STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STOCKBRIDGE EDUCATION ASSOCIATION, Complainant, vs. SCHOOL DISTRICT OF STOCKBRIDGE, Respondent.	:	Case II No. 26621 MP-1136 Decision No. 18016-A

Appearances:

Mr. Dennis W. Muehl, Executive Director, Bayland Teachers United, 1540 Capitol Drive, Green Bay, Wisconsin 54303, appearing on behalf of the Complainant.

Mr. Karl L. Monson, Consultant, Wisconsin Association of School Boards, 122 W. Washington Avenue, Madison, Wisconsin 53703, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Stockbridge Education Association, having on August 4, 1980 filed a complaint with the Wisconsin Employment Relations Commission wherein the Association alleged that School District of Stockbridge had committed prohibited practices within the meaning of the Municipal Employment Relations Act (MERA); and the Commission having appointed Dennis P. McGilligan, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing having been held on said complaint at Chilton, Wisconsin on September 16, 1980 before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and enters the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Stockbridge Education Association, hereinafter referred to as the Complainant or Association, is a labor organization and the recognized exclusive collective bargaining representative of employes of the Respondent in a bargaining unit composed of all regular full-time and regular part-time certified teachers excluding the administrator and all other employes.

2. That School District of Stockbridge, hereinafter referred to as the Respondent or District, is a municipal employer engaged in the operation of a public school system in a district which includes Stockbridge, Wisconsin.

3. That Sheila S. Piunti, hereinafter referred to as the grievant or Piunti, is a regular, certified teacher employed by the District in the bargaining unit noted above and is represented by the Association for purposes of collective bargaining.

4. That Complainant Stockbridge Education Association and Respondent School District of Stockbridge are signators to a collective bargaining agreement effective during the 1979-80 and 1980-81 school years covering wages, hours and conditions of employment of the aforesaid unit; and that said agreement contains the following provisions:

ARTICLE IV.

MANAGEMENT RIGHTS

Management retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions during the term of the collective bargaining agreement, except to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this agreement. These rights include, but are not limited by enumeration to, the following rights:

ARTICLE XIV.

MISCELLANEOUS

H. Teachers entering the system will receive full credit for experience up to five years.

that Article XIV, Section H noted above has been in existence in one place or another in every collective bargaining agreement since at least 1972 and that the above mentioned labor agreement makes no provision for the final and binding resolution of disputes concerning its interpretation or application.

5. That Sheila Piunti was hired to teach Business Education for the District beginning February 14, 1979, as a long-term substitute replacing a full-time teacher then on maternity leave; that at the time of hire Gordon Wagner, District Superintendent, informed Piunti that she would be given no credit for outside teaching experience and thereafter the District placed her on Step 0 of the Degree Lane in the Salary Schedule contained in the parties' existing collective bargaining agreement.

6. That during the summer of 1979, the District offered Sheila Piunti the same Business Education teaching position on a full-time basis for the 1979-80 school year; that Piunti subsequently accepted the position and began teaching August 1, 1979; that the District credited Piunti with one (1) year's teaching experience, for salary schedule placement purposes, because of her previous 1979 long-term substitution as Business Education teacher at Stockbridge.

7. That Sheila Piunti was employed as a certified teacher of the deaf or mentally retarded at the Fort Wayne State Hospital in Indiana from February 15, 1972 to August 15, 1972; that Piunti was hired by the Marlboro County Schools, Bennettsville, South Carolina effective August of 1972 and that Piunti continued in the employ of the Marlboro County Schools as a teacher of the hearing handicapped teaching all subject matters, until November 1, 1977.

8. That the aforementioned 1979-81 collective bargaining agreement which was in effect at all times material herein was ratified by the Association on February 11, 1980 and by the Respondent's Board of Education on February 21, 1980; that all terms of said agreement were made retroactive by the parties to August 1, 1979 and that in October of 1979, during the negotiations for said agreement, the District made a proposal concerning the disputed language to change same to provide credit only for experience in a related field which was rejected by the Association.

9. That on or about October 3, 1979, Sheila Piunti discussed her alleged improper placement on the salary schedule for the 1979-80 school year with Gordon Wagner; that Superintendent Wagner told Piunti not to pursue the matter any further at that time since the subject had been brought up in negotiations and that due to the negotiations over the terms of the aforesaid 1979-81 collective bargaining agreement, Piunti was not formally offered a regular teaching contract for the 1979-80 school year until February 21, 1980.

10. That on or about February 22, 1980 Sheila Piunti filed a written grievance with the District alleging that her placement on the 1979-80 salary schedule was inappropriate; that in said grievance Piunti claimed that she was improperly denied credit on the salary schedule for the five years of teaching experience she had in the employ of another public school system noted in Finding of Fact Number 7 above and that if Piunti had been granted credit for same she would have been placed on Step 5 of the BA lane of the salary schedule for the 1979-80 school year and Step 6 of the BA lane for the 1980-81 school year.

11. That on February 27, 1980, the Respondent, through Superintendent Wagner, verbally informed Piunti and the Association that it was denying the above grievance.

12. That the Association, on Piunti's behalf, submitted a written appeal to Wagner on March 3, 1980; that the Association requested that such appeal be placed on the Respondent's Board of Education agenda for consideration; that on or about March 20, 1980 at a regularly scheduled meeting of the Board, the Board rejected the Association's above-mentioned appeal of the denial of Piunti's grievance stating that it was the Respondent's interpretation and understanding of the disputed contract language that "experience" meant teaching within the field the teacher is hired to teach by the Respondent which was not the case with Piunti.

13. That on or about March 15, 1980, Sheila Piunti was renewed for the 1980-81 school year pursuant to Section 118.21 and 118.22, Wisconsin Statutes by the Respondent; that Respondent's renewal of Piunti did not include salary schedule placement credit for the years of teaching experience claimed by Piunti and the Association herein; that on or about April 16, 1980, Piunti initiated a second grievance making the same claims for the 1980-81 school year that she had made with regard to her salary schedule placement in the 1979-80 school year and that the Respondent through Superintendent Wagner and the Board of Education denied Piunti's claim as presented by the Association for the 1980-81 school year for the same reason they denied her 1979-80 claim noted above.

14. That the grievance procedures contained in the aforementioned applicable 1979-81 collective bargaining agreement have been exhausted with respect to the two grievances noted in Findings of Fact Numbers 10 and 13 noted above.

15. That since at least 1972 the District Superintendent and Respondent's Board of Education have interpreted the disputed language to mean that teachers would receive credit for prior teaching experience only when it related specifically to the positions they were being considered for or actually hired to teach; that since Gordon Wagner became Superintendent in August of 1977 he has evaluated applicants for teaching vacancies in the District by not giving them credit for teaching experience outside the area for which they were being interviewed or hired; that Wagner has communicated same to the job applicants; that

at least one teacher (Kathy Teller), currently a member of the bargaining unit, has not received credit on the salary schedule according to the District's policy noted above; that Superintendent Wagner has treated non-bargaining unit employes in a similar manner; that neither Superintendent Wagner or any other representative of the Respondent have formally communicated this policy to the Association prior to the instant dispute and that the Association has never filed a grievance or otherwise challenged same at any time material herein.

Upon 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 Respondent District and, therefore, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of said grievances.

2. That the Respondent has not denied credit on the salary schedule to the grievant for public school teaching experience outside the area of her employment with the District in violation of the terms of the collective bargaining agreement existing between the Respondent District and Complainant Association and has not violated Section 111.70(3)(a)5 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 23rd day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The instant complaint was filed on August 4, 1980. The Examiner scheduled a hearing for September 9, 1980 which was subsequently postponed to September 16, 1980. The Respondent answered the complaint at the hearing. A transcript was completed and mailed to the parties on October 8, 1980. Briefs were exchanged by the Examiner on November 12, 1980.

POSITION OF THE COMPLAINANT:

The Complainant alleges in its complaint that:

> By the acts and conduct described above in paragraphs 13 and 16(b), Respondent has violated the terms and conditions of its agreed upon collective bargaining agreement, including Article XIV, Section H (sic) of said agreement, set forth above in paragraph 7, in violation of Section 111.70(3)(a)(5), Stats.

In support of the above allegation, the Complainant argues that the District is required pursuant to the disputed contract language to give credit to the grievant on the salary schedule for public school teaching experience outside the area she was hired to teach for the Respondent.

In this regard the Complainant first argues that the contract language in question is broadly drawn to require salary schedule credit in the instant case.

The Complainant next maintains that a past practice does not exist which supports the Respondent's interpretation of the aforesaid contract language. The Complainant adds that even if the Examiner finds the existence of a past practice the Association was not aware of it and therefore said practice is not binding on the parties.

The Complainant also argues that bargaining history supports its position.

Based on the above, the Complainant requests that the Examiner agree with its interpretation of the disputed contract language; find that the Respondent committed a prohibitive practice as alleged and make the grievant whole for all losses caused by the Respondent's actions. The Complainant further asks that the grievant be placed on the Step 5 BA lane for work done during the 1979-80 school year and that she be advanced to Step 6 BA lane for work completed during the 1980-81 school year.

RESPONDENT'S POSITION:

The Respondent basically argues that the Examiner should look to past practice to determine the appropriate meaning of Article XIV, Section H.

In this regard the Respondent claims that the disputed language has been interpreted and applied consistently since at least 1972 to mean that teachers could receive credit for prior teaching experience

only when it related specifically to the positions they were being considered for or actually hired to teach. The Respondent argues that the Complainant has at least tacitly accepted said practice by not filing a grievance or otherwise challenging same.

The Respondent points out that despite the Union's argument in support of a broad interpretation of what is meant by the word "experience" the Union's own witnesses recognized limitations on the type of experience to be credited on the salary schedule.

In view of all of the above, the Respondent asks that 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 undisputed 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 grievances.

SUBSTANTIVE ISSUE:

At issue is whether the Respondent violated the collective bargaining agreement by denying credit on the salary schedule to the grievant for her public school teaching experience outside the area of her employment with the District.

Both parties rely on Article XIV, Section H of the agreement to support their position. However, there is nothing in said provision to prohibit the Respondent from acting as it did in the instant case. Said section merely provides that teachers hired by the District will receive full credit for experience up to five years.

The Complainant argues that the Respondent is attempting to narrow the scope of the aforementioned clause to deny credit to the grievant herein. However, an examination of the language in question reveals that it is ambiguous and subject to differing interpretations. In the instant situation, the District denied the grievant credit on the salary schedule for teaching experience outside the area for which she was hired. This is not inconsistent with the language of Article XIV, Section H, noted above, nor is an interpretation of said language by the District in this manner specifically prohibited by same. To the contrary Article IV of the agreement clearly gives the Respondent the right to make such a decision except where the District's authority is "explicitly, clearly and unequivocally restricted by the express terms of this Agreement."

Interpretation of the above contract language in this manner by the Examiner is supported by what little evidence of past practice that exists. The record indicates that representatives of the District have, since at least 1972, interpreted the disputed language to mean that teachers could receive credit for prior teaching experience

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

only when it related specifically to the positions they were being considered for or actually hired to teach. The District Superintendent has evaluated job applicants and credited their experience based on such a policy during this period of time. The Association was unable to offer one specific example of the District giving credit for experience outside the area for which the teacher was hired. The District, on the other hand, gave at least one specific example of a teacher currently in the system not receiving credit on the salary schedule for experience outside the area for which she was hired. 2/ In addition, the District has treated non-bargaining unit employes in a similar manner.

The Complainant argues that it had no knowledge of the District's hiring practice; and that, since there was no mutuality involved the practice could not be binding on it. The Respondent, on the other hand, makes an equally persuasive argument that there was at least tacit acceptance by the Association of the practice herein based on the fact that the District told applicants what kind of experience it was granting credit for and that the Association never filed a grievance or otherwise challenged same.

The Complainant relies on bargaining history to support its position. However, the Examiner finds the fact that the District attempted to change the disputed language during negotiations for the current agreement, at a time when the grievant was challenging her placement on the salary schedule, unpersuasive, absent any other bargaining history to support the Association's position.

In view of all of the above and the record as a whole, and absent any persuasive evidence to the contrary, the Examiner finds that the Complainant did not sustain its burden of proof that the Respondent violated the applicable collective bargaining agreement when it denied credit on the salary schedule to the grievant for her teaching experience outside the area for which she was hired.

Based upon the foregoing considerations, the Examiner therefore concludes that the Respondent did not violate Section 111.70(3)(a)5 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 23rd day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

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2/ Kathy Teller. See TR. 62 and Board Exhibit No. 18.