STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN STATE EMPLOYEES UNION (WSEU), AFSCME, COUNCIL 24, AFL-CIO, Complainant, vs. STATE OF WISCONSIN, DEPARTMENT OF EMPLOYMENT RELATIONS, Respondent.	Case CXCIII No. 31820 PP(S)-100 Decision No. 20910-A

Appearances:

Lawton & Cates, Attorneys at Law, 110 East Main Street, Madison, Wisconsin 53703, by Mr. Richard V. Graylow, appearing on behalf of the Complainant.

Mr. Sanford N. Cogas, Attorney at Law, Department of Employment Relations, 149 East Wilson Street, Madison, Wisconsin 53702, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Daniel J. Nielsen, Examiner: The Wisconsin State Employees Union (WSEU), American Federation of State, County and Municipal Employees, Council 24, AFL-CIO, hereinafter referred to as Complainant, having on June 24, 1983, filed a complaint with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that the State of Wisconsin had committed certain unfair labor practices within the meaning of the State Employment Labor Relations Act (SELRA); and the Commission having, on August 10, 1983, appointed Daniel J. Nielsen, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.07 Stats.; and the parties having requested several postponements of the hearing in the matter; and the hearing having been held before the Examiner in Madison, Wisconsin, on February 9, 1984; and a stenographic record of the hearing having been made, a transcript of which was received by the Examiner on February 9, 1984; and the parties having filed post-hearing briefs which were exchanged through the Examiner on February 21, 1984; and the parties having filed reply briefs which were exchanged through the Examiner on March 13, 1984; and the Examiner having considered the evidence and the arguments of the parties and the record as a whole, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That AFSCME, Council 24, Wisconsin State Employees Union, hereinafter referred to as the Complainant, is a labor organization and has its principal offices at 5 Odana Court, Madison, Wisconsin 53719.

2. That the State of Wisconsin, hereinafter referred to as the Respondent, is an employer and is represented by its Department of Employment Relations, which has offices at 149 East Wilson Street, Madison, Wisconsin 53702.

3. That at all times material hereto the Respondent and the Complainant were parties to a collective bargaining agreement containing the following provisions:

ARTICLE I

Scope of the Agreement

Security & Public Safety, Blue Collar & Non-Building Trades, and Technical

. . .

5 This Agreement recognizes three separate bargaining units. Each provision of this Agreement applies to all three bargaining units unless specified otherwise. The coverage of this Agreement shall be extended by the parties when mutually agreed to by the Employer and the Union to include employes in the classified service of the State of Wisconsin in additional appropriate collective bargaining units represented by the Wisconsin State Employees Union as certified by the Wisconsin Employment Relations Commission.

. . .

ARTICLE IV

Grievance Procedure

. . .

Section 2: Grievance Steps

. . .

50 . . . The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and shall not make any award which in effect would grant the Union or the Employer any matters which were not obtained in the negotiation process.

. . .

56 The decision of the arbitrator will be final and binding on both parties of this Agreement. . . .

. . .

ARTICLE VI

Hours of Work

. . .

Section 2 Overtime

A. Definitions

90 . . .

(3) Work Time --

. . .

(b) Travel time required by the Employer:

. . .

(3) The time spent in traveling from an employe's place of residence to and from a work site is not considered work time except in those instances where an employe is required by the Employer to travel in excess of eighteen (18) miles one way, measured from the employe's home work station or place of residence whichever is closer. In those instances, the miles in excess of eighteen (18) will be considered work time.

. . .

4. That in late November of 1980 a grievance was filed by Paul Weidner, an Engineering Technician II in the Department of Transportation (Division of Highways); that Weidner's grievance alleged that the State of Wisconsin was violating the collective bargaining agreement between the parties by failing to pay for time spent travelling to the job site from motels where employes stayed while working on the road; that the relief requested in the grievance included instructing District 4 personnel that the 18 miles criteria at issue were not applicable to temporary field locations; that the matter was appealed to arbitration and was decided in an Award issued by George R. Fleischli on February 23, 1983; and that the Award issued by Fleischli read, in material parts, as follows:

ARBITRATION AWARD

. . . The parties were unable to resolve a grievance involving the application of the definition of work time contained within the agreement, in the case of employees required to stay overnight, and selected the undersigned to resolve said dispute. . . .

BACKGROUND

. . .

The grievance alleges that the Employer's refusal to allow the grievant to measure his starting and ending time from his departure from or arrival back at the motel is violative of Article VI, Section 2(4) of the agreement (Article VI, Section 2A(3), (b)(3) in the Employer's printed version). That provision reads as follows:

"(3) The time spent in traveling from an employe's place of residence to and from a work site is not considered work time except in those instances where an employe is required by the Employer to travel in excess of eighteen (18) miles one way, measured from the employe's home work station or place of residence whichever is closer. In those instances, the miles in excess of eighteen (18) will be considered work time."

The grievance goes on to state:

"The aggrieved paragraph defines work time as including the time incurred while travelling in excess of 18 miles from an employee's 'home work station or place of residence.'

"District policy normally requires our represented employees to stay in a temporary field location (motel, rooming house, etc.) when their job duties are 35 miles or more from the headquarters city.

"Since a temporary field location is neither an employee's home work station or place of residence, we feel that the 18 miles criteria cannot be applied to such locations as is now the policy in District policy.

"Relief sought - District 4 personnel be instructed that the 18 mile criteria is not applicable to temporary field locations."

The Employer's answer to the grievance at Step 3 reads in relevant part as follows:

"Article VI Section 2A(3)(b)(3) provides that the only times employes are entitled to paid travel time going to and from a work site is when the employes are required to

travel a distance in excess of 18 miles one way. Consequently there has been no violation of the Agreement as alleged. Grievance denied."

(Jt. Exhibit #2, pp 3-4)

. . .

ISSUE

Has the Employer violated Article VI, Section 2 A(3)(b)(3) of the labor agreement by disallowing travel time from the employee's motel to the work site when staying in the field on a work assignment?

(Jt. Exhibit #2, p. 6)

. . .

EMPLOYER'S POSITION

. . .

The Employer also points to the testimony of Buchen to the effect that all eight districts within the division and department surveyed a week prior to the hearing indicated that they were pursuing the same policy as that which is pursued in District No. 4. . . .

DISCUSSION

. . .

Nor does the evidence with regard to past practice support a finding that the parties have agreed, by their practice under the agreement, that the term "residence" is intended to include a "temporary residence" such as a motel when an employee is required to stay overnight. It is generally recognized that an alleged "past practice", in order to be binding on both parties, must be unequivocal, clearly enuciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both parties. 2/ The testimony here establishes that the actual practice prior to the filing of the grievance herein, was probably mixed and generally ambiguous. Some of the testimony establishes that certain crews, particularly road marking crews, completed time sheets which routinely included time spent traveling from the motel site to the road pavement being painted. While that same evidence also indicates that work is sometimes completed at the motel site, it does not establish that this was always the case, nor does it establish that there was an understanding between the parties that such fact was critical. Even in District No. 4, where the practice has allegedly been consistent, there is evidence indicating that time sheets sometimes included time spent traveling from the motel site to the survey site or other work site, and more importantly, there is no evidence of an express agreement between the parties that survey crews, or other crews, were required to treat their motel as a "temporary residence" for purposes of completing time sheets.

(Jt. Exhibit #2, pp 18-20)

. . .

AWARD

The Employer has violated Article VI, Section 2A(3)(b)(3) of the labor agreement by disallowing travel time from the employee's motel to the work site when staying in the field on a work assignment because said provision does not apply to

such travel time. The Employer is therefore directed to pay the grievant, Paul W. Weidner, a sum of money equal to the wages he lost as a result of such disallowances. Further, District 4 personnel should be instructed that the 18 mile limitation contained in said provision is not applicable to temporary field locations, as requested in the grievance.

Dated at Madison, Wisconsin this 23rd day of February, 1983.

George R. Fleischli
George R. Fleischli
Arbitrator

(Jt. Exhibit #2, p. 23)

5. That on June 27, 1983, the instant complaint was filed alleging that the Respondent had refused to implement the Arbitration Award; and that the complaint requested the entry of an order directing the Complainant to implement the Arbitration Award, to make the Union and the Grievant whole with respect to lost overtime and holiday opportunities, and to award such other relief as might be appropriate including attorneys' fees.

6. That on September 6, 1983, the following notice was issued by the Respondent:

DATE: September 6, 1983

To: Technical Bargaining Unit Employees Represented by Wisconsin State Employees Union Local 221, Transportation District 4, Wisconsin Rapids

From: D. L. Cronkrite, District Director
Transportation District 4

Subject: Administration
Personnel
Arbitration Award - Case No. 1531

Arbitrator George R. Fleischli determined in his Award dated February 23, 1983, that WSEU Represented District 4 Personnel shall be on paid time from temporary field locations (Motel) to job sites and that the 18 mile limitation is not applicable under that situation.

Those WSEU Represented Personnel in District 4 affected by the Award will be reimbursed for travel time from Motel to job site as of the date of the Award (February 23, 1983).

In the future, affected WSEU Represented Personnel will record work time on their F.O.S. forms as starting from the Motel to job site and return to Motel when field assigned.

For complete clarity, this Award applies only to employees in the Technical Bargaining Unit Represented by WSEU Local 221, Transportation Distict 4, Wisconsin Rapids.

By James E. Buchen /s/
James E. Buchen
District Chief of
Administrative and Management Services

7. That following the issuance of the notice set forth in Finding of Fact No. 6, all technical employes in Transportation District No. 4 who were theoretically covered by the Award were given the opportunity to file claims; that nine employes including Weidner did file claims; that the employes filing claims, and the amounts claimed are as follows:

Baker, John	$101.67
Burggraf, Joseph	$173.38
Layton, Gilbert	$ 72.84
Liepitz, Philip	$219.13
Peronto, Thomas	$179.55
Schaeffer, Gary	$ 65.01
Schmit, William	$ 4.26
Weidner, Paul	$806.39
Wittman, Cindy	$189.67

that all of the monies claimed were paid in full; that these amounts were paid on or about December 12, 1983; and that the payments made on these claims did not include the payment of any interest.

8. That the Division of Highways consists of eight highway districts; and tht the Fleischli Award has been implemented only in District No. 4, and has not been implemented in the other seven districts.

9. That the Fleischli Award relating to the 18 mile limitation on travel time reimbursement is not limited by its terms to employes in Highway District No. 4; and that the Award is applicable to all similarly situated employes in the eight Highway Districts.

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

CONCLUSIONS OF LAW

1. That the State of Wisconsin is an employer within the meaning of Sec. 111.81(16), SELRA;

2. That the Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO, is a labor organization within the meaning of Sec. 111.81(9), SELRA, and is a party in interest within the meaning of Sec. 111.07(2)(a), WEPA, to the dispute over the enforcement of the Fleischli Arbitration Award set forth in Findings of Fact Nos. 4-8, supra;

3. That the State of Wisconsin, by refusing to pay to Paul Weidner until December 12, 1983, the monetary relief ordered by Arbitrator Fleischli in his February 23, 1983 Award, refused to accept the terms of an arbitration award, in violation of Sec. 111.84(1)(e), SELRA;

4. That the State of Wisconsin, by failing to implement the Fleischli Award outside of Transportation District No. 4, refused to accept the terms of an arbitration award, in violation of Sec. 111.84(1)(e), SELRA;

5. And that the State of Wisconsin, by its violation of Sec. 111.84(1)(e), SELRA, as set forth above in Conclusions of Law 3 and 4, committed a derivative act of interference in violation of Sec. 111.84(1)(a), SELRA.

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

ORDER 1/

IT IS HEREBY ORDERED that the Respondent, State of Wisconsin, its officers and agents shall immediately:

1. Cease and desist from refusing to implement the Fleischli Award outside of Transportation District No. 4 upon

(See Footnote 1 on Page 7)

demand for implementation from the Complainant Union; and

2. Take the following affirmative actions which the Examiner deems necessary to effectuate the policies of SELRA:

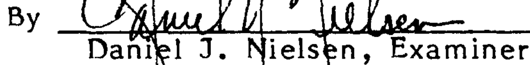
   a. Pay to Paul Weidner interest on the monies due him as of February 23, 1983 under the terms of the Fleischli Award, at the statutory rate of 12% per annum, for the period from February 24, 1983 through December 12, 1983; and

   b. Notify all bargaining unit employes in its Division of Highways that it will comply with the terms of the Fleischli Award, by posting in all Transportation District offices a copy of the Notice appended hereto as "Appendix A"; and

   c. Notify the Wisconsin Employment Relations Commission in writing within 20 days the date of this Order regarding what steps it has taken to comply with the Order.

Dated at Madison, Wisconsin this 29th day of August, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Daniel J. Nielsen, 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 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"

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the purposes of the State Employment Labor Relations Act, we hereby notify our employes that:

> We will abide by the terms of the Arbitration Award issued on February 23, 1983 by Arbitrator George R. Fleischli relating to the inapplicability of the 18 mile limitation on travel time pay when employes are staying in the field on work assignments. Further, the Award will be applied to all similarly situated employes in all highway districts throughout the state.

STATE OF WISCONSIN
DIVISION OF HIGHWAYS

BY: ______________________________

THIS NOTICE MUST BE POSTED FOR THIRTY DAYS FROM THE DATE HERETO AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

I. BACKGROUND

The facts are stipulated and are fairly detailed in the Findings of Fact. To briefly review, the Union filed a complaint in June of 1983 alleging that the Respondent had failed to implement a valid Arbitration Awawrd in violation of Sec. 111.84(1)(e), SELRA, by refusing to pay to the Grievant in the case the monetary damages awarded by the Arbitrator. On September 5, 1983, subsequent to the filing of the complaint and prior to the hearing in the matter, the Respondent requested that all employes in Highway District No. 4 who were represented by the Complainant filed claims for any amounts owing to them under the Award. Nine employes, including the original Grievant, Paul Weidner, filed claims. The Respondent paid the full amounts claimed on or about December 12, 1983, but did not pay any interest on these monies.

The September 6th notice issued by the Employer specified that the Arbitration Award applied only to "employees in the technical bargaining unit represented by WSEU Local 221, Transportation District 4, Wisconsin Rapids." The parties stipulated that the Award had only been implemented in District No. 4, and had not been implemented in the other seven highway districts.

II. POSITIONS OF THE PARTIES

A. COMPLAINANT'S BRIEF

The Complainant takes the position in its initial brief that interest is due, as a matter of law, on arbitration awards, citing Madison Teachers, Inc. v. WERC, 115 Wis. 2d 623, 630 (Ct. of Appeals, 1983). The Complainant further argues that the Respondent's narrow application of the Arbitrator's Award to only the employes in District 4 is unlawful in light of the fact that the provision interpreted by the Arbitrator is, on its face, applicable to all employes covered by the agreement, not simply those in District 4.

B. RESPONDENT'S BRIEF

The Respondent takes the position that it has fully complied with the Arbitrator's Award. The Arbitrator ordered the Respondent to pay Paul Weidner "a sum of money equal to the wages he lost as a result of such disallowance. Further, District 4 personnel should be instructed that the 18 mile limitation contained in said provision is not applicable to temporary fuel locations, as requested in the grievance." Weidner claimed, and was paid, $806.39. The Respondent notified District 4 personnel on the Arbitrator's Award and allowed them to file claims, paying all such claims in full. Thus there is no portion of the Award which has not been complied with. The Grievant has been paid his money and the employes in District 4, to whom the affect the Award was limited, have received their notice and the full benefit of the Award. Inasmuch as the Respondent has fully complied with the Award and the Complainant has stipulated to the acts of compliance, the Respondent takes the position that there is no longer any case and that the complaint should be dismissed.

C. COMPLAINANT'S REPLY BRIEF

The Complainant replies to the Respondent's argument that the Award was limited in application to District 4 personnel by citing the Commission's decision in Department of Administration (Security and Public Safety), Dec. No. 14823-C (WERC, 10/77). The Complainant notes that the Commission determined in that case that the State's failure to accept an arbitration award as final and binding and to apply it to all employes covered by the agreement upon demand by the Union that it do so, was an unfair labor practice within the meaning of Sec. 111.84(1)e, SELRA. There is no distinction, the Complainant asserts, between that case and the instant case. As in that case, the underlying issue has been settled by an arbitrator and it is incumbent upon the State to accept the arbitrator's judgment without forcing other employes to file grievances to secure their identical contract rights.

D. THE RESPONDENT'S REPLY BRIEF

The Respondent replies to the claim for interest on monies paid by asserting that the amounts owed to the employes filing claims in District 4 was for the period after the issuance of the Award. The record is not sufficient to determine when these amounts accrued and in what amount they accrued, other than the ultimate amount as of December 12. Thus there is no fixed and determined amount which could have been paid at a specified time in order to avoid the accrual of interest. Interest is only payable on amounts which are determined as of the date from which interest is claimed. Here the record is insufficient to make that determination and the Respondent urges that interest must therefore be denied. With respect to the Union's claim that the Award should be applied outside District 4, the Respondent again asserts that the Award, by its specific terms, is applicable only in that District. The Respondent therefore renews its request that the complaint be dismissed.

III. DISCUSSION

A. THE PLEADINGS

As a preliminary matter, the Examiner will review the issues that are properly before the Commission. The complaint in this case was filed in June of 1983. The complaint:

1. Sets out the parties;

2. Recites that a grievance was filed by Paul Weidner concerning the interpretation and application of the collective bargaining agreement; and

3. Alleges that Arbitrator Fleischli granted the grievance on February 23, 1983; and

4. Alleges that the State refused to implement the Award; and

5. More specifically, alleges that the State had refused to pay Weidner compensation for travel time as directed in the Award; and

6. Alleges that the State's failure to pay Weidner constitues a violation of Sec. 111.84(1)(a), d and e, SELRA.

The respondent answered the complaint alleging that a grievance had never been filed and that the Arbitrator's Award was invalid and in excess of his authority.

As shown by the stipulated facts and the arguments made by the parties in their briefs, the case that has been litigated before the Examiner is rather different than that set forth in the pleadings. The Complainant, for its part, now focuses on the failure of the State to pay interest to affected individuals and the application of the Award only to District 4 personnel. The Respondent makes no reference to defects in either the grievance or the Award, but argues that the Award has been complied with. Neither party amended its pleadings through a formal motion to the Examiner.

ERB 20.01, Wis. Adm. Code, directs that the rules of the Commission be liberally construed in order to effectuate the Act, and provides that . . . "the Commission . . . may waive any requirement of these rules unless a party shows prejudice thereby." The rules relating to the filing of pleadings and unfair labor practice charges under Sec. 111.84 are set forth in Chapter ERB 22, Wis. Adm. Code. ERB 22.02(5) and 22.03(5) allow for amendment of the pleadings by motion at any time prior to the issuance of Findings, Conclusions and Order. ERB 22.02(5)(b) specifically contemplates amendment of the complaint to conform to the evidence. In the instant case, the parties stipulated to the relevant facts, including the limited scope given the Award. Both parties argued the proper scope of the Award in their briefs. Given that the facts as stipulated go beyond the narrow allegations of the complaint and answer, that both parties have litigated the question of scope and that neither party has raised an objection to the issue

being considered by the Examiner, the Examiner deems that there is no prejudice to either party in amending the pleadings to reflect the case as litigated and conform it to the evidence concerning the scope of application given the Fleischli Award. 2/

With respect to the issue of interest on the payment to Weidner, there is no need to amend the pleadings in order to reach that question. The pleadings allege that the monies had not been paid. A fair reading of the complaint and prayer for relief implicitly raised the issue of interest, since prejudgment interest is available as a matter of law if monies are in fact owed. A request for interest need not be specifically plead and the issue will always be present where monetary relief is requested. 3/

Turning to the question of the payments made to other employes and whether any interests is due on those monies, the Examiner believes that this issue is subsumed in the more general question of compliance with an appropriate scope of the Award. The issue of interest on payments to employes other than Weidner, however, is not raised by the pleadings nor by the Complainant's brief. The Respondent alone makes reference to such interest payments. As the record does not reflect that the issue is actually present in this case, the Examiner will not consider it.

B. MERITS

1. FAILURE TO TIMELY PAY WEIDNER

The Complainant asserts that Weidner is due interest on the amount awarded him by the Arbitrator but not paid for some 9 1/2 months after the issuance of the Award. In so asserting, the Complainant focuses on remedy rather than whether a violation of SELRA occurred. This stipulated fact shows that the Respondent did not pay Weidner's claim until well after the Award was issued and the instant complaint filed. There is nothing in either of the facts or the Respondent's brief to explain this lapse of time. Plainly the Respondent had not complied with the Arbitrator's Award as of the date of filing, and did not even begin to do so until three months afterwards. Actual compliance did not take place until six months after the instant complaint was filed. The Respondent failed to accept the Fleischli Award as final and binding during this period in that it took no steps to comply therewith. The fact that the Respondent subsequently complied with the Award does not "cure" the unfair labor practice, which was committed prior to the filing of the complaint and continued thereafter. 4/ Rather, it merely serves to mitigate damages due to Weidner.

The payment of the principle sum on or about December 12 leaves unresolved the question of interest. The Complainant notes that prejudgment interest is due as a matter of law in cases of this type (Madison Teachers Inc., supra). Weidner is therefore entitled to interest on the sums ordered by the Fleischli Award, from the date of the Award until the Respondent's payment in December. 5/

2. APPLICATION OF THE AWARD OUTSIDE DISTRICT 4

The Respondent stipulates that it has not applied the Fleischli Award outside District 4. The Respondent asserts that the Award was, by its terms, limited to District 4 since the relief requested was posting of the notice to District 4 employes. In so contending, the Respondent confuses the relief requested with the

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2/ See Brown County, Dec. No. 19314-B (WERC, 6/83) at pg. 12.

3/ Madison Teachers Inc. v. WERC, 115 Wis.2d 623, 630 (Ct. of Appeals 4, 1983).

4/ Madison Metropolitan School District, Dec. No. 17514-D (WERC, 1/83) at pg. 9.

5/ In awarding interest from the date of the Award, the Examiner is mindful of the fact that there may be times when immediate compliance with an Arbitrator's Award is not administratively possible. No such showing was made in this case.

proper scope of the Award. Under the Respondent's reasoning, had Weidner failed to request the posting of any notice, the Award would have had application only to him as an individual. The application of a collective bargaining agreement on such a person by person basis is inconsistent with traditional precepts of labor management relations, as well as the state policy favoring acceptance of arbitration awards as final and binding.

The Respondent adopted a position similar to that taken in this case in Department of Administration (Security and Public Safety), supra. The Commission reviewed the record before the Arbitrator and concluded that both parties had understood the question to be proper interpretation of a contractual term rather than the unique contractual rights of one individual employe. The Commission affirmed the Examiner's conclusion that the Respondent's attempt to limit application of the Award constituted an unfair labor practice and ordered the Respondent to cease and desist from refusing to apply the Award to all similarly situated employes. In the instant case, the record of the proceedings before the Arbitrator is not available. A fair reading of the Arbitrator's Award, however, demonstrates that the issue as litigated before and decided by him, was not limited to employes in District 4, but rather to all similarly situated employes. This is demonstrated by the excerpts from the Award cited in the Findings of Fact (See Finding of Fact 4, supra). The Respondent's primary arguments before the Arbitrator focused on bargaining history, belying its claim that the issue was intended to have application only in District 4. The Arbitrator's decision is premised solely upon his interpretation of the word "residence" and the bargaining history surrounding the disputed contract provision. The Arbitrator expressly disclaimed the existence of any past practice, unique to District 4, which would have led to his granting of the grievance. With the sole exception of the order to post notices in District 4, nothing in the Award suggests that it should be implemented only in that District.

The undersigned concludes, based upon the Commission's decision in Department of Administration (Security and Public Safety), supra, and the stipulations of the parties, that the Respondent has failed to accept the Fleischli Award as final and binding by refusing to implement beyond Highway District No. 4, 6/ and has thereby committed an unfair labor practice. The record before the Examiner, however, is insufficient to determine what, if any, monetary relief would be due to employes represented by the Complainant, since there is no evidence of any similarly situated employe actually being denied travel time pay. The Examiner therefore concludes that the purposes of the act are effectuated by prospective order that the Respondent apply provisions of Article VI, Section 2a(3)(b)(3), as interpreted by the Fleischli Award, to all similarly situated employes effective with the date of this Order, and post notices to that effect.

Dated at Madison, Wisconsin this 29th day of August, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By ______________________
Daniel J. Nielsen, Examiner

6/ The application of the Arbitrator's Award ordered herein is to similarly situated employes. While it is possible to posit circumstances under which some employes may not fall into this category, there is no evidence the record before the Examiner that there are any such circumstances which justify limiting the Award to District 4.