

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BOARD OF EDUCATION - RICHMOND JOINT
SCHOOL DISTRICT NO. 2 LISBON-PEWAUKEE

Complainant,

vs.

ESTHER HEIER AND ARROWHEAD DISTRICT
COUNCIL,

Respondents.

Case IV
No. 18629 MP-412
Decision No. 13233-B

ESTHER HEIER AND ARROWHEAD DISTRICT
COUNCIL, RICHMOND SCHOOL TEACHERS,

Complainants,

vs.

JOINT SCHOOL DISTRICT NO. 2, LISBON-
PEWAUKEE; BOARD OF EDUCATION,
RICHMOND ELEMENTARY SCHOOL, JOINT
SCHOOL DISTRICT NO. 2, LISBON-
PEWAUKEE,

Respondents.

Case VII
No. 18734 MP-430
Decision No. 13269-A

Appearances:

- Mr. George Shiroda, Representative, appearing on behalf of the Municipal Employer.
- Mr. Gregory Wilson, Staff Counsel, WEAC, appearing on behalf of Esther Heier and Arrowhead District Council, Richmond School Teachers.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

Board of Education - Richmond Joint School District No. 2, Lisbon-Pewaukee having filed a complaint on December 19, 1974 (Case IV) with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that Esther Heier, hereinafter Heier, and the Arrowhead District Council, hereinafter Richmond Teachers, had committed a prohibited practice within the meaning of Section 111.70(3)(b)4 of the Municipal Employment Relations Act (MERA); and Esther Heier and Arrowhead District Council, Richmond School Teachers, hereinafter Complainants, having filed a complaint on January 16, 1975 (Case VII) alleging that Joint School District No. 2, Lisbon-Pewaukee; Board of Education, Richmond Elementary School, Joint School District No. 2, Lisbon-Pewaukee, hereinafter Respondent, has committed a prohibited practice within the meaning of Section 111.70(3)(a)1, 2 and 5 of MERA; and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner in both Case IV and Case VII and to make and issue Findings of Fact, Conclusions of Law and Orders, pursuant to Section 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 complaints having been held at Waukesha, Wisconsin on February 5, 1975; and at the outset of said hearing the Examiner on his own motion and over the objection of Respondent, having consolidated Cases IV and VII for hearing; and the parties having sub-

mitted briefs by April 29, 1975; 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, Conclusions of Law and Orders.

FINDINGS OF FACT

1. That Esther Heier is an individual who has been continuously employed by Respondent since 1967 and is a municipal employe within the meaning of Section 111.70(1)(b) of MERA; and that Arrowhead District Council, Richmond School Teachers 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 recognized exclusive bargaining representative of teachers employed by Respondent.

2. That Joint School District No. 2, Lisbon-Pewaukee; Board of Education, Richmond Elementary School Joint District No. 2, Lisbon-Pewaukee, is a public school district organized under the laws of the State of Wisconsin; that the Board of Education, Richmond Elementary School is charged with the management, supervision and control of said District; and that Respondent is a municipal employer as defined in Section 111.70(1)(a) of MERA; that Respondent is engaged in the provision of public education in its district; and that, at all times material herein, Edward T. Johnson was the Administrator and Ervin S. Hewitt was Clerk of Respondent.

3. That, at all times material herein, Richmond School Teachers and Respondent were parties to a collective bargaining agreement effective from July 1, 1973 through June 30, 1975, covering wages, hours and other conditions of employment of teachers in the employ of Respondent, and that said agreement contained a four-step grievance procedure which culminates in binding arbitration; the definition of a grievance and the scope of that procedure material hereto are delineated as follows:

"ARTICLE VII
GRIEVANCE PROCEDURE

7.01 Definitions:

1. A grievance is defined as an alleged violation of a specific article or section of this AGREEMENT.
2. A grievant is defined as the individual employee, or group of employees, who is filing the grievance. Said employee(s) may present his/their grievance and have the matter handled to his/their satisfaction, at step one, without the intervention of the TEACHERS or any other teachers if said employee(s) so desires so long as the adjustment is not inconsistent with the terms of this AGREEMENT.
3. A day, as used in this Article, is defined as a scheduled school day except as otherwise noted.

7.02 Procedure

1. The purpose of this procedure is to provide an opportunity for the parties to question alleged violations of the AGREEMENT between the BOARD and the teachers.

. . .

ARTICLE XXI
PROFESSIONAL COMPENSATION

. . .

21.03 All degressed teachers employed after September 8th, 1973 shall be given full credit for a maximum of five (5) years of outside teaching experience. Outside teaching experience granted to teachers employed prior to September 8th, 1973, will remain at the level granted prior to the initiation date of this AGREEMENT."

4. That on October 17, 1973, Arrowhead District Council's President, J. Christopher Moore, filed the following grievance on behalf of the labor organization the Arrowhead District Council, Richmond School Teachers, which in material part provides:

"STATEMENT OF GRIEVANCE

. . .

GRIEVANT: J. Christopher Moore Sr. for the Richmond TEACHERS

AGGRIEVED: Esther Heier

DATE: this 17th day of October, 1973.

. . .

CONTENTION OF GRIEVANT:

Inasmuch as no salary schedule existed for nondegreed teachers, and inasmuch as no outside teaching experience had ever been granted or denied, it is the contention of the grievant that, absent a precedent, the aggrieved would fall under provisions of Article XXI, section 21.03 sentence 1.

Inasmuch as Esther Heier has been continuously employed by the District and inasmuch as her duties and responsibilities have always been those of a certificated teacher, it is the contention of the grievant that denial of years of actual experience is a blatant violation of Article XXI, section 21.01 and appendix B., of the AGREEMENT executed by the BOARD and the TEACHERS.

. . ."

that pursuant to a complaint filed by Moore to compel Respondent to proceed to arbitration on said grievance, hearing was held in the matter before the Commission's Examiner Amedeo Greco on November 27, 1973, and at said hearing Complainant and Respondent agreed to proceed to a hearing before Respondent and to arbitration, if necessary, on all issues contained in the October 17, 1973 grievance.

5. That, thereafter, hearing was held before Respondent Board on all issues pertaining to the October 17 grievance, whereupon said grievance was denied by Respondent; thereupon, the Complainant and Respondent proceeded to arbitration before a panel of three arbitrators which was chaired by its neutral member Robert J. Mueller; that in September, 1974 Mueller issued an award in which Respondent's appointee to the arbitration panel concurred in denying the grievance on the grounds that the grievance procedure contained in the 1973-1975 agreement (cited above at paragraph three) did not permit the Richmond Teachers or its representative to present a grievance in its own behalf without the aggrieved employe actually becoming a party to said grievance, the Mueller panel found that under the agreement, an aggrieved employe became a party to the grievance by signing the grievance, and for that reason the Mueller panel concluded "that the issue of the merits is not before the arbitration panel". Richmond School Joint School District (Mueller, 1974) unpublished award.

6. That on November 1, 1974, Heier filed the following grievance which in material part provides as follows:

"STATEMENT OF GRIEVANCE"

. . .

GRIEVANT: Esther Heier

AGGRIEVED: Esther Heier

DATED: this First day of November, 1974

. . .

CONTENTION OF GRIEVANT:

1. It is the contention of the aggrieved, Esther Heier, that Steps, equated as experience, do not digress back to point zero at any position on the salary schedule but that preparation columns intersect with that lateral line designated as years of experience.
2. Continuing experience within a district cannot be denied, deleted or arbitrarily concluded.

SPECIFIC RELIEF SOUGHT:

Immediate placement on the step eleven (11) of the salary schedule and benefits accrued for the time the contract was retroactively incepted as its effective date."

7. That on November 15, 1974, Johnson, Respondent's Superintendent, denied the grievance; that on November 18, 1974 Heier requested Respondent to advance the grievance to the Board level of the grievance procedure; that on December 14, 1974 Hewitt, Respondent's Clerk, advised Heier of Respondent's determination to file a prohibited practice complaint against Heier for filing the grievance and on that basis Hewitt refused to advance Heier's grievance any further; that on December 20, 1974, Heier requested that her grievance be submitted to arbitration; that on December 31, 1974, Hewitt advised Heier that a prohibited practice complaint had been filed against Heier (Case IV) and as a result Respondent would take no further action.

8. That the dispute between Heier, Richmond Teachers, on one hand, and Respondent, on the other, concerns Heier's placement on the salary schedule 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.

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

CONCLUSIONS OF LAW

1. That Heier was not a party to the October 17, 1973 grievance which was determined by an arbitration panel chaired by Mueller in September 1974, and therefore, the November 1, 1974 grievance filed by Heier concerning her placement on the teacher salary schedule is not res adjudicata.

2. That the dispute between Esther Heier, Arrowhead District Council, Richmond School Teachers and Respondent pertaining to the

placement of Heier on the salary schedule included in the parties' agreement, arises out of a claim, which on its face, is governed by the terms of the parties' collective bargaining agreement, and that Respondent, by its refusal to proceed to arbitration on Heier's November 1, 1974 grievance, has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes.

3. That Respondent, in refusing to proceed to arbitration on the Heier November 1, 1974 grievance has not interfered with, restrained or coerced municipal employes in the exercise of their rights nor has Respondent, by the same conduct, initiated, created, dominated, interfered with the formation or administration of any labor organization; and thereby Respondent has not violated Section 111.70(3)(a)1 and 2 of the Wisconsin Statutes.

4. That Esther Heier, by filing the November 1, 1974 grievance, has not refused to accept a final and binding arbitration award and by her conduct she has not violated Section 111.70(3)(b)4 of the Wisconsin Statutes or any other provision of MERA.

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

ORDERS

- I. IT IS ORDERED that the complaint of the Board of Education, Richmond School Joint District No. 2, Lisbon-Pewaukee against Esther Heier and the Arrowhead District Council, denominated as Case IV, be, and the same hereby is, dismissed.
- II. IT IS ORDERED that the portions of the complaint of Esther Heier and Arrowhead District Council, Richmond School Teachers against Joint School District No. 2, Lisbon-Pewaukee alleging Respondent's violation of Section 111.70(3)(a)1 and 2 be, and the same hereby are, dismissed.
- III. IT IS ORDERED that Joint School District No. 2, Lisbon-Pewaukee; its Board of Education, Richmond Elementary School, its officers and agents shall immediately:
 - A. Cease and desist from refusing to submit the Esther Heier November 1, 1974 grievance to arbitration.
 - B. Take the following action which the Examiner finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:
 1. Comply with the arbitration provisions of the July 1, 1973 - June 30, 1975 collective bargaining agreement with respect to the Heier November 1, 1974 grievance.
 2. Notify Esther Heier and Arrowhead District Council, Richmond School Teachers her representative, that, upon request, Respondent will proceed to arbitration on the Heier November 1, 1974 grievance and on all issues concerning same.
 3. Participate in the arbitration proceeding on the Heier November 1, 1974 grievance and all issues related thereto before the arbitrator so appointed.

4. 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 23rd day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDERS

Pleadings

The Municipal Employer in its complaint alleges that Esther Heier and Arrowhead District Council refused to accept and abide by an arbitration award issued in September, 1974 dismissing a grievance filed by J. Christopher Moore on behalf of the Richmond Teachers concerning Heier's placement on the negotiated salary schedule. The theory underlying the Employer's complaint is that all procedural and substantive issues were determined by the Mueller arbitration panel when it dismissed the grievance. Hence, Heier's re-filing of the grievance constitutes a refusal to accept the final and binding award issued by the Mueller panel, and thereby Heier and the Arrowhead District Council have violated Section 111.70(3)(b)4 of MERA.

Complainants, on the other hand, allege that the Heier November 1, 1974 grievance is not the same as the Moore October 17, 1973 grievance. Complainants argue strenuously that Heier was not a party to the October 17, 1973 grievance and therefore, it does not preclude her from filing and pursuing this grievance on her own behalf. Furthermore, Complainants point out that the Mueller panel concluded that the parties' agreement did not contemplate an association grievance and on that basis it dismissed the grievance without reaching the merits of the case.

It is apparent from the pleadings and arguments of the parties that the gravamen of both complaints is whether the November 1, 1974 grievance is res adjudicata as a result of the Mueller panel's arbitration award determining the October 17, 1973 grievance. Furthermore, the res adjudicata question is dispositive of the major issues raised in both complaints.

In City of St. Francis (Decision No. 13182) 4/75, the Commission noted that the doctrine of res adjudicata requires an exact identity of parties, issues and causes of action. In this case, the most glaring difference between the October 17, 1973 grievance and the November 1, 1974 grievance is the material issues which are the subject of both grievances. In the earlier grievance, the threshold issue before the Mueller panel was whether the collective bargaining agreement required the individual teacher sign the grievance or whether the agreement permitted the filing and processing of an "association" grievance. The Mueller panel decided, in accordance with Respondent's position, that the agreement required the individual teacher sign the grievance. Although Heier's placement on the salary schedule in 1973 was a subject of the October 17, 1973 grievance, the Mueller panel concluded "the issues of the merits is not before the arbitration panel."

In the November 1, 1974 grievance, Heier signed the grievance. The question to be decided by an arbitrator is Heier's appropriate placement on the 1974 salary schedule and the effective date of such placement. This issue was not decided by the Mueller panel. Respondent's argument to the contrary is based on the wording of the section of the arbitration decision labeled "Award" wherein Mueller stated "That the grievance be, and the same hereby is, in all respects, dismissed." 1/ However,

1/ Lisbon-Pewaukee (Mueller, 1974) unpublished award, at p. 10.

Respondent fails to note the body of Mueller's discussion in which he clearly states that the merits of the grievance were not considered and that the matter was dismissed on the basis of Respondent's procedural defense. 2/

Furthermore, it should be noted that the parties to the grievance are different. That is significant here, because the absence of Heior's signature to the grievance, and her failure to participate as a party to the grievance, was the basis of the dismissal of the earlier grievance. Therefore, it is apparent that there is no identity of issues or parties to the October 17, 1973 grievance and November 1, 1974 grievance and as a result the November 1, 1974 grievance is not res adjudicata.

In light of the Examiner's determination that the November 1, 1974 grievance is not governed by the res adjudicata doctrine, the only remaining issue to be discussed concerns the arbitrability of the November 1, 1974 grievance. The definition of the grievance at Article 7.01 is sufficiently broad to encompass within its scope an issue arising under Article 21.03 of the agreement concerning teacher placement on the salary schedule. Thus, the grievance states a claim, which on its face, is governed by the collective bargaining agreement; therefore all procedural and substantive issues relating to the November 1, 1974 grievance are to be determined by the arbitrator. 3/

Complainants alleged in their complaint in Case VII that by refusing to proceed to arbitration Respondent also violated Sections 111.70(3)(a)1 and 2. However, Complainants did not present any independent evidence showing interference or domination by Respondent when it refused to proceed to arbitration on the November 1, 1974

2/ Mueller formulated his analysis of the issue in his award as follows:

"Taking the above construction of the grievance procedure steps along with the definition of a grievant as being an individual employee or group of employees, one can come to only one conclusion and that is that the submission of the 'Statement of Grievance' must be signed by the 'teacher' who is aggrieved, in this case.

. . .

On the basis of the above facts and discussion thereon it follows that the issue of the merits is not before the arbitration panel. The matter is barred by the procedural error raised by the District as a defense. While it is general arbitral policy to avoid disposing of a matter on procedural grounds whenever possible, the panel is nevertheless bound by the contract of the parties and its terms. It should be noted that the Board offered to waive the time limits and to consider the matter on its merits a number of times if the teacher would sign the Statement of Grievance. She declined and refused to sign at each offering. She was clearly advised of the Board's position and defense on numerous times, was given the opportunity to have the merits considered merely by signing, but refused to do so, choosing instead to make a test case of interpretation of the contract." Richmond School Joint School District (Mueller, 1974) unpublished award.

3/ City of St. Francis (Decision No. 13182-L) 4/75; Costburg Joint School District No. 14 (Decision No. 11196-A, B) 11/72, 12/73; aff'd Nebraska Circuit Court, 6/74.

grievance, nor did Complainants argue this issue in their brief. Therefore, the Examiner has dismissed the portions of the complaint pertaining to the interference and domination allegations.

Dated at Madison, Wisconsin this 23rd day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner