STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHLAND PINES 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 IX No. 20662 MP-643 Decision No. 14790-A

Appearances:
Mr. Eugene Degner, Executive Director, WEAC UniServ Council No. 18, 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, CONCLUSIONS OF LAW AND ORDER

Northland Pines Education Association and Jack Stoskopf, having on July 16, 1976 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 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 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 August 17, 1976 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, Conclusions 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 chargedwith the management and control of the Respondent District and its affairs.

2. That Complainant Northland Pines 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 Stoskopf, hereinafter referred to as Complainant Stoskopf or Stoskopf, is a physical education teacher employed by the Respondent District to teach physical education and is represented by the Complainant Association for purposes of collective bargaining.

4. That Complainant Northland Pines Education Association and Respondent Board of Education were signators to a collective bargaining agreement effective during the 1975-1976 school year, covering wages, hours and conditions of employment of the employes in the aforesaid unit; and that said agreement contained the following provisions:

"SECTION VI - FAIR DISMISSAL

After completing a two-year probationary period, no teacher shall be dismissed, demoted, suspended without pay, or non-renewed for delinquencies except in accordance with the following procedures:

. . .

SECTION VIII - FACULTY TRANSFERS

When making transfers, the Board, where practical, shall take the training, experience, specific achievements, service to the district, wishes and convenience of the teacher into consideration; however, it is understood that the instructional requirements and best interests of the school system and the pupils are of primary importance. Wherever possible, transfers shall be on a voluntary basis . . . .";

that bargaining history indicates that the reason for the transfer language contained in Section VIII of the contract as noted above was the reorganization of the District and resultant building programs; that bargaining history also indicates that the primary concern of the teachers regarding said language was first that they would be properly certified for whatever they would be asked to do; have adequate experience within that area, and that they would feel it was an area in which they would be comfortable to teach in; that such things as disruption of home life and the situation whereby a teacher would have to travel from Eagle River to an outlying school were of secondary concern to said teachers; and that the above mentioned labor agreement makes no provision for the final and binding resolution of disputes concerning its interpretation or application.

5. That for a number of years, Complainant Stoskopf had taught physical education to students at the Eagle River Elementary School in Grades 1 through 8, with varying class assignments; that during the 1975-1976 school year Stoskopf taught physical education to students (Boys) in the second and third grades, and fifth and sixth grades at the Eagle River Elementary School, and the sixth, seventh and eighth grades Physical Education in the Sayner Elementary School; that Sayner Elementary School was approximately twenty miles distance from Eagle River; that as a result of a reorganization and building program the Respondent Board began operating a "Middle School" consisting of Grades 6, 7 and 8 in the school year 1976-1977; that in order to properly staff the aforementioned school, the Respondent Board created a new position for Middle School Physical Education; that Respondent Board's Administrator, Robert Sutter, sent a letter to teachers sometime in October of 1975 asking them for their teaching preference for class assignments for the 1976-1977 school year; that on or about November 7, 1975 Stoskopf indicated a first choice for the Physical Education teacher position in the Middle School; that Robert Fischer, who was also employed by the Respondent District as a physical education teacher, indicated as his second choice the Middle School Physical Education position; that the above two teachers had identical certification and were qualified for the position; that Stoskopf had thirteen years of employment with the District and Fischer had two years of employment with the District, and none of that in the 1st through 8th grade Physical Education programs; that as a result of an evaluation process, Michael Kubiaczyk, then a principal at the Eagle River Elementary School, with the concurrence of the other school principals, recommended sometime in January of 1976 that Stoskopf remain in the Eagle River Elementary School as a Physical Education teacher for Grades 1 through 5; that on or about March 15, 1976 Stoskopf received his individual teaching contract with a teaching assignment of Lower Elementary Physical Education; that in March and April of 1976 Stoskopf met with Kubiaczyk, Sutter and various principals regarding the dispute over assignment but without success; that thereafter Stoskopf was told a final decision had been made to assign him to Lower Elementary Physical Education; that subsequently for the 1976-1977 school year Stoskopf retained

Grades 1 through 5 in the Eagle River Elementary School, and was assigned several classes in the outlying schools of St. Germain and Conover; that both St. Germain and Conover are nearer to Eagle River than Sayner and Complainant Stoskopf is reimbursed for mileage except for the first 20 miles the same as during the 1975-1976 school year.

6. That as a result of all of the above, a grievance was filed and processed under the terms of the collective bargaining agreement; that the Complainants herein took the position in relevant part that Complainant Stoskopf had been denied the Physical Education teacher position in the Middle School in violation of the collective bargaining agreement between the Complainant Association and Respondent Board; that said grievance was denied by Respondent Board; 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 Association and the Respondent Board and, therefore, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of said grievance.

2. That the Respondents have not failed to assign the Complainant, Jack Stoskopf, to the Physical Education teacher position in the Middle School, in violation of the terms of the collective bargaining agreement existing between the Respondent Board and Complainant Association and have not violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

3. That since the Respondents have not violated the terms of the collective bargaining agreement existing between the Complainant Association and Respondent Board and therefore have not committed a prohibited practice in violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act by failing to make the proper teaching assignment to Jack Stoskopf, said Respondents have not interfered with, restrained or coerced employes represented by the Complainant Association in violation of Section 111.70(3)(a)1 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 24th day of February, 1977.

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 Respondents violated the 1975-1976 collective bargaining agreement between the Respondent Board and the Complainant Association, by failing to make the proper teaching assignment to Complainant Stoskopf. The Examiner held a hearing on August 17, 1976. Complainant Association filed a brief on November 9, 1976. Respondent filed a brief on December 13, 1976 and a reply brief on December 20, 1976.

POSITION OF THE COMPLAINANTS:

On July 16, 1976, Complainants filed a complaint with the Commission alleging:

> "By the acts and conduct described above in subparagraphs (c), (f), (j) and (k), the Board has violated Sections VI & VIII of the contract and thusly violated Section 111.70(3)(a)5 and 1, Wisconsin Statutes."

Complainant Association argues that Stoskopf's assignment to Elementary School Physical Education and not Middle School Physical Education involves a transfer in violation of Section VIII of the parties' collective bargaining agreement for the 1975-1976 school year. The Association contends that management offered no valid reason for Stoskopf not being granted his first choice of Middle School Physical Education. The Association feels that on the basis of training, experience, achievement, wishes of the teachers involved and best interests of the school district Stoskopf should have been given the aforementioned job.

Complainant Association also argues that since Stoskopf will have to travel more, and should have rightfully had his choice of the two positions, that the aforesaid action of the Respondents constituted a demotion of the grievant in violation of Section VI of the parties' labor agreement.

Complainant Association asks that the Respondent Board be found guilty of committing a prohibited practice by denying Stoskopf the appropriate teaching assignment as provided for in the collective bargaining agreement; that the Respondent Board be required to reinstate Stoskopf to his rightful position; and that the Respondent Board cease and desist from violating the collective bargaining agreement.

POSITION OF THE RESPONDENTS:

Respondents argue that the failure to assign Stoskopf to the Middle School as a Physical Education teacher did not constitute a demotion in violation of Section VI of the collective bargaining agreement. Respondents maintain that the Board's action cannot be considered a demotion by any legitimate definition of the word. In support thereto, Respondents rely on the definitions of the word "demotion" contained in Black's Law Dictionary, Fourth Edition and Webster's Seventh New Collegiate Dictionary. Respondents also rely on the case of McCarthy v. Steinkellner, 223 Wis. 605 (1937) which discussed demotion with regard to contract provisions for a fire department in Milwaukee. Respondents point out that Stoskopf was neither reduced in rank nor removed from his position. Respondents feel that Stoskopf was not in any lesser position than what he was prior to the 1976-1977 school year.

Respondents also argue that the failure to assign Stoskopf to the Middle School did not constitute a transfer in violation of Section

VIII of the labor contract. Again Respondents rely on the definition of the word "transfer" contained in Webster's Seventh New Collegiate Dictionary as follows:

"To move to a different place, region or situation;"

In its brief Respondents continue the argument:

> "Stoskopf still teaches at the Eagle River Grade School. Thus, he has not been moved to a different place. In 1975-76 he taught at Sayner, which is about twenty miles away; his 1976-77 contract provides for him to teach at St. Germain and Conover, both of which are nearer than Sayner. Thus, he has not been transferred to a different region. Prior to the present year he was teaching Phy. Ed. in Grades 1 through 8. His new contract calls for him to teach Phy. Ed. in Grades 1 through 5. Thus, he is not in a different situation. By definition, therefore, he has not been transferred.";

Respondents also cite bargaining history to support their position.

Respondents 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 the Respondent Board breached its collective bargaining agreement with Complainant Association, when it failed to make the proper teaching assignment to Complainant Stoskopf.

Complainant Association initially argues that the grievant's assignment to Elementary School Physical Education and not Middle School Physical Education involves a transfer in violation of Section VIII of the parties' collective bargaining agreement. The Association maintains that said clause offers practicality of an employe's choice in the instant matter. The Association also argues that the intent of the following sentence:

"Whenever possible, transfers shall be made on a voluntary basis."

was violated since Stoskopf's first choice was the Middle School and both candidates had the same certification.

The labor agreement, Section VIII, entitled Faculty Transfers, states that when making transfers the Board shall consider certain factors enumerated therein. Yet the contract provides no definition of the word transfer.

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

It is common to give words their ordinary and popularly accepted meaning in the absence of anything indicating that they were used in a different sense or that the parties intended some special colloquial meaning. In the present case, there is no past practice in the record regarding transfer inconsistent with the Respondent Board's assignment of Stoskopf. However, what little bargaining history exists regarding Section VIII of the contract supports the Respondents' interpretation of said language. Stoskopf was properly certified for; had adequate experience in and was comfortable in the area of his assignment to teach physical education during the 1976-1977 school year. These were the primary concerns of the teachers during bargaining over the language of Section VIII. Although Stoskopf was to teach at one additional outlying school during the new school year, the amount of travel and assignment was similar to his past experiences. In addition, teacher travel to outlying school districts was not the basic reason for insertion of Section VIII into the labor contract.

In light of the above, it is reasonable to define "transfer" by giving the word its ordinary, plain meaning. "Transfer" means to move to a different place, region or position. In the instant case, Stoskopf still teaches at the Eagle River Grade School. In the 1975-1976 school year Stoskopf taught at an outlying school (Sayner) which is approximately twenty miles away from Eagle River; his 1976-1977 teacher contract provides that he teach at two outlying schools (St. Germain and Conover) both of which are nearer to Eagle River than Sayner. In either case Stoskopf receives mileage, travels a similar amount of miles and suffers no loss of income or position. Prior to the present year he was teaching Physical Education in Grades 1 through 8. His present contract calls for him to teach Physical Education in Grades 1 through 5 and several grades in the outlying schools. Thus, the record indicates that Stoskopf now holds basically the same job he previously held and is performing the same type of duties and is at the same or similar locations. Based on the plain meaning of the word transfer and bargaining history, the record indicates Stoskopf has not been transferred in the instant case.

However, assuming arguendo that the Board's action regarding Stoskopf involved a transfer the Complainants' position still must fail. A reading of Section VIII of the labor agreement as a whole supports the Respondents' position. Although said section requires the Respondent Board, when making transfers, to where practical take into consideration the various needs and qualifications of the teacher, the section places primary importance on the instructional requirements and best interests of the school system and the pupils. Consistent with the authority placed in the Respondent Board and its administration elsewhere in the contract this gives management the final say in teacher assignment. However, inadequate the Respondents' evaluation process was regarding the Physical Education teacher position in the Middle School absent a showing that the assignment was done in an arbitrary or discriminatory manner in an attempt to circumvent the rights of the grievant the Board's authority in the instant matter must be upheld.

Likewise, the undersigned rejects the Complainant's argument that the aforesaid action of the Respondents constituted a demotion of the grievant in violation of Section VI of the labor agreement. Demotion is defined in Websters New World Dictionary, Section College Edition, page 376 as a reduction to a lower grade; a lower rank; the opposite of promotion. Stoskopf was not deprived of any rank, he was not reduced in pay, he was not reduced in seniority, he received his normal increment increase and all other increases due to contract negotiations. Stoskopf taught physical education at the same grade levels he had previously taught and in the same position. There is no way that Stoskopf's failure to get the new Phy. Ed teacher position in the Middle School could be considered a demotion by any normal or legal definition of the word.

Finally, the Complainant Association argues that as a result of the Respondents' actions the Employer has interfered with, restrained or coerced the employes of the Respondent District represented by the Complainant Association in violation of Section 111.70(3)(a)1 of the Municipal Employment Relations Act. However, since the Examiner has found against the Complainants on the other allegations, and in the absence of any evidence to the contrary, it follows that the undersigned must dismiss this part of the complaint as well.

Based upon the foregoing considerations, the Examiner therefore concludes that the Respondents did not violate Section 111.70(3)(a)5 or Section 111.70(3)(a)1 of MERA, nor any other section of the Act and that, as a result, the complaint must be dismissed in its entirety.

Dated at Madison, Wisconsin this 24th day of February, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner