

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS,	:	
	:	
Complainant,	:	Case I
	:	No. 21895 MP-770
vs.	:	Decision No. 15715-A
	:	
SHELL LAKE SCHOOL DISTRICT,	:	
	:	
Respondent.	:	
	:	

Appearances:

- Mr. Alan D. Manson, Executive Director, appearing on behalf of the Complainant.
- Mr. Woodrow W. Bitney, Attorney at Law, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above-named Complainant having filed a complaint with the Wisconsin Employment Relations Commission on July 25, 1977 alleging that the above-named Respondent had committed a prohibited practice within the meaning of Section 111.70(3)(a) 5 of the Municipal Employment Relations Act (MERA); 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, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been filed before the Examiner in Shell Lake, Wisconsin on September 9, 1977; and briefs having been filed until July 27, 1978; 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 Northwest United Educators, herein Complainant, is a labor organization functioning as the collective bargaining representative of certain professional personnel employed by the Shell Lake School District including, at all times material herein, Virginia Stella.
2. That the Shell Lake School District, herein Respondent, is a municipal employer.
3. That in November 1962, before Complainant had achieved bargaining representative status, Respondent promulgated Official Operating Policies which contained the following provision regarding the placement of teaching personnel on the salary schedule with respect to their educational level:

"E. Definition of 'Years of Training':

1. 2 years: 2 years of credits applicable to a 4 year degree in education.
2. 3 years: 3 years of credits applicable to a 4 year degree in education.
3. 4 years: A degree in education.

4. 5 years: 30 credits beyond the Bachelor's Degree toward Master's.
5. Master's: Completion of all work toward a Master's Degree.";

that said Policies also contained the following provision:

"G. Summer School Attendance:

1. Teachers are required to attend summer school according to the following schedule:

Two-year graduates	-	6 credits per year
Three-year graduates	-	6 credits every two years
Degree teachers	-	6 credits every five years
2. Extension courses may be substituted for summer school if they are acceptable for a more advanced degree, or are approved by the superintendent in the teaching area of the teacher. They must be completed before effective date of contract.
3. Penalty for failure to comply with this requirement shall be as follows:
 - (a) Forfeiture of additional increments until requirement is fulfilled, or
 - (b) Discharge of the teacher. This shall be at the discretion of the school board.";

that from the 1962-1963 school year through the 1972-1973 school year, Respondent administered said policies in a manner which allowed teachers to utilize approved graduate or undergraduate credits to meet the continuing education summer school requirement while only considering graduate credits for placement vis-a-vis the horizontal lanes on the salary schedule.

4. That the first collective bargaining agreement between Complainant and Respondent covered the 1973-1974 school year; that said agreement contained the following provisions:

"ARTICLE XVII - PROFESSIONAL IMPROVEMENT

. . .

2. Teachers are required to earn additional credit according to the following schedule:

Bachelor Degree	6 credits every five years
Master Degree	6 credits every seven years
3. Extension courses may be substituted for summer school if they are acceptable for a more advanced degree, or are approved by the superintendent in the teaching area of the teacher. They must be completed before effective date of contract in order to receive additional compensation or as specified in Article 30 paragraph G.

. . .

ARTICLE XXIII - GENERAL PROVISIONS

This Agreement shall supersede any rules, regulations, or practices of the Board which shall be contrary to or incon-

sistent with its terms. The provisions of the Agreement shall be incorporated into and be considered part of the established policies of the Board.

. . .

ARTICLE XXX - PROFESSIONAL COMPENSATION

. . .

- c. Placement on the salary schedule shall be in accordance with the teacher's years of experience, highest degree, and the number of credits earned beyond said degree. (Degree and credits earned must be applicable to the instructional area for which he is employed).";

that during bargaining for said contract there was no discussion between the parties as to whether the credits referred to in Article XXX(c) could be either undergraduate or graduate; that said agreement contained a salary schedule with the following horizontal lanes; 3 yr. B.A., B.A.+8, B.A.+16, B.A.+24, M.A., M.A.+8; that the 1974-1975 bargaining agreement also contained the foregoing provisions; that during the 1973-1974 and 1974-1975 school years Respondent continued its practice of only allowing graduate credits to be counted toward progress on the horizontal lanes of the salary schedule while crediting both graduate and undergraduate work under the continuing education requirements of Article XVII.

5. That the parties' two year 1975-1977 bargaining agreement contained a grievance procedure with the final step being the decision of Respondent's Board of Education; that said agreement maintained the horizontal salary schedule steps contained in the 1972-1973 and 1973-1974 agreements; that said agreement dropped the requirement of continuing education and retained the following provisions:

"ARTICLE XVII - PROFESSIONAL IMPROVEMENT

. . .

2. Extension courses may be substituted for summer school if they are acceptable for a more advanced degree, or are approved by the superintendent in the teaching area of the teacher. They must be completed before effective date of contract in order to receive additional compensation or as specified in Article 30 paragraph G.

. . .

ARTICLE XXIII - GENERAL PROVISIONS

This agreement shall supersede any rules, regulations, or practices of the Board which shall be contrary to or inconsistent with its terms. The provisions of the Agreement shall be incorporated into and be considered part of the established policies of the Board.

. . .

ARTICLE XXX - PROFESSIONAL COMPENSATION

. . .

- c. Placement on the salary schedule shall be in accordance with the teacher's years of experience, highest degree, and the number of credits earned beyond said degree. (Degree and credits earned must be applicable to the instructional area for which he is employed)."

6. That the Official Operating Policies which Respondent adopted in June 1975 contained the following provisions:

"E. Definition of 'Years of Training':

1. 3 years: 3 years of credits applicable to a 4 year degree in education.
2. 4 years: a degree in education.
3. B + 10: is 30 credits beyond the Bachelor's Degree toward Master's.
4. Masters: Completion of all work towards a Masters Degree."

7. That as of the commencement of the 1976-1977 school year, Virginia Stella, who had been employed by Respondent for approximately 23 years, possessed a Bachelor of Science degree and 24 undergraduate credits; that in March of 1976 Stella had signed a teaching contract offered by Respondent for the 1976-1977 school year which compensated her pursuant to the B.A. horizontal lane on the salary schedule; that in April 1977 Stella filed a grievance with Respondent pursuant to the parties' bargaining agreement wherein she asserted that Respondent had violated Article XXX(c) of said agreement by failing to recognize her 24 undergraduate credits when placing her on the salary schedule for the 1976-1977 school year; that there is no evidence that Respondent has ever considered undergraduate credits when placing Stella or any other teacher on the salary schedule; and that during bargaining Complainant and Respondent have never discussed whether undergraduate credits can be utilized to advance on the salary schedule under Article XXX.

Based on the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSION OF LAW

That Respondent Shell Lake School District did not violate the parties' 1975-1977 collective bargaining agreement by failing to compensate Virginia Stella pursuant to the BA+24 lane of the 1976-1977 salary schedule contained therein and thus did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the undersigned makes and issues the following

ORDER

That the instant complaint be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 25th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Complainant asserts that despite the plain meaning of the phrase "credits beyond said degree", the Respondent violated Article XXX(c) of the parties' 1975-1977 bargaining agreement by failing to take Virginia Stella's 24 undergraduate credits into account when placing her on the salary schedule for the 1976-1977 school year. The Respondent contends that Article XXX(c)'s reference to "credits beyond said degree" only refers to graduate credits and thus that it did not violate the bargaining agreement by ignoring Stella's undergraduate credits when placing her on the salary schedule. 1/

It is the undersigned's judgment that the phrase "credits beyond said degree" as utilized in Article XXX(c) is ambiguous. Said provision could reasonably be interpreted as meaning credits of any kind earned after one receives a degree, or as meaning only graduate credits toward an advanced degree. Given this ambiguity, the Examiner must turn to interpretative aids such as other contractual provisions, bargaining history, and past practice in an effort to determine the parties' intent.

The Union asserts that the content of Article XVII(3) supports its position arguing that the specific mention of "credits acceptable for a more advanced degree" in said Article and the lack of any specific mention thereof in Article XXX(c) leads to the conclusion that Article XXX(c) credits need not be at the graduate level. Initially it is noted that even if it were clear that the content of Article XVII(3) is applicable to the dispute at hand the Complainant's argument is something less than overwhelming. However examination of the parties' 1973-1974 and 1974-1975 agreements creates considerable doubt as to whether Article XVII(3) is indeed even relevant to the resolution of the instant dispute. Said Article was placed in those two prior contracts to set forth requirements for the then existent continuing education requirement. It had no bearing upon the question of credits which are applicable for advancement on the salary schedule. Although when the continuing education requirement dropped out of the 1975-1977 contract Article XVII(3) was retained, the history of said Article forces the undersigned to conclude that its content cannot be relied upon as an expression of the parties' intent vis-a-vis the instant dispute.

Turning to the question of bargaining history, the Examiner concludes, despite the parties' efforts to the contrary, that no conclusive evidence was presented by either side. Indeed the record clearly reveals that the issue of graduate or undergraduate credits was simply never discussed in the context of Article XXX. Thus bargaining history is of no use when one attempts to resolve the instant dispute.

Turning to the question of past practice, the record demonstrates that Respondent has never considered undergraduate credits when placing a teacher on the salary schedule. This practice existed during the ten year period prior to the placement of Article XXX in the parties' first bargaining agreement and continued through the terms of the parties' 1973-1974, 1974-1975 and 1975-1977 agreement until challenged

1/ Respondent raised no issue as to the timeliness of the grievance or as to whether Stella's credits met the Article XXX(c) requirement that they be applicable to the instructional area in which she is employed. Although Superintendent Johnson testified that Stella's grievance was denied in part because the credit was not in her instructional area (Tr. 70), Respondent made no argument with respect thereto at the hearing or in its post-hearing brief and rested its entire defense upon the "graduate credit" theory.

by Stella in April 1977. Given the potent combination of the longstanding nature of the practice and its continuing, direct financial impact upon teachers who took undergraduate credits to meet the continuing education requirement which existed until the 1975-1976 school year, the undersigned can only conclude that the Complainant was aware of said practice. In light of this lengthy practice which Complainant was aware of at the time Article XXX(c) was originally placed in the contract and continued to be aware of during succeeding contracts which also contained said language, the Examiner concludes that the lack of any discussion regarding Article XXX and thus the Complainant's silence in that regard evidences the parties' intent that said language merely reflect that said practice was to continue, as opposed to establishing a departure therefrom. Some support for this conclusion can be drawn from the physical structure of the salary schedule itself in that the horizontal lanes of B.A., B.A.+8, B.A.+16, B.A.+24 and M.A. create an inference that the credits earned in addition to the B.A. must be graduate credits progressing toward the M.A. It is also noteworthy that the "Years of Training" section of Respondent's 1975 Operating Policies despite its antiquated nature, clearly reflects the concept that B.A.+ credits are to be "credits beyond the Bachelor's degree toward Master's." In light of the foregoing, the Examiner concludes that Respondent did not violate the 1975-1977 agreement by failing to consider Stella's 24 undergraduate credits when placing her on the salary schedule, and thus did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of MERA.

Dated at Madison, Wisconsin this 25th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Peter G. Davis, Examiner