII, above, and therefore, said matter constitutes a grievance under the definition contained in Article II of the collective bargaining agreement.

Contrariwise, it is Respondent's contention that when Clow's teaching contract for 1973-1974 was not renewed he was not refused employment within the meaning of Article VIII, Rule 1 and therefore, his grievance concerning same is not a valid grievance within the definition contained in Article II.

Clearly, there is a dispute between the parties as to whether or not Warren Clow was refused employment when his teaching contract was not renewed. The disposition of said issue calls for an interpretation and application of Article VIII, Rule 1, and more specifically the meaning of "refused employment".

Based on the above, the Examiner must conclude that Clow has made a complaint which, on its face, is governed by the collective bargaining agreement.

At the close of the hearing in the instant matter, the parties in their closing arguments referred to the case of Richards vs. Board of Education, Joint School District No. 1, City of Sheboygan, et al, 4/ recently decided by the Wisconsin Supreme Court. In pertinent part, said decision held in effect that school boards could not contract away rights and authority empowered to them by Section 118.22 of the Wisconsin Statutes. The Court specifically stated:

> "The defendant, subject to Sec. 118.22, Stats., was empowered to relieve the plaintiff of his coaching assignment without prior notice and the requirement of a common law hearing. To the extent that the master agreement purports to limit this power, it is void."

Subsequent to said decision, the Supreme Court issued a per curium order denying a motion for rehearing in said case in which the Court withdrew the above mentioned language and substituted the following language: 5/

4/ 58 Wis. 2d 444 (1973).

5/ Richards vs. Board of Education, Joint School District No. 1, City of Sheboygan, et al, 59 Wis. 2d ___ 1973.

". . . this court has no difficulty in concluding that a grievance procedure established by a collective bargaining agreement, and relating to dismissals falls within the embrace of 'wages, hours and conditions of employment,' and that the conditions of such an agreement are binding on the parties. See our opinion in Local 1226 v. Rhinelander (1967), 35 Wis. 2d 209.

This court is also of the opinion, however, that 'dismissal' as that word is used in the master agreement means to remove from employment and not the failure to 'renew' plaintiff's one year contract under the same terms as it had contained before. We do not at this time render an opinion as to whether the failure to renew a co-curricular assignment could also be made subject to a grievance procedure under the terms of a collective bargaining agreement."

In reviewing said language, the Examiner finds nothing in Richards case, as modified, precluding the parties from entering into a binding agreement placing limitations on the power of the School Board in the non-renewal of teaching contracts. 6/ Whether or not the parties in the instant case have limited the power of the School Board in non-renewing teaching contracts, is a determination for the Arbitrator, as provided by the parties in their collective bargaining agreement, and not for the Examiner.

Based on the above, the Examiner concludes there is nothing in the Richards decision precluding the undersigned, in the instant case, from making a finding that the grievance concerning Warren Clow is, on its face, governed by the collective bargaining agreement existing between the parties, and based on same, ordering the parties to final and binding arbitration.

Dated at Madison, Wisconsin this 30th day of November, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Examiner

6/ See Waterloo Joint School District No. 1, et al, Dec. No. 10946-A, 8/73, affirmed Dec. No. 10946-B, 9/73.