

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DODGE COUNTY SHERIFF	:	
DEPARTMENT, EMPLOYEES	:	
LOCAL 1323B, AFSCME, AFL-CIO	:	
	:	
Complainant,	:	
	:	Case LIX
vs.	:	No. 28977 MP-1282
	:	Decision No. 19354-B
DODGE COUNTY,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Lawton and Cates, Attorneys at Law, by Mr. Bruce Davey, 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of the Complainant.  
Mr. Steve Schmitz, Assistant Corporation Counsel, Dodge County, Dodge County Courthouse, Juneau, Wisconsin 53039-1384, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Dodge County Sheriff's Department, Employees Local 1323B, AFSCME, AFL-CIO, having filed a complaint on December 15, 1981 with the Wisconsin Employment Relations Commission, wherein it alleged that Dodge County had violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA) by Dodge County's refusal to submit a grievance to arbitration pursuant to the parties collective bargaining agreement; and the Commission having on February 2, 1982, appointed Edmond J. Bielarczyk, Jr., a member of the Commission's staff, as Examiner to conduct a hearing on said complaint and to make and issue Findings of Fact, Conclusions of Law and Order as set forth in Secs. 111.70(4)(a) and 111.07 of the Wisconsin Statutes; and hearing in the matter having been conducted on March 12, 1982, in Juneau, Wisconsin; and a stenographic transcript of the proceedings having been prepared; and post-hearing arguments having been exchanged by the Examiner on May 12, 1982; and the Examiner, after consideration of the arguments of the parties and the record as a whole, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Dodge County Sheriff's Department, Employees Local 1323B, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization which, since January 1, 1981, has represented for purposes of collective bargaining certain employes with the power of arrest of the Dodge County Sheriff's Department.
2. That Dodge County, hereinafter referred to as the Respondent, is a municipal employer and has its offices located at Juneau, Wisconsin; that among its governmental functions the Respondent operates a Sheriff's Department; and, that at all times material hereto, Ronald Guptill has been employed by the Respondent's Sheriff's Department as a Deputy Sheriff.
3. That the Complainant and Respondent are parties to a collective bargaining agreement, effective January 1, 1981 through December 31, 1981, covering wages, hours and conditions of employment; that said agreement contains the following provisions which are material hereto:

AGREEMENT

. . .

WHEREAS, it is intended that the following Agreement shall be an implementation of the provisions of Section 111.77 of the Wisconsin Statutes, consistent with that legislative authority which devolves upon the County of Dodge, the statutes and, insofar as applicable, the rules and regulations relating to or promulgated by the Civil Service Ordinance.

. . .

ARTICLE II

Management Rights

2.1 Except as hereinafter provided, the Employer shall have the sole and exclusive right to determine the number of Employees to be employed, the duties of each of these Employees, the nature and place of their work, and all other matters pertaining to the management and operation of the County, including the hiring, promoting, transferring, demoting, suspending or discharging for cause of any Employee. This shall include the right to assign and direct Employees, to schedule work and to pass upon the efficiency and capabilities of the Employees and the Employer may establish and enforce reasonable work rules and regulations. Further, to the extent that rights and prerogatives of the Employer are not explicitly granted to the Union or Employees, such rights are retained by the Employer. However, the provisions of this section shall not be used for the purpose of undermining the Union or discriminating against any of its members.

. . .

ARTICLE IV

Grievance Procedure

4.1 Grievance: A grievance is defined as a matter involving the interpretation, application or enforcement of the terms of this Agreement or a claim by an employee, Employees or Employee representative that he had been discriminated against or treated unfairly or arbitrarily by the Employer as a result of any action taken in the exercise of its rights and powers.

. . .

4.3 Arbitration: If a satisfactory settlement is not reached as outlined above, either party may, within ten (10) days after the written answer is received or due from the Personnel and Labor Negotiations Committee, request the Wisconsin Employment Relations Committee to appoint an arbitrator from its staff to hear the grievance, whose decision shall be final and binding on both parties.

. . .

and, that said agreement was ratified by the Complainant on May 7, 1981 and adopted by resolution by the Respondent on May 19, 1981.

4. That the Respondent on June 24, 1980, enacted Ordinance No. 187 which contains the following provisions:

. . .

Section VII - SUSPENSION, DISMISSAL OR OTHER  
DISCIPLINARY PROVISIONS

(A) Whenever the Sheriff or Chief Deputy or a majority of the members of the commission determines that a deputy sheriff is incompetent to perform his or her duties, or merits suspension, demotion or dismissal, a written report shall be made to the Grievance Committee setting forth the complaint.

(B) There is hereby created a Grievance Committee for the Dodge County Sheriff's Department, said committee shall consist of five (5) members.

The Grievance Committee shall be appointed in the same manner and at the same time as standing committees of the County Board of Supervisors are appointed, except that the first Grievance Committee shall be appointed and prepared to serve as of January 1, 1981. The committee may be made up of members of the Board of Supervisors, or other electors in Dodge County, or both.

(C) Any member of the Dodge County Sheriff's Department may be suspended, demoted or dismissed in accordance with Section 59.21(8)(b) Wis. Stats., for cause. If the complaining official is the Sheriff he may suspend or demote the officer at the time such complaint is filed.

(D) The Grievance Committee shall forthwith notify the accused officer of the filing of the charges and upon request furnish him with a copy of the same.

(E) The Grievance Committee shall, if the officer requests hearing, hold such hearing following the procedure as designated in Wis. Stats. 59.21.

Section VIII - GENERAL PROVISIONS

. . .

(B) The salaries of deputy sheriffs shall be determined through the collective bargaining process for all union employees and by the Personnel and Labor Negotiations Committee of the Dodge County Board of Supervisors for non-union personnel.

(C) Except as expressly stated, this ordinance shall not diminish the rights of deputy sheriffs to collectively bargain with respect to wages, hours or conditions of employment.

. . .

Section XI - EFFECTIVE DATE

This ordinance shall be effective January 1, 1981, contemporaneous with the effective date of Ordinance No. 186, except that the portion of Section VII. part (B) regarding the appointment of the First Grievance Committee shall be effective immediately upon passage and publication of this ordinance.

. . .

5. That prior to the effective date of Ordinance No. 187, the Respondent had in effect since August 12, 1975 Ordinance No. 112 which contained the following provisions which are material hereto:

. . .

10. There is hereby created a Grievance Committee consisting of the Sheriff and District Attorney Committee of the Dodge County Board of Supervisors and members of said Grievance Committee shall be paid in the same manner as all other members of County Board Committees.

11. Deputy Sheriffs may be dismissed or demoted for all causes specified in Section 59.21(8)(b) of the Wisconsin Statutes.

12. (a) Whenever the Sheriff, or a majority of the members of the Sheriff and District Attorney Committee of the Dodge County Board of Supervisors, believes that a deputy sheriff has acted to show himself to be incompetent to perform his duties or to have merited suspension, demotion, or dismissal; they shall report in writing to the Grievance Committee setting forth specifically their complaint, and when the party filing the complaint is the Sheriff, the Grievance Committee may suspend or demote the officer at the time such complaint is filed. Thereafter, the procedure before the Grievance Committee shall be as provided by Section 59.21(8)(b) of the Wisconsin Statutes and acts amendatory thereof.

. . .

6. That prior to January 1, 1981, the Respondent recognized Teamsters Union Local No. 695, hereinafter referred to as the Teamsters, as the exclusive bargaining representative for all employes of the Dodge County Sheriff's Department with the power of arrest; that since at least 1977 and until January 1, 1981 the Respondent and the Teamsters entered into successive collective bargaining agreements which contained the following provisions which are material hereto:

. . .

#### ARTICLE I - INTENT AND PURPOSE

1:1 It is intended that the following Agreement shall be an implementation of the provisions of Section 111.70 of the Wisconsin Statutes, consistent with that legislative authority which devolves upon the County of Dodge, the statutes, and, insofar as applicable, the rules and regulations relating to or promulgated by the Civil Service Ordinance.

. . .

#### ARTICLE V - GRIEVANCE PROCEDURE

5:1 GRIEVANCE. A grievance is defined as any matter involving the interpretation, application, or enforcement of the terms of this Agreement, or a claim by an employee, employees, or employee representative, that he has been discriminated against or treated unfairly or arbitrarily by the Employer as a result of any action taken in the exercise of its rights and powers.

7. That the Respondent and the Teamsters in 1977 jointly requested the Commission to appoint an arbitrator to arbitrate a dispute concerning the discharge of a Deputy Sheriff Jailor; that hearing on said matter was held on January 6, 1978; and, that an award was issued on said matter on October 16, 1978.

8. That on July 23, 1981, the Respondent notified Deputy Sheriff Ronald Guptill that he was being placed on a two-day suspension for conduct non-becoming an officer; that by letter dated July 24, 1981, Guptill was informed that a "formal complaint" was filed by Respondent's Chief Deputy with the Dodge County Grievance Committee, hereinafter referred to as the Grievance Committee; that said letter informed Guptill he had ten (10) days to request a hearing before the Grievance Committee and that he would be furnished a copy of the complaint upon request; that on July 30, 1981, the Complainant filed a grievance with the Respondent requesting a meeting with the Respondent and alleging the Respondent

did not have sufficient facts to issue the suspension; that on August 13, 1981, Respondent by letter replied to the Complainant that the disciplinary action taken was in accordance with Ordinance #187 and Section 59.21(8), Wisconsin Statutes, that the parties collective bargaining agreement did not pertain to the said disciplinary action, and that the matter would not be processed as a grievance; and, that on September 11, 1981 the Grievance Committee upheld the disciplinary action.

9. That on August 13, 1981 the Complainant requested that the Commission appoint a member of its staff to arbitrate said grievance; that on August 18, 1981, the Respondent advised the Commission by letter that it did not believe said grievance was subject to the parties collective bargaining agreement as the Respondent had enacted by ordinance a civil service commission pursuant to Section 59.21(a), Wisconsin Statutes which brings such disputes within the provisions of said statute and ordinance and advised the Commission that it would dispute the jurisdiction of the arbitrator at the hearing; that on November 18, 1981 the Respondent informed Arbitrator Christopher Honeyman, a member of the Commission's staff, that it would not concur in the Complainant's request for arbitration; and, that on December 15, 1981, the Complainant filed the instant complaint wherein it alleged that the Respondent's refusal to arbitrate said grievance violates Section 111.70(3)(a)5, Wisconsin Statutes.

10. That the Respondent contends that the parties' agreement requires said grievance to be submitted to the Grievance Committee in accordance with the Respondent's civil service ordinance, that the Respondent did not agree to arbitrate disciplinary matters when it agreed to the collective bargaining agreement, and that the Respondent's Ordinance should prevail over the parties' collective bargaining agreement.

11. That the Complainant contends the Respondent's refusal to submit said grievance to arbitration pursuant to the collective bargaining agreement's grievance procedure constitutes a violation of Section 111.70(3)(a)5, Wisconsin Statutes, that disciplinary actions are included in the broad and expansive language of the parties' grievance procedure, that there is no specific exclusion in the parties grievance procedure for disciplinary actions and therefore the grievance is arbitrable, and, that the collective bargaining agreement requires the Respondent to have "cause" in order to suspend a bargaining unit employe.

12. That the collective bargaining agreement, and more particularly, Article IV thereof, provides for final and binding arbitration of grievances involving the interpretation, application, or enforcement of the terms of the agreement.

13. That the Ronald Guptill grievance states a claim which on its face is covered by the parties' collective bargaining agreement.

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

#### CONCLUSION OF LAW

The Respondent by declining to permit the submission of the Ronald Guptill grievance to arbitration, which on its face is covered by the collective bargaining agreement, has committed and continues to commit, a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner issues the following

#### ORDER 1/

1. That the Respondent, Dodge County and its officers and agents shall immediately:

- a. Cease and desist from declining to submit the Ronald Guptill grievance to final and binding arbitration.

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

- b. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70 of the Municipal Employment Relations Act:
1. Comply with the arbitration provision of the 1981 collective bargaining agreement between it and Dodge County Sheriff's Department, Employees Local 1323B, AFSCME, AFL-CIO, with respect to the Ronald Guptill grievance.
  2. Notify Dodge County Sheriff's Department, Employees Local 1323B, AFSCME, AFL-CIO, that it will proceed to arbitration on said grievance.
  3. Participate with Dodge County Sheriff's Department, Employees Local 1323B, AFSCME, AFL-CIO, in final and binding arbitration proceedings concerning the Ronald Guptill grievance as set forth in the parties' 1981 collective bargaining agreement.
  4. Notify all employees of its Sheriff's Department by posting in conspicuous places where said employees are employed, copies of the notice attached hereto and marked "Appendix A". Said notice shall be signed by a duly authorized officer or agent of the Respondent, shall be posted immediately upon receipt of a copy of this Order and shall remain posted for a period of thirty (30) days thereafter. The Respondent shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by other material.
  5. 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.

Dated at Madison, Wisconsin this 9th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Edmond J. Bielarczyk Jr.  
Edmond J. Bielarczyk Jr. Examiner

1/ (Continued)

(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 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.

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. We will immediately cease and desist from declining to submit the Ronald Guptill grievance to final and binding arbitration.
2. We will comply with the arbitration provisions of the collective bargaining agreement with Dodge County Sheriff's Department, Employees Local 1323B, AFSCME, AFL-CIO.
3. We will participate with Dodge County Sheriff's Department, Employees Local 1323B, AFSCME, AFL-CIO, in final and binding arbitration proceedings concerning the Ronald Guptill grievance as set forth in the parties' collective bargaining agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

DODGE COUNTY

By \_\_\_\_\_

THIS NOTICE MUST BE POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

This matter concerns the Respondent's denial to proceed to final and binding arbitration on a grievance concerning Deputy Sheriff Ronald Guptill. The matter presented does not concern the merits of the Guptill grievance, but instead deals with the selection of the proper forum for the hearing and disposition of the grievance.

Background

On July 23, 1981 the Respondent notified Guptill that he was being placed on a two-day suspension for conduct non-becoming an officer. Subsequently, Guptill's suspension was grieved by the Complainant. On August 13, 1981, Respondent replied by letter that the disciplinary action taken against Guptill was in accordance with Respondent's civil service ordinance, Ordinance No. 187, and Section 59.21(a), Wisconsin Statutes. At that time, the Respondent also informed the Complainant that disciplinary actions were not subject to the parties' grievance procedure. The Complainant, on August 13, 1981, requested the Wisconsin Employment Relations Commission to appoint an arbitrator to arbitrate the Guptill grievance. Christopher Honeyman, a member of the Commission's staff, was informed by the Respondent on November 18, 1981, that it would not concur in the Complainant's request for arbitration. The Complainant, as a result of Respondent's refusal to concur to arbitrate the Guptill grievance, filed the instant matter with the Commission on December 15, 1981.

Complainant's Position

The Complainant contends that the language of the grievance procedure of the parties' collective bargaining agreement is broad and expansive. Complainant argues it includes grievances over whether there was cause for the suspension of a bargaining unit employe by the Respondent and that there is no explicit exclusion in the grievance procedure for such grievances. Therefore, the Complainant contends the Guptill grievance is arbitrable and Respondent's refusal to submit said grievance to arbitration pursuant to the parties' collective bargaining agreement is a violation of Section 111.70(3)(a)5, Wis. Stats.

Further, the Complainant contends that the language of the collective bargaining agreement had an understood and established meaning. The Complainant points out that the introductory language of the agreement and the language of the grievance procedure came from prior collective bargaining agreements between the Teamsters and the Respondent. In addition, the ordinance in effect prior to Ordinance No. 187 was virtually the same and the previous ordinance was in existence when said prior contracts were in effect. The Complainant argues that under said prior contracts it was understood that disciplinary actions were not excluded from the contractual grievance procedure. The Complainant contends that the parties did not negotiate a change in the 1981 agreement and that the Respondent is attempting to gain in litigation that which it neither sought nor obtained in negotiations.

Finally, the Complainant contends that the fact the Respondent adopted the collective bargaining agreement by resolution rather than ordinance cannot be relied on by the Respondent. Complainant argues that this defense was not raised in the Respondent's answer to the complaint filed in the instant matter, was first raised at the hearing at the conclusion of the Complainant's case, and therefore, should not be considered by the undersigned. Furthermore, Complainant argues that the parties intended for the grievance procedure to apply to disciplinary actions because, in the introductory language, the agreement specifically states ". . . insofar as applicable, the rules and regulations relating to or promulgated by the Civil Service Ordinance." The Complainant contends that the language of the agreement, its history, and the fact that on one prior occasion the same language was interpreted to require the arbitration of a disciplinary grievance, demonstrates that the parties intended the grievance procedure to apply to disciplinary actions. The Complainant also argues that the method by which the Respondent chooses to adopt the collective bargaining agreement is left to the Respondent, but the Respondent must use a method whereby it fully implements the agreement. Lastly, the Complainant contends that the courts have held that rules adopted by resolution are in effect incorporated into an ordinance (Taplick v. City of Madison Personnel Board, 90 Wis 2nd 400, 1979).

The Complainant would have the undersigned find that the Respondent violated Section 111.70(3)(a)4, Wis. Stats., by refusing to arbitrate the Guptill grievance and enter an order directing the Respondent to arbitrate said grievance, post appropriate notices, and refrain from similar conduct in the future.

### Respondent's Position

The Respondent contends that it did not agree to arbitrate the Guptill suspension on the grounds that it did not agree to arbitrate a disciplinary matter covered by the provisions of the civil service ordinance, Ordinance No. 187. Respondent argues that the parties' collective bargaining agreement does not contain an agreement to arbitrate the suspension of a deputy sheriff but that the collective bargaining agreement does contain an agreement that the civil service ordinance of Dodge County will govern matters relating to the suspension of a deputy sheriff.

The Respondent, in support thereof, argues that there is an unambiguous agreement between the parties to not arbitrate disciplinary matters and that even if a conflict exists between Ordinance No. 187 and the collective bargaining agreement, it can be harmonized. Further, that even if said conflict cannot be harmonized, the ordinance should prevail because to hold that the parties agreed to arbitrate disciplinary matters governed by the ordinance would effectively render at least half of the ordinance meaningless. The Respondent points out that said ordinance preexisted the collective bargaining agreement and argues that the resolution adopting the agreement cannot and does not have the effect of repealing or amending the ordinance. The Respondent also argues that to hold the ordinance inapplicable to union members might violate the constitutional guarantee of equal protection. Respondent's theory is that to hold that the ordinance is only applicable to non-union employees and not in force for union employees, or vice versa, would result in discrimination. The Respondent argues that the legislative authority for the ordinance, Section 59.21(8), Wis. Stats., does not allow counties to enact civil service systems for deputy sheriffs which allows the restriction of such systems to only non-union employees or only union employees. Respondent contends the equal protection clause not only forbids discriminatory laws which make distinction without a rational basis, it also forbids the discriminatory application of laws which are nondiscriminatory on their face.

Finally, the Respondent contends that if the undersigned cannot determine that the parties agreed that the civil service ordinance controlled disciplinary matters, then the undersigned should find that there was no agreement made by the parties on this issue.

The Respondent would have the undersigned dismiss the complaint.

### Discussion

The Wisconsin Employment Relations Commission has consistently held that when a party seeks enforcement of a collective bargaining agreement's arbitration provision, the scope of the Commission's inquiry shall be limited to a determination of whether the party seeking arbitration has stated a claim which, on its face, is covered by the collective bargaining agreement. The Commission's policy is consistent with federal substantive law and has been affirmed by the Wisconsin Supreme Court as well. 2/ It is therefore necessary for the undersigned to make

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2/ The Commission first acknowledged its adherence to these policies in the administration of the Municipal Employment Relations Act in Oostburg Joint School District No. 14 (11196-A, B) 11/72, 12/73. The Commission had consistently applied the same policy for many years in the administration of the equivalent provision contained in the Wisconsin Employment Peace Act; See, for example Dunphy Boat Corp. (3588). Federal cases often cited by the Commission in support of this policy include the following: Steelworkers vs. American Mfg. Co., 353 U.S. 564 (1960); Steelworkers vs. Warrior Gulf Navigation Co., 353 U.S. 574 (1960); Steelworkers vs. Enterprise Wheel & Car Corp., 353 U.S. 593 (1960); and John Wiley and Sons, Inc. vs. Livingston, 376 U.S. 543, (1964). Wisconsin State Supreme Court decisions adopting federal substantive law relied upon by the Commission include Denhart vs. Waukesha Brewing Company, Inc., 17 Wis. 2d 44 (1962), Joint School District No. 10 vs. Jefferson Ed. Assoc., 78 Wis. 2d 94 (1976), Milwaukee Police Association vs. Milwaukee, 92 Wis. 2d 145 (1979).

an initial determination as to whether the Complainant has made a claim which, on its face, is covered by the agreement.

Herein, the claim put forth by the Complainant is that a disciplinary action applied by the Respondent to a bargaining unit employe, Ronald Guptill, involves a contractual interpretation of the Management Rights clause 3/ to ascertain if the Respondent had "cause" for the disciplinary action. The definition of "grievance" in the instant agreement is quite broad:

. . . A grievance is defined as a matter involving the interpretation, application or enforcement of the terms of this Agreement or a claim by an Employee, Employees or Employee Representative that he had been discriminated against or treated unfairly or arbitrarily by the Employer as a result of any action taken in the exercise of its rights and powers.  
4/

Giving the broad contractual definition of "grievance" its full meaning and noting that the Complainant alleges that the Respondent did not have cause to suspend Guptill, the Examiner can only conclude that the Guptill grievance states a claim which on its face is covered by the collective bargaining agreement. Therefore, the Respondent has a duty to arbitrate such a grievance which, on its face, is covered by the collective bargaining agreement.

Unlike WERC v. Teamsters Local No. 563, 75 Wis 2nd 602, wherein the court held that a discharge pursuant to a violation of a City of Neenah residency ordinance was not arbitrable, the instant matter does not pertain to a violation of an ordinance but rather, pertains to the selection of the proper forum for the hearing and disposition of the Guptill grievance. The Respondent's defenses that the collective bargaining agreement specifically provides that the Dodge County Civil Service Ordinance 5/ governs disciplinary matters, or in the alternative that there was no "meeting of the minds" on this issue, are in themselves objections to the arbitrability of the grievance. Such objections, similar to objections that a grievance was not properly processed or that it was not filed in a timely fashion, are in and of themselves questions of contract interpretation which are properly within the jurisdiction of an arbitrator, the forum selected by the parties for the resolution of such issues. 6/ Further, the Commission has held that questions concerning whether disciplinary grievances are arbitrable are properly submitted to arbitration. 7/ Therefore, the undersigned concludes that it is not within his jurisdiction to review and apply the contractual provisions to the facts raised by the Respondent.

For the foregoing reasons, the undersigned concludes that the Respondent has and continues to commit a prohibited practice as defined by Section 111.70(3)(a) (5) of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin this 9th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Edmond J. Bielarczyk, Jr.  
Edmond J. Bielarczyk, Jr., Examiner

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3/ Article II of the agreement.

4/ Article IV of the agreement.

5/ Ordinance No. 187.

6/ City of Racine (14348) 10/79; City of Cudahy (18417-A) 5/81; Milwaukee County (16448-B) 4/79; Sauk Prairie School District (15282-B) 7/78.

7/ City of Cudahy, supra.