STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EAGLE RIVER DISTRICT EDUCATION ASSOCIATION and JERRY STADLER, Complainants, vs. JOINT SCHOOL DISTRICT NO. 1, CITY OF EAGLE RIVER; BOARD OF EDUCATION, EAGLE RIVER JOINT DISTRICT NO. 1, Respondents.	Case VI No. 19225 MP-474 Decision No. 13740-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 Jerry Stadler, 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 files 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 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 Jerry Stadler, hereinafter referred to as Complainant Stadler or Stadler, is an elementary guidance counselor and grade school basketball coach employed by the Respondent District and represented by the Complainant Association for purposes of collective bargaining.

4. That prior to the 1973-74 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 negotiating a collective bargaining agreement covering the newly organized district, the parties relied on the provisions of the high school agreement as the basic document for purposes of bargaining; that prior to entering into the 1973-74 agreement covering the newly created joint school district, the Eagle River Elementary School had employed two basketball coaches for the purpose of coaching the "A team" consisting of the seventh and eighth grade players, and the "B team" consisting of the fifth and sixth grade players.

5. That Complainant Stadler had no coaching responsibilities at the Eagle River Elementary School during the 1972-1973 school year; that during the 1973-1974 school year, Stadler was assigned extra duty as a grade school basketball coach at the Eagle River Elementary School; that Stadler coached the "A team" and the "B team" during the 1973-1974 school year for which he received a total of $200 additional compensation under the terms of the 1973-1974 collective bargaining agreement; that all other grade school basketball coaches in the employ of the District were compensated on the same basis during the 1973-1974 school year.

6. That during the protracted negotiations that preceded the 1974-75 collective bargaining agreement, the Complainant Association made a proposal that grade school basketball coaches, including Stadler, be paid $430 for their coaching activities which was the same amount that the assistant basketball coaches at the high school were receiving for coaching a single team; that at no time during said negotiations did the Complainant Association propose that the grade school basketball coaches be paid a separate sum for each team coached; that at one time during the negotiations the Respondents did offer to increase the compensation for grade school basketball coaches from $200 to $250; that at the conclusion of the negotiations, the Complainant Association accepted Respondents' last offer for extra duty compensation, which included its offer to pay grade school basketball coaches $250.

7. That at the beginning of the 1974-75 school year, Complainant Stadler was aware that the Complainant Association was asking that grade school basketball coaches be paid $430 and accepted an assignment as grade school basketball coach for the "A" and "B" teams at the Eagle River Elementary School even though the question of the amount of compensation to be paid to him for such extra duty was still subject to negotiations.

8. That another teacher, Jack Stoskoph, who had previously acted as a grade school soccer coach during the 1973-74 school year for the seventh and eighth grades for additional compensation in the amount of $150, likewise accepted an assignment to act as grade school soccer coach for seventh and eighth grades at the Eagle River High School during the 1974-75 school year; that sometime during the early part of the 1974-75 school year students from the fifth and sixth grades asked Stoskoph if he would be willing to act as their soccer coach as part of an intramural soccer program; that with the acquiescence of his supervising principal, Stoskoph began acting as coach for the fifth and sixth grade students; that using separate vouchers, Stoskoph asked for and received a total of $300 compensation for coaching the fifth and sixth and seventh and eighth grade soccer teams.

9. That thereafter, Stadler, using separate vouchers, asked for a total of $500 compensation for coaching the "A" and "B" basketball teams, but that his request was denied, and he, like the other grade school basketball coaches, was paid a total of $250 for coaching the "A" and "B" basketball teams; that thereafter Stadler filed a grievance alleging that

the Respondents had violated the provisions of the collective bargaining agreement by refusing to pay him $250 for each team that he had coached; that Stadler's grievance was processed in a timely manner pursuant to the terms of the collective bargaining agreement and ultimately denied by the Respondent Board; that the parties' grievance procedure does not provide for binding arbitration of grievances involving the interpretation or application of the provisions of the agreement.

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 Stadler $250 for each grade school basketball team that he coached during the 1974-75 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 upon 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

The Complainants argue that because the Respondents pay each high school coach the stated sum of money for the one team they coach and becaus they paid Stoskoph a sum of money for each grade school soccer team that he coached during the 1974-75 school year, the contractual provision providing that grade school basketball coaches shall receive $250 should be read to mean that grade school basketball coaches shall receive $250 for each team coached. It is the Complainants' position that the evidence of a "past practice" to the contrary, during the 1973-74 school year should be disregarded as unreliable because separate coaches coached the seventh and eighth grade teams and the fifth and sixth grade teams in years prior to the reorganization of the District and each received compensation in the amount of $400.

The Respondents argue that the language of the agreement is clear and unambiguous and it is inappropriate to consider extrinsic evidence to imply that the reference to "$250" should really be read to say "$250 per team". Although the Respondents concede that there has only been one year of experience under the Joint School District agreement, they argue that the Complainants' failure to negotiate a change in the language with regard to the compensation earned by grade school basketball coaches precludes an interpretation which is different than that which flows from its unambiguous wording and its application in the 1973-74 school year. The Respondents argue further that Stoskoph's situation has no applicability to the proper interpretation of the provision relating to grade school basketball coaches inasmuch as his case was an isolated example based on distinguishable facts. Finally, it is the Respondents' position that by failing to ask that grade school basketball coaches be compensated on a per team basis and agreeing to compensate said coaches at the rate of $250 the Complainant Association manifested an intent to accept the apparent intent of the language, and they should not now be heard to argue for a different interpretation.

DISCUSSION:

Contrary to the Respondents' position, the Examiner concludes that it is not possible to determine, simply by reading the provision in question, what compensation Stadler is entitled to receive for his basketball coaching activities during the 1974-75 school year. It is appropriate in the opinion of the undersigned to consider the "extrinsic evidence" regarding the situation that existed at the time that the agreement was entered into for the purpose of attempting to determine the intended meaning of the language in question.

It is also clear that the fact that the Respondents paid the grade school basketball coaches for one year under the first agreement covering the consolidated district, hardly qualifies as a "past practice" as that expression is utilized in the interpretation of labor agreements. To qualify as a past practice, a practice under an agreement should be mutually accepted and consistently applied for a number of years preferably under a number of collective bargaining agreements.

subsequently paid the grievant for coaching both teams. No evidence was introduced as to whether the parties had reached agreement on the terms of the 1973-74 agreement when Stadler accepted the coaching assignment in question for the sum of $200, but it must be assumed that he was willing to accept that method of compensation and amount of compensation since there is no evidence that a grievance was ever filed.

When it came time to negotiate changes in the extra-duty compensation schedule for the 1974-75 school year, the Association asked that the grade school coaches be paid $430. Stadler indicated in his testimony that he was aware of this demand. No demand was ever made that said coaches be paid a separate sum for each team coached. Ultimately, the Complainant Association agreed that the grade school coaches were to be paid $250 for the 1974-75 school year.

Because the parties must be presumed to be aware of the facts which gave rise to the demand for an increase in the compensation for grade school basketball coaches, the apparent intent of this agreement was that the Respondents were agreeing to compensate the grade school basketball coaches in the amount of $250 for all coaching duties performed rather than for $200 as had been the case in the prior year. There were no substantial changes in the duties performed by the grade school basketball coaches in the 1974-75 school year. The Union's claim that the agreement should be read to provide for separate payment for each team coached is contradicted by its actions at the bargaining table. The Association knew, or should have known, at the time the agreement was entered into that the Respondents interpreted the 1973-74 agreement to require only one payment to the grade school basketball coaches, all of whom coached two teams. The Respondents were entitled to assume that by agreeing that grade school basketball coaches who received $200 during the 1973-74 school year should receive $250 during the 1974-75 school year the Complainant Association was agreeing that said compensation was for all coaching duties performed.

The fact that a grade school soccer coach whose duties changed during the 1974-1975 school year to include a second team, asked for and received twice as much compensation as the agreement called for does not alter the meaning of the provision in question. First of all his situation was quite different in that he had coached only one soccer team in the prior year so that his duties in fact changed substantially in the 1974-75 school year. Secondly, the evidence discloses his applications for payment were approved by the new superintendent before he became apprised of all of the facts. Finally, the question of whether that teacher was entitled to the double payment would seem to relate to the equities of his particular situation rather than the provisions of the agreement.

For the above and foregoing reasons the undersigned concludes that the Respondents did not violate the provisions of the 1974-75 collective bargaining agreement when they refused to pay Stadler $250 for each grade school basketball team coached by him during the 1974-75 basketball season 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