STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MORAINE PARK VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT, Complainant, vs. SANDRA ANDERSON and MORAINE PARK FEDERATION OF TEACHERS LOCAL 3338, Respondents.	Case 21 No. 33324 MP-1599 Decision No. 22009-A

Appearances:

St. Peter Law Offices, S.C., Attorneys at Law, Fond du Lac Plaza, 131 South Main Street, Fond du Lac, Wisconsin 54935, by Mr. John A. St. Peter, appearing on behalf of Moraine Park Vocational, Technical and Adult Education District.

Mr. Steve Kowalsky, Staff Representative, Wisconsin Federation of Teachers, 2021 Atwood Avenue, Madison, Wisconsin 53704, appearing on behalf of Sandra Anderson and Moraine Park Federation of Teachers Local 3338.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having filed a complaint with the Wisconsin Employment Relations Commission on May 18, 1984, wherein it alleged that the above-named Respondents have committed prohibited practices pursuant to Sec. 111.70(3)(b)4, Stats.; and an answer having been received on June 1, 1984, wherein Respondents counterclaimed that Complainant had violated Sec. 111.70(3)(a)5, Stats.; and the Commission, after having made several unsuccessful settlement attempts, having appointed Mary Jo Schiavoni, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided by Sec. 111.07(5), Stats; and hearing on said matter having been postponed at the request of the parties while they attempted to agree on a stipulation of facts; and hearing having been held on October 30, 1984, at Fond du Lac, Wisconsin; and the transcript having been received on January 9, 1985; and the parties having completed a briefing schedule on February 5, 1985; and the Examiner, having considered the evidence and arguments of the parties 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 Complainant Moraine Park Vocational, Technical and Adult Educational District, hereinafter referred to as the District, is a municipal employer which operates a vocational, technical and adult education program pursuant to Chapter 38, Stats.; and that its principal place of business is 235 North National Avenue, Fond du Lac, Wisconsin.

2. That Sandra Anderson, hereinafter referred to as the grievant or Anderson, is an individual residing at 171 South Royal Street, Apartment 9, Fond du Lac, Wisconsin; that since 1973, Anderson has been employed by the District as a cosmetology instructor; and that she is a member of the bargaining unit represented by Moraine Park Federation of Teachers Local 3338.

3. That Moraine Park Federation of Teachers Local 3338, hereinafter referred to as the Federation, is, and has been at all pertinent times hereto, a labor organization within the meaning of Sec. 111.70, Stats., whose principal place of business is 235 North National Avenue, Fond du Lac, Wisconsin; and that,

at all times material hereto, the Federation has been and is the exclusive bargaining representative for all regular contract teaching personnel who work at least fifty percent (50%) of a full work load schedule in their area, including student guidance counselors and the school health nurses.

4. That the Federation and District have been parties to collective bargaining agreements concerning wages, hours and conditions of employment for the employes referred to in Finding of Fact 3, the most recent collective bargaining agreement extending from July 1, 1983 through June 30, 1985; and that said agreement provided, inter alia, as follows:

> Article III - Rights Clause
>
> Section 1 - Management Rights
>
> (a) Except to the extent expressly abridged by a specific provision of that Agreement, the management of the District hereby reserves and retains unto itself all powers, rights, authority, duties, and responsibilities conferred upon and invested in it by the Laws and Constitution of the State of Wisconsin and the United States, and all of its Common Law rights to manage the District, as such rights exist prior to the execution of that Agreement.
>
> (b) The District will not exercise its rights, powers, authority, duties, and responsibilities in an arbitrary or capricious manner, nor in violation of the terms of that Agreement, or of the Laws of the State of Wisconsin and the United States.
>
> (c) The rights of the District unless abridged by that Agreement shall include but are not limited to the following:
>
> 1. To establish, maintain, change, or abolish policies, practices, and procedures.
>
> 2. To determine and redetermine the number, location, and types of its operations, methods, processes, and materials to be employed and to discontinue the performance of methods, processes, and operations by teachers.
>
> 3. To determine the number of hours per day, per week, and days per year operations shall be carried on.
>
> 4. To select and determine the number and types of teachers required and assign work to teachers in accordance with requirements determined by management.
>
> 5. To establish and change work schedules and assignments.
>
> Article IV - Grievance Procedure
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> . . .
>
> Section 4 - Initiation and Processing
>
> . . .
>
> (g) The sole function of the arbitrator shall be to determine whether or not the rights of the teacher have been violated by the District contrary to an express provision of this Agreement or in violation of law. The arbitrator's decision will be in writing and will set forth the findings of fact, reasoning, and conclusions of the issues submitted. The arbitrator shall have no authority to add to, subtract from, or modify the Agreement in any way. The arbitrator shall have no authority to impose liability upon the District arising out of fact occurring before the effective date or after the termination of the Agreement. Nothing in the

foregoing shall be construed to impower the arbitrator to make any decision contrary to the right vested by law in the District unless modified by this Agreement. The decision of the arbitrator shall be made in accordance with the jurisdiction and authority and within the limits established by this document. The arbitrators (sic) decision will be final and binding on both parties.

. . .

Article VIII - Conditions of Employment

. . .

Section 6 - Length of School Year

(a) The normal school year for teachers shall be 190 paid employment days. It shall be the prerogative of the District to determine within such 190 days the number of in-classroom teaching days and the number of days to be set aside for teacher training, in-service registration, and/or other purposes deemed necessary by the District.

(b) Subject to subparagraph (a) above, the school calendar shall be as set forth in Attachments B and C.

(c) When an individual formal teaching contract is extended beyond the 190-day normal school year, additional salary compensation will be prorated according to Attachment A, or prorated from a 190 day salary.

(d) Nothing in this Agreement shall limit the District from additionally contracting with a teacher individually or informally, to teach or perform any other type of work at such times and for such periods as the District may deem appropriate.

5. That on January 5, 1983, Arbitrator William W. Petrie issued an award in which he interpreted language in the parties' previous agreement which was identical to that set forth in Finding of Fact 4; that Arbitrator Petrie's award involved a group grievance filed by the Federation regarding "certain educational programs to be carried out on an extended basis, or a basis which exceeded the normal school year of 190 days"; that most of the evidence adduced involved one of these programs, the practical nursing course of instruction; that the issues submitted for arbitral determination were as follows:

(1) Does the requirement of extended contracts by the District violate the collective bargaining agreement?

(2) Does variation from the teaching calendar (Attachments D, E and F) by the District violate the collective bargaining agreement?

(3) If the answer to either of the above is yes, what is the appropriate remedy?

that both parties argued the general propositions underlying these questions, but that the Distict argued a past practice with regard to LPN program also; that Arbitrator Petrie found that "the matter is a straight contract interpretation

unchanged since the original labor agreement was entered into by the parties in 1970; additionally, they agreed that the Employer has required extended contracts from various employees since 1970, and that teachers in the LPN program have been so assigned. The existence of these practices was well established in testimony at the hearing, and is also well documented in Exhibits #5, #6, #7 and #8.

When the parties have at least tacitly agreed upon a particular contract interpretation over an extended period of time, this factor is extremely persuasive evidence of their mutual intention that the same language be applied in the same manner in the future. When the past practice extends over several labor agreements, and the parties renegotiate the agreements without change in the disputed language, the persuasiveness of the evidence is further enhanced.

The Employer is additionally correct that Attachment 7 to Exhibit #4 persuasively indicates that as of October 31, 1979, the parties were in full agreement that the District had the right to schedule extended contracts in various year-round programs including the practical nursing program. . . . Indeed, not only has the District followed a past practice of requiring extended teaching contracts within the practical nursing program, but it has also done so on a rather extensive basis in various other functional areas of instruction!

On the basis of the above, the Impartial Arbitrator has concluded that the above referenced past practices of the parties strongly and significantly favor the position of the District in this proceeding. Over and apart from the duration of the past practice, is the fact that there is no evidence in the record that the Federation has attempted to change the mandatory scheduling of extended contracts during past contract negotiations. It is difficult to conclude that that continuation of a twelve year past practice, until 1983 negotiations, would create a hardship for either party . . .

that primarily based upon this evidence of past practice, Petrie made the following preliminary conclusions:

(1) The disputed language of Article VIII, Section 6(c) and 6(d) is ambiguous in certain respects, and is subject to interpretation by the Impartial Arbitrator.

(2) Primarily on the basis of the parties' past practice and to a lesser extent on the basis of the overall context in which the provisions appear, the appropriate interpretation of the disputed contract provisions, is that the District has the right to require teachers to work in excess of the normal 190 day contract.

(3) There is nothing in the record to suggest that the Employer has acted unreasonably, in requiring extended teaching contracts within the Practical Nursing faculty.

(4) Although it is impossible to make individual determinations at this time, on the contractual propriety of any scheduled time-off during February and March of 1983, affected teachers working under extended contracts should not be detailed-off for the purpose of avoiding the payment of additional compensation required by Article VIII, Section 6(c).

and that in his ultimate award, he decided:

(1) The requirement of extended contracts by the District does not violate the collective bargaining agreement.

(2) It is impossible at this time to determine the contractual propriety of changes in the teaching schedule for affected teachers, in February or March of 1983. Variations from the teaching calendar in connection with extended contracts, would not violate the collective bargaining agreement if undertaken for the purpose of reasonably meeting bona fide educational needs; variations unilaterally undertaken by the District for the purpose of avoiding the payment of the additional compensation requirements of extended contracts, would violate the collective bargaining agreement.

(3) Subject to the above, the grievance is denied.

7. That on February 3, 1984, pursuant to the most recent collective bargaining agreement, grievant Anderson filed an individual grievance which stated as follows:

Aggrieved Person: Sandra Anderson

Base School: Fond du Lac

Person Submitting This Report, If Other Than The Aggrieved Person:

Grievance Filed With: Jean Fleming, Moraine Park Technical Institute

Date Facts Became Known: On going violation

What Previous Action Has Been Taken to Resolve The Problem?

Many discussions and memos between Jean Fleming, Betty Brunelle, Rod Pasch, John Shanahan, Pat McCall and Union representatives. A union grievance dated November 6, 1981, a union grievance dated April 6, 1983, and a discrimination grievance dated December 20, 1983.

Grievant Explanation of Alleged Violation:

Article VIII Section 6 Violated
Article III Section 1 (b) Violated

On April 12, 1983, I signed an individual Teacher Employment Contract which required 236 working days which violates the terms of the Collective Bargaining Agreement at Article VIII, Section 6, which provides that the length of the teacher school year shall be 190 paid employment days. As a matter of law, the terms of the Collective Bargaining Agreement control where there is conflict between the individual contract and the Collective Bargaining Agreement.

The length of the school year as it affects my department was previously grieved on November 6, 1981, and the grievance was settled at a meeting held on November 19, 1981. (Copies of grievance and settlement attached.) It is our position that the prior grievance settlement on November 19, 1981 properly establishes the meaning of the work year set forth at Article VIII, Section 6, as it affects the Cosmetology Department.

A prior grievance was filed on April 6, 1983, and was not pursued by reason of the answer furnished by Doctor Shanahan on May 9, 1983, wherein he alleged that a prior arbitration award by arbitrator Petrie resolved the issue. Dr. Shanahan further alleged in his answer that pursuit of my grievance would be in violation of 111.70 Wisconsin Statutes. It is our position that the District's reliance on the Petrie award and Section 111.70 of the Statutes is erroneous in

that the Petrie award dealt only with past practices as it affects the nurses who used that grievance and Petrie clearly in his award reserved his findings as to practices to that Department. With respect to Section 111.70 of the Statutes, the provision of the law which declares that failure to accept an aribtrator's (sic) award is a prohibited practice, applies only to the grievants using the issue being arbitrated. Since I am not a grievant on the issues raised in the Petrie arbitration, his award which is reserved to apply only to the Nursing Department, has no applicability beyond that Department, nor to me or my Department.

Further, we contend that Article III, Section 1, (b), is violated in that the District has acted in an arbitrary and capricious manner because the District has no uniform policy dealing with extended contracts. Joyce Borndahl in the Health Occupations Department was offered a 190-day contract even though her Department runs through the summer months, and Tina Haza, an O.R. Instructor from Marian College, teaches the 9-week summer session. The foregoing is typical of other arrangements worked out between the District and the staff in other Departments.

Relief Requested: That the grievance settlement of November 19, 1981 be re-established. Alternatively that the District limit my teaching committment (sic) to 190 days, provided that a qualified instructor can be contracted for the summer session.

cc: R. Pasch
B. Brunelle
P. Rameker

8. That the Federation has processed Anderson's grievance through the relevant steps contained within Article IV, Section 4 and has attempted to submit the matter to arbitration.

9. That the District has objected to the appointment of an arbitrator and at all times material herein has refused and continues to refuse to submit said grievance to arbitration; and that the District has, at all times relevant, maintained that the Petrie award governs the instant dispute.

10. That the Federation claims that there is a significant discrepancy of fact between the Petrie arbitration award and the Anderson grievance noting differences in the instructional area, length of extended contracts and a significant differing past practice with respect to cosmetology instructors; and that the Federation also disputes the reasonableness of the District's actions with respect to the cosmetology instructors.

11. That there was, in fact, a previous grievance filed and subsequently settled with respect to the cosmetology instructors in 1981, the alleged explanation of the grievance and relief being requested as follows:

Article(s) 8 Section(s) 6 Paragraph(s) (a) & (b) Allegedly Violated

. . .

Grievant Explanation of Alleged Violation:

Instructor Mary Eiring has been informed via the attached memo that she will he required to work an extended contract through the summer of 1982. She is a Cosmetology Instructor with a 65% contract presently. She does not wish to take an extended contract again next year. She has been informed that she only has the option of accepting such an extended contract or terminating her employment with Moraine Park.

It is the position of the Federation that an extended contract is not mandatory under the contract signed with the school. This section cited, specifically states that the normal school year is 190 days. Any days to be worked beyond this is at the discretion of the district to offer and the option of the teacher to refuse, without the threat of the loss of a position.

Relief Requested: The Federation request is that this instructor and all other instructors similarly impacted be allowed to refuse an extended contract without loss of employment or other harassment.

. . .

and that the settlement of said grievance was as follows:

Sandi - Mary

Summary of Meeting - 11/19/81

Areas discussed: shorter program, block of 9 weeks off during summer and before Christmas, benefit of call staff with current shop experience, possibility of 50% contract so Mary could concentrate on school now, 80% load during summer, importance of instructors teaching classroom and clinic, importance of vacations and getting completely away and ??

Areas agreed on:

(1) Sandi and Mary indicated they are willing to work more than a 190-day contract.

(2) You agreed on 2 of 3 staff members being present at all times.

(3) You will provide me with suggestions for vacation during the summer before Tuesday's meeting recognizing that Margie has requested August 2 through August 17.

12. That no material discrepancy of facts or issues exists between the Petrie award and the Anderson grievance.

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

CONCLUSIONS OF LAW

1. That the Respondents, Sandra Anderson and Moraine Park Federation of Teachers Local 3338, by filing and processing the February 3, 1984, grievance, did not commit and are not committing a prohibited practice within the meaning of Sec. 111.70(3)(b)4 of the Municipal Employment Relations Act by failing to comply with a previous arbitration award inasmuch as said Respondents had a good faith basis for believing said grievance to differ from the facts alleged in the previous award.

2. That the award issued by Arbitrator William W. Petrie on January 5, 1983, with respect to the grievance filed by the Moraine Park Federation of Teachers Local 3338 is conclusive on the Complainant and Respondent and is res judicata as to the interpretation of Article III, Section 1(a) and (c)1 through 5 and Article VIII, Section 6 of the collective bargaining agreement between the parties, as to the District's authority to require extended individual teaching contracts; and that the Complainant, Moraine Park Vocational, Technical and Adult Education District, did not commit and is not committing a prohibited practice within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act by refusing to again submit the Anderson grievance involving the issue of the right to require extended individual teaching contracts to arbitration under the collective bargaining agreement.

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

ORDER 1/

IT IS ORDERED that both the complaint and countercomplaint in the above entitled matter be, and hereby are dismissed in their entirety; and that costs and any additional monetary remedies, requested by either party, are hereby denied.

Dated at Madison, Wisconsin this 29th day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, 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.

MORAINE PARK VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pleadings

In its complaint filed on May 18, 1984, the District alleges that Anderson and the Federation have failed and refused to comply with the Petrie award in violation of Sec. 111.70(3)(b)4 of MERA by filing and processing Anderson's February 3, 1984, grievance. The Federation, on the other hand, in its answer and counterclaim, maintains that the District has failed and refused to proceed to arbitration on the February 3, 1984, Anderson grievance in violation of Sec. 111.70(3)(a)5 of MERA.

Position of the District:

While acknowledging that it has refused to proceed to arbitration on the Anderson grievance, the District defends its action in that regard by citing the cases in which the Commission has held that the final and binding decision of an arbitrator in one case will bind the parties as res judicata on other grievances raising the same issue. The District argues that the Anderson grievance raises the identical issue as that previously decided by Arbitrator Petrie in his January 5, 1983, award. Moreover, the District contends that Anderson and the Federation have committed a prohibited practice by the filing and processing of the Anderson grievance in that these acts constitute a refusal to comply with the Petrie award.

Position of Anderson and the Federation:

The Federation and Anderson argue that the principle of res judicata should not apply because there exists significant discrepancy of fact between the Petrie award and the Anderson grievance. According to the Respondents, there exist differences in instructional areas, in the length of extended contracts, and a significant difference in the past practice of the departments involved. Furthermore, they assert that the Anderson grievance contains an issue as to the reasonableness of the District's action which did not exist in the Petrie award. Because of these differences, res judicata should not be applied to the Anderson grievance.

With respect to the District's allegations that the Federation and Anderson are refusing to accept the terms of a previous arbitration award, Respondents argue that the filing, processing and arbitration of a grievance are protected activities under both the collective bargaining agreement and MERA. They maintain that the District can point to no covert or overt actions to demonstrate failure to abide by an arbitrator's award. In essence, Anderson and the Federation dispute that the stipulation offered by the District is sufficient proof to establish the alleged statutory violation maintaining that the act of processing and attempting to arbitrate a grievance cannot be the basis for finding a prohibited practice.

Discussion:

Res Judicata Effect of an Arbitration Award

In reviewing the two cases, it is readily apparent that the parties involved in the Anderson grievance are the same parties involved in the grievance submitted to Arbitrator Petrie despite any contentions of the Federation to the contrary. Although the Federation argues that Anderson, as an individual, filed the instant grievance, the Commission has routinely recognized that the actual parties in interest are the parties to the collective bargaining agreement, the employer and the union; 2/ accordingly, the parties to the two actions are identical.

2/ Wisconsin Telephone Company, Dec. No. 4471 (WERC, 3/55) aff'd Decision 4158 Milw. Co. CirCt; rev. on other grounds 6 Wis.2d 243 (1959).

Likewise, the language in dispute in both grievances is identical and it makes no difference that successor agreements are involved. 3/ Most importantly, however, the Anderson grievance essentially poses the same issue presented to the arbitrator and ultimately decided in his award.

The Commission has held that it will apply the principle of res judicata to a prior arbitration award "where there is no significant discrepancy of fact involved in the prior award and in the subsequent case to which a complainant is requesting the Commission to apply the award. A balance must be struck between the need for consistency and finality to contract interpretation as evidenced by prior arbitration awards and invading that province specifically reserved by the courts to the arbitrator - deciding the merits of the dispute. Where no material discrepancy of fact exists, the prior award should be applied. In these circumstances both interests are accommodated without undermining either." 4/

The Federation's argument that a significant discrepancy of fact exists in the instant case must be rejected. It is clear that Arbitrator Petrie considered evidence of the District's practice as it applied to different instructional areas other than practical nursing in his award. In fact, he expressly received evidence with respect to the cosmetology department and the grievant herself as demonstrated by Exhibit C4a and C4d. Moreover, the Federation can point to no differences in the District's practice premised upon differing requirements in the affected instructional areas. Where, as here, it appears that the arbitration award was premised upon general evidence involving the same instructional area which the Federation seeks to relitigate, it must be concluded that no material discrepancy of fact exists based upon the instructional area(s) involved.

Similarly, the length of the individual teaching contracts in controversy does not establish a significant discrepancy in fact. Arbitrator Petrie considered the varied lengths of extended contracts in the different instructional areas as evidenced by Exhibit C4d. Moreover, the length of the extended individual contracts in the two cases is an insignificant fact. Even assuming that Petrie had not discussed the varying lengths of the extended contracts in his award, the difference in the length of the contracts would not present such a significant distinction to warrant the relitigation of the subject matter decided in Petrie's award.

The Federation also argues that the cosmetology department enjoyed a differing past practice from that considered by Petrie. It points to a 1981 grievance and grievance settlement in support of its contention that a material discrepancy of fact exists with respect to the past practice in the cosmetology department as opposed to the licensed pracical nursing department. Nothing in the settlement agreement establishes that a contrary past practice exists which significantly differs from the practice considered and relied upon by Arbitrator Petrie. Said settlement did not reveal any type of waiver or deviation by the District from its position that it had the right to require extended individual contracts of the cosmetology instructors. Rather, said agreement provided an informal resolution for the next summer wherein at least two of the three instructors indicated that they were willing to work in excess of the 190 day contract; that two of the three would be present at all times; and that suggestions for vacation scheduling would be accepted by the District's supervisor. It should also be noted that the Federation could have presented this evidence of a so-called differing past practice at the Petrie arbitration hearing had it deemed it relevant to the issue at that time. Accordingly, it must be concluded that this evidence of past practice in the cosmetology area of instruction is insufficent to warrant a finding that a material discrepancy of fact exists with respect to relevant past practice in the two cases.

3/ Pure Milk Association, Dec. No. 6584 (WERC 12/63) aff'd Dane Co. CirCt 10/64; remanded for further hearing 12/64; supple. order, Dec. No. 6584-B (12/65).

4/ Wisconsin Public Service Corp., Dec. No. 11954-B (WERC, 5/74); see also, State of Wisconsin, Dec. No. 18084-A (McCormick, 6/82) aff'd Dec. No. 18084-B (WERC, 7/82).

Finally, the Federation argues that it has raised an entirely new issue in the Anderson grievance, that of the "reasonableness" of the District's action in requiring an extended contract of the grievant. Again, the Federation raised the issue and Arbitrator Petrie addressed it in his award. While the Federation may not agree with his conclusion, it is clear that the arbitrator held that there was ample educational justification for the District to require the extended contracts and that it was not acting in an unreasonable manner. Thus it must be concluded that no new material facts exist in the instant case sufficient to permit relitigation of this issue.

In sum, the issue to which Arbitrator Petrie's award was addressed in the most broad terms was whether the District was entitled to require extended individual contracts. Arbitrator Petrie answered this definitively in the affirmative. The Federation is not entitled to relitigate his interpretation of the applicable provisions of the collective bargaining agreement in the instant case. Therefore, the District has not violated Sec. 111.70(3)(a)5 by refusing to proceed to arbitration with respect to the Anderson grievance.

Failure to Abide by an Arbitration Award

The parties stipulated that the sole basis for the District's assertion rests upon Anderson's filing and the Federation's acceptance and processing of Anderson's grievance. These actions, the District urges, establish a failure to abide by the Petrie award. The Federation, on the other hand, argues that these activities are protected activities within the meaning of Sec. 111.70(2) of MERA and the collective bargaining agreement and cannot, in and of themselves, constitute a basis for finding a prohibited practice.

The undersigned, in her analysis of the res judicata effect of the Petrie award, essentially concluded that no significant or material discrepancy of fact existed which would warrant relitigation of the issues raised. The record reflects that, at least with respect to the past practice in the cosmetology area of instruction, both the grievant and the Federation, although mistaken, had a good faith belief that they could sufficiently distinguish the past practice in that area from the past practice considered by Petrie in his award. Where the activities complained of by the District are strictly those which the Commission has found to be protected under MERA, absent a showing of bad faith, said activities, in and of themselves, are not sufficient to establish a violation of Sec. 111.70(3)(b)4 under the circumstances set forth above. To hold otherwise, especially where there is great uncertainty as to whether a material discrepancy in the facts exists, would chill the exercise of these protected activities. Accordingly, the grievant and the Federation did not violate Sec. 111.70(3)(b)4 of MERA by filing and processing the Anderson grievance.

Dated at Madison, Wisconsin, this 29th day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner