

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 NORTHWEST UNITED EDUCATORS, :  
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 Complainant, :  
 :  
 vs. : Case 25  
 : No. 45338 MP-2451  
 : Decision No. 26832-A  
 CAMERON SCHOOL DISTRICT, :  
 :  
 Respondent. :  
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Appearances:

Mr. Michael J. Burke, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, on behalf of Complainant.

Mr. Richard J. Ricci, Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, 715 South Barstow, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of Respondent.

ORDER DENYING RESPONDENT'S MOTION  
TO DISMISS COMPLAINT

Northwest United Educators, herein Complainant, having on February 15, 1991 filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, wherein it alleged that the Cameron School District, herein Respondent, has unilaterally changed terms and conditions of employment for unit employes by discontinuing to give employes parent/teacher conference days off with pay, in violation of Sec. 111.70(3)(a)1, 2 and 4, Wis. Stats.; the Commission, on March 20, 1991 having appointed Sharon Gallagher Dobish, a member of its staff to act as Examiner in the matter; the Respondent having on April 15, 1991, filed a Motion to Dismiss the instant complaint along with a supporting brief; also on April 15th, Respondent placed a conference call to the Examiner and Complainant wherein the parties engaged in oral argument regarding the merits of Respondent's Motion to Dismiss; Complainant did not file a written brief in opposition to Respondent's Motion to Dismiss but chose to orally argue against Respondent's Motion during the April 15th conference call; and the Examiner, for the reasons contained in the accompanying Memorandum, believing that the complaint should not properly be dismissed at this time, makes and issues the following

ORDER

IT IS ORDERED that Respondent's Motion to Dismiss the complaint and to defer the matter to grievance arbitration be and the same hereby is denied.

Dated at Madison, Wisconsin this 26th day of April, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Sharon Gallagher Dobish, Examiner

MEMORANDUM ACCOMPANYING ORDER  
DENYING RESPONDENT'S MOTION  
TO DISMISS COMPLAINT

Respondent argued in its written Motion as well as during the April 15th conference call that the complaint herein should be dismissed on the grounds that no important issues of law or policy are involved herein and that the complaint allegations should be deferred to the grievance arbitration procedure contained in the effective collective bargaining agreement because the collective bargaining agreement addresses itself to the underlying allegations of the complaint. Respondent also stated it is willing to waive any technical/procedural impediments to processing a grievance should deferral be ordered. Complainant responded, during the conference call, that no grievance has been filed regarding the events which gave rise to the complaint; that the parties have had a collective bargaining relationship since 1986; that the complaint does not allege a violation of the effective labor agreement; that Complainant is not alleging or contending herein that any violation of that agreement has occurred; that the collective bargaining agreement is silent regarding the complaint allegations and the Complainant seeks a decision herein whether the Respondent unilaterally discontinued a practice of granting unit employes a paid holiday on parent/teacher days.

It is well-established that the Commission has jurisdiction to hear and decide cases which allege prohibited practices but which could also be resolved through an existing grievance arbitration procedure. However, the exercise of this jurisdiction is discretionary with the Commission. As Examiner Houlihan stated in Racine Unified School District, Dec. No. 18443-B (1981),

. . . 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. Among the guiding criteria considered by the Commission for deferral are 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. 1/ (Footnote omitted)

In the instant case, although the Respondent has agreed to renounce any technical/procedural objections it could otherwise have raised to the processing of a grievance covering the events leading up to the instant complaint, it is significant here, that Complainant has not filed a grievance which could then be deferred to arbitration. Nor has Complainant evinced a willingness to process such a grievance were it filed. In addition, the complaint does not allege a violation of the effective bargaining agreement between the parties. In oral argument, Complainant took the position that the contract is silent on the points in issue in this case and that no violation of the agreement has occurred. Rather, Complainant argued that Respondent unilaterally changed a past practice (going back to perhaps 1986) which Complainant contended is the basis of the complaint herein and this is the specific action for which Complainant seeks a remedy. Thus, the parties are clearly in disagreement whether the contract addresses itself of the specific dispute underlying this complaint.

Therefore, the undersigned concludes that there is insufficient evidence to grant Respondent's Motion to Dismiss at this time. Based upon all written and oral communications on this point, it is clear that this is a contested case requiring a full hearing on the pleadings. 1/

Dated at Madison, Wisconsin this 26th day of April, 1991.

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1/ See e.g., Joint School District No. 1 of Glidden, Dec. No. 15490-A (McGilligan, 6/77); Mutual Fed. Savings & Loan Assoc. v. Savings & Loan Adv. Comm., 38 Wis.2d 381 (1968); State ex rel. City of La Crosse v. Rothwell, 25 Wis.2d 228 (1964), rehearing denied; Town of Ashwaubenon v. Public Service Commission 22 Wis.2d 38 (1964), rehearing denied; State ex rel. Ball v. McPhee 6 Wis.2d 190 (1959); General Electric Co. v. Wisconsin Employment Relations Board 3 Wis.2d 227, 241 (1957).

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Sharon Gallagher Dobish, Examiner