STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

S. STEPHENS HALE, JR. and the NORTHWEST UNITED EDUCATORS, Complainants, vs. JOINT SCHOOL DISTRICT NO. 1, WINTER, ET AL., Respondent.	Case VII No. 18700 MP-425 Decision No. 13275-A

Appearances:
Mr. Robert West, Executive Director, Northwest United Educators, appearing on behalf of the Complainants.
Mr. Charles Ackerman, Labor Consultant, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainants having on January 9, 1975, filed a complaint with the Wisconsin Employment Relations Commission, alleging that the above-named Respondent has committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed Dennis P. McGilligan, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and hearing on said complaint having been held at Hayward, Wisconsin on April 17, 1975 before the Examiner; and the Examiner having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That S. Stephens Hale, Jr., hereinafter referred to as Complainant Hale, is an individual residing at Ojibwa, Wisconsin; and that at all times material hereto, Complainant Hale, Jr. has been employed by Joint School District No. 1, Winter, et al., as a public school teacher.

2. That Northwest United Educators, hereinafter referred to as Complainant NUE, is a labor organization representing employes for the purpose of collective bargaining, and has its offices at Rice Lake, Wisconsin.

3. That Joint School District No. 1, Towns of Winter, Draper, Ojibwa, Meadowbrook, Radisson, Courderay and Villages of Radisson and Courderay, Sawyer County and Town of Hubbard, Rusk County, State of Wisconsin, hereinafter referred to as the Respondent, is a School District, organized under the laws of the State of Wisconsin, with principal offices at Winter, Wisconsin.

4. That at all times material hereto, Respondent has recognized Complainant NUE as the exclusive bargaining representative for all full-time employes of the Winter School District engaged in teaching,

and including classroom teachers, guidance counselors and librarians, but excluding the following: administrators and principals; non-instructional personnel; office, clerical, maintenance and operation employes; substitute teachers, student and/or intern teachers.

5. That Complainant NUE and the Respondent were signators to a collective bargaining agreement effective from July 1, 1974 until June 30, 1975 covering wages, hours and conditions of employment of the employes in the aforesaid unit; and that said agreement contained the following provision:

"SECTION XIV - Breach of Contract

A. A teacher shall reimburse the District by a fee or [sic] no more nor less than $200.00 for reasonable damages caused by any breach of contract on the teacher's part if the contract is broken by the teacher less than thirty (30) days prior to the first Inservice day."

and that said agreement makes no provision for the final and binding resolution of disputes concerning its interpretation or application.

6. That on August 22, 1974, the first inservice day of the Winter School District for the 1974-1975 school year commenced; that on September 16, 1974, Complainant Hale submitted a letter of resignation to District Administrator Louis Behrens, an agent of the Respondent, to be effective 30 days or sooner from September 16, 1974; that on October 15, 1974, in agreement with the verbal instructions of the District Administrator Behrens, Complainant Hale's resignation became effective; that on October 21, 1974, at its regular monthly meeting, the Respondent acted to withhold $200 from Complainant Hale's net wages, and subsequently did withhold $200 from Complainant Hale's net wages.

7. That a grievance was filed and processed under the terms of the collective bargaining agreement; that the Complainants herein took the position that the Respondent withheld $200 in wages from Complainant Hale, in violation of the collective bargaining agreement between Complainant NUE and the Respondent; that said grievance was denied by the Respondent; and that the grievance procedures contained in the collective bargaining agreement have been exhausted.

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

CONCLUSIONS OF LAW

1. That the Complainants exhausted the grievance procedure established by the collective bargaining agreement between Complainant NUE and the Respondent and, therefore, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of said grievance.

2. That the Respondent has not withheld $200 in wages from Complainant Stephens Hale, Jr., in violation of the terms of the collective bargaining agreement existing between said Respondent and Complainant NUE and has not violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

NOW, THEREFORE, it is

ORDERED

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 30th day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the Respondent violated the 1974-1975 collective bargaining agreement between the Respondent and the Complainant NUE, by withholding $200 in wages from Complainant Hale. The Examiner held a hearing on April 17, 1975. Complainant NUE filed a brief on July 16, 1975. Respondent did not file a brief.

POSITION OF THE COMPLAINANTS:

On January 9, 1975, Complainants filed a complaint with the Commission alleging:

> "6. That the Respondent Joint School District No. 1, Winter et al. violated Wisconsin Statutes 111.70 (3) (a) 5 by not complying with the collective bargaining agreement in that said Respondent agreed to withhold $200 from the Complainant's net wages, and did withhold $200 from the Complainant's net wages."

Complainants point out that Article XIV provides for a breach of contract payment of $200 by the teacher to the Respondent (District) if the contract is broken by the teacher less than thirty days prior to the first inservice day. Complainants argue that since Complainant Hale's resignation took place after the first inservice day for the 1974-75 school year, the Respondent violated the clear language of the contract by withholding $200 in wages from Complainant Hale.

Complainants argue that the Respondent cannot incorporate additional restraints in the individual contract regarding breaking of contract by the teacher and attempt to enforce them in violation of the contract between Complainant NUE and the Respondent.

Complainants would have the Examiner find the Respondent guilty of violating the collective bargaining agreement and Section 111.70 (3)(a)5. Complainants ask that the Respondent be ordered to cease such actions; pay Complainant Hale the $200 in wages due him, plus 12 percent interest for the period in which the pay was withheld; and pay the expenses incurred by the Complainants in the preparation, filing and processing of this complaint in the sum of $289.60.

POSITION OF THE RESPONDENT:

Respondent argues that Complainant Hale was not working for the Respondent at the time it withheld $200 in wages from him, and question whether Complainant NUE can even represent Complainant Hale.

Respondent also argues that Complainant Hale is required by his individual teacher contract to reimburse the Respondent "by a fee of no more nor less than $200 for reasonable damages caused by any breach of contract on the teacher's part if the contract is broken by the teacher after August 1."

Respondent believes the contract supports its position and argues that it does not make sense to have a lesser penalty for breach of contract after the school year has started than for a breach of contract by a teacher less than 30 days prior to the first inservice day.

Respondent would have the Examiner deny and dismiss the complaint.

EXHAUSTION OF GRIEVANCE PROCEDURE:

The question of whether the Complainants herein exhausted all steps of the grievance procedure must first be determined, for, if it is decided that Complainants failed to exhaust all steps of the grievance procedure, the Examiner would refuse to assert the jurisdiction of the Commission. 1/ The matter was not contested at the hearing and, as noted in the Findings of Fact, the contract did not contain procedures for final and binding arbitration. The Complainants did, in fact, exhaust all steps of the grievance procedure. Therefore, the Examiner has asserted the jurisdiction of the Commission to determine the merits of said grievance.

SUBSTANTIVE ISSUE:

As noted above, the primary issue herein is whether Respondent breached its collective bargaining agreement with Complainant NUE, when it withheld $200 in wages from Complainant Hale.

With respect to Complainants' position, there is indeed a body of arbitrable thought which holds that if the language of an agreement is clear and unequivocal, an arbitrator generally will not give it a meaning other than that expressed. 2/ However, if all there were to interpreting contract language was ascertaining its "clear meaning", a dictionary might supply all the aids necessary to construction. But interpretation involves more than finding the dictionary meaning of words. And dictionary definitions are not binding, in any case, if they lead to absurd or unreasonable results plainly at variance with the purpose and object of the agreement. 3/ Indeed, Arbitrator Harry H. Platt later expanded on this theory that arbitral surgery is justified where necessary to prevent absurd results. 4/

The Examiner finds that Complainants' reliance on Section XIV, A of the contract would lead to an absurd and unreasonable result plainly at odds with the purpose and object of the agreement. Clearly, the parties intended Section XIV, A to protect the Respondent against loss of teachers immediately prior to the opening of the school year at a time when it would be difficult, if not impossible, for a small country school district to find suitable replacements. Hence, the contract requires a penalty in that a teacher is required to give the Respondent at least a 30-day notice or pay a penalty of $200 for reasonable damages. To allow, as the Complainants argue, a teacher to circumvent the obvious intent and purpose of Section XIV, A by waiting until after the first inservice day before breaking the contract flies in the face of good faith, minimal standards of fairness and responsibility.

Based on the above, the undersigned finds that the Respondent acted properly in withholding $200 in wages from Complainant Hale in conformance with the terms of the contract, and therefore, the Respondent did not

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1/ Lake Mills Joint School District No. 1 (11529-A) 7/73; Oostburg Joint School District No. 1 (11196-A) 11/72.

2/ Elkouri and Elkouri, How Arbitration Works, 303 (3rd Ed. 1973).

3/ Allegheny Ludlum Steel Corp., 36 LA 561, 566 (Platt, 1960).

4/ Evening News Assn., 50 LA 239, 245 (1968).

violate the collective bargaining agreement or commit a prohibited practice. Therefore, the complaint is dismissed in its entirety.

Dated at Madison, Wisconsin this 30th day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner