

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CADOTT EDUCATION ASSOCIATION, :
  
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Complainant, :
  
:
  
vs. :
  
:
  
SCHOOL DISTRICT OF CADOTT COMMUNITY, :
  
:
  
Respondent. :
  
:
  
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Case 17  
No. 49639 MP-2766  
Decision No. 27775-A

Appearances:

Ms. Mary E. Pitassi and Mr. Stephen Pieroni, Staff Counsel, Wisconsin  
Mr. Stephen L. Weld, Weld, Riley, Prenn and Ricci, S.C., Attorneys at  
Law,  
715 South Barstow, Suite 111, Eau Claire, Wisconsin 54702-1030,

Educator  
appear

ORDER DENYING MOTION TO DEFER TO GRIEVANCE ARBITRATION

On August 3, 1993, Complainant Cadott Education Association filed a complaint wherein it alleged that Respondent Board of Education, School District of Cadott Community, had committed prohibited practices by violating Section 111.70(3)(a)4 and Section 111.70(3)(a)1, Stats., when it unilaterally imposed sick leave and medical leave for holiday pay. On August 23, 1993, the Wisconsin Employment Relations Commission appointed Mary Jo Schiavoni, 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 August 26, 1993, Respondent filed an Answer and Motion to Dismiss the 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 August 27, 1993, the Complainant advised the Commission that it had no objection to submitting the matter to arbitration provided the Respondent renounce procedural and substantive arbitrability objections. On September 13, 1993, Respondent indicated its willingness to waive any substantive arbitrability objection but refused to waive any procedural arbitrability questions which have been raised in a timely fashion. Having considered the Respondent's Motion to Defer to Grievance Arbitration and Complainant's response thereto;

NOW, THEREFORE, it is

No. 27775-A

ORDERED

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

Dated at Madison, Wisconsin this 30th day of September, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni /s/  
Mary Jo Schiavoni, Examiner

CADOTT SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING  
ORDER DENYING MOTION TO DEFER TO GRIEVANCE ARBITRATION

While the Commission has consistently stated that Sec. 111.70(3)(a)4 refusal to bargain allegations will be deferred to the contract grievance arbitration forum in appropriate cases where the Respondent objects to the Commission's exercise of jurisdiction in the matter, such deferral has been premised upon the "substantial probability that submission of the merits of that dispute to the arbitral forum will resolve the claim in a manner not repugnant to MERA. . ." 1/ If Respondent raises a procedural defense before the arbitrator, the probability of determination of the merits is reduced. In many cases, the raising of such a defense will result in the merits remaining unresolved.

Because the Commission does possess a statutory duty to ensure that claims of statutory violations receive a determination on the merits in a fair and timely fashion in a manner not repugnant to MERA, 2/ it is inappropriate to defer to the arbitral forum, where, as here, Respondent will not waive its procedural objections such as the timely filing and/or processing of the grievance. Hearing on the merits is warranted under the circumstances and will not be delayed.

Dated at Madison, Wisconsin this 30th day of September, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni /s/  
Mary Jo Schiavoni, Examiner

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

2/ Ibid.