

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-B

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Examiner Herman Torosian having, on November 30, 1973, issued his Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, in the above entitled matter, wherein he concluded that the above named Respondent had committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act by refusing to process the grievance of Warren Clow through the grievance procedure and by refusing to proceed to arbitration in the matter in violation of the collective bargaining agreement existing between the parties; and wherein said Examiner ordered the Respondent, among other things, to participate in the arbitration proceeding before an arbitrator pursuant to the collective bargaining agreement "on the grievance and issues concerning same"; and on December 19, 1973, the above named Respondent having timely filed a petition for review in the matter, wherein it requested the Commission to set aside a portion of the Order of the Examiner, and in its stead to frame an order which would require the School District to proceed through the steps of the grievance procedure and from there to proceed to arbitration only if the matter was not resolved in said procedure and if the Union desired to invoke arbitration; and the Commission having reviewed the entire record in the matter and being satisfied that the Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, issued by the Examiner should be affirmed;

NOW, THEREFORE, it is

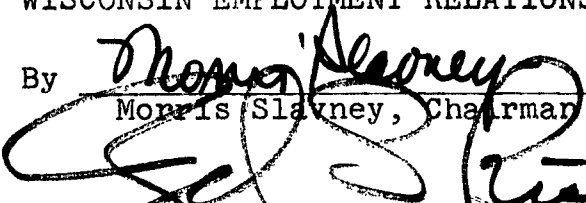
ORDERED


That, pursuant to Section 111.07(5) of the Wisconsin Statutes, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, issued in the above entitled matter as its Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, and, therefore, the Respondent, Ashland Unified School District No. 1, shall notify the Wisconsin Employment Relations Commission within ten (10) days of the receipt of a copy of this Order as to what steps it has taken to comply therewith.

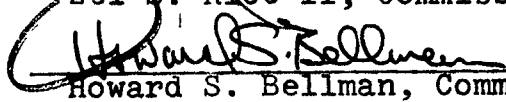
Given under our hands and seal at the  
City of Madison, Wisconsin, this 15<sup>th</sup>  
day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

In its petition for review, the Respondent did not take issue with the conclusion that the Respondent committed a prohibited practice. However, it did request the Commission to revise the Order issued by the Examiner so as to specifically require the Respondent to "proceed through the steps of the grievance procedure and from there to arbitration only if the matter is not resolved in the grievance procedure and the Union then wishes to invoke arbitration."

It should be noted that paragraph 2 (c) of the Examiner's Order requires the Respondent to "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."


Generally, the Commission will order arbitration in a matter involving the interpretation or application of the provisions of a collective bargaining agreement where the dispute, on its face, is governed by the collective bargaining agreement. The Commission has further, in numerous cases, declared that procedural defenses are for the arbitrator to determine.

The Commission interprets the Examiner's Order as leaving all issues of procedural arbitrability for the arbitrator, and as permitting the Respondent to raise an issue before the arbitrator as to whether the arbitrator will require the parties to proceed through the steps of the grievance procedure prior to his exercising jurisdiction over the merits of the grievance. During the course of the hearing before the Examiner, it was established that at the outset the representative of the Respondent rejected the grievance and contended that it was "moot." It should also be noted that the grievance procedure provides that "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." The issue as to whether the Respondent, by the action of its representative, in contending that the grievance was moot constitutes such an answer to the grievance as would permit the Complainant to proceed to arbitration is an issue which must be determined by the arbitrator.

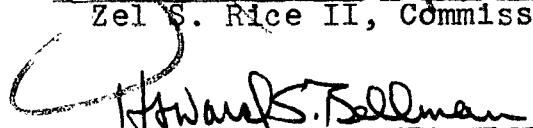
Dated at Madison, Wisconsin, this 15<sup>th</sup> day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slattery, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner