STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ASHLAND TEACHER'S FEDERATION LOCAL 1275, WFT, AFT,	:	
Complainant,	:	Case XX No. 17037 MP-266
vs.	:	Decision No. 12071-A
ASHLAND UNIFIED SCHOOL DISTRICT NO. 1,	:	
Respondent.	:	

Appearances:
Mr. William Kalin, Director of Organization, appearing on behalf of the Complainant.
Foley and Lardner, Attorneys at Law, by Mr. Herbert P. Wiedemann, Esq., appearing on behalf of the Respondent.
Mr. Charles Ackerman, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Ashland Teacher's Federation Local 1275, affiliated with the Wisconsin Federation of Teachers, AFL-CIO, having filed a complaint with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that Ashland Unified School District No. 1 has committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA); and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Orders pursuant to 111.07(5) of the Wisconsin Employment Peace Act, as made applicable to municipal employment by Section 111.70(4)(b) of MERA; and hearing on said complaint having been held at Ashland, Wisconsin, on January 30, 1974; and the Examiner having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Ashland Teacher's Federation Local 1275, WFT, AFT, hereinafter Complainant, is a labor organization as defined in Section 111.70(1)(j) of the Wisconsin Statutes and has been, at all times material hereto, the exclusive bargaining representative of teachers employed by Ashland Unified School District No. 1, and that the position of Department Head is included in the collective bargaining unit represented by Complainant.

2. That Ashland Unified School District No. 1, hereinafter Respondent, is a public school district organized under the laws of the State of Wisconsin; that Respondent is a municipal employer as defined in Section 111.70(1)(a) of the Wisconsin Statutes with its principal office located at Ashland, Wisconsin; that Respondent is engaged in the provision of public education in its district; and that, at all times material herein, James Falkner was the principal of the Ashland High School of Respondent and he has held that position since 1971.

3. That, at all times material herein, Complainant and Respondent were signators to a collective bargaining agreement effective from August 26, 1972, through August 25, 1973, covering wages, hours and other conditions of employment of teachers in the employ of Respondent, and that said agreement contained the following provisions relevant herein:

"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 establisning policies or practices effecting [sic] 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 itsown [sic] 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 represented 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 [sic] 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, the 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 [sic] 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 Wisconsin Statutes. [sic]

(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 III.

WORKING CONDITIONS

. . .

G. Other Conditions Affecting Elementary and/or Secondary Teachers

. . .

Rule 10. Heads of departments shall be elected by the members of each department for a term of one year. Duties of the new department head shall commence effective with the new school year. This election shall take place at the April monthly teachers' meeting. The department heads shall receive compensation for the extra work required in accordance with the schedule in this contract. Qualifications and duties of the department heads shall be set by a staff committee

agreed upon by the Union and administration. Department heads shall be scheduled for a normal teaching load.

. . .

K. Innovations and Changes

Rule 1. Curriculum development is the cooperative effort of teachers and administrators. Development toward any changes or updating in curriculum, new courses, books or other new equipment shall be the cooperative effort of teachers and the administrative staff in a joint developmental committee or other such working arrangement.

. . .

ARTICLE IV

SALARY AND FRINGE BENEFITS

. . .

Rule 14. Teachers who assume the following extra duty assignments shall be paid the sum designated after each assignment:

. . .

Department Head -	7 or more teachers	535
	Less than 7 teachers	214

. . ."

4. That, at all times material herein, Daniel Corning was employed as a German teacher of Respondent and he has been so employed for approximately eleven years; and that during the 1971-1972 school year, Corning served as the Department Head of the Foreign Language Department of the Ashland Public Schools.

5. That sometime in the Spring or Fall of 1972, the English and Foreign Language Departments at the Ashland High School were consolidated; and as a result, Ms. Gore, the head of the English Department, became the head of the combined English and Foreign Language Departments for the 1972-1973 school year.

6. That on April 5, 1973 1/ Corning filed a grievance with Principal Falkner which provided in material part that:

> "My grievance is, that the Foreign Language Department has not been restored to its individual status, as has been done with the other small departments. Mr. Falkner gave no definite reason for not doing this other than its being an administrative decision. He says that he is satisfied with it as it is and therefore it must not be changed.

1/ Unless specifically indicated, all dates refer to 1973.

He did memtion [sic] one reason for restoring the other departments was that it was more convienient [sic] for them when taking inventory. I would like to point out at this time that the Drivers Ed. Dept. was one department which was restored for this reason and the Foreign Language Dept. has more inventory to take with the language lab materials and equipment than the Drivers Ed. Dept.

We have simply been thrown in with the English Dept. No provision has been made for the maintainance [sic] and minor repair of the language lab. I used to take care of this myself as Department Head, rather than send to Ironwood each time for the repairman. I no longer feel obligated to do this.

I also feel that as Department Head I would have been more involved in the decision to bring in a third language. The last time our department was evaluated by Dr. Frank Grittner, of the State Foreign Language Department, he advised us to drop the third language because he said our enrollment could not support a third language. Our enrollment is less than it was at that time but Mr. Falkner, after changing his decision for the third time, thinks we should have a third language. This will take one third more of the students going into Foreign Language away from my German Classes."

6. That on April 9, Falkner responded to the Corning grievance as follows:

"There will be no change in the English/language department this year. The decision to work independently with some small departments was made when it became apparent that these departments were not able to prepare for the move as a unit. They were accustomed to working independently. We had a curriculum study project to undertake and preparatory groundwork to lay for transferring to the new school. Home economics, business education and industrial arts were permitted to work independently. Drivers education, a part of this grouping, was then isolated. It too, had to work independently.

Problems which exist in the foreign language programs should be discussed with Miss Gorr, your department head. If equipment failure occurs, this also should be reported.

The decision to offer a third language was made by the Language Curriculum Committee of which you are a member. Your voice should have been heard there. The recommendation to offer Spanish next year was made by the Steering Committee. It is subject to final approval of the Board of Education. It will probably be reversed by the Board. The Steering Committee recommendation is contrary to my own. I do feel they should be heard, however. This is why it is still being considered. An arbitrary decision on my part would not be in keeping with the spirit of committee work."

7. That on April 11, Corning and John Beiersdorff, Complainant, appealed said grievance to Step III of the grievance procedure, as follows:

"I am hereby appealing Mr. Falkners [sic] decision to make no change in the English/Language department and request a hearing on the matter as provided for in Article II, Section C, Step III, sub (1) of the Master Agreement."

8. That on April 24, Harvey W. Johnson, Respondent's Superintendent of Schools, responded to the Corning grievance as follows:

> "A review of your grievance indicated that it does not qualify within the definition of a grievance, as defined in our negotiated contract.
>
> 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 affecting the conditions of employment, salaries or hours of the employees of the Board of Education for whom the Union is the negotiating representative.
>
> I would hope that I would be informed exactly what portion of the contract is the basis of your complaint.
>
> Mr. Ackerman has advised us that he can see no basis for a grievance on the matter."

9. On April 26, Corning and Beiersdorff appealed said grievance to Step IV of the grievance procedure by requesting a hearing before the Board of Education of Respondent, hereinafter the Board. On May 7, the Board affirmed the Superintendent's position and denied Complainant's request for a hearing.

10. That sometime prior to May 25, Complainant forwarded a request to the Commission for the appointment of an arbitrator; pursuant thereto, the Commission directed a letter to Respondent seeking concurrence with Complainant's request to proceed to arbitration on the Corning grievance; that on June 11, Superintendent of Schools Johnson, directed the following letter to the Commission, which in material part provides as follows:

> "The request for the appointment of an arbitrator to hear and decide an alleged dispute over the reinstatement of a department head in the Language Department does not meet with our concurrence.
>
> Mr. Charles Ackerman, Bruce, Wisconsin, labor consultant for the Board of Education, recommends that the Board of Ashland Unified School District No. 1 refuse this request. The Board will abide by his recommendation."

11. That Complainant demanded of Respondent that it proceed to arbitration on the Corning grievance, and that from June 11 up to and through the date of the hearing Respondent has refused and continues to refuse to proceed to arbitration on said grievance.

12. That the dispute between Complainant and Respondent concerns the effect of consolidation of the English and Foreign Language Departments at the Ashland High School on Corning's status as Department Head at said school, and it arises out of a claim, which on its face, is covered by the terms of the collective bargaining agreement existing between the parties.

13. That Respondent by its refusal to proceed to arbitration on the Corning grievance has not repudiated the contractual grievance procedure.

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

CONCLUSION OF LAW

That the dispute between Complainant, Ashland Teacher's Federation Local 1275, WFT, AFT, pertaining to the Daniel Corning grievance concerning the effect of the consolidation of the Ashland High School on Corning's status as a Department Head, thereby affecting his wages and working conditions, arises out of a claim which, on its face, is governed by the terms of the parties' collective bargaining agreement, and that the Ashland Unified School District No. 1 by its refusal to proceed to arbitration in the matter of the Daniel Corning grievance 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 Conclusion 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 Daniel Corning grievance to arbitration.

2. Take the following 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 with respect to the Corning grievance.

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

   (c) Participate in the arbitration proceeding on the Corning grievance and all issues related thereto before the arbitrator so appointed.

   (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 27th day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complainant alleges that Respondent refused to process the Corning grievance 2/ through the grievance procedure, and in its prayer for relief, Complainant demands that the Examiner decide the merits of the Corning grievance. Respondent on the other hand, maintains that the Corning grievance is not arbitrable because it does not state a claim which is governed by the agreement, and, "because an agreement by the Board of Education to abdicate its responsibility for educational policy in regard to the organization of the subjects of instruction would be illegal and unenforceable." (Respondent's brief, pages 8-9). Finally, Respondent asserts that if it does not prevail in its arguments, the Examiner should direct the parties to proceed to arbitration.

The Commission (WERB) 3/ in Seaman-Andwall Corp. (Dec. No. 5910), 1/62 adopted federal substantive law for the enforcement of arbitration provisions contained in collective bargaining agreements as the policy of the Commission under the Wisconsin Employment Peace Act. The federal substantive law was established in the "Steelworkers Trilogy" 4/ and the WERB in its decision in Seaman-Andwall, supra, quotes from the opinion of Justice Douglas written for the majority of the U.S. Supreme Court in American Manufacturing Co., supra, as follows:

> "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.
>
> The courts therefore have no business weighing the merits of the grievance considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious. The

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2/ In addition, Complainant alleged that Respondent refused to process the grievance of Warren Clow through the grievance procedure. In Ashland Unified School District No. 1, (11861-A, B), 11/73 and 1/74, Respondent was directed to proceed to arbitration. At the outset of the hearing in the instant matter, Respondent stated that it would participate in arbitration proceedings. Without opposition from Complainant, Respondent moved to dismiss the allegations of the complaint pertaining to Clow, and said motion was granted by the Examiner.

3/ The Commission at that time was called the Wisconsin Employment Relations Board, WERB.

4/ The following three cases comprise, what is commonly known as the Steelworkers Trilogy: Steelworkers vs. American Mfg. Co., 46 LRRM 2415, (1960), Steelworkers vs. Warrior & Gulf Navigation Co., 46 LRRM 2416, (1960), Steelworkers vs. Enterprise Wheel & Car Corp., 46 LRRM 2423, (1960).

processing of even frivolous claims may have therapeutic values (of) which those who are not a part of the plant environment may be quite unaware.

The Union claimed in this case that the company had violated a specific provision of the contract. The company took the position that it had not violated that clause. There was, therefore, a dispute between the parties as to 'the meaning, interpretation and application' of the collective bargaining agreement. Arbitration should have been ordered. When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under that regime, is entrusted to the arbitration tribunal."

In Warrior & Gulf Navigation Co., supra, Justice Douglas continued his explication of the judicial role in enforcing arbitration provisions when he noted that:

"The Congress, however, has by SS. 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate. For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties, through the machinery of arbitration, the judicial inquiry under SS. 301 must be be [sic] strictly confined to the question of whether the reluctant party did agree to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." (Emphasis added)

The WERB, in Seaman-Andwall, supra, quoted with approval the foregoing language, and also noted that the federal policy established in the Trilogy is identical to the policy established by the Wisconsin Employment Peace Act:

"In point, the Act prohibits employers and unions from violating the terms of a collective bargaining agreement (including an agreement to accept an arbitration award) [Secs. 111.06(1)(f) and (2)(c)]. . . Furthermore, to implement such policy the Act provides as follows:

'111.10 Arbitration. Parties to a labor dispute may agree in writing to have the board act or name arbitrators in all or any part of such dispute, and thereupon the board shall have the power so to act. The board shall appoint as arbitrators only competent, impartial and disinterested persons. Proceedings in any such arbitration shall be as provided in Chapter 298 of the Statutes'."

The WERB added in Seamen-Andwall, supra, that:

"The Board has had ample opportunity to enforce the policy of the state in this regard, for since the effective date of the Act in 1939 the Board has issued approximately thirty orders dealing with the obligation of employers to proceed to arbitration pursuant to the provisions contained in collective bargaining agreements."

Thereafter, MERA was enacted in 1971 and at 111.70(3)(a)5 of MERA, it became a prohibited practice for an employer:

> "To violate any collective bargaining agreeement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such award as final and binding upon them."

Following enactment of MERA, the Commission adopted the policy it has enunciated in Seaman-Andwall, supra, as being likewise applicable to the municipal sector. See Oostburg Joint School District No. 14, (Decision No. 11196-A, B) 11/72, 12/72; aff'd. Sheboygan Circuit Court, 6/74. The Commission has subsequently adopted the same policy in other municipal sector cases. 5/ The Examiner has traced, at length, the evolution of the Commission's policy in this area because this is the second time which these same parties have raised this issue. 6/

In general terms, the Corning grievance pertains to the combination of the Ashland High School Foreign Language and English Departments. Complainant asserts that the contractual basis for the grievance is Article III, Sections G, Rule 10, and K, Rule 1, and Article IV, Rule 14, which provide:

"ARTICLE III

WORKING CONDITIONS

. . .

G. Other Conditions Affecting Elementary and/or Secondary Teachers

. . .

Rule 10. Heads of departments shall be elected by the members of each department for a term of one year. Duties of the new department head shall commence effective with the new school year. This election shall take place at the April monthly teachers' meeting. The department heads shall receive compensation for the extra work required in accordance with the schedule in this contract. Qualifications and duties of the department heads shall be set by a staff committee

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5/ In the public sector alone, the Commission has applied this basic principle of labor law most recently in Ashland Unified School District No. 1, (Decision No. 11861-A, B), Manitowoc County, (Decision No. 12047-A, B) 10/73, Weyerhauser Jt. School District No. 3, (Decision No. 12984), and Portage Jt. School District No. 1, (Decision No. 12116-A, B), 11/74.

6/ See Ashland Unified School District No. 1, (Decision No. 11861-A, B), 11/73, 1/74.

agreed upon by the Union and administration. Department heads shall be scheduled for a normal teaching load.

. . .

K. Innovations and Changes

Rule 1. Curriculum development is the cooperative effort of teachers and administrators. Development toward any changes or updating in curriculum, new courses, books or other new equipment shall be the cooperative effort of teachers and the administrative staff in a joint developmental committee or other such working arrangement.

. . .

ARTICLE IV

SALARY AND FRINGE BENEFITS

. . .

Rule 14. Teachers who assume the following extra duty assignments shall be paid the sum designated after each assignment:

. . .

Department Head -	7 or more teachers	535
	Less than 7 teachers	214

. . ."

Respondent, however, argues that Complainant's characterization of the grievance in its complaint and at the hearing differs substantially from the statement of the grievance originally submitted to High School Principal Falkner by Corning. In order to determine the arbitrability of the dispute between Complainant and Respondent, the Examiner may not impose upon the parties and the arbitrator his opinion of what is the issue in the grievance; that is a determination which is to be made solely by the arbitrator. The Examiner need only determine if the grievance, on its face, states a claim which is governed by the collective bargaining agreement.

The collective bargaining agreement defines a grievance in broad terms:

"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 [sic] the conditions of employment, salaries, or hours of the employees of the Board of Education for whom the Union is the negotiating representative." (Article II, Section A).

The definition of a "grievance", then, is sufficiently broad to sustain the arbitrability of Corning's claim concerning his position as Department Head of the Foreign Language Department, and all issue(s) related thereto.

Respondent argues that Complainant's grievance concerns a matter of educational policy 7/ which area is reserved to the Board of Education by Article X, Section 1 of the Constitution of the State of Wisconsin, which provides that:

"ARTICLE X.
EDUCATION

Superintendent of public instruction. SECTION 1. The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct; . . ."

Respondent argues, as well, that the provisions of MERA must be construed to accommodate this constitutional purpose.

Article X, Section 1 of the Wisconsin Constitution is addressed to the Office of the Superintendent of Instruction. Respondent has not indicated in its brief how Article X, Section 1 applies to the matter at hand. Furthermore, Respondent cites no other applicable constitutional provision or state statutes which concern education and which would negate Respondent's statutory responsibilities under the Municipal Employment Relations Act, specifically, as it relates to the matter at issue herein.

Finally, in any event, the Corning grievance can be construed to cover only the effect of Respondent's decision to consolidate the English and Foreign Language departments on Corning's wages and working conditions. If so, the grievance would not intrude into the area of educational policy. 8/ Therefore, Respondent's argument concerning a potential conflict between MERA and a school board's function of determining educational policy is speculative.

Complainant demanded that the Examiner determine the Corning grievance on its merits. In order for the Examiner to decide the grievance on its merits, Complainant had the burden of proving that Respondent had repudiated the grievance procedure contained in the parties' agreement. 9/ The Examiner afforded Complainant an opportunity, at the outset of the hearing, to introduce testimony showing that Respondent had repudiated the collective bargaining agreement. Complainant failed to meet its burden of proof. The Examiner, therefore, ordered the parties to proceed to arbitration.

7/ Respondent cites Dunellen Board of Education, et al., vs. Dunellen Education Association, (1973) 311A 2d 737 72LC par. 53, 199, in support of its position that matters of educational policy are not arbitrable. The facts in Dunellen are very similar to the facts in this case. However, the New Jersey Law under which Dunellen was decided differs markedly from Wisconsin Law in this area. The differences between the two jurisdictions is exemplified by the New Jersey Court's determination that the dispute concerning consolidation of Departments should have been presented to the New Jersey Commissioner of Education for his determination.

8/ City of Beloit by the Beloit City School Board (11831-C) 9/74, Oak Creek Franklin Joint City School District No. 1 (11827-D) 9/74.

9/ Levi-Mews d/b/a Mews Redi Mix Corp., (Dec. No. 6683) 3/64.

By his order directing the parties to arbitration, the Examiner has left all procedural and substantive issues for the arbitrator's determination. Thus, it is fully intended by the Examiner's order that the arbitrator may direct the parties to proceed through the several steps of the grievance procedure prior to his exercise of jurisdiction in the matter.

Dated at Madison, Wisconsin, this 27th day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner