STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LINDA MARTIN, Complainant.

vs.

MADISON METRO SCHOOL DISTRICT;
MADISON METROPOLITAN SCHOOL DISTRICT BOARD,
MADISON TEACHERS, INC.; RICH THAL; THOMAS YAEGER, Respondents.

Case 298
No. 65194
MP-4191

Decision No. 31593-A

Appearances:

Linda Martin, 1000 Castle Drive, Sun Prairie, Wisconsin 53590, appearing on behalf of herself.

Attorney Thomas Yaeger, 5920 Mayhill Drive, Madison, Wisconsin, 53711, appearing on behalf of himself.

Attorney Malina Piontek, Labor Attorney, Madison Metropolitan School District, 545 West Dayton, Madison, Wisconsin 53703, appearing on behalf of Respondent-Employer.

Lawon & Cates, S.C., by **Attorney Bruce Davey**, 10 East Doty, Suite 4, Madison, Wisconsin 53701, appearing on behalf of **Attorney Richard Thal.**

Garvey & Stoddard, S.C., by **Attorney Edward Garvey**, 634 Main Street, Suite 101, Madison, Wisconsin 53701, appearing on behalf of Respondent-Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DISMISSING THE COMPLAINT AS TO ARBITRATOR YAEGER

On September 30, 2005, Linda Martin, hereafter “Complainant," filed a complaint with the Wisconsin Employment Relations Commission (herein "WERC") in which she alleged that Madison Metropolitan School District, hereafter referred to as “Respondent-Employer,”

Thomas Yaeger, Arbitrator, herein "Arbitrator Yaeger," and Madison Teachers, Inc. et al, herein collectively referred to as "Respondent-Union," engaged in various unlawful actions, including, but not limited to, violations of Section 111.70(3), Stats. The Commission appointed Mr. Stanley H. Michelstetter II, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec's. 111.07(5) and 111.70(4)(a), Stats. On November 4, 2005, Arbitrator Yaeger filed a motion to dismiss the complaint as to him. The Examiner issued a notice on November 14, 2005, to Complainant to show cause as to why the complaint should not be dismissed as to Arbitrator Yaeger. Complainant responded to the notice with her stated reasons why the complaint should not be dismissed. The other parties did not respond for reasons other than the merits. The Examiner then notified the parties that he would dismiss the action as to Arbitrator Yaeger.

FINDINGS OF FACT

1. Complainant Linda Martin is an adult individual who resides at 1000 Castle Drive, in the City of Sun Prairie, Wisconsin.

2. Respondent Madison Metropolitan School District is a municipal employer with offices at 545 West Dayton Street, in the City of Madison, Wisconsin.

3. Madison Teachers, Inc. is a labor organization representing municipal employees with offices at 821 Williamson Street, in the City of Madison, State of Wisconsin.

4. Arbitrator Thomas Yaeger is a labor arbitrator listed on the WERC's panel of outside labor arbitrators. Arbitrator Yaeger resides at 5920 Mayhill Drive, in the City of Madison, State of Wisconsin. Arbitrator Yaeger is not a municipal employer, municipal employee, or labor organization.

5. Complainant was an employee of Respondent-Employer in a bargaining unit represented by Complainant.

6. Respondent-Employer and Respondent Union were party to a comprehensive collective bargaining agreement at all material times with respect to the bargaining unit in which Complainant was employed. Arbitrator Yaeger is not a party to the collective bargaining agreement. The collective bargaining agreement provided a procedure for the resolution of disputes arising between employees subject to the collective bargaining agreement and Respondent-Employer. The grievance procedure provided for final and binding resolution of grievances by arbitration as follows:

B. GRIEVANCE AND ARBITRATION PROCEDURE

1. GRIEVANCE PROCEDURE

a. A grievance is defined as any matter involving the interpretation, application or enforcement of the terms of this Agreement or a claim by an employee or Union official that he/she has been discriminated against or treated unfairly or arbitrarily by the employer by any action in the exercise of its rights or power.

b. Grievances shall be processed in the following manner. Time limits set forth shall be exclusive of Saturdays, Sundays, and holidays. Time limits for processing grievances from one step in the procedure to another may be extended upon mutual agreement.

STEP I: If an employee has a grievance, he/she shall first present the grievance orally to his/her immediate supervisor or his/her designated replacement, either alone or accompanied by a Union representative, within five (5) days of his/her knowledge of the occurrence of the event causing the grievance, but not later than fifteen (15) days from the time of the event and shall state that he/she is presenting a grievance. The supervisor shall be required to give an oral answer within five (5) days.

STEP II: The grievance shall be considered settled in Step I unless within five (5) days after the immediate supervisor's answer is due, the grievance is reduced to writing and presented to the department or division head. The written grievance shall, to the extent possible, include the facts upon which the grievance is based, the issues involved, the articles alleged to be violated and the relief sought. The department or division head may confer with the aggrieved and the Union. Such decision shall be reduced to writing and submitted to the aggrieved employee, and the Union within five (5) days from his/her receipt of the grievance and/or appeal of the immediate supervisor's answer.

STEP III: The grievance shall be considered settled in Step II, unless within five (5) days from the date of the department or division head's written answer or last date due, the grievance is presented in writing to Human Resources. Human Resources shall respond in writing to the Union within fifteen (15) days.

STEP IV: The grievance shall be considered settled in Step III, unless within fifteen (15) days from the date of Human Resources' written answer or last date due, a request is made for arbitration.

2. ARBITRATION

a. Arbitration shall be limited to issues involving interpretation and application of provisions of this Agreement.

b. An impartial arbitrator shall, if possible, be mutually agreed upon by the parties. If agreement on the arbitrator is not reached within ten (10) days after the date of the notice requesting arbitration or if the parties do not agree upon a method of selecting an arbitrator within ten (10) days, then the Wisconsin Employment Relations Commission (WERC) shall be requested to submit a panel of five (5) arbitrators. The party requesting arbitration shall strike the first name and after each party has struck two (2) names, the remaining person shall be appointed as the arbitrator. Each party shall pay one-half (1/2) the cost of the arbitrator.

c. The impartial arbitrator shall have the authority to determine issues concerning the interpretation and application of all articles or sections of this Agreement. He/she shall have no authority to change any part; however, he/she may make recommendations for changes when in his/her opinion such changes would add clarity or brevity which might avoid future disagreements.

d. The written decision of the arbitrator, in conformity with his/her jurisdiction, shall be final and binding upon both parties but shall not constitute a binding precedent in connection with future negotiations.

3. GENERAL GRIEVANCES

Employer grievances or Union class grievances involving the general interpretation, application or compliance with this Agreement may be initiated with the third step of the procedure.

7. A dispute arose between Complainant, Respondent-Employer, and Respondent-Union over whether Respondent-Employer, with or without the collusion of Respondent-Union, improperly reclassified Complainant's position in Respondent-Employer's transportation department in violation of the applicable collective bargaining agreement. Respondent-Union processed a grievance to arbitration on behalf of Complainant over that dispute. Arbitrator Yaeger was named to as the impartial arbitrator to hear and decide that grievance in apparent compliance with the selection process for arbitrators in the grievance and arbitration procedure listed in paragraph 5, above.

8. Arbitrator Yaeger held a hearing on Complainant's grievance on May 13 and May 18. Respondent-Union was represented by Attorney Richard Thal. Complainant was present individually and with her own Attorney, Lounsbury Katy, of Shneidman, Hawks and Ehlke, S.C. Respondent-Employer and Respondent-Union did not permit Complainant's attorney to participate in the arbitration hearing as an advocate for Complainant, but merely permitted the attorney to act as an observer and advisor for Complainant. No one objected to Arbitrator Yaeger acting as arbitrator in the matter prior to the issuance of his award. Arbitrator Yaeger issued an arbitration award in the matter in late October, 2005. Arbitrator Yaeger acted within his jurisdiction and solely in a judicial capacity with respect to the arbitration of Complainant's grievance.

9. The complaint filed in this matter alleges, in relevant part, as follows:

May 13 & 18, 2004 The **MTI arbitration for the surplus of Nov 2002** finally took place. It had been scheduled and rescheduled.

- My concern was that I received a letter from John Matthews saying that the **arbitrator would be Tom Yaeger** and a couple weeks later, I received a letter from the HR department saying that they **had requested a list of arbitrators from WERC** and would be selecting one shortly. When I told them **I already knew who the arbitrator was, they were shocked** to hear I already knew.

- **Under oath, Doug Keillor admitted that he and Roger Price had been working on getting Linda Martin out of transportation to allow for Jeff Fedler to come into the district** but Doug was made to believe that it was because Linda Martin was having performance issues. Had Doug ever once asked me about it, I could have told him (in fact I did on numerous occasions and have emails to back it up) that I sensed something was taking place that was not kosher in transportation because the smoothness between Linda and Renee had mysteriously broken down. There was very little communication between us and important factors such as bell times and new staff (principals, secretaries, social workers) information was not even passed on to me – this is a critical component to the secretary job since it's this position that sends out all the start up and calendar information to every carrier and school in the entire district – including Delavan and Janesville Hearing Impaired Schools. This has to coordinate every school's calendar and if the secretary doesn't even know the bell times have changed, how can any carrier schedule accurate transportation? That was part of the plan for me to fail.

- Every time I tried to ask the MTI attorney, Rich Thal, to enter something that I felt was important, he would tell me (or my attorney Katy who was at both days of arbitration with me) that **we should save that evidence for the EEOC**. But when it came time for us to go to the hearing at the EEOC, Katy and Bruce both called me into their office and said they were terminating the case with me and that I should think seriously about dropping it entirely. I had already paid them $13,000 and had $2500 more on the books to pay and all for

nothing! I told them I wasn't going to drop this case and let this district steal taxpayer money, continue to commit all the fraudulent acts it is without every ounce of a fight I can must up in me.

- When the arbitration was over in May, it took until the **end of October to get an answer back** from the arbitrator though he continued to take other arbitrations all summer long. Every time I would ask Doug Keillor or Rich Thal or my attorneys where the case stood, I would get "we are still waiting on Tom Yaeger's opinion."

- In the meantime, I was **being denied my disability pay** because Madison National Life said stress was not a disability and even though my dr and my counselor all said it was the enormous amount of stress that was placing such a toll on me and my health, and that this was definitely a case for disability. It became a vicious circle, the stress from no pay – stress from no job – stress from not knowing – stress from knowing that everything was taking place with **staff promotions for staff doing drugs on company property that I had reported** – for **staff that had falsified their employment resume and application** (Jeff Fedler) and then got the job that I had performed for 5 years with excellent performance evaluations, etc. None of it made any sense.

- I was not **receiving any of my union newsletters,** I **could not communicate with the district staff** because my **email capability had been removed** as a staff person, my **name was removed from staff** lists, and it was just like I didn't exist while other employees that were on medical leaves were kept on the email and all the listings, they were invited to company outings and sent cards and well wishes from staff throughout their time away. I received nothing from anyone! Deaths, birthdays, work anniversary dates, etc **nothing was acknowledged**.

Based on the foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. Complainant is a municipal employee within the meaning of Section 111.70(1)(i), Stats.

2. Respondent Madison Metropolitan School District is a municipal employer within the meaning of Section 111.70(1)(j), Stats.

3. Respondent Madison Teachers, Inc., is a labor organization within the meaning of Section 111.70(1)(h), Stats.

4. Arbitrator Yaeger is not a municipal employee, municipal employer, or labor organization within the meaning of Section 111.70(1), Stats.

5. Arbitrator Yaeger by possibly having engaged in the actions alleged in paragraphs 7 to 9acted solely within the scope of his jurisdiction as a labor arbitrator in the instant dispute and acted solely within a judicial capacity. Arbitrator Yaeger, by any of the actions complained of above, did not "do or cause to be done on behalf of or in the interest of municipal employers or municipal employees any act prohibited by Section 111.70(3)(a) or (b), Stats.

Based on the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

The Complaint filed herein is dismissed as to Arbitrator Yaeger.

Dated at Madison, Wisconsin, this 18th day of January, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stanley H. Michelstetter /s/
Stanley H. Michelstetter II, Examiner

MARTIN V. MADISON METROPOLITAN SCHOOL DISTRICT, ET AL

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS

The complaint was filed in this matter September 30, 2005. The procedural history of this case is set out in the order above and will not be restated here. The Complaint alleges that Respondent-Employer, Respondent Union, Arbitrator Yaeger, Respondent-Thal and others, committed prohibited practices within the meaning of Section 111.70(3), Stats. The Complaint is unclear. It appears to allege that Respondent-Employer, reduced her from full-time employment, terminated her, or constructively discharged Complainant as a result of a "reclass process" which occurred November 22, 2002. The complaint seeks to have Complainant made whole for "retirement, salary, seniority, reinstatement of sick leave, vacation, and all fringe benefits." It also seeks attorneys' fees, costs and "compensation for the undue amount of stress placed on me." The complaint alleges that this action was taken in response to "whistleblowing" activity and also was the result of discrimination against her on the basis of physical disability. The Examiner infers for the purposes of the motion decided herein that the Complaint alleges that Respondent-Employer violated the applicable collective bargaining agreement by improperly reclassifying her (surplussing her from her position as a full-time Transportation Assistant) and moving her to a part-time position in Accounting and, also, improperly disciplined her in her position in accounting by effectively constructively discharging her by creating so much stress for her that she had to exhaust her benefits and ultimately go on unpaid medical leave. The complaint alleges that Respondent-Union submitted a grievance about the alleged improper surplussing to arbitration under the collective bargaining agreement. It alleges that Arbitrator Yaeger was selected to hear the case. The hearing was held for two days commencing on, or about May 13, 2004. Complainant was independently represented by Attorneys Bruce Ehlke and Katy Lounsbury of Shneidman, Hawks & Ehlke, S.C. at the arbitration hearing, but they were only permitted to consult with Respondent-Union's attorney, Richard Thal. Mr. Thal, representing the Union, presented the case for the Union and Complainant before Arbitrator Yaeger. Arbitrator Yeager rendered an arbitration award which the Examiner assumes for the purposes of this motion to be unfavorable to Complainant, in October 2004.

Arbitrator Yaeger was named as one of the parties-respondent in the complaint. He filed a motion to dismiss the complaint as to him on November 4, 2005. The Examiner reviewed the complaint and the motion, and issued an order to Complainant to show cause why the matter should not be dismissed on November 14, 2005. Ms. Martin filed her response to the order to show cause on November 23, 2005, but a copy was not forwarded to the other parties. The Examiner forwarded a copy of that response to the opposing parties on November 25, 2005, along with a statement that he intended to issue a formal decision dismissing Arbitrator Yeager as a party. At the request of the Examiner, the parties agreed to include the specific language of the grievance and arbitration procedure of the applicable collective bargaining agreement in this decision.

DISCUSSION

The WERC will entertain motions to dismiss based upon an allegation that a complaint filed under Section 111.70(3), Stats, fails to state a cause of action. See, WAUSAU INSURANCE COMPANY, DEC. NO. 30018-C (WERC, 10/03). The limits on WERC motion practice are well stated in DAIRYLAND GREYHOUND PARK, DEC. NO. 28134-B (McLaughlin, 10/95). See, also, BLACKHAWK VOCATIONAL AND TECHNICAL COLLEGE, DEC. NO. 30023-C (Levitan, 5/03), p. 19 et. Seq. The WERC has stated in WAUSAU INSURANCE, *supra*, the following standards for deciding pre-hearing motions to dismiss for failure to state a cause of action:

> When considering a pre-hearing motion to dismiss, the Commission has adopted the following standard:
>
> Because of the drastic consequences of denying an evidentiary hearing on a motion to dismiss, the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief. UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY, WISCONSIN, DEC. NO. 15915-B (Hoornstra, with final authority for WERC, 12/77).

The Examiner concludes that the complaint fails to state a cause of action under Section 111.70(3), Stats, against Arbitrator Yaeger. The Examiner alternatively concludes that the motion dismiss also essentially invokes the doctrine of judicial immunity. Although the WERC has not formally recognized that doctrine, the Examiner concludes that the doctrine also requires the immediate dismissal of the complaint.

The sole allegations of the complaint which are directed to arbitrator Yaeger are:

1. That Respondent-Union knew that Arbitrator Yaeger would be the arbitrator hearing her grievance concerning her being suprlussed from the Transportation Department, before Respondent-Employer knew that an arbitrator had been selected. Essentially, Complainant takes the position that the Union selected Arbitrator Yaeger without the participation of Respondent-Employer.

2. That the award was wrong, procured by falsified evidence, and/or apparently was procured by collusion between Respondent-Employer and Respondent-Union. Specifically, she alleged that Respondent-Union and Respondent-Employer were conspiring to get her suprlussed from the Transportation Department in violation of the applicable terms of the collective bargaining agreement when both knew the real reason for the action was to retaliate against her for publicly revealing alleged corruption in Respondent-Employer's transportation program. She also alleges that the Union's attorney, Richard Thal refused to submit

evidence which she and her own attorney asked him to submit in the arbitration proceeding.

3. That it took from May 2004, until October 2004, to get an arbitration award. Specifically, Complainant's position is that Arbitrator Yeager should have issued his award immediately upon the close of testimony.

4. That the arbitrator failed to recognize that labor and management were in collusion in the arbitration hearing.

Complainant's response to my order to show cause included the following additional allegations:

1. Arbitrator Yaeger, reversing a previous ruling of his, allowed Jeff Fedler to be present in the hearing room even though this had the effect of intimidating and harassing Complainant.

2. Arbitrator Yaeger should have rendered an award at the close of testimony.

The allegations of this complaint seek to embroil the arbitrator in the dispute between Ms. Martin and her employer. The WERC exercises jurisdiction over her complaint for violation of collective bargaining agreement under Section 111.70(3)(a)5, Stats., and, in that regard, exercises jurisdiction over the award of the arbitrator in the same dispute under that statute. The issue presented by the motion to dismiss is one directed to jurisdiction over the arbitrator, individually, and not over the award he rendered.

Sections 111.70(3)(a)5 and 111.70(3)(b)4, Stats, make it a prohibited practice of an employer, or municipal employee, acting alone, or in concert, to violate a collective bargaining agreement previously agreed upon by the employer and exclusive representative. Section 111.70(3)(c), Stats., makes it a prohibited practice for "any person" to "do or cause to be done on behalf of or in the interest of municipal employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by par. (a) or (b)."

Arbitrator Yaeger is neither a municipal employee, nor a municipal employer within the meaning of Section 111.70(1), Stats. There is no allegation in the complaint that Arbitrator Yaeger is a party to the collective bargaining agreement in issue. Instead, the allegation is that he functioned within the scope of his jurisdiction as a neutral labor arbitrator with the consent of Respondent-Employer and Respondent-Union and that the award in question was issued within the scope of the jurisdiction granted by the parties under the collective bargaining agreement. Accordingly, the sole allegations which arguably could be made against Arbitrator Yeager are under Section 111.70(3)(c), Stats.

One of the elements of the prohibited practice under Section 111.70(3)(c), Stats., requires that the person do an "act" which is "prohibited" under Section 111.70(3)(a) or (b), Stats. The complaint fails to allege that Arbitrator Yaeger did any act prohibited under Section 111.70(3)(a) or (b), Stats. The only "act" prohibited by Section 111.70(3)(a) or (b) which Complainant's complaint could be construed to allege is that the judgments made by Arbitrator Yaeger somehow violated the collective bargaining agreement (Sections 111.70(3)(a)5 and 111.70(3)(b)4, Stats.) [1] The underlying alleged violation, surplussing, took place before Arbitrator Yaeger was selected. He could not have been involved in the violation itself. The other specific allegations made by Complainant do not relate to any specific provision of the grievance procedure or any other provision of Respondent-Union and Respondent-Employer's collective bargaining agreement. Instead, they relate to the procedural judgments made by Arbitrator Yaeger and his judgments on the merits of the dispute as expressed in his arbitration award. Arbitrator Yaeger's personal duty to render a judgment arises not from the collective bargaining agreement, but rather from his contract with the parties to the collective bargaining agreement. The WERC has authority over the arbitration award in certain respects as outlined in its well-established case law, but it does not have jurisdiction under Section 111.70(3), Stats., over the arbitrator's contract with the parties. Accordingly, the complaint fails to state a cause of action under Section 111.70(3), Stats., against Arbitrator Yaeger.

Moreover, allegations of the complaint strike at the heart of the concept of "judicial immunity" for arbitrators acting in their official capacity. Judicial officers acting in the exercise of their jurisdiction are exempt from civil liability . . . ." See, BROMUND V. HOLT, 24 Wis.2D 336, 341 (1963). Judicial immunity does not exist solely for the protection of judges, but more broadly for the protection of litigants by insuring the independence of the judicial process. See, Nolan and Abrams, "The Arbitrator's Immunity from Suite and Subpoena," *Arbitration 1987, The Academy at Forty*, (BNA, 1988), p 149, @ 153. The independence of the litigation process can only be preserved if judicial officers may function without fear of being embroiled in the disputes over which they preside. This view was adopted by the Wisconsin Supreme Court in FORD V. KENOSHA COUNTY, 160 Wis. 2D 485, 495 (1991), as follows:

> The theory of immunity, as stated by Judge Learned Hand, is that "it is better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." GREGOIRE V. BIDDLE, **177 F.2d 579**, **581** (2d Cir. 1949), *cert. denied*, 339 U.S. 949 (1950).

The Wisconsin view is based upon common law, analogy to federal law and the law of other states.

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[1] It is conceivable that the "act" prohibited could also be considered to Section 111.70(3)(a)1, Stats. As noted below, Section 111.70(3)(5), Stats., makes it clear that the WERC is to control the enforcement of the award, but also thereby implies that the Arbitration process is independent of control under Section 111.70(3), Stats. Section 111.70(3)(a)1, Stats, does not apply to the honest exercise of judicial judgment by a labor arbitrator under a grievance and arbitration provision of a collective bargaining agreement.

Wisconsin law extends judicial immunity to judicial officers and to those who are non-judicial officers when they are performing acts intimately related to the judicial process. The Wisconsin courts apply the concept of immunity based upon the function of the defending person rather than his or her position title. See, BERNDT V. MOLEPSKE, 211 Wis.2D 572 (Ct. App., 1997); EVANS V. LUBKE, 267 Wis.2D 596 (Ct. App., 2003), cert. den. 269 Wis.2D 198 (2004). In those cases, the Wisconsin Courts extended judicial immunity to guardians *ad litem* to the extent they performed judicial function. The Examiner has little doubt that the Wisconsin Courts would extend the same to labor arbitrator when they make decisions under jurisdiction granted them under collective bargaining agreements. Labor Arbitrators acting in that capacity share the judicial function with the Wisconsin Circuit Courts [2] and with the WERC acting under Section 111.70(3)(a)5, Stats, because they act as private judicial officers acting in lieu of judges. Accordingly, there is little doubt that labor arbitrators perform a judicial function.

In any event, federal courts acting under Section 301 of the LMRA, have extended the doctrine of judicial immunity to labor arbitrators functioning within their jurisdiction under collective bargaining agreements. See, NEW ENGLAND CLEANING SERVICES V. AAA, 163 LRRM 2065 (CA 1, 1999); SUTTON V. ROADWAY EXPRESS, INC., 146 LRRM 2126 (DC EPa, 1994); Nolan and Abrams, "The Arbitrator's Immunity from Suite and Subpoena," *Arbitration 1987, The Academy at Forty*, (BNA, 1988), p 149, @ 153. The WERC has concurrent jurisdiction with the federal courts and applies federal law under Section 111.06(1)(f), Stats., which is a provision parallel to Section 111.70(3)(a)5, Stats., in relevant part. Accordingly, the same case law should be applied to Section 111.70(3)(a)5, unless Wisconsin law requires otherwise.

One of Complainant's most significant allegations is that Arbitrator Yaeger failed to recognize that the parties were in collusion and, that, therefore, the parties' collusive efforts resulted in an award unfavorable to Complainant. Complainant's position may have suggested that Arbitrator Yaeger colluded with the parties. This appears to be the only allegation which could arise to the level of some form of misconduct. To the extent that the complaint may be construed to allege Arbitrator Yaeger's collusion with the parties, the Wisconsin courts have addressed a similar allegation and concluded that judicial immunity protects a judge from allegations of collusion with a party. See, ABDELLA V. CATLIN, 79 Wis.2D 270, 278 (1976),

[2] Section 111.70(4)(a), provides that proceedings under Section 111.70(3), Stats, be pursuant to Section 111.07, Stats. Section 111.07(1), provides for concurrent jurisdiction with the state courts. In the private section, labor arbitrators share concurrent jurisdiction with the federal courts acting under Section 301 of the LMRA.

citing KALB v. LUCE, 234 Wis. 509 (1940). Accordingly, the complaint against Arbitrator Yeager is dismissed because to allow it proceed would violate the doctrine of judicial immunity for arbitrators and, also, because it simply otherwise fails to state a cause of action under Section 111.70(3), Stats.

Dated at Madison, Wisconsin, this 18th day of January, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stanley H. Michelstetter /s/
Stanley H. Michelstetter II, Examiner

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