

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LADYSMITH-HAWKINS EDUCATION
ASSOCIATION,

Complainant,

vs.

LADYSMITH-HAWKINS SCHOOL SYSTEMS,
JOINT DISTRICT NO. 1,

Respondent.

Case I
No. 20557 MP-630
Decision No. 14719-B

ORDER AFFIRMING EXAMINER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Peter G. Davis having on November 30, 1976 issued his findings of fact, conclusions of law and Order with accompanying memorandum in the above-entitled proceeding, wherein the above named respondent was found to have committed and was committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA) by refusing to submit a grievance to arbitration pursuant to its agreement with the complaint, and wherein the respondent was ordered to cease and desist therefrom and to take certain affirmative action with respect thereto; and the respondent having on December 13, 1976 timely filed a petition for a review of said findings of fact, conclusions of law and order with accompanying memorandum pursuant to section 111.07(5), Stats.; and the commission having reviewed the record presented and being satisfied that the findings of fact, conclusions of law and order with accompanying memorandum issued by the examiner should be affirmed.

NOW, THEREFORE, it is

ORDERED

That pursuant to section 111.07(5), Stats., the Wisconsin Employment Relations Commission hereby adopts the examiner's findings of fact, conclusions of law and order with accompanying memorandum issued in the above-entitled matter as its findings of fact, conclusions of law and order with accompanying memorandum and therefore the respondent, Ladysmith-Hawkins School Systems, Joint District No. 1, shall notify the Wisconsin Employment Relations Commission within ten (10) days of the date of this order as to what steps it has taken to comply therewith.

Given under our hands and seal at the
City of Madison, Wisconsin this 27th
day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its petition for review the respondent argues:

- (1) that the examiner found in finding of fact no. 3 that article XVII, which covers staff reductions, applies to this case and alleges that said provision was not contained in the collective bargaining agreement at the time that the grievant signed the individual contract of employment.
- (2) that the examiner ignored an arbitration award, which was quoted in part at the hearing, wherein Arbitrator Christenson found that a provision allegedly similar to article VII section D was inapplicable to the non-renewal of a teaching contract;
- (3) that the examiner ignored the respondent's objection that the grievant was not present at the hearing before the examiner for possible examination by the respondent; and
- (4) that an order of the Rusk County Circuit Court dismissing a petition for a writ of mandamus renders the issues herein res judicata. 1/

The examiner's finding of fact no. 3 merely constitutes a finding that the parties have agreed to article XVII as part of the collective bargaining agreement which was in effect at all times material to the complaint. The complaint alleges that the respondent has refused to proceed to arbitration on and after May 4, 1976, and the respondent's answer admits that it has so refused. Furthermore at the hearing the respondent stipulated to the admission of joint exhibit no. 1, which was described by the examiner as being the "applicable" collective bargaining agreement.

The examiner did not find that article XVII was applicable to the grievance. It may be that an arbitrator will find that article XVII was agreed to subsequent to the execution of the individual teaching contract by the grievant. 2/ Furthermore, the arbitrator may find that the parties did not intend that said article should be applicable to the grievant's situation. However, those arguments relate to the merits of the grievance and not to the question of whether the respondent has agreed to arbitrate the grievance.

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- 1/ In its petition the respondent contends that it has been "determined" that the grievant was properly non-renewed under the statutes.
 - 2/ The 1974-1975 collective bargaining agreement was not introduced at the hearing. However, an alleged copy of that agreement was attached to the respondent's petition for review. Said copy does not in fact contain article XVII.

The respondent's argument with regard to the arbitration award of Arlen Christenson is based on the same misunderstanding of the issue presented herein. The arbitrator may construe article VII, section D in the same way that Arbitrator Christenson apparently construed an allegedly similar provision in the case referred to by the respondent at the hearing. (In that case the arbitrator found that a "just cause" provision did not apply to a non-renewal because the parties failed to mention non-renewals.) However, under article VI, it is the function of the arbitrator and not the commission to determine the merits of the complainant's claim in that regard. In doing so the arbitrator will be required to consider the relevant facts and contract language before him and will not be bound by the decision of arbitrator Christenson which was based on the facts and contract language in that case.

With regard to the respondent's third argument in its petition for review, it should be noted that the respondent has failed to show that the testimony of the grievant was in any way relevant to any issue properly presented herein. It was undisputed in the pleadings and at the hearing that that respondent has refused to proceed to arbitration on the grievance as alleged. It is also undisputed that the individual contract which the grievant signed (and was admitted in evidence) contains the statement as alleged in the respondent's answer. Finally, there is no indication in the record of this case that the respondent sought to subpoena the grievant. Under these circumstances it is the commission's judgment that this objection is without merit.

Finally, with regard to the respondent's third argument, the commission is satisfied that the issue presented herein is not res judicata. 3/ The complainant's petition for a writ of mandamus was based on its claim that the respondent violated the rights of the grievant granted her by sec. 118.22 Stats. The grievance herein alleges that the respondent has violated the rights of the grievant arising under the collective bargaining agreement. The only issue properly before the commission is whether the grievance states a claim which on its face is arbitrable under the terms of the agreement. Because of the broad definition of grievances contained in article VI section A, the commission is satisfied that the examiner correctly concluded that the grievance on its face states a claim of alleged violations which are arbitrable under article VI, section C, step 4 of the collective bargaining agreement.

On the basis of the record presented the commission is satisfied that the arguments raised by the respondent in its petition for review are without merit and that the examiner correctly applied the law with regard to the arbitrability of the grievance in question.

3/ In fact a final determination of the issues in the case has not been made at this juncture, since the case is pending before the Wisconsin Supreme Court. (Case No. 76-241).

Consequently we have affirmed his findings of fact, conclusions of law and order and his memorandum accompanying same.

Dated at Madison, Wisconsin this 27th day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoonstra
Charles D. Hoonstra, Commissioner