

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WISCONSIN STATE EMPLOYEES UNION	:	
(WSEU), AFSCME, COUNCIL 24,	:	
AFL-CIO, and its appropriate	:	
affiliated LOCAL 55,	:	Case 272
	:	No. 42890 PP(S)-160
Complainant,	:	Decision No. 26214-B
	:	
vs.	:	
	:	
STATE OF WISCONSIN,	:	
	:	
Respondent.	:	
	:	

Appearances:

Lawton & Cates, S.C., Attorneys at Law, by Mr. Richard Graylow, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, appearing on behalf of the Complainant.

Ms. Teel Haas, Chief Legal Counsel, Department of Employment Relations, 137 East Wilson Street, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Respondent.

ORDER DENYING MOTION TO DISMISS AND DEFERRING
COMPLAINT TO GRIEVANCE ARBITRATION

The Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO, and its appropriate affiliated Local 55, hereinafter referred to as Complainants, having on September 21, 1989, filed a complaint with the Wisconsin Employment Relations Commission alleging that the State of Wisconsin, hereinafter referred to as Respondent, has committed and continues to commit unfair labor practices within the meaning of Sections 111.84(1)(a) and (1)(c) of the State Employment Relations Act by refusing to recognize the Union's designation of grievance representatives to represent certain grievants in the grievance process; and the Commission having on October 26, 1989, appointed Stuart Levitan, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats.; and due to the unavailability of Examiner Levitan, the Commission having on August 3, 1990, substituted the undersigned as Examiner; and the Respondent, having on November 21, 1989, filed a Motion to Dismiss the Complaint on the grounds that at all times material a grievance pertaining to issues presented in the complaint is being processed pursuant to the parties' dispute resolution procedure which culminates in final and binding arbitration and that the Commission should dismiss the complaint and defer to the grievance-arbitration procedure; the Complainant having responded that it has no objection to deferral of the matter to the grievance-arbitration procedure exhausted but objects to the dismissal of said complaint on that basis as inappropriate and unwarranted; and the Examiner, having considered the arguments of counsel with respect to the Motion to Dismiss, concludes that the complaint should not be

dismissed and the matter should be deferred to the parties' grievance-arbitration procedures.

NOW, THEREFORE, it is

ORDERED

1. That the complaint is deferred to the parties' grievance-arbitration procedure with the Examiner retaining jurisdiction over the matter to ensure,

as Respondent alleges, that the issues raised by the complaint are resolved and, if appropriate, adequately remedied by arbitration.

Dated at Madison, Wisconsin, this 12th day of September, 1990.

COMMISSION

WISCONSIN EMPLOYMENT RELATIONS

By Mary Jo Schiavoni /s/

Mary Jo Schiavoni, Examiner

STATE OF WISCONSIN

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION
TO DISMISS AND DEFERRING COMPLAINT TO GRIEVANCE ARBITRATION

Neither party objects to Commission deferral of the complaint to grievance-arbitration. Respondent, however, requests that said deferral be accompanied by dismissal of the complaint while the Complainant asserts that dismissal is neither appropriate nor warranted.

DISCUSSION

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, the Commission will consider the following in determining whether deferral is appropriate:

(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. 1/

The Examiner is satisfied from the assertions contained in Respondent's Motion to Dismiss that the three considerations set forth above have been satisfied. Nevertheless, it is appropriate to retain jurisdiction and hold said complaint in abeyance to ensure that the alleged statutory violations are resolved in a fair and timely fashion and that the arbitration award is not inconsistent with statutory policy. 2/

The Motion to Dismiss is accordingly denied and the matter is deferred to grievance arbitration.

Dated at Madison, Wisconsin, this 12th day of September, 1990.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION

By Mary Jo Schiavoni /s/

Mary Jo Schiavoni, Examiner

1/ Racine Unified School District, Dec. No. 18443-B (Houlihan, 3/81); and City of Beloit, Dec. No. 25917-B (Crowley, 8/89).

2/ Cedar Grove - Belgium Area School District, Dec. No. 25849-A (Burns, 12/89); City of Beloit, Dec. No. 25817-B (Crowley, 8/89).

