

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NORTHWEST UNITED EDUCATORS	:	
	:	
Complainant,	:	Case XIV
	:	No. 24856 MP-1003
vs.	:	Decision No. 17151-B
	:	
COOPERATIVE EDUCATIONAL SERVICE	:	
AGENCY NO. 4	:	
	:	
Respondent.	:	
	:	

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ORDER AFFIRMING EXAMINER'S FINDINGS  
OF FACTS, CONCLUSION OF LAW  
AND ORDER

Examiner Douglas V. Knudson having, on March 31, 1980, issued his Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, in the above-entitled matter, wherein he concluded that the above named Respondent had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act by failing to reimburse employe James Joslin for travel expenses incurred by him in the performance of his teaching duties, as required in the collective bargaining agreement existing between the above named Complainant and the Respondent, and wherein the Examiner ordered, among other things, that the Respondent reimburse James Joslin for such travel expenses; and the Respondent, on April 18, 1980, having timely filed a petition requesting the Wisconsin Employment Relations Commission to review the Examiner's decision, pursuant to Sec. 111.07(5), Wis. Stats.; and the Commission, having reviewed the entire record, the petition for review, as well as the arguments in support thereof and in opposition thereto, being satisfied that the decision of the Examiner be affirmed;

NOW, THEREFORE, it is

ORDERED

That the Examiner's Findings of Fact, Conclusions of Law and Order, as well as the Memorandum accompanying same, issued in the above-entitled matter, be and the same hereby are, affirmed, and therefore Cooperative Educational Service Agency No. 4 shall notify the Wisconsin Employment Relations Commission, in writing, within ten (10) days from the date hereof as to what steps it has taken to comply therewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
 Morris Slavney, Chairman

Gary L. Covelli  
 Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER AFFIRMING EXAMINER'S FINDINGS  
OF FACTS, CONCLUSION OF LAW  
AND ORDER

In its complaint initiating the instant proceeding NUE alleged that the District violated the travel pay provision in the collective bargaining agreement existing between the parties by failing to reimburse Guidance Counselor Joslin for certain travel expenses incurred by him in the performance of his duties, and thus, as alleged by NUE, the District committed a prohibited practice in violation of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA). In its answer the District denied any violation of the agreement, and requested that the complaint be dismissed.

Following hearing in the matter and after the receipt of briefs, the Examiner issued his decision, wherein he concluded that the District had not properly reimbursed Joslin for his business travel, and thereby violated the collective bargaining agreement, a prohibited practice under the provision of MERA cited above. The Examiner ordered the District to make proper reimbursement to Joslin. The District timely filed a petition requesting the Commission to review the Examiner's decision. Specifically the District contends that the Examiner erred in making certain findings leading to his conclusion as to the violation found, and in that regard the District argues that such conclusionary findings as to the intent of the contractual provision involved, were not supported by a clear and satisfactory preponderance of the evidence, and as a result the Examiner's interpretation of the provision in issue is erroneous. The District urges the Commission to reverse the Examiner's decision.

Contrariwise NUE argues that the Examiner's interpretation of the pertinent contractual language is reasonable, and fully supported by the credible evidence. In addition, NUE urges the Commission not to disturb "decision of its examiners interpreting collective bargaining agreements, unless the process by which the examiner reached his/her decision was corrupted by misconduct or the examiner's interpretation of the contract is without support in the record of the case. Furthermore, reviewing examiner decisions interpreting collective bargaining agreements in this fashion is consistent with the public policy underlying grievance arbitration, Commission precedent and the judicious use of the Commission's processes."

It is apparent that NUE would have the Commission limit its review of an Examiner decision relating to violations of collective bargaining agreements to the same basis as court review of arbitration awards, as set forth, generally in Chapter 298, Wis. Stats. This proceeding does not involve an arbitration award, simply because the collective bargaining agreement alleged to have been violated does not provide for final and binding arbitration of grievances. As a result, to seek enforcement of the alleged violation of the agreement between the parties, NUE filed a complaint alleging that the District committed a prohibited practice by such an alleged violation. NUE would have the Commission ignore the statutory tests for establishing the commission of prohibited practices, as set forth in Sec. 111.70(4)(a) of MERA and Sec. 111.07(3) of the Wisconsin Employment Peace Act, which states "Any such proceedings shall be governed by rules

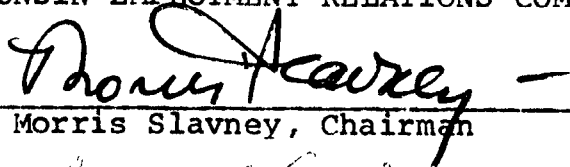
of evidence prevailing in courts of equity and the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence." 1/

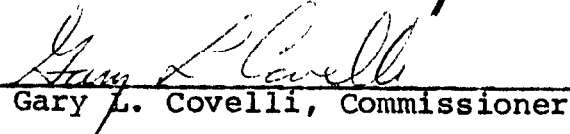
Contrary to the claim of the Respondent, we conclude that the Examiner correctly determined that the contractual provision in issue required the payment of travel expenses as claimed by NUE. The Examiner, in his memorandum, succinctly discussed and considered the evidence adduced with respect to the negotiation of the provision, as well as its historical application, in reaching his determination. While he did not characterize such evidence as a clear and satisfactory preponderance of the evidence, a full reading of his memorandum conveys a conclusion in that regard, and we agree in that conclusion. Therefore we have affirmed the Examiner's decision in all respects.

Dated at Madison, Wisconsin, this 3rd day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Gary L. Covelli, Commissioner

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1/ Emphasis added.