

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
WAUKESHA COUNTY TECHNICAL EDUCATORS  
ASSOCIATION,

Complainant,

vs.

BOARD OF VOCATIONAL, TECHNICAL AND  
ADULT EDUCATION OF THE WAUKESHA COUNTY  
TECHNICAL INSTITUTE,

Respondent.

Case XIII  
No. 19718 MP-531  
Decision No. 14067-A

-----  
Appearances:

Mr. Rick L. Oglesby, Executive Director, for Complainant.  
Quarles & Brady, Attorneys at Law, by Mr. James A. Urdan, for  
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Waukesha County Technical Educators Association, herein referred to as Complainant, having on October 20, 1975, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleges that Board of Vocational, Technical and Adult Education of the Waukesha County Technical Institute, herein referred to as Respondent, had committed prohibited practices within the meaning of Section 111.70 (3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner and to make and issue findings of fact, conclusions of law and orders as provided in Section 111.07(5) of the Wisconsin Statutes; and, pursuant to notice, hearing on said complaint having been held at Waukesha, Wisconsin on November 21, 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 Complainant, Waukesha County Technical Educators Association is a labor organization having its principal offices at 10201 West Lincoln Avenue, West Allis, Wisconsin.

2. That Respondent, Board of Vocational, Technical and Adult Education of the Waukesha County Technical Institute, is a Wisconsin

No. 14067-A

vocational school board operating an educational facility known as the Waukesha County Technical Institute which houses Respondent's principal offices, all of which is located at 800 Main Street, Pewaukee, Wisconsin.

3. That at all relevant times Respondent has recognized Complainant as the exclusive representative of certain of its professional teaching personnel including Dale Brown and Eldor Teske; and that Complainant and Respondent have been party to a collective bargaining agreement in effect at all relevant times which provides in relevant part:

"GRIEVANCE PROCEDURE

16.

A. GRIEVANCE - PURPOSE

The primary purpose of this procedure is to secure at the lowest level possible an equitable solution to the problem of the parties.

B. GRIEVANCE - DEFINED

A 'Grievance' shall mean a complaint that there has been a violation, misinterpretation or inequitable application of any of the provisions of this agreement or that one or more educators have been treated unfairly or inequitably, for reason of any act or condition prevailing in the schools, or which is contrary to established policy or practice governing or affecting educators.

. . . .

D. PROCEDURE FOR ADJUSTMENT OF GRIEVANCE - FORMAL METHOD

17.

. . . .

Step 4 - Impasse Procedures

18.

An impasse shall exist when one of the aggrieved parties in the grievance is not satisfied with the disposition of the grievance at the 'Board' level or in the event no decision has been reached by the 'Board.' The 'Board' shall be notified of the impasse within twenty (20) days from the time its decision should have been rendered.

Step 5 - Impasse Procedures

The impasse shall be resolved by arbitration as follows:

An arbitrator will be selected by requesting an appointment by the Wisconsin Employment Relations Commission, or requesting a list of private arbitrators from the Federal Mediation Service, or requesting a list of private arbitrators from the Wisconsin Employment Relations Commission, whichever of such three methods is mutually agreed upon.

If no agreement can be reached, there shall be a coin toss, with the winner of the toss having the option of first striking one of such three alternatives, second the other party then striking one of the remaining alternatives.

If the list of private arbitrators from the Wisconsin Employment Relations Commission, or the Federal Mediation Service is selected, then the same procedure of a coin toss will be followed in choosing the arbitrator.

. . .

#### GENERAL PROVISIONS

19.

. . .

- C. If a grievance arises from the action of authority higher than the Assistant Director level of the school, the 'Association' may present such grievance at the next higher step of the grievance procedure. An informal conference shall be held as the initialing step in such a situation.

. . .

- G. The grievance procedures provided in this agreement shall be supplementary or cumulative to, rather than exclusive of, any procedures or remedies afforded to any educator by law.

. . .

#### COURSE CLASSIFICATION COMMITTEE

30.

##### OBJECTIVES:

1. To review all requests for course classification changes and the classification for new courses.
2. To approve or disapprove the action on the basis of the evidence presented.

##### COMMITTEE MEMBERSHIP:

1. Three faculty representatives selected by the faculty not from the division from which the course is offered.
2. Three management representatives selected by management not from the division from which the course is offered.
3. The committee will elect a chairman.
4. The committee will elect a secretary.

##### MEETING SCHEDULE:

This committee shall meet no later than December and April of each semester with action completed within thirty (30) days.

##### COMMITTEE PROCEDURE:

1. New courses may be classified by mutual agreement by instructors and administration and this classification will remain in effect until challenged.
2. Any faculty or management member who wishes to change the classification of a course may petition the Course Classification Committee for a hearing.
3. The committee will establish a date, time, and room for the hearing and post notification of the hearing on the bulletin boards in the corridor adjacent to the Administrative Offices.
4. The committee will conduct the hearing at an open meeting and may request any additional material or testimony it deems necessary to arrive at a decision.
5. The committee will arrive at its decision for action

- by secret ballot and notify the District Director and President of the Association of its action.
6. Committee decisions can be retroactive by unanimous vote by the Course Classification Committee to allow for changes in classification of courses taught during the semester of the evaluation.
  7. In the event the committee reaches a deadlock on the question of a course classification and the Board resolves the issue by its own action, a grievance filed by the Association would go directly to arbitration by petition to the WERC for appointment of a WERC staff member as an arbitrator.

. . ."

4. That prior to April 24, 1975, Dale W. Brown and Eldor M. Teske jointly filed a petition with the Course Classification Committee to re-classify a course which they both taught; that pursuant to notice the Course Classification Committee held a hearing with respect thereto on April 24, 1975; that thereafter, but prior to or on April 29, 1975, said committee reached a three to three deadlock with respect to said petition; that on May 12, 1975 Respondent by its Board determined that it would not intervene in the aforementioned deadlock; that pursuant to the understanding of the parties the petition is considered to have failed and the existing classification continues when the Course Classification Committee reaches deadlock; that by memorandum dated June 16, 1975 Complainant requested that Respondent arbitrate before an arbitrator appointed from the Wisconsin Employment Relations Commission's staff with respect to the classification of the aforementioned course; that by memorandum dated June 19, 1975, Respondent declined and continues to decline to arbitrate said matter although said dispute remains unresolved; that the purpose of Respondent's May 12, 1975 action was to resolve the instant classification dispute in its favor.

5. That Respondent first proposed the language of Item 7, page 30 of the parties' current collective bargaining agreement during the parties' negotiations for their 1972 comprehensive collective bargaining agreement with the exception of arbitration by a member of the staff of the Wisconsin Employment Relations Commission; that Respondent proposed the phrase therein "...and the Board resolves the issue by its own action...." for the purpose of achieving or retaining its desired course classification in the event of a Course Classification Committee deadlock by effecting a unilateral change, if necessary, in a disputed course classification; that during negotiations Complainant's representatives were unaware of any ambiguity with respect to what action would constitute Respondent's "own action" during the aforementioned negotiations; that during said negotiations Respondent insisted on

the quoted language for said reasons and relied on Complainant's right to arbitrate as provided in the proposal as a basis upon which Complainant should accept said language; that at no time during those negotiations did Respondent ever state any concern with respect to limiting Complainant's right to arbitrate in the event that the Board decided not to take any unilateral action with respect to the disputed classification of a course; that Complainant acceded to Respondent's request as modified; that said provisions were carried unchanged into the parties' agreement mentioned in Finding of Fact 3 above.

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

#### CONCLUSIONS OF LAW

1. That since the Course Classification Committee reached a deadlock with respect to the petition for reclassification filed by Dale W. Brown and Eldor M. Teske and since the Respondent resolved the issue by its own action, all within the meaning of Item 7 on page 30 of the parties' collective bargaining agreement, that the conditions precedent to arbitration of a grievance filed by Complainant with respect thereto have been met.

2. That Respondent by having refused Complainant's request to arbitrate a grievance with respect thereto before an arbitrator appointed by the Wisconsin Employment Relations Commission from its staff in violation of Item 7 on page 30 of the aforementioned collective agreement has committed, and is committing, prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

On the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and files the following

#### ORDER

IT IS ORDERED that Respondent, Board of Vocational, Technical and Adult Education of the Waukesha County Technical Institute, its officers and agents, shall immediately:

1. Cease and desist from refusing to submit the grievance with respect to the petition for course reclassification of Dale W. Brown and Eldor M. Teske to arbitration before an arbitrator appointed by the Wisconsin Employment Relations Commission from its staff.
2. Take the following affirmative action which the Examiner finds

will effectuate the policies of the Municipal Employment Relations Act:

- (a) Comply with the arbitration provision contained in Item 7 on page 30 of the collective bargaining agreement existing between it and Complainant now in effect.
- (b) Immediately notify Complainant, Waukesha County Technical Educators Association, that it will proceed to such arbitration on such grievance and issues concerning same.
- (c) Participate with Complainant in the selection of an arbitrator to hear said grievance and the issues concerning same, pursuant to Item 7 at page 30 of the aforementioned agreement.
- (d) Participate in the arbitration proceedings before the arbitrator so selected or appointed with respect to the aforementioned grievance and the issues concerning same.
- (e) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from receipt of a copy of this Order as to what steps it has taken to comply herewith.

Dated at Milwaukee, Wisconsin, this 26<sup>th</sup> day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II  
Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On April 24, 1975 Dale W. Brown and Eldor M. Teske filed a joint petition for reclassification of the course they were teaching. The Course Classification Committee, after hearing the matter reached the first deadlock the parties had ever experienced in the life of the Course Classification Procedure. Rather than actually breaking the deadlock, the board determined "to not intervene" in the deadlock.<sup>1/</sup> In accordance with the parties' understanding the previous classification continued.

POSITIONS OF THE PARTIES:

Complainant contends that Respondent's only purpose in proposing substantially what is now Item 7, page 30 was to expedite the general grievance and arbitration procedure, commencing on page 16 of the parties' agreement, and not to restrict its right to arbitrate. It asserts that under the 1971 agreement, it and individual teachers had the unlimited right to litigate the classification of a course without deference to the classification procedure or a decision rendered thereunder. It asserts that the three basic concerns expressed by Respondent<sup>2/</sup> in negotiations leading to the adoption of the instant language in the 1972 agreement, its statement of its overall purpose to expedite the grievance procedure, and the remainder of Respondent's offered testimony do not substantiate any concern over limiting Complainant's right to arbitrate. On this basis, it argues that the Board's action to not resolve the deadlock was in fact action sufficient to fulfill the Item 7 condition precedent to arbitration before a WERC staff arbitrator.

Respondent asserts that the instant provision is a restrictive arbitration provision under which final determination of substantive arbitrability is reserved to the Examiner. It contends that its determination to not intervene in this matter was not taking action within the meaning of Item 7, page 30 because the purpose of the provision is to eliminate the use of the grievance procedure by individuals when the Course Classification Committee can resolve the matter. It claims the right to unilaterally change a decision of the committee or break a deadlock: only in either circumstance can Complainant arbitrate the matter. Therefore, when Respondent decided to not intervene in the committee deadlock, it did not resolve the dispute by its own action.

DISCUSSION:

In this matter the language at issue creates an arbitration pro-

---

<sup>1/</sup> Joint Exhibit 5.  
<sup>2/</sup> Transcript p. 13.

vision separate from the general grievance procedure to deal with a limited genre of grievance. No issue is presented under the general grievance procedure. <sup>3/</sup> Under the circumstances of this case, including, but not limited to, the ability to fully determine substantive arbitrability without resort to the merits of the underlying classification dispute, the positions of the parties and the non-exclusive nature of the instant special grievance procedure (see Item G, page 20), the Examiner deems it appropriate to make a final determination of substantive arbitrability.

Either construction offered by the parties of the phrase "...and the Board resolves the issue by its own action...." as to whether Respondent's decision to not break the Course Classification Committee's deadlock was "its own action" is a plausible construction. The Examiner relies on the parties' evidence of bargaining history to establish what parties similarly situated would have done. <sup>4/</sup>

Respondent proposed what is now substantially Item 7, page 30 except to the extent that it specifies arbitration by a member of the staff of the Wisconsin Employment Relations Commission. Respondent's primary aim in proposing the above-quoted phrase, if not its only aim, was to specifically reserve a right to take action to change the classification of a course when the committee reached deadlock. Its purpose was to insure that the disputed classification of a course after the committee reached deadlock was acceptable to it. In every case, Complainant would then have to seek arbitration as the grieving party if it wished to achieve its desired classification. Complainant originally sought to have the dissatisfied party appeal directly to arbitration from a Course Classification Committee deadlock, but later accepted Respondent's proposal with arbitration by WERC staff.

By contrast, the evidence does not establish negotiation with respect to Respondent's asserted purpose to exclude the instant circumstances from its duty to arbitrate. Richard Swain, one of Complainant's representatives at the negotiations leading to the adoption

---

<sup>3/</sup> Dist. Steelworkers v. Warrior Navigation Co. 363 U.S. 574, 80 S.Ct. 1347, 46 LRRM 2416 (1960); Steelworkers v. American Mfg. Co. 363 U.S. 564, 80 S.Ct. 1343, 46 LRRM 2414 (1960). Further, neither party has requested arbitration or deferral to the non-exclusive (see Item G, page 20), general grievance and arbitration procedure over the determination of the dispute as to substantive arbitrability.

<sup>4/</sup> Wisconsin E.R. Board v. Gateway Glass Co. 265 Wis. 114, @ p. 117, 60 NW. 2d. 768 (1953); Carey v. Rathman 55 Wis. 2d. 732, @ pp. 737-738, 200 N.W. 2d. 591 (1972).



of the instant language testified in relevant part as follows: 5/

"...I guess there was a discussion about the question--relative to the question about whether or not they would be making decisions. Mr. Rechlicz indicated to us--he was the Chief Negotiator at the time for the Board, and his argument was that we would always have the opportunity to take a case like this to arbitration; and based on that, plus the ability to go to the W.E.R.C., which would not be as costly, we acceded."

On the basis of the record as a whole, the Examiner is satisfied that Complainant's representatives were not acutally aware of the instant possibility. The underlying statements of Rechlicz discussed in the above-quoted testimony were related to whether Respondent needed to exercise a unilateral right as opposed to directly arbitrating a classification dispute. The above-quoted testimony does, however, establish Respondent's repeated assurances of Complainant's right to arbitrate. Respondent has not denied its reliance on Complainant's right to arbitrate as leverage during negotiations, nor has it offered any evidence that it ever stated its concern, if any, over these circumstances. Whether Respondent was aware of the instant possibility, or not, the Examiner is satisfied that parties similarly situated would not have intended to deny Complainant the right to arbitrate before a member of the staff of the Wisconsin Employment Relations Commission under these circumstances. Respondent is therefore ordered to proceed to arbitration pursuant to the terms of Item 7, page 30.

Dated at Milwaukee, Wisconsin, this 26<sup>th</sup> day of March, 1976.  
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II  
Examiner