STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PRENTICE EDUCATION ASSOCIATION, Complainant, vs. BOARD OF EDUCATION, SCHOOL DISTRICT OF PRENTICE, Respondent.	:	Case VII No. 24310 MP-961 Decision No. 16943-A

Appearances:
Mr. Eugene Degner, Director, WEAC UniServ Council No. 1, appearing on behalf of the Complainant.
Mr. Norris Erickson, District Administrator, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Prentice Education Association having, on March 20, 1979, filed a complaint with the Wisconsin Employment Relations Commission alleging that the School District of Prentice had committed a prohibitive practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed Stephen Pieroni, a member of the Commission's staff, to act as examiner in the matter and to make and issue Findings of Fact, Conclusion of Law and Order, as provided in Section 111.07(5), Wis. Stats.; and hearing on said complaint having been held at Prentice, Wisconsin, on May 1, 1979, before the Examiner; and briefs having been filed by both parties with the Examiner by June 11, 1979; and the Examiner having considered the evidence and arguments, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Prentice Education Association, hereinafter referred to as Complainant or the Association, is a labor organization within the meaning of Section 111.70, Wis. Stats.; and that Eugene Degner is the representative of same.

2. That the Association is recognized by the School District of Prentice as the exclusive collective bargaining representative for all full-time and part-time certified teaching personnel of the school district.

3. That School District of Prentice and Board of Education of School District of Prentice, hereinafter referred to as the Respondent, are respectively, a public school district organized under the laws of the state of Wisconsin and a public body charged under the laws of the state of Wisconsin with the management, supervision and control of said district and its affairs. At all relevant times herein, Norris Erickson was the District Administrator of said school district.

4. That Complainant and Respondent were at all times material hereto parties to collective bargaining agreements for the school years 1977-78 and 1978-79, which agreements contained identical provisions as follows:

ARTICLE XVI

CONTRACT SPECIFICATIONS

B. If the individual's contract status as of September 1 will differ from the status in affect at the time the contract was signed, such status must be declared prior to June 1 of the effective date of the contract. Written proof of this change in status must be furnished to the Superintendent prior to September 15th of the year for which the contract is issued.

ARTICLE XVII

SALARY AND FRINGE BENEFITS

B. Credited years of teaching experience and the number of credits beyond the BA or MA degree shall determine placement on the salary schedule.

As of September 29, 1977, all credits on file shall count towards "BA+24" lane, however, only those credits in the related area shall count towards the "MA or 32 Related Credits" lane.

As of September 29, 1977, all credits earned for advanced lanes shall be in related areas. Either graduate or under-graduate credits will count.

And that the parties' 1978-79 agreement makes no provision for the final and binding resolution of disputes concerning its interpretation or application.

5. That at all material times herein, Glenna Jo Peterson taught learning disabled students in an elementary school in the Prentice School District, and Marion Hoffman taught kindergarten in the Prentice School District.

6. That both Peterson and Hoffman notified the district in the spring of 1978 that each had enrolled in a three-credit graduate course entitled "Supervision of Student Teachers," at Mount Senario College, Ladysmith, Wisconsin; Peterson informed the district that upon completion of said course, she should be advanced on the salary schedule to the "MA or 32 Related Credits" column; Hoffman informed the district that upon the completion of said course, she should be advanced on the salary schedule to "BA+8" column.

7. That Peterson and Hoffman provided the district with proof of their successful completion of said course consistent with the terms of Article XVI of the parties' collective bargaining agreement.

8. That Respondent refused to advance Peterson and Hoffman to the above noted columns on the salary schedule on the basis that the course, "Supervision of Student Teachers," was not related to either of the teachers' curriculum assignments and therefore the course failed to meet the requirement of Article XVII, which states that "as of September 29, 1977, all credits earned for advanced lanes shall be in related areas."; that Respondent's denial was for reasons impermissible under the provisions of the parties' collective bargaining agreement.

9. That Respondent violated the terms of Article XVII - Salary and Fringe Benefits in the parties' 1978-79 collective bargaining agreement by its refusal to pay Peterson and Hoffman a salary commensurate with the number of credits each earned beyond the BA degree.

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

CONCLUSION OF LAW

That Respondent, by its refusal to recognize the three-credit graduate course entitled "Supervision of Student Teachers," completed by Peterson and Hoffman, for purposes of placement on the salary schedule, has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5, Wis. Stats.

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

ORDER

It is ordered that the School District of Prentice, its officers and agents, shall immediately:

1. Cease and desist from refusing to accept the three-credit course entitled "Supervision of Student Teachers," completed by Peterson and Hoffman, for purposes of advancing each grievant to her appropriate step and column on the the 1978-79 salary schedule.

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

   a. Make Peterson and Hoffman whole for any loss of pay and benefits each suffered by reason of Respondent's wrongful refusal to accept the above-stated three-credit course for purposes of advancing each grievant to her appropriate step and column on the 1978-79 salary schedule.

   b. Notify the Wisconsin Employment Relations Commission in writing, within 20 days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 30th day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Pieroni
Stephen Pieroni, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT CONCLUSION OF LAW AND ORDER

The instant dispute involves an allegation by the Complainant that Respondent refused to pay Glenna Jo Peterson and Marion Hoffman commensurate with the number of credits each had earned beyond a BA degree in violation of Article XVII of the collective bargaining agreement and in violation of Section 111.70(3)(a)5, Wis. Stats. Upon reviewing the entire record and the arguments of the parties, and for the following reasons, the Examiner hereby finds a violation of Section 111.70(3)(a)5, Wis. Stats.

POSITION OF THE PARTIES:

In support of its complaint, the Association avers that Peterson and Hoffman gave proper notice and evidence of completion of the course in question consistent with their responsibility under Article XVI - Contract Specifications.

The narrow issue to be resolved is whether the course is in a "related area" within the meaning of Article XVII - Salary and Fringe Benefits. Peterson and Hoffman jointly wrote a two-page statement explaining how the course was related to their teaching assignments. (Association Exhibit 17). The Employer failed to offer any persuasive evidence contrary to Complainants' reasons.

In addition, bargaining history of this particular provision supports the Association's interpretation. Degner testified that when asked what "related areas" meant during negotiations, his response was that the course had to be offered by a school of education in order to be related. This testimony was unrefuted.

Asserting that the course in question is not related to the Complainants' area of teaching, the Respondent argues as follows:

> a. Neither grievant had been required or asked to supervise student teachers as part of their duties. Further, the course is not designed for elementary teachers. Therefore, the course is unrelated to the teachers' duties.
>
> b. The college promoted and subsidized this course for its own purpose. Neither grievant was required to pay any fees for this course.
>
> c. While approval from the administrator is not required by the contract, many teachers have done so in the past in order to avoid this type of dispute. Here, neither teacher made an effort to obtain prior approval for this course.
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> d. That the Association introduced a proposal during the negotiations for the 1978-79 collective bargaining agreement seeking additional compensation for supervision of student teachers or, in the alternative, a prohibition against using student teachers, is relevant bargaining history in support of the Employer's position.

DISCUSSION:

Looking to the merits of the dispute, the Examiner finds that the pertinent contractual language is ambiguous. Article XVII does not define what is meant by credits in "related areas." Said phrase is arguably broad enough to encompass the Complainant's interpretation that any course offered by a school of education is a "related area." On the other hand, said phrase could be read to limit courses to within a teacher's teaching assignment. Given this ambiguity, the Examiner must turn to interpretive aids such as past practice and bargaining history in an effort to determine the parties' intent.

No evidence of past practice was offered by the parties, so the Examiner must conclude that no persuasive evidence of past practice exists. However, unrebutted evidence was introduced concerning the Association's announced intent in proposing the language in question. Mr. Degner testified that when the question was raised during bargaining as to the meaning of "related areas," he responded that education credits would count. (TR. pp. 24-25) The fact that the district did not introduce evidence to the contrary raises a strong inference that the district acquiesced in the Association's understanding of the phrase "related areas."

Even in the absence of this bargaining history, Peterson and Hoffman presented a letter dated February 9, 1979 to the school board president which documented ten different ways in which Peterson and Hoffman believed the course assisted them in their teaching duties. (Association Exhibit 17). The district did not refute the particular allegations contained in said letter except to aver that supervision of student teachers was not specifically required of either of the Complainants. Hence, the weight of the evidence favors the Complainant's case. Inasmuch as the unrebutted evidence established that the course provided some ancillary benefits which related to the teachers' daily teaching duties, the undersigned does not believe that the determinative factor is whether the Complainants actually supervised student teachers.

The defect in the district's argument becomes readily apparent when one examines District Exhibits 22 and 23. In Exhibit 22, a teacher requested approval to attend a course entitled "Workshop in Mental Health." While it is not clear from the record if approval was granted in that instance, Employer Exhibit 23 reveals that approval was granted to another teacher to attend a course entitled "Child Abuse and Neglect." It is obvious that in approving the latter course, the district did not require that the teacher actually teach the subject matter of child abuse and neglect as part of her daily curriculum. The collective bargaining agreement only required that the course be in "related areas" and no prior approval is required. The fact that the district accepted the above-noted course as being in a "related area," but rejected the course in question, in the undersigned's opinion, buttresses the conclusion herein.

While it is true that the district did not receive Complainant's explanation of the course until February 9, 1979, Complainants did in fact inform the district of the completion of the course and thereby the change in their status before September 15 of the pertinent school year. Hence, Complainants complied with all that is required by the collective bargaining agreement per Article XVI - Contract Specifications.

Therefore, based upon the foregoing analysis, the undersigned finds that in this particular instance the course entitled "Supervision of Student Teachers" was in a related area to Peterson's and Hoffman's teaching duties. By refusing to accept this three-credit course for purposes of advancing the Complainants on the salary schedule, the Examiner concludes that said refusal violated the collective bargaining agreement and, by derivation, Section 111.70(3)(a)5, Wis. Stats. The remedy appropriate for the violation has been ordered above.

Dated at Madison, Wisconsin this 30th day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Pieroni
Stephen Pieroni, Examiner