STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE OF WISCONSIN, DEPARTMENT OF EMPLOYMENT RELATIONS, Complainant, vs. WISCONSIN ASSOCIATION OF SCIENCE PROFESSIONALS, LOCAL 3732, WISCONSIN FEDERATION OF TEACHERS, AFL-CIO, Respondent.	Case CLII No. 26562 PP(S)-75 Decision No. 18012-C

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

Examiner Amedeo Greco having, on February 24, 1981, issued his Findings of Fact, Conclusion of Law and Order in the above entitled proceeding wherein he dismissed the instant complaint; and the State of Wisconsin Department of Employment Relations having, on March 13, 1981, 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 July 13, 1981, 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, Conclusion 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 13th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

_____
Morris Slavney, Commissioner

_____
Herman Torosian, Commissioner

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

Background

The Wisconsin Association of Science Professional, Local 3732, Wisconsin Federation of Teachers, AFL-CIO, hereinafter referred to as the Association, is the certified collective bargaining representative of "science" professionals in the employ of the State, and that in said relationship the parties have entered into collective bargaining agreements covering wages, hours and working conditions of said employes. This proceeding involves a collective bargaining agreement in effect during the 1977-1979 biennium, which contained, among its provisions, the following material herein:

> It is recognized by the parties that the Employer is prohibited from bargaining on the policies, practices and procedures of the civil service merit system relating to . . . the job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classifications, assignment and reassignment of classifications to salary ranges, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocation.

The agreement also provided for final arbitration of grievances arising with respect to the interpretation and application of the terms of said agreement, and in that regard, provided in part, as follows:

> On grievances where the arbitrability of the subject matter is an issue, a separate aribtrator shall be appointed to determine the question of arbitrability unless the parties agree otherwise.

Pursuant to a survey conducted by the State's Department of Administration, the Department of Natural Resources (DNR) sought and obtained reclassifications of certain positions previously classified as Natural Resources Specialists, and as a result of the State's belief that said reclassified positions were not occupied by "science" professionals, considered the incumbents of said positions not included in the bargaining unit represented by the Association. The Association filed a grievance with respect to said reallocation out of its bargaining unit, and the matter not having been resolved in the grievance procedure, it requested that the grievance proceed to arbitration as provided in the collective bargaining agreement. The State originally did not object to proceeding to arbitration, and as a matter of fact, advised the Association that the State desired arbitration initially on the issue of subject matter arbitrability. After the parties had selected the arbitrator, and after a postponement of the initial hearing date, the State changed its position in the matter and advised the Association and the arbitrator that it would not proceed, contending that the subject matter of the grievance was "clearly and unambigously not arbitrable" under the collective bargaining agreement, as well as under the State Employment Labor Relations Act (SELRA). Nevertheless the Association persisted in its demand that the matter proceed to arbitration, and over the objections of the State, the arbitrator set hearing in the matter, which was postponed as a result of the filing of the complaint initiating this proceeding.

The Examiner's Decision

The Examiner concluded that the Association, in seeking arbitration of the grievance involved, did not commit any unfair labor practices within the meaning of any provision of SELRA, and therefore dismissed the complaint, and in that regard the Examiner found that under the collective bargaining agreement the Association had the right to seek arbitration regardless "of the clear outcome" which the State expected, and that the State was free to contend before

the arbitrator that the matter was not arbitrable for the reasons previously claimed by it, and further that if the arbitrator concluded otherwise, and the State was of the belief that such award contravened State law, the State could seek review of the award.

The Petition for Review

In its peition for the review that State simply reiterated the arguments submitted to the Examiner, to the effect that SELRA prohibits the State from bargaining with respect to classifications of employes, and therefore its participation in an arbitration on an issue regarding same would be violative of the law. Thus, the Association's persistence that the State proceed to arbitration constitutes an unfair labor practice.

The Association contends that the parties have agreed to arbitrate disputes arising under their collective bargaining agreement, and that the position of the State goes to the question of jurisdiction of the arbitrator to determine the merits of the grievance, and therefore, the Association properly seeks arbitration of a proper matter.

Discussion

We have reviewed the Examiner's decision and his rationale in support thereof, as well as the briefs and arguments of the parties. The parties, in their collective bargaining agreement, defined the term grievance as "a written complaint involving an alleged violation" of any provision of the agreement. The Commission has long established that a party to a collective bargaining agreement providing for final and binding arbitration of grievances arising thereunder has the right to proceed to such arbitration, where it is making a claim, which on its face, is governed by the collective bargaining agreement 1/ Significantly the agreement between the parties contained a provision, as set forth above, reiterating the statutory prohibition set forth in Sec. 111.91(2) with respect to "prohibited" subjects of bargaining. Significantly there is no provision in the agreement setting forth that any grievance arising out of such "prohibited" State action is exempt from the grievance and arbitration procedure. Therefore, on the face of the agreement there appears to be a claim that the agreement governs the subject matter of the grievance. Further, even if the outcome of proceeding to arbitration is clear as argued by the employer, the Association's pursuit of arbitration is not violative of SELRA, and thus we conclude that the Examiner correctly dismissed the complaint.

Dated at Madison, Wisconsin this 13th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

_____
Morris Slavney, Commissioner

_____
Herman Torosian, Commissioner

1/ Hines Lumber Co. (5854-A) 1/62; Oostburg Schools (11196-A,B) 12/71.