

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**FEDERATION OF NURSES & HEALTH PROFESSIONALS,
LOCAL 5001, Complainant**

and

MILWAUKEE COUNTY, Respondent

Case 428
No. 54375
MP-3208

Decision No. 28944-B

APPEARANCES

Ms. Carol Beckerleg, Field Representative, Federation of Nurses and Health Professionals, Local 5001, 9620 West Greenfield Avenue, Milwaukee, Wisconsin, 53214, for the Complainant.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin, 53233, for the Respondent.

**ORDER AFFIRMING IN PART AND MODIFYING IN PART
EXAMINER'S FINDINGS OF FACT AND AFFIRMING
EXAMINER'S CONCLUSION OF LAW AND ORDER**

On June 27, 1997, Examiner Stuart Levitan issued Findings of Fact, Conclusion of Law and Order with Accompanying Memorandum in the above matter wherein he determined that Respondent Milwaukee County had violated Sec. 111.70(3)(a)5, Stats., by refusing to arbitrate a grievance. He ordered Respondent to proceed to arbitration.

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On July 16, 1997, Respondent County filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats.

Complainant Federation of Nurses & Health Professionals, Local 5001, filed a written response to the petition on August 18, 1997. Respondent did not file a reply brief and the record was closed September 2, 1997.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

A. Examiner Findings of Fact 1-3 are affirmed.

A. Examiner Finding of Fact 4 is set aside and the following Finding is made:

Deborah Karis was employed at Doyne Hospital. Karis resigned from County service in November 1995. In December 1995, the County ceased to operate Doyne Hospital. Karis did not believe she had received the full amount of vacation payout due her and relayed her concerns to the president of her union, Candice Owley. On Karis' behalf, Owley wrote Henry Zielinski, Labor Relations Director for Milwaukee County, and requested the balance Karis believed was due her. Zielinski denied said claim by letter to Owley. Following an additional exchange of letters between Owley and Zielinski, in April 1996, Karis signed a grievance initiation form prepared and submitted on her behalf by union steward, Barbara Kelsey. The grievance was denied by the County's Assistant Director of Labor Relations, Thomas M. Taylor. Said denial was based on Zielinski's first letter to Owley.

A. Examiner Findings of Fact 5-9 are set aside.

D. Examiner Finding of Fact 10 is renumbered Finding 5 and affirmed as modified to find that the date of the Taylor letter is May 20, 1996, not May 7, 1996.

A. Examiner Finding of Fact 11 is renumbered Finding 6 and affirmed.

A. Examiner Conclusion of Law and Order are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of
October 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

Milwaukee County

**MEMORANDUM ACCOMPANYING ORDER AFFIRMING IN PART AND
MODIFYING IN PART EXAMINER'S FINDINGS OF FACT AND AFFIRMING
EXAMINER'S CONCLUSION OF LAW AND ORDER**

BACKGROUND

Complainant and Respondent were parties to a 1994-1996 contract which they labeled a Memorandum of Agreement (MOA). In April 1996, Complainant filed a grievance with Respondent which stated:

Grievant was not paid on all of her accrued vacation at the time of Doyne Hospitals closing.

The grievance stated that the Respondent's alleged conduct violated:

2.21(1)&(2) Vacation And (*sic*) any other applicable section of the MOA.

Respondent denied the grievance and subsequently refused to arbitrate the grievance.

On August 21, 1996, Complainant filed a complaint with the Wisconsin Employment Relations Commission alleging that the Respondent was violating Sec. 111.70(3)(a)5, Stats., by refusing to arbitrate the grievance.

THE EXAMINER'S DECISION

Applying JOINT SCHOOL DISTRICT NO. 10 V. JEFFERSON EDUCATION ASSOCIATION, 78 Wis. 2d 94 (1977), the Examiner concluded Respondent was obligated to arbitrate the grievance. He determined the grievance/arbitration clause in the Memorandum of Agreement was susceptible to an interpretation which covered the vacation pay dispute. He then commented on the merits of what he determined were the alleged "procedural deficiencies" upon which the County had premised its refusal to arbitrate.

DISCUSSION

On review, Respondent asserts the Examiner erroneously concluded Respondent was obligated to arbitrate the vacation pay grievance. Respondent contends the grievance was untimely and that the grievant was not an employee and thus not covered by the parties' bargaining agreement.

Complainant urges us to affirm the Examiner.

In our view, the Examiner correctly determined that the County arguments go to the timeliness and merits of the grievance, not to the question of whether the County has contractually obligated itself to proceed to arbitration. The County may persuade the arbitrator that it is not violating the contract. But, under JEFFERSON, it is clear the County has contractually obligated itself to make its case to an arbitrator and cannot rely upon what it believes to be its unassailable arguments as a valid basis to escape that obligation.

JEFFERSON tells us that our role in this case is limited to:

. . . a determination whether there is a construction of the arbitration clause that would cover the grievance on its face and whether any other provision of the contract specifically excludes it.

and that:

An order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

Here, the grievance alleges a violation of the vacation provisions of the contract. The contract gives the parties the right to arbitrate "Any dispute arising . . . out of the interpretation of the Memorandum . . ." The grievance is such a "dispute" between the parties. There is no applicable contractual restriction on the right to arbitrate unresolved "disputes." Consistent with the conclusion of the Examiner, JEFFERSON compels us to conclude that given the foregoing contract provisions, the County has contractually obligated itself to arbitrate the grievance.

We note that the County has raised a number of procedural defenses. We are not the forum in which these defenses should be raised. Nor is this the appropriate forum for us to express *any* view as to the merits of those defenses. That is a matter solely for the arbitrator to determine. Thus, the Examiner's conclusions as to those defenses are not only *dicta*, but constitute an invasion of the arbitrator's province and are set aside for that reason.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of
October 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
B. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

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