STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AFSCME, COUNCIL 24, WISCONSIN STATE EMPLOYEES UNION, AFL-CIO, Complainant, vs. STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION, and its EMPLOYMENT RELATIONS SECTION, Respondent.	Case LII No. 18548 PP(S)-27 Decision No. 13539-C

Appearances:
Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, appearing on behalf of the Complainant.
Mr. Lionel L. Crowley, Attorney at Law, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO, having, on December 5, 1974, filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that the State of Wisconsin, Department of Administration and its Employment Relations Section, had committed unfair labor practices within the meaning of Section 111.84 of the Wisconsin State Employment Labor Relations Act; and the Commission having scheduled hearing in the matter; and, prior to said hearing, the Respondent having moved for dismissal of the complaint; and the Complainant having objected thereto; and the Commission having reserved ruling on such motion until after the close of the evidence in the case; and, prior to any further action by the Commission, the Complainant having moved to amend its complaint; and the hearing having been postponed pending ruling on such motion; and the Respondent having opposed the motion of the Complainant for the amendment of the complaint; and the Commission having, on April 15, 1975, denied the Complainant's motions for amendment of the complaint; and the Commission having, on May 9, 1975, appointed Marvin L. Schurke, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Section 111.07(5) of the Wisconsin Statutes; and the Complainant having moved for consolidation of the captioned matter with two other matters then pending before the Commission; and the Respondent having taken a position in opposition to such a consolidation; and the Commission having on May 21, 1975, issued an Order denying said motion to consolidate; and, pursuant to notice, hearing on said complaint having been held at Madison, Wisconsin, on July 28, 1975, 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 AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization having its principal offices at 148 East Johnson Street, Madison, Wisconsin; and that, at all times pertinent hereto, William Posso has been employed by the Complainant as a Field Representative.

2. That the State of Wisconsin, Department of Administration and its Employment Relations Section, hereinafter referred to as the Respondent, is an agency of the State of Wisconsin charged under Section 111.81(16), Wisconsin Statutes, with responsibility for the employer functions of the executive branch under the State Employment Labor Relations Act; that the Respondent maintains its principal office at One West Wilson Street, Madison, Wisconsin; and that, at times pertinent hereto, Gene A. Vernon was an employe of the Respondent authorized to act on behalf of the Respondent in matters and relationships affecting the Respondent and the collective bargaining representatives of employes of the State of Wisconsin.

3. That the Respondent recognizes the Complainant as the exclusive collective bargaining representative in the bargaining unit consisting of "blue collar and nonbuilding trades" employes of the State of Wisconsin; and that the Respondent and the Complainant were parties to a collective bargaining agreement made and entered into on July 1, 1973 and effective from that date until June 30, 1975 which contained the following provisions pertinent hereto:

"ARTICLE IV

Grievance Procedure

Section 1 Definition.

A grievance is defined as, and limited to, a written complaint involving an alleged violation of a specific provision of this Agreement.

Only one subject matter shall be covered in any one grievance. A grievance shall contain a clear and concise statement of the grievance by indicating the issue involved, the relief sought, the date the incident or violation took place, and the specific section or sections of the Agreement involved. The grievance shall be presented to the designated supervisor involved in quadruplicate (on mutually agreed upon forms furnished by the Employer to the Union and any prospective grievant) and signed and dated by the employe(s) and/or Union representative.

. . .

All grievances must be presented promptly and no later than fourteen (14) calendar days from the date the grievant first became aware of, or should have become aware of with the exercise of reasonable dilligence, the cause of such grievance.

. . .

Step Four: Grievances which have not been settled under the foregoing procedure may be appealed to arbitration by either party within fifteen (15) calendar days from the date of the agency's answer in Step Three, or the grievance will be considered ineligible for appeal to arbitration. If an unresolved grievance is not appealed to arbitration, it shall be considered terminated on the basis of the Third Step answers of the parties without prejudice or precedent in the resolution of future grievances. The issue as stated in the Third Step shall constitute the sole and entire subject matter to be heard by the arbitrator, unless the parties agree to modify the scope of the hearing.

. . .

Where two or more grievances are appealed to arbitration, an effort will be made by the parties to agree upon the grievances to be heard by any one arbitrator. On the grievances where agreement is not reached, a separate arbitrator shall be appointed for each grievance. The cost of the arbitrator and expenses of the hearing, including a court reporter if requested by either party, will be shared equally by the parties. Except as provided in Section 9, each of the parties shall bear the cost of their own witnesses, including any lost wages that may be incurred./On grievances where arbitrability of the subject matter is an issue, a separate arbitrator shall be appointed to determine the question of arbitrability unless the parties agree otherwise./Where the question of arbitrability is not an issue, the arbitrator shall only have authority to determine compliance with the provisions of this Agreement. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and shall not make any award which in effect would grant the Union or the Employer any matters which were not obtained in the negotiation process.

The decision of the arbitrator will be final and binding on both parties of this Agreement.

. . .

Section 8 Union Grievances.

Union officers and stewards who are members of the bargaining unit shall have the right to file a grievance when any provision of this Agreement has been violated or when the Employer interpretation of the terms and provisions of this Agreement lead to a controversy with the Union over application of the terms or provisions of this Agreement.

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ARTICLE XIII

Employe Benefits

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Section 7 Leaves of Absence Without Pay.

A. Leaves of Absence

1. Except as provided in parts 1b, and 1c of this section, employes may be granted leaves without pay at the sole discretion of the appointing authority for any reason for a period up to, but not exceeding one (1) year.

2. Employes who are elected or appointed officials of the Union, shall upon written request of the employe be granted a leave of absence without pay for the term of office, not to exceed one (1) year.

3. Pregnant employes shall be granted a maternity leave of absence without pay as follows:

   a. The employe shall submit written notification to her immediate supervisor at least four (4) weeks prior to her anticipated departure stating the probable duration of the leave. Such leaves shall be granted for a period of time up to, but not exceeding six (6) months. Upon request of the employe and at the

discretion of the appointing authority, maternity leaves of absence without pay may be extended or renewed for another period of time, not to exceed six (6) months. In no case shall the total period of leave exceed 12 months.

b. In no case shall the employe be required to leave prior to childbirth unless she is no longer able to satisfactorily perform the duties of her position.

c. Except as provided under Article XIII, section 4 of this agreement (sick leave), all periods of leave related to maternity shall be leaves of absence without pay."

4. That, on March 7, 1972, Eleanor Licht, an individual theretofore employed by the State of Wisconsin, Department of Health and Social Services, as a Food Service Worker at the Northern Wisconsin Colony and Training School, Chippewa Falls, Wisconsin, was places on an unpaid leave of absence for reasons having to do with her medical and physical condition; that such leave of absence was renewed and extended thereafter; and that, on March 19, 1974, the State Employer, by J. M. Heimerl, Personnel Manager, directed correspondence to Licht containing the following material pertinent hereto:

"This will confirm approval of your request for a leave of absence of which a copy is attached.

This leave of absence entitles you to return to a position of the same classification upon the expiration of your leave.

It is your obligation to report to work upon expiration of your leave of absence on July 1, 1974, with appropriate medical clearance, or your employment will be terminated. This is in accordance with the W.S.E.U. Contract, Article 13, Section 7, Paragraph A 1."

5. That, on May 4, 1972, Helen Peterson, an individual theretofore employed by the State of Wisconsin, Department of Health and Social Services, as a Seamstress at the Northern Wisconsin Colony and Training School, Chippewa Falls, Wisconsin, was placed on an unpaid leave of absence for reasons having to do with her medical and physical condition; that such leave of absence was renewed and extended thereafter; and that, on an unspecified date on or about April 1, 1974, correspondence was directed to Peterson by the Personnel Manager of the State Employer, containing the following material pertinent hereto:

"It is your obligation to report to work upon expiration of the leave of absence on July 1, 1974, or your employment will be terminated. This is in accordance with the W.S.E.U. Contract, Article 13, Section 7, Paragraph A.1."

6. That, on or about April 3, 1974, Leonard M. O'Connell, the President of Local No. 116 of the Complainant, filed a grievance on behalf of the Union, taking exception with the interpretation of Article XIII, Section 7, A.1. made by the State Employer, as expressed in the aforesaid letters to Licht and Peterson; that such grievance was processed through the grievance procedure; that, on May 10, 1974, the grievance was denied at Step 3 of the grievance procedure by the appointing authority; and that said grievance was thereafter processed to the arbitration step of the grievance procedure contained in the aforesaid collective bargaining agreement.

7. That, on or about July 2, 1974, the State Employer, by A. C. Nelson, Superintendent, directed separate letters to Licht and Peterson informing them that their employments with the State of Wisconsin had been terminated as of July 1, 1974 due to their failure to return to work as of that date from the leaves of absence previously granted to them; that, thereafter, a grievance was initiated on behalf of Licht, protesting her termination and requesting that she be reinstated and placed on leave of absence; that, thereafter, a grievance was initiated on behalf of Peterson, protesting her termination and requested that she be reinstated and placed on leave of absence; and that both such grievances were processed to step three of the grievance procedure as of July 23, 1974.

8. That, on July 23, 1974, a hearing was held before Arbitrator Philip G. Marshall at Eau Claire, Wisconsin, in the matter of the arbitration of the grievance previously filed by O'Connell and referred to in paragraph six of these Findings of Fact; that, during the course of such proceedings, Posso appeared on behalf of the Complainant and Vernon appeared on behalf of the Respondent; that, during the course of such proceedings, Licht appeared as a witness called by the Complainant, and the letters directed to Licht on March 19, 1974 and July 2, 1974 were placed in evidence before the Arbitrator; that, during the course of Licht's testimony, Vernon made a statement of the position of the Respondent which is recorded in the transcript of the arbitration hearing at page ten thereof, in the following terms:

"MR. VERNON:

> Well, both this witness as well as at least one other witness have present grievances filed that are in the grievance proceedings and I have no intention of getting into the merits of their individual cases this morning, as to why they wanted leave of absence and why it was denied, if it was, and so on, and that isn't the purpose of this hearing this morning.";

that thereafter, the Arbitrator directed certain questions to Licht and Posso volunteered certain additional information, after which the following colloquy, recorded in the transcript of the arbitration hearing at page 12 thereof, occurred:

"MR. VERNON:

> I am going to OBJECT to that. That has nothing to do with this hearing.

ARBITER:

> I want to merely find out what happened. I realize the position of counsel that the merits of any particular agreement are 'never you mind, it is none of your business,' and I understand your position to be the state has the sole discretion to determine whether leaves of any kind shall be granted.

MR. VERNON:

> Well, even more important than that is, this employee filed a grievance, which is now at the third step, challenging that interpretation. I don't think it is appropriate to go into that grievance this morning.

ARBITER:

> We have no intention of going into that grievance, I assure you.";

and that, on August 30, 1974, Arbitrator Marshall issued his "Discussion & Award", containing the following material pertinent hereto:

". . .

The several incidents which triggered the grievance resulted from the receipt by several employees of letters from the Personnel Manager, in each of which he stated in material part as follows:

> 'It is your obligation to report to work upon expiration of the leave of absence on July 1, 1974, or your employment will be terminated. This is in accordance with the W.S.E.U. Contract, Article 13, Section 7, Paragraph A 1.' (Exhibit 9 and Exhibits 4, 5, 6 & 10 which are of similar import).

. . .

The contractual language here in question is new and differs markedly from that contained in the prior labor agreement. It came into being because of the Union's desire to include in the collective bargaining agreement a guaranteed leave of absence for those employees elected or appointed as officials of the Union and further because of its desire to have the contract contain a guaranteed maternity leave, both of which were granted and are to be found in Article XIII, Section 7-A-2 and 3 of the contract. It could very well be that the Union did not fully realize that in obtaining these two guarantees they were diluting the effectiveness of the general leave of absence provisions, which is the clear result of the current contract language. This appears to have been first brought into sharp focus by the receipt of the several letters by employees on leave, the material part of which is quoted above.

At the hearing, it became clear that the Employer was not taking the fixed and immutable position which the Union ascribed to its actions and that rather its position was that while leaves were limited to a one year duration, any extension beyond that period was solely at the discretion of management. Evidence adduced at the hearing demonstrates that at the Union's request - and also by operation of law - leaves of absence beyond the one year period have been granted in those instances where workmen's compensation cases were pending.

. . .

AWARD

Article XIII, Section 7-A-1 places in the hands of management the sole discretion for the granting of leaves of absence, except leaves guaranteed for Union business and for maternity. It does not, however, contractually bind the parties to the fixed and immutable position that no leave shall extend beyond the period of one year. The Employer may, at its discretion, extend the leave beyond that period for circumstances it may deem to be sufficient."

9. That the grievances of Licht and Peterson referred to in paragraph seven of these Findings of Fact were denied by the State Employer at step three of the grievance procedure; that the Complainant appealed the denials of such grievances to the arbitration step of the grievance procedure; and that, on October 8, 1974, Vernon directed correspondence to Posso regarding the Licht and Peterson grievances, as follows:

"This letter is in reference to the appeals to arbitration of Helen Peterson and Eleanor Licht both employes of the Northern Wisconsin Colony both of which deals with denials of leaves of absence without pay.

Please be advised that on August 30, 1974, we received an opinion by Mr. Phillip [sic] G. Marshall interpreting Article 13, Section 7 of the agreement between the parties. This decision involved Mr. Leonard O'Connell also of the Northern Wisconsin Colony. In this decision, Mr. Marshall clearly indicated that Article 13, Section 7 places in the hands of management the sole discretion for the granting or denying of leaves of absence except in the case of union business and maternity. Since neither of these cases involved a leave of absence for union business nor maternity, Mr. Marshall's decision is controlling. Therefore, since Mr. Marshall's decision is final and binding, we are refusing to process the grievances of Helen Peterson and Eleanor Licht to arbitration.";

and that, at all times subsequent thereto, the Respondent has refused, and continues to refuse, to submit the grievances of Licht and Peterson to arbitration pursuant to the terms of the collective bargaining agreement.

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

CONCLUSIONS OF LAW

1. That the Award issued by Arbitrator Philip G. Marshall on August 30, 1974 with respect to the grievance filed by Leonard O'Connell is conclusive on the Complainant and the Respondent and is res judicata as to the interpretation of Article XIII, Section 7 A.1. of the collective bargaining agreement between the parties; and that the Respondent, State of Wisconsin, Department of Administration and its Employment Relations Section, has not committed, and is not committing, unfair labor practices within the meaning of Section 111.84(1)(e) of the State Employment Labor Relations Act by refusing to again submit that issue to arbitration under the collective bargaining agreement.

2. That the Respondent, State of Wisconsin, Department of Administration and its Employment Relations Section, by refusing to submit the grievances of Eleanor Licht and Helen Peterson to arbitration on issues other than the interpretation of Article XIII, Section 7 A.1. of the collective bargaining agreement, has violated said collective bargaining agreement and has committed, and is committing, unfair labor practices within the meaning of Section 111.84(1)(e) of the State Employment Labor Relations Act.

3. That there is no evidence to establish a violation of Section 111.84(1)(a) of the State Employment Labor Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED:

1. That the portions of the complaint filed in the above-entitled matter alleging that the Respondent, State of Wisconsin, Department of

Administration and its Employment Relations Section, have committed unfair labor practices within the meaning of Section 111.84(1)(a) of the State Employment Labor Relations Act be, and the same hereby are dismissed.

2. That the State of Wisconsin, Department of Administration and its Employment Relations Section, its officers and agents shall immediately:

a. Cease and desist from refusing to submit to arbitration the issues raised by the Licht and Peterson grievances other than the interpretation of Article XIII, Section 7 A.1. of the collective bargaining agreement between the parties.

b. Take the following affirmative action which the Examiner finds will effectuate the policies of the State Employment Labor Relations Act:

1. Upon request, submit the issues raised by the Licht and Peterson grievances other than the interpretation of Article XIII, Section 7 A.1. of the collective bargaining agreement between the parties to arbitration pursuant to the terms of said collective bargaining agreement.

2. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date hereof as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 16th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION, LII, Decision No. 13539-C

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEADINGS AND PROCEDURE:

In its complaint filed December 5, 1974, the Union alleges that the State has violated the collective bargaining agreement between the parties, and thereby violated Section 111.84(1)(e) of the Wisconsin Statutes, by refusing to proceed to arbitration on the Licht and Peterson grievances. On December 16, 1974 the State filed a Motion to Dismiss in which it claimed that the parties were bound by the decision issued on August 30, 1974 by Arbitrator Philip G. Marshall, so that the State was not obligated to re-arbitrate the issue raised and decided in the proceedings before Arbitrator Marshall. The Commission reserved ruling on that motion, and the State then filed an answer to the complaint in which it denied any violation of SELRA and reasserted the Award of Arbitrator Marshall as controlling on the grievances which the Union seeks to arbitrate.

Prior to the hearing in the instant matter, the Union filed motions to amend the complaint in the instant matter on two additional counts where the State was alleged to have violated SELRA by refusing to proceed to arbitration on a grievance. Those motions were denied by the Commission and separate complaints were filed embodying the allegations initially proposed for inclusion in the captioned case. The Union then moved for consolidation of the three separate proceedings, and that motion was also denied by the Commission. The instant matter was heard separately on July 23, 1975. Briefs were filed by the parties on or before August 20, 1975, and the transcript of the hearing was delivered to the Examiner on October 15, 1975.

POSITION OF THE STATE:

While acknowledging that it has refused to proceed to arbitration on the Licht and Peterson grievances, the State defends its action in that regard on the basis of a series of cases in which the Commission has held that the final and binding decision of an arbitrator in one case will bind the parties as res judicata on other grievances raising the same issue. The State contends that the evidence demonstrates that the grievances of Licht and Peterson raise the identical issue and relate to the same contract provision as interpreted by Arbitrator Marshall in the O'Connell case, and that the Arbitration Award in the O'Connell case is therefore res judicata on the others.

POSITION OF THE UNION:

Citing federal cases and certain cases decided by the Commission, the Union contends that the Licht and Peterson grievances raise claims which, on their face, are covered by the collective bargaining agreement, so that an order compelling arbitration is required. The Union disputes the validity of the res judicata defense asserted by the State in this case, claiming that the doctrine does not apply to administrative proceedings. However, the Union's brief does not make reference to, let alone distinguish, the long line of cases decided by the Commission and the Wisconsin courts which apply the principle advanced here by the State. The Union contends, further, that even if a res judicata defense were applicable, the O'Connell grievance arbitration is not completely dispositive of the Licht and Peterson grievances. The Union points out that Arbitrator Marshall, at the insistence of the State, excluded the details of any particular employe's situation from consideration, and contends that issues remain which were never submitted to or considered by Arbitrator Marshall in the arbitration of the O'Connell grievance.

RES JUDICATA EFFECT OF AN ARBITRATION AWARD:

In Wisconsin Telephone Company (4471) 3/57; aff. Milwaukee Co. Cir. Ct., 4/58; rev. on other grounds 6 Wis. 2d 243 (1959), the Commission ruled that the arbitration award rendered in the case of one employe was conclusive and res judicata as to the issue presented and relief sought by the union and a second employe in a subsequent grievance, where the issue and the relief sought in the second grievance were identical in all respects to the issue and the relief sought in the initial grievance. An identity of individual employe grievants was obviously deemed to be unnecessary, as the principles of that case were applied to the larger relationship between the actual parties to the collective bargaining agreement: the employer and the union. In Wisconsin Telephone, as in the instant case, the separate grievance arose within a short time of one another and under the same collective bargaining agreement.

Since Wisconsin Telephone, the Commission has consistently followed, and even extended, the policies first applied in that case. In Pure Milk Association (6584) 12/63; aff. Dane Co. Cir. Ct., 10/64; remanded for further hearing, 2/64; supplemental order (6584-B) 12/65, the Commission ruled that the same rationale applied to enforcement of an arbitration award favoring a union following the expiration of the collective bargaining agreement under which that award was rendered, where the successor agreements between the parties contained language identical to that interpreted by the Arbitrator. The award was thus enforced against the employer, who had reverted under the subsequent collective bargaining agreements to the practice previously found by the arbitrator to be in violation of the agreement.

These cases and applicable federal court rulings were reviewed fully in Wisconsin Gas Company (8118-C) 11/67, (8118-E) 3/68, (8118-F) 4/68, where it was found that although the parties, the general fact situations and the contract language were substantially identical, the exact facts in dispute were not identical so that the arbitration award issued in the first of a series of cases did not govern the following grievances. In Handcraft Company (10300-A, B) 7/71, the identities for application of the res judicata doctrine were found with respect to one of two grievances filed subsequent to an arbitration, and the award was enforced against the employer in that case; while the required identities were found to be absent on the second subsequent grievance, and that case was returned to the grievance procedure. Most recently, in Wisconsin Public Service Corp. (11954-D) 5/74, the Commission again reviewed the federal authorities and restated its policy in the following terms:

> ". . . this Commission has said repeatedly that it will apply the principles of res judicata to a prior arbitration award in complaint cases filed alleging a violation of Section 111.06(1)(g), where there is no significant discrepancy of fact involved in the prior award and in the subsequent case to which a complainant is requesting the Commission to apply the award. A balance must be struck between the need for consistency and finality to contract interpretation as evidenced by prior arbitration awards and invading that province specifically reserved by the courts to the arbitrator - deciding the merits of the dispute. Where no material discrepancy of fact exists, the prior award should be applied. In these circumstances both interests are accommodated without undermining either." (11954-D) at page seven.

The Commission went on in that case to find that the identities did not exist, but the cited discussion clearly gives the undersigned Examiner direction as to whether the res judicata policy remains viable.

The collective bargaining agreement specifically contemplates and makes provision for grievances filed by the Union in instances where a controversy arises concerning interpretation of the agreement. The O'Connell grievance protesting the State's interpretation of Article XIII, Section 7 A.1. was filed in anticipation of any termination of an employe, but it framed an issue which was likely to be included in the subsequent grievances filed to protest the actual terminations of Licht and Peterson. Although the timing of events was such that the "declaratory" award interpreting the agreement came after the disputed interpretation had already been applied, that award was nevertheless valid, final and binding on the issue submitted. Disagreeing with the Union, the Examiner concludes that there is no real dis-identity of grievants between the case submitted to Arbitrator Marshall and the cases which the Union now proposes to submit to arbitration. As noted by the Union in its brief, O'Connell was not an employe on leave of absence who was threatened with loss of his employment. Rather, O'Connell was the President of the local Union, acting in that capacity, when he filed his grievance. As noted by the Arbitrator, the grievance was triggered by the letters sent to several employes, including Licht and Peterson, and it is evident that the Union was representing the interests of those employes even though they had not joined as grievants. Thus, on the basis of the foregoing, if the interpretation of Article XIII, Section 7 A.1. were clearly the only issue raised by the Licht and Peterson grievances, the Examiner would be inclined to find that the identities for res judicata existed and that the Marshall award absolved the State of any obligation to arbitrate the subsequent grievances. However, this is not the case.

In its brief, the Union raises a number of allegations with respect to the Licht and Peterson terminations which were never considered by Arbitrator Marshall. Recalling the protests of then-counsel for the State at page ten of the transcript of the arbitration hearing, it is evident that the reason that nothing other than the interpretation of Article XIII, Section 7 A.1. was considered by Arbitrator Marshall is that the State then wanted nothing else to be considered. Mr. Vernon's statement: "I have no intention of getting into the merits of their individual cases this morning, as to why they wanted leave of absence and why it was denied, if it was, and so on", inherently establishes that there was something different about the Licht and Peterson grievances which required separate treatment. The State cannot expect to have it both ways. The State has precluded consideration of the merits of the Licht and Peterson cases before Arbitrator Marshall and, having now received an arbitration award establishing one of the significant points relating to the Licht and Peterson grievances, would turn around and use Arbitrator Marshall's award to completely preclude consideration of the merits of those grievances.

The Union is not entitled to relitigate the interpretation of Article XIII, Section 7 A.1. of the collective bargaining agreement, and is bound while that language survives in the collective bargaining agreements between the parties to Arbitrator Marshall's interpretation that Article XIII, Section 7 A.1. places in the hands of management the sole discretion for the granting of leaves of absence (except leaves guaranteed for Union business and for maternity), that it does not contractually bind the parties to the fixed and immutable position that no leave shall extend beyond the period of one year, and that the State may (at its discretion) extend the leave beyond that period for circumstances it may deem to be sufficient. Accordingly, the State is not, and will not hereby be, obligated to submit that issue to another arbitrator. Even with that avenue foreclosed, the Union has raised a number of other questions concerning the propriety of the terminations of Licht and Peterson, including the sufficiency of the medical release which Licht presented when she reported for work on July 1, 1974, and the circumstance

that both were initially placed on leave of absence following injuries compensable under Workmen's Compensation. These raise claims under the collective bargaining agreement, and entitle the Union to an opportunity to present those claims to an arbitrator. The State has therefore been ordered to submit all of the issues raised by the Licht and Peterson grievances to arbitration except for the issue already raised and determined by Arbitrator Marshall on the O'Connell grievance.

Dated at Madison, Wisconsin this 16th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner