STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHERRY PERRIN AND THE SPOONER EDUCATION ASSOCIATION, Complainants, vs. SPOONER JOINT SCHOOL DISTRICT NO. 1, Respondent.	:	Case XI No. 20248 MP-592 Decision No. 14416-A

Appearances:
Mr. Robert West, Executive Director, Northwest United Educators, appearing on behalf of Complainants.
Mr. Woodrow W. Bitney, Attorney at Law, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Thomas L. Yaeger, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.70(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Shell Lake, Wisconsin on March 31, 1976, before the Examiner; and the parties having filed post hearing briefs by July 9, 1976; and the Examiner having considered the evidence and arguments, 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 Sherry Perrin, referred to herein as Perrin, is a teacher employed by the Respondent Spooner Joint School District No. 1, is a member of the Spooner Education Association and, resides at 802 1/2 River Street, Spooner, Wisconsin.

2. That the Spooner Education Association, herein Association, is a labor organization and the exclusive collective bargaining representative for teachers in the employ of the Spooner Joint School District No. 1.

3. That Spooner Joint School District No. 1, herein Respondent or District, is a municipal employer.

4. That at all times material hereto the Association and Respondent were parties to a collective bargaining agreement, which among its several provisions, contained the following which are material herein:

"ARTICLE XI

GRIEVANCE ADJUSTMENT

A. Definitions

1. A grievance is defined as any dispute arising out of the interpretation or application of the master agreement or any dispute arising out of the reasonableness

of board policy relating to wages, hours and working conditions adopted after the signing of this agreement.

. . .

4. If the grievance is not satisfactorily resolved in the third step of the grievance procedure the grievant or the Association may submit the grievance to arbitration. If the issue is to be submitted to arbitration the grievant or Association must advise the Board of same within 10 days of the answer in step three. The Wisconsin Employment Relations Commission will be requested to submit a list of names from the Commission from which the Board and the Association will alternately strike until the final name remains as arbitrator. The decision of the arbitrator will be final and binding. The cost of any hearing which may result will be shared by the Board and the Association.

. . .

ARTICLE XIII

RELATION TO BOARD POLICY

Board policy in conflict with this agreement will terminate on the effective date of this Agreement. Board policies relating to wages, hours and conditions of employment shall remain as at present until negotiated with the Association."

5. That on October 13, 1975, Perrin and the Association jointly filed the following grievance with Respondent:

"The recent Board policy in relation to mileage paid to traveling teachers is in violation of the Master Contract Article XI Section A-1 and Article XIII. Ms. Perrin has not been receiving full round trip mileage which is specifically in violation of these two articles.

We request that the Board pay mileage to Ms. Perrin and all traveling teachers in accordance with past practice and that any Board Policy change be negotiated with the Association.";

that on October 13, 1975, Respondent Superintendent of Schools, John M. McDermott, received the aforesaid grievance; and that on October 16, 1975, McDermott lettered Perrin, with a copy to the Association's President, wherein he in essence denied the grievance.

6. That on October 30, 1975, Perrin lettered Respondent Board of Education President, Thorsness, wherein she advised Respondent that said grievance was being appealed to Respondent Board of Education; and that on November 5, 1975, Thorsness advised Perrin in writing that Respondent Board of Education had denied the aforesaid grievance.

7. That on November 19, 1975, Association President, Wacker, et al, lettered Thorsness advising him that the aforesaid grievance was being appealed to arbitration; and that on January 29, 1976, Thorsness, in a letter to Robert West, Executive Director of the Northwest United Educators, advised that Respondent Board of Education believed there was nothing to arbitrate in the matter of the aforesaid grievance.

8. That on February 26, 1976, Byron Yaffe, Wisconsin Employment Relations Commission Staff Director, in response to West's request for

arbitration, advised West in writing that Respondent would not consent to arbitrate the Perrin grievance; that in its answer to the instant complaint Respondent admits it has and continues to refuse to arbitrate Perrin's grievance; and, that its reasons for refusing to arbitrate are that (1) the contractually established time limit for filing grievances was not complied with in the Perrin grievance and, (2) there has not been a change in school board policy relating to wages, hours, and conditions of employment since the signing of the subject collective bargaining agreement.

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

CONCLUSION OF LAW

That Respondent, Spooner Joint School District No. 1, has violated, and continues to violate, the terms of the collective bargaining agreement existing between it and the Complainant Spooner Education Association by refusing to submit Complainant Perrin's grievance to arbitration and, by refusing to arbitrate said grievance has committed and is committing prohibited practices 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 Examiner makes the following

ORDER

That Respondent, Spooner Joint School District No. 1, and its agents, shall immediately:

1. Cease and desist from refusing to submit the aforesaid grievance and issues related thereto to arbitration.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70 of the Municipal Employment Relations Act.

   a) Comply with the arbitration provisions of the collective bargaining agreement existing between Respondent and Spooner Education Association with respect to the subject Perrin grievance.

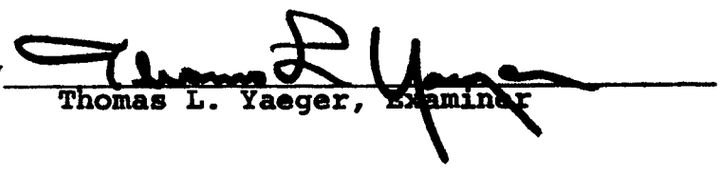
   b) Notify the Spooner Education Association that Respondent will proceed to arbitration on said grievance and the issues concerning same.

   c) Participate with the Spooner Education Association in the arbitration proceedings before the arbitrator to resolve the grievance.

   d) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 10th day of September, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner

SPOONER JOINT SCHOOL DISTRICT NO. 1, Case XI, Decision No. 14416-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The complaint filed herein alleges that Perrin and the Association filed a grievance with Respondent, subsequently requested arbitration of said grievance and, that Respondent has refused to proceed to arbitration in violation of the contract and Section 111.70(3)(a)5 of the Municipal Employment Relations Act. At hearing, the parties stipulated to the introduction into evidence of several exhibits and, after the exhibits were received in evidence Complainants rested their case. Thereupon, Respondent moved to dismiss the complaint on three counts: (1) that the grievance in dispute was not timely filed, (2) that there has been no change in Board policy since the signing of the parties' collective bargaining agreement and, therefore, Perrin's claim is not a proper subject for a grievance, and, (3) that Perrin agreed to the mileage reimbursement formula prior to signing her individual teaching contract.

The Examiner denied Respondent's motion to dismiss with respect to the first count, i.e., that the grievance was not timely filed. Allegations of a party's failure to comply with contractual time limits for the processing of grievances are procedural defenses to arbitrability and as such are reserved for the arbitrator. This Commission has said many times, too numerous to cite, that the question of whether the Union properly processed the grievance is no defense to a Municipal Employer's refusal to proceed to arbitration. 1/

The Examiner, however, reserved ruling on the other two counts of Respondent's motion. Both can be summarized as allegations of failure to state a claim governed by the contract. The Complainants argue that the subject grievance concerns an alleged change, during the term of the instant collective bargaining agreement, in the District's mileage reimbursement policy in violation of Article XIII of said agreement. Complainants contend that said dispute is the proper subject of a grievance as that term is defined in Article XI, Section A-1, and, therefore, Respondent is violating the contract by refusing to arbitrate said grievance.

This Commission has for years held, both in the private and public sectors, that if the grievance states a claim, which on its face, is governed by the collective bargaining agreement it is prima facie substantively arbitrable. 2/ However, the question of whether, in fact, the contract governs the dispute and, the grievance is substantively arbitrable, is for the arbitrator to ultimately determine. Herein, the grievance contends the District's mileage policy violates Article XIII of the parties' agreement and, Article XI, Section A-1 defines a grievance as being:

> ". . . as any dispute arising out of the interpretation or application of the master agreement or any dispute arising out of the reasonableness of board policy relating to wages, hours and working conditions adopted after the signing of this agreement."

1/ Monona Grove Jt. School Dist. No. 4, (11614-A, B) 8/73.

2/ Oostburg Jt. School Dist. No. 14, (11196-A, B) 12/72; Seaman Andwall Corp., (5910) 1/62.

Consistant with Commission policy of giving arbitration provisions in collective bargaining agreements "their fullest meaning" 3/ the Examiner concludes that the instant grievance states a claim "which on its face" is arbitrable.

Therefore, in light of the foregoing the Examiner has found that Respondent violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act by refusing to process Perrin's grievance to arbitration.

Dated at Madison, Wisconsin this 10th day of September, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas L. Yaeger
Thomas L. Yaeger, Examiner

3/ Oostburg, supra.