STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LEONARD VANDEHEY Complainant, vs. BOARD OF EDUCATION, ELROY-KENDALL-WILTON SCHOOL DISTRICT Respondent.	:	Case VIII No. 25856 MP-1082 Decision No. 17707-A

Appearances:
Mr. Leonard Vandehey, 1008 Academy, Elroy, Wisconsin 53929, appeared on his own behalf.
Mr. Allen Schraufnagel, District Administrator, Elroy, Wisconsin 53929, appeared on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Mr. Leonard Vandehey (Complainant) filed a complaint on March 6, 1980 with the Wisconsin Employment Relations Commission, alleging that the Board of Education, Elroy-Kendall-Wilton School District (Respondent) had violated section 111.70 of the Municipal Employment Relations Act. The Commission on March 25, 1980 appointed Ellen J. Henningsen, a member of its staff, to make and issue Findings of Fact, Conclusions of Law and Order, as provided for in sections 111.70(4)(a) and 111.07 of the Wisconsin Statutes. Hearing on the complaint was held on April 24, 1980. The record was closed on June 20, 1980. The parties chose not to file briefs.

The Examiner, having considered the evidence and arguments presented by the parties, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Complainant Leonard Vandehey is a municipal employe who is employed by Respondent as the Royall High School head football coach.

2. Respondent Board of Education, Elroy-Kendall-Wilton School District, is a municipal employer.

3. The Wisconsin Interscholastic Athletic Association (WIAA) is a private organization comprised of Wisconsin school districts which manages interscholastic athletic competition of the member school districts. Respondent is a member of the WIAA, and the football team at Royall High School participates in WIAA sanctioned competition. In order to participate in WIAA sanctioned competition, schools must abide by all rules and regulations of the WIAA.

4. The Elroy-Kendall-Wilton Education Association and Respondent are parties to a collective bargaining agreement for the term from July 1, 1979 until June 30, 1980 which provides in relevant part as follows:

ARTICLE III. MANAGEMENT RIGHTS RESERVED

A. . . . The Board shall be the exclusive judge of all matters relating to the conduct of its business, including, but not limited to the building, equipment, methods, and materials to be utilized. Nothing in this agreement . . . shall require the Board to continue in existence any of its present programs in its present form . . .

. . .

B. Nothing in this article is to be construed as limiting the negotiability of any items related to wages, hours, and conditions of employment.

. . .

ARTICLE VI. SALARY AND FRINGE BENEFIT STIPULATION

. . .

J. Mileage and Other Expense

Staff members and other employes are reimbursed at seventeen cents per mile for use of personal vehicles for official business. Vouchers must be submitted on proper expense forms on a monthly basis.

. . .

TERMS OF THE AGREEMENT

. . .

Nothing contained in this Agreement shall be construed in any way to be interfering with the obligation of the parties hereto to comply with any and all state and federal laws, or any rule, regulation, or order pertaining to matters covered herein, and such compliance shall not constitute a breach of this Agreement.

Said agreement does not contain a grievance arbitration provision to resolve disputes arising under that agreement.

5. Prior to the 1979 football season, Respondent considered scouting trips by its coaches to view opponents to be official school business and thus subject to the mileage reimbursement clause (Article VI, section J) of the agreement.

6. In June 1979 the WIAA Board of Control ordered the elimination of the use of school vehicles or fuel, including reimbursement for use of personal vehicles, for purposes of scouting.

7. On July 10, 1979 Respondent adopted the above policy of the WIAA. Complainant subsequently was notified of Respondent's action. Thereafter, Complainant undertook scouting missions during the 1979 football season as part of his head football coach duties. On December 4, 1979, Complainant submitted a travel voucher requesting reimbursement, pursuant to Article VI, section J, for the miles driven on those scouting trips. Respondent denied reimbursement due to the WIAA rule. Complainant timely filed a grievance, pursuant to the grievance procedure of the agreement, protesting the denial.

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

CONCLUSIONS OF LAW

1. Because the collective bargaining agreement between Respondent and the Elroy-Kendall-Wilton Education Association does not contain a provision for final and binding grievance arbitration, the Examiner will assert the jurisdiction of the Commission to determine the merits of the alleged contractual violation.

2. Respondent, by refusing to reimburse Complainant for mileage expenses incurred while on scouting trips, has not violated the collective bargaining agreement between Respondent and the Elroy-Kendall-Wilton Education Association and therefore has not committed a prohibited practice within the meaning of section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 24th day of September, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant alleges that Respondent violated the collective bargaining agreement between Respondent and the Elroy-Kendall-Wilton Education Association, thereby violating section 111.70(3)(a)5 of Municipal Employment Relations Act (MERA) 1/, by refusing to reimburse him for his mileage incurred while on scouting trips as a football coach. Article VI, section J of the collective bargaining agreement states that Respondent is required to reimburse employes seventeen cents per mile for use of personal vehicles "for official business". Scouting trips have always been considered "official business", reimbursable pursuant to Article VI, section J. Respondent, Complainant alleges, changed this practice, which amounts to a condition of employment, without fulfilling its obligation to bargain. Respondent's contractual obligation to reimburse mileage expenses cannot be excused by the language in the "Terms of the Agreement" section of the contract; if so, any voluntary organization could issue a rule which could unilaterally overturn otherwise lawful provisions of a collective bargaining agreement. "Rule, regulation, or order" applies to the state and federal laws previously mentioned in that clause, not to rules of a voluntary organization.

Respondent argues that it has not violated the collective bargaining agreement or section 111.70(3)(a)5 of MERA. Article VI, section J states that mileage reimbursement is required "for official business." Respondent, by adopting the WIAA rule, in effect determined that scouting was no longer "official business." The Management Rights clause of the contract grants Respondent the right to determine what is or is not "official business."

Respondent also argues that the clause in the "Terms of the Agreement" section permits its action. That clause states that:

> [n]othing contained in this Agreement shall be construed in any way to be interfering with the obligation of the parties hereto to comply with any and all state and federal laws, or any rule, regulation, or order pertaining to matters covered herein, and such compliance shall not constitute a breach of this Agreement.

The WIAA issued an order concerning scouting trips which Respondent was obligated to abide by or risk disciplinary action imposed by the WIAA. This order is an "order" within the meaning of the above contract language. The phrase "rule, regulation or order" includes rules, regulations or orders promulgated by agencies other than the state or federal government.

DISCUSSION

Article VI, section J states that "staff members and other employes are reimbursed at seventeen cents per mile for use of personal vehicles for official business." The collective bargaining agreement contains no specific reference to scouting trips and thus the contract does not on its face indicate that mileage costs incurred

1/ Section 111.70(3)(a)5 states that:

> It is a prohibited practice for a municipal employer individually or in concert with others . . . [t]o violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes . . . .

due to scouting trips are a reimburseable expense. The parties agree, however, that scouting has always in the past been considered "official business" within the meaning of Article VI, section J. Treating scouting trips in this manner means that scouting trips were considered by Respondent to be one of the duties of a coach. 2/ It is Respondent's right, pursuant to the management rights clause of the collective bargaining agreement, to determine whether scouting trips are to continue to be part of a coach's duties. The management rights clause states that it is Respondent's right to determine ". . . the methods . . . to be utilized." That clause also states that "Nothing in this agreement shall . . . require the Board to continue in existence any of its present programs in its present form . . ." These statements indicate that Respondent had the right to remove scouting from Complainant's coaching duties.

Respondent's decision concerning reimbursement did not mean that coaches were expected to make scouting trips at their own expense. Rather, the decision to discontinue the reimbursement of coaches for mileage costs incurred during scouting trips was, in effect, a decision by Respondent that scouting trips were no longer a duty or responsibility expected of coaches. Respondent's decision concerning reimbursement was communicated promptly to Complainant and he knew, prior to undertaking the trips and incurring any expense, that he was no longer expected to undertake scouting trips.

Because Respondent was contractually permited to remove scouting trips from Complainant's duties as coach, scouting trips were no longer "official business" within the meaning of Article VI, section J. Therefore, no contractual violation, and thus no statutory violation, occurred when Respondent refused to reimburse Complainant for mileage costs incurred due to scouting trips. As this case turns on Respondent's right to include scouting as a duty, there is no need for this Examiner to interpret the "Terms of the Agreement" clause. In addition, the Examiner has not dealt with Complainant's allegation that Respondent unilaterally changed a condition of employment because the complaint involved solely a section 111.70(3)(a)5 or violation of contract allegation and not a section 111.70(3)(a)4 or refusal to bargain allegation.

Dated at Madison, Wisconsin this 24th day of September, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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2/ There is no evidence that coaches were required to undertake scouting trips prior to the adoption of the WIAA policy. Rather, the record indicates that such trips, if made, were "official business."