STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHLAND COLLEGE EMPLOYEES LOCAL 216-G, AFSCME, AFL-CIO, Complainant, vs. NORTHLAND COLLEGE, Respondent.	Case 7 No. 33713 Ce-2005 Decision No. 22094-A

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce M. Davey, 110 East Main Street, Madison, Wisconsin 53707-3354, appearing on behalf of the Complainant.

Clark & Clark, Attorneys at Law, by Mr. Scott W. Clark, 214 West Second Street, Ashland, Wisconsin 54806, appearing on behalf of the Respondent.

Herrick, Brynelson & Gehl, Attorneys at Law, by Mr. Fred Gantz, Suite 500, 122 West Washington Avenue, P. O. Box 1767, Madison, Wisconsin 53701-1767, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On August 17, 1984, Northland College Employees, Local 216-G, AFSCME, AFL-CIO filed a complaint with the Wisconsin Employment Relations Commission, (hereinafter referred to as the WERC) alleging that Northland College had committed unfair labor practices within the meaning of Sec. 111.06(1)(F), Wis. Stats., by refusing to submit proposed changes in the 1982-1984 Collective Bargaining Agreement to interest arbitration over the terms of a successor agreement and by refusing to go to grievance arbitration over its refusal to go to interest arbitration. The Commission appointed Sharon A. Gallagher, a member of its staff to act as Examiner in this matter, and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07, Wis. Stats. A hearing was held in Ashland, Wisconsin on December 19, 1984 at which a stenographic transcript was taken. The transcript was received by the parties on or about January 24, 1985 and thereafter both parties timely filed briefs and reply briefs, the last of which was received on April 2, 1985. The Examiner, having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Northland College Employees, Local 216-G, AFSCME, AFL-CIO, hereafter Union, is a "representative" of employes within the meaning of Sec. 111.02(11) Wis. Stats., and has its principal offices at Route 1, Box 2, Brule, WI 54820.

2. That Northland College, hereafter the College, is an "employer" within the meaning of Sec. 111.02(7) Wis. Stats., whose principal offices are located at 1411 Ellis Avenue, Ashland, WI 54806.

3. That since the late 1960's, the Union and the College have entered into a series of collective bargaining agreements the most recent of which ran from July 1, 1982 through June 30, 1984; that these agreements, including the most recent one, have recognized the Union as the exclusive representative of the following employes:

> Watchmen/Firemen, Custodians and Maintenance personnel but excluding supervisors, students and all other employes.

Prior to July 1, 1984 there were 14.4 unit positions, 7 of which were custodial positions.

4. That the agreement contains the following language:

Article II - Union Management Relations

. . .

3. The Union recognizes and accepts the rights of management as provided herein and agrees it will not infringe upon or in any way hinder the exercise of those rights by employer. The management of the college and the direction of the working forces and of the affairs of the employer shall be vested exclusively in the employer's functions of the management, except as specifically modified or waived under terms of this labor agreement. Such rights shall include, but not be limited to:

1) The right to hire, suspend, assign, or discharge for just cause, the right to relieve employees from duty because of lack of work.

2) The determination of the lay-out and equipment to be used and the process, technique and methods.

3) The right to selection of employees for promotion to supervisory and other managerial positions, the determination of the size of the working force, the establishment of the quality standards, the right to introduce new and improved methods, facilities, the right to make and enforce reasonable rules of conduct and to manage the College in the traditional manner is invested exclusively in the Employer except where specifically waived in this contract.

4) There shall be no waiver by the College of any of its rights by part time employees to exercise those rights.

. . .

ARTICLE VIII - GRIEVANCE PROCEDURE

1. When any misunderstanding or dispute arises between the College and the Union, or any of its members as to the interpretation of any provision of this Agreement to any given situation, either the Union or the College may initiate a grievance which shall be settled by and in the following manner.

Step I. The aggrieved employee and Union Steward will discuss the problem with the immediate Supervisor.

Step II. If not settled in Step I, the grievance shall be submitted to the Business Manager/Treasurer of the College.

Step III. If not settled in Step II, the grievances shall be the subject of mediation, unless both parties agree to waive mediation and go directly to Step IV.

Step IV. If not settled in Step III, the grievance shall be submitted to Arbitration

Arbitration: Any dispute or grievance arising out of or relating to this Agreement shall be submitted to an Arbitration Board. The arbitration board shall consist of three (3) members - one to be named by the College, the

second member to by named by the Union, and the third member, who shall act as chairperson of the arbitration board, shall be appointed by the Wisconsin Employment Relations Commission from their staff. The College and the Union agree that the decision of the arbitration board shall be considered final and binding. Each party shall bear the cost of members named by them, and share equally the cost of the third member.

Article XXIV

. . .

2. Termination. This agreement will remain in effect from July 1, 1982 through June 30, 1984. Either party may terminate this Agreement, provided that such termination is transmitted through the U.S. mails to the responsible signatories to this Agreement. In no case may termination notice be sent less than thirty (30) days prior to the termination date.

3. Renewal. Should neither party to this Agreement send a notice of termination as described in Section 2 of this Article, this Agreement will be considered to have been automatically renewed for another calendar year.

4. Negotiations may be conducted at any time upon thirty (30) days written notice but the effective date of such negotiation will be June 30 of any such year.

5. Changes. Should either party to this Agreement wish to inaugurate collective bargaining discussions over changes they may wish to introduce into this Agreement, it is agreed that notice of the substance of the changes and the language with which said desired changes are to be expressed, shall be mailed to the authorized parties signatory to this Agreement prior to thirty (30) days before the termination date of this Agreement. The parties receiving such notice of desired changes shall forthwith seek establishment of a meeting of the parties for the purpose of discussion and amicable accommodation for the desired changes. Should no amicable settlement be forthcoming with the thirty (30) day period to the termination date, the parties shall jointly submit the disputed section of the Agreement to mediation and, if necessary, arbitration. Decision of the Arbitration Board shall be binding upon the parties as described in Article VIII on Grievance Procedure.

6. Through the process of the Arbitration Board's effort, this Agreement shall remain in full force and effect.

5. That the College began experiencing financial problems in approximately 1982 and those problems continued through the fiscal year ending June 30, 1984.

6. That in February or March, 1983 the College's Vice President of finance and administration, Mr. Haukaas, was directed by his superiors to look into the possibility of subcontracting custodial work; that Haukaas began checking into the matter in March, 1983 and he thereafter requested and received estimates from potential subcontractors in the Spring of 1983.

7. That the College and the Union met on June 29, 1983 and August 31, 1983; that at these meetings, the College sought economic contractual concessions from the Union; that the Union refused to make any concessions during the term of the 1982 - 1984 agreement; and that the Union confirmed its position on this issue in its September 4, 1983 letter, which assumed subcontracting would begin during the term of the 1982-84 agreement and asserted that if the College persisted in its

efforts to subcontract unit work, the Union would pursue the College before the National Labor Relations Board (hereineafter referred to as the NLRB) and take other action to publicize the College's actions.

8. That thereafter the College sent the Union a series of letters dated September 12, October 14, and December 16, 1983; that the Union did not respond to any of these letters; that the September 12, 1983 letter advised the Union that the College . . .

> "intends on terminating the College custodial staff no later than June 30, 1984, the end of the current agreement. Please consider this letter as notice of such termination as required by Article XXIV of the current agreement";

that the letter also advised that the College might consider earlier termination under Article XXIV, Paragraph 2; that the October 14 letter indicated that the College believed the Union had waived its right to bargain regarding College's decision and subcontract custodial work; that the December 16, 1983 letter stated, in part, as follows:

> The College is proceeding to arrange for the performance of custodial services by an independent contractor commencing in July 1, 1984.
>
> As you know, the September 12, 1983 letter to you contained a notice of termination of the collective bargaining agreement and the College custodial staff as of June 30, 1984 as required by Article XXIV of the current agreement.

9. That on March 13, 1984 the Union requested that negotiations for a new agreement commence, and a negotiation session was set for April 3, 1984, at which the Union and the College exchanged and discussed written proposals for a new contract; that the Union's April 3 proposal assumed the continued employment of the custodial employes and proposed to prohibit subcontracting, while the College's proposal assumed their termination no later than June 30, 1984 and addressed the impact of such terminations; that on April 3, the parties agreed that they were so far apart that no voluntary settlement could be reached and they agreed to jointly request the assistance of WERC's Mediator, Robert McCormick.

10. That on May 15 and May 24 the College and the Union engaged in mediation sessions with Mediator McCormick.

11. That the parties met again on June 19, 1984 without Mediator McCormick and discussed such matters as the seniority list, bumping rights, which employes would be terminated and whether the College would attempt to convince the subcontractor to give terminated employes preferencial treatment for hire.

12. That following the June 19 meeting, letters were exchanged confirming agreements reached at that meeting; that in a letter dated June 25, 1984 addressed to WERC Chairman Torosian, the Union requested a panel of arbitrators so that selection of an interest arbitrator could be made; that in a separate letter dated June 25, the Union sent the College its final offer which was identical to its April 3, 1984 proposal; that in a letter to the Union dated June 27, 1984 the College refused to arbitrate "the issue of termination of the custodians," rejected the Union's June 25 final offer and threatened to "implement its last offer to the maintenance/watchmen as of July 1, 1984;" that in a separate letter to Chairman Torosian dated June 27, the College asserted the following:

> Please be advised that Northland College formally objects to the attempt on the part of AFSCME Local 216G to attempt to have the Wisconsin Employment Relations Commission take jurisdiction over this matter.
>
> There is no question that the parties are not governed by the Wisconsin Employment Relations Act or the arbitration procedures set forth therein. The parties are under the jurisdiction of the National Labor Relations Board.

. . .

> No disrespect intended, Northland College will decline any attempt on the part of the Wisconsin Employment Relations Commission to exercise jurisdiction over the interest arbitration proposed by Mr. Ellingson. Mr. Ellingson is clearly in the wrong forum when dealing with the Wisconsin Employment Relations Commission.

13. That by letter addressed to Haukaas dated June 29, 1984, the Union requested arbitration of its grievance as follows:

> I am in receipt of the enclosed letter from Scott Clark to Herman Torosian, Commissioner of the Wisconsin Employment Relations Commission. Mr. Scott has refused as representative of Northland College to go to arbitration under ARTICLE XXIV (3) (5) (6).
>
> Therefore this letter will serve as a grievance of the refusal of the College to proceed to interest arbitration. Since Mr. Wick has been fired by the College, I am submitting the grievance to you at Step II of the Grievance Procedure;

14. That by letter to the Union dated July 5, 1984, the College denied the Union's grievance over the College's refusal to proceed to arbitration as follows:

> . . . Your so called grievance is, of course, denied.
>
> Your attempt to indirectly have the issue of the termination of the college custodian (sic) arbitrated when it may not be done directly, will not be successful.
>
> As both myself and college representatives have repeatedly informed you, we have all intentions of complying with our obligations under the law and the collective bargaining agreement, however, as far as the college is concerned the issue of the termination of the custodian (sic) is closed for all purposes. It would seem that before any arbitration or other dispute resolution procedures would be applicable, the parties must negotiate to impass (sic) on the issues of the maintenance workers' contract, beginning July 1, 1984 and impact of the custodial termination. As we have mentioned in prior correspondence to you, no meaningful discussions have ever been held on those points . . .

15. That by letter dated July 6, 1984, Chairman Torosian sent the parties a panel of arbitrators; that thereafter a series of letters were exchanged in which both parties attempted to maintain their positions without waiving any rights should charges be filed with the NLRB or should a complaint be filed with the WERC, that after these letters were exchanged, neither party wrote, called or met with the other party.

16. That the College continued to apply all terms of the 1982-84 agreement to unit employes until July 1, 1984 when the College began its subcontract of the custodial work and terminated the seven custodians; that the College continues to apply the terms of the expired 1982-84 agreement to the remaining unit employes--the maintenance and watchmen/firemen employes.

17. That on August 17, 1984 the complaint herein was filed by the Union; that on September 5, 1984 the Union filed charges against the College with the NLRB and those charges were amended by the Union on October 1, 1984; that sometime thereafter, the Regional Director of Region 18 of the NLRB allowed the Union to withdraw its charges without prejudice.

18. That the grievance raises a claim which, on its face, is governed by the terms of the 1982-84 agreement; that the College continues to refuse to proceed to interest and/or grievance arbitration.

Based upon the above Findings of Fact the Examiner makes and files the following

CONCLUSIONS OF LAW

1. That the WERC has jurisdiction of the Union's complaint allegations of contract violation and is not preempted or otherwise precluded from exercising said jurisdiction; that the Union's NLRB charges, the investigation and the ultimate determination thereof have no bearing upon and are irrelevant to the instant proceeding.

2. That the College's refusal to process the grievance over the College's refusal to proceed to interest arbitration is a violation of the parties' collective bargaining agreement and therefore violates Sec. 111.06(1)(f), Stats.

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

ORDER 1/

That Respondent Northland College and its agents, shall immediately:

(1) Cease and desist from refusing to submit the above-described grievance and the issues related thereto to grievance arbitration.

(2) Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.06 of the Wisconsin Employment Peace Act.

(a) Comply with the arbitration provisions of the 1982-84 collective bargaining agreement between Respondent and Northland College Employees Local 216-G, AFSCME, AFL-CIO with respect to the subject grievance.

(b) Notify the Northland College Employees Local 216-G, AFSCME, AFL-CIO that Respondent will proceed to arbitration on said grievance on the issues concerning same.

(c) Participate with the Northland College Employees Local 216-G, AFSCME, AFL-CIO in the arbitration proceedings before the selected arbitrator.

(d) Should the grievance Arbitrator decide that Respondent Northland College is obligated to proceed to interest arbitration, the parties should then immediately proceed to such arbitration.

(e) Notify the WERC in writing within 20 days from the date of this ORDER as to what steps Respondent has taken to comply herewith.

Dated at Madison, Wisconsin this 26th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sharon A. Gallagher
Sharon A. Gallagher, 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.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the College twice violated Sec. 111.06(1)(f), Wis. Stats., (1) by refusing to proceed to interest arbitration under Article XXIV of the 1982-84 collective bargaining agreement and (2) by refusing to proceed to grievance arbitration concerning the Union's grievance of the College's refusal to proceed to interest arbitration.

POSITIONS OF THE PARTIES

The College filed a Motion to Dismiss and Answer herein. In these documents the College asserted that the WERC lacks jurisdiction to consider the complaint allegations herein because the Union filed charges with the NLRB over the same events; that by virtue of the NLRB's assertion of general jurisdiction over the charges and the investigation of the allegations therein, the WERC is preempted from exercising jurisdiction over the same matters which the NLRB had before it. In addition, the College argued that the NLRB's issuance of a letter which allowed the Union to withdraw its charges without prejudice is the same as a decision on the merits to dismiss the charges, and therefore the NLRB's determination is res judicata of the allegations in this case.

The College also asserted that since the College is a private sector employer, falling under the NLRB's general jurisdiction, the WERC cannot apply state law so as to restrict the College's federal right to subcontract unit work pursuant to the NLRA and that even if the Union prevailed herein, the WERC may only send that portion of the dispute to arbitration which does not deal with the decision to subcontract.

In addition, the College argued that the facts support its claim that it did not violate the Wisconsin Employment Peace Act. It argues that the facts show that no provision of the 1982-84 contract expressly prohibits subcontracting and that management's rights to subcontract are reserved therein; that the College attempted to negotiate the decision to subcontract but the Union refused to grant concessions; that in its September 12, 1983 letter the College gave the Union notice it intended to terminate custodial staff no later than June 30, 1984 thereby terminating that portion of the contract; that impasse was reached regarding subcontracting on September 4, 1983 or at the latest with receipt of the College's October 14, 1983 letter and therefore the College could lawfully implement its decision to subcontract; that the Union has failed to bargain in good faith and has waived its right to negotiate regarding the subcontract. The College also asserted that the Union has no right to bargain regarding the subcontract, citing Marinette School District, Dec. No. 19542-B (Crowley, 6/83) as holding that Wisconsin's Mediation/Arbitration law is not applicable to bargaining impasses arising during the term of a contract. The College argued further that its actions on and after April 3, 1984 did not reopen negotiations regarding the decision to subcontract since (1) the College expressly reserved its rights not to negotiate the subcontract decision in April negotiations and in mediation in May, 1984; (2) the decision to subcontract was only discussed in order to settle threatened litigation and evidence thereof should not be admitted in this case under Federal Rules of Evidence (408) and Sec. 111.07(3) and 904.07, Wis. Stats.; (3) the College is not obligated to arbitrate a grievance regarding the subcontracting of unit work according to precedent in cases arising under Section 301 of the NLRA and arbitral law; (4) the College did not otherwise breach the 1982-84 contract by refusing to proceed to interest arbitration since there were no meaningful negotiations and no impasse was reached regarding a new contract for remaining unit employes.

The Union argued that the WERC has jurisdiction of the allegations of the complaint. The Union contended that since the College stipulated to being a private sector employer under Sec. 111.02(7), Sec. 111.06(1)(f) makes it an unfair labor practice for such an employer to violate the terms of a collective bargaining agreement; that valid precedent holds that Sec. 111.06(1)(f), Stats., is the Wisconsin equivalent of Section 301(a) of the NLRA and therefore, the WERC must apply Section 301 federal law to such contract enforcement claims, citing Tecumseh Products Co. v. WERB, 23 Wis.2d 118 (1954). The Union also contended that the NLRB's assertion of jurisdiction over the Union's bad faith bargaining charge does not deprive the WERC of jurisdiction of the instant complaint. Nor

does the NLRB's issuance of a withdrawal letter have a res judicata affect herein since such a letter does not constitute a merit determination of the NLRB charges. The Union further contended that even if the NLRB had dismissed the Union's charge on the merits such would not deprive the WERC of its independent jurisdiction to enforce the parties' collective bargaining agreement pursuant to Sec. 111.06(1)(f), Stats., citing Chattanooga Mailers Union, Local 92 v. Chattanooga News-Free Press, 90 LRRM 3000 (6th Cir., 1975).

Further, the Union argued that the College's refusal to go to interest arbitration violated the collective bargaining agreement under the circumstances here; that the Union met all of the requirements of Article XXIV including engaging in negotiations and mediation and making a timely request to arbitrate upon impasse prior to the termination date of the agreement. Therefore, the WERC must require the College to go to interest arbitration under State and Section 301 federal law precedent.

The Union argued, contrary to the College, that it had not waived its right to negotiate regarding subcontracting; that an employer's decision to subcontract during the term of a collective bargaining agreement is different from its decision to subcontract after the termination of a collective bargaining agreement; that the parties negotiated concerning the subcontract after the Union reopened the contract on April 3, 1984 and not before that time. The Union also argued that Marinette School District, supra is distinguishable from the instant case. Finally, the Union argued that evidence regarding what the College has called "settlement" negotiations is not excludable under Federal Rule of Evidence 408 or Sec. 904.08, Stats., since no litigation was pending in May and June 1984 when mediation and "settlement" talks occurred.

DISCUSSION

The Commission's Jurisdiction

The College's Motion to Dismiss is denied. It is clear that the Wisconsin Employment Relations Commission has jurisdiction of the allegations of this complaint under Sec. 111.06(1)(f), Tecumseh Products Co. v. NLRB, 23 Wis.2d 118 (1964); Dunphy Boat Corp. v. WERB, 267 Wis. 316 (1954). The Union is correct in its assertion that in the State of Wisconsin Tecumseh Products Company v. WERB, 23 Wis.2d 118 (1964) and its progeny indicate that the WERC has jurisdiction of cases alleging violation of collective bargaining agreements and that the WERC is to apply Section 301 federal law. See, e.g. Dunphy Boat Corporation v. WERB, 267 Wis. 316 (1954). 2/ In addition, the NLRB's assertion of jurisdiction over essentially a bad faith bargaining charge (Section 8(a)(5), (1) and 8(d)) does not preempt or preclude the WERC from ruling upon allegations of a refusal to proceed to arbitration under Sec. 111.06(1)(f), Stats. The WERC's jurisdiction over such claims is different from and independent of the NLRB's jurisdiction under Section 8(a)(5). It is also clear that the NLRB's issuance of a withdrawal letter is not the equivalent of a dismissal of charges. The former is clearly not a merit determination and does not bar the filing of a new charge over the same

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2/ Cases cited by the College are distinguishable from the instant case and inapplicable here. Thus, Lodge 76, International Association of Machinists & Aerospace Workers, AFL-CIO v. WERC, 92 LRRM 2881 (1976) did not concern a breach of contract claim. Rather, it concerned the Wisconsin Employment Relations Commission's injunction of a Union's partial work stoppage which was intended to place economic pressure on a private sector employer to agree to a new contract. There, the United States Supreme Court found that the National Labor Relations Act preempted the WERC from enjoining such protected concerted activities.

In addition, the College's reliance upon Marinette School District, Dec. No. 19542-B (Crowley, 6/83) is misplaced. The Examiner in that case stated that since the Union had not exhausted the grievance procedure, with regard to the complaint's breach of contract claim under Sec. 111.70(e)(a)(5) he would not assert jurisdiction of or decide that claim. I note, also, that Marinette, supra, arose under the Municipal Employment Relations Act and the subcontracting issue was decided on its merits by the WERC under that statute.

events, while the latter is a merit determination barring the subsequent filing of a charge over the same events. Finally, the fact that the amended charge before the NLRB alleged that the College's refusal to proceed to interest arbitration constituted bad faith bargaining and, therefore violated Section 8(a)(5) of the NLRA does not preclude the WERC from considering Sec. 111.06(1)(f) allegations based upon the same events. This is true, as stated above, because the NLRB's withdrawal letter is not a merit determination of the charges and therefore is not res judicata of the claim. Also, the proof of a Section 8(a)(5) bad faith bargaining claim grounded upon a refusal to arbitrate is distinct from the proof of a Sec. 111.06(1)(f) refusal to proceed to arbitration. Indeed, the NLRB lacks jurisdiction of a Section 111.06(1)(f) claim and the NLRB must bow to determinations of the federal courts and to agencies like the WERC when they sit as Section 301 courts considering contract enforcement claims.

The College's additional arguments in its Motion are matters not properly before me in the instant proceeding. First the College's argument that the Union bargained in bad faith regarding a new contract for the remaining unit employes on and after April 3, 1984 is an argument which should have been brought before the NLRB 3/ Such an argument is without my jurisdiction and is immaterial and irrelevant to the issues herein.

Second, the College's waiver/preemption argument, under Machinists and Aerospace Workers v. WERC, 92 LRRM 2881 (U.S. Sup. Ct., 1976), is unpersuasive. That case is wholly distinguishable from the instant case. 4/

The Merits of the Union's Claims

The real issue in this case is whether the College is obliged to proceed to arbitrate the grievance filed by the Union over the College's refusal to proceed to interest arbitration. All other issues on which the parties seek a ruling and the proffered evidence supporting those issues are not properly within my jurisdiction to consider as Examiner in a Sec. 111.06(1)(f) lawsuit.

The United State Supreme Court laid down guidelines in the "Steelworkers Trilogy" case, United Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574, 46 LRRM 2416 (1960) for the application and interpretation of Sec. 301 of the National Labor Relations Act, as amended:

> . . . the judicial inquiry under Section 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. All doubts should be resolved in favor of coverage. 363 U.S. at 582-83.

The Commission has held that where a dispute is arbitrable on its face it will direct the parties to proceed to arbitration. As Examiner Yaeger stated in Spooner Joint School District No. 1, Dec. No. 14416-A (Yaeger, 9/76):

> This Commission has for years held, both in the private and public sectors, that if the grievance states a claim, which on its face, is governed by the collective bargaining agreement it is prima facie substantively arbitrable. However, the question of whether, in fact, the contract governs the dispute and, the grievance is substantively arbitrable, is for the arbitrator to ultimately determine.

3/ I note that the evidence herein indicates that the College never filed a NLRB charge against the Union concerning this claim.

4/ See Note 2 infra.

Here, Article VIII contains broad language defining a grievance as "any misunderstanding or dispute . . . as to the interpretation of any provision of this agreement to any given situation . . .". Thus, the grievance is, on its face, covered by the collective bargaining agreement -- it is a dispute or misunderstanding as to the proper interpretation of Article XXIV. I find that the College was and is obliged to proceed to grievance arbitration and I shall order the College to arbitrate the grievance.

The issue whether the College is obliged to proceed to interest arbitration under Article XXXIV is for the grievance arbitrator. Federal case law indicates that where a Section 301 court would have to interpret the language of a collective bargaining agreement, such interpretation should be eschewed by the court, as contract interpretation is properly for the arbitrator to determine. See, Chattanooga Mailers Union Local 92 v. The Chattanooga News-Free Press, 90 LRRM 3000, 3008 (6th Cir., 1975). See also, Spooner Joint School District, supra; City of Racine, Dec. No. 17348 (Hawks, 10/79). Whether the parties have met the procedural requirements for arbitration is an issue for the arbitrator to determine. See also, City of Racine, supra; Sauk Prairie School District et al., Dec. No. 15282-B (WERC, 7/78). See also, Milwaukee County, Dec. No. 16448-B (Lynch, 4/79).

The College has urged that the following issues are properly before me: (1) whether the College terminated the 1982-84 collective bargaining agreement prior to April 3, 1984 (2) whether the Union waived its rights to negotiate concerning custodial employes between September 12, 1983 and April 3, 1984 (3) whether the Union properly reopened negotiations on April 3, 1984, (4) whether the College waived its right to insist upon cloture to custodial negotiations by participating in the meetings of May 15, 24 and June 19, 1984, (5) the proper interpretation of Article XXIV vis a vis other sections of the 1982-84 agreement, including whether the contractual status quo must be maintained pending interest arbitration.

However, as stated above, these are procedural and substantive arbitrability issues or they are questions concerning the proper interpretation of Article XXIV. As such, these matters and the evidence proffered regarding them are without my jurisdiction to consider.

Accordingly, the undersigned concludes that the Repondent Northland College has and continues to commit an unfair labor practice of refusing to proceed to grievance arbitration as defined by Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act. The issues described above, regarding procedural and substantive arbitrability and contractual interpretation are for the grievance arbitrator to determine.

Dated at Madison, Wisconsin this 26th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sharon A. Gallagher
Sharon A. Gallagher, Examiner