

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BERLIN EDUCATION ASSOCIATION and  
JACKIE FITZPATRICK, CHERYL HOPSON,  
RUSS KAPING, BILL LAWLER, PAULA  
MCMASTER, GERALDINE NICKOLAISEN,  
WALTER SCHMUDLACH,

Complainants,

vs.

SCHOOL BOARD OF BERLIN PUBLIC SCHOOLS,

Respondent.

Case VII  
No. 17969 MP-365  
Decision No. 12979-D

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW AND REVISING ORDER

Examiner Dennis P. McGilligan having, on September 11, 1974, issued Findings of Fact, Conclusions of Law and Order in the above-entitled matter, wherein the above-named Respondent was found to have committed, and was committing, prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act, and wherein the Respondent was ordered to cease and desist therefrom and to take certain affirmative action with respect thereto; and the above-named Respondent having timely filed a petition and an amended petition requesting the Commission to review the Examiner's decision; and the Commission having reviewed the entire record in the matter, the briefs in support of the petition and amended petition for review, as well as the brief in support of the Examiner's decision, and the Commission being satisfied that the Examiner's Findings of Fact and Conclusions of Law be affirmed, but that, however, his Order be revised;

NOW, THEREFORE, it is

ORDERED

That Respondent, School Board of Berlin Public Schools, its officers and agents shall immediately:

1. Cease and desist from refusing to adhere to the terms of the collective bargaining agreement between the parties effective from July 1, 1972 through June 30, 1973.
2. Take the following affirmative action which the undersigned finds will effectuate the purposes of the Municipal Employment Relations Act:
  - (a) Reimburse each of the staff teachers who supervised the Outdoor Education Program (Findings of Fact No. 9) in an amount negotiated by the Berlin Education Association and the School Board. Should said parties fail to reach an agreement after a reasonable period of negotiations, they may, by joint stipulation, request the Commission to determine said amount.

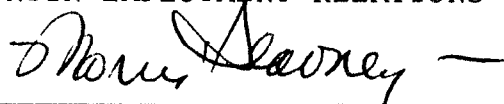
No. 12979-D

- (b) Notify all certified Non-Federal Project teachers employed by Respondent School Board of Berlin Public Schools, by posting in conspicuous places on its premises, where notices to all such employes are usually posted, copies of the notice marked "Appendix A" forwarded to the Respondent by the Examiner in his Order Modifying Notice issued by the Examiner on September 13, 1974; and further that said "Appendix A" be signed by John A. Bjorge and Roger M. Field of Berlin Public Schools.
- (c) Notify the Wisconsin Employment Relations Commission within ten (10) days from the date of this Order as to what steps have been taken to comply herewith.

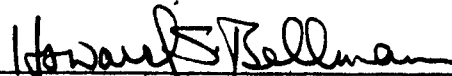
Given under our hands and seal at the  
City of Madison, Wisconsin this 29th  
day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Howard S. Bellman, Commissioner



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW AND REVISING ORDER

EXAMINER'S DECISION:

Examiner Dennis P. McGilligan having issued Findings of Fact, Conclusions of Law and Order in the above-entitled matter, wherein he concluded that the School Board violated the collective bargaining agreement existing between it and the Association, and thus committed a prohibited practice within the meaning of Section 111.70, MERA, by assigning teachers to perform duties above and beyond their normal work day, without paying said teachers for such duties. To remedy such violation, the Examiner ordered the School Board, among other things to reimburse the teachers who were required to perform such duty for the hours spent by them over and beyond their normal teaching work day, on a pro-rata basis calculated on their daily rate of pay.

THE PETITION AND AMENDED PETITION FOR REVIEW:

In its petition and amended petition for review the School Board took exception to the Examiner's Findings of Fact that the teachers were required to perform the duty involved, contending that, as in the past, such extra duty over and above the regular school day, was voluntary on behalf of the teachers, and, therefore, the School Board did not commit a prohibited practice in refusing to reimburse the employees for such activity.

DISCUSSION:

We are satisfied that the record supports the Findings of Fact and Conclusions of Law of the Examiner and therefore we have affirmed same.

However, we have revised his Order to delete the formula for determining pay due and owing the teachers for the extra duty performed by them. The Commission has determined that said formula is excessive in view of the compensation paid to teachers for activities outside of the classroom according to the contract's extra duty schedule. In the absence of an express agreement as to the appropriate compensation for said extra duty, the Commission has determined that it would effectuate the purpose of the act to direct the parties to enter into negotiations for the purpose of reaching agreement on the appropriate compensations for said extra duty. If, after a reasonable period of negotiations, the parties are unable to agree on the amount, they may, by joint stipulation, request the Commission to determine said amount.

Dated at Madison, Wisconsin this 29th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Herman Torosian  
Herman Torosian, Commissioner