

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PORTAGE EDUCATION ASSOCIATION,
WISCONSIN EDUCATION ASSOCIATION
COUNCIL, NATIONAL EDUCATION
ASSOCIATION,

Complainants,

vs.

JOINT SCHOOL DISTRICT NO. 1, CITY OF
PORTAGE, TOWN OF CALEDONIA, FORT
WINNEBAGO, DEKORRA, LEWISTON, WYOCENA,
DOUGLAS, MOUNDVILLE, MARCELLON, PACIFIC,
GREENFIELD, VILLAGE OF ENDEAVOR;
COLUMBIA, MARQUETTE, SAUK COUNTIES,
STATE OF WISCONSIN, AND THE BOARD
OF EDUCATION OF PORTAGE, WISCONSIN,
OF THE CITY OF PORTAGE, et al.,

Respondents.

Case VII

No. 20160 MP-576

Decision No. 14372-A

Appearances:

Mr. James M. Yoder, Executive Director, South Central United Educators,
appearing on behalf of the Complainants.

Mr. Francis W. Murphy, Attorney at Law, appearing on behalf of the
Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above-named Complainant having, on February 12, 1976 filed a prohibited practice complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondent 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 Peter G. Davis, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been held in Portage, Wisconsin on April 19, 1976, before the Examiner; and the Examiner having considered the evidence and arguments of counsel makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That the Portage Education Association, hereinafter referred to as the Complainant, is a labor organization functioning as the collective bargaining representative of all contracted certified teaching personnel employed by Joint School District No. 1, City of Portage, Townships of Caledonia, Fort Winnebago, Dekorra, Lewiston, Wyocena, Douglas, Moundville, Marcellon, Pacific, Greenfield, and the Village of Endeavor.

2. That Joint School District No. 1, City of Portage, Townships of Caledonia, Fort Winnebago, Dekorra, Lewiston, Wyocena, Douglas, Moundville, Marcellon, Pacific, Greenfield, and the Village of Endeavor, hereinafter referred to as the Respondent, is a Municipal Employer having its principal office at 117 West Franklin, Portage, Wisconsin.

3. That at all times material herein, Complainant and Respondent were parties to a collective bargaining agreement covering wages, hours and conditions of employment of the aforesaid represented individuals in the employ of the Respondent, and that said agreement contained the following provisions:

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"SECTION VIII - CLASS LOAD

CLASS LOAD

The teacher work schedule shall consist of a 5 day, 40 hour week of which 30 minutes per day shall be duty free lunch and 1,650 minutes may be scheduled class and study hall time. This description is exclusive of monitoring type duties such as homeroom, playground supervision, hall supervision, recess supervision, and duties of like responsibility. Pupil teacher loads should be consistent with Wisconsin Department of Public Instruction guidelines. The BOARD and Administration will work toward equalizing the teaching load as finances and facilities permit.

WORK LOAD QUALIFIERS

Teachers shall not be required to supervise lunch rooms during lunch periods but may assume the duty by mutual consent with the administration.

All teachers shall have 300 minutes per week of preparation time during the school day without the assigned responsibility for students. This preparation time shall be made available in at least 15 minute blocks of time. The 300 minutes preparation time in the elementary schools will be made available from unscheduled recess periods, periods when students go to special teachers, before school, during the noon hour and after school.

Teachers may not be required to perform more than 300 minutes per week of monitoring type duties during the school day.

The above descriptions do not apply to weeks in which a make-up day is scheduled.

ADDITIONAL CLASS LOAD

No teacher shall be allowed to accept additional class load without the consent of the teacher and the administrator. Additional class load, if approved, should receive additional monetary reimbursement amounting to its equivalence as a fractional part of the teacher's base salary. This rate is determined by dividing the teacher's total number of contract days into his base salary and dividing the resulting daily rate by eight. The above formula applies only to scheduled, long term, regular class load as assigned by the administration and agreed to by the teacher.

. . .

SECTION XI - GRIEVANCE PROCEDURE

DEFINITION: A grievance is defined as any violation of the provisions of this agreement and must be submitted in accordance with the following procedure:

- Step 1. An alleged grievance of an individual or group must first be submitted verbally to the Building Principal or immediate Supervisor within ten (10) working days of the time the grievance becomes known to the grievant. A verbal answer shall be given within three (3) working days of the submission.
- Step 2. If a solution is not reached in Step 1 above, the grievance shall be reduced to writing and within five (5) working days again submitted to the Building Principal or immediate Supervisor with a copy to the Superintendent of Schools. The written grievance shall give a statement of the alleged grievance including the fact upon which the grievance is based, the issues involved, the agreement provisions involved, the agreement provisions involved, and the relief

sought. The parties shall then meet within two (2) working days in an attempt to work out a solution.

- Step 3. If a solution is not reached in Step 2 above, the grievant shall notify the Superintendent in writing within two (2) working days and the Superintendent shall arrange a meeting within four (4) working days, at which time he shall be present with the aggrieved, Building Principal or immediate Supervisor. At this meeting the matter shall be reviewed and an attempt shall be made to arrive at a satisfactory solution.
- Step 4. If the matter is not resolved in Step 3 above, the grievance may be submitted to the BOARD, in writing, within five (5) working days after the completion of Step 3. The BOARD shall meet with the parties involved and a written answer shall be given within twenty (20) working days after receipt of the written appeal.
- Step 5. If a solution is not reached in Step 4 such grievance may be submitted to final arbitration by either party. The procedure is commenced by either party filing with the other party a notice of intention to submit the grievance to an arbitrator. It is mutually agreed between the parties that if a notice of intention to arbitrate is not filed within ten (10) working days after completion of Step 4, the matter is deemed resolved. The parties will meet within ten (10) working days of receipt of this notice to attempt to select an arbitrator by mutual agreement. The expenses of the arbitrator shall be paid by the party ruled against. If the parties are unable to agree on an arbitrator at this meeting, then the arbitrator shall be selected by the following procedure:

The Wisconsin Employment Relations Commission shall be asked to appoint a member from the Commission or its staff to arbitrate the dispute.

The arbitrator shall issue no opinions that will modify or amend any terms of this agreement. The decision of the arbitrator shall be final and binding upon both parties.

Any contracted employee complaint not covered by the agreement between the parties to this agreement, which involves a question of salaries, hours or conditions of employment, shall be processed through Step 3 ONLY of this grievance procedure, if such complaint is presented in accordance with the time limits set forth above. The Superintendent shall inform the BOARD of Education in writing of the nature and content of the grievance and the decision rendered.

At any step of the above procedure the aggrieved parties shall be allowed representation by the Association or other parties of his own choice. It is further agreed between the parties that any time limits set forth above may be waived by mutual consent of the parties in writing.

If a grievance extends beyond the school year then the term 'working days' shall mean Monday through Friday. (5 days)"

4. That on October 27, 1975 the Respondent tendered individual contracts for behind the wheel driver education for the 1975-1976 school year to three teachers in the bargaining unit covered by the aforesaid collective bargaining agreement; and that on November 4, 1976 one of the three teachers, Eldon Nelson, returned his behind the wheel drivers education contract unsigned with a notation indicating that

the rate of compensation specified in said contract appeared to be inconsistent with Section VIII of the 1975-1976 bargaining agreement.

5. That on November 19, 1975 Ms. Patsy Pasch, grievance representative filed a grievance on behalf of the Complainant which stated its belief that Sections III and VIII of the bargaining agreement had been violated by the terms of the individual behind the wheel drivers education contracts offered by the Respondent and requested compliance with the requirements of said Sections; that the grievance was processed through the grievance procedure contained in Section XI of the bargaining agreement; that at Step 4 of said procedure Respondent indicated that it was denying Complainant's request for a hearing pursuant to Step 4 because it believed that the Complainant was not a proper party to the grievance, that the request was untimely, and that the answer given by Respondent at Step 3 of the grievance procedure was "factual and reasonable."

6. That on January 22, 1976 Complainant's President, Ms. Diane Benner, sent a letter to the President of Respondent's Board of Education, Ms. Mary Rhyme, which stated "this is our notice of intention to submit the grievance to an arbitrator"; and that on January 30, 1976 Ms. Rhyme indicated by letter to Ms. Benner that "The Board has replied and is not interested in pursuing the matter of your November 11, 1975 grievance statement to arbitration."

7. That the dispute between Complainant and Respondent regarding the proper compensation for behind the wheel drivers education raises a claim which on its face is covered by the terms of the collective bargaining agreement which exists between said parties.

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

CONCLUSION OF LAW

That Joint School District No. 1, City of Portage et al. has violated and continues to violate the terms of Section XI of the 1975-1976 collective bargaining agreement existing between it and the Portage Education Association by refusing to submit to arbitration the grievance of Ms. Patsy Pasch and thus has committed and continues to commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that Joint School District No. 1, City of Portage et al., its officers and agents shall immediately:

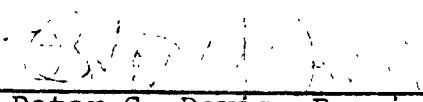
1. Cease and desist from refusing to submit the Pasch grievance to arbitration.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:
 - (a) Immediately Comply with the arbitration provisions of the collective bargaining agreement existing between it and the Portage Education Association with respect to the Pasch grievance.
 - (b) Immediately notify the Portage Education Association that it will proceed to arbitration of the Pasch grievance.

- (c) Pursuant to Article XI of the collective bargaining agreement participate with the Portage Education Association in the submission of a letter to the Wisconsin Employment Relations Commission requesting that an arbitrator be appointed to resolve the Pasch grievance.
- (d) Participate in the arbitration proceeding before the arbitrator appointed by the Wisconsin Employment Relations Commission with respect to said grievance and issues concerning same.
- (e) 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 2nd day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Section 111.70(3)(a)5 of the Municipal Employment Relations Act makes it a prohibited practice for a Municipal Employer "to violate any collective bargaining agreement agreed upon by the parties . . . including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement" When interpreting said provision with respect to questions of procedural and substantive arbitrability the Commission has followed the federal substantive law set forth in the Trilogy cases 1/ and John Wiley and Sons, Inc. vs. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964). Thus in actions seeking enforcement of arbitration provisions contained in collective bargaining agreements the Commission will give such clauses their fullest meaning and restrict itself to a determination of whether the party seeking arbitration makes a claim which, on its face is covered by the bargaining agreement. 2/ Therefore, the issue before the Examiner is limited to a determination of whether the Pasch grievance is arbitrable under the parties' 1975-1976 bargaining agreement.

Section XI of the parties' bargaining agreement defines a "grievance" as ". . . any violation of the provisions of this agreement" The Pasch grievance alleges that the Respondent violated Section VIII of the agreement when computing the compensation to be offered the drivers education teachers. The Respondent's refusal to arbitrate said grievance is premised upon its procedural defense that the Complainant is not a proper party to the grievance as well as its substantive contention that there is no provision of the bargaining which sets the rate of compensation for such duties. The Complainant asserts that it is a proper party to the grievance and that behind the wheel driver education is "additional class load" which must be compensated in accordance with the terms of Section VIII.

With respect to the Respondent's procedural defense, Section XI of the bargaining agreement contains references to the "grievance of an individual or group" and to either "party" submitting the grievance to arbitration. Whether the Complainant qualifies as a "group" or "party" within the meaning of Section XI clearly calls for an interpretation of the bargaining agreement. Similarly, interpretation of Section VIII is required for a determination of its applicability to the amount of compensation received by drivers education teachers. Given this determination that the Pasch grievance raises issues which on their face are covered by the collective bargaining agreement, the Examiner must conclude that the Pasch grievance is arbitrable under the 1975-1976 bargaining agreement. 3/ Thus the Respondent, by its refusal to proceed to arbitration of the Pasch grievance, must be found to have violated its contractual duty

1/ Steelworkers vs. American Mfg. Co., 353 U.S. 564 (1960); Steelworkers vs. Warrior and Gulf Navigation Co., 353 U.S. 574 (1970); Steelworkers vs. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

2/ Oosting Jt. School Dist., (1196-A) 10/72; Monona Grove Jt. School Dist. (11614-A) 7/73; Weyerhaeuser Jt. School Dist. (12984) 8/74.

3/ It should be clear that this conclusion does not reflect any determination with respect to the merits of either the procedural or substantive issues raised by the Pasch grievance.

under Section XI to arbitrate unresolved grievances and therefore to have committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin this 2nd day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Peter G. Davis
Peter G. Davis, Examiner