

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 168, SERVICE EMPLOYEES	:	
INTERNATIONAL UNION,	:	
	:	
Complainant,	:	Case LXXXI
	:	No. 27239 MP-1179
vs.	:	Decision No. 18349-A
	:	
KENOSHA UNIFIED SCHOOL DISTRICT NO. 1	:	
	:	
Respondent.	:	
	:	

Appearances:

Schroeder, Ventura & Breitenbach, Attorneys at Law, by Mr. Bruce E. Schroeder, appearing on behalf of the Complainant.
 Davis, Kuelthau, Vergeront, Stover, Werner & Goodland, S.C., Attorneys at Law, by Mr. Clifford B. Buelow, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Local 168, Service Employees International Union, having filed a complaint on December 22, 1980, with the Wisconsin Employment Relations Commission alleging that Kenosha Unified School District No. 1, had committed a prohibited practice within the meaning of Section 111.70 (3)(a)5 of the Municipal Employment Relations Act; and the Commission having appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and prior to the hearing and at the hearing, the Complainant having in writing and orally amended its complaint; and hearing on said amended complaint having been held before the Examiner in Kenosha, Wisconsin, on April 7, 1981; and briefs having been filed by both parties with the Examiner by July 14, 1981; and the Examiner having considered the evidence and arguments of the parties, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Complainant, Local 168, Service Employees International Union, is a labor organization and is the exclusive bargaining representative for certain custodial employees of Respondent, Kenosha Unified School District No. 1.
2. Respondent, Kenosha Unified School District No. 1, is a public school district and a municipal employer.
3. At all times material hereto, Complainant and Respondent were parties to a collective bargaining agreement, which provides for final and binding grievance arbitration. This agreement also contains an Appendix B which contains the following provisions:

APPENDIX B

SCHEDULE I - Unit Factors to Determine Personnel Requirements and Building Classifications.

I. MANHOUR UNIT FACTORS PER WEEK

- A. Man Hours Required per 1,000 Square Feet
 1. Over 236,000 Square Feet - 2.1 M. Hr.
 2. Between 180,000 to 236,000 Square Feet - 2.2 M. Hr.

3. Between 132,000 to 180,000 Square Feet - 2.3 M. Hr.
4. Between 92,000 to 132,000 Square Feet - 2.5 M. Hr.
5. Between 60,000 to 92,000 Square Feet - 2.8 M. Hr.
6. Between 36,000 to 60,000 Square Feet - 3.0 M. Hr.
7. Between 20,000 to 36,000 Square Feet - 3.4 M. Hr.
8. Under 20,000 Square Feet - 3.6 M. Hr.

B. Manhour Deductions per 1,000 Square Feet

1. Oil and/or Gas Fired Building - 0.1 M. Hr.
2. Unfired Buildings - 0.2 M. Hr.

C. Adjustment for Buildings over 25,000 square feet usable area using night custodian staff

1. Deduct 4% of total manhours

II. MANHOURL REQUIREMENTS AND BUILDING CLASSIFICATIONS

Class A1 Building - Over 425 M. Hrs. - Tremper Senior High School, Bradford Senior High School.

Class A Building - 275 to 425 M. Hrs. - Lance Junior High School, Bullen Junior High School and Reuther.

Class B1 Building - 180 to 275 M. Hrs. - Lincoln Junior High School, McKinley Junior High School, and Washington Junior High School.

Class B Building - 180 to 275 M. Hrs. - Vernon Elementary School.

Class C Building - 104 to 180 M. Hrs. - Bain, Bose, Columbus, Forest Park, Frank, Grant, Harvey, Jefferson, Jeffery, Lincoln, McKinley, Prairie Lane, Roosevelt, Somers, Southport, Strange, Sunnyside and Wilson Elementary Schools.

Class D Building - 55 to 104 M. Hrs. - Berryville, Durkee, Green Bay Road, Hill Crest, Pleasant Prairie and Whittier Elementary Schools.

Class E1 Building - School Administrative Offices - Deming Instructional Center, Weiskopf, Highland, Special Education, and Municipal Building.

4. On or about January 29, 1980, Respondent notified Complainant in writing that it intended to make certain revisions in the custodian staffing. No employes were to be laid off, but as the Respondent had expanded its facilities, revisions were necessary.

5. On or about February 4, 1980, David A. Mink, Complainant's President, filed a Step 1 grievance which alleged, in pertinent part, as follows:

"The subject of the grievance is the staff changes proposed at New Reuther, Municipal, Whittier, Tremper, and New Bradford. The changes proposed are in conflict [sic] with Appendix B of Local 168 contract.

The Local is asking to keep the Man hours at the level required [sic] as stated in Appendix B of the Service Employees contract."

6. Said grievance was not resolved by the parties and was processed through the contractual grievance procedure and ultimately submitted to Arbitration before Arbitrator Frank P. Ziedler.

7. On November 3, 1980, Arbitrator Ziedler issued an Arbitration Award which stated as follows:

"The grievance of Local 168, Service Employees International Union, that the Kenosha Unified School District violated Appendix B of the Service Employee Contract when the District reduced hours at certain schools in the District is sustained in part. While the Board reduced man hours for custodial workers in certain schools contrary to the agreement, yet the grievance limits the remedy only to the schools specifically grieved. Further because under past practice the Union tolerated certain understaffing of man hours in the past in the specific schools named, its remedy is limited only to a restoration of the same percentage of man hours which obtained in the past in the same buildings, whatever their present names; or to 100 percent of the hours where the man hours in the building in the past exceeded the requirements of Appendix B. Specifically the remedy then is that the Board is to restore to the employees up to 293 hours minus 5% at the New Reuther School, no new hours at the Bradford School, the full number of hours required at the Tremper School and the Whittier School, and 65 hours at the Municipal Building."

8. The Respondent restored all the man hours required by Arbitrator Ziedler's award so that there were 65 man hours per week at the Municipal Building of which 25 man hours were performed by a student janitor, a non bargaining unit employe.

9. The issue presented to Arbitrator Ziedler was whether the man power requirements of Appendix B must be complied with and Arbitrator Ziedler's award resolved only that issue. The issue of whether the man hours could be provided by other than bargaining unit employes was not within the scope of Arbitrator Ziedler's award and must be treated as a new issue or grievance.

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

CONCLUSION OF LAW

Respondent, by assigning 25 man hours of work at the Municipal Building to a student helper has complied with the November 3, 1980 Arbitration Award of Frank P. Ziedler, and, thus 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 Conclusion of Law, the Examiner makes and issues the following

ORDER

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

Dated at Madison, Wisconsin this 3rd day of August, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

MEMORANDUM ACCOMPANYING FINDING
OF FACT, CONCLUSION OF LAW AND ORDER

The issue raised by the amended complaint is whether the Respondent's restoring 25 man hours at the Municipal Building by the use of a student helper constitutes compliance with Arbitrator Ziedler's award issued on November 3, 1980.

COMPLAINANT'S POSITION

The Complainant argues that Arbitrator Ziedler's award is clear in that it requires the Respondent to restore "to the employees" up to 65 hours at the Municipal Building. The term "employees" has only one meaning, namely the Complainant. Therefore the Respondent's assignment of these man hours to someone other than a member of the bargaining unit is a refusal to abide by the Arbitrator's decision. The Complainant also asserts that Respondent's reliance on the right to subcontract is misplaced and the Respondent is using this argument to justify its defiance of the Arbitrator's award.

RESPONDENT'S POSITION

The Respondent argues that the sole issue before Arbitrator Ziedler was whether Appendix B was merely a guideline, as argued by it, or a requirement, as argued by Complainant. The Respondent concedes that Arbitrator Ziedler found that Appendix B is a requirement, however it insists that the use of student janitors to meet these requirements was not raised by the grievance and Arbitrator Ziedler did not consider that issue. It asserts that the use of student janitors falls within its right to subcontract, but since the use of students was not an issue at the arbitration hearing, this argument was not raised. The Respondent notes that in testimony about deviations from the requirements of Appendix B, the use of students was discussed. The testimony established that in the past, students were used to meet the man-hour requirements of Appendix B. When the use of students was dropped a loss of man hours from the requirements resulted. When no objection was made by the Union, with the passage of time, a deviation was established. Inasmuch as the parties had previously counted student's hours for Appendix B purposes, the use of a student at the Municipal Building complies with Arbitrator Ziedler's award.

DISCUSSION

The grievance underlying the arbitration alleged a violation of Appendix B of the parties' collective bargaining agreement and the relief sought was that the man-hour requirements of Appendix B be met. Appendix B requires, for buildings of a certain size, a corresponding number of man hours per 1000 square feet. The Respondent rearranged and expanded its facilities so that the total square footage increased, however the staff remained the same. This resulted in fewer man-hours than the requirements specified in Appendix B. Arbitrator Ziedler found that Respondent violated Appendix B and required the Respondent to increase the man hours in the five buildings specified in the grievance to meet the man hours specified in Appendix B.

"In the past there have been student janitors who did custodial work or were assigned to outside work. There were about eight such employes who worked ten to 15 hours per week for 37 to 38 weeks and 40 hours per week for 12 weeks in the summer. (TR-41)"

Arbitrator Ziedler further noted:

"It was the testimony of the Union that in the past when the District fell short in the number of man hours it was supposed to apply to the custodial work of a building, it would hire students to make up the shortage (TR. 33). When the procedure was dropped, the Union made no objection. (TR-42).

Arbitrator Ziedler found that because the Union made no objection to the shortage in man-hours when the Respondent stopped using students to meet the Appendix B requirements, a deviation from these requirements was established. It is implicit in this finding that had objection been made at the time the Respondent had discontinued the use of students, the deviations would not have occurred. Arbitrator Ziedler did not find that a deviation was created by the Respondent's use of students, but instead, found that a deviation was created only when Respondent ceased using students. Since Arbitrator Ziedler fashioned a remedy which took into account the deviations, the Examiner concludes that the issue of the use of students was not raised before the Arbitrator and therefore not considered by him. In other words, the use of students to meet the man hour requirements of Appendix B is a new issue or grievance outside the scope of Arbitrator Ziedler's award. 1/

Therefore, the Examiner concludes that the Respondent has not failed to comply with Arbitrator Ziedler's award by the use of a student to provide 25 man hours at the Municipal Building and the Respondent has not committed a prohibited practice within the meaning of section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin this 3rd day of August, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

1/ The evidence established that Complainant had filed a grievance on the use of the student at the Municipal Building and was processing it through the grievance procedure.