

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GREEN LAKE EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	Case VII
	:	No. 32452 MP-1531
vs.	:	Decision No. 21314-A
	:	
GREEN LAKE SCHOOL DISTRICT,	:	
	:	
Respondent.	:	
	:	

Appearances:

Ms. Melissa A. Cherney, Staff Attorney, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, WI 53708, appearing on behalf of the Green Lake Education Association.
Mr. David Friedman, Staff Counsel, Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Room 700, Madison, WI 53703, appearing on behalf of the Green Lake School District.

ORDER DENYING MOTION TO DEFER TO VOLUNTARY DISPUTE RESOLUTION PROCEDURES AND MOTION TO POSTPONE HEARING

Green Lake Education Association having, on November 18, 1983, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Green Lake School District has committed prohibited practices within the meaning of Sections 111.70(3)(a) 1 and 4 of the Municipal Employment Relations Act; and the Commission having, on January 11, 1984, appointed Lionel L. Crowley, a member of its staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order; and hearing on the matter having been scheduled for February 3, 1984; and Respondent having, on January 24, 1984, filed a motion to Defer to Arbitration and a Motion to Postpone Hearing pending a ruling on said Motion to Defer; and Respondent having, on January 27, 1984, amended said Motion to Defer to Arbitration to a Motion to Defer to Voluntary Dispute Resolution Procedures; and the Examiner being advised in the premises makes and issues the following

ORDER

1. That Respondent's Motion to Defer to Voluntary Dispute Resolution Procedures be, and the same hereby is, denied.
2. That Respondent's Motion to Postpone Hearing be, and the same hereby is, denied.

Dated at Madison, Wisconsin this 30th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY Lionel L. Crowley
 Lionel L. Crowley, Examiner

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DEFER TO VOLUNTARY DISPUTE
RESOLUTION PROCEDURES AND MOTION TO POSTPONE HEARING

The Commission has previously indicated that Section 111.70(3)(a)4 refusal to bargain allegations will be deferred to the contractual grievance arbitration forum in appropriate cases in which Respondent objects to Commission exercise of jurisdiction in the matter. 1/ It is undisputed that the parties' collective bargaining agreement does not provide for the final and binding arbitration of disputes arising thereunder. In the absence of binding arbitration procedures, the Commission has exercised its jurisdiction under Section 111.70(3)(a)5, Stats., to determine whether a contractual provision has been breached, once exhaustion of available contract remedies has occurred. 2/ Respondent in its motion has waived any and all procedural and technical objections to the Complainant's processing a grievance to its ultimate resolution. Essentially, "deferral" would ultimately bring the matter within the Commission's jurisdiction. The rationale for deferral is to give full effect to the agreed-upon resolution mechanism in the parties' collective bargaining agreement. As the parties' dispute resolution mechanism results in Commission jurisdiction of a Section 111.70(3)(a)5 allegation, the policy considerations for deferral of 111.70(3)(a)4 allegations are not present in the instant case. Respondent recognizes that the Commission would have ultimate jurisdiction in the matter, but asserts that the thrust of its motions is to have the case tried under a breach of contract theory as opposed to a refusal to bargain theory. A review of the complaint and answer filed in this matter establishes a contested case with respect to the factual underpinnings for which theory might be appropriate and this is best resolved by an evidentiary hearing. The Complainant may propound whatever theory of the case it deems is legally correct. Similarly, Respondent may defend on any theory it deems is legally correct. Accordingly, the Examiner has denied Respondent's Motions to Defer to Voluntary Dispute Resolution Procedures and To Postpone the Hearing.

Dated at Madison, Wisconsin this 30th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY *Lionel L. Crowley*
Lionel L. Crowley, Examiner

1/ Brown County, (19314-B) 6/83.

2/ Winter Joint School District No. 1, (17867-C) 5/81;
Weyauwega Joint School District No. 2, (14373-B) 6/77.