

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PRENTICE EDUCATION ASSOCIATION	:	
	:	
Complainant,	:	
	:	
vs.	:	Case VIII
	:	No. 24311 MP-962
	:	Decision No. 17480
BOARD OF EDUCATION,	:	
SCHOOL DISTRICT OF PRENTICE	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. Gene Degner, Director, appearing on behalf of the Complainant.
 Mr. Norris Erickson, District Administrator, and Mr. Peter
 J. Thompson, Attorney at Law, appearing on behalf of the
 Respondent.

FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND ORDER

The 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 staff, to act as Examiner in the matter 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 hearing on said complaint having been held at Prentice, Wisconsin on May 1st, 1979 before the Examiner; and briefs having been filed by both parties with the Examiner by June 8, 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, Conclusions 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 Gene 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, 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 the 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 and John Holst, was the High School Principal.

4. That Complainant and Respondent were signators to a collective bargaining agreement which by its terms was effective from the first day of the full term of 1978 until the first day of the full term of 1979. Said collective bargain agreement was ratified by both parties sometime in December, 1978 with the provisions of same being retroactive to the first day of the full term, 1978. Among the provisions contained in the 1978-79 collective bargain agreement were the following:

ARTICLE XVI

CONTRACT SPECIFICATIONS

. . .

- C. The individual's assignments, i.e. teacher, teacher-coach, grade and subject taught, shall be specified on the contract. No subject change will be made without prior consultation with the teacher involved.

- E. Any individual contract between the Board and an individual teacher heretofore and hereafter executed shall be subject to an consistent with the terms and conditions of this Agreement. If an individual contract contains any language inconsistent with this Agreement. this Agreement shall be controlling.

APPENDIX C

EXTRA CURRICULAR

. . .

Forensics

200

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 terms herein, Mary Feltz was employed by the Respondent in a bargaining unit position.

6. That among the assignments listed on Feltz's individual contract for the 1978-79 school year was "forensics". The individual contract issued to Feltz for the 1977-78 school year did not include Forensics. During the period 1971 to 1977, Feltz provided professional assistance to the District's High School Forensics Program, but did not receive compensation for same. "Forensics" appeared as a contractually paid extra-curricular activity for the first time in the 1978-79 collective bargaining agreement.

7. That in addition to Forensics, other duties assigned to Feltz for the 1978-79 school year were IMC (School district Librarian), proof reader, news and Spanish.

8. The coaching for the Forensics program did not begin until January 4, 1979. During the period between January 4, 1979 and March 1st, 1979, Feltz coached ten of the thirteen students who were involved in the High School Forensics program. Said coaching required Feltz to expend approximately twenty five to thirty hours, not including providing resource material and/or other services typically rendered by Feltz in her capacity as a Librarian. The coaching which occurred during this period constituted the major portion of all the coaching of Forensics students during the 1978-79 school year.

9. That sometime in February, 1979 Respondent informed Feltz that she would not receive remuneration for her work in the Forensics program.

10. That at all material times, herein, June Dobbe was an elementary teacher employed by the Respondent and a member of the instant bargaining unit. That Dobbe had been issued an individual contract for the 1978-79 school year which included the assignment of "Forensics". That in February, 1979, Dobbe was informed by Respondent that she would not receive remuneration for her work in the Forensics program.

11. Thereafter in February, 1979 both Dobbe and Feltz notified their bargaining representative, Degner, concerning Respondent's failure to pay for Forensics pursuant to the 1978-79 collective bargaining agreement. On February 19, 1979 Degner informed the Respondent that he expected Respondent to pay Feltz and Dobbe for Forensics per the parties collective bargaining agreement.

12. That thereafter Respondent agreed to pay Dobbe \$200 for her activities in the Elementary Forensics Program, but Respondent refused to pay Feltz for her activities in the High School Forensics Program. Rather, Respondent limited the other \$200 payment to one person in the high school, Avney, who Respondent had selected as Chairperson of the High School Forensics Program.

13. The Respondent violated the terms of the parties 1978-79 bargaining agreement by its refusal to pay Feltz for her Forensics coaching activities.

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

CONCLUSION OF LAW

The Respondent, by its refusal to pay Feltz for her Forensics coaching activities, has committed and is committing a prohibitive 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 School District of Prentice, its Officers and Agents shall immediately:

1. Cease and desist from refusing to pay Feltz \$200 for her Forensics coaching activities during the 1978-79 school year pursuant to the parties collective bargaining agreement.

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

- a. Make Feltz whole for her loss of pay which she suffered by reason of Respondent's wrongful refusal to compensate her for her Forensics coaching activity.

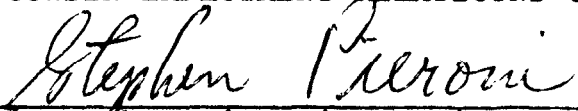
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- b. Notify the Wisconsin Employment Relations Commission, in writing, within twenty days following the date of this Order, as to what steps are being taken to comply herewith.

Dated at Madison, Wisconsin, this 5th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY



Stephen Pieroni, Examiner

No. 17480

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

The instant dispute involves an allegation by the Complainant that Respondent refused to pay Mary Feltz for coaching Forensics students in violation of the parties' 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 Stats.

Position of the Complainant

In support of its position, the Complainant basically argues that strict construction of the contract requires a finding in its favor.

In the alternative, the Complainant argues that pertinent contractual provisions examined in light of the circumstances surrounding this dispute militate a finding in its favor. For example, two other teachers were paid \$200 for Forensics duties. Feltz, was the only employe outside of the English Department who coached Forensics but was not compensated. It is inconsistent for the Respondent to argue that the extra-curricular schedule in the contract limits payment to one employe when it, in fact, paid two employes for Forensics.

Contrary to Respondent's contention at hearing, Feltz's coaching activity did not involve part of her regular workload. Further, if Respondent considered coaching Forensics as part of Feltz's regular duties, it would have been on her 1977-78 teaching contract, but it was not.

Lastly, Complainant argues that there is no basic difference between the service Dobbe performed for extra-curricular pay, and that service performed by Feltz. Therefore, Feltz should be paid for her extra-curricular Forensics activity per the terms of the parties' collective bargaining agreement.

Position of the Respondent

Seeking dismissal of the instant complaint, Respondent asserts that Feltz's participation in the Forensics program was minimal. Unlike Dobbe's extra-curricular Forensics program, the bulk of Feltz's activity was a part of her regular duties and deserves no additional compensation. For the one evening Feltz spent assisting the Forensics program, Respondent has offered to pay \$8.00, pursuant to Article XVII of the Agreement.

Respondent treated Feltz the same as other teachers who assisted the Forensics program on an in-school basis, but received no additional compensation. The intent of the extra-curricular pay of \$200 was to compensate one individual who would travel to other cities with Forensics students who participated in various contests. Feltz was aware of this arrangement, since she was paid approximately \$75 for one trip the previous year.

DISCUSSION

Reading Appendix C of the parties agreement, together with Feltz's individual contract, there appears to be no ambiguity concerning the Respondent's obligation to pay Feltz \$200 for her Forensics assignment.

It is true that at the time the Respondent issued Feltz an individual contract Forensics was not a paid extra-curricular assignment; however, the parties agreement to pay \$200 for Forensics was ratified by both parties before Feltz began coaching Forensics students. The evidence of record reveals that Feltz spent 25 to 30 hours coaching ten of the thirteen students before she was told by Respondent that she would not be compensated for her Forensics activity. At that point the preparation for the Forensics contests was substantially completed. (Transcript p. 12). Further, there is no serious dispute in the record that Feltz's coaching was a valuable asset to the Forensics program. (Transcript page 37, Employer Exhibit VIII).

Although Feltz's coaching was accomplished during the school day, it did require Feltz to spend part of her lunch hour and preparation periods coaching students who preferred not to stay after school. The unrebutted evidence of record reveals that Feltz took home work, (library and Spanish) which she otherwise would not have done if she had not coached the Forensics students. (Transcript pages 11, 16, 18, 19). In addition, the hours spent on coaching did not include Feltz's time spent advising Forensics students on topics and assisting them in locating research material (Transcript pages 11, 12, 19, Employer Exhibit V). By working these extra hours, Felts's relied to her detriment upon her individual contract and the master agreement, which together indicated that she would be paid for her Forensics assignment.

Based upon the preponderance of the evidence, the undersigned concludes that the Forensics coaching performed by Feltz was beyond the scope of her regular library duties and must be considered an extra-curricular activity within the meaning of Appendix C of the 1978-79 Agreement.

Even assuming, arguendo, that the Contract was ambiguous as to whether Forensics extra-curricular pay was to be limited to one employe, the Respondent's action in working out an individual program with June Dobbe, seriously undermines the Employer's argument. After Dobbe complained that she was not being paid for her Forensics activities, the Respondent agreed to work out a Forensics program for which she would be paid. (Exhibit IX). The Examiner finds the difference between Dobbe's activity and Feltz's activity indistinguishable, since both agreed to perform duties beyond their regularly scheduled teaching duties.

Clearly, the fact that certain English teachers apparently incorporated Forensics instruction as part of their English curriculum and not join in the instant complaint, does not undermine the merits of Feltz's case.

Lastly, Respondent had an opportunity to rescind the Forensics duties assigned to Feltz, on her individual contract before the 1978-79 collective bargaining agreement was ratified in December, 1978. This the Respondent apparently failed to do. Feltz, on the other hand, acted reasonably in carrying out her contractual obligations by coaching the vast majority of Forensics students. Therefore, she relied to her detriment upon the clear and unambiguous contractual obligations. To allow Felts to suffer a loss as a result of Respondent's apparent error would create an unjust result. The provisions of the collective bargaining agreement as well as the preponderance of the evidence do not support such a result.

Therefore, based upon the foregoing analysis, the undersigned finds that, Respondent's refusal to pay Feltz for coaching students in the Forensics program violated the parties' 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 in Madison, Wisconsin, this 5th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Pieroni
Stephen Pieroni, Examiner

No. 17480