

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ONDOSAGON DRIVERS, CUSTODIANS, COOKS  
AND SECRETARIES' UNION

Complainant,

vs.

ONDOSAGON SCHOOL DISTRICT,

Respondent.  
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: Case IV  
: No. 23572 MP-898  
: Decision No. 17458  
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Appearances:

Mr. Barry Delaney, Executive Director, Chequamegon United Teachers,  
on behalf of the Complainant.

Mr. Jack Carlson, Attorney at Law, on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Ondossagon Drivers, Custodians, Cooks and Secretaries' Union, herein the Complainant, filed the instant prohibited practices complaint with the Wisconsin Employment Relations Commission, herein the Commission. Hearing was held in Ashland, Wisconsin, on November 9, 1978, before Examiner William C. Houlihan, who was appointed Examiner by the Commission for the purpose of issuing findings and orders pursuant to Section 111.07(5), Wisconsin Statutes. A transcript was made of the hearing, and briefs were filed by the parties. The Examiner has considered the evidence and arguments of the parties and hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Ondossagon Drivers, Custodians, Cooks and Secretaries' Union, herein the Complainant, is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act. The Complainant is the exclusive bargaining representative for certain non-certified employees employed by Ondossagon School District.
2. That Ondossagon School District, herein District or Respondent, is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act.
3. That the Respondent entered into a group administrative agreement with the Wisconsin Education Association Insurance Trust, herein WEA Trust, on June 10, 1977. The pertinent provision of said agreement is as follows:

ELIGIBLE EMPLOYEES - Each regular full-time employee of the district who is actively performing or is able to perform the duties of his occupation and working half-time or more will be eligible for benefits as provided for in the WEA Trust Plan(s).

4. That the Complainant and Respondent entered into a collective bargaining agreement effective July 1, 1978 through June 30, 1981.

## PERTINENT CONTRACTUAL PROVISIONS

### ARTICLE I - RECOGNITION

The Board acting for said District recognizes the Union as the exclusive and sole bargaining representative for all non-certified employees, including clerical, school lunch cooks, custodians, bus mechanics, school bus drivers and teacher aides employed by the District; excluding part-time incidental help, student school lunch help, and the District bookkeeper.

### ARTICLE IV - GENERAL PROVISIONS

This Agreement shall supersede any rules, regulations, or practices of the Board which shall be contrary to or inconsistent with its terms.

If the District or the Union desires new employees to hold two (2) positions within the unit, the parties agree to negotiate that request. 1977-78 employees who hold two (2) or more positions shall retain those positions unless there is just cause.

### ARTICLE VI - DISCIPLINE PROCEDURE

No employee shall be terminated, suspended, reprimanded, reduced in rank or compensation or otherwise disciplined without just cause.

### ARTICLE VII - REDUCTION IN FORCE

If necessary to decrease the number of employees in a department (cooks, clerical, bus drivers, custodians, mechanics, and aides) the Board may lay off the necessary number, but only in inverse order of the appointment in each department. Such employees shall be reinstated in inverse order of their being laid off when vacancies occur. Such reinstatement shall not result in loss of credit for previous years of service. No new or substitute appointments may be made while those who were laid off are available to fill the vacancies. In the event the Board decides to sell the buses the Board will bargain the impact.

### ARTICLE X - INSURANCE AND RETIREMENT

A. All eligible employees will become members of the Wisconsin Municipal Employees Retirement System. The Board will pay the employee's portion to the System at the present 5% rate.

B. The Board shall provide, without cost to the employee, complete dental care protection (Plan I Dental Insurance) through the WEA Insurance Trust for single or family plan as is applicable to all employees.

C. The Board shall provide, without cost to the employee, complete health care protection (hospital-surgical-major medical insurance) through the WEA Insurance Trust for single or family plan as is applicable to all employees.

D. An employee receiving a leave of absence may request to remain part of the group for health care and dental protection. The employee is to pay his/her premium to the district bookkeeper monthly while on leave. This is to be allowed if within the rules of the insurance company.

#### ARTICLE XV - BUS DRIVER WORKING CONDITIONS

The Board shall continue to supply a vehicle for taking bus drivers home and back who leave their bus at their home at night, as per past practice.

#### ARTICLE XVII - DURATION OF AGREEMENT

The Agreement shall be in full force and effect from July 1, 1978 through June 30, 1981, inclusive.

5. That two cook helper positions, currently occupied by Yvonne Bizub and Joyce Nelson are and have at all relevant times been included within the bargaining unit.
6. That the Employer refused to provide health and dental insurance benefits to either of the cook helpers in 1976-77 or in 1977-78.
7. That, as a result of a change in policy by the insurance carrier, Bizub and Nelson are currently eligible to receive health and dental insurance benefits.
8. That John Gazdik worked as a bus driver and substitute custodian during the 1977-78 school year. On May 15, 1978, he was hired as a full-time custodian, said position to take effect on July 1, 1978.
9. That on August 21, 1978, the Respondent eliminated Gazdik's bus driver position. Gazdik had worked as a District bus driver for seven years. Gazdik applied for a vacant bus driver position which opened up on September 15, 1978, but he was not hired by the Respondent.
10. That six bus drivers, Catherine Delfield, Amy Brilla, George Zepczyk, Joe Mihalek, John Bednarik and Alex Panasuk, keep their buses home at night and are supplied with District vehicles to get home after their morning run and return to work in the afternoon.
11. That the salary for the bus driver position was converted from a base pay plus mileage to an hourly rate for the 1977-78 school year.
12. That in 1977-78, Bednarik and Panasuk were paid on a portal-to-portal basis for the time spent driving their bus home after the morning run and returning to work in the afternoon. They have been paid on the same basis in 1978-79.
13. That in 1977-78, Delfield, Brilla, Zepczyk and Mihalek were paid one-half hour for their time spent traveling home and back to work in a District van. All four bus drivers ride in the same vehicle.

14. That in 1978-79, Brilla has been paid one-half hour for commuting in the District van. Delfield, Zepczyk and Mihalek have not been paid one-half hour in 1978-79 for commuting in the District van.

Based on the foregoing Findings of Fact, the Examiner makes the following

#### CONCLUSIONS OF LAW

1. By refusing to provide health and dental insurance benefits to cook helpers as of August 22, 1978, the Respondent violated Article X, Sections B and C of the parties' 1978-81 collective bargaining agreement and committed a prohibited practice within the meaning of Section 111.70(3)(a)(5), Wisconsin Statutes.

2. By refusing to provide John Gazdik with a bus driver position for the 1978-79 school year, the Respondent violated Article IV, Section G and Article VII of the parties' 1978-81 collective bargaining agreement and committed a prohibited practice within the meaning of Section 111.70(3)(a)(5), Wisconsin Statutes.

3. By failing to pay Delfield, Zepczyk and Mihalek in 1978-79 for their time spent commuting in a District vehicle, the Respondent did not violate Article XV, Section H of the parties' 1978-81 collective bargaining agreement and did not commit a prohibited practice within the meaning of Section 111.70(3)(a)(5), Wisconsin Statutes.

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

#### ORDER

IT IS ORDERED that Respondent Ondossagon School District, its officers and agents, shall immediately:

1. Cease and desist from violating Article X, Sections B and C, of the parties' 1978-81 collective bargaining agreement.
2. Cease and desist from violating Article IV, Section G and Article VII of the parties' 1978-81 collective bargaining agreement.
3. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
  - a. Make the cook helpers, Yvonne Bizub and Joyce Nelson, whole by reimbursing them for health and dental expenses incurred by them, after health insurance became available to them, which expenses would have been paid for by the WEA Insurance Trust. The Examiner retains continuing jurisdiction for sixty (60) days from the date of this award to resolve any disputes over the payment of health and dental insurance benefits.
  - b. Make John Gazdik whole by re-employing him as a regular bus driver and reimbursing him for the work hours lost due to the Respondent's failure to reinstate him on September 15, 1978.

c. 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 27th day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan  
William C. Houlihan, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW AND ORDER

The pleadings and arguments raise a question as to whether the Respondent has violated a number of provisions of the collective bargaining agreement by (1) failing to provide health and dental insurance benefits for cook helpers as of August 22, 1978; (2) failing to provide John Gazdik with a bus driver position for the 1978-79 school year; and (3) failing to pay three bus drivers for their time spent commuting in a District vehicle during the 1978-79 school year.

Health and Dental Insurance Benefits

Article X, Sections B and C of the parties' 1978-81 collective bargaining agreement provides for complete health and dental care protection for "all employees." The Complainant argues that the words "all employees" can only be interpreted to mean all members of the bargaining unit, regardless of their full-time or part-time employment status. The Respondent argues that health and dental insurance benefits were not contemplated by the parties to specifically extend to the cook helpers under the master agreement, since they work part-time and were not eligible to receive such benefits under the terms of the WEA Health Insurance Agreement, as that agreement existed during the term of the negotiations. It was only after negotiations had concluded that the Employer was informed by the Insurance carrier that the carrier was prepared to provide health and dental coverage to employees working less than 20 hours per week.

Contract provisions must be read and interpreted within the context in which they appear. The Examiner notes that the language in Sections A and D of Article X indicates the parties' ability and willingness to restrict contractual benefits on the basis of employee eligibility where that is the intended result. However, Sections B and C of Article X do not contain restrictive language such as "all eligible employees" or "subject to the rules of the insurance company," as do Sections A and D of Article X. The parties could have written restrictions into Sections B and C at the same time they drafted Sections A and D, since all four sections of Article X arose out of the same set of negotiations. In the absence of such restrictions, the words "all employees" can only be interpreted to mean all members of the bargaining unit. The phrase "as is applicable" relates to whether the employee will be covered under the single plan or the family plan, not to the employee's eligibility.

The language in Sections B and C of Article X is clear and unequivocal. Such clear-cut language constitutes the best evidence of the parties' intent, affording the Examiner no invitation to probe into that intent. While it may well be that the Employer reasonably relied upon the terms of its Agreement with the Insurance carrier during the course of negotiations, that reliance and subsequent change of carrier policy does not operate to rewrite the collective bargaining agreement between the parties. A part of what the parties bargained for was the WEA Trust Insurance Carrier, whose rules and policies come hand in hand with the coverage it provides. The clear meaning of Sections B and C of Article X must be enforced, since parties to a contract are charged with full knowledge of its provisions and of the significance of its language. Health and dental insurance benefits, as provided for in Sections B and C of Article X, apply to all members of the bargaining unit, they are entitled to complete health and dental care protection under either the single plan or the family plan of the WEA Insurance Trust.

### Elimination of John Gazdik as a Bus Driver

Article IV, Section G of the parties' 1978-81 agreement provides employees who held two or more positions in 1977-78 with the right to retain those positions unless there is just cause for non-retention. The Respondent argues that Article IV, Section G was not meant to cover John Gazdik's situation; that Gazdik did not hold two permanent positions in 1977-78; and that the elimination of Gazdik as a bus driver was justifiable on economic grounds. The Complainant argues that Article IV, Section G covers any employee who held two or more positions in 1977-78, regardless of whether those positions are half-year or one-year appointments; that Gazdik held two positions in 1977-78; that Gazdik should not have been eliminated as a bus driver; and that Gazdik should have been reinstated as a bus driver when a vacant position arose.

The language in Article IV, Section G of the contract does not specifically name the employees intended to be covered by the parties, nor does it require that the positions referred to be permanent. In the absence of any such language of limitation, the Examiner interprets Article IV, Section G to cover any bargaining unit employee who held two or more positions in 1977-78.

The record reveals that John Gazdik held two positions in 1977-78. He worked as a custodian and as a bus driver from January 16, 1978 until the end of the 1977-78 school year. Gazdik was looked upon by the Respondent as both a full-time custodian and bus driver until August 15, 1978, when he was informed of the elimination of his bus driver position. He was never told by the Respondent that he had to relinquish his position as bus driver in order to be hired as a full-time custodian for the 1978-79 school year. Gazdik, therefore, had the right to retain his two positions, subject to discharge for just cause pursuant to Article IV, Section G of the contract.

In order to remove Gazdik from his bus driving position, the Employer faces a burden to show a just cause motive. Respondent indicated that the elimination of the position was motivated by economic considerations arising as a result of a decline in student enrollment. While these economic considerations certainly provide a sound basis for the elimination of a position, they provide no support for the selection of Gazdik for layoff. Quite the contrary, Article VII mandates that the least senior bus driver be laid off, where a layoff is warranted.

The Respondent's layoff of Gazdik violates Article VII. There is no record evidence suggesting that Gazdik was either unqualified or unavailable to perform the work in question. The Respondent's failure to award Gazdik the subsequent vacancy for which he applied served only to compound the original error and to abort any Employer attempt to argue failure to mitigate.

### Payment for Driving Time

The language in Article XV, Section H of the 1978-81 collective bargaining agreement provides for the use of a District vehicle by bus drivers who must commute between work and home, "as per past practice." Article XV, Section H does not specifically mention payment for commuting time. The record reveals that the parties never conducted face-to-face discussions over the meaning or scope of Article XV, Section H. The Complainant interprets said provision to require the District to supply a District vehicle and pay all the bus drivers for their time spent commuting between work and home. The Respondent interprets said provision to require only the supplying of a District vehicle.

In order to resolve the instant dispute, the Examiner must determine what was intended by the parties when they agreed upon the phrase "as per past practice." The record reveals that the District has an established and accepted practice of providing a District vehicle to bus drivers who must commute between work and home; however, the District does not have a clear and established method of payment for such commuting time. In the past, some drivers have been paid on a portal-to-portal basis. Other drivers were paid for one-half hour of their commuting time in 1977-78, but they were not paid for commuting in 1978-79. One driver continued to receive the one-half hour payment in 1978-79.

In light of the evidence and arguments presented, the Examiner interprets the phrase "as per past practice" to relate solely to the District's obligation to supply a District vehicle to bus drivers who must commute between work and home after their morning run and prior to their afternoon run. The District is not obligated to pay Delfield, Zepczyk and Mihalek for their time spent commuting in the District vehicle after their morning run and prior to their afternoon run.

Dated at Madison, Wisconsin this 27th day of November, 1979.

By William C. Houlihan  
William C. Houlihan, Examiner