STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS EDUCATION ASSOCIATION, Complainant, vs. MILWAUKEE BOARD OF SCHOOL DIRECTORS, Respondent.	Case LXXI No. 20447 MP-616 Decision No. 14614-B

ORDER AMENDING DECISION AND DISMISSING PETITION FOR REHEARING

Respondent, on January 24, 1977, having filed a petition for rehearing of the commission's decision herein of January 3, 1977; the parties having filed written arguments; and the commission having reviewed the same and believing that the petition for rehearing should be dismissed but that the commission's original decision should be modified in part;

IT IS ORDERED:

1. That the reference in footnote 8 on page 8 of the memorandum accompanying the decision of January 3, 1977, be deleted and the following substituted therefor:

"8/ See notes 10 and 11, infra."

2. That 2. c., d. and e. of the order of January 3, 1977, shall be, and hereby are, amended to read as follows:

"c. Participate with complainant in the selection of an arbitrator to determine the grievance and issues concerning same, and, pursuant to Part VII. D. of the agreement, if the parties are unable to agree upon the selection of an impartial arbitrator within two weeks after the date of this order, join with complainant in filing a written request with the Wisconsin Employment Relations Commission to submit to the parties a list of names of five persons suitable for selection as impartial arbitrator, and if the parties cannot agree on an arbitrator from said list, participate in the alternate selection process provided in Part VII. D. 2. b. of the agreement.

"d. Participate in the arbitration proceeding before the arbitrator so selected on the grievance and issues concerning same.

"e. 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 with the order of January 3, 1977, as amended herein."

3. That the petition for rehearing shall be, and hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of February, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AMENDING DECISION AND DISMISSING PETITION FOR REHEARING

On January 24, 1977, petitioner filed its petition for rehearing, pursuant to sec. 227.12, Stats., alleging errors in the commission's decision of January 3, 1977. That decision ordered the respondent, inter alia, to proceed to arbitration, pursuant to the terms of its collective bargaining agreement with complainant, relative to the complainant's grievance of March 10, 1976.

Respondent calls attention to an editing error in the commission's decision on page 8 relative to footnote 8. That footnote references footnote 12. There is no footnote 12. The commission has corrected that reference to show that footnote 8 references to footnotes 10 and 11.

Respondent argues that Finding of Fact paragraph 9 contains a material error. That finding states:

> "The dispute between the complainant and the respondent in respect to the grievance . . . and the issues related thereto, as well as the procedural defenses raised by the respondent, concerns the interpretation and application of the terms of the collective bargaining agreement . . . ."

Respondent relies on certain decisions of the commission, and makes the following statement:

> "It has always been the position of the [respondent] that the five classifications which were added to the existing unit do not have rights under the existing contract . . . ."

While respondent argues that the occupants of the five classifications have no rights under the contract, complainant argues otherwise and points to certain language in the collective bargaining agreement as supporting its position. As explained in our original decision, the parties are in dispute as to whether the collective bargaining agreement shows that the work performed by the occupants of the five classifications is covered, and that dispute is arbitrable.

Respondent also argues that the conclusion of law in the original decision is in error in holding that the grievance arises out of a claim covered by the terms of the collective agreement as to the five classifications, since the agreement was in existence on March 4, 1975, and the five classifications were included in the unit by the commission clarification decision of July 7, 1975. 1/

Essentially, respondent argues that the commission's unit clarification decision constituted an accretion to the unit about which the parties must bargain, not arbitrate. The commission's clarification decision, however, did not determine whether the five classifications constituted an accretion to the unit. Rather, that decision determined only that the occupants of said positions did not perform duties which are supervisory or managerial and were included in the unit represented by complainant. While noting that the classifications came into existence in 1974, the clarification decision did not adjudicate whether the collective bargaining agreement already covered the work, whether in whole or in part or not at all, included in the classifications. Complainant argues that the collective bargaining agreement covers such work and that the new classifications

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1/ (13787) 7/75.

only shuffled some duties around. Respondent disagrees. As determined in our original decision here, resolution of the parties' dispute as to contract coverage is subject to the arbitration provisions of the agreement itself.

Respondent relies on language in the grievance protesting respondent's failure to comply with the commission's clarification order. While we agree that such language suggests complainant was protesting conduct other than an alleged violation of the collective bargaining agreement, the grievance as a whole alleges contract violations.

Respondent also relies on complainant's conduct in beginning negotiations for the wages, hours and conditions of employment for the occupants of the classifications in question. It may be that an arbitrator will look to such conduct as bearing on the question whether the parties had reached agreement in the collective bargaining contract as to coverage of the work of the five classifications. Such conduct, however, does not denigrate the commission's conclusion that complainant is grieving over a matter covered by the contract and that the merits of the grievance must be decided by the arbitrator pursuant to the terms of the collective bargaining agreement.

Respondent also argues that the commission's Findings in paragraphs 3 and 4 recognize that at the time the collective bargaining agreement was executed complainant did not represent the occupants of the five classifications. To the contrary, these findings reflect only that the contractual recognition clause did not include the five named classifications. Complainant's argument is that, notwithstanding the new classifications, the work performed by the occupants of the new classifications has been unit work within the meaning of the collective bargaining agreement, as more fully set forth in paragraph 4 of the Findings and pages 7, 9 and 10 of the memorandum.

Respondent further argues that the commission's Finding at paragraph 9 effectively decides the issue in this case, viz., whether the occupants of the five classifications are covered by the terms of the collective bargaining agreement. The commission has made no such determination. Rather, it has found only that the grievance states a claim concerning the interpretation and application of the collective bargaining agreement. We do not suggest how the arbitrator should decide that claim.

Finally, respondent relies on I, G, of the agreement which states that respondent has power to establish or change position descriptions, and that if its decision in this respect has a major effect on wages, hours and conditions of employment, the same shall be negotiated. This is defensive matter, however, which the arbitrator may consider in ruling on the complainant's claim that, in the respects it alleges, the positions are not changed within the meaning of I, G, but are continuations of functions already covered by said other provisions of the collective bargaining agreement.

Fundamentally, respondent's argument fails to appreciate that a unit clarification ruling by the commission is not an adjudication of the substantive provisions of a collective bargaining agreement. A unit clarification merely clarifies and/or determines whether certain classifications are included in the existing collective bargaining unit. The unit clarification previously issued by the commission is not determinative of whether the provisions of the collective bargaining agreement have been violated with respect to the classifications involved.

Respondent correctly notes an error in our order at 2. c. There, respondent is ordered to request the commission to appoint an arbitrator if the parties are unable to agree on the selection of an arbitrator

within two weeks after our decision. The labor agreement, however, only requires the parties to ask the commission to submit a list of five persons who are suitable. It follows that reference to the appointment of an arbitrator in 2. d. must be deleted. Finally, since the instant petition for rehearing has delayed compliance with the order to arbitrate, the said two-week period and the 20-day notification period will be measured from the date of the instant order.

Dated at Madison, Wisconsin this 10th day of February, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner