

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NORTHWEST UNITED EDUCATORS,

Complainant,

vs.

COOPERATIVE EDUCATIONAL SERVICE  
AGENCY NO. 4,

Respondent.  
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Case XIV

No. 24856 MP-1003

Decision No. 17151-A

Appearances:

Alan D. Manson, Executive Director, for the Complainant.

Coe, Dalrymple, Heathman & Arnold, Attorneys at Law, by Edward J. Coe, for 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 6, 1979 alleging that the above named Respondent had committed certain prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA); and the Commission having appointed Douglas V. Knudson, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5) Stats.; and hearing on said complaint having been held before the Examiner in Barron, Wisconsin on October 22, 1979; and the parties having filed briefs until December 14, 1979; and the Examiner having considered the evidence and arguments of the parties, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Northwest United Educators, herein Complainant, is a labor organization which functions as the exclusive collective bargaining representative of the certified professional employees of Respondents.

2. That Cooperative Educational Service Agency No. 4, herein Respondent, is a municipal employer.

3. That at all times relevant herein, Complainant and Respondent were parties to a collective bargaining agreement, which did not provide for binding arbitration of grievances. Said agreement contained the following provisions:

ARTICLE III - GRIEVANCE PROCEDURE

. . .

1. Level One - The grievant will first discuss his grievance with the CESA #4 Coordinator, either directly or through the NUE's designated representative. Grievances must be filed within 15 days of the incident giving rise to the grievance.

2. Level Two - If the grievant is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within ten (10) school days after he has first met with the Coordinator, he may file the grievance in writing with the Board.

At the next regularly scheduled meeting, after receiving the written grievance, the Board will meet with the grievant and NUE representative for the purpose of resolving the grievance. The Board shall answer the grievant within ten (10) school days following the meeting.

Grievances not advanced within the prescribed time limits will be deemed waived.

#### ARTICLE X - BUSINESS TRAVEL

. . .

- B. Transportation expenses among school districts and school buildings is reimbursable; however employees shall be responsible for transportation costs from home to the nearest assignment center and return for each working day. Special cases subject to review by the Coordinator.
- C. Approved business travel is reimbursable at the rate of 16¢ per mile. From July 1, 1978 to June 30, 1979, the rate will be 17¢ per mile.

4. That James Joslin, herein Joslin, has been employed by Respondent since the start of the 1976-77 school year; and has resided in Exeland during said period of time; that during the 1976-77 and 1977-78 school years Joslin received mileage reimbursement for 50 miles for each day on which he worked at Weyerhaeuser; that the mileage from Weyerhaeuser to Birchwood is 25 miles, which distance is identical to the mileage from Weyerhaeuser to Exeland; that during the 1978-79 and the 1979-80 school years, for those days on which Joslin worked only in Weyerhaeuser, he received mileage reimbursement for the 30 mile round trip distance between Weyerhaeuser and Ladysmith rather than for the 50 mile round trip distance between Weyerhaeuser and Exeland as he had requested.

5. That at the time Article X, Section B was placed in the contract, the parties mutually understood said language to mean that an employee would receive mileage reimbursement for his travel between his home and a more distant assignment center on days he did not also travel to his nearest assignment center.

6. That Respondent's method of reimbursing Joslin's mileage during the 1976-77 and 1977-78 school years did not establish a practice, of which either Joslin or Complainant had knowledge, different than the intent of the parties when Article X, Section B was placed in the collective bargaining agreement.

7. That Respondent failed to prove that its method of reimbursing Joslin for his travel in the 1978-79 school year was consistent with the reimbursement method it had followed in the 1976-77 and 1977-78 school years.

8. That the language in Article X, Section B of the collective bargaining agreement is not clear and unambiguous with respect to the subject of the grievance herein.

9. That Respondent's failure to reimburse Joslin for the round trip mileage between Exeland and Weyerhauser for the days he worked only at Weyerhauser in the 1978-79 and 1979-80 school years, constitutes a violation of its collective bargaining agreement with Complainant.

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

#### CONCLUSION OF LAW

That, commencing with the start of 1978-79 school year Respondent violated, and has continued to violate, Article X, Section B of the collective bargaining agreement by its method of reimbursing Joslin's travel, thereby also violating Section 111.70(3)(a)5 of MERA.

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

#### ORDER

It is ordered that Respondent Cooperative Educational Service Agency No. 4, its officers and agents, shall:

1. Immediately, in accordance with Article X, Section B of the collective bargaining agreement, begin reimbursing James Joslin for his travel between Exeland and Weyerhauser for those days on which he reports to Weyerhauser without also reporting to Ladysmith, and further, shall reimburse Joslin for such travel for the period of time from August 21, 1978 forward to the date of this Order. Respondent may deduct from that reimbursement any payments of lesser amounts already made for such travel.

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

Dated at Madison, Wisconsin this 31st day of March, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Douglas V. Knudson, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

Position of Complainant:

Complainant contends that when Article X, Section B was negotiated the word "working" was intended to modify the word "day". Further, the parties understood said language to mean working day in the employee's nearest assignment center. Therefore, an employee would be reimbursed for all actual mileage driven in excess of the mileage resulting from driving to work at the nearest assignment center on days he works at said center. Moreover, Respondent made mileage payments for two years in accordance with Complainant's interpretation prior to applying a different interpretation commencing with the 1978-79 school year. Respondent's current method of payment has added restrictions to the contract language, to which restrictions Complainant had not agreed.

Position of Respondent:

Respondent argues that the meaning of the contested language is clear, and further, that it has applied said language in a manner which is consistent with the clear meaning. During Joslin's first two years of employment, he was paid for the mileage from his nearest assignment center to his alternate assignment center for those days when he traveled to his alternate assignment center. Said mileage was identical to the mileage from Joslin's home in Exeland to Weyerhauser, which apparently caused Joslin to misunderstand how his reimbursement was being computed. Respondent asserts that Article X does not qualify the phrase "working day" by limiting its application only to those days when an employee works at his nearest assignment center.

Discussion:

Joslin has been employed by Respondent since the start of the 1976-77 school year. During the 1976-77 and 1977-78 school years, Joslin divided his time equally between the school districts of Birchwood and Weyerhauser. Joslin's assignment was altered for the 1978-79 and 1979-80 school years through the replacement of the Birchwood school district with the Ladysmith school district. For the first three years of his employment, Joslin normally did not work in more than one school district on any given day. In the 1979-80 school year Joslin began working at both school districts on one day in each week. Joslin continued to spend the other four days in each week entirely at one school district or the other.

Joslin has resided in Exeland, Wisconsin during the entire period of his employment with Respondent. The following distances are relevant: Exeland to Birchwood - 20 miles; Exeland to Weyerhauser - 25 miles; Birchwood to Weyerhauser - 25 miles; Exeland to Ladysmith - 23 miles; and, Weyerhauser to Ladysmith - 15 miles.

Respondent's Administrator, McDougall, testified that he understood Article X, Section B to mean an employee would be reimbursed for the mileage from his nearest assignment center to his more distant assignment center for those days on which the employee worked at the more distant assignment center. In accordance with that interpretation, McDougall altered Joslin's initial mileage reimbursement statement, which was filed in September of 1976, by deleting all trips between Exeland and Birchwood, since Birchwood was Joslin's nearest assign-

ment center. The list of trips from Exeland to Weyerhauser was not altered. McDougall then sent a copy of the altered mileage statement to Joslin along with a letter in which he stated:

"The board denied your mileage claim at their recent meeting and I have corrected it as shown on the enclosed copy. A CESA employee is responsible for transportation costs from home to the nearest assignment center and return each day. Mileage to other schools is reimbursable. Thus, I have crossed out the mileage to Birchwood, but you are reimbursed for mileage to Weyerhauser."

McDougall testified that he had approved of the mileage reimbursement for trips between Exeland and Weyerhauser because he had estimated that distance to be the same as the distance from Birchwood to Weyerhauser, i.e., 25 miles. Since the amount of reimbursable miles was correct, McDougall did not bother to alter Joslin's mileage statement by replacing Exeland with Birchwood for Joslin's trip to Weyerhauser. Apparently Joslin continued to receive mileage reimbursements on that basis for the remainder of the 1976-77 school year and for the entire 1977-78 school year.

In September of 1978 Joslin submitted a mileage statement requesting mileage reimbursement for each day he drove from Exeland to Ladysmith and back, and, for each day he drove from Exeland to Weyerhauser and back. In a letter dated September 22, 1978 McDougall informed Joslin that he was not claiming mileage correctly, since he could claim reimbursement only for the difference between (1) the mileage from his home to nearest assignment center, i.e., Weyerhauser, and (2) the mileage from his home to his other assignment center i.e. Ladysmith. On September 28, 1978 McDougall sent another letter to Joslin in which he basically repeated the contents of his letter of September 22, 1978, but also, stated that Joslin's mileage statement for September was being reimbursed to avoid inconveniencing him, with necessary adjustments to be made later. In a letter dated October 30, 1978, McDougall informed Joslin that he would be allowed reimbursement for the mileage between Weyerhauser and Ladysmith for the days on which he traveled to Ladysmith, and further, that Joslin's next reimbursement would be adjusted to reflect that mileage rather than the mileages for which he had been reimbursed for the previous two mileage statements. Said adjustment was made in Joslin's reimbursement for his next mileage statement.

Both parties contended that the contested language is clear on its face and should be controlling in this matter. While said language does appear to be quite clear as to mileage reimbursement on days when an employe travels from his nearest assignment center to a more distant assignment center, said language fails to set forth a clear and unambiguous procedure for mileage reimbursement on a day when an employe travels from his home to a more distant assignment center without also traveling to his nearest assignment center on the same day. In fact, absent any other factors, Section B could be interpreted to mean that an employe would be reimbursed only for those miles in excess of the mileage between his home and his nearest assignment center for all days he worked at any assignment center, which would be an interpretation different than those advanced by either Respondent or Complainant. Similarly, standing alone, either Respondent's alleged practice, i.e., that an employe is reimbursed for the mileage between assignment centers for those days when he works at a more distant assignment center, or Complainant's interpretation, i.e., an employe is to be reimbursed for the mileage between his home and

a more distant assignment center for those days when he works at the more distant assignment center without also reporting to his nearest assignment center, would be reasonable interpretations of the contested language. Inasmuch as the contested language is susceptible to more than one reasonable interpretation, it is not clear and unambiguous, and therefore, other factors must be analyzed to arrive at the proper interpretation to be given said language.

Complainant's support for its interpretation of the contested language is based primarily on the testimony of one of its representatives, Robert West, who participated in the drafting of the pertinent language at the time of its entry into the contract in 1973. West testified that he and Respondent's negotiator reached agreement on the following interpretation of the contested language:

"An employee would not receive mileage payments for traveling from his home to the assignment center closest to his home for those days on which he worked at the assignment center. However, an employee would receive mileage reimbursement both for traveling between assignment centers, and, for traveling from his home to an assignment center other than the assignment center closest to his home."

West further stated that the word "working" was used to modify the word "day" in Article X, Section B, as a means of identifying those days when an employee traveled to his nearest assignment center as opposed to those days when an employee traveled to a more distant assignment center.

West's testimony, concerning the mutual intent to be given to the Article X, Section B at the time the parties agreed to add said language to the contract, was uncontradicted. McDougall was not employed by Respondent until after the conclusion of those negotiations. Further, there is no evidence in the record to show that Respondent's negotiator conveyed an interpretation of the contested language to Respondent different than the interpretation to which West testified.

Although McDougall contended that in the 1976-77 and 1977-78 school years he had been reimbursing Joslin for mileage between Birchwood and Weyerhauser rather than for mileage between his home and Weyerhauser, he did not alter Joslin's mileage statements by replacing Exeland with Birchwood so as to reflect such a practice, whereas he did draw lines through the trips from Exeland to Birchwood for which reimbursement was requested but not approved. Further, McDougall never specifically told Joslin that he was being reimbursed for mileage from Birchwood to Weyerhauser rather than for mileage from Exeland and Weyerhauser. Thus, neither Joslin nor Complainant were aware of McDougall's interpretation of the method under which Joslin was receiving mileage reimbursement for the 1976-77 and 1977-78 school years. Joslin reasonably assumed he was being reimbursed for the trips from Exeland to Weyerhauser in accordance with the statements which he submitted during that period of time, and therefore, he did not grieve such reimbursement until September 1978 when he learned that he would not be reimbursed for traveling from Exeland to Weyerhauser during the 1978-79 school year.

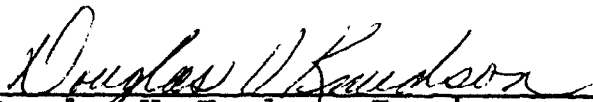
In light of West's uncontradicted testimony and of Respondent's method of reimbursing Joslin during the 1976-77 and 1977-78 school years, it must be concluded that Respondent's method of calculating Joslin's mileage reimbursement commencing in September 1978 was incorrect, and consequently, was in violation of the contract. Accordingly, Complainant's interpretation of Article X, Section B must be upheld.

Respondent shall reimburse Joslin the difference between the monetary amount that he has received in mileage reimbursement, and, the monetary amount that he would have received if he had been reimbursed for the round-trip milage between Exeland and Weyerhauser for all days on which he has worked at Weyerhauser without also working at Ladysmith, since the start of the 1978-79 school year. Further, Respondent shall utilize that same method in making further mileage reimbursements to Joslin.

Dated at Madison, Wisconsin 31st day of March, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Douglas V. Knudson, Examiner