STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WEST CENTRAL EDUCATION ASSOCIATION, Complainant, vs. JOINT SCHOOL DISTRICT NO. 3, PLUM CITY, WISCONSIN, ET AL., PIERCE COUNTY, WISCONSIN, Respondent.	Case I No. 21797 MP-761 Decision No. 15626-A

Appearances:
Mr. Roland F. Gilligan, Executive Director, West Central Education Association, appearing on behalf of Complainant.
Doar, Drill, Normal, Bakke, Bell & Skow, Attorneys at Law, by Mr. Warren W. Wood, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

West Central Education Association, herein Complainant or Association, having on June 22, 1977, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, herein Commission, wherein it alleged Joint School District No. 3, Plum City, Wisconsin, herein Respondent or District, had committed prohibited practices in violation of Section 111.70(3)(a), Stats.; and the Commission having appointed Thomas L. Yaeger, a member of the Commission's staff, to act as Examiner in the matter; and hearing on said complaint having been held at Plum City, Wisconsin, on October 11, 1977; and the parties having filed briefs in the matter by February 28, 1978; 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 the West Central Education Association is the exclusive bargaining agent for teachers employed by the District and a labor organization within the meaning of Section 111.70(1)(j), Stats., and, Margean Baader and Madolyn Weldon have been employed as teachers in the District at all times material hereto.

2. That Plum City Joint School District No. 3, is a municipal employer within the meaning of Section 111.70(1)(a), Stats., with its principal offices in Plum City, Wisconsin.

3. That the Association and District were parties to a collective bargaining agreement governing wages, hours and conditions of employment of teachers employed in the District for the 1976-1977 school year; and, that said agreement contained the following provisions that are material to the instant complaint:

"3. Association Rights

A. The Association (WCEA) and its representatives shall have the right to use school buildings at all reasonable hours for meetings with the approval of the superintendent.

B. Representatives of the Association and their affiliates shall be permitted to transact Association business on school property at all reasonable times, provided that this shall not disrupt normal school operations with approval of the superintendent.

C. The associations and its representatives shall have the privilege of posting notices of activities and matters of the Association in the teachers lounge in the respective buildings. The Association may use the district mail service and teacher mail boxes for communication to teachers, however the mail service will be limited to delivery of mail between buildings and delivery of mail to the post office. In no instance will the school district mailing list for the school district newsletter be made available to the Association without advance approval of the Board.

D. The Board agrees to furnish the Association all available information concerning the financial resources of the district, including but not limited to: annual financial reports, tentative budgetary requirements and allocations, agendas and minutes of all public board meetings, treasurer's reports, school census information, names addresses, and telephone numbers of all teachers, educational background and placement upon the salary schedule of all teachers, and such other information as will assist the Association in developing constructive proposals and programs on behalf of the teachers and their students, and also any information which may be necessary for the Association to process any grievance or complaint at the superintendent's discretion.

. . .

8. Lane Changes

A. Proof of qualification for lane changes must be submitted within seven days after teachers report for duty each year. In the event the proof is unavailable to the teacher within that period of time, a letter should be submitted to the administration stating the lane changes. Proof of lane changes must be then submitted by the fourth Friday in September of that year to the administrator. There will be no limit to the number of lane changes allowed per year. All lane change credits in the teacher's field will be partially financed by the school district. The approved minimum shall be $15.00 per credit to be made for graduate credit with advance approval of courses given by the administration shall be financed at the rate above by the school district.

B. Each teacher may take no more than one course per quarter or semester for pay credit or lane change credit during the school year.

C. Each teacher must take 3 approved semester credits every 3 years. If a teacher does not fulfill this requirement at the end of 3 years, a two day pay deduction will be made.

D. Financing by the school district of credits will begin June 1, 1974 and all presently employed faculty members must have earned 3 semester credits by August 30, 1976. Teachers employed after June 1, 1974 will have 3 years to earn 3 semester credits.

E. This part of the negotiated agreement headed by Lane Changes will remain in effect until June 1, 1977.

. . .

16. Experience Factor - Present Staff

Present employees using any leave of absence features in this negotiated agreement after 9/1/75 and who teach a half a year or more will receive a year's experience credit on the included salary schedule.

17. Grievance

Any grievance will be brought to the attention of the building principal and then referred to the district administrator, and the Board, in turn, if it has not been resolved. Grievances may be filed directly with the Board should the grievance be a result of direct board action. The grievance as defined below must be filed within 10 days of the incident being grieved. The grievance once filed must be resolved by all parties involved within 30 school days. The aggrieved may have a member of his association represent him in the proceedings provided the agrieved [sic] requests this in written form signed by the aggrieved, submitted to the administrator. All grievances must be in written form and signed by the aggrieved.

Grievances shall be limited to this working agreement.

. . .

20. Salary Schedule

	B.S.	B.S. +8	B.S. +16	B.S. +24	M.S.
0	8725	8875	9025	9175	9325
1	9074	9230	9386	9542	9698
2	9423	9585	9747	9909	10071
3	9772	9940	10108	10276	10444
4	10121	10295	10469	10643	10817
5	10470	10650	10830	11010	11190
6	10819	11005	11191	11377	11563
7	11168	11360	11552	11744	11936
8	11517	11715	11913	12111	12309
9	11866	12070	12274	12478	12682
10	12215	12425	12635	12845	13055
11			12996	13212	13428
12				13579	13801
13					14174"

4. That prior to the 1976-1977 collective bargaining agreement the District and the Plum City Education Association had entered into collective bargaining agreements governing the wages, hours and conditions of employment for teachers in the District; that said agreement for the 1973-1974 school year contained the following grievance procedure:

> "3. Grievance
> Grievance procedure: Any grievance will be brought to the attention of the building principal and then referred to the district administrator and the school board, in turn, if it has not been solved. The grievance as defined below must be filed within 10 days of the incident. The grievance procedure once on file with the building principal should be completed within 30 school days and the aggrieved may have a member of his group represent him in the proceedings above the building principal level if he so requests. Grievances shall be limited to this working agreement and as required by statute. Also, the association cannot represent an individual unless the individual initiates the grievance in writing.";

and, the 1970-1971 collective bargaining contract contained the following grievance procedure:

> "2. Grievance procedure: Any grievance will be brought to the attention of the building principal and then referred to the district administrator and the school board, in turn, if it has not been solved. The entire procedure should be completed within 30 days and the aggrieved may have a member of his group

represent him in the proceedings above the building principal level if he so requests. Grievances shall be limited to this working agreement and as required by statute."

5. That during the 1975-1976 school year Baader was an elementary teacher with the District, and was placed at experience Step 9 (top step) in the B.S. +8 lane of the negotiated salary schedule; that for the same school year Weldon, also an elementary teacher, was placed at the 10th (top) experience step of the B.S. +16 lane of said salary schedule; that for the 1976-1977 school year both teachers were eligible to be advanced one lane because of additional education credits they had earned; that as a result thereof, the District Superintendent, Kegler, advised Baader and Welson in September 1976, that their salary schedule placement would be as follows:

Baader at the 10th experience step of the B.S. +16 lane
Weldon at the 11th experience step of the B.S. +24 lane;

and, that upon being so advised both objected to their placement in that they both believed that in light of their years of prior teaching experience they should have been advanced two experience steps each to the top or last step in their respective lanes.

6. That during his conversation with both Baader and Weldon, Kegler advised them that his interpretation of the contract was that they did not have a contractual right to advance more than one experience step in any school year; that Kegler further advised both that if they disagreed with his decision they could file grievances; that neither employe ever filed a grievance pursuant to the contract although Weldon did write a letter on September 11, 1976, to the Board of Education concerning the matter; and that Baader didn't grieve because she was afraid of being harassed if she did so whereas Weldon did not grieve because she did not like to file grievances.

7. That on March 21, 1977, Anderson, of the Association's Teacher Defense Committee, acting on behalf of Weldon and Baader, filed individual grievances with District Elementary Principal, Bjurquist, contesting said teachers' 1976-1977 salary schedule placement as a breach of the collective bargaining agreement; that said grievances were signed by Anderson and not Baader and Weldon; that the District denied said grievances at each step of the grievance procedure; that the reasons given for denying the grievances were that they were not timely filed, not signed by the affected teachers, and that said teachers were advanced on the salary schedule in a manner not violative of the collective bargaining agreement; and that thereafter all the steps of the contractual grievance procedure were exhausted prior to filing of the subject complaint of prohibited practices.

8. That the parties' 1976-1977 collective bargaining agreement that governs the March 21, 1977, grievances filed in the subject dispute, while permitting the filing of grievances by the Association regarding alleged breaches of Association contractual rights, does not permit the Association to grieve alleged breaches of individual contractual rights; that the District's alleged misplacement of teachers Baader and Weldon on the 1976-1977 salary schedule is a matter involving individual contractual rights; and that as such is a matter that can only be grieved by the affected individual(s) and cannot be grieved by the Association.

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

CONCLUSIONS OF LAW

1. That the parties' 1976-1977 collective bargaining agreement barred the Association's grievances on behalf of Baader and Weldon relative to their placement on the salary schedule for the 1976-1977 school year.

2. That because the contractual grievance procedure has not been complied with, the Commission will not determine if Respondent committed a prohibited practice in violation of Section 111.70(3)(a)5, Stats.

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

ORDER

IT IS ORDERED that the complaint in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 27th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas L. Yaeger
Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

During the hearing, at the conclusion of Complainant's case, Respondent moved to dismiss same for the following reasons: There was no evidence adduced as to the salary actually received by Weldon and Baader and what the deficiency was, the collective bargaining agreement is silent on vertical advancement, therefore the Management Rights clause of the contract controls, and that the Association is not a proper party to this action. All of these defenses are so inextricably interwoven with the merits of the case that the contentions have been dealt with in the discussion, which follows.

The instant complaint was filed on June 22, 1977, and the Respondent answered same on August 3, 1977. In its answer, the Respondent raised several affirmative defenses to said complaint, two of which pertained to alleged procedural defects in the grievances filed contesting the alleged breaches of contract. Those specifically were that said contractual grievances were not timely filed nor were they signed by the aggrieved individuals as required by the contract. These same defenses were argued by Respondent in its post-hearing brief.

Complainant's contend to the contrary that the Association is a proper Complainant inasmuch as it is the exclusive bargaining agent for teachers and as such has both authority to and responsibility for administering the contract if negotiated. Further, it argues its complaint of prohibited practices was filed after it had exhausted the contractual grievance procedure and within the one year statute of limitations under Section 111.07(14), Stats.; and, no claim is made that Commission rules have been violated. Lastly, notwithstanding the foregoing arguments, the Association believes the grievances were timely filed inasmuch as the alleged breach is in the nature of a continuing violation because each time the affected teachers are paid another breach occurs.

Procedural Defenses

The Respondent raises, as an affirmative defense to the instant prohibited practice complaint, two alleged procedural defects in the two grievances which underly said complaint. The parties' collective bargaining agreement contains a grievance procedure, but no arbitration is provided for therein. Preliminary to filing the instant complaint, the Association filed two grievances, on behalf of Baader and Weldon contesting their placement on the salary schedule for the 1976-1977 school year, and exhausted all steps of said procedure. The exhaustion of the contractual grievance procedure is a necessary prerequisite to filing the instant complaint in that the Commission will not assert its jurisdiction to review the merits of an alleged breach of contract complaint where available contractual procedures for resolving such disputes have not been exhausted and where said exhaustion has not been excused. 1/

1/ Lake Mills Jt. School District No. 1 (11529-A, B) 8/73; Dodgeland Jt. School District No. 11 (11882-B, C, D) 8 /74; Winter Jt. School District No. 1 (128 89-A, B) 1/75; Winter Jt. School District No. 1 (13275-A, B) 8/75; Village of Waterford (14192-E, F) 4/77.

The District contends the Commission must first determine if the foregoing alleged procedural defects are meritorious, for if they are, then the Commission is without jurisdiction to determine the merits of the alleged breach of contract complaint allegations. Implicit in the Association's position respecting these defenses is that the Commission need not concern itself with all of the provisions of the collective bargaining agreement in processing a breach of contract prohibited practice complaint, for it argues that procedural defects in a grievance, filed on the same subject as a necessary forerunner of the complaint proceeding, cannot be raised as an affirmative defense to the complaint. This theory, however, runs afoul of previous Commission decisions on point wherein it has determined that all provisions of a collective bargaining agreement must be enforced.

> "Since the Commission has decided to assert its jurisdiction to decide the merits of all issues and not defer the alleged contractual violations to arbitration, the procedural defense raised by the Board--that Zimmer failed to timely initiate Level 2 of the grievance procedure--must be disposed of." 2/

Consequently, the alleged procedural defects in the subject Association grievances, raised by Respondent as an affirmative defense to the instant prohibited practice complaint, must be considered by the undersigned. If they are found meritorious they will necessarily bar further consideration of said complaint.

Respondent contends that the contract in issue herein precludes the Association from filing grievances. It points to the language of Article 17 - Grievance Procedure that makes reference to the "aggrieved" party and "him" and concludes that "aggrieved" party must be an individual. Thus, because Weldon and Baader never formally filed a grievance or signed those that were filed by the Association, the District reasons the grievances that were filed are necessarily defective.

The record reveals that the present grievance procedure was modified in several respects from that appearing in the 1973-1974 contract. Several of those modifications are not germane to the subject dispute, however, and will not be discussed. Those changes that are germane appear in the 5th and 6th sentences of Article 17

> "The aggrieved may have a member of his association represent him in the proceedings provided the aggrieved requests this in written form signed by the aggrieved, submitted to the administration. All grievances must be in written form and signed by the aggrieved."

In the sentence beginning "The aggrieved", the term "association" was inserted in place of "group", the phrase "above the building principal" was deleted, and "provided the aggrieved requests this in written form signed by the aggrieved, submitted to the administrator" replaced "if he so requests". Also, the last or 6th sentence of Article 17 is new and appeared for the first time in the subject agreement.

2/ Waunakee Public Schools, Joint District No. 4, (14749-A, B) 2/77, 2/78; see also Whitewater Unified School District No. 1, (14221-A, B) 3/77; City of Adams, (14082-A, B) 3/76.

While the grievance procedure language was modified in many respects none of those modifications weakens the Respondent's position respecting the Association's right to file grievances. Rather, the addition of the last sentence in the 1976-1977 contract, if anything, strengthens the District's position. It unequivocally provides that "all grievances" must be "signed" by the "aggrieved".

The question of whether a union can file grievances under language similar to that in dispute herein has confronted several arbitrators. In the arbitration decisions reviewed by the undersigned arbitrators have gone both ways on the question. In Ohio Power Co., 45 LA 1039 (1965), the arbitration board found that the Union had the right to file grievances questioning the propriety of Company action even though the individual Union officer filing the grievance was not personally affected by the Company action.

> "Thus, the fundamental issue presented is the right of an individual, particularly the President of the Union Local, to file a grievance questioning the propriety of an act of the Company which he deems to be in conflict with the Contract provisions, even though he is not personally affected by the alleged violation.
>
> The Grievance provisions of the Contract, Article 17, are not specific on this question. Section 17.1, the introductory paragraph of the Article, provides that a dispute or disagreement arising between 'an employee and the Company as to the meaning or application of the terms and provisions hereof' are to be disposed of under that Article. This is extremely broad language and literally would permit any employee, however remotely connected with an alleged violation, to contest it. General language is continued in Section 17.11, the 'FIRST STEP', which uses the phrase, the grievance '* * * shall be adjusted by direct contact between the employee and his immediate supervisor * * *.' Thereafter, some of the subsequent sections use the phrase 'aggrieved employee'.
>
> While the various uses of the word 'employee' and the phrase 'aggrieved employee' might form the basis for different conclusions, it would appear that the Contract is not unduly restrictive of the right to file grievances. Under these circumstances, it would be inappropriate to impose a legalistic restriction on the free right of the parties to settle their disputes by use of the grievance procedure.
>
> In this connection, the reasoning of other arbitrators is highly persuasive. The issue has been discussed in George Otto Boiler Company and International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers of America, Local No. 81, 37 LA 57, and in Eastern Shore Public Service Company of Maryland and Local 1307, International Brotherhood of Electrical Workers, 39 LA 751. As viewed by the arbitrators involved in those cases, the Union must have the right to contest actions of the Company that it deems to violate the Union's contractual rights. Otherwise, through lack of interest on the part of members specifically affected or as a consequence of pressures that might be brought to bear upon them, grievances might not be taken to contest actions that were violative of the contract. Thereby, the Union's rights could be worn away. They point out that the Contract is between the Union and the Company, rather than between the employees and the Company, and, therefore, the grievance machinery must be viewed as permitting the settlement of disputes between the two major parties in interest.

Additional observations of one of the arbitrators involved are particularly applicable here. If the Company's argument were to be accepted, it would be almost impossible to determine the aggrieved employee and no grievance could likely be found on which to submit the substance of the question to arbitration. In other words the position would have to be posted and bids received before any idea could be obtained as to who might be interested in the position, to say nothing of the group ultimately found to be eligible to bid or the decision as to the 'right' person for the job. The Company's argument would require the Grievant to be a member of at least one of these groups and the membership of none of them can be ascertained before posting. Thus, the Company's position would be to deny anyone the use of the Grievance procedure in this case.

If a restrictive reading of the Grievance Article were to be followed and 'interested parties' could not be found in similar cases, a full blown practice might ultimately develop without agreement of the Union. This would not be fair." 3/

A contrary finding to that made in Ohio Power Co., supra, was reached by Arbitrator Updegraph where the contract explicitly required the aggrieved employe sign the grievance.

"The contract provides in Article XII, Section 1, Step A, paragraph 1, that grievances shall be written and 'signed' by the aggrieved employee. Such provisions are usually bargained into contracts by employers and are designed to prevent the filing of grievances anonymously, or by union officers only, in circumstances in which the employer will be handicapped in meeting a grievance by not knowing exactly in respect to whom it is accused of some impropriety. Even a company which has full confidence in its present union contracts may demand such a provision for future protection in case its relations with the employee organization be less happy at some future time.

This type of provision, when found in an agreement operates as a limitation upon the authority of the arbitrator. At most he can only assume jurisdiction to decide matters which are properly launched and carried forward under the grievance procedure as defined in the agreement. If the undersigned should undertake to decide a dispute not in every material detail within the terms of the contract, he will necessarily be overstepping the express limitations of Article XII, Section 1, Step E, (3) and Section 2 of the contract." 4/

A careful analysis of the foregoing decisions, as well as others, reveals that irrespective of the result, the decisions are footed in the specifics of the particular contract language confronting the arbitrator. In those cases involving broad grievance procedure language or where the language explicitly

---

3/ See also Wahl Clipper Corporation 69-1 ARB ¶ 8056 (1968).

4/ See also Morton Salt Co., 31 LA 979 (1959); Caterpillar Tractor Co., 37 LA 659 (1961).

authorizes the filing of grievance by the union, arbitrators have permitted same without the authorization or cooperation of the individual aggrieved by the alleged breach. However, where the contract explicitly requires the aggrieved to sign a grievance or where the language speaks soley in terms of an aggrieved, arbitrators have rebuffed attempts by unions to file grievances, concluding the Union bargained the restriction and must live with the bargain struck. Obvious exceptions have also been made where the contract requires the aggrieved sign and he is unable to do so, 5/ or where a custom or practice has developed of permitting the Union to file and sign grievances. 6/

Several arbitrator's who concluded the Union must have the right to grieve an alleged breach, even where the aggrieved is not willing to do so, have reasoned that the Union is the exclusive bargaining agent and as such ought to be able to protect the integrity of the agreement.

> "It would appear that arbitration authority, if it can be considered as such, indicates that a union, as an entity ought to have the right to file a grievance (general or policy) where it has reason to believe that an act of the company contravenes a provision of the collective bargaining agreement, even though the union is not an 'employee' who has personally been aggrieved by the company's act inasmuch as the union, not only is the agent for all the employees but is also the agent for each individual employee who could have a 'problem' and thus entitled to be the 'aggrieved.'" 7/

Still others have acknowledged the need of the Union to protect the agreement against collusive acts of employes and management by permitting the union to file policy grievances where no specific relief is sought in behalf of the aggrieved employe.

> "Therefore, the Union should have the right to avoid these kinds of situations by filing 'policy' grievances. But this sort of thing can be taken care of by the Union filing a 'policy' grievance that calls attention to the situation and places the Company on record as to the Union's disapproval, without seeking specific financial reimbursement, or other specific action, in favor of the employee whose rights under the Agreement appear to have been violated. 8/

After carefully analyzing the rationale of others who confronted the issue and after giving considerable attention to the subject language, the undersigned is persuaded that the grievance procedure language adopted by the parties for inclusion in their 1976-1977 collective bargaining agreement limits the Association's right to file grievances to matters involving alleged breaches of Association rights and precludes its filing grievances regarding alleged breaches of individual

---

5/ Brush Beryllium Co., 70-2 ARB ¶ 8874 (1970).

6/ ESB, Inc., 70-1 ARB ¶ 8172 (1969).

7/ Whal Clipper Corp., supra. See also U.S. Ceramic Tile Co., 28 LA 167 (1957).

8/ Wayne Pump Division, 68-1 ARB ¶ 8063 (1967); contrariwise see Joyce-Gridland Co., 49 LA 947 (1963).

contractual rights. Herein, the alleged breach concerned the specific placement of Weldon and Baader on the 1976-1977 school year salary schedule and as such is a matter of individual right. Examples of union rights, the alleged breach of which would permit the Association to grieve, can be found in Article 3 of the parties' agreement and include such things as the right to use school buildings for meetings and the right to transact Association business on school property.

The subject language of Article 17 makes specific reference to the "aggrieved" and, furthermore, provides for Association assistance only where the "aggrieved" requests same in writing through the administrator. There are also provisions that "all grievances" must be in writing and "signed by the aggrieved". Thus, the Examiner is persuaded that it was the intent of the parties, by including such restrictive provisions in their contract, to preclude the filing of grievances concerning breaches of individual rights by any one other than one affected by an alleged breach. In the case of alleged breaches of individual rights, that necessarily excludes the Association. While this result is restrictive of the Association's rights, one must be mindful of the Association's participation in the negotiation of said provision as the teachers' exclusive bargaining agent. The Association bargained the language and is now stuck with its bargain, notwithstanding it obviously bargained away certain interests it previously had in the grievance procedure. Further, this construction is buttressed by the absence of any record evidence of a custom or practice of allowing the Association to file grievances relative to alleged breaches of individual contractual rights. Also, the contrary result requires ignoring or failing to give full effect to the language of the agreement.

Consistent with the foregoing interpretation of the grievance procedure is the contractual right of the Association, as the "aggrieved", to file grievances challenging alleged District breaches of Association rights. Thus, those Association rights and concomitant District obligations to it can only be enforced by the Association or its representatives.

The distinction the undersigned has drawn between individual and Association rights is not novel. The Commission has recognized the distinction, as well as the inability of individuals to enforce Union rights. In City of Menasha (13283-A) 2/77 the Commission said

> ". . . . an employe within the collective bargaining unit has no standing to complain of respondent's refusal to bargain with the association as the exclusive majority collective bargaining representative. Respondent's duty to bargain is owed to the association, not to the complainant. Indeed, as respondent correctly argues, respondent may not bargain with an individual employe." 9/

Some might argue the undersigned's interpretation of the subject grievance procedure language lends itself to the establishment of binding practices that amend the contract which the Association would be powerless to prevent. 10/ This, however, is not the case. In order for a custom or practice to become binding it must be acquiesced in by both parties to the

---

9/ See also City of Madison (15171-1C, D) 1/78.

10/ Wayne Pump Division, supra.

contract. Surely, such acquiescence would not be inferred from the Association's failure to challenge the District's actions in the grievance procedure, where it clearly had no contractual right to grieve, and even more particularly where it voiced its objections outside the grievance procedure. Consequently, any fears in this regard are unfounded.

Herein Baader and Weldon each advanced different reasons as to why they did not grieve their placement on the 1976-1977 salary schedule. Baader did not grieve because she feared she would be harassed if she did grieve and Weldon did not grieve because she did not like to file grievances. Neither reason however is sufficient to excuse their failure to grieve. In Baader's case there was no objective evidence of prior harassment of individuals who did grieve. Rather there is only her naked subjective assertion of the fear of harassment. Obviously, if she were to be harassed she has a remedy at law under Section 111.70(3)(a), Stats. Finally, it goes without saying, that dislike for a particular procedure, in this case Weldon's dislike of the grievance procedure, is no excuse for failure to utilize same. 11/ This is particularly true where, as here, strong public policy favors the utilization of contractual grievance procedures for the resolution of such disputes.

Thus, because the Association did not have a contractual right to grieve Baader's and Weldon's placement on the 1976-1977 salary schedule, the grievances filed by the Association's representative Anderson were fatally defective. Therefore, the Commission will not determine whether in fact the District breached the parties' collective bargaining agreement in violation of Section 111.70(3)(a)5, Stats. by its decision to allow Baader and Weldon to advance only one vertical step on the 1976-1977 salary schedule.

Dated at Madison, Wisconsin this 27th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas L. Yaeger
Thomas L. Yaeger, Examiner

11/ Weldon's demeanor as a witness in these proceedings evidenced very strong feelings and sensitivity about her treatment by the District while at the same time confirming her distaste for confrontation.