STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON TEACHERS INCORPORATED, Complainant, vs. JOINT SCHOOL DISTRICT NO. 8, CITY OF MADISON, VILLAGES OF MAPLE BLUFF AND SHOREWOOD HILLS, TOWNS OF MADISON, BLOOMING GROVE, FITCHBURG AND BURKE: THE BOARD OF EDUCATION OF JOINT SCHOOL DISTRICT NO. 8, CITY OF MADISON, ET AL., Respondent.	Case XLII No. 19678 MP-524 Decision No. 14038-A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Madison Teachers Incorporated having filed a complaint on October 13, 1975 with the Wisconsin Employment Relations Commission alleging that Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke: The Board of Education of Joint School District No. 8, City of Madison, et al., had 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 Byron Yaffe, 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 Statutes; and hearing on said complaint having been held at Madison, Wisconsin on November 14, 1975, before the Examiner, and briefs having been filed by both parties with the Examiner; and the Examiner having considered the arguments, evidence and briefs 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 Madison Teachers Incorporated, hereinafter referred to as the Complainant is a labor organization and the collective bargaining representative of certain teachers employed by Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke.

2. That Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke, hereinafter referred to as the Respondent or District, is a public school district organized under the laws of the State of Wisconsin and is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act.

3. That the Board of Education of Joint School District No. 8, City of Madison, et al., hereinafter referred to as the Board, is a public body charged under the laws of the State of Wisconsin with the management, direction and control of said District and its affairs.

4. That at all times pertinent hereto the Complainant and the Respondent were parties to collective bargaining agreements, 1/ which among their several provisions, contained the following which are material herein.

"I - Recognition - A

MANAGEMENT RIGHTS CLAUSE

1. The Board of Education on its own behalf hereby retains and reserves unto itself, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by applicable law, rules, and regulations to establish the framework of school policies and projects including, (but without limitation) because of enumeration, the right:

   a. To the executive management and administrative control of the school system and its properties, programs and facilities.

   b. To employ all personnel and, subject to the provisions of law or State Department of Public Instruction regulations, determine their qualifications and conditions of employment, or their dismissal or demotion, their promotion and their work assignment.

   c. To establish and supervise the program of instruction and to establish and provide supervision under agreed upon rules for such programs of an extra-curricular nature as the Board of Education feels are of benefit to students.

   d. To determine means and methods of instructions, selection of textbooks, and other teaching materials, the use of teaching aids, class schedules, hours of instruction, length of school year, and terms and conditions of employment.

2. The exercise of the foregoing powers, right, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited by the terms of this agreement and Wisconsin Municipal Employment Relations Act.

. . .

II - Procedure - B

B. GRIEVANCE PROCEDURE

. . .

1/ The pertinent provisions of the collective bargaining agreement in effect between January 1, 1973 - December 31, 1974 and January 1, 1975 - December 31, 1975 remained unchanged.

3. Definition:

a. A 'Grievance' is defined to be a dispute concerning the interpretation or application of any of the terms of any 'written' agreement establishing salaries, hours, or other conditions of employment for the employees of the Board of Education for whom Madison Teachers is the collective bargaining representative. Aggrieved parties may be Madison Teachers or any such employees.

. . .

6. The procedural steps for Madison Teachers shall commence at Level 3. Organizational (Class) Grievance: Madison Teachers must submit the alleged grievance within sixty (60) days after Madison Teachers knew of the act or condition on which the grievance is based, or the grievance will be deemed waived. If the act or condition reoccurs the time limit will be renewed.

. . .

LEVEL 5:

a. To the extent the grievance remains unresolved at the conclusion of Level 3 or 4, Madison Teachers may call for compulsory, final, and binding arbitration. Said call must be within fifteen (15) school days after the receipt of the answer at Level 3 or 4.

. . .

d. The decision of the arbitration panel shall be final and binding on all parties except as forbidden by law and shall be rendered within thirty (30) days following the final day of hearings or receipt of briefs, whichever is later.

. . .

III - Salary - M

M. EXTRA DUTY COMPENSATION SCHEDULE

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3. A schedule for teacher supervision at athletic events, social activities and other school related functions is effective 1-1-71.

. . .

a. All employment shall be voluntary. No position shall require assignment of teachers."

5. That the Principal of the Cherokee middle school, beginning during the 1971-72 school year, assigned certain teachers to supervise the loading of students onto public buses at the close of the school day, and that said assignments continued through the 1972-73 school year.

6. That during the 1973-74 school year the principal instituted a rotation plan among all teachers under his supervision of the bus

loading assignment to ensure that said responsibility would be shared equally among the teachers.

7. That said plan remained in effect during the 1974-75 school year.

8. That on February 25, 1975 the Complainant filed a grievance alleging that the bus duty assignment violated the collective bargaining agreement. That said grievance was not resolved by the parties and accordingly was submitted to final and binding arbitration pursuant to the parties' collective bargaining agreement.

9. That the matter was heard by Arbitrator Max Raskin on May 2 and June 17, 1975, and that thereafter briefs were submitted to the Arbitrator by the parties.

10. That on August 19, 1975 Arbitrator Raskin issued an award in the matter, which in pertinent part provided:

> "It is undisputed that the subject of bus assignment is not mentioned in the collective bargaining agreement.
>
> . . .
>
> While the contract is silent on the subject of bus duty assignment, it does speak of a number of duties that teachers may undertake on a voluntary basis such as supervision at athletic, social, and other school related functions of a non-academic nature. Lunch room duty and noon hour supervision within the school building is included in this class.
>
> The contract further provides that other needed positions at athletic events, timers, scorers, score board operators, announcers, field judges, line judges which do not require for a teacher to perform, permits the Board to seek lay personnel for the performance of such duties. In this class are also '. . .social events not sponsored by the Recreation Department . . . supervisors and/or ticket sellers and takers in such numbers and for such periods as requested by the principal of the high school.'
>
> It seems clear from the detailed inclusion of certain functions that the parties to the contract recognized that certain activities or programs of extra-curricular nature require either teacher or non-teacher supervision of children to provide for order and discipline, to avoid over action by children, or to take on work of a purely labor character.
>
> The question then arises: if the bargaining parties saw the need for these inclusions, did they by implication permit the Board to unilaterally make all other work assignments which may come to the need of the school and the mind of a principal?
>
> It would be difficult to accept the premise that the parties left it to the principal of each school in the system to decide for himself how and under what circumstances he will utilize teacher time for work assignment of an extra-curricular nature.
>
> . . .
>
> Thus it is not entirely unknown to labor-management negotiators to supplement master contracts with local plant contracts where the employer operates a multi-plant system and where special conditions within an individual plant suggests such action. But to accomplish such purpose requires agreement between the parties.

In reality the parties to the instant contract covered this area of negotiations by providing that the School Board may '. . . provide supervision under agreed upon rules for such program of an extra-curricular nature as the Board of Education feels are of benefit to students.'

. . .

What was required, however, was for Principal Stoddard to have notified the Board that due to special circumstances in his school building, teacher supervision of bus loading was essential. The Board would have then been required to notify Madison Teachers and negotiate so as to agree 'upon rules, for such program' of an extra-curricular nature.

This obviously was not done and the unilateral action of Principal Stoddard falls short of the overall objectives of the contracting parties.

. . .

Counsel for the Board recognizes that the subject of bus duty is of a bargaining nature. The Arbitrator agrees that the 'remedy is through further negotiations.' The Board, however, must withhold imposing such duty upon the teachers until negotiations on the subject have been completed.

. . .

Bus loading supervision on the part of teachers is not within the scope of their employment nor is it reasonably related to professional teacher services. It is a condition of employment because it is not in the field of instruction and therefore, must be negotiated.

. . .

Assisting or supervising children in boarding buses is not of an emergency character. It is not a situation arising out of an unforseen, [sic] unplanned and abnormal work condition which the contracting parties under normal circumstances could not have contemplated. Since they failed to cover the subject in the contract, it must be concluded that the parties refused to make it a subject for bargaining until such time that the School Board imposed such duty upon the teachers universally and throughout the system and then only after the parties negotiated and then 'agreed upon the rules for such program.'

Until that is done the Board is without power to assign teachers to supervise children while boarding buses at or near school premises.

Milwaukee [sic] Teachers, Inc., seeks compensation for teachers at Cherokee Middle School who have performed such services, presumably in the last four years.

The Arbitrator is of the view that Milwaukee [sic] Teachers had the opportunity to grieve the subject from the time Principal Stoddard first imposed the duty on the teachers under his supervision. To have waited until now and then seek compensation retroactively would work an injustice upon the Board.

Award

The Madison School Board and Donald Stoddard, principal of Cherokee Middle School are enjoined from imposing upon the teachers in their employ the duty to assist with or supervise in the loading or boarding of buses stationed at or near school premises.

Teachers may volunteer for such service and be compensated therefor following negotiations and upon rates to be agreed upon by the parties.

Compensation claims for bus loading services performed prior to the filing of the instant grievance are disallowed.

Compensation for such services performed following the filing of the grievance shall be negotiated between the parties."

11. That the Respondent has continued to refuse to implement the aforementioned award of Arbitrator Raskin.

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

CONCLUSIONS OF LAW

1. That the Award of Arbitrator Raskin which was issued on August 19, 1975 was based upon his interpretation and application of the terms of the collective bargaining agreement existing between the parties and that accordingly, said Award was within Arbitrator Raskin's authority.

2. That the Respondent, by its refusal to comply with the Award of Arbitrator Raskin has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke: The Board of Education of Joint School District No. 8, City of Madison, et al., its officers and agents shall immediately:

1. Cease and desist from refusing to comply with the Award of Arbitrator Max Raskin dated August 19, 1975.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

   a) Comply with the Award of Arbitrator Max Raskin dated August 19, 1975 by (1) Not requiring teachers to perform bus loading supervision duties unless the rights and responsibilities of the parties in this regard have been modified in collective bargaining agreements entered into subsequent to the 1975 agreement. (2) Negotiating a rate of compensation for services performed supervising the loading of public buses following the filing of the grievance which is the subject of this dispute for the period covered by the 1973-74 and 1975 agreements and for such subsequent periods

as the rights and responsibilities of the parties have not been modified by a collective bargaining agreement.

b) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 4th day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Byron Yaffe
Byron Yaffe, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Respondent has raised an affirmative defense to the complaint to the effect that Arbitrator Raskin exceeded his authority in making his Award, since said Award added to and modified the agreement, and accordingly, the Award did not have its essence in the collective bargaining agreement.

The agreements pertinent herein 2/ provide for the arbitration of grievances which in turn are defined in Article II B. 3.a. as disputes ". . .concerning the interpretation or application of any of the terms of any 'written' agreement establishing salaries, hours, or other conditions of employment . . ." Thus, the Respondent argues that the Arbitrator is limited to the interpretation and application of the existing terms of the agreement. Conversely, an Arbitrator may not add to or modify in any way the existing terms of the written agreement.

Specifically, the Respondent contends that Arbitrator Raskin added to and modified the parties' collective bargaining agreement by assuming that "bus duty" was an implied provision of Article III, Section M of the agreement, which sets forth various tasks which may not be assigned as part of the teachers' regular work assignment. It argues that the Arbitrator's above-mentioned interpretation is manifestly unreasonable given the factual circumstances present in the dispute and the bargaining history between the parties with respect to the subject matter of the dispute. Accordingly, the Respondent argues that because the Arbitrator acted beyond his contractual authority, his Award is not enforceable.

On the other hand, the Complainant contends that the Arbitrator confined himself to the interpretation and application of what the Arbitrator deemed to be the relevant provisions of the collective bargaining agreement, and thus rendered an enforceably, final, and definite Award.

In this regard, the Arbitrator concluded that the Management Rights Clause did not permit the Respondent to unilaterally assign teachers to bus duty based upon his interpretation and application of Articles III-M and I-A of the pertinent collective bargaining agreements. Thus, because it is clear that the Arbitrator rendered the award in question based upon his interpretation of the collective bargaining agreement rather than upon other criteria, said Award should be enforced whether or not the Commission agrees with the Arbitrator's interpretation of said agreement.

In the review and enforcement of arbitration awards under both the Wisconsin Employment Peace Act and the Municipal Employment Relations Act, the Commission has applied the standards set forth in Section 298.10 of the Wisconsin Statutes for the review of such Awards. 3/ The statutory standards for vacating such Awards are as follows:

2/ The 1973-74 agreement and the 1975 agreement, the pertinent terms of which are identical.

3/ Hacker Heating & Sheet Metal, Inc. et al., (6704) 4/64; H. Froebel & Son (7804) 11/66; Research Product; Corp. (10223-A) 12/75.

"(a) Where the award was procured by corruption, fraud or undue means;

(b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual final and definite award upon the subject matter submitted was not made."

The Respondent asserts that the Arbitrator exceeded his authority in this case, which raises the issue of the applicability of the fourth above-mentioned standard to the facts present herein. That standard is consistent with the standard applied by the federal courts in reviewing arbitration decisions under Section 301 of the Labor Management Relations Act.

The standard which the Examiner believes is appropriate to apply in this instance was well articulated by Judge Hastie in Honold Manufacturing Company v. Fletcher 4/:

" . . . a, labor arbitrator's award does 'draw its essence from the collective bargaining agreement' if the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context and any other indicia of the parties' intention; only where there is a manifest disregard of the agreement, totally unsupported by principles of contract construction and the law of the shop, may a reviewing court disturb the award." (Footnote omitted).

Thus, in determining whether to uphold the Arbitrator's decision, a reviewing tribunal must not merely substitute its own interpretation of an agreement for that of the Arbitrator. So long as the Arbitrator's decision can be construed as an interpretation of the agreement, reviewing tribunals, under both federal 5/ and state 6/ labor law policy, should not engage in a plenary review of the merits of the interpretation.

In this case the crux of the Respondent's argument is that given the factual circumstances of the dispute in question it was "manifestly unreasonable" for the Arbitrator to have concluded that the bus loading supervision is a form of voluntary extra duty, the compensation for which must be negotiated pursuant to the terms of the parties' collective bargaining agreement and the Municipal Employment Relations Act.

The Examiner, however, is of the opinion that the only appropriate issue for the Commission's consideration is not whether the Arbitrator's

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4/ 70 LRRM 2368 at p. 2371 (3d Cir. 1969).

5/ Steelworkers v. Enterprise Wheel & Car Corp. 353 U.S. 593, 46 LRRM 2423 (1960).

6/ Supra, footnote 1.

interpretation of the parties' written agreement was reasonable, but instead, whether the Award can reasonably be construed as an interpretation of that agreement.

In that regard, Arbitrator Raskin, in formulating his Award, appears to have construed two sections of the parties' collective bargaining agreement: The Management Rights Clause, specifically Article I Section A 1 c, and Article III, Section M, the extra duty compensation schedule.

Arbitrator Raskin appears to have construed Article III, Section M as a reflection of the parties' recognition that there are a ". . .number of duties that teachers may undertake on a voluntary basis such as supervision at athletic, social, and other school related functions of a non academic nature." Arbitrator Raskin further found that because bus loading supervision " . . . is not within the scope of their (the teachers') employment nor is it reasonably related to professional teachers services," it must be viewed as an extra curricular duty within the meaning of Article I, Section A 1 c of the agreement. Thus the Arbitrator found:

> "In reality the parties to the instant contract covered this area of negotiations by providing that the School Board may . . . provide supervision under agreed upon rules for such provisions of an extra-curricular nature as the Board of Education feels are of benefit to students." 7/

Accordingly, the Arbitrator found that since Article I, Section A 1 c provides that the parties would have to agree upon the rules for such provisions, the contract was violated since the duty was unilaterally established without such agreement and furthermore, since the duty was mandatory rather than voluntary, it violated the clear intent of Article III, M which contemplates that extra-curricular duty shall be assigned on a voluntary basis. 8/

While it is clear that the Arbitrator had to make certain inferences in making the aforementioned contractual interpretation, the Examiner, for reasons set forth above, will not engage in a plenary review of the merits of those inferences and the resultant contractual interpretation.

Thus, in this case, the Examiner concludes that the Arbitrator's Award was based upon his interpretation of the collective bargaining agreement. Because said Award draws its essence from the agreement, and because the parties bargained for and agreed to accept the Arbitrator's interpretation of that agreement, said Award is enforceable and the complaint filed herein is therefore meritorious.

For the foregoing reasons the Examiner finds that the Respondent has violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act by refusing to comply with Arbitrator Raskin's Award of August 19, 1975.

The Respondent is therefore directed to comply with said Award to the extent that it remains effective under the parties' current collective bargaining agreement. Since there is no evidence on the record as to

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7/ See Article I, Section A 1 c.

8/ See Article III, Section M 3 a.

the contractual provisions currently in effect regarding the bus loading supervision issue, the Respondent's current obligation to comply with that portion of the Arbitrator's Award enjoining the Respondent from mandatorily assigning teachers such duty must be conditioned by the terms of the current collective bargaining agreement. Said portion of the Award would remain in effect only so long as there were no modifications in subsequent agreements in this regard.

The Respondent, however, must negotiate compensation for such services performed following the filing of the grievance, at least through the duration of the 1975 agreement and for such subsequent periods as the parties' rights and responsibilities in this regard have not been modified by subsequent collective bargaining agreements.

Dated at Madison, Wisconsin this 4th day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Byron Yaffe, Examiner