

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALAN MANSON and THE NORTHWEST UNITED  
EDUCATORS,

Complainants,

vs.

WEYERHAUSER JOINT SCHOOL DISTRICT  
NO. 3,

Respondent.

Case I  
No. 17749 MP-344  
Decision No. 12984

Appearances:

Mr. James T. Guckenberg, Executive Director, appearing on behalf of  
the Complainants.

Mr. James A. Pelish, Attorney at Law, appearing on behalf of the  
Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above named Complainants, having filed a complaint with the Wisconsin Employment Relations Commission, alleging 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; and a hearing on said complaint having been held at Ladysmith, Wisconsin on April 10, 1974 before Commissioner Zel S. Rice II; and the Commission having considered the evidence 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 Alan Manson, hereinafter referred to as Complainant Manson, is an individual residing at Exeland, Wisconsin; and that Northwest United Educators, hereinafter referred to as Complainant NUE, is a labor organization representing employees for the purpose of collective bargaining, and has its offices at Rice Lake, Wisconsin.

2. That Weyerhauser Joint School District No. 3, Weyerhauser, Wisconsin, hereinafter referred to as the Respondent, is a public school district, organized under the laws of the State of Wisconsin, charged with the management, supervision, and control of the district and its affairs, and in that regard employs, among others, certified teaching personnel.

3. That Complainant NUE and the Respondent are signators to a collective bargaining agreement, effective from November 9, 1973 to the first inservice session of the 1974-1975 school year, covering the wages, hours and conditions of employment of all classroom teachers, guidance counselors, speech therapists and librarians in the employ of the Respondent; and that agreement contained among its provisions a salary schedule and the following with respect to grievances and the arbitration thereof:

"GRIEVANCE PROCEDURE, ARTICLE VII.

I. DEFINITIONS

A. For the purpose of this agreement, a 'Grievance' is  
defined as any question concerning an alleged violation

of this agreement between the Board and the NUE Weyerhauser.

- D. The term 'days' when used in this article shall, except where otherwise indicated mean working school days; thus, weekend or vacation days are excluded.
- C. The Administration and/or Board of Education may have any representative of their choosing at all levels of the grievance procedure.

## II. INITIATION AND PROCESSING

- A. Level One. The grievant will first discuss his grievance with his principal or immediate supervisor, either directly or through NUE Weyerhauser's designated representative.
- B. Level Two.
  - 1. If the grievant is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within ten (10) school days after presentation of the grievance, he may file the grievance in writing with the superintendent of schools.
  - 2. Within ten (10) school days after receipt of the written grievance by the superintendent, the superintendent will meet with the grievant and NUE Weyerhauser representative in an effort to resolve it.
- C. Level Three. If the grievant is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within 10 school days after he has first met with the superintendent, he may file the grievance in writing with the Board. Within ten (10) school days after receiving the written grievance, the Board will meet with the grievant and NUE Weyerhauser representative for the purpose of resolving the grievance.
- D. Level Four. If the grievant is not satisfied with the disposition of his grievance at Level Three, or if no decision has been rendered within ten (10) school days after he has first met with the Board, he may, within five (5) school days after a decision by the Board of (sic) fifteen (15) school days after he has first met with the Board, whichever is sooner, request that NUE Weyerhauser submit his grievance to arbitration by the Wisconsin Employment Relations Commission.
- E. Initiation of Group Grievances. If in the judgment of NUE Weyerhauser, a grievance affects a group or class of teachers, the grievance committee may submit such grievance in writing to the superintendent directly and the processing of such grievance will be commenced at Level One.

## III. GENERAL PROCEDURES

- A. Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.
- B. In the event a grievance is filed so that sufficient time as stipulated under all levels of the procedure cannot be provided before the last day of the school term, should it

be necessary to pursue the grievance to all levels of the appeals, then said grievance shall be resolved in the new school term in September under the terms of this Agreement and this article, and not under the succeeding agreement. Every effort shall be made to settle grievances by the end of the school year. If not settled, the grievance shall be processed following the end of the school term waiving the definition of days as set forth.

. . ."

4. That Complainant Manson has been employed by the Respondent as a classroom teacher at least since 1969; that on March 4, 1972 Complainant Manson and agents of the Respondent executed an individual teaching contract covering Complainant Manson's employment for the 1972-1973 school year, wherein it was agreed, among other things, that Complainant Manson was to receive an annual salary of \$9,350.00 and additional increments having a value of \$200.00 for said school year; that Complainant continued in employment as a teacher by the Respondent for the 1973-1974 school year; that, sometime after the effective date of the collective bargaining agreement, Complainant Manson, pursuant to "Level One" of the contractual grievance procedure, in a conversation with his Principal, contended that he was not receiving the salary to which he was entitled under the collective bargaining agreement; that said Principal did not respond to said grievance within ten school days; and thereupon Complainant Manson reduced his grievance to writing and processed same through Levels Two and Three of the contractual grievance procedure; that the Respondent's agents denied the grievance in both of said steps; that on January 8, 1974 Complainant Manson, in writing, requested Complainant NUE to proceed to arbitration of his grievance, pursuant to Level Four of the contractual grievance procedure; that on January 18, 1974 Complainant NUE directed a letter to the Wisconsin Employment Relations Commission, requesting the Commission to assign an arbitrator in the matter; that the Commission on January 21, 1974 directed a letter to Respondent's Administrator to determine whether Respondent would agree to proceed to arbitration; that, on January 31, 1974, the Respondent, by its counsel, in writing, advised the Commission that the Respondent objected to proceeding to arbitration, contending that the dispute with regard to Complainant Manson's grievance "is not subject to arbitration"; and that on January 31, 1974 the Commission directed a letter to Complainant NUE, wherein it indicated Respondent's "objection to arbitration" and wherein, because of the Respondent's position, the Commission advised that it would not designate the arbitrator; and that the Respondent has refused, and continues to refuse, to proceed to arbitration on Complainant Manson's grievance.

5. That Complainant Manson's grievance concerns an alleged violation of the terms of the collective bargaining agreement existing between Complainant NUE and the Respondent.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

#### CONCLUSION OF LAW

That Respondent Weyerhaeuser Joint School District No. 3, by its refusal to proceed to arbitration in the matter of the grievance of Complainant Alan Manson, wherein he alleged that the salary he was being paid for the 1973-1974 school year violated the terms of the collective bargaining agreement existing between Respondent Weyerhaeuser Joint School District No. 3 and Complainant Northwest United Educators, has violated, and is violating the terms of said collective bargaining agreement relating to grievances and the arbitration thereof, and by such refusal, Respondent Weyerhaeuser Joint School District No. 3 has committed, and is committing, a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

It is ORDERED that Respondent Weyerhaeuser Joint School District No. 3, its officers and agents, shall immediately:

- (1) Cease and desist from refusing to submit the grievance of Complainant Alan Manson to arbitration.
- (2) Take the following affirmative action which the Commission finds will effectuate the policies of the Municipal Employment Relations Act:
  - (a) Immediately comply with the arbitration provision of the collective bargaining agreement existing between it and Complainant Northwest United Educators with respect to the grievance of Complainant Alan Manson.
  - (b) Immediately notify Complainant Northwest United Educators that it will proceed to such arbitration on said grievance and issues concerning same.
  - (c) Immediately in writing advise the Wisconsin Employment Relations Commission that it has agreed to proceed to arbitration of the grievance of Complainant Alan Manson.
  - (d) Participate in the arbitration proceeding before the arbitrator appointed by the Wisconsin Employment Relations Commission on said grievance and issues concerning same.
  - (e) Notify the Wisconsin Employment Relations Commission in writing within ten (10) days from the receipt of a copy of this Order as to what steps it has taken to comply herewith.

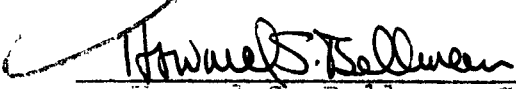
Given under our hands and seal at the  
City of Madison, Wisconsin, this 30th  
day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

On March 18, 1974 Complainants filed a complaint with the Commission alleging that the Weyerhauser Joint School District No. 3 had committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes by refusing to proceed to arbitration in violation of Article VII, Section 2 of the collective bargaining agreement between the parties on the grievance filed on behalf of Alan Manson. Said grievance concerns the failure to pay Manson in accordance with the master contract negotiated between Northwest United Educators and the Weyerhauser Joint School District No. 3 covering the 1973-1974 school year. In its answer filed on April 8, 1974 the Respondent denied that it had violated the collective bargaining agreement by not compensating Manson at the base salary, denied that it had violated the agreement by refusing to comply with the definition of "grievance", denied that it had violated the agreement by refusing to arbitrate, denied that it had violated the agreement in any manner whatsoever, and denied that it had violated the Municipal Employment Relations Act.

For an affirmative defense the Respondent alleged that Manson received a contract for the 1973-1974 school year pursuant to the Wisconsin Statutes and that Manson accepted renewal of his contract on April 9, 1973. It further alleged that the individual contract of Manson had not been breached and that Manson does not have a "grievance" as contemplated by Article VII of the labor agreement between the NUE and the Respondent and that therefore the grievance procedure set forth in Article VII is not applicable.

The Respondent does not deny refusing to proceed to arbitration on the Manson grievance. The Respondent's position has been that Manson's contract was renewed under the provisions of Section 118.22(2) of the Wisconsin Statutes, and that the labor agreement in effect at the time of the renewal did not include a grievance procedure. The Respondent contends that since the labor agreement negotiated and executed on November 9, 1973 was executed after Manson accepted his individual 1973-1974 teaching contract, the grievance procedure does not apply to said individual contract and therefore Manson does not have a grievance under the terms of the 1973-1974 collective bargaining agreement.

The question before the Commission is whether the grievance of Alan Manson is arbitrable under Article VII of the labor agreement. The Commission has stated that arbitration provisions in collective bargaining agreements will be given their fullest meaning and that its function in cases seeking to enforce arbitration provisions in grievances to ascertain whether the party seeking arbitration is making a claim that on its face is governed by the collective bargaining agreement. 1/ In this regard it is noted that Article VII, Section 1 (A) defines a "grievance" "as any question concerning an alleged violation of this agreement between the Board and the NUE Weyerhauser." Article XVII, Section IV of the agreement contains a provision as to payment of salaries and attached to the agreement is a salary schedule. Complainants claim that the Respondent violated the agreement by not paying Manson a salary for the 1973-1974 school year in accordance with the salary schedule included in the agreement.

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1/ Seaman-Andwall Corporation, (5910) 1/62.

It is Respondent's position that Manson's individual contract was renewed in accordance with Section 116.22(2) of the Wisconsin Statutes prior to the execution of the collective bargaining agreement between the NUL and the Respondent, and that Complainant Manson was not advised that his individual contract would be amended in accordance with the terms of the collective bargaining agreement subsequently entered into by the NUL and the Respondent. Respondent argues that the question of Manson's salary is not a grievance since it does not involve interpretation and application of a provision of the collective bargaining agreement.

The question of whether Manson's salary is subject to the collective bargaining agreement clearly calls for an interpretation of its terms. This interpretation should be made by the arbitrator as provided in the collective bargaining agreement and not by this Commission, and therefore we have found that the refusal to proceed to arbitration is violative of Section 111.70(3)(a)5 of the Municipal Employment Relations Act, and we have ordered the Respondent to proceed to arbitration.

Dated at Madison, Wisconsin this 30th day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Thomas Slavney, Chairman

Zel S. Rice II  
Zel S. Rice II, Commissioner

Howard S. Bellman  
Howard S. Bellman, Commissioner