

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**STURGEON BAY SCHOOL DISTRICT EMPLOYEES,
LOCAL 1658, COUNCIL 40, AFSCME, AFL-CIO, Complainant,**

vs.

STURGEON BAY SCHOOL DISTRICT BOARD OF EDUCATION, Respondent.

Case 40
No. 62480
MP-3949

Decision No. 30695-B

Appearances:

Davis & Kuelthau, S.C., by **Clifford B. Buelow**, Attorney at Law, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of the Complainant.

**ORDER MODIFYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

On June 20, 2003, Sturgeon Bay School District Employees, Local 1658, Council 40, AFSCME, AFL-CIO filed with the Commission a complaint alleging that the Sturgeon Bay School District Board of Education has violated Section 111.703(a)(5) and derivatively violated Section 111.70(3)(a)1, Stats., by refusing to submit two grievances to final and binding arbitration. On August 28, 2003, the Commission appointed Coleen A. Burns, an examiner on its staff, to conduct a hearing and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Secs. 111.70(4)(a) and 111.07, Stats. The Examiner issued Findings of Fact, Conclusions of Law and Order on September 7, 2004. On September 20,

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2004, the parties stipulated to certain facts and jointly requested the Examiner to modify the September 7, 2004 Findings of Fact, Conclusions of Law and Order. Having considered the parties' stipulation and joint request, the Examiner makes and issues the following

ORDER

A. The Examiner's Finding of Fact Five is modified as follows:

By letters dated June 28, 2002, Union Representative Rainford filed with the Wisconsin Employment Relations Commission a "Request to Initiate Grievance Arbitration" on the grievance dated March 8, 2002 and a "Request to Initiate Grievance Arbitration" on the grievance dated February 18, 2002. District Attorney Buelow responded to each request with a letter dated July 15, 2002. In each letter, District Attorney Buelow states as follows:

The School District of Sturgeon Bay objects to the Union's request for arbitration because the Union has failed to timely exhaust all prior steps of the grievance procedure. Accordingly, the District requests the Commission return the Union's petition or grievance arbitration.

The Respondent has refused, and continues to refuse, to arbitrate the grievance dated March 8, 2002. On August 18, 2004, Complainant withdrew the grievance dated February 18, 2002. Prior to this withdrawal, Respondent refused to arbitrate the grievance dated February 18, 2002.

B. The Examiner's Conclusions of Law are modified as follows:

3. Respondent's refusal to process the grievance dated March 8, 2002 through final and binding arbitration constitutes a prohibited practice in violation of Sec. 111.70(3)(a)5, Stats., and derivatively Sec. 111.70(3)(a)1, Stats.

4. By refusing to process the grievance dated February 18, 2002 through final and binding arbitration prior to the time that Complainant withdrew this grievance, Respondent has committed a prohibited practice in violation of Sec. 111.70(3)(a)5, Stats., and derivatively Sec. 111.70(3)(a)1, Stats.

C. The Examiner's Order is modified as follows:

To remedy its violation of Sec. 111.70(3)(a)5 and derivatively Sec. 111.70(3)(a)1, Stats., the Respondent Sturgeon Bay School District Board of Education, its officers and agents, shall immediately take the following affirmative action that the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

- (a) Process the teacher aides grievance dated March 8, 2002 through final and binding arbitration;
- (b) Notify all of its employees represented by Complainant Sturgeon Bay School District Employees, Local 1658, Council 40, AFSCME, AFL-CIO, by posting in conspicuous places on its premises where employees are employed, copies of the Notice attached hereto and marked as Appendix "A". The Notice shall be signed by the President of the Sturgeon Bay School District Board of Education and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken to insure that said Notice is not altered, defaced or covered by other material.
- (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this order what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 22nd day of September, 2004.

Coleen A. Burns /s/

Coleen A. Burns, Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

WE WILL process through final and binding arbitration the teacher aides grievance dated March 8, 2002 which has been filed by Sturgeon Bay School District Employees, Local 1658, Council 40, AFSCME, AFL-CIO.

By

President,
Sturgeon Bay School District Board of Education

**THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE
HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY
OTHER MATERIAL**

STURGEON BAY SCHOOL DISTRICT

**MEMORANDUM ACCOMPANYING ORDER MODIFYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On September 7, 2004, the Examiner issued Findings of Fact, Conclusions of Law and Order. On September 20, 2004, the parties stipulated that, on August 18, 2004, Complainant withdrew its grievance dated February 18, 2002 and that, as a result of this withdrawal, it is not an appropriate remedy to order the Respondent to process the grievance dated February 18, 2002 through final and binding arbitration. The parties also jointly requested the Examiner to modify the Order to reflect their stipulations. After consideration of the parties' stipulations and joint request, the Examiner, pursuant to Sec. 111.07(5), Stats., and ERC 12.08, has modified the September 7, 2004 Findings of Fact, Conclusions of Law and Order.

Dated at Madison, Wisconsin, this 22nd day of September, 2004.

Coleen A. Burns /s/

Coleen A. Burns, Examiner

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