

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHULLSBURG EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	Case VIII
	:	No. 28650 MP-1254
vs.	:	Decision No. 19036-A
	:	
SHULLSBURG SCHOOL DISTRICT,	:	
	:	
Respondent.	:	
	:	

Appearances:

Ms. Roberta Klein, Cullen & Weston, Attorneys at Law, 20 North Carroll Street, Madison, Wisconsin 53703, appearing on behalf of the Association.

Mr. John N. Kramer, Kramer, Kussmaul & Hawley, Attorneys at Law, 1038 Lincoln Avenue, Fennimore, Wisconsin, 53809 appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission regarding the above-entitled matter; and the Commission having appointed William C. Houlihan, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.70(5), Wis. Stats.; and hearing on said complaint having been held in Shullsburg, Wisconsin on December 22, 1981, before the Examiner; and the parties having filed post hearing briefs by February 11, 1982; and the Examiner having considered the evidence and arguments, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. That the Shullsburg Education Association, hereinafter the Association, is an organization which exists, at least in part, for the purpose of engaging in collective bargaining over grievances, labor disputes, wages, hours, and conditions of employment with the Shullsburg School District and is the certified collective bargaining representative of certain teaching employes of the school district and maintains an office c/o Cullen & Weston, Attorneys at Law, 20 North Carroll Street, Madison, Wisconsin 53703.
2. That the Shullsburg School District, hereinafter the District is a school district within the State of Wisconsin, which engages the services of employes, and maintains an office at 444 Judgement Street, Shullsburg, Wisconsin 53586.
3. That, at all times material hereto the Association and the District were parties to a collective bargaining agreement which contains, among others, the following provisions:

SECTION A

RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION AND THE SCHOOL BOARD

ARTICLE I RECOGNITION

The Board hereby recognizes the Association as the exclusive bargaining agent for all regular full-time and regular part-time certificated professional personnel in teaching, but excluding the following:

1. per diem substitute teachers;
2. non-professional personnel such as teacher aides, maintenance employes, janitors, office and clerical personnel, cooks;
3. any employee defined by Wisconsin Statutes 111.70 as administrative and/or supervisory; Cooperative Educational Services Agency (C.E.S.A.) personnel.

ARTICLE II BOARD RIGHTS

Except as specifically modified by this Agreement, the Board retains without limitations all authority, rights and powers vested in it by all laws, rules and regulations of the State of Wisconsin. The exercise of these authorities, rights and powers shall not be subject to the grievance procedure.

ARTICLE IV TEACHER RIGHTS

. . .

E. All rules and regulations governing the teachers' wages, hours and conditions of employment shall be interpreted and applied uniformly throughout the District

F. Nothing herein may be interpreted to limit all other rights that teachers have under the applicable laws, regulations and decisions of the State of Wisconsin and the United States.

. . .

ARTICLE VI GENERAL PROVISIONS

. . .

C. Acceptance of a contract with the District carries with it an agreement to conform to all rules and regulations governing the school as stated in this Agreement, the Teachers Handbook, Statutory requirements, and School Board Policies.

. . .

ARTICLE VII GRIEVANCE PROCEDURE

A. A Grievance is defined as a dispute arising over the interpretation and/or application of the Agreement and disputes related to wages, hours and conditions of employment.

1. The Association may request all pertinent information needed by the Association to represent bargaining unit members.

B. The Grievance may be initiated by an individual teacher against the Administration; or the Association against the Administration; or individual or the Association against the Board.

. . .

D. The primary purpose of the procedure is to secure, at the lowest level possible, equitable solutions to a claim of the aggrieved person or persons. It should be determined at this stage at what level the grievance is pertinent. This will prevent prevent loss of time and airing the grievance between inappropriate parties.

. . .

Step V: If the grievant can substantiate that the Board's decision was made arbitrarily,

discriminately, or illegally then he or she has the right to appeal to the Wisconsin Employment Relations Commission (W.E.R.C.) for arbitration under its rules. Written notice of a request for arbitration is made with the clerk of the Board within ten (10) days of receipt of the Board's answer in Step IV. The Board and the Association will share equally any joint costs such as the fee and expense of the arbitrator and the cost of the hearing room. The decision of the arbitrator shall be final and binding on the parties.

ARTICLE IX SUSPENSION AND DISMISSAL

A. Reasons for nonrenewal of a teacher contract shall not be arbitrary or capricious. Procedures for nonrenewal shall be according to s. 118.22 of the Wisconsin Statutes.

B. No teacher shall be suspended or dismissed without just cause.

C. Nothing in this section shall preclude the immediate suspension without pay of a teacher for violation of rules and regulations, Board policies or negligence in the performance of duties when determined by the Administration thus such violation or negligent act warrants immediate suspension during the course of investigation and prior to the hearing held on the alleged violation or negligent act.

4. That Kathleen A. Vosberg, Jeanette Knutson, Joyce Meyers and Annette Canfield are all employes of the District, are in the bargaining unit represented by the Association, and are covered by the provisions of the collective bargaining agreement.

5. That the District issued individual teaching contracts to Vosberg, Knutson, Canfield, and Meyers prior to March 15, 1981; that each of the contracts were signed and returned by the individuals; that Vosberg returned her contract on April 21, 1981; that Knutson returned her contract on April 21, 1981; and that Meyer returned her contract on April 22, 1981.

6. That the following provision is contained on each of the individual contracts; "this contract will be consummated and valid only if it is signed by the teacher and returned to superintendent's office, 444 North Judgement Street, Shullsburg, Wisconsin on or before April 15, 1981."

7. That the District refused to accept the returned individual contracts.

8. that the Association filed a grievance on behalf of Vosberg, Knutson, Canfield and Meyers, alleging violations of Section A, Article IX (A)(B) and Section A, Article IV (E) of the collective bargaining agreement; that the grievance provides the following:

111. Statement of Grievance: The District has refused to accept signed, valid teaching contracts submitted by the individual teachers. The contracts were submitted on April 21 or April 22, 1981, in either case the first business day for the teachers following April 15th. April 15th, in the current school calendar, fell during a scheduled calendar recess. Further, the District failed to notify teachers of its requirement to have all contracts returned prior to the commencement of the calendar recess.

The District took no action to nonrenew or to lay off any of the teachers. The District, therefore, has taken action to dismiss the grievants without just cause or, at least, is taking action that is arbitrary and capricious in nature and is in violation of the collective bargaining agreement.

The District's conduct toward the teachers is not in conformance with its treatment of others in the same situation and is, therefore, also in violation of the collective bargaining agreement.

that the grievance seeks immediate reinstatement of the teachers including reimbursement for lost monies and/or benefits.

9. That the District wrote the following letter as a response to the grievances;

IN THE MATTER OF THE "GRIEVANCE" OF JEANETTE E. KNUTSON
JOYCE MYERS, KATHLEEN A. VOSBERG AND ANNETTE CANFIELD

The matters raised in the alleged grievance of the Shullsburg Education Association filed at Steps 1 and 2 of Article VII, Subsection B and D on behalf of Jeanette E. Knutson, Joyce Myers, kathleen A. Vosberg and Annette Canfield are not subject to the grievance procedure under the collective bargaining agreement. Section 118.22 of the Wisconsin Statutes reads in part as follows:

A teacher who received a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew his contract for the ensuing school year on or before March 15, shall accept or reject in writing such contract not later than the following April 15.

This matter is therefore not subject to the grievance procedure pursuant to Article II of the collective bargaining agreement which reads as follows:

Except as specifically modified by this agreement, the Board retains without limitations all authority, rights and powers vested in it by all laws, rules and regulations of the State of Wisconsin. The exercise of these authorities, rights and powers shall not be subject to the grievance procedure.

There is no provisions of the collective bargaining agreement which modifies the provisions of Section 118.22(2) of the Wisconsin Statutes. In addition, Article VI Subsection D specifically requires teachers covered by the agreement to comply with the statute and it reads as follows:

Acceptance of a contract with the district carries with it an agreement to conform to all rules and regulations governing the school as stated in this agreement, the Teachers Handbook, Statutory Requirements, and School Board Policies.

The District is under no legal or contractual obligation to notify teachers of the April 15 deadline requiring the return of the teachers contract, however, each of the individual contracts involving these teachers contained the following clear language as to the contractual deadline.

Execution and Return of Contract

This contract will be consummated and valid only if it is signed by the teacher and returned to Superintendent's office, 444 North Judgement Street, Shullsburg, Wisconsin, on or before April 15, 1981.

10. That the Association requested the Wisconsin Employment Relations Commission to appoint a panel of arbitrators to arbitrate the grievance.

11. That the District refused, and continues to refuse to submit the disputes concerning Vosberg, Knutson, and Meyers to arbitration; that the arbitrability of the Canfield grievance has been resolved by the parties.

CONCLUSIONS OF LAW

1. That the Shullsburg Education Association is a labor organization within the meaning of Section 111.70(1)(j), Wis. Stats.
2. That the Shullsburg School District is a municipal employer within the meaning of Section 111.70(1)(a), Wis. Stats.
3. That by refusing to submit the grievances of Vosberg, Knutson, and Meyers to arbitration the District has violated, and continues to violate Section 111.70(3)(a)5, Wis. Stats.

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

ORDER

That Respondent, School District of Shullsburg and its agents, shall immediately:

1. Cease and desist from refusing to submit the aforesaid grievance and issues related thereto to arbitration.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70 of the Municipal Employment Relations Act.
 - a) Comply with the arbitration provisions of the collective bargaining agreement existing between Respondent and Shullsburg Education Association with respect to the grievance involving Vosberg, Knutson, and Meyers.
 - b) Notify the Shullsburg Education Association that Respondent will proceed to arbitration on said grievance and the issues concerning same.
 - c) Participate with the Shullsburg Education Association in the arbitration proceedings before the arbitrator to resolve the grievance.
 - d) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith. 1/

Dated at Madison, Wisconsin this 20th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan
William C. Houlihan, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or

(Continued on Page 6).

1/ modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Background

Kathleen Vosberg, Jeanette Knutson and Joyce Meyers are teachers employed by the School District of Shullsburg. In accordance with Section 118.22 Wis. Stats. the School District issued individual contracts to these teachers prior to March 15, 1981. The contracts were signed and returned. Vosberg and Knutson returned their contracts on April 21, 1981; Meyer returned hers the next day, April 22, 1981. The District refused to accept the returned contracts.

The Association filed a grievance over the Boards refusal to accept the signed contracts, and ultimately requested that the dispute be submitted to grievance arbitration. The District refused to consider the grievance as a matter appropriate for the grievance procedure and refuses to submit the matter to arbitration.

The question before this Examiner is whether or not the District's refusal to submit the grievance to binding arbitration constitutes a violation of Section 111.70(3)(a)(5), Wis. Stats.

Positions of the Parties

It is the position of the Association that the District violated Section 111.70(3)(a)5 Wis. Stats., in refusing to proceed to arbitration over the grievances. The Association contends that the standard, against which the employers refusal to arbitrate should be measured, is the following

If any construction of a contract could encompass the grievance on its face and make it arbitrable, the grievance is arbitrable unless explicitly prohibited by the contract. Unless it can be said with positive assurance that the arbitration clause is not susceptible to an interpretation which makes the grievance arbitrable, the grievance is arbitrable.

The association contends that arbitration clauses are to be given their fullest meaning with doubts resolved in favor of coverage.

According to the Association, the task of this Examiner is to determine whether the grievance states a claim which on its face is covered by the collective bargaining agreement. The Association cites caselaw authority for each of its contentions. The Association asserts that on their face the grievance claims are arbitrable.

It is the position of the District that extension or renewal of an individual teaching contract is controlled by Section 118.22 Stats. According to the District the individual contract terminates if not renewed. The District argues that the collective bargaining agreement neither interferes with, modifies, nor enlarges upon Section 118.22. Under Article II the Board retains those legal rights not modified by the collective bargaining agreement and the exercise of those rights are not subject to the grievance procedure.

According to the District the Union bears the burden of establishing the right to invoke arbitration through a specific provision of the agreement. The renewal of a contract is alleged not to involve an interpretation or application of the agreement nor a dispute relating to wages, hours, and conditions of employment.

The District contends that the just cause standard does not apply to renewal of contracts or nonrenewal.

Discussion

This Commission has for years held that a grievance which, on its face, states a claim governed by the collective bargaining agreement is substantively

arbitrable. 2/ Similarly, procedural defenses to arbitrability have consistently been regarded as matters properly placed before arbitrators. 3/ The Commission's policy in this regard is mirrored in the courts. Wisconsin's Supreme Court, in Jt. School District No. 10 v. Jefferson Education Association 78 Wis. 2d 94 cautioned lower courts confronted with arbitrability questions arising out of collective bargaining disputes. In Jefferson, the court offered the following direction.

When the court determines arbitrability it must exercise great caution. The court has no business weighing the merits of the grievance. It is the arbitrators' decision for which the parties bargained. In Dehnart v. Waukesha Brewing Co., Inc., 17 Wis.2d 44, 115 N.W.2d 490 (1962), this court adopted the Steelworkers Trilogy teachings of the court's limited function. The court's function is limited to a determination whether there is a construction of the arbitration clause that would cover the grievance on its face and whether any other provision of the contract specifically excludes it. This case differs from those in the Steelworkers Trilogy. United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). The Steelworkers Cases involve broad arbitration clauses submitting questions of contract interpretation to the arbitrator. This contract delineates a restricted area of arbitrable grievances. Nevertheless, we believe the teachings of the Steelworkers Trilogy are applicable to the case at bar.

"An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582, 583 (1960).

Our adherence to the Trilogy is in keeping with the strong legislative policy in Wisconsin favoring arbitration in the municipal collective bargaining context as a means of settling disputes and preventing individual problems from growing into major labor disputes. Secs. 111.70(3)(a)5, 111.70(6), Stats.; Local 1226 v. Rhinelanders, 35 Wis. 2d 209, 216, 151 N.W. 2d 30 (1967); Teamsters Union Local 695 v. Waukesha County, 57 Wis. 2d 62, 69, 203 N.W. 2d 707 (1973).

Jefferson, involved a teacher who, upon receipt of his individual teaching contract from his School District employer crossed out the "Probationary Contract" notation that had been placed on it, and returned the altered document to the District. The District treated the returned document as a rejection of its proffered contract and a counteroffer, which it declined to accept. The Association, representing the individual, characterized the District's action as a discharge or, in the alternative, a non-renewal either of which were arbitrable under the collective bargaining agreement. The District contended that its action was neither a discharge nor a non-renewal, that it had contractually agreed to submit only discharge and non-renewal grievances to arbitration, and that the matter was therefore not arbitrable.

In light of the very limited arbitration clause in the Jefferson contract, the court required the Association to point to specific contract language which arguably expressly covered the subject of the grievance. The Association relied upon the contractual agreement to arbitrate discharge and non-renewal grievances. The court found the matter arbitrable with the following holding:

We hold that it cannot be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. The grievance is therefore arbitrable.

2/ Spoooner Jt. School District No. 1, (14416-A) 9/76, Oostsburg Jt. School District No. 14, (11196-A, B) 12/72, Seaman Andwall Corp., (5910) 1/62.

3/ Monona Grove Jt. School District No. 4, (11614-A, B) 8/73.

The Shullsburg collective bargaining agreement defines a grievance as "a dispute arising over the interpretation and/or application of the Agreement and disputes related to wages, hours and conditions of employment". This broad grievance definition easily encompasses a dispute as to the continued employment of three teachers with the District.

The collective bargaining agreement in this matter reflects an agreement to arbitrate grievances "if the grievant can substantiate that the Board's decision was made arbitrarily, discriminately, or illegally".

While the language, on its face, raises some question as to precisely what is arbitrable, that matter has previously been litigated by these parties and resolved through grievance arbitration. On August 21, 1981, Arbitrator Peter Davis ruled 4/ that the grievant must substantiate his case to a grievance arbitrator, as opposed to the employer. Davis also ruled that any violation of the collective bargaining agreement is illegal inasmuch as Section 111.70(3)(a) 5 Stats., makes it illegal to violate the terms of a collective bargaining agreement.

The grievance which the Association seeks to submit to arbitration alleges a dismissal, further alleges arbitrary and capricious action on the part of the District, and finally alleges disparate or discriminatory treatment of the grievants.

The court's ruling in Jefferson, in conjunction with Arbitrator Davis' Award make each of these claims arbitrable. On the question of whether the District's action (or non-action) constituted a dismissal the high court has considered, and expressly rejected, an arbitrability claim substantially equivalent to that advanced by this District. The District makes no effort to distinguish the arguments it is advancing in this matter from those submitted by the Employer in Jefferson. Whether or not the District acted in an arbitrary, capricious, or discriminatory fashion in this matter involves a question of fact. Under the logic of the Davis Award all such questions are for the arbitrator.

It is noteworthy that in Article IX, A the parties contractually agreed that "Procedures for nonrenewal shall be according to Section 118.22 of the Wisconsin Statutes." It is at least arguable that the parties have, through this provision, incorporated statutory non-renewal procedures into the collective bargaining agreement. Under the Davis award, the question of whether or not the contract does so is one for the arbitrator. Consistent with the policy of the Commission and the courts of giving arbitration clauses in collective bargaining agreements their fullest meaning I conclude tht the grievance states a claim which on its face is arbitrable.

Dated at Madison, Wisconsin this 20th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan
William C. Houlihan, Examiner

4/ School District of Shullsburg, unpublished decision, Exhibit 5.