STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MAPLE FEDERATION OF TEACHERS, LOCAL 1293, WFT, AFT, AFL-CIO,	:	
Complainant,	:	Case II No. 21513 MP-738 Decision No. 15454-B
vs.	:	
SCHOOL BOARD OF THE SCHOOL DISTRICT OF MAPLE,	:	
Respondent.	:	

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., and Ms. Marianne Goldstein; and Mr. William Kalin, Executive Secretary, Wisconsin Federation of Teachers, appearing on behalf of the Complainant-Union.
Losby, Riley and Farr, S.C., Attorneys at Law, by Mr. Stevens L. Riley, and Mr. James M. Ward, and Mr. James L. Cirilli, appearing on behalf of the Respondent-School District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Local 1293, Maple Federation of Teachers, WFT, AFT, AFL-CIO, hereinafter the Union, having filed a complaint of prohibited practices on March 31, 1977, with the Wisconsin Employment Relations Commission alleging that the School Board of the School District of Maple, hereinafter the District, has committed prohibited practices within the meaning of Section 111.70 of the Municipal Employment Relations Act (MERA); and on April 25, 1977, the Commission having appointed Robert M. McCormick, a member of its staff to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Order pursuant to Section 111.07(5) as made applicable to municipal employment by Section 111.70(4)(a) of MERA; and hearing on said complaint having been held on May 24, 1977 at Superior, Wisconsin and the parties having submitted briefs by October 25, 1977; and the Examiner having considered the evidence and arguments of Counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Maple Federation of Teachers, Local 1293, WFT, AFT, AFL-CIO, hereinafter the Union, is a labor organization within the meaning of Section 111.70(1)(j) having its principal offices at 1808 East Sixth Street, Superior, Wisconsin 54880, and is affiliated with the Wisconsin Federation of Teachers, AFL-CIO.

2. The School Board of the School District of Maple, hereinafter the District, is a Municipal Employer within the meaning of Section 111.70 (1)(a) having its principal offices at Maple, Wisconsin 54854; and that, at all times material herein, Leonard E. Kavajacz, was the Administrator of said District.

3. At all times material herein, the District has recognized the Union as the exclusive representative for all teachers of the District. In said relationship the Union and the District have been at all times material herein, parties to a collective bargaining agreement, at least since 1970, covering the wages, hours and conditions of employment of

such teachers, the last of such agreements was executed by the parties on October 11, 1976 and made effective July 1, 1976 and in full force and effect at least until June 30, 1977.

4. Said agreement contains a grievance-arbitration procedure. However, for purposes of the instant proceeding, the parties stipulated that the grievance-arbitration provision did not subject the instant controversy to final and binding arbitration, and further stipulated that the Examiner could exercise the jurisdiction of the Commission to dispose of the controversy pursuant to Sections 111.70(3)(a)5 and 111.07, Stats.

5. The aforesaid collective bargaining agreement contains among its provisions the following material herein:

"ARTICLE III. THE TEACHER'S CONTRACT

Contract Required - No teacher shall be employed who has not entered into a legal contract with the Board. The term of the contract shall not be for more than one school year and shall be subject to all of the terms hereof.

Section 1. The school year shall be one hundred eighty-eight (188) days. Teachers new to the system will be required to meet one day prior to the official opening of school with either the elementary supervisor or the high school principal, depending on the area of their employment. This day will ordinarily be the last Thursday or Friday preceding the opening of school. The teachers will be notified of the exact time and place. The normal date for the opening of school will be the last Monday in August.

. . .

Section 5. Pay for Employment Beyond Regular School Year: All teachers employed for more than one hundred eighty-eight (188) days in any school year, with the exception of designated department heads, shall be reimbursed at the rate of 65% per month of their regular salary for the school term.

. . .

Section 12. Assignments: Academic, school, and grade level assignments shall be made by the superintendent.

a. Teachers may express their preference in writing to the office of the superintendent.

b. A tentative verbal assignment of advisorships and programs will be given each teacher prior to the close of the school year by the school administrator or the administrator's representative.

c. Changes in assignments made with reference to (b) will be made only after consultation with the teacher involved. Should the teacher so desire, due to changes of assignments, the Board shall release said teacher from any contract obligation without prejudice. Written notice must be given the Board within two (2) weeks of notification of assignment change should the teacher desire release from contract.

. . .

Section 14. High school class advisorships will be assigned by the high school prinicpal after consultation with a high school faculty committee consisting of Union members.

. . .

Section 16. School Day: All senior and junior high school teachers shall be on duty from 7:45 A.M. until 3:20 P.M. Bus duty shall be assigned by the building principals and shall coincide with the scheduled arrivals of the buses at the high school building. The classroom bell will be rung at 7:45 A.M. at which time junior and senior high school teachers shall be available for supervisory assignments or in their room for possible conferences sought by students for individual help or for information on work they may have missed due to absence.

. . .

Section 19. Adjustments: A leeway above the salary schedule is established to allow a more accurate adjustment for such facts as (1) teacher work load, (2) critical teaching area, (3) teaching of exceptional children. (Regular work load in the secondary consists of six (6) classes or assigned periods plus a preparation period.)

. . .

ARTICLE IV. SALARY SCHEDULE AND COMPENSATION

Section 1. The Salary Schedule, Special Provisions, Extra-Curricular Activities Reimbursement Schedule and Compensation for Supervision at School Activities and designated as Addendum A, B, C, and D, together with this Agreement form the complete Agreement and is as surely a part of the Agreement as hereto attached or herein repeated.

. . .

ADDENDUM D

COMPENSATION FOR SUPERVISION OF SCHOOL ACTIVITIES

Reimbursement for additional duties outside of the school day will be paid at the rate of three dollars and fifty cents ($3.50) per hour subject to the provisions of Article IV, Section 3.

. . .

Section 3. The Board will pay teachers for ticket taking, supervising spectators or performing necessary identified tasks of a non-instructional nature at the rate of $3.50 per hour for the following school activities:

a. All school athletic events to which the public is invited and an admission is charged.

b. Bus duty assignment shall be reimbursed at the rate of $4.25 per hour.

c. All events such as plays, concerts and similar events in the Maple Public School System to which the adult public is invited and admission is charged. High school proms and parties of similar

nature shall be excluded from this Agreement for extra pay.

d. For all other events not referred to in Section 3,c, faculty members are subject to the call and service as determined by the administration on a fair and rotational basis to meet the supervisory needs of the school programs conducted both during and outside of the regular school day. A teacher may volunteer his services for any duty involving extra pay. Their assignment to such duties shall be with the approval of the high school principal.

. . .

ARTICLE IX. MANAGEMENT RIGHTS

Section 1. The Board, on its own behalf and on behalf of the electors of the district, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Wisconsin, and of the United States, including, but without limiting the generality of the foregoing, the right:

a. To the executive management and administrative control of the school system and its properties and facilities, and the assigned school activities of its employees;

b. To hire all employees and subject to the provisions of law, to determine their qualifications and the conditions for their continued employment, or their dismissal or demotion; and to promote, and transfer all such employees;

c. To establish grades and courses of instruction, including special programs, and to provide for athletic, recreational and social events for students, all as deemed necessary or advisable by the Board;

d. To decide upon the means and methods of instruction, the selection of textbooks and other teaching materials, and the use of teaching aids of every kind and nature.

Section 2. The exercise of the foregoing powers, rights, 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 only by the specific and express terms of this Agreement and then only to the extent such specific and express terms hereof are in conformance with the Constitution and Laws of the United States."

6. Roxanne Lambert, hereinafter the grievant, was employed as a Business Education teacher by the District continuously from 1969-1970 school year to the present, except for one semester pregnancy leave during said period. In the fall of the 1970-1971 school year the grievant suggested to the District that she organize and supervise the Future Business Leaders of America (FBLA) program; the District agreed that grievant should make such an undertaking. In view of her added FBLA duties, the District at the time relieved grievant of her duties as head advisor of the junior class and prom coordinator for the 1970-1971 school year.

7. A practice has existed at least from 1970-1971 through 1975-1976, where in the spring of the year, the District's High School principal would discuss with building representatives the assignments of teachers to class advisorships, clubs and school activities for the following school year in accordance with Sections 12 and 14 of Article III of the agreement. Such consultations between the parties' representatives resulted in an agreement each year with regard to prospective assignments and thereafter triggered the dispatch of written notices from the principal to the teachers prior to the close of a then current school year. Such notices indicated the teachers' respective assignments for the following school year.

8. In the late spring of each school year subsequent to the 1970-1971 school year, the District's administration met with grievant and discussed the FBLA assignment for the subsequent school year pursuant to Article III, Section 12 of the agreement. The District assigned the FBLA duties to grievant for each school year following 1970-1971, through at least the 1975-1976 school year, and paid a salary to grievant based solely upon her degree and credit attainment and years of experience as a Business Education teacher according to the salary schedule.

9. Sometime prior to the close of the 1975-1976 school year, the District supervision first discussed with grievant, and later confirmed in writing, her assignment as the advisor to the Maple School Chapter of FBLA for the following 1976-1977 school year. Grievant at that time agreed to continue her responsibilities as advisor for FBLA for the subsequent 1976-1977 school year. At no time prior to the close of the 1975-1976 school year did grievant request additional compensation for performing the duties of FBLA-advisor for the next school year nor did grievant request to be relieved of said duties until October 19, 1976.

10. On October 14, 1976, Roxanne Lambert signed an individual teaching contract with the District for the 1976-1977 school year at an annual salary of $12,050, based upon Addendum A and which contract contained among its provisions the following:

"Term of Contract

The term of service provided by this employment contract is for the 1976 1977 school year for a term of 37.6 wks. commencing on the 30th day of August, 1976.

Compensation

The salary for this period is determined as follows:

Base Salary		$12,050.00
Credit Reimbursement		$ -0-
Extra Curricular		$ -0-
Other		$ -0-
	Total	$12,050.00

. . .

It is clearly understood that this contract is subject to all the terms of the agreement between the Board of Education and Maple Teachers Federation Local 1293 and to all the rules and regulations of the Board of Education. The teacher agrees to accept such duties, not inconsistent with said agreement, rules and regulations, as may be assigned by the principal or superintendent."

11. On or about October 19, 1976, grievant requested that she be relieved of her duties as FBLA advisor effective immediately; that the District Administrator denied said request and shortly thereafter, grievant filed a grievance stating that she should be allowed to resign from FBLA effective immediately or, in the alternative, be compensated for that assignment.

12. Shortly after October 19, 1976, the District Administrator responded to the grievance in writing stating in material part:

> ". . . As you said, what you were grieving was the fact that you were unable to resign from a portion of your assignment as advisor of FBLA. . . There has been no change in your assignment since the time the assignments were made last spring. I also told you that the FBLA advisorship is as much a part of your assignment as is your class schedule. You cannot resign from a part of your assignment. You either resign from the whole assignment or you accept the whole assignment.
>
> . . .
>
> Your assignment has not been changed or added to, we are not asking you to do something more than you did last year, we are asking that you carry out the assignment you were contracted for. . . ."

13. Grievant continued to perform as the FBLA advisor under protest. As a part of her FBLA activities, grievant kept a current log book of the number of hours worked after school and on weekends from September 8, 1976 to April 19, 1977 which totalled 210 hours. Over this same period, grievant was assigned a normal workload of six periods of actual classroom work as Business Education teacher. The aforementioned total of 210 hours covers only her FBLA activity occurring after regular school hours. The normal work load for high school teachers for 1976-1977 school year was six (6) classes of assigned periods plus a prepration period.

14. Grievant was the first teacher to attempt to resign from a club activity. When teachers had previously sought to resign from extra-curricular activities, the District with acquiescence of the Union, followed a policy of attempting to replace those teachers who wished to resign from extra-curricular activities with teachers who were available and qualified to handle said activities.

15. The District did not seek a replacement for grievant in connection with the FBLA club assignment for 1976-1977 because the only other teacher with a background in Business Education, a necessary prerequisite for the FBLA advisorship, had already been assigned a full schedule of other added activities which included the Distributive Education Club of America advisorship (DECA).

16. The nature of the teacher's activities in supervising participating students in the FBLA club is instructional, and therefore is closely aligned with grievant's classroom teaching of Business Education.

17. That the District's failure to secure a replacement for grievant on October 19, 1976, and its refusal to relieve grievant of her FBLA duties constituted an assignment in accordance with Article III, Section 12 of the agreement.

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

CONCLUSIONS OF LAW

1. The Examiner may exercise the jurisdiction of the Commission to determine the merits of the instant controversy as to whether the District has violated the collective bargaining agreement and thus Section 111.70(3)(a)5, Stats., because the parties have stipulated that the contractual arbitration provision is not applicable to the issues joined herein.

2. That Respondent-District did not violate any provision of the existing collective bargaining agreement by its refusal to pay grievant

added compensation for her performance of the duties of FBLA-advisor in the 1976-1977 school year; and that the District did not violate any provision of said agreement by refusing to permit the grievant to resign from the FBLA advisorship, which assigned task was instructional in nature; and therefore, the Respondent-District did not commit, and is not committing, any violation of Section 111.70(3)(a)5, Stats.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint in its entirety, be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 12th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

MAPLE JOINT SCHOOL DISTRICT NO. 1, II, Decision No. 15454-B

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEADINGS, AMENDMENTS AND JURISDICTION

The instant complaint was filed on March 31, 1977. Hearing was held on May 24, 1977 and the transcript thereof was received on August 11, 1977. Briefs were filed by October 25, 1977.

The Union alleged in its complaint inter alia that the District violated Section 111.70(3)(a)5, Stats., in breaching the collective bargaining agreement by its failure to release the grievant of her duties as Advisor, Future Business Leaders of America (FBLA), or in the alternative pay her extra compensation for performance of such duties, all in violation of contractual provisions: Article III, Sections 5, 14, 16 and 19; Article IV, Section 1 and Addendum D; Article IV, Section 3(d). In addition, the Union alleged that the District violated Article VII, Section 2(g), (Grievance Procedure) by declining to arbitrate said grievance on and after January 6, 1977.

The District filed no written answer, but at outset of hearing, made oral answer on the record wherein it denied having breached any of said provisions of the collective bargaining agreement and further denied having violated Section 111.70(3)(a)5, Stats.

The Union amended its complaint and withdrew its allegations Nos. 11 and 13, referencing a claimed violation of the grievance-arbitration provision, Article VII, Section 2(g). The Union further amended allegation No. 12, and alleged that the District violated both Addendum A and D of Article IV, Section 1.

The collective bargaining agreement executed by the parties provides for arbitration of unresolved disputes under certain conditions. However, the parties stipulated at outset of hearing that the arbitration provision of the agreement did not apply to the issues joined herein. Therefore, the Examiner has exercised the jurisdiction of the Commission to dispose of the controversy as a prohibited practice proceeding pursuant to Sections 111.70(3)(a)5 and 111.07, Stats.

The issues for disposition by the Examiner involve whether the Union has proven, by a clear and satisfactory preponderance of the evidence, that the District violated the aforementioned provisions of the collective agreement by its failure to compensate grievant for performance of the FBLA-advisorship duties, or in the alternative, violated same by its refusal to relieve her of said assignment.

FACTS:

There is little dispute as to the immediate events which pre-dated the filing of the grievance in the instant controversy. The major dispute as to the existing facts involved the significance that should flow from the facts, including what inferences, if any, that should be drawn from the Union's bargaining-table conduct in the summer and fall of 1976. The Union made a specific proposal for a new provision for the 1976-1977 agreement, which if accepted by the District, would have provided extra compensation for certain clubs and advisorships including DECA, and FBLA advisorships. The District rejected same, and subsequently near the date of a final accord in October 1976, the Union dropped said proposal. There is insufficient evidence to determine whether at the time of said negotiations, the parties in fact agreed, one way or the other, as to whether FBLA advisorship was mandatory or voluntary. The Union argues on the record and later in its brief that its proposal in that regard was made in the context that prior agreements and practice established that FBLA and other advisorships were voluntary. There is no evidence that the parties ever discussed in their 1976-1977 negotiations the question of whether FBLA was voluntary or mandatory

With regard to the practice prior to the 1976-1977 school year, the Union urges that the record evidence reflects the grievant voluntarily agreed to the performance of FBLA duties from 1970-1971 to the 1976-1977 school year. While the District urges that the 1970-1971 to 1976-1977 experience reflects the District making assignments pursuant to Article III, Section 12 of the agreement and the grievant having acquiesced to same over such time span.

POSITIONS OF THE COMPLAINANT:

The Union argues that grievant initially volunteered to organize a chapter of FBLA on her own initiative in 1970-1971 and she considered her activity during the subsequent six years as voluntary. It contends that in the course of 1976-1977 contract negotiations, the District did not dispute that teachers' club activities were voluntary in nature when the Union proposed that teachers be compensated for after-school club activities.

The Union urges that the collective bargaining agreement defines the exact number of school days in the school year (Article III, Section 1 and 5); and exact description of the school day (Article III, Section 16); and the normal teacher work load (Article III, Section 19). The Union contends that any assignments requiring performance of duties beyond said aforementioned parameters must be compensated in accordance with such Articles and under Article IV, Section 3 and Addendum D.

The Union argues that if compensation for the FBLA advisorship is not required by the terms of the contract, then it follows that the grievant cannot be required to work without compensation, and therefore, grievant should have been allowed to resign from said advisorship.

The Union points out that the "assignment provision" contained in the grievant's individual contract is explicitly subordinate to the master contract between the Union and the District by virtue of both its terms and by Section 111.70, Stats. The Union seeks back pay for the hours grievant was wrongfully compelled to perform the FBLA duties.

The District argues that the labor agreement does not restrict the Employer's right to assign the FBLA advisorship to the grievant nor does it restrict the related right to refuse to relieve her of such advisorship. Indeed, Article IX, Section 2, Management Rights, provides in broad terms that the Employer's right to manage the School District "shall be limited only by the specific and express terms of this agreement" and that the only provision that could possibly affect management's rights in this context is Article IV, Section 3(d), which does not apply to this advisorship for reasons articulated hereafter.

In the absence of a specific prohibition or statement in the contract that indicates the FBLA advisorship is strictly voluntary, the Employer acted within its management rights by assigning the FBLA advisorship to the grievant and by refusing to relieve the grievant of said advisorship.

It urges that the assignment of the grievant to the FBLA advisorship was consistent with Article III, Section 12(c) which by implication provides that if a teacher is dissatisfied with an advisorship, the sole recourse for that teacher is to resign from the individual contract.

The District contends that compelling policy reasons militate in favor of its existing practice of not allowing a teacher to resign from an unpaid advisorship unless a suitable replacement can be found. To hold otherwise would deny to students a beneficial program.

The District argues that the grievant is not entitled to compensation for the assigned FBLA advisorship under the contract provisions cited by the Union. The language of Article III, Section 5 applies to additional

compensation for teachers who are required to either begin their duties prior to commencement of the normal 188 day school year, or to continue their duties after the close of the school year. The District Administrator's testimony that this section does not apply to any type of work a teacher might engage in during the regular school year was not rebutted by the Union. Although many other assignments entail work on weekends or after school hours, the Union did not adduce any evidence that this section was intended to apply to work during the school year.

The District urges that Article III, Section 14 deals exclusively with "class" advisorships such as Freshman, Sophomore, etc., and that FBLA is not considered a "class" advisorship.

With regard to the verbiage of Article III, Section 19, it contains no language which requires that the District pay above the salary schedule when a teacher has a heavy work load. This section grants the District discretion to hire above scale or otherwise make salary adjustments as it deems necessary, in order to recruit or retain teachers, without violating the collective bargaining agreement.

The District argues that the definition of a school day at the high school, as defined by Article III, Section 16, is from 7:45 a.m. to 3:20 p.m. and Addendum D, Compensation For Supervision of School Activities, provides for reimbursement for additional duties outside the school day at the rate of $3.50 per hour subject to the provisions of Article IV, Section 3. However Article IV, Section 3 enumerates and describes the types of functions of a "non-instructional" nature which call for the hourly additive.

The District Administrator testified that FBLA advisorship is instructional in nature because of its direct relationship to the business education curriculum, the subject which the grievant was assigned to teach. The grievant's own testimony corroborates said testimony. Therefore, Article IV, Section 3 does not apply to FBLA, an instructional assignment.

The District's consistent practice has been to apply Article IV, Section 3 to "non-instructional events" such as ticket-taking and supervising athletic contests and dances. The evidence stands uncontroverted that the District has never applied this section to FBLA or other similar advisorships. The District requests that its construction of the crucial clauses of the agreement be adopted and that it be found not to be in violation of the agreement or statute.

DISCUSSION:

This discussion will first examine whether additional compensation for the FBLA advisorship is required by the applicable contract provisions and; second, the discussion will focus on the issue of whether the District possesses the contractual authority to require grievant to choose between continuing her duties as FBLA advisor or resigning from her teaching contract altogether.

The Union claims that the District lacks the contractual authority to compel the grievant to continue to supervise the FBLA club unless additional compensation is paid.

It is noteworthy that in the spring of 1976 the grievant discussed with the District her duties as supervisor of the FBLA club. The grievant testified that at that meeting she agreed to be the advisor for the FBLA club during the 1976-1977 school year and that she received a piece of paper from the District which confirmed this assignment in writing. The record evidence established that this was the procedure between the grievant and the District which was followed for six years. In addition, the grievant entered into an individual contract on October 14, 1976 which stated that her base salary for the school year would be $12,050. Although the contract provided additional lines to indicate additional compensation for other duties, the figure "-0-" was entered on those lines and the

figure $12,050 was entered on the bottom line designating "total" salary. (Respondent's Exhibit B.) The contract also contained the following language:

> "It is clearly understood that this contract is subject to all the terms of the agreement between the Board of Education and Maple Teachers Federation Local 1293 and to all rules and regulations of the Board of Education. The teacher agrees to accept such duties, not inconsistent with said agreement, rules and regulations, as may be assigned by the prinicpal or superintendent." (Emphasis added.)

The grievant did not inform the District of her intent to resign until October 19, 1976.

The Union refers to several provisions of the master agreement in support of its position that compensation is required when the District imposes FBLA and other advisorship duties upon teachers which require mandatory supervision of such advisorships.

First, an examination of Article III, Section 5, reveals that the parties have made provision for added compensation for those teachers involved in extended contracts, to wit:

> ". . . All teachers employed for more than. . . (188) days in any school year,. . . shall be reimbursed at the rate of 65% per month of their regular salary for the school term."

Even if the undersigned concludes that the language of said provision is ambiguous so as to view the provision in the most favorable light supportive of the Union's position, the record evidence is devoid of any instances of extrinsics going to either past practice or bargaining-table conduct which might establish that the clause applies to transactions other than extended contracts. The Administrator testified that this provision applies to what is commonly known as an extended contract. Indeed, there was no evidence to indicate that this section was ever applied to other unpaid advisorships for either class levels (Freshman, Sophomore, etc.) or school organizations (FBLA, DECA or FFA). The Examiner agrees with the District's contention that this provision applies only to teachers who are required to begin their duties prior to the commencement of the school year or that are obliged to continue their duties after the close of the school year. It does not apply to any type of work a teacher might engage in during the regular 188 day school year. Such testimony was not refuted by the Union. A clear and satisfactory preponderance of the evidence supports the District's construction. Therefore, the District's refusal to pay extra compensation to the grievant for her assuming the FBLA advisorship for the 1976-1977 school year was not violative of Article III, Section 5 of the agreement.

Second, the Union avers that Article III, Section 14, Assignment of Class Advisorships, was violated. The uncontroverted testimony of the District witness was that "Class" advisorships referred to grade levels such as Freshman, Sophomore, etc. and that FBLA is not considered a "Class" advisorship within the meaning of the section. There is no language in the provision to indicate that the parties intended a more broad application of the section to clubs such as DECA and FBLA advisorships. The Examiner concludes that this section does not apply to advisorships such as FBLA, but only to class-level advisorships and therefore the District has not violated Article III, Section 14.

With regard to the Union's third allegation that Article III, Section 19 has been violated, the language of said section speaks of "leeway above the salary schedule" (discretion of the District to pay more than Schedule A-salaries) for among other reasons, "a more accurate adjustment for teacher work load." However, the Union adduced no evidence which would indicate

inequitable treatment by the District of grievant's work load relative to that of other teachers, nor evidence of a disparately low salary for grievant vis-a-vis that of others similarly situated. The section clearly contains no language making it mandatory for the District to pay a teacher above the salary schedule. The Examiner concludes that the District has not violated Article III, Section 19 of the agreement.

Fourth in the array of contract provisions relied upon by the Union is the contention that the District violated a combination of provisions, when the following clauses are construed together, namely: Article III, Section 16, as it defines the school day as being from 7:45 a.m. to 3:20 p.m.; Addendum D, which required reimbursement for additional duties outside the school day at $3.50 per hour subject to the terms of Article IV, Section 3.

However, an examination of that "third leg of the table" which otherwise represents the Union's construction of the three clauses, reveals the significant conditional language, ". . . or performing necessary identified tasks of a non-instructional nature at the rate of $3.50 per hour. . ." (Emphasis added.)

This latter section enumerates such tasks as "bus duty, athletic events, plays, concerts and similar events." There is no reference in Article IV, Section 3 to clubs, advisorships or any similar instructional-type task.

The record evidence indicates that the tasks and skills involved with FBLA are closely related to the business education curriculum at the high school. In addition, the grievant's testimony corroborated the fact that FBLA serves a necessary educational function by furthering those skills learned in her business education classes. Unrebutted testimony of the Administrator establishes that Article IV, Section 3 had never in the past been applied to the FBLA advisorship or other similar school organizations. Therefore, the undersigned finds that the FBLA advisorship is a task, instructional in nature. The Examiner thus concludes that there is no support for the Union's construction of the combined provisions, Article III, Section 16, Addendum D and Article IV, Section 3. Given the plain meaning of the term "non-instructional in nature," the undersigned can find nothing in the verbiage of the three aforementioned provisions which would compel the District to pay additional compensation for the grievant's performance of instructional tasks for the 1976-1977 school year in her continued supervision of the activities of the FBLA advisorship.

In considering the bargaining-table conduct leading to the 1976-1977 agreement, it is undisputed that the Union proposed that the District pay additional compensation for teacher performance of FBLA and similar advisorship tasks, and that thereafter near the close of negotiations, the Union dropped said proposal. However, the Examiner concludes that such evidence of bargaining-table conduct has little probative value in resolving the question as to whether the parties intended to provide extra compensation for FBLA duties when performed. The Union argued on the record and in its brief that said proposal was made in the context that the existing and preceding agreements did not make it mandatory upon teachers to accept FBLA and similar advisorship tasks.

Under such circumstances and given the lack of a sufficient quantum of evidence to establish whether the parties had in fact discussed voluntary versus mandatory performance of FBLA tasks in said negotiations, the Examiner has given no weight to such evidence in resolving the issue as to whether extra compensation is required for FBLA tasks.

Lastly, it is noted that the Union in its brief averred that the District has also violated Article IV, Section 2 and Addendum C of the agreement by its failure to pay grievant added compensation for the FBLA duties. However, neither the complaint nor the testimony at hearing referred to this section of the collective bargaining agreement. The Union was given

opportunity to amend its complaint at outset of hearing before the District made oral answer denying those allegations of the complaint which set forth claimed violations of the agreement. 1/ The Union in fact narrowed the issues involving claimed violations of said agreement through its amended complaint. It is a well established principle of due process under the "fair-play statute" of Chapter 227, Administrative Procedure Act, that the Examiner should not consider new allegations of claimed violations of contract, where same have not been alleged in the complaint or litigated at hearing of a contested case. 2/

The Examiner concludes that the District has violated none of the aforementioned provisions of the agreement, as cited by the Union, by its declination to pay added compensation for the assigned duties of the FBLA advisorship for the 1976-1977 school year, which duties have been found to be instructional in nature and properly compensated for as an integral part of grievant's salary as a Business Education teacher.

Did the District Possess the Authority to Require Grievant to Continue Performing the Duties of the FBLA Advisorship?

The grievant's individual teaching contract has been set forth in Findings of Fact, paragraph 10, supra. The collective bargaining agreement, Article III, makes the individual contract "subject to all of (its) provisions." The individual teaching contract states that the grievant "agreed to accept such duties. . . as may be assigned by the prinicpal or superintendent" except where said assignment of duties is "inconsistent with said agreement."

Although the grievant originally suggested the idea to the District of establishing a chapter of the FBLA in 1970, the clear weight of the evidence indicates that every year from the 1970-1971 school year through the 1975-1976 school year, the District assigned that responsibility to the grievant pursuant to Article III, Section 12(b) and the grievant acquiesced in those assignments. In the spring of 1975-1976, for purposes of the 1976-1977 school year, grievant also acquiesced in said assignment and only in October 1977, after the parties had executed a 1976-1977 agreement, did the grievant seek to be relieved of the FBLA advisorship on her claim that supervision of FBLA was a voluntary task.

The issue to resolve is whether there is any language in the collective bargaining agreement between the Union and the District which modified or restricted the District's authority to require the grievant to continue supervising the FBLA club during the 1976-1977 school year.

The Union did not cite any specific language in the agreement to support its position that the District could not compel the grievant to perform the duties of FBLA advisor. Instead, the Union took the broader position that the FBLA duties were beyond those defined by the terms of the collective bargaining agreement and therefore additional compensation was required. The undersigned concludes that the FBLA activities are within the scope of the grievant's employment, instructional in nature and are reasonably related to her professional teaching services, namely, as a Business Education teacher.

In addition, Article IX, Section 2, Management Rights, provides in broad terms that the District's right to manage the District "shall be limited only by the specific or express terms of this Agreement. . . ." The District argues that in relation to this grievance there are no specific or express contractual terms which limit the authority of the

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1/ TR. pages 3-5.

2/ Section 227.07, Stats.; General Electric Co. v. WERB (1958), 3 Wis. 2d 227, 88 NW 2d 691.

District to require the grievant to finish the 1976-1977 school year as the FBLA advisor.

Indeed, the position of the District finds substantial support in Article III, Section 12(c). That subsection provides by implication that if the teacher is dissatisfied with a change in his/her assignment such as FBLA, the only recourse is to resign from the entire teaching contract wihtout prejudice. Absent any other express limitation in the agreement, restricting the District's right to make assignments, the only reasonable construction of Article III, Section 12(c), is that resignation from one's total obligation under the individual teaching contract is the only choice for a teacher who is dissatisfied with an assignment, but is unable to persuade the District to make an accomodation which is acceptable to the teacher. The Examiner concludes that there is no specific contractual provision which provides authority for a teacher to resign an assignment such as FBLA as a matter of right.

On the contrary, the contractual provisions in the grievant's individual contract as incorporated by Article III of the agreement and the provisions contained in the Management Rights clause (Article IX, Section 2) and the Assignment clause (Article III, Section 12) grant sufficient authority to the District to require the grievant to continue her duties as the FBLA advisor in the 1976-1977 school year.

The issue joined herein is to be distinguished from the result in Berlin Education Association et al. vs. School Board of Berlin Public Schools (12979-A) 9/74 and (12979-D), 3/76. In Berlin Public Schools, the credited testimony of witnesses for the complainant association and the minutes of the respondent board established that the program in question (overnight camping) was voluntary. (Emphasis added.)

Thus, when the board attempted to require teachers to supervise the program in question, the Commission found that the District made a unilateral change in the hours and conditions of employment violative of the agreement. In the absence of a contractual provision to support added compensation, the Commission (setting aside the Examiner's remedy) required the board to negotiate with the complainant association over the reasonable wages for the duties assigned.

In the instant case, there is no such record evidence that the FBLA assignment was a voluntary one. In addition, the nature of the duties involved herein, as well as the applicable contract language differ significantly from the situation in Berlin Schools.

Finally, District witnesses stated that there existed a practice of attempting to find qualified teachers for those teachers who wished to resign from extra-curricular activities, but this was the first instance of a teacher seeking to resign from a club activity. The District stated that it would ordinarily follow the same practice for teachers wishing to resign from club activities. In this instance, however, the District established that the one qualified teacher, the DECA advisor, had already been assigned to other activities which were too time-consuming to allow him to assume the additional duties of the FBLA advisor. Given the fact that this testimony was uncontroverted and that the grievant sought to resign from the FBLA after the school year had begun, the Examiner finds that the District's response of not contacting other teachers who were too busy to give assistance, was reasonably related to its authority under Article III, Section 12 of the agreement.

Based upon the foregoing Findings of Fact, Conclusions of Law and discusssion thereon, the Examiner has dismissed the complaint in its entirety.

Dated at Madison, Wisconsin this 12th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner