STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL #48, AFSCME, AFL-CIO & LOCAL 1616, Complainant, vs. MILWAUKEE BOARD OF SCHOOL DIRECTORS, Respondent.	:	Case L No. 16952 MP-252 Decision No. 12028-A

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Complainant.
Mr. James B. Brennan, City Attorney, by Mr. Nicholas M. Sigel, Assistant City Attorney, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission having appointed George R. Fleischli, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Milwaukee, Wisconsin on October 4, 1973 before the Examiner; and the Examiner having considered the evidence and arguments 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 Milwaukee District Council #48, AFSCME, AFL-CIO, and its affiliated Local No. 1616, hereinafter referred to jointly as the Complainant, are labor organizations within the meaning of Section 111.70(1)(j) of the Wisconsin Statutes, having offices at Milwaukee, Wisconsin and represent certain nonprofessional employes employed by the Milwaukee Board of School Directors for purposes of collective bargaining on questions of wages, hours and working conditions.

2. That Milwaukee Board of School Directors, hereinafter referred to as the Respondent Board, is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act, organized under the laws of the State of Wisconsin for the purpose of operating a school system in the City of Milwaukee, Wisconsin.

3. That at all times relevant herein, the Complainant and Respondent have been parties to a collective bargaining agreement which contains a grievance and complaint procedure which reads in relevant part as follows:

"PART VI

GRIEVANCE AND COMPLAINT PROCEDURE

A. PURPOSE

The purpose of this grievance procedure is to provide a method for quick and binding final determination of every question of interpretation and application of the provisions of this agreement, thus preventing the protracted continuation of misunderstandings which may arise from time to time concerning such questions. The purpose of the complaint procedure is to provide a method for prompt and full discussion and consideration of matters of personal irritation and concern of an employe with some aspect of employment.

B. DEFINITIONS

1.A grievance is defined to be an issue concerning the interpretation or application of provisions of this agreement or compliance therewith, provided, however, that it shall not be deemed to apply to any order, action, or directive of the Superintendent or the Secretary-Business Manager or of anyone acting on their behalf, or to any action of the Board which relates or pertains to their respective duties or obligations under the provisions of the state statutes.

2.A complaint is any matter of dissatisfaction of an employe with any aspect of his employment which does not involve any grievance as above defined. It may be processed through the application of the first two steps of the grievance procedure.

C. RESOLUTION OF GRIEVANCE OR COMPLAINT

If the grievance or complaint initiation or appeal is not processed within the time limit at any step of the grievance or complaint procedure, it shall be considered to have been resolved by previous disposition. Any time limit in the procedure may be extended by mutual consent.

D. STEPS OF GRIEVANCE PROCEDURE

Grievances or complaints shall be processed as follows:

First Step - An employe shall, within ten working days after the event giving rise to the grievance occurred or the employe could reasonably have been expected to have knowledge of it, submit his grievance or complaint directly to his next higher authority; but he may request next high authority to send for (a) a representative of the Union or (b) a fellow employe of his own choosing for the purpose of joint oral presentation and discussion of the grievance or complaint at a mutually convenient time. If the grievance or complaint is not resolved satisfactorily, it shall be reduced to writing and presented to the employe's next higher authority within five working days of the oral presentation. The next higher authority shall give a written answer within five working days of receipt of the written grievance or complaint.

The next higher authority shall advise the Superintendent or the Secretary-Business Manager in writing of his disposition of any grievance or complaint presented without the presence of a Union representative, with copies for the department head and the Union. All written grievances shall be set forth on a form provided by the Superintendent or Secretary-Business Manager.

. . .

Fourth Step - If the grievance is not satisfactorily adjusted within ten working days after discussion with the Superintendent, Secretary-Business Manager, or their designee, it may be presented within ten working days by the Union to the Rules and Complaints Committee who shall hear the appeal and render a decision within forty-five (45) days from receipt of the appeal. The Committee shall forward its recommendation in writing for action by the Board.

Fifth Step - The Board, at its subsequent meeting, shall pass upon the grievance and notify the Union in writing of its decision. If the grievance is not certified to the impartial referee in accordance with the impartial referee procedure within twenty working days after notification of the Board's decision, the decision of the Board shall become final.

Sixth Step - The decision of the Board upon a grievance shall be subject to hearing by the impartial referee upon certification to him by the Union. The final decision of the impartial referee, made within the scope of his jurisdictional authority, shall be binding upon the parties and the employes covered by this agreement. [Emphasis Supplied]

. . ."

5. That the Rules and Complaints Committee of the Respondent Board is a committee consisting of five of the 15 members of the Respondent Board who meet once a month or more often as necessary for the purpose, inter alia, of considering grievances which are taken to the Fourth Step of the Grievance Procedure by the Complainant as well as four other unions representing employes employed by the Respondent Board.

6. That during the calendar year 1972 the Rules and Complaints Committee entertained grievances and held hearings thereon in approximately 35 cases arising under the ten different collective bargaining agreements the Respondent Board has with five different unions, including the Complainant Union; that during the period beginning January 1, 1973 and ending on October 4, 1973, the Rules and Complaints Committee received approximately 60 grievances arising under said collective bargaining agreements.

7. That the Complainant Union has presented approximately seven to ten grievances in hearings before the Rules and Complaints Committee pursuant to Step Four of the current collective bargaining agreement and predecessor agreements; that in only one instance did the Complainant appeal a determination from the Rules and Complaints Committee to arbitration because it was dissatisfied with the disposition of a grievance before that Committee.

8. That on March 21, 1973, Edward R. Neudauer, acting Chief Negotiator for the Respondent Board, wrote a letter to John Redlich, Staff Representative for the Complainant Union, regarding a backlog of grievances pending before the Rules and Complaints Committee, which letter read in relevant part at follows:

"I note that several grievances certified to the Rules and Complaints Committee by District Council 48, Local 1616, have not as yet been heard.

The grievances at issue are as follows:

Grievance Number	Date of Appeal to Rules and Complaints	Expiration of 45 days
#130	2/16/73	4/2/73
132	2/16/73	4/2/73
134	2/6/73	3/23/73
135	2/16/73	4/2/73
139	3/12/73	4/26/73

As you know, Part VI, Section C, of the Local 1616 contract, entitled Resolution of Grievance or Complaint, states that:

> 'If the grievance or complaint initiation or appeal is not processed within the time limit at any step of the grievance or complaint procedure, it shall be considered to have been resolved by previous disposition. Any time limit in the procedure may be extended by mutual consent.'

Since it is apparent that on some of the grievances, the Rules and Complaints Committee may not be able to act within the prescribed time limits, the contractual right of the union is to pursue the grievance through the succeeding step. The next step available to the union would seem to be the sixth step, which is arbitration.

Please contact me to let me know how you wish to pursue these grievances and if you intend to proceed to arbitration."

9. That on April 26, 1973, Redlich responded to Neudauer's letter set out above as follows:

"In your letter dated March 21, 1973, you indicate that the Rules and Complaints Committee need not hear a grievance at their step (Fourth Step) of the grievance procedure and that the Union may then appeal to final and binding arbitration. For the basis of your opinion, you rely on Part VI, Section C, p. 23 of the contract.

As you are aware, the Fourth Step clearly states that 'the Rules and Complaints Committees [who] shall hear the appeal and render a decision within forty-five (45) days from receipt of the appeal.' The Fifth Step states that 'the Board, at its subsequest meeting, shall pass upon the grievance and notify the Union in writing of its decision.' Part VI, Section C, p. 23 refers to the initiation or appeal of the grievance or complaint. In the event it is not processed by the Union within the prescribed time limits, either initiated after the alleged violation or appealed after a disposition, it shall be considered resolved by the previous disposition. (You could verify this by simply checking your most recent negotiating notes.)

In the event the Rules and Complaints Committee fails to hear an appeal and render a decision within forty-five days from receipt of the appeal, they shall be in violation of the Purpose of the grievance procedure, Step Four, Step Five, and the entire Collective Bargaining Agreement.

Therefore, we request you convey this to all of the members of the Rules and Complaints Committee and eliminate the possibility of an unfortunate situation occurring in the very near future."

10. That on July 2, 1973 the Complainant filed the complaint herein, wherein it alleged:

". . .

4. A clear and concise statement of the facts constituting the alleged practice:

On April 30, 1973, the Rules and Complaints Committee, of which Director Radtke is Chairman, received a grievance appeal for Grievance No. 155. The Fourth Step of the Grievance Procedure in the current Collective Bargaining Agreement reads: 'If the grievance is not satisfactorily adjusted within ten working days after discussion with the Superintendent, Secretary-Business Manager, or their designee, it may be presented within ten working days by the Union to the Rules and Complaints Committee who shall hear the appeal and render a decision within forty-five (45) days from receipt of the appeal. The Committee shall forward its recommendation in writing for action by the Board.', The Fifth Step of the Grievance Procedure in the current Collective Bargaining Agreement reads: 'The Board, at its subsequent meeting, shall pass upon the grievance and notify the Union in writing of its decision. If the grievance is not certified to the impartial referee in accordance with the impartial referee procedure within twenty working days after notification of the Board's decision, the decision of the Board shall become final.'

5. The sections of the act alleged to have been violated:

Wisconsin Statutes, Section 111.70, (3), (a).

6. Reflief (sic) Requested:

The Chairman of the Rules and Complaints Committee, the Rules and Complaints Committee, and the entire School Board to adhere to the terms of the Collective Bargaining Agreement and that as a result of not hearing Grievance No.155 within the time limits and terms set forth in the Collective Bargaining Agreement, the Grievance to be considered resolved in favor of the Union's position and that each employe so adversely affected be made whole."

11. That on July 5, 1973, Neudauer sent a letter to Redlich regarding the failure of the Rules and Complaints Committee to consider Grievance No. 155 referred to in the complaint, which letter read in relevant part as follows:

"I am in receipt of a complaint of a prohibited practice filed by you and Local 1616 against the Board and Miss Lorraine M. Radtke, Chairman of the Rules and Complaints Committee. We have been over this matter many times before; and the filing of such action, in my opinion, constitutes harassment.

As you will recall, Part VI, Section C of the contract clearly says:

> 'If the grievance or complaint initiation or appeal is not processed within the time limit at any step of the grievance or complaint procedure, it shall be considered to have been resolved by previous disposition. Any time limit in the procedure may be extended by mutual consent.'

I informed you of this in a similar situation earlier in the year when the Rules and Complaints Committee was not able to

schedule a meeting. Let me reemphasize that since the Rules and Complaints Committee has been unable to meet within the time limits, the contract clearly provides that it is the option of the union to move forward to arbitration, since this is the next step in the grievance procedure.

I think that the union's filing of a prohibited practice rather than using the remedies available to it under the contract is really prolonging rather than attempting to resolve the dispute."

12. That sometime after July 5, 1973 but prior to September 24, 1973, the Complainant filed a grievance with the Rules and Complaints Committee alleging that the Respondent was violating the collective bargaining agreement by not acting within 45 days on grievances which reach the Fourth Step of the grievance procedure; that on or about September 24, 1973, the Rules and Complaints Committee entertained arguments with regard to the merits of Grievance No. 155 and the Complainant's grievance with regard to the alleged violation resulting from the failure of the Rules and Complaints Committee to act in a timely manner on grievances which reach the Fourth Step of the agreed to procedure; that on or about October 1, 1973, the Rules and Complaints Committee reconvened for the purpose of disposing of Grievance No. 155 as well as the grievance involving its alleged failure to abide by the contractual grievance procedure but deferred ruling on both grievances and has since that date, failed to forward its recommendation in writing for action by the Board with regard to Grievance No. 155 or the grievance involving its alleged failure to abide by the Fourth Step of the grievance procedure.

Based on the above and foregoing Findings of Fact, the Examiner makes and enters the following

CONCLUSIONS OF LAW

1. That, although the question of whether the Respondent has violated the grievance procedure, is a question which is arbitrable under the terms of the collective bargaining agreement existing between the Complainant and Respondent, the Commission should as a matter of policy, assert its jurisdiction to determine the merits of said dispute and not defer to arbitration of said dispute.

2. That the provisions of Section C of the grievance procedure set out above only apply to those instances where a grievant, or the Complainant on a grievant's behalf, fails to initiate or appeal a grievance within the prescribed time limits and do not apply to those instances where the Respondent or its agents fail to act on a grievance within the prescribed time limits.

3. That, by the actions of its agent, the Rules and Complaints Committee of failing to act on Grievance No. 155 within 45 days as required under the Fourth Step of the grievance procedure set out above, the Respondent has violated and is violating the provisions of a collective bargaining agreement and has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and enters the following

ORDER

IT IS ORDERED that the Respondent, Milwaukee Board of School Directors, its officers and agents, shall immediately:

1. Cease and desist failing to act on Grievance No. 155 or failing to act on any other grievance arising under its collective bargaining agreement with the Complainant within 45 days of its appeal to its Rules and Complaints Committee if reasonably possible and if not, within a reasonable time thereafter.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

(a) Act on Grievance No. 155 by directing its Rules and Complaints Committee to forward its recommendations in writing as required by the Fourth Step of the grievance procedure set out above.

(b) Act on any other grievance arising under its collective bargaining agreement with the Complainant within 45 days of its appeal to its Rules and Complaints Committee if reasonably possible, and if not, within a reasonable time thereafter.

(c) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days following the date of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 29th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

MILWAUKEE BOARD OF SCHOOL DIRECTORS, L, Decision No. 12028-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint, the Complainant alleges that the Respondent 1/ has violated the grievance procedure with regard to its processing of Grievance No. 155 and has thereby violated Section 111.70(3)(a) of the Municipal Employment Relations Act and asks that the Respondent and its agents be directed to abide by the grievance procedure; that Grievance No. 155 be resolved in favor of the Complainant's position and that all employes affected by Grievance No. 155 be made whole. In its Answer, the Respondent denies that it has violated Section 111.70(3)(a) of the Municipal Employment Relations Act and affirmatively alleges that the grievance procedure provides for binding arbitration and that the Complainant has the option to proceed to arbitration on Grievance No. 155 under Section C of the grievance procedure.

At the hearing it was disclosed that, subsequent to the filing of the complaint herein, the Complainant filed a grievance with the Rules and Complaints Committee alleging that its failure to act on Grievance No. 155 was a violation of the grievance procedure. The Rules and Complaints Committee has not acted on that grievance. At the outset of the hearing, the Respondent made a motion to dismiss the complaint on the basis of its affirmative defense set out above and on the additional basis that the Commission should defer to arbitration since there is a grievance pending which deals with the violation alleged herein.

There is no significant dispute of fact raised by the pleadings or evidence. Grievance No. 155 was processed in accordance with the established grievance procedure and appealed by the Complainant to the Rules and Complaints Committee pursuant to the Fourth Step of the grievance procedure on or about April 30, 1973, and the Rules and Complaints Committee failed to finally act on said grievance within the 45 days provided therein. After the complaint was filed on July 2, 1973, the Respondent, by its acting Chief Negotiator, advised the Complainant that it could treat the failure of the Rules and Complaints Committee to act within the prescribed time as a "resolution" under Section C of the grievance procedure and proceed to the next step of the procedure, that being arbitration.

The Complainant does not agree that the failure of the Rules and Complaints Committee to act on Grievance No. 155 constitutes a "resolution" under Section C. According to the Complainant, the provisions of Section C were intended to imply to the initiation of a grievance or the appeal of a grievance by an individual grievant or the Complainant. In support of this argument, the Complainant presented evidence of the most recent bargaining history of the language contained in Section C. With regard to the Respondent's argument that the Commission should defer to arbitration of the issue presented, especially since there has been a grievance filed with regard to the matter, the Complainant argues that the contract violation alleged herein constitutes the breakdown of the grievance procedure over which the Commission ought to assert jurisdiction as a matter of policy.

1/ In its complaint, the Complainant named Miss Lorraine M. Radtke a Director and Chairman of the Rules and Complaints Committee as an individual Respondent. Because Miss Radtke was not personally served with a copy of the complaint, the Complainant elected to drop her as a Respondent and proceed with the hearing. Transcript at p. 2.

The threshold issue that must be decided in this case is the question of whether the Commission should assert its jurisdiction to resolve the claim that the Respondent has violated the provisions of the grievance procedure. Such a violation, if established by the evidence, would be a violation of the collective bargaining agreement which is a prohibited practice under Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

It is a well-established policy of the Commission not to assert its jurisdiction to entertain complaints which allege that one party has violated the terms of the collective bargaining agreement where the parties have agreed to arbitrate disputes which arise over alleged violations of the agreement. 2/ The Complainant acknowledges the existence of this policy which is not limited to substantive issues and covers procedural issues as well 3/ but argues that this case should constitute an exception to the rule because the position taken by the Respondent undermines the grievance and arbitration procedure itself. In support of its position, the Union cites the Acme Industrial 4/ case regarding the duty to furnish information during the processing of grievances and several other cases 5/ where the NLRB has made exceptions to its policy of deferral to arbitration established in the Collyer 6/ case.

First of all, it should be noted that the Commission's policy of deferral to arbitration, which antedates the NLRB's Collyer policy, is not limited to cases where the conduct in question would otherwise constitute an unfair labor practice (or prohibited practice) in the absence of a collective bargaining agreement. The NLRB has no jurisdiction to interpret or enforce the provisions of a collective bargaining agreement except as it might be appropriate to find or remedy a violation of one of the other provisions of Section 8 of the National Labor Relations Act as amended. The Commission's deferral policy preceded, but is consistent with, the deferral policy established under Section 301 of the Labor Management Relations Act. Under that policy the Commission will normally defer to the grievance and arbitration procedure, any arbitrable dispute over the enforcement of the provisions of a collective bargaining agreement unless there is a sound policy reason not to do so.

The Examiner is satisfied that this case presents facts which ought to constitute an exception to the Commission's deferral policy because the dispute in this case has caused a breakdown in the grievance procedure itself. Because of the dispute over the applicability of Section C to the processing of Grievance No. 155, no action has been taken on that grievance. If either party were to act to move Grievance No. 155 out of the Rules and Complaints Committee the other party could argue that such action was

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2/ J. I. Case Co., (1593) 4/48; River Falls Coop. Creamery (2311) 1/50; Tecumseh Products Co., 23 Wis 2d 118 (1964); Oostburg Jt. School Dist. No. 1, (11196-A, B) 12/72.

3/ Oostburg Jt. School Dist. No. 1, (11196-A, B) 12/72.

4/ N.L.R.B. v. Acme Industrial Co., 385 U.S. 432, 64 LRRM 2069 (1967).

5/ Jos. T. Ryerson & Sons, Inc., 199 NLRB, No. 44, 81 LRRM 1261 (1972); North Shore Publishing Co., 206 NLRB, No. 7, 84 LRRM 1165 (1973); and Medical Masons Inc., 206 NLRB, No. 124, 84 LRRM 1421 (1973).

6/ Collyer Insulated Wire, 192 NLRB, 150, 77 LRRM 1931 (1971).

evidence of the correctness of its position. If the Complainant demanded arbitration of Grievance No. 155, the Respondent could argue that such action was recognition of the correctness of its interpretation of Section C. If the Respondent's Rules and Complaints Committee forwarded its recommendations with regard to Grievance No. 155 to the Board, such action would support the Complainant's claim that it was obligated to do so.

The same dilemma faces the parties with regard to the grievance (not identified by number) which is presently pending before the Rules and Complaints Committee wherein the Complainant alleges that the Rules and Complaints Committee is in violation of the grievance procedure because of its failure to act within the prescribed time limit. That grievance, which could presumably resolve the question of the proper interpretation and application of Section C, is not "ripe" for arbitration and may never "ripen" for arbitration because of the current stalemate. Given this state of affairs, the Examiner is convinced that the Commission should "grab the bull by the horns" in order to effectuate the policy of encouraging the peaceful settlement of disputes over the proper application and interpretation of collective bargaining agreements.

On the face of the language in question, and on the basis of the most recent bargaining history of that language, the undersigned is convinced that Section C was not intended to cover the situation where the Respondent or its agents fails to act on a grievance within the prescribed time limit. Like many, if not most grievance procedures, the procedure in question assumes that grievances will be filed by employes or the Complainant on their behalf. The use of the expression "initiation or appeal" clearly limits the applicability of Section C to situations where an employe, or the Complainant on his behalf, fails to initiate a grievance or appeal a grievance within the prescribed time limit. It has no applicability to the failure of the Employer to take action on the grievance within the prescribed time period (in this case 45 days). In other words, if an employe, or the Complainant on his behalf, fails to initiate a grievance in a timely manner, or fails to appeal an answer which is considered unacceptable within the prescribed time period (unless extended), a grievance will be treated as resolved against the grievant.

It is no doubt because of the harshness of this provision from the grievant's point of view that the Complainant initially made a proposal in the most recent negotiations to eliminate the first sentence of Section C. Instead of agreeing to eliminate the first sentence, the parties ultimately agreed to add the words "initiate or appeal" thereby making it clear that the language (which might have been ambiguous before) only applied to the grievant or the Complainant acting on the grievant's behalf.

At some point during negotiations, the Respondent proposed that any grievance which was not acted upon during the prescribed period would be automatically progressed to the next step in the procedure. The Complainant's representative thought that the Complainant indicated at one point that this proposal would be acceptable if the Respondent would agree to a system of cost-free arbitration but the Respondent disputes this latter allegation. In either event, it is undisputed that the words "initiation or appeal" were added to Section C and, at the same time, the words "who shall hear the appeal and render a decision within forty-five (45) days from receipt of the appeal" were inserted in the Fourth Step in place of the words "for prompt hearing". Based on a simple reading of the language in question and the recent bargaining history of that language, the conclusion is inescapable that the parties never intended the first sentence of Section C to apply to the failure of the Respondent or its agents to meet the prescribed time limits for answering a grievance at the various steps.

It is undisputed that the Respondent's Rules and Complaints Committee has failed to meet the prescribed time limit of 45 days with regard to Grievance No. 155. If the provisions of Section C applied to the situation herein in the manner that the Respondent alleges, the contract would provide its own remedy for that breach. However, since the provisions of Section C do not apply, the question arises as to what is the appropriate remedy for the violation.

Just as the evidence clearly demonstrates the value of the Fourth Step of the grievance procedure to the Complainant in satisfactorily resolving grievances without the delay or expense involved in arbitration, the evidence also demonstrates that the Fourth Step has become greatly overburdened with unresolved grievances. While it is true that most of the grievances which make up this backlog arise in other bargaining units and involve other unions, the fact remains that the Complainant must be willing to accept the bitter with the sweet if it wants to insist that the Respondent's Rules and Complaints Committee comply with the spirit as well as the specific requirements of the Fourth Step.

When the parties agreed to set a limit of 45 days, they understood that the five Directors who are members of the Rules and Complaints Committee are not able to devote an unlimited amount of time to the duties of that Committee. Presumably, they were also of the opinion that the "caseload" experienced in the prior year made it possible to dispose of most grievances within 45 days of receipt of the appeal. Because of the extrordinary increase in the caseload of the Rules and Complaints Committee, it is understandable that the Committee is currently experiencing difficulty in rendering a decision on a grievance within the prescribed time period if it is to continue to give full and fair consideration to each grievance.

The Examiner does not understand the Complainant to be asking for an order that would require the Rules and Complaints Committee to dispose of all cases presented within the time limit agreed at the expense of full and fair consideration of the grievances presented. At the hearing, the Complainant indicated its willingness to abide by reasonable delays beyond the agreed to 45 days. The Respondent has offered the Complainant an "interpretation" of Section C which would give it the right to move a grievance out of the Rules and Complaints Committee when the 45 days has been exceeded and the Complainant has rejected such an offer, which it correctly points out is not consistent with the intended meaning of Section C. Instead, the Complainant asks that when a grievance is not moved out of the Rules and Complaints Committee within the agreed to time or extention thereof, it should be considered resolved in favor of the Complainant.

Such a remedy would clearly be unjustified on the facts presented and destructive of the proceedings before the Rules and Complaints Committee. Under the threat of such a possibility, the Rules and Complaints Committee would be under such pressure to dispose of grievances quickly that the Complainant might have succeeded in killing the patient in order to save him.

Clearly the Respondent has no right to unilaterally rewrite the Fourth Step out of the grievance procedure or to impose an unwarranted interpretation of Section C on the Complainant. However, on the basis of the record presented, there is no reason to suppose that the Respondent will not make a good-faith effort to comply with a directive from the Commission to follow the agreed to provisions of the Fourth

Step of the grievance procedure within the time limits set out if reasonably possible and if not, within a reasonable time thereafter.

Dated at Madison, Wisconsin this 24th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner