STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SCHOOL DISTRICT OF DRUMMOND EMPLOYE'S ASSOCIATION, Complainant, vs. SCHOOL DISTRICT OF DRUMMOND, Respondent.	Case XV No. 25883 MP-1085 Decision No. 17726-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 Employe's Association, hereinafter referred to as 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 and was continuing to commit a prohibited practice within the meaning of Section 111.70 of the Municipal Employment Relations Act (MERA). The Commission thereafter appointed Timothy E. Hawks, a member of its staff, as an Examiner and authorized the same to make and issue Findings of Fact, Conclusion of Law and Order in the matter.

Hearing was held on May 28, 1980 in Ashland, Wisconsin. A stenographic transcript at the hearing was prepared and filed with the Commission on November 19, 1980. The parties thereafter submitted to the Examiner post-hearing briefs which were simultaneously exchanged on December 15, 1980. The undersigned having fully considered the evidence and arguments and being fully advised in the matter, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. School District of Drummond Employe's Association is a labor organization with its business address at Route 1, Box 111, Hayward, Wisconsin 54843.

2. The School District of Drummond is a municipal employer with its business address at 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 is the first between these parties.

5. Said agreement makes no provision for binding arbitration of disputes regarding its application and interpretation. The agreement does provide a procedure for presenting grievances which procedure was dutifully exhausted.

6. Said agreement contains the following provisions:

ARTICLE IV - GENERAL PROVISIONS

A. This Agreement may be altered, changed, added to, deleted from, or modified only through the voluntary mutual consent of the parties in written and signed amendment to this Agreement. This Agreement upon ratification supercedes - and cancels all prior practices and agreements whether written or oral unless expressly stated to the contrary herein. The Association does not waive its right to bargain impact.

. . .

ARTICLE VII - DISCIPLINE PROCEDURE

A. Alleged breaches of discipline shall be promptly reported to the affected employee.

B. Unless immediate action is required to protect life and property an employee shall at all times be entitled to have present a representative of the Association whenever requested to meet with the administration when being disciplined more severely than a written reprimand. When a request for such representation is made, no action shall be taken with respect to the employee until such representative of the Association is present unless the Association does not provide a representative within twenty-four (24) hours.

C. No employee shall be terminated, suspended or reduced in compensation without cause. Employees will serve a ninety (90) day probationary period before being covered by the cause standard.

7. On January 7, 1980, as a consequence of inclement weather, the District determined by its agents not to open school on an otherwise scheduled school day. Certain non-certified employes of the District did not report to work and were not paid for the hours they did not work. Certain custodial employes of the District did report to work and were paid for the hours they worked. Two employes who did not work on January 7, 1980, were nevertheless paid for 40 hours of work for the week in which January 7, 1980 fell, but said employes were paid for having worked the previous Saturday (which was not a regularly scheduled workday) and not for January 7, 1980.

8. For a period of at least seven years prior to the 1979-80 school year, the non-certified employes of the District were paid for all days they were required to work as set forth on a document entitled "employes contract" whether or not on any of such days the employes did not work due to inclement weather.

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

CONCLUSION OF LAW

The School District of Drummond did not commit a prohibited practice as defined by Section 111.70(3)(a)5, Municipal Employment Relations Act, since the District did not violate Article VII, Section C of the collective bargaining agreement between it and the School District Employe's Association by not paying certain employes for the hours they did not work on January 7, 1980 as a consequence of inclement weather.

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

ORDER

IT IS ORDERED, that the complaint be, and the same hereby is dismissed.

Dated at Milwaukee, Wisconsin this 16th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Timothy E. Hawks
Timothy E. Hawks, Examiner

SCHOOL DISTRICT OF DRUMMOND XV Decision No. 17726-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complainant alleges that Respondent committed a "prohibited practice" as defined by Section 111.70(3)(a)5 MERA when it deducted an amount equal to one day's wages from certain of its non-teaching staff when they did not work on a day when school was closed as a consequence of inclement weather. The Association contends that the affected employes "were reduced in compensation without cause". More particularly, the Association asserts that the Respondent has for seven years paid its employes for the number of days set forth in their individual employment contracts whether or not any of such days were not worked as a consequence of inclement weather. Discontinuation of this practice according to Complainant constitutes a violation of the just cause standard.

The Respondent asserts that the collective bargaining agreement expressly supercedes and cancels prior practices. According to Respondent, the Association's reliance on past practice is misplaced. The Respondent also emphasizes that the contract is silent as to the question of pay for "snow days", with the exception of a parenthetical statement on the wage schedule which would guarantee that the hours worked by cooks on snow days would entitle them to their hourly wage. Thus, the Respondent concludes that the contractual silence for the remainder of the staff would establish the proposition that if the employes did not work they would not be paid. Accordingly, the District requests that the matter be dismissed and that its costs be reimbursed by Complainant.

Section 111.70(3)(a)5 MERA provides in relevant part that it is a prohibited practice for an employe

> "To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes . . ." 1/

The contractual provision upon which the Association relies states:

> ARTICLE VII - DISCIPLINE PROCEDURE
>
> . . .
>
> C. No employees shall be terminated, suspended or reduced in compensation without cause. Employees will serve a ninety (90) day probationary period before being covered by the cause standard.

Notably, this provision falls within a contractual article entitled "Discipline". While the title of the Article is not necessarily dispositive of disputed language found within it, the title stands as direction for interpretation. More importantly, the two paragraphs

---

1/ The collective bargaining agreement at issue here makes no provision for binding grievance arbitration thus there is no question regarding exhaustion of contractual dispute resolution mechanisms.

which proceed the above section and are contained in the same Article are limited to disciplinary matters. Section A, Article VII, requires that "alleged breaches of discipline shall be promptly reported to the affected employee". Section B requires that a representative of the Association be present when the District's Administration requests to meet with an employee who is to be disciplined more severely than a written reprimand. Section C, the only other section in the "Discipline Procedure" article, sets forth the cause standard cited in full above. This Article, when read as a whole clearly limits the applicability of the "just cause" standard to those situations in which the District decides to discipline an employe and chooses as a means of discipline termination, suspension or reduction in compensation.

In this case the District chose not to pay employes for the hours they did not work. Discipline is ordinarily considered the imposition of a penalty for the purpose of reforming unacceptable behavior. Here the District did not impose discipline. Accordingly, Article VII, Section C is unapplicable to the disputed matters.

The Association argues that the past practice of the employer may provide substance to a "just cause" standard as the standard is applied to specific circumstances. The Association also asserts that the "just cause" standard incorporates the last sentence of Article IV, which provides: "The Association does not waive its right to bargain impact". Either proposition may be correct given the proper contractual language. It is unnecessary to reach these arguments here, however, as the standard is limited to disciplinary matters. Since the District did not impose discipline, the undersigned makes no determination regarding these arguments.

The Association also suggests that a past practice may be an implied term of the agreement when the practice is of long standing, continuous and acknowledged by the parties through express approval or by conduct evincing tacit acquiesence. It does not assert however that the District's action constitutes a breach of an implied term. Rather as noted above, the Association asserts that the practice is incorporated within the just cause standard. The inapplicability of this standard to the instant matter is set out above. Since the allegation of statutory breach is premised solely upon a claimed violation of Article VII, Section C the undersigned makes no determination regarding the binding nature of the past practice or the impact that Article IV, Section A which provides that the "agreement . . . supercedes and cancels all past practices", might have on such an argument.

For the reasons set out above the undersigned finds that the District did not violate Article VII, Section 3 of the collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 16th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Timothy E. Hawks
Timothy E. Hawks, Examiner