

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-B

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

Examiner Thomas L. Yaeger having, on April 27, 1978, issued his Findings of Fact, Conclusions of Law and Order in the above entitled proceeding wherein he dismissed the instant complaint; and the West Central Education Association (Association) having, on May 16, 1978, timely filed a petition for Commission review of said decision; and the parties having filed briefs in the matter, the last of which was received on November 13, 1978, and the Commission having reviewed the record in the matter including the petition for review and the briefs filed in support of and in opposition thereto, and being satisfied that the Examiner's decision be affirmed

NOW, THEREFORE, IT IS

ORDERED

That the Examiner's Findings of Fact, Conclusions of Law and Order in the instant matter be, and the same hereby are, affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 18th day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
 Morris Slavney, Chairman

Herman Torosian
 Herman Torosian, Commissioner

Marshall L. Gratz
 Marshall L. Gratz, Commissioner

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

Background

In its complaint initiating this proceeding the Association alleged that the District committed prohibited practices within the meaning of Sections 111.70(3)(a)1 and 5 of the Municipal Employment Relations Act by violating the collective bargaining agreement existing between the parties through the improper placement of two teachers on the salary schedule set forth in the agreement. The District denied any violation of the agreement and affirmatively asserted that the Association was not a proper party complainant inasmuch as the collective bargaining agreement requires that grievances of employees covered by the agreement must be signed by the employees involved, and that in this matter the two employees involved did not sign grievances, and furthermore the grievances filed by the Association's representative on behalf of the two teachers were untimely filed.

The Examiner's Decision

In his decision the Examiner concluded that, since the Association had exhausted the contractual grievance procedure, which did not provide for final and binding arbitration of grievances, he could properly exercise the Commission's jurisdiction to determine the alleged breaches of the agreement. The Examiner then concluded that such a consideration of the grievances involved must include a determination as to the validity of the alleged procedural defects, cited by the District, which, if found to be meritorious, would lead to the dismissal of the complaint. The Examiner proceeded to a detailed discussion of the District's assertion that the Association was precluded from filing the grievances involved by the following language contained in Article 17 of the collective bargaining agreement:

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.

The Examiner's discussion included lengthy consideration of arbitral authority on both sides of the issue and ultimately culminated with the conclusion "that the specific grievance procedure adopted by the parties for inclusion in their 1976-1977 collective bargaining agreement limits the Association's right to file grievances in matters involving alleged breaches of Association rights and precludes its filing of grievances regarding alleged breaches of individual contractual rights. Herein the alleged breach included specific placement of Weldon and Baader on the 1976-1977 school year salary schedule and as such is a matter of individual right."

The Examiner's conclusion in said regard was supported by the following analysis:

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.

Having found that the Association lacked the contractual right to pursue the grievances, the Examiner dismissed the complaint.

The Petition For Review

The Association's petition for review argues that the labor relations policy of this state, particularly the concomitant principles of exclusivity of representation and the duty of fair representation, creates a strong presumption that the collective bargaining representative is entitled to grieve, has a duty to grieve, and indeed is "aggrieved by" an alleged violation of the bargaining agreement. The Association contends that its ability to independently grieve alleged violations is critical because it prevents the erosion of contractual rights through de facto past practices which might otherwise develop because of the reluctance of individual employees to file grievances. Given this presumption the Association asserts that it should not be found to have waived its right to grieve alleged contractual violations unless the District presents substantial evidence derived from the contractual language, bargaining history, and past practice, that the Association knowingly abandoned this right. It contends that inasmuch as the record contains no evidence of bargaining history or past practice, and as the contractual language does not clearly and explicitly preclude the Association from filing grievances, the Examiner's decision should be reversed.

The District opposes the Association's petition for review and argues that the Examiner's decision was mandated by the clear and unambiguous contractual language which precludes the Association from filing of individual grievances regarding alleged breaches of individual contract rights. It contends that the contractual requirement that the grievances must be signed by the aggrieved individuals does not lock the Association out of the grievance procedure inasmuch as the individuals have the contractual right to involve the Association in the processing of the grievance. The District would have the Commission affirm the decision of the Examiner.

Discussion:

There can be no question that the Association is vitally interested in policing the collective bargaining agreement. It is equally

clear that the Association is vitally concerned with and aggrieved by alleged breaches of its agreement with the District. In order for the employe representative to maintain the integrity of the collective bargaining agreement, many agreements specifically set forth the right of the representative to initiate grievances regarding the alleged breach of any provision of the agreement. Even lacking said language the Commission agrees with the Association that as a matter of policy contract grievance language should be liberally construed in favor of the right of a union to file grievances involving employes. However, such presumption must be, in the final analysis, weighed against the specific contract language in question. In so doing the Commission concludes that in the instant agreement the Association agreed to a requirement which can only be reasonably interpreted as precluding the Association from filing grievances regarding alleged breaches of provisions inuring to the benefit of individual employes.

In its reply brief the Association directed the Commission's attention to the decision of the New Jersey Supreme Court in Red Bank Regional Education Assn. v. Red Bank Regional High School Board of Ed., 99 LRRM 2447, 1978, and argued that said decision supported the proposition that the Association has a ". . . presumptive right - if not an unwaivable right - to protect its contract with the employer by direct access to the grievance procedure, without individual consent if necessary. . . ." Said court's decision was predicated on a provision in the New Jersey Employer-employe Relations Act prescribing the nature of grievance procedures and was substantially influenced by a provision in the New Jersey constitution. No parallel provisions are found in MERA or the Wisconsin Constitution.

We have concluded that the parties agreed that an aggrieved individual's signature is necessary where an individual employe is aggrieved by the subject matter of the grievance. We are not determining herein the breadth of the term "aggrieved" in any other but the instant context, and we are not to be understood to hold herein that the Union is not "aggrieved" in a broader sense (other than the sense in which the parties used that term in the provision in question) by the employer actions which were the subject of the instant grievances.

The Association argues that it will be bound by past practices. It is doubtful that a past practice would take on binding effect based solely on the absence of grievances of a sort the bargaining representative is contractually precluded from initiating. Moreover, the Association could even protect itself from that remote possibility by simply putting the employer on notice that it protests the action taken by the employer even though it is unable to grieve same. Finally, there is nothing to preclude the Association from attempting to modify said provision in future agreements to permit the Association to initiate grievances on behalf of individuals.

Dated at Madison, Wisconsin this 18th day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slayney
Morris Slayney, Chairman

Herman Torosian
Herman Torosian, Commissioner

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