

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:
NEOSHO TEACHERS EDUCATION ASSOCIATION, :
:
Complainant, :
:
vs. : Case 13
: No. 45999 MP-2505
: Decision No. 27095-A
NEOSHO JOINT SCHOOL DISTRICT, :
:
Respondent. :
:

Appearances:

Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Complainant.

Mr. David R. Friedman, Attorney at Law, Suite 202, 30 West Mifflin Street, Madison, Wisconsin 53703, appearing on behalf of the Respondent.

ORDER DENYING MOTION TO DEFER TO GRIEVANCE ARBITRATION

On July 17, 1991, Complainant Neosho Teachers Education Association filed a complaint wherein it alleged that Respondent Board of Education, Neosho Joint School District, had committed prohibited practices by violating Section 111.70(3)(a)4 and Section 111.70(3)(a)1, Stats. On July 25, 1991, the Complainant filed an amended complaint wherein Complainant alleged that the Respondent had violated Section 111.70(3)(a)4 and Section 111.70(3)(a)1 when it refused to bargain with the Complainant over the impact of Respondent's decision to increase pupil contact hours and rearrange the teacher workday or working conditions of bargaining unit members. On November 13, 1991, Respondent filed an answer to the amended Complaint wherein Respondent denied that it had committed any prohibited practices and requested that the matters raised in the Complaint be deferred to grievance arbitration. On December 4, 1991, the Wisconsin Employment Relations Commission appointed Coleen A. Burns, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Sections 111.70(4)(a) and 111.07, Stats. On December 4, 1991, the Examiner advised the parties that should either party wish to file any documents in support of or opposed to Respondent's Motion to Defer to Grievance Arbitration, such documents were to be filed on or before

January 6, 1992. Having considered the Respondent's Motion to Defer to Grievance Arbitration and Complainant's response thereto;

NOW, THEREFORE, it is

ORDERED

That Respondent's Motion to Defer to Grievance Arbitration is denied.

Dated at Madison, Wisconsin this 29th day of January, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____

Coleen A. Burns, Examiner

NEOSHO JOINT SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO
DEFER TO GRIEVANCE ARBITRATION

As the Respondent argues, the Commission has previously stated that a Section 111.70(3)(a)4 refusal to bargain allegation may be deferred to the contract grievance arbitration forum in appropriate cases. The Commission has found it appropriate to defer when there is a high probability that a grievance arbitration would fully resolve the unlawful unilateral change claim and the Respondent has objected to the Wisconsin Employment Relations Commission exercise of prohibited practice jurisdiction. 1/ To prevail on its motion to defer, Respondent must demonstrate, *inter alia*, that the matters in dispute arose during a period of time in which the parties were covered by a collective bargaining agreement which contained a procedure for final and binding grievance arbitration.

Respondent argues that the matters in dispute arose during a period of time in which the parties were covered by a collective bargaining agreement which contained a procedure for final and binding grievance arbitration. Respondent's argument, however, does not establish the fact of the matter asserted. Since neither the pleadings, nor the documents provided in support of or against Respondent's motion to defer, establishes that the matters in dispute arose during a period of time in which the parties were covered by a collective bargaining agreement which contained a contractual grievance procedure which was final and binding upon the parties, the Examiner has denied Respondent's Motion to Defer to Grievance Arbitration. Respondent may renew its motion at hearing.

Dated at Madison, Wisconsin this 29th day of January, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____

Coleen A. Burns, Examiner

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