

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**TEACHING ASSISTANTS ASSOCIATION,
LOCAL 3220 OF THE WISCONSIN FEDERATION OF
TEACHERS, AFT, Complainant,**

vs.

**STATE OF WISCONSIN,
UNIVERSITY OF WISCONSIN-MADISON, Respondent.**

Case 530
No. 61638
PP(S)-329

Decision No. 30701-B

Appearances:

Aaron N. Halstead and **Kathleen M. Lounsbury**, Shneidman, Hawks & Ehlke, S.C., 222 West Washington Avenue, Suite 705, P.O. Box 2155, Madison, Wisconsin 53701-2155, appearing on behalf of the Teaching Assistants Association, Local 3220 of the Wisconsin Federation of Teachers, AFT.

David J. Vergeront, Chief Legal Counsel, Office of State Employment Relations, State of Wisconsin, 345 West Washington Avenue, P.O. Box 7855, Madison, Wisconsin 53707-7855, on behalf of State of Wisconsin, University of Wisconsin-Madison.

ORDER ON REVIEW OF EXAMINER'S DECISION

On July 30, 2004, Examiner David E. Shaw issued Findings of Fact, Conclusions of Law and Order, holding that the State of Wisconsin/University of Wisconsin-Madison (Respondent) did not violate an agreement to arbitrate within the meaning of Sec. 111.84(1)(e), Stats., when it refused to arbitrate a grievance that the Teaching Assistants Association, Local 3220 of the Wisconsin Federation of Teachers, AFT (TAA) had filed on behalf of a graduate student who had been terminated.

The Examiner concluded that, where the parties had a good faith dispute about the bargaining unit status of a position held by a graduate student, the Respondent had no duty to arbitrate a grievance relating to that student until the TAA had exhausted the contractual requirement that the Wisconsin Employment Relations Commission (Commission) determine

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via a unit clarification petition that the student was a member of the bargaining unit. Because the TAA had not exhausted that element of the contractual procedures, the Examiner dismissed the TAA's complaint.

On August 19, 2004, the TAA filed a timely Petition for Review of the Examiner's decision. Both parties thereafter submitted briefs, the last of which was received on November 1, 2004. The parties' arguments in those briefs focused almost entirely upon the Examiner's Proposed Findings of Fact and Conclusions of Law in the companion unit clarification decision (Dec. No. 31007) issued on the same date. While the TAA filed a Petition for Review, neither that document nor the TAA's written briefs mounted a cognizable substantive challenge to the Examiner's decision in the instant unfair labor practice proceeding. 1/

1/ We note that, at page 11 of its initial Brief in Support of its Petition for Review, the TAA included a very brief argument asking us to overturn the Examiner's decision in the unfair labor practice case, because "the parties' contract provides for arbitration, including in cases where the Union alleges the absence of just cause for termination." Nothing in the Examiner's decision takes issue with the foregoing assertion, nor does anything in the TAA's brief take issue with the Examiner's actual holding, as we have summarized it in the text, above. We also note that, at page 5 of its Brief in Opposition to the Petition for Review, the Respondent summarized the Examiner's holding in the instant unfair labor practice case as follows: "[S]ince Mr. Pedroni was not a PA, he did not have the protection of the contract or SELRA and dismissed the Complaint." This is not an accurate statement of the Examiner's holding, which we have restated in the text, above.

Having considered the evidence and the arguments of the parties, we hereby affirm the Examiner's decision in its entirety, for the reasons set forth in that decision.

ORDER

The Examiner's Findings of Fact, Conclusions of Law and Order are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of December, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner