

Article IV - Grievance Procedure

Section 1 - Definitions

a) A grievance shall be any matter which involves a violation of one or more specific provisions of this Agreement.

b) A complaint is a personal dissatisfaction of a teacher with any aspect of his/her employment which does not involve a grievance as defined above.

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Section 3 - Limitations

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g) The final step for resolving a complaint will be Step 3 as outlined in Section 4 below (an appeal before the Assistant District Director - Administration whose decision shall be final).

Section 4 - Steps

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Step 4. (Arbitration)

If the grievance is not resolved satisfactorily, either party may appeal within fifty (50) school days for arbitration.

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- c. The decision and award of the arbitrator shall be in writing and shall set forth his/her opinions and conclusions on the issues submitted to him/her.
- d. The decision and award of the arbitrator, if made in accordance with his/her jurisdiction and authority under this Agreement, will be accepted as final by the parties to the dispute and both parties will abide by it.
- e. The arbitrator shall determine whether there has been a violation of an express provision of this Agreement but shall have no power to add to, subtract from modify, or amend this Agreement.

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Article X - Academic Freedom

Section 1 - Within MATC

The spirit of this institution, developed and sponsored under progressive administrative and teacher leadership, encourages the teaching, investigating, and publishing of findings in an atmosphere of freedom and confidence which shall continue to be upheld by the Board. We believe that when students are exposed to a variety of opinions and beliefs, greater knowledge and maturity of judgment occur.

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Article XVI - Saving Clause

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The Board agrees that it will make no changes which are in conflict with this Agreement, in existing policies.

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4. On May 9, 1980, Paul T. Witzke, a member of both Respondent's faculty and the bargaining unit represented by Complainant, filed a grievance alleging "administrative interference in the adoption of departmental text books" because the administration refused to adopt new textbooks selected by the department's faculty. Witzke's supervisor denied the grievance. Said grievance was processed through the grievance procedure up to arbitration. On July 2, 1980 Complainant requested arbitration of the grievance. Respondent refused, and continues to refuse, to proceed to arbitration on the basis that the grievance did not raise an issue involving a specific provision of the agreement.

CONCLUSIONS OF LAW

1. The grievance filed by Paul T. Witzke raises a claim which on its face is covered by the terms of the parties' collective bargaining agreement.

2. Respondent's refusal to proceed to arbitration on the Witzke grievance did not constitute a refusal to bargain, and therefore, such action was not violative of Section 111.70(3)(a)4 of MERA.

3. The Milwaukee Area Board of Vocational, Technical and Adult Education District No. 9 has violated and continues to violate the terms of Article IV of the collective bargaining agreement then existing between it and the American Federation of Teachers, Local 212, WFT, AFL-CIO, by refusing to process the Witzke grievance to final and binding arbitration, and thus, has committed, and continues to commit, a prohibited practice within the meaning of Section 111.70 (3)(a)5 of the MERA.

On the basis of the above Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

The Milwaukee Area Board of Vocational, Technical and Adult Education District No. 9, its officers and agents, shall immediately:

1. Cease and desist from refusing to submit the Witzke grievance to final and binding arbitration;

2. Take the following action, which the Examiner finds will effectuate the policies of the MERA:


(a) Submit the Witzke grievance to final and binding arbitration by selecting an arbitrator in the manner provided in the agreement, and, participate in the proceedings before the arbitrator so selected.

(b) Notify the Wisconsin Employment Relations Commission within twenty (20) days of the date of this Order, in writing, of what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 5th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Douglas V. Krudson, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

The complaint alleges that Respondent has refused to submit to arbitration a grievance filed by Paul T. Witzke, which refusal violates the terms of the grievance and arbitration procedure in the parties' 1977-81 agreement, and therefore, violates Sections 111.70(3)(a)4 and 5 of MERA.

On May 9, 1980 the grievance at issue herein was filed. Said grievance alleged that Respondent's administrators had interfered in the adoption of new textbooks for the Mathematics Department, because the administrators had refused to adopt books which had been selected by the teaching staff. Respondent denied the grievance, which it viewed to be a complaint, rather than a grievance. The matter was processed through the grievance procedure up to arbitration.

In a letter dated July 2, 1980 Complainant requested the Commission to arrange for arbitration of the matter. On either July 15 or 16, 1980 Respondent refused to concur with Complainant's request for arbitration. The instant complaint was filed on November 19, 1980.

Complainant argues that since the grievance alleges a violation by Respondent of specific provisions of the agreement, then the arbitrator has the authority to determine if a violation actually occurred. The grievance procedure can't reasonably be interpreted to allow only the processing of grievances which Respondent believes represent actual violations rather than frivolous complaints.

Respondent contends that the agreement does not refer to textbooks. Further, the selection of textbooks constitutes educational policy, and therefore, it is a permissive subject of bargaining. Accordingly, the grievance actually is a complaint which the agreement specifically excludes from arbitration. Moreover, the provisions of the agreement, which the grievance alleged the Respondent has violated, have no relevance to the selection of textbooks. Thus, the grievance fails to raise an issue, which on its face, is governed by the terms of the agreement.

It is well established that the function of the Commission, or of a court, in cases of an alleged refusal to arbitrate under a collective bargaining agreement arbitration provision, is limited to ascertaining whether the party seeking arbitration is making a claim which on its face is arguably governed by the agreement. 1/

The instant grievance arguably raises a question concerning the interpretation and application of Article X, Section 1, since Complainant alleges that Respondent's refusal to change the mathematics textbooks, as requested by the mathematics faculty, violates the spirit specified in said provision. Although Respondent's position may ultimately be upheld in arbitration, the judgment of whether Respondent's actions violated Article X, Section 1, must be made by the arbitrator. The undersigned could make such a judgment only by interpreting the agreement, which is a function reserved to the arbitrator.

1/ Milwaukee Board of School Directors, Decision No. 14614-A, 1/77.

Inasmuch as it has been determined that the grievance does raise an issue which on its face may be governed by Article X, Section 1, of the agreement, it is unnecessary to determine whether the grievance may also be governed by other provisions of the agreement as alleged by Complainant.

Dated at Madison, Wisconsin this 5th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Douglas V. Knudson, Examiner