

September 28, 1994

Mr. Thomas Ivey
Central Wisconsin UniServ
Council-North
2805 Emery Drive
P.O. Box 1606
Wausau, WI 54401

Mr. Dean R. Dietrich
Ruder, Ware & Michler, S.C.
Attorneys at Law
500 Third Street
P.O. Box 8050
Wausau, WI 54401-8050

Re: Mid-State Vocational, Technical
& Adult Education District
Case 62 No. 50426 MA-8251
(Goal grievance)

Gentlepersons:

This letter is to confirm "a modified bench decision with some supporting rationale" rendered by the undersigned in the above-entitled matter pursuant to an agreement by the parties at hearing on September 7, 1994 in the District Board Meeting Room, Wisconsin Rapids, Wisconsin.

On January 31, 1994, Patrick T. Kubley, MSTC Faculty Association Grievance Chair filed a Request to Initiate Grievance Arbitration on behalf of Mid-State Vocational, Technical Faculty Association, herein Association, in the above-entitled matter.

On February 23, 1994, Dean R. Dietrich, representative for the Mid-State Vocational, Technical & Adult Education District, herein District, filed a request with the Wisconsin Employment Relations Commission "that one of the two Mid-State VTEA grievance arbitration cases (Goal and Osborne Grievances) recently assigned to Dennis McGilligan be assigned to another arbitrator." That request was denied by letter dated March 29, 1994, from Marshall L. Gratz, Attorney/Team Leader to Dietrich.

Subsequently, on June 30, 1994, the Wisconsin Employment Relations Commission designated Dennis P. McGilligan as the impartial Arbitrator pursuant to the parties' contractual grievance/arbitration procedure to resolve the above dispute.

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Hearing in the matter was held on September 7, 1994, as noted above. At the start of the hearing, the District moved that the Arbitrator find that the Association has actually raised two separate grievances, that the grievances should be litigated separately, and that, upon so finding, the Arbitrator should recuse himself from one of the two separate grievances. In the alternative, the District moved that the Arbitrator find that the GOAL Instructors' grievance involves two separate issues and that the issues should be bifurcated to allow separate litigation of the issues before the Arbitrator. The Association opposed both motions.

The parties filed written arguments in support of their positions which were received by the undersigned on September 20, 1994. The District basically argues in support of the motions that the Association has filed multiple grievances that should not be heard together, that there are two separate and distinct issues in dispute which cannot be properly combined for consideration at one arbitration hearing, and that the Arbitrator must recuse himself from one of the grievances to ensure that an independent decision is made. The Association, on the other hand, in requesting that the motions be denied maintains that said motions really relate to remedy and that "Separation of remedy determination could lead to additional conflict and confusion between the parties rather than bringing closure to the instant dispute." The Association further maintains that the motions constitute a continued effort to restrict the Arbitrator from hearing the case and that the issue proposed by the Association is broad enough to cover the parties' arguments and proposed remedies.

Based on the parties' arguments, and the exhibits, I am denying both motions for the following reasons:

1. The parties were unable to stipulate to the issue. Therefore, the Arbitrator will have to frame the issue following close of hearing based on the entire record. In the opinion of the Arbitrator, the grievance (Joint Ex. No. 2) is broad enough on its face to encompass all the arguments and issues raised by the parties in their briefs and at hearing as to the matter before the Arbitrator for decision, and, therefore, the entire dispute is properly before the Arbitrator for resolution.
2. The parties are identical in this case. The issues and events in dispute are also related. Therefore, the cases relied on by the District in support of its position that "the factual matters involved are separate and distinct" and should be heard by different arbitrators are distinguishable from the instant dispute.
3. While it is true, as pointed out by the District, that the collective bargaining agreement makes reference to the terms "grievance" and "disputed issue," it also refers to "differences" being resolved through the grievance procedure, and provides for an expansive "statement of grievance" to contain the name of the grievant, the

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facts giving rise to the grievance, the contract provisions alleged to have been violated and the requested relief. In addition, there is no express requirement in the agreement that a grievance be "in the singular form" or be singular in nature or preventing multiple claims from being included in a single grievance. Based on same, the Arbitrator finds that the District has not sustained its burden on this point.

4. The District cited no persuasive reason why the Arbitrator should recuse himself from one of the "grievances" to ensure that an independent decision is made. Nor could the Arbitrator find any basis in the record for recusal.
5. The Arbitrator believes the interests of arbitral efficiency, fairness and bringing closure to the instant dispute will be served by denying the District's motions.

The Arbitrator is persuaded based on the District's brief, as well as the Association's arguments, the exhibits and the entire record of the complex nature of the facts and issues involved in this case. Therefore, the Arbitrator requests that the parties provide a court reporter for the hearing in order to have a more complete and accurate record upon which to base a decision. Article V, Section C, Step 5, e provides "If either party desires a transcript of the testimony to be prepared for the arbitrator, such will be an expense which will be shared."

Please inform me in writing of your willingness to comply with this request for a court reporter prior to the continued hearing date, Thursday, October 13, 1994, at 10:00 a.m. in the District Board Meeting Room, Wisconsin Rapids, Wisconsin.

Very truly yours

Dennis P. McGilligan
Arbitrator

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