

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

I. G. ELTON NELSON, PORTAGE EDUCATION
ASSOCIATION, WISCONSIN EDUCATION
ASSOCIATION COUNCIL, NATIONAL
EDUCATION ASSOCIATION,

Complainant,

vs.

JOINT SCHOOL DISTRICT NO. 1, CITY OF
PORTAGE, TOWNS OF CALEDONIA, PORT
WINNEBAGO, DEKORRA, LEWISTON, WYOCENA,
DOUGLAS, MOUNDVILLE, MARCELLON, PACIFIC,
GREENFIELD, VILLAGE OF ENDEAVOR,
COLUMBIA, MARQUETTE, SAUK COUNTIES,
STATE OF WISCONSIN, AND THE BOARD OF
EDUCATION OF PORTAGE, WISCONSIN, OF
THE CITY OF PORTAGE, et al.,

Respondent.

Case III

No. 17104 MP-275

Decision No. 12116-A

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Michael S. Weiden, appear-
ing on behalf of the Complainant.

Mr. Francis W. Murphy, City Attorney, appearing on behalf of the
Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

I. G. Eldon Nelson and the Portage Education Association, Wisconsin Education Association Council, National Education Association, having filed a complaint with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that Joint School District No. 1, City of Portage, et al., and the Board of Education of Portage have committed prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and hearing on said complaint having been held at Portage, Wisconsin, on October 24, 1973 before the Examiner; and Complainant having filed its brief in the matter on April 30, 1974, and Respondent having advised the Examiner on August 8, 1974 of its decision not to file a brief in the matter; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Complainant, I. G. Eldon Nelson, hereinafter Complainant Nelson or Nelson, is a teacher employed by Joint School District No. 1, City of Portage.

2. That Complainant, Portage Education Association, WEAC, NEA, hereinafter the Complainant Association or Association, is a labor organization within the meaning of Section 111.70(1)(j) of the Wisconsin Statutes, and has been at all times material herein the exclusive bargaining representative of teachers employed by Joint School District No. 1, City of Portage.

No. 12116-A

3. That Respondent Joint School District No. 1, City of Portage, hereinafter Respondent District, and the Respondent Board of Education of Portage, hereinafter Respondent Board are, respectively, a Public School District organized under the laws of Wisconsin, and a public body charged under the laws of Wisconsin with the management, supervision, and control of the Respondent District and its affairs.

4. That at all times material herein, Complainant Association and the Respondent Board were signators to a collective bargaining agreement effective from July 1, 1972 to June 30, 1973 covering wages, hours and other conditions of employment of teachers in the employ of the Respondent District and that said agreement contained the following provisions relevant herein:

"SECTION XI - GRIEVANCE PROCEDURE

DEFINITION: A grievance is defined as any violation of the provisions of this agreement and must be submitted in accordance with the following procedure:

- STEP 1: An alleged grievance with the individual or group must first be submitted verbally to the Building Principal or immediate Supervisor within five (5) working days the grievance becomes known to the grievant. A verbal answer shall be given within three (3) working days of the submission.
- STEP 2: If a solution is not reached in Step 1 above, the grievance shall be reduced to writing and within five (5) working days again submitted to the Building Principal or the immediate Supervisor with a copy to the Superintendent of Schools. The parties shall then meet within two (2) working days in an attempt to work out a solution and the Superintendent shall be present at this meeting if possible.
- STEP 3: If a solution is not reached in Step 2 above, the Superintendent shall arrange a meeting within four (4) working days at which time he shall be present with the aggrieved, Building Principal or immediate Supervisor. At this meeting the matter shall be reviewed and an attempt shall be made to arrive at a satisfactory solution.
- STEP 4: If the matter is not resolved in Step 3 above, the grievance may be submitted to the Board in writing within five (5) working days after the completion of Step 3. The Board shall meet with the parties involved and a written answer shall be given within twenty (20) working days after receipt of the written appeal.
- STEP 5: If a solution is not reached in Step 4 such grievance may be submitted to final arbitration by either party. The procedure is commenced by either party filing with the other party a notice of intention to submit the grievance [sic] to an arbitrator. It is mutually agreed between the parties that if a notice of intention to arbitrate is not filed within ten (10) working days after completion of Step 4, the matter is deemed resolved. The parties will meet within ten (10) working days of receipt of this notice to attempt to select an arbitrator by mutual agreement. The expense of the arbitrator shall be paid equally by the Board and the Association. If the parties are unable to agree on an arbitrator at this meeting, then the arbitrator shall be selected by the following procedure.

The Wisconsin Employment Relations Commission shall be asked to appoint a member from the Commission or its staff to arbitrate the dispute.

The arbitrator shall issue no opinions that will modify or ammend [sic] any terms of this agreement. The decision of the arbitrator shall be final and binding upon both parties.

Any contracted employee complaint not covered by the agreement between the parties to this agreement, which involves a question of salaries, hours, or conditions of employment shall be processed through Step 3 ONLY of this grievance procedure, if such complaint is presented in accordance with the time limit set forth above. The Superintendent shall inform the Board of Education in writing of the nature and content of the grievance and the decision rendered.

At any step of the above procedure the aggrieved parties shall be allowed representation by the Association or other parties of his own choice. It is further agreed between the parties that any time limits set forth above may be waived by mutual consent of the parties in writing."

"SECTION VIII - CLASS LOAD

The teacher work schedule shall consist of a 5 day, 40 hour week of which 30 minutes per day shall be for duty free lunch and 1,650 minutes may be scheduled class and study hall time. This description is exclusive of monitoring type duties. Pupil teacher loads should be consistent with Wisconsin Department of Public Instruction guidelines. The Board and Administration will work toward equalizing the teaching load as finances and facilities permit.

. . .

Elementary, Junior High and Senior High Staff

No teacher shall be allowed to accept additional load without the mutual consent of the teacher and the administrator. Additional load, if approved, should receive additional monetary reimbursement amounting to its equivalence as a fractional part of the teacher contract of salary.

. . ."

5. That Complainant Nelson and Respondent Board were parties to an individual teaching contract executed on March 15, 1972, for the 1972-73 school year; that said contract provided among other things that Nelson was to teach for 180 teaching contract days; and that said contract did not specify the specific teaching duties to be assigned to Nelson during the 1972-73 school year.

6. That Nelson taught Driver Education in the Portage Senior High School for the 1972-73 school year; that sometime on and/or between September 28, 1972 and October 4, 1972, Nelson and the grievance representative of Complainant Association, Mrs. Katherine Berry, filed a verbal and written grievance with Robert G. Morey, Principal of the Portage Senior High School, concerning the amount of remuneration to which Nelson was entitled for teaching Driver Education after normal school hours on Saturdays and holidays; and that said grievance in relevant part reads as follows:

"PROVISION OF MASTER AGREEMENT OF

SCHOOL POLICY ALLEGEDLY VIOLATED p. 12, Sec. VIII-Class Load:

Par. 1 The teacher work schedule shall consist of a 5 day, 40 hour week of which 30 minutes per day shall be for duty free lunch and 1,650 minutes may be scheduled class and study hall time. This description is exclusive of monitoring type duties. Pupil teacher loads should be consistent with Wisconsin Department of Public Instruction guidelines. The Board and Administration will work toward equalizing the teaching load as finances and facilities permit. Par. 7 *

STATEMENT OF GRIEVANCE

The grievant has not received monetary reimbursement for additional load as stated in Paragraph 7, Sec. VIII - Class Load of the Negotiated Agreement.

ACTION REQUESTED

The grievant receive additional monetary reimbursement for additional load amounting to its equivalence as a fractional part of his teacher contract of salary.

I. G. Eldon Nelson /s/

SIGNATURE OF THE COMPLAINANT

*Elementary, Junior High and Senior High Staff

No teacher shall be allowed to accept additional load without the mutual consent of the teacher and the administrator. Additional load, if approved, should receive additional monetary reimbursement amounting to its equivalence as a fractional part of the teacher contract of salary."

7. That by letter dated October 6, 1972, Morey advised Nelson in part that:

"This written answer to your grievance complaint under step 2 of the grievance procedures is the same as the verbal answer given you on 9/28/72, which complied with your verbal grievance under step 1. This answer is being given you in written form by me as Principal of the high school as the Superintendent is out of town on this date and is not available for a meeting.

The alleged grievance states that school policy, page 12 section VIII, class load has been violated. I am pointing out that section VIII paragraph 1 is referring to the legal school day, which for Portage Senior High School is 8:00 A. M. to 3:30 P. M. and the following paragraphs on page 12 further stipulates situations that apply to specific school or academic levels under section VIII class load. In the statement of grievance, the grievant is referring to monetary reimbursement for activities outside of the school day. The grievant had been notified of the hourly rate for this activity prior to the opening of the 1972-73 school term, which makes this grievance past due in terms of step 1 section XI grievance procedures. The grievant has received monetary reimbursement for the out of school activity at the rate of \$6.00 per hour."

8. That by letter dated October 12, 1972, Association representative Berry informed Marshall C. Boyd, Superintendent of Schools of Respondent, that:

"This is a written answer to the letter dated October 6, 1972 which I received from Mr. Morey. In that letter Mr. Morey stated your solution to Mr. Nelson's grievance.

The solution you offered is not acceptable to Mr. Nelson, and therefore, I believe we should move on to Step #3 of the Grievance Procedure."

9. That by letter dated October 16, 1972, Boyd advised Berry that:

"Your request for a grievance hearing is denied. I concur with Mr Morey's statement that the grievance is past due and can not therefore be processed as a grievance.

However, I am willing to meet with Mr. Nelson and Mr. Morey on an informal basis to discuss the matter and to try to bring about a mutual understanding."

10. That from October 16, 1972 through the date of hearing, Respondent has refused and continues to refuse to process the Nelson grievance beyond Step 2 of the grievance procedure as requested by the Association.

11. That the dispute between Complainant I. G. Eldon Nelson, Portage Education Association, and Joint School District No. 1 of the City of Portage and the Board of Education of Portage concerning the Nelson grievance, to-wit: the wages due Nelson for teaching Driver Education after normal school hours and on Saturdays and holidays, arises out of a claim which on its face is covered by the terms of the collective bargaining agreement which exists between the parties.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That Joint School District No. 1 of the City of Portage and the Board of Education of Portage, by their refusal to proceed to Step 3 and the other remaining steps of the grievance procedure including Step 5, the arbitration level of the grievance procedure, in accordance with Article XI of the 1972-73 collective bargaining agreement, have violated and are violating the terms of the collective bargaining agreement which exists between Respondent and the Portage Education Association, and by such refusal have committed and are committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that Joint School District No. 1 of the City of Portage and the Board of Education of Portage, its officers and agents, shall immediately:

1. Cease and desist from refusing to submit the Nelson grievance to arbitration.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:
 - a) Comply with the grievance-arbitration provisions of the collective bargaining agreement existing between Respondent and the Portage Education Association with respect to the Nelson grievance.
 - b) Notify the Portage Education Association that Respondent will proceed to such arbitration on said grievance and issues concerning same.

- c) Participate with the Portage Education Association in the selection of an arbitrator to hear said grievance and the issues concerning same; and pursuant to Article XI of the collective bargaining agreement, if the parties are unable to agree upon an arbitrator, both parties shall jointly file a written request with the Wisconsin Employment Relations Commission to appoint an arbitrator to determine the matter.
- d) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the receipt of a copy of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin, this 28th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER

Complainant alleges that Respondent refused to process the Nelson grievance, concerning a claim for wages for teaching Driver Education after normal school hours, on Saturdays and holidays, beyond the second step of the grievance procedure. Complainant, in its prayer for relief, demands that Respondent be ordered to submit the Nelson grievance to arbitration and that Respondent be ordered to participate in said arbitration proceedings.

Respondent, however, maintains that the grievance was not timely filed and as a substantive defense claims that Nelson accepted compensation offered and paid to him for assuming the responsibilities of teaching Driver Education.

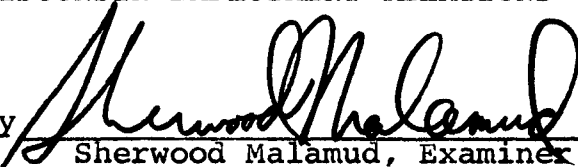
The gravamen of the matter before the Examiner is whether the Nelson grievance is arbitrable under Article XI of the agreement. The Commission recently restated its policy in cases of this kind in Weyerhaeuser Joint School District No. 3 (12984) 8/74, where it held that:

" . . . arbitration provisions in collective bargaining agreements will be given their fullest meaning and that its function in cases seeking to enforce arbitration provisions in grievances [is] to ascertain whether the party seeking arbitration is making a claim that on its face is governed by the collective bargaining agreement."

Here, a grievance is defined under Article XI as "any violation of the provisions of this agreement." Complainant alleged in the Nelson grievance that Respondent violated Article VIII of the agreement. The Examiner concludes that the Nelson grievance does make a claim which on its face is governed by the collective bargaining agreement. All procedural and substantive defenses to Complainant's claim is for the determination of the arbitrator. . Therefore, the Examiner has found that Respondent violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act by refusing to process the Nelson grievance through the grievance procedure, and the Examiner has ordered Respondent to proceed to arbitration.

Dated at Madison, Wisconsin, this 28th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Sherwood Malamud, Examiner