

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

## Respondents.

No. 17708-A

3. That Complainant Northland Pines Education Association and Respondent Board of Education were signators to a collective bargaining agreement effective during the 1978-79 and 1979-80 school years covering wages, hours and conditions of employment of the employees in the aforesaid unit; and that said agreement contained the following provisions:

SECTION 1 - BOARD RESPONSIBILITIES

The Board of the Northland Pines School District, on its own behalf and on behalf of the electors of the district, hereby retains and reserves unto itself, except as herein otherwise specifically provided and agreed to, all powers, rights, authority, duties and responsibilities.

SECTION VIII - FACULTY SUBSTITUTIONS

Absences about which the administration has received adequate notice will be covered by substitute teachers if available. If an elementary art, music or physical education teacher is absent, a substitute shall be used if available during the period of the special teacher's absence. However, it is recognized that the administration may assign a regular teacher to substitute for an absent teacher. If a teacher is so required, the substituting teacher shall be reimbursed at the rate of \$5.00 per period.

SECTION XI - POLICIES RELATING TO SALARIES

D) The assignment of regular classes shall be the function of the Administration.

and that the above mentioned labor agreement makes no provision for the final and binding resolution of disputes concerning its interpretation or application.

4. That during the 1978-79 contract year a District Art teacher was assigned to teach art at the Northland Pines Elementary School and taught two thirty-minute periods of art per week in each class of the Northland Pines School District Elementary School.

5. That commencing with the 1979-80 school year, because of staff reduction, a District Art teacher was assigned to teach art at the Northland Pines Elementary School and taught one thirty-minute period of art each two weeks in each class of Northland Pines School District Elementary School; and that the classroom teachers taught the other art classes formerly taught by the assigned art teacher.

6. That on or about September 28, 1979, the elementary teachers requested substitute pay as provided for in Section VIII, of the parties' collective bargaining agreement, by means of District-provided vouchers; that on or about October 15, 1979, the District failed to pay the aforementioned vouchers; that on or about October 19, 1979, Carol Smart, Association President, notified the elementary principal that said vouchers had not been paid; and that on or about October 22, 1979, the elementary principal replied by written communication that the matter needed to be resolved at the District Administration level.

7. That as a result of all of the above, a grievance was filed on or about October 25, 1979 on behalf of the affected teachers and timely processed under the terms of the collective bargaining agree-

ment; that the Complainant herein took the position in relevant part that the aforementioned teachers had been denied payment of said vouchers in violation of the collective bargaining agreement between the Complainant Association and Respondent Board; that said grievance was denied by Respondent Board; and that the grievance procedures contained in the collective bargaining agreement have been exhausted.

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

CONCLUSIONS OF LAW

1. That the Complainant exhausted the grievance procedure established by the collective bargaining agreement between Complainant Association and the Respondent Board and, therefore, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of said grievance.

2. That the Respondents have not failed to provide compensation for elementary teachers providing art instruction during the 1979-80 school year in the absence of an art instructor who provided those services during the 1978-79 school year in violation of the terms of the collective bargaining agreement existing between the Respondent Board and Complainant Association and have not violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

3. That since the Respondents have not violated the terms of the collective bargaining agreement existing between the Complainant Association and Respondent Board and therefore have not committed a prohibited practice in violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act by failing to pay elementary teachers compensation for providing art instruction during the 1979-80 school year in the absence of an art instructor who provided said services during the previous school year, said Respondents have not interfered with, restrained or coerced employees represented by the Complainant Association in violation of Section 111.70(3)(a)1 of the Municipal Employment Relations Act.

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

ORDER

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

Dated at Madison, Wisconsin this *9th* day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Dennis P. McGilligan*  
Dennis P. McGilligan, Examiner

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MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The instant complaint was filed on March 3, 1980. The Examiner scheduled a hearing for April 23, 1980 which was subsequently postponed to May 22, 1980. The Respondent filed an Answer on April 7, 1980. Thereafter, the parties agreed to stipulate to the facts in writing as dated May 8, 1980; waive their rights to a hearing; make arguments in written brief form and let the Examiner decide the issues. Briefs were exchanged through the undersigned on June 19, 1980.

POSITION OF THE COMPLAINANT:

The Complainant Association alleges in its complaint that:

"By the acts and conduct described above in subparagraphs (e), (i) and (k) of Paragraph IV, the Board has violated the Collective Bargaining Agreement and thusly violated Section 111.70(3)(a)5 and 1, Wisconsin Statutes.

In support thereof the Complainant Association argues that the language of the collective bargaining agreement between the parties provides compensation for elementary teachers providing art instruction three (3) periods every two (2) weeks during the 1979-80 school year in the absence of an art instructor who provided these services during the 1978-79 school year.

More specifically, the Complainant Association relies on Section VIII of said agreement entitled "Faculty Substitution" to support its position. The Complainant Association maintains that the absence of an elementary art teacher due to a staff reduction cannot be treated any differently than temporary absences due to illness for purposes of substitute pay.

The Complainant Association also argues that the District's action cannot be construed as a management right superceding other provisions in the collective bargaining agreement. In this regard the Complainant Association contends that because the District had elementary teachers provide necessary services in the absence of an elementary art special teacher, it was obligated to reimburse the teachers for those services pursuant to Section VIII of the agreement.

As a remedy the Complainant Association requests that the Examiner find that the Respondent committed the prohibited practices alleged herein; that the Respondent be ordered to cease and desist violating the agreement; that the Respondent be ordered to make whole all individuals for losses occasioned by Respondent's prohibited practices; that the Respondent be ordered to reimburse the Association for monetary amounts needed to process said complaint; that the Respondent be ordered to post an appropriate compliance note and that the Examiner order such other relief as it deems appropriate.

POSITION OF THE RESPONDENTS:

The Respondents contend that they did not commit prohibited practices by violating the aforementioned agreement as alleged by the Complainant Association.

To support this position, the Respondents argue that a teacher is entitled to substitute pay only when he is teaching for a teacher, under contract, who is temporarily absent.

The Respondents feel that the key words in Section VIII are "absent" and "substitute." With respect to said words, the Respondents contend that their plain meaning supports the Respondents' interpretation of the disputed contract language.

The Respondents also argue that the language of Section VIII leads to the inescapable conclusion that the context in which the terms "substitute" and "absent" are used requires definition in terms of temporary absences.

The Respondents further argue that under the management's rights clause the District has the right to reduce staff size and assign teachers to teach classes -- rights which it exercised in the instant case. The Respondents conclude that because the grade school teachers were required to teach extra art periods pursuant to their obligations under the agreement this does not entitle them to substitute pay under Section VIII.

Respondents would have the Examiner deny and dismiss the complaint.

#### EXHAUSTION OF GRIEVANCE PROCEDURE:

The question of whether the Complainant herein exhausted all steps of the grievance procedure must first be determined, for, if it is decided that the Complainant failed to exhaust all steps of the grievance procedure, the Examiner would refuse to assert the jurisdiction of the Commission. 1/ The matter was stipulated to and, as noted in the Findings of Fact, the contract did not contain procedures for final and binding arbitration. The Complainant did, in fact, exhaust all steps of the grievance procedure. Therefore, the Examiner has asserted the jurisdiction of the Commission to determine the merits of said grievance.

#### SUBSTANTIVE ISSUE:

As noted above, the primary issue herein is whether the Respondent Board breached its collective bargaining agreement with Complainant Association, when it failed to provide compensation for elementary teachers providing art instruction three (3) periods every two (2) weeks during the 1979-80 school year in the absence of an art instructor who provided those services during the 1978-79 school year. For the reasons noted below, the Examiner finds it reasonable to conclude that it did not violate said agreement.

Both parties rely on Section VIII of the agreement to support their position. This section governs faculty substitutions and provides that if an elementary art special teacher is absent, a substitute shall be used if available during the period of the special teacher's absence. The section also provides that the administration may assign a regular teacher to substitute for an absent special teacher and establishes a reimbursement rate regarding same.

In addition, both parties cite the meaning of the word "absent" to support their interpretation of the above provision. The record further indicates that the term "substitute" is relevant to a determination regarding the meaning of said section.

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1/ Lake Mills Joint School District No. 1 (11529-A) 7/73; Oostburg Joint School District No. 1 (11196-A) 11/72.

It is common to give words their ordinary and popularly accepted meaning in the absence of anything indicating that they were used in a different sense or that the parties intended some special colloquial meaning. In the present case, neither past practice nor bargaining history sheds light on the meaning of the words "absent" and "substitute". The contract does not define the terms.

Based on the above, it is reasonable to define the terms "substitute" and "absent" by giving the words their ordinary, plain meaning. A substitute is one who serves in place of another person. 2/ Thus, a substitute teacher is one who replaces another teacher or one who is absent. Absent is defined as not present. 3/ A teacher who is absent, therefore, is one who is not present or who is missing.

The Respondents argue that "this all contemplates the existence of a teacher in order for that teacher to be missing." The Respondents add that "since the staff in this instance was reduced in size, there was no missing teacher; there was no absent teacher; there was no teacher to substitute for." The Respondents conclude that the elementary school teachers were simply teaching the additional art classes in the grade school and not substituting for anyone and, therefore, not eligible for compensation under Section VIII as noted above. The Examiner would agree.

An examination of the language of Section VIII leads to the conclusion that the context within which the terms "substitute" and "absent" are used requires definition in terms of temporary absences. The first sentence refers to absences about which the Administration has received adequate notice. Absent persuasive evidence to the contrary, it is reasonable to conclude that notice comes from a contracted teacher who for some reason is temporarily absent. The second sentence states that substitutes shall be used if available during the period of the special teacher's absence. If the Complainant Association's position prevails, the District would have no right to reduce the staff without paying substitute pay from that period on. This would lead to a harsh or absurd result.

An interpretation of the above contract language in this manner by the Examiner is supported by its historical use. Substitute pay is normally accorded a teacher who is requested to temporarily replace another teacher, for whatever the reason. A substitute teacher may teach on behalf of another teacher who is absent several hours, a day or longer. However, where there is a reduction in staff which causes other teachers to teach additional classes, the matter is not generally covered by a contract provision governing the use of substitute teachers and substitute pay. Any deviation from this common understanding regarding use of substitute teachers and the payment of substitute pay must be supported by clear and unambiguous contract language or past practice and/or bargaining history. The Complainant did not establish same in the instant case.

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2/ Webster's New World Dictionary of the American Language, 2d ed., page 1420, 1974.

3/ Ibid, p. 4.

Finally, the Complainant Association argues that as a result of the Respondents' actions the Employer has interfered with, restrained or coerced the employees of the Respondent District represented by the Complainant Association in violation of Section 111.70(3)(a)1 of the Municipal Employment Relations Act. However, since the Examiner has found against the Complainant on the other allegations, and in the absence of any evidence to the contrary, it follows that the undersigned must dismiss this part of the complaint as well.

Based upon the foregoing considerations, the Examiner therefore concludes that the Respondents did not violate Section 111.70(3)(a)5 or Section 111.70(3)(a)1 of MERA, nor any other section of the Act and that, as a result, the complaint must be dismissed in its entirety.

Dated at Madison, Wisconsin this 9th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Dennis P. McGilligan  
Dennis P. McGilligan, Examiner

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