STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN EDUCATION ASSOCIATION, Complainant, vs. SCHOOL DISTRICT OF SHEBOYGAN, Respondent.	Case 92 No. 42060 MP-2221 Decision No. 26098-B

Appearances:
Ms. Melissa A. Cherney, Staff Counsel, Wisconsin Education Association Council, 1287,
Mulcahy & Wherry, S.C., Attorneys at Law, First Wisconsin Bank, P.O. Box
Mr. Frederic M. Schweiger, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On April 20, 1989, Sheboygan Education Association filed a complaint alleging that School District of Sheboygan and Richard F. Swider and Associates, Inc., had violated various provisions of the Municipal Employment Relations Act by unilaterally changing a Tax Shelter Annuity (TSA) program without notification to or bargaining with the Association. Hearing concerning the aforesaid complaint of prohibited practices was held in abeyance pending an informal attempt to resolve said dispute. Thereafter, the undersigned was appointed Examiner in this matter and a hearing was scheduled for August 30, 1989, in the Sheboygan City Hall, Sheboygan, Wisconsin. By letter dated August 10, 1989, Complainant moved to withdraw the complaint as to Respondent Richard F. Swider and Associates, Inc. The Examiner, having received a letter dated August 16, 1989 from Respondent Richard F. Swider and Associates, Inc., wherein said Respondent indicated that it had no objection to said motion, granted said motion by Order dated August 18, 1989 thereby dismissing Richard F. Swider and Associates, Inc. as a Respondent in this matter. A hearing was conducted by the undersigned on August 30, 1989, in the Sheboygan Area School District's offices, 830 Virginia Avenue, Sheboygan, Wisconsin. The hearing was transcribed, and the parties completed their briefing schedule on December 8, 1989. The Examiner, having considered the evidence and argument of the parties and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Complainant, Sheboygan Education Association, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and has its principal place of business at Kettle Moraine UniServ Council, 3841 Kohler Memorial Drive, Sheboygan, Wisconsin.

2. Respondent, School District of Sheboygan, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and has its principal place of business at 830 Virginia Avenue, Sheboygan, Wisconsin.

3. At all times material hereto, Complainant and Respondent were parties to a collective bargaining agreement that governed the wages, hours and conditions of employment of certain professional employes of Respondent engaged in teaching. Said agreement was in effect from July 1, 1987 to June 30, 1989, and contained among its provisions a grievance procedure culminating in final and binding arbitration. Said agreement also contained the following provisions:

3.7 Payroll Deductions. The Board will make employee authorized deductions for employee share of insurance plans in effect, United Way, Northeastern Education Association dues, any credit union which has an office in Sheboygan County provided there are at least 25 employees authorizing deduction to such credit union, and Tax Shelter Annuity in the manner as determined by the Board. 3/

ARTICLE VII - GRIEVANCE PROCEDURE

7.1 Definition. A grievance is defined as any alleged violation of a specific provision or provisions of this Agreement between the Association and the Board regarding wages, hours, or conditions of employment. Aggrieved parties may be the Association or any bargaining unit employee.

4. In October 1987, Respondent began thinking about changing the Tax Shelter Annuity (TSA) program. George Haynes, District Comptroller, had several concerns regarding the TSA program then in effect including potential tax liability (in 1985 the IRS had begun an investigation into other financial areas of Respondent), too many carriers and administrative difficulties. Haynes had several conversations during this period with Richard F. Swider of Richard F. Swider and Associates about establishing a new program. He then presented a proposed TSA program to the directors of the Respondent; the directors' group included the District Administrator, the Director of Business Services and other managers for Respondent.

5. On January 8, 1988, George Haynes placed the following article in the Respondent's staff bulletin:

TAX-SHELTERED ANNUITY POLICY REVISION - A. George Haynes

The administration is in the process of reviewing and revising policies and procedures relating to tax-sheltered annuity programs. In order to facilitate this process a moratorium has been declared for new providers of tax-sheltered annuities. The moratorium went into effect on January 1, 1988. Tax-sheltered annuities may still be taken out or increased with providers already doing business with the district.

Any employee considering a new tax-sheltered annuity is requested to contact the payroll department to verify whether or not the district is presently doing business with the company. Verifying the company in advance will save time and possible frustration. As soon as final policies and procedures are finished, general notification will be made.

Thereafter, Respondent refused to honor requests from teaching employes represented by Complainant for a tax sheltered annuity with a new tax shelter annuity provider.

6. On August 11, 1988, George Haynes and Daniel L. Moberly, Respondent's Director of Business Services, sent a memo to the Board of Education for Respondent recommending that the District enter into a contract with Richard F. Swider & Associates to administer Respondent's TSA program. Said memo indicated that the then current system of allowing "employees to make contributions to any of the 42 eligible providers" caused Respondent several concerns including:

1.An unmanageable administrative process.

2.Liability problems.

3.Difficulty for Respondent and its employes in evaluating the relative competitiveness of all the eligible carriers.

Said memo also recommended that the list of tax deferred annuity providers be limited to eight companies. Finally, the memo proposed that "employees with existing contracts not included in the eight companies will be able to grandfather those contracts at their current level, "and that Richard F. Swider and Associates be named as the exclusive agent of record for Respondent for the

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1/ The provision quoted above was first contained in the parties' 1981 collective bargaining agreement. Bargaining history in 1980 sheds no light on the meaning the parties attached to the phrase "The Board will make employee authorized deductions for . . . Tax Shelter Annuity in the manner as determined by the Board," which was contained in the aforesaid provision. Said contract provision was contained in each collective bargaining agreement since 1981 to date with minor differences, but said differences are immaterial to the decision reached herein.

eligible companies.

7. On August 15, 1988, George Haynes spoke with Ken DeShambo, President of Complainant, regarding the above recommendation to change Respondent's TSA program. DeShambo told Haynes that Complainant was not pleased; that its Executive Board would be meeting that evening; that he would submit the proposed changes in the TSA program to the Board, and get back to him with a response the next day.

8. On August 16, 1988, DeShambo and Haynes met to discuss the matter. DeShambo informed Haynes that Complainant was concerned that the teachers had had no input into the proposed changes in the TSA program; and asked that the Board of Education hear and receive the report but take no action until Complainant had a chance to negotiate regarding the matter. Haynes stated that he "heard" what Complainant was saying but made no promises regarding same. Haynes did not convey Complainant's aforesaid request to Respondent's Board.

9. On August 16, 1988, Respondent's Board of Education met. At that meeting, the Board unilaterally made the following changes in the TSA program:

1. Employees may no longer make contributions to TSAs with the company of their choice.

2. Only eight companies will be involved with the program.

3. Employees must freeze their TSA with their current company and start a TSA with one of the eight companies chosen by the District, or roll their TSA over to one of the eight companies chosen by the District.

10. Thereafter, on or about August 22, 1988, Respondent signed a two (2) year contract with Richard F. Swider and Associates, Inc., which provided inter alia that Swider would employ an individual in the District office, to administer the new TSA program noted above, and to act as broker for the eight companies involved with the program.

11. By letter dated August 25, 1988, Respondent informed the aforesaid teaching employes of the changes in the TSA program as follows:

> We have entered into a new agreement with Richard F. Swider & Associates, Inc., for the administration and sales assistance of our tax deferred annuity plan, which may affect you. Our objectives are to improve the administrative efficiency and assure compliance with Federal regulations for this plan. Additionally, we have arranged for a full time representative to assist you and answer any questions or concerns you may have, regarding your individual tax deferred annuity plan.
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> As of November 1st, we will restrict new contributions to the following approved carriers:
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> | | |
> |---|---|
> | Beneficial Standard Life | Northern Life |
> | Federal Kemper Life | Security Benefit Life |
> | Integrated Resources Life | Travelers |
> | National Guardian Life | WETSAT |
>
> As of November 1, 1988, you will not be allowed to make any tax deferred annuity contributions to any provider other than those listed above. Your accumulated contributions made prior to November 1st may be either frozen with your existing carrier or transferred to one of the approved carriers.
>
> We will be holding group meetings to discuss these changes in more detail on the following dates:

. . .

12. At the group meetings noted above which were held in early September, 1988, employes expressed dissatisfaction with the changes in the TSA program and the manner in which those changes were made.

13. On September 15, 1988, Complainant, by its attorney Melissa A. Cherney, wrote to Respondent's attorney, Paul Hemmer, advising Respondent that it believed Respondent acted in violation of Chapter 111.70, Stats., by unilaterally changing the TSA program. The letter further requested that Respondent reconsider the matter and bargain with Complainant. The Respondent did not respond to Complainant's September 15, 1988 letter.

14. On September 20, 1988, Respondent's Board of Education met at which time a number of people, including teachers and local insurance agents, spoke against the Board's decision to limit the number of tax-sheltered annuity

companies represented in the District's TSA program as well as the contract with Richard F. Swider and Associates, Inc.

15. On or about this time, and in response to concerns raised by its employes and local insurance agents, Respondent began meeting with agents of Richard F. Swider and Associates, Inc. to discuss modifications of the TSA program adopted August 16, 1988.

16. On September 23, 1988, Complainant, by its attorney Melissa A. Cherney, sent the following letter to Paul L. Hemmer, attorney for Respondent:

> I understand that the Sheboygan School Board and Administration are meeting with Swider and Associates regarding the future of the Tax Shelter Annuity Program at the Sheboygan School District. The Association would like to express its interest in being involved in those discussions. Such involvement could help to bring about a resolution of this matter which is satisfactory to all parties. Moreover, since the Board is required to bargain with the Association regarding any changes in its policy prior to implementation, it makes sense for the Association to be involved at this time.
>
> Please contact Sheboygan Education Association President Ken DeShambo or Charles Garnier at the Kettle Moraine UniServ Council offices if the Board is willing to allow input from the Association in this matter.

Respondent did not respond to Complainant's letter dated September 23, 1988.

17. On or about September 25, 1988, Respondent and Richard F. Swider and Associates agreed to modify the aforesaid TSA program referred to in Finding of Fact Number 9. The modification allowed the grandfathering of carriers, but only at the monetary level that the employe had previously contributed and only if the carrier would sign a hold harmless agreement drafted by Swider. The modification also extended the agreement for another year and added a clause which would require the Respondent to pay $200,000, if it breached the agreement.

18. On November 15, 1988, Respondent's Board of Education adopted in final form a Tax Sheltered Annuity Program reflecting the aforesaid policy changes. In a policy statement the Board noted as follows:

> The Sheboygan Area School District sponsors a Tax Sheltered Annuity Program intended to qualify under Section 403 (b) of the Internal Revenue Code of 1986 for the benefit of its eligible employees. The administration and operatin (sic) of the program shall be governed by the rules and procedures of this policy. The employee shall elect to make contributions to only one (1) company with the exception of those employees who have been "grandfathered" as of December 1, 1988.

19. On November 22, 1988, Ken DeShambo, on behalf of the Complainant, sent the following letter to Pat Thomas, local representative for Richard F. Swider and Associates:

> I am once again writing on behalf of the Association, and specifically the Executive Board. We have discussed the possibility of meeting with Mr. Swider and yourself, and at this time it does not appear that such a meeting would serve any purpose for the Association.
>
> At a number of points along the way we requested that we be involved in the TSA decision making, but we were not allowed that opportunity. At this time we have decided to work within the current system in a manner that will best serve the long term interests of our membership.

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

CONCLUSIONS OF LAW

1. That because the parties' collective bargaining agreement in effect from July 1, 1987 to June 30, 1989 contains a grievance procedure culminating in final and binding arbitration; and because the complaint filed herein basically alleges a contractual violation of Section 3.7 of the aforesaid agreement which should be resolved through the parties' contractual grievance arbitration procedure; the Examiner will apply the Commission's longstanding policy regarding breach of contract allegations not to assert jurisdiction, but to defer the instant dispute to the parties' agreed upon procedure for resolving such disputes.

2. That because the Examiner has deferred the instant dispute to grievance arbitration, the Examiner will not assert the Commission's jurisdiction to determine whether by its conduct Respondent has failed to bargain collectively and in good faith with Complainant by unilaterally changing the TSA program without notification to or bargaining with Complainant, and has interfered with, restrained or coerced employes in the exercise of their rights, as guaranteed in Sec. 111.70(2), Stats., thereby violating Secs. 111.70(3)(a)1 and 4, Stats.

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

ORDER 2/

That the complaint is deferred to grievance arbitration with the Examiner retaining jurisdiction over the matter, to ensure that the issues raised by the complaint are both resolved, and if appropriate, adequately remedied by arbitration.

Dated at Madison, Wisconsin this 9th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Dennis P. McGilligan, Examiner

(See Footnote 2/ on Page 6)

2/ 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

BACKGROUND

In the complaint initiating these proceedings, Complainant alleged that Respondent violated Secs. 111.70(3)(a)1 and 4, Stats., by having failed and refused to bargain collectively and in good faith with Complainant by unilaterally changing the TSA program without notification to or bargaining with the Association. On August 16, 1989, Respondent filed an answer with the Commission denying that it had committed any violation of the applicable statutes because one, the complaint fails to state a claim upon which relief can be granted; two, Complainant failed to invoke or exhaust the remedy afforded by the grievance arbitration procedure set forth in the parties' labor agreement; three, Respondent satisfied its obligation to bargain collectively and in good faith at such time the parties reached a negotiated agreement and incorporated into their labor agreement Section 3.7 of the agreement which covers the dispute at hand; and four, Complainant is barred from presenting the claims in this matter on the basis of estoppel. On August 28, 1989, Respondent filed an amended answer with the Commission adding that Complainant is also barred from presenting claims in this matter on the basis of waiver. As noted above, hearing in the matter was held on August 30, 1989; and the parties completed their briefing schedule on December 8, 1989.

COMPLAINANT'S POSITION

Complainant basically argues that the Respondent violated Secs. 111.70(3)(a)1 and 4, Stats., when it unilaterally changed its TSA program. In support thereof Complainant maintains that the issue of employe-authorized payroll deductions to a TSA program is a mandatory subject of bargaining. Complainant also maintains that Respondent made the change in the TSA program without first offering Complainant the opportunity to bargain over the decision or its impact on employes. Therefore, Complainant concludes that Respondent violated its duty to bargain in good faith by making a unilateral change in a mandatory subject of bargaining without notifying the collective bargaining representative and affording it the opportunity to bargain over the matter as noted above. Complainant cites a number of Commission cases in support of its position.

Complainant rejects Respondent's affirmative defenses as "unpersuasive" and claims they "do not excuse or justify its action." In this regard Complainant first argues that the language of Article 3.7 of the labor agreement does not constitute a waiver of its right to bargain over Respondent's action. Complainant reaches this conclusion for two reasons: one, the clause in dispute does not contain a clear and unequivocal waiver of the right to bargain over the employer's decision to eliminate employe choice in TSA deductions; and two, bargaining history.

Complainant next adds that it did not waive its right to bargain by inaction. Complainant also claims that the parties' zipper clause is not a clear and unmistakable waiver.

Complainant further contends that Respondent's concerns about tax liability do not justify its failure to give notice and the opportunity to bargain over the changes in the TSA program.

Finally, Complainant rejects the authority cited by Respondent as inapposite and Respondent's characterization of the facts as misleading.

For a remedy Complainant requests that the Examiner find that Respondent violated the aforesaid provisions of MERA by its actions herein and order Respondent to return to the status quo ante; make employes whole for all losses resulting from Respondent's unilateral change, with interest; and take other compliance action deemed appropriate by the Examiner.

RESPONDENT'S POSITION

Respondent essentially asserts the four affirmative defenses noted above in support of its position that the complaint should be dismissed.

In its brief, Respondent emphasizes the following principal arguments:

1. Under the terms of Section 3.7 of the collective bargaining agreement Respondent was not required to engage in collective bargaining with the complainant before making changes in the manner in which it makes payroll deductions to a tax sheltered annuity.

a) Section 3.7 clearly reserves to the Board of Education complete authority with regard to administration of the TSA program.

b) Respondent has a duty to bargain collectively with the representative of its employes with respect to mandatory subjects of bargaining during the term of an existing collective bargaining agreement, except as to those matters which are embodied in the provisions of said agreement, where bargaining on such matters has been clearly and unmistakenly waived. The matter of payroll deductions for a tax shelter annuity was previously negotiated and is specifically addressed at Section 3.7. Therefore, Respondent has no additional obligation to negotiate with regard to this issue with Complainant.

c) Complainant is charged with knowledge of the broad language it agreed to at Section 3.7 and the consequences of the exercise of the language by Respondent.

2. Under the terms of Section 8.4 of the agreement, Complainant has waived the right to engage in collective bargaining with Respondent over the manner in which payroll deductions for tax sheltered annuities are to be made.

a) Section 8.4 provides:

8.4 This Agreement reached as a result of collective bargaining represents the full and complete agreement between the parties and supersedes all previous agreements between the parties. It is agreed that any matters relating to the current contract term, whether or not referred to in this Agreement, shall not be open for negotiations except as otherwise provided herein, or as otherwise mutually agreed by the parties. All terms and conditions of employment not covered by this Agreement shall continue to be subject to the Board's direction and control, provided, however, that the bargaining agent shall be notified in advance of any changes having a substantial impact on the bargaining unit, given the reason for such change, and provided an opportunity to discuss the matter.

b) The Commission previously construed Section 8.4 as an express waiver of the right to engage in collective bargaining over staff reduction in a case - Board of Education Joint School District No. 1, City of Sheboygan, et al, Dec. No. 11990-B (1/76) - analogous to the present dispute over TSA deductions. That case is controlling.

3. There is no evidence to prove that Section 3.7 has any meaning other than that as clearly reflected in its terms.

a) Complainant seeks to render meaningless the last phrase of

Section 3.7.

b)Clear language of Section 3.7 must be given the meaning expressed i.e. complete authority of Board to make TSA payroll deductions in the manner the Board determines most appropriate.

c)Complainant has not proved any basis upon which to give Section 3.7 any meaning other than that clearly expressed.

(1)Complainant introduced no evidence to contradict the clear and unambiguous terms of Section 3.7.

(2)Pursuant to the reserved authority of the Board under Section 3.7, Respondent acted to manage the tax sheltered annuity payroll deduction program.

(3)The credit union minimum participation requirement at Section 3.7 confirms the reserved authority of Respondent to determine the manner in which payroll contributions to tax sheltered annuities will be made.

4.Failure to properly administer the TSA program subjects Respondent to potential liability for income tax and penalties.

5.Respondent's decision to manage the TSA program through a third party administrator was based upon concerns of public liability and had a de minimus impact upon employes.

For relief, Respondent requests that the complaint be dismissed, and that the Examiner award Respondent costs and reasonable attorney fees.

DISCUSSION

Respondent initially argues that the complaint fails to state a claim upon which relief can be granted. However, Respondent cites no cases in support of this position. Nor is there anything in the record which would support such a finding. Therefore, the Examiner denies this claim of Respondent.

Respondent next argues that Complainant has failed to invoke or exhaust the remedy afforded by the parties' contractual grievance arbitration procedure. Therefore, the Examiner must next decide whether to exercise the Commission's jurisdiction to adjudicate the alleged prohibited practices herein or defer the matter to arbitration.

It is well established that the Commission has jurisdiction to adjudicate cases which allege prohibited practices, even though the facts might also support a breach of contract claim which is resolvable through arbitration.

However, whether to exercise said jurisdiction or defer the alleged statutory violations to arbitration is a discretionary act. The Commission has previously stated that it will abstain and defer only after it is satisfied that the Legislature's goal, to encourage the resolution of disputes through the method agreed to by the parties, will be realized, and that there are no superseding considerations in a particular case. 4/ Here, Complainant argues that it is not alleging a violation of the terms of the parties' collective bargaining agreement, but is alleging that Respondent violated Secs. 111.70(3)(a)1 and 4, Stats., when it unilaterally changed its TSA program. However, the undersigned also finds persuasive Respondent's assertion that the complaint basically alleges a contractual violation of Section 3.7 of the parties' collective bargaining agreement which should be resolved through the contractual grievance arbitration procedure. Where the complaint alleges a violation of the statute and the collective bargaining agreement contains a provision which provides that the alleged activity may also constitute a violation of the collective bargaining agreement, whether to exercise jurisdiction, the Commission considers the following:

> (1) the parties must be willing to arbitrate and renounce technical objections which would prevent a decision on the merits by the arbitrator;
>
> (2) the collective bargaining agreement must clearly address itself to the dispute; and
>
> (3) the dispute must not involve important issues of law or policy. 5/

Applying the above criteria to the facts herein, the Examiner believes, inasmuch as Respondent has raised this issue as its second affirmative defense, that Respondent is willing to arbitrate the merits of the dispute and renounce any procedural objections regarding same. Therefore, the Examiner concludes that the first consideration set forth above has been met.

The Examiner also believes the second criterion has been met. In this regard the Examiner points out that Section 3.7, on its face, clearly addresses the disputed issue when it states: "The Board will make employe authorized deductions for . . . Tax Shelter Annuity in the manner as determined by the Board." In addition, the parties' pleadings and arguments make it clear that a determination as to the meaning of Section 3.7 would likely operate to resolve the areas of dispute before the Examiner. Finally, the Examiner notes that Article VII, Section 7.1 defines a grievance as "any alleged violation of a specific provision or provisions of this Agreement between the Association and the Board regarding wages, hours, or conditions of employment," and as noted previously the agreement does provide for final and binding arbitration of any such disputes.

With respect to the third criterion, the Examiner does not believe that there exists important issues of law or policy arising out of this case. The Examiner reaches this conclusion because there is a high probability that a grievance arbitration would fully resolve the unlawful unilateral change claim which is at the heart of Complainant's case. More specifically, the analysis and the remedies (if any) in a grievance arbitration of the dispute are likely to fully determine the statutory issues and to satisfactorily remedy any unlawful unilateral change in the TSA program. In this regard the Examiner opines that an answer to the question as to whether Respondent acted properly in the instant case can be found in the analysis of the language - "The Board will make employee authorized deductions for employee . . . Tax Sheltered Annuity in the manner as determined by the Board" (emphasis added) - found in Section 3.7 of the agreement.

3/ Racine Unified School District, Dec. No. 18443-B (Houlihan, 3/81).

4/ Id; City of Beloit (Fire Department), Dec. No. 25917-B (Crowley, 8/89) aff'd Dec. No. 25917-C (WERC, 10/89).

As noted above, issues concerning interpretation of the contract which can be resolved through the grievance arbitration process predominate over statutory issues herein. In addition, there do not appear to be significant legal issues or policy considerations present for the Commission to exercise its jurisdiction to adjudicate the alleged prohibited practices. 6/ In sum, because Respondent has raised an affirmative defense that Complainant has failed to invoke or exhaust the remedy afforded by the grievance arbitration procedure set forth in the parties' collective bargaining agreement and because there is a substantial probability that submission of the merits of this dispute to the arbitral forum will resolve the claim in a manner not repugnant to MERA, deferral is appropriate. 7/

For the reasons set forth above, the Examiner defers the complaint to grievance arbitration on the assumption Respondent will waive any technical objections so the matter can proceed on the merits. The Examiner retains jurisdiction over the matter, to ensure that the issues raised by the complaint are resolved, and, if appropriate, adequately remedied by arbitration.

Dated at Madison, Wisconsin this 9th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Dennis P. McGilligan, Examiner

5/ The Commission has already decided that insurance carrier identity is a mandatory subject of bargaining. Madison Metropolitan School District, Dec. No. 22129, 22130, (WERC, 11/84) and Milwaukee Board of School Directors, Dec. No. 23208-A (WERC, 2/87).

6/ Brown County, Dec. No. 19314-B (WERC, 6/83).