

BOARD OF TRUSTEES OF STATE COLLEGES (WORCESTER STATE COLLEGE) AND WORCESTER STATE COLLEGE FACULTY FEDERATION, LOCAL 2070, AFT, RBA-1 (6/13/75). ORDER UNDER CHAPTER 150E, SECTION 8.

(20 Jurisdiction of the Commission)
22. Arbitration - deferral to

ORDER UNDER CHAPTER 150E, SECTION 8

On November 19, 1974, the Worcester State College Faculty Federation, Local 2070, American Federation of Teachers, AFL-CIO (Federation) filed with the Labor Relations Commission (Commission) a request pursuant to Section 8 of Chapter 150E of the General Laws (the Law) seeking an order directing the Board of Trustees of State Colleges to arbitrate a dispute involving the non-renewal of a faculty member.

We directed that further investigation should be made. Following a continuance by mutual consent, a conference was held on April 30, 1975, at the offices of the Commission. At that conference, the Board raised numerous objections to the issuance of an order under Section 8.

The Board first objected that the allegations supporting the petition were not made under oath, and could not support the issuance of an order. The defect has since been corrected, and, once remedied does not bar consideration of the request.

The timing of the request for arbitration is also attacked on several theories. Initially the Board asserts that, as the contract under which the grievance arose has expired, there is no party to a collective bargaining agreement with current standing to bring the request. We reject this conclusion. See Department of Public Utilities, SUP-69, 1 MLC 1137 (9/23/74). Continuity of collective bargaining requires that disputes properly arising under a collective bargaining agreement not be extinguished by the expiration of that agreement. To hold otherwise would encourage and reward delay in the processing of grievances. Nothing in the language of Section 8 indicates this was the Legislative intent.

The Board also asserts that the Federation and the grievant have failed to process the grievance in a timely fashion. If the grievant failed to comply with the grievance procedure that matter may properly be placed before the arbitrator. Procedural arbitrability is properly for the arbitrator.

Finally, the Board contends that arbitration should be blocked by the pendency of litigation in the courts. The grievant, Mrs. Glazer, has filed suit in the superior court, (seeking essentially the same relief), on the same claim which the union seeks to arbitrate. The Board urges that an election should be required. We must disagree. There is no mandatory election of remedies between two statutory rights. Dedham v. Labor Relations Commission, Mass. , 312 N.E. 2d 548 (1974). The application of the doctrine is within the equitable discretion of the court or agency. See Cohasset School Committee, MUP-419, 6/19/73; Collyer Insulated Wire, 192 NLRB 837, (1971). We conclude that the exercise of this discretion in the instant case would be inappropriate. The statute clearly makes arbitration the preferred mechanism for resolving contractual disputes. It will likely be more expeditious than resort to the courts, and will preserve the time of court and agency for other matters where arbitration is not available. We have noted in prior cases that resort to the courts is not an effective substitute for Section 8 arbitration. Town of Danvers, MUP-2068, 1 MLC 1231 (12/20/74).



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The inquiry of the Commission in such matters is limited. Although we will not order the parties to perform a futile act, Sturbridge School Committee, RBA-4, 1 MLC (4/10/75), if a dispute is "arguably arbitrable" no further examination of the substance of the grievance is proper. Cf. Final Order in Commonwealth of Mass., Dept. of Public Welfare, SI-3. (11/14/74). We have made the threshold determination in favor of the substantive arbitrability of the dispute.

Other arguments of the Board go to the constitutionality of the statute. We do not presume to decide such issues. We note only that they have been raised before the agency. We are persuaded that under the statute our action is proper. If the statute is defective it is for the courts to so inform us.

In light of the foregoing the Commission ORDERS:

1. The Board and the Federation are to meet within ten days to agree upon a method of selecting an arbitrator. In the event the parties are unable to agree, on the request of either party, the Commission will select an arbitrator.
2. The question is whether the non renewal of Barbara Glazer violated the provisions of the then current collective bargaining agreement. The arbitrator shall have authority to determine both procedural and substantive arbitrability, but his authority shall be limited to interpretation or application of the agreement.
3. The parties shall inform the Commission as to the arbitrator selected and the dates on which any hearings are to be held. The parties shall forward a copy of the arbitrator's award to the Commission within ten days of its issuance.

SO ORDERED.

