STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SCHOOL DISTRICT OF DRUMMOND EMPLOYEE'S ASSOCIATION, Complainant, vs. SCHOOL DISTRICT OF DRUMMOND, Respondent.	:	Case XIV No. 25387 MP-1057 Decision No. 17498-A

Appearances:

Mr. Barry Delaney, Executive Director, Chequamegon United Teachers, Route 1, Box 111, Hayward, Wisconsin 54843, appearing on behalf of the Complainant.

Mr. Dale R. Clark, Attorney at Law, P.O. Box 389, Ashland, Wisconsin 54806, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW & ORDER

School District of Drummond Employee's Association, hereinafter referred to as Complainant or the Association, filed a complaint with the Wisconsin Employment Relations Commission on March 14, 1980 in which the Association alleged that the School District of Drummond had committed a prohibited practice within the meaning of Section 111.70 of the Municipal Employment Relations Act (MERA). The Commission thereafter appointed Sherwood Malamud, a member of its staff, as an Examiner and authorized him to make and issue Findings of Fact, Conclusions of Law and Orders in the matter. 1/

Hearing was held on February 19, 1980 in Washburn, Wisconsin. A stenographic transcript of the hearing was prepared and filed with the Commission on May 28, 1980. By June 27, 1980 Complainant filed a brief, and Respondent, by said date, filed a brief and reply brief. The undersigned having fully considered the evidence and arguments and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The School District of Drummond Employee's Association is a labor organization; its business address is Route 1, Box 111, Hayward, Wisconsin 54843.

2. The School District of Drummond is a municipal employer; its business address is Drummond, Wisconsin 54832.

3. The Association is the certified collective bargaining representative for all non-certified staff regularly employed by the District excluding managerial, supervisory and confidential employes.

4. The Association and the District are parties to a collective bargaining agreement in effect from November 1, 1978 to and including June 30, 1980. Said agreement makes no provision for final and binding arbitration of disputes. It does provide a procedure for presenting grievances; that procedure was dutifully exhausted.

1/ Reference at page 1 of the transcript to the Examiner's association with the Department of Industry, Labor and Human Relations' Equal Rights Division is hereby corrected above.

The agreement also contains the following provision pertinent hereto:

ARTICLE XIII - Working Conditions

. . .

J. Aides or secretaries when assigned 75 percent or more of a teacher's class or playground duty when there is no teacher or principal to direct supervision shall receive a ten (10) percent higher hourly wage for such assigned periods.

5. On August 31, September 4, 5, 6, 7, 10 and 11, 1979, 2/ Keuster, a Kindergarten teacher, assigned Radloff, a teacher aide at Respondent's Cable Grade School, to work with fifteen of the seventeen children on specified exercises in the Peabody Language Development Kit. Radloff worked and taught the children for thirty minutes on each of the above dates. During these thirty minute time segments, Keuster worked in a corner of the room with the two remaining students. Keuster remained in the classroom and Radloff was subject to Keuster's supervision during these time segments.

6. On September 12, Radloff complained to the Cable School Principal Gustafson concerning Keuster's daily assignments, and Radloff demanded she be paid the 10% permium under Article XIII J for the thirty minute segments on each of the seven days which she was assigned fifteen of the seventeen children in the class. The premium pay at issue here amounts to a total of approximately $1.31. 3/

7. Gustafson immediately stopped Keuster's assignement of the vast majority of the students in her class to the teacher aide. He also contacted District Administrator Prenn concerning Radloff's demand for premium pay. Radloff was then told to submit a request for the 10% premium for the time in question. Radloff submitted her request for the premium pay which was denied by Prenn.

8. In negotiations for the 1978-80 agreement, Complainant's representatives suggested the inclusion of Article XIII J for several reasons; one of which was to bring an end to the practice of classroom teachers leaving the classroom for the purpose of taking a cigarette or coffee break. Complainant wanted to end the teacher practice of turning over most of the class to an aide, while the teacher tutored one or two students. However, Complainant never expressed this latter concern to Respondent during their negotiations over what ultimately became Article XIII J quoted above.

9. When Keuster takes a duty free lunch and Radloff relieves her, Radloff is paid the Article XIII J premium.

10. Respondent's denial of Radloff's claim for premium pay does not violate the parties agreement.

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

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2/ Unless otherwise specified all dates refer to 1979.

3/ There is no direct testimony in the record concerning the exact amount of grievant's claim. The Examiner calculated the amount of potential liability here by: 1) Taking 10% of the aides hourly rate in 1979-80 which is $3.75/hour or a premium of 37.5 cents for each "assigned" hour under Article XIII J. 2) Multiplying this premium pay by 7 half hour segments or 3.5 hours which equals $1.305. The Examiner rounded the figure upwards in his Findings of Fact.

CONCLUSIONS OF LAW

1. The Examiner asserts the jurisdiction of the Wisconsin Employment Relations Commission to determine the contractual dispute between Complainant and Respondent under Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

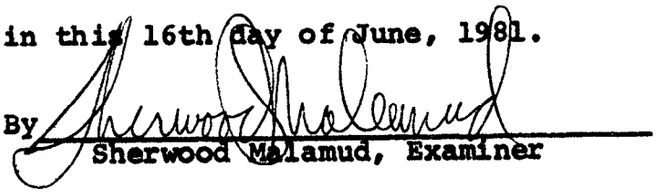
2. By denying Radloff the 10% premium pay, the Employer did not violate the parties agreement, and consequently, by said conduct it did not violate section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

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

Dated at Madison, Wisconsin this 16th day of June, 1981.

By 
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

Complainant alleges that Respondent violated the parties agreement when it denied Radloff premium pay, 10% of the aides hourly rate, for a period of 30 minutes on each of the following work days, August 31, September 4, 5, 6, 7, 10 and 11. Respondent denied it violated the parties collective bargaining agreement when it refused to pay Radloff's claim for premium pay under Article XIII J of the agreement. Since the parties agreement contains no provision for final and binding arbitration of disputes, the Examiner asserts the jurisdiction of the Commission under Section 111.70(3)(a)5 of the Municipal Employment Relations Act to determine the matter. Resolution of the parties dispute turns on the interpretation of Article XIII J of the labor agreement.

POSITIONS OF THE PARTIES:

Complainant interprets said language as follows. If an aide is assigned 75% or more of a teacher's class, she is entitled to premium pay. If she is assigned playground duty when there is no teacher or principal to direct supervision, she is entitled to premium pay. Complainant argues that Radloff on the seven days noted above was assigned more than 75% of Keuster's class, and as a result she is entitled to the premium pay. Complainant argues that if the premium pay only applied when a teacher or principal were not present, the aide would be in control of the entire class or playground. The 75% limitation would be unnecessary. It further argues that the phrase "no teacher or principal to direct supervision" should be interpreted to mean that when the aide rather than the teacher is providing direct supervision, the premium should be paid. Complainant notes that Respondent's witnesses could not recall why the "75 percent" language was included in this provision. Complainant argues it was included to provide a premium to the aide when the aide is teaching the vast majority of the students in the class. Complainant urges that its claim be sustained. Respondent be found in violation of MERA, and it be directed to post notices.

Respondent filed a brief and a reply brief. Respondent argues that Article XIII J is clear and unambiguous. Two conditions must be met to justify the payment of the premium: 1) the aide must be assigned 75% or more of the class; 2) no teacher or principal may be present in the class or playground. Here, the presence of the teacher negates Respondent's obligation to pay the 10% premium. Respondent argues that the language was included in the agreement to remedy a situation where teachers would duck out for a cigarette or coffee break and leave the aide with the responsibility of classroom or playground supervision. In its reply brief, Respondent cites Egner v. States Realty Company, 223 Minn. 365, and Board of Education of City of Minneapolis v. Sand, 227 Minn. 202 in support of its position that to supervise means to oversee. Keuster was in the position to oversee the aides work during the seven 30 minute segments in question. Radloff did not have the sole responsibility for the children on the above dates, therefore, she is not entitled to the premium pay.

DISCUSSION:

Radloff claims Respondent must pay her premium pay for the thirty minute time segments in which she supervised fifteen of 17 students in Keuster's class in August and early September, 1979. The source of her claim is Article XIII J. The parties differ as to the meaning and scope of the language which reads as follows:

ARTICLE XIII - Working Conditions

. . .

J. Aides or secretaries when assigned 75 percent or more of a teacher's class or

playground duty when there is no teacher or principal to direct supervision shall receive a ten (10) percent higher hourly wage for such assigned periods.

The above language is ambiguous. The phrase when 75% or more of a teacher's class may modify only the phrase a teacher's class. Similarily, the phrase when there is no teacher or principal present may only modify the phrase playground duty. The Association presses the above reading on the Examiner.

Respondent argues that the phrase "when there is no teacher . . . to direct supervision" applies to both a teacher's class and playground duty. It argues that to collect the premium the aide must be assigned 75% of the class and no teacher or principal may be present.

Article XIII J is awkward. Under Respondent's reading of the clause, the reason both the 75% and supervision limitation were included is not clarified by the record. The Association's reading of the language is grammatically flawed. For the reference to the teacher's class and playground duty to be independent of one another, there should be either a comma or semi-colon between the "class" and "or" in Article XIII J. It also overlooks the fact that when is used here in a conjunctive context. The Examiner must look beyond the awkward construction of the language to determine its meaning.

In resolving contract interpretation problems an Examiner or arbitrator may use several rules of interpretation to clarify ambiguous language. 4/ One such rule, is that the words of an agreement be given their plain meaning, unless there is evidence that the parties intended a special meaning for certain contractual language. Here, the plain meaning of the words as punctuated in the agreement tends to support Respondent's reading of the clause. There is no punctuation in the agreement which isolates the 75% limitation from the condition that teacher or principal supervision be unavailable while an aide is performing an assignment.

Another rule of interpretation further supports the reading of Article XIII J urged by Respondent. The rule provides that ambiguous language be interpreted against the drafter. 5/ Complainant proposed the inclusion of Article XIII J in the agreement. Although Complainant wanted to solve the teacher "duckout problem", it also wished to bring an end to the teacher's practice of dumping a vast majority of students on the teacher aide. This latter justification was not explained to Respondent by Complainant, and its draft of the language did not clearly reflect that intent. The Examiner, therefore, adopted Respondent's interpretation of the language. Two conditions are necessary for the collection of premium pay by an aide: 1) the aide must be assigned 75% or more of the teacher's class; 2) the aide must fulfill the assignment by herself without the supervision of a teacher or principal. In applying the above language to the facts herein, it is clear that Radloff was assigned more than 75% of the class. The dispute then boils down to who was in charge of the class during the seven 30 minute segments, the teacher or the aide. Radloff admitted that if problems in the class developed during the 30 minute segments, Keuster was available to her for direction. 6/ Accordingly, the Examiner concludes that the teacher was present and supervising the class during the seven 30 minute segments. Through the presence of the teacher, a necessary condition for the payment of the premium was absent here. Therefore, Radloff's claim fails. Accordingly, the Examiner dismissed the complaint.

Dated at Madison, Wisconsin this 16th day of June, 1981.

By Sherwood Malamud, Examiner

4/ See, Elkouri and Elkouri, How Arbitration Works, 3rd Ed. BNA, Washington, D.C. 1973, Chapter 9 p. 296-320.

5/ Ibid. p. 318-319.

6/ Transcript p. 28.