STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EAGLE RIVER DISTRICT EDUCATION ASSOCIATION and JACK STOSKOPF, Complainants, vs. JOINT SCHOOL DISTRICT NO. 1, CITY OF EAGLE RIVER: BOARD OF EDUCATION, EAGLE RIVER JOINT DISTRICT NO. 1, Respondents.	Case V No. 19224 MP-473 Decision No. 13739-A

Appearances:

Mr. Eugene Degner, Executive Director, appearing on behalf of the Complainants.

Drager, O'Brien, Anderson & Stroh, Attorneys at Law, by Mr. John L. O'Brien, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Eagle River District Education Association and Jack Stoskopf, having on June 5, 1975 filed a complaint with the Wisconsin Employment Relations Commission wherein they alleged that Joint School District No. 1, City of Eagle River and Board of Education, Eagle River Joint District No. 1 had committed prohibited practices within the meaning of the Municipal Employment Relations Act (MERA); and the Commission having appointed George R. Fleischli, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders in the matter as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing having been held on said complaint at Eagle River, Wisconsin on July 24, 1975 before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and enters the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Joint School District No. 1, City of Eagle River, hereinafter referred to as the Respondent District or District, and Board of Education, Eagle River Joint District No. 1, hereinafter referred to as the Respondent Board or Board, are respectively a municipal employer engaged in the operation of a public school system and the public body charged with the management and control of the Respondent District and its affairs.

2. That Complainant Eagle River District Education Association, hereinafter referred to as the Complainant Association or Association is a labor organization and the voluntarily recognized representative of certain professional personnel employed by the Respondent District for purposes of collective bargaining on matters affecting wages, hours and conditions of employment.

3. That Complainant Jack Stoskoph, hereinafter referred to as Complainant Stoskoph or Stoskoph, is a physical education teacher employed by the Respondent District to teach physical education at its Eagle River Elementary School and is represented by the Complainant Association for purposes of collective bargaining.

4. That prior to the 1973-1974 school year, the Respondent District was reorganized from a high school district into a joint school district consisting of a high school and several elementary schools; that in the 1972-1973 school year the St. Germane-Sayner Area Schools employed a teacher by the name of Horstman to teach physical education to elementary students; that after the reorganization of the Respondent District, Horstman was employed by the Respondent District to teach physical education at a number of elementary schools in the Respondent District including the Eagle River Elementary School; that as part of her teaching assignment during the 1973-1974 school year, Horstman was assigned to teach physical education to the seventh and eighth grade girls at the Eagle River Elementary Schools; that at the outset of the 1974-1975 school year, Horstman was assigned to teach physical education at a number of elementary schools not including the Eagle River Elementary School; that the reason Horstman was not assigned to teach physical education to the seventh and eighth grade girls at the Eagle River Elementary School in the 1974-1975 school year was because of her heavy teaching load at the other elementary schools in the district.

5. That for a number of years, Stoskoph had taught physical education to students at the Eagle River Elementary School; that during the 1973-1974 school year Stoskoph taught physical education to all of the students in kindergarten through the eighth grade with the exception of the students in the fourth grade and the girls in the seventh and eighth grade which totalled 487 students; that at the outset of the 1974-1975 school year Stoskoph was advised that he would be teaching physical education to all the students in kindergarten through eighth grade except for the students in the fourth grade which totalled 536 students; that because he was assigned to teach physical education to approximately 100 seventh and eighth grade girls during the 1974-1975 school year, Stoskoph found it necessary to schedule a total of four additional 42-minute class periods during the 1974-1975 school year than were scheduled during the 1973-1974 school year; that Stoskoph complained to the administration about the number of students in classes that he was assigned to teach and the District ultimately hired an additional physical education teacher to teach physical education to elementary students in the second semester of the 1974-1975 school year; that during the second semester of the 1974-1975 school year, Stoskoph was not assigned to teach physical education to seventh and eighth grade girls and was only required to teach 306 students total.

6. That sometime during the first semester of the 1974-1975 school year, an industrial arts teacher by the name of Kroupi was absent from work for a period of weeks as a result of an accident; that because the District was unable to find a substitute teacher who was capable of handling Kroupi's classes, another industrial arts teacher, Thomas Marion, was asked to cover Kroupi's classes and he agreed to do so; that at the time that Marion was asked to cover Kroupi's classes, he was advised that he would be paid $5 for each class period involved; that Marion did cover Kroupi's classes for a number of weeks by jointly supervising the students' activities in his regular class and in Kroupi's classes where they were scheduled during the same period and by utilizing his preparation periods where they coincided with Kroupi's classes; that Marion was substituting for an absent teacher during this period of time.

7. That during the protracted negotiations that preceded the 1974-1975 collective bargaining agreement, the Complainant Association made a demand that teachers who were required to substitute for absent teachers where there was no substitute teacher available to take the absent teacher's classes would be paid $10 per hour for such work; that near the end of negotiations the Respondents offered to include a provision in the agreement that read as follows:

"Any teacher may be required to substitue for an absent teacher during his/her preparation period. If a teacher is so required in excess of one period per week, the substituting teacher shall be reimbursed at the rate of $5 per hour."

8. That the Complainant Association asked the Respondents to make several changes in their proposal including the deletion of the words "during his/her preparation period" from the first sentence; that the Respondents did not agree to any of the requested changes except for the deletion of the words "during his/her preparation period" from the first sentence; that at the conclusion of the negotiations the parties agreed to include the following language in their agreement:

"SECTION VIII - FACULTY SUBSTITUTIONS

Absences about which the administration has received adequate notice will be covered by substitute teachers if available. If an elementary art, music, or physical education special teacher is absent, a substitute shall be used if available during the period of the special teacher's absence. However, it is recognized that the administration may assign a regular teacher to substitute for the special teacher. Any teacher may be required to substitute for an absent teacher. If a teacher is so required in excess of one period per week, the substituting teacher shall be reimbursed at the rate of $5.00 per hour."

9. That sometime subsequent to the execution of the collective bargaining agreement which contained the language set out above, a question arose as to the application of said language in situations where a teacher who is supervising a group of students during a study period is required to accept additional students in the study area because of the absence of a substitute teacher to cover the classes of an absent teacher; that it was agreed between the parties that in cases where 20 or more students were placed in a study area, the teacher who is supervising the study area will be paid $5 per hour.

10. That Stoskoph taught the seventh and eighth grade girls physical education as part of his regular teaching assignment and not as a substitute for an absent teacher; that the terms of the collective bargaining agreement do not provide for additional compensation for teachers whose regular teaching assignment is excessive in terms of the number of students taught or the number of classes taught.

Based on the above and foregoing Findings of Fact, the undersigned Examiner makes and enters the following

CONCLUSION OF LAW

That by refusing to pay Stoskoph $5 for each additional hour in excess of one hour per week that he taught physical education to the seventh and eighth grade girls during the first semester during the 1974-1975 school year, the Respondents have not violated the provisions of the collective bargaining agreement and have not and are not committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the MERA.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the undersigned Examiner makes and enters the following

ORDER

IT IS ORDERED that the complaint herein be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 10th day of February, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

It the Complainant Association's position that since Horstman taught physical education to the seventh and eighth grade girls in the 1973-1974 school year and that Stoskoph was assigned to teach physical education to the seventh and eighth grade girls in the first half of the 1974-1975 school year, Stoskoph qualifies for "substitute" pay under the provisions of Article VIII of the agreement. Since the record indicates that Stoskoph taught four additional 42-minute class periods as a result of such assignment, the Association contends that he should be paid $5 for three class periods per week during the period in question.

The Respondents contend that Stoskoph does not qualify for "substitute" pay under the provisions of Article VIII since he was assigned to teach the seventh and eighth grade girls physical education as part of his regular teaching assignment during the 1974-1975 school year and he was not substituting for an absent teacher. Although the Respondents admit that Stoskoph had a heavier teaching load during the 1974-1975 school year than he had during the prior school year, they argue that other teachers, including Horstman, had a heavy teaching load during the 1974-1975 school year as well and did not receive substitute pay.

DISCUSSION:

It would appear that the Complainants are attempting to take a contract provision which was intended to discourage (by requiring compensation for) a particular practice, that is, the utilization of regular teaching staff to cover the temporary absences of other members of the staff, and applying it to discourage (by requiring compensation for) another practice, that is, the over-burdening of a particular member of the teaching staff by a failure to employ a sufficient number of teachers to teach the offered subjects in a given year. Horstman taught physical education to the seventh and eighth grade girls at the Eagle River Grade School for one year but was not assigned to teach those same grades during the second year of her employment by the reorganized district because of her own heavy teaching load. There was no "absent teacher" under these circumstances and the provisions of Article VIII would appear to be inapplicable.

The two examples relied upon by the Association, that of the industrial arts teacher Marion and the agreement on study periods, do not support a different conclusion. Marion was clearly substituting for an absent teacher when he covered the classes normally taught by Kroupi. Teachers who supervise 20 or more students of an absent teacher are likewise substituting for the absent teacher even though they are substituting study period supervision for classroom instruction.

There is no doubt that Stoskoph put in more hours of work during the first semester of the 1974-1975 school year than in the prior school year as a result of the large number of classes taught by him during the first semester. However, he is clearly not entitled to extra compensation for such work under the agreement as it is presently written. To attempt to stretch the language of the agreement to cover his situation, no matter how compelling, would make the future application of the language agreed to unpredictable and foster unwarranted disputes as to its meaning.

For the above and foregoing reasons the undersigned concludes that the Respondents did not violate the provisions of the 1974-1975 collective

bargaining agreement when they refused to pay Stoskoph $5 for each additional hour in excess of one per week that he taught physical education to the seventh and eighth grade girls during the first semester of the 1974-1975 school year and has dismissed the complaint accordingly.

Dated at Madison, Wisconsin this 10th day of February, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner