

- H. To determine the size of the teaching staff, the allocation and assignment of work to teachers and the determination of policies affecting the selection of teachers and the establishment of standards for judging teacher performance.
- J. To make assignments for all programs of an extra curricular nature.

ARTICLE XII - ASSIGNMENTS, VACANCIES AND TRANSFERS

Section D When making assignments and transfers, the wishes and convenience of the individual teacher will be honored to the extent that they do not conflict with the instructional requirements and interests of the school system. Assignments and transfers will not be made without prior discussion with the teacher.

ARTICLE XIII - TEACHING CONDITIONS

Work Load:

The Administration will endeavor to provide relatively equal work loads.

- A. Seven assigned periods per day will be comprised of 5 class periods, 1 study hall and 1 preparation period. A teacher may be scheduled with 6 class periods and 1 preparation period if the teacher approves of the additional class period assignment.

ARTICLE XXIX - EXTRA CURRICULAR

The following amounts are added to the base salaries:

Head coaches in football, basketball, volleyball, and wrestling, and athletic director will be paid 7% of their base salary in their academic column of the schedule.

The Board retains the right to eliminate any program. If a new position is added, the Board and NUE will negotiate the wages for that position.

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 a written job description for the proposed Athletic/Activities Director position was first proposed on February 7, 1979; that on March 21, 1979 the Respondent formally approved the creation of the combined position at its regular School Board meeting; that sometime following said approval the Respondent made the following posting:

Positions available:

1- Activities/Athletic Director

This position will be offered as the equivalent of two class periods per day within the Shell Lake School schedule. A job description for the position can be obtained from, and applications for the position, should be addressed to:

and that at no time material herein did the Respondent notify the Complainant of the creation of the new position noted above or negotiate with the Complainant over the wages for said position.

5. That James Campbell, hereinafter referred to as the grievant, was initially employed by the Respondent as Study Hall Supervisor during the 1978-79 school year; that by letter dated May 8, 1979 the grievant applied for the position of Athletic/Activities Director noted in Finding of Fact No. 4 above; that on July 18, 1979 the Respondent's School Board adopted a resolution approving the grievant as the Athletic/Activities Director for the 1979-80 school year; that by the terms of said resolution the School Board also decided to employ the grievant as Assistant Football Coach, Head Wrestling Coach and Junior High Wrestling Coach; that the grievant's total compensation for the 1979-80 school year was \$4,285.00; that this sum of money included \$2,860 for the position of Athletic/Activities Director which was approximately 2/7 of the BA Base for teachers during the 1979-80 school year; that said sum of money also included payment as Head Wrestling Coach of \$700.00, as Assistant Football Coach of \$500.00 and as Junior High Wrestling Coach of \$225; that the grievant also acted as Study Hall Supervisor during the 1979-80 school year; that while employed by the Respondent during the aforesaid school year the grievant was not certified to teach nor was he a member of the teachers' bargaining unit; and that the grievant's employment contract was not covered by the terms of the parties' collective bargaining agreement.

6. That after becoming certified to teach, the grievant was offered and accepted a teaching contract for the 1980-81 school year; that according to said contract the grievant was employed by the Respondent during the 1980-81 school year at 6/7 of a full time teaching position; that grievant's position included an assignment to teach physical education classes 4/7 of full time at a wage of \$6,260.00; that the grievant also received \$3,130.00 for 2/7 of full time devoted to his work as Athletic/Activities Director; that in addition, the grievant received \$766.85 for his Head Wrestling Coach responsibilities, \$547.75 for his Assistant Football Coach duties and \$275.00 for his Junior High Wrestling Coach position; that under the above contract, the grievant's total compensation was \$10,979.60; that in the 1980-81 school year the grievant was not provided with a preparation period by the Respondent as required by the contract; that toward the end of the 1980-81 school year the grievant asked Respondent's Superintendent Fred Johnson about his lack of a preparation period; that Superintendent Johnson explained to the grievant that the preparation period was tied into the 2/7 of full time he received for the Athletic/Activities Director position; that Superintendent Johnson further explained to the grievant that 1/7th of said sum was a combination payment for Athletic/Activities Director job and that the other 1/7th was payment for the preparation period.

7. That prior to April 15, 1981, the grievant self-renewed his teaching contract for the 1981-82 school year; that on June 10, 1981, in order to keep budget costs down, the Respondent's School Board adopted a number of budget recommendations which included elimination of the Athletic/Activities Director position and assignment of those responsibilities to the High School Principal and other employes of the District; that as a result of the Board's action the Respondent reduced the grievant's percentage of employment 2/7 of full time by removing from his assignment the position of Athletic/Activities Director; and that by letter dated August 6, 1981 Superintendent Johnson informed Complainant's Executive Director, Alan D. Manson, that a preparation period at 1/7 of full time was part of the 2/7 of full time the grievant received for the Athletic/Activities Director position during the 1980-81 school year and that said position was eliminated by the School Board for the 1981-82 school year pursuant to Article XXIX of the agreement.

8. That by letter dated August 28, 1981, James Campbell filed a grievance "over compensation for a preparation period for 1980-81 and over a reduction in percentage of employment for 1981-82"; that said grievance was timely processed under the terms of the collective bargaining agreement; that the Complainant herein took the position in relevant part that the grievant should be compensated an additional 1/7 of the base salary for 1980-81 due to his not being provided with a preparation period during said school year; that the Complainant also took the position that the grievant "be provided with the Athletic/Activities Director assignment for 1981-82, or an assignment of comparable value so as to keep his percentage of employment equal to that of 1980-81"; that said grievance was denied by Respondent's School Board on October 21, 1981 according to Step 3, the last step of the grievance procedure; 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 and Respondent and, therefore, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of said grievance.

2. By failing to negotiate with Northwest United Educators regarding the wage for the Athletic/Activities Director position during the 1980-81 school year, the Shell Lake School District did not violate Article XXIX or any other provision of the applicable collective bargaining agreement existing between said Respondent and said Complainant, and therefore in said regards Respondent did not commit a prohibited practice in violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

3. By failing to negotiate with the Complainant regarding the wage for the Athletic/Activities Director position during the 1980-81 school year, the Respondent committed a prohibited practice in violation of Section 111.70(3)(a)4 of the Municipal Employment Relations Act.

4. By failing to provide the grievant, James Campbell, with a preparation period for the 1980-81 school year the Respondent violated Article XIII of the parties aforesaid collective bargaining agreement, and therefore in said regards Respondent committed a prohibited practice in violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

5. By eliminating the position of Athletic/Activities Director for the 1981-82 school year and reassigning said position's duties to other employes, the Respondent did not violate Article XII or any other provision of the applicable collective bargaining agreement existing between said Respondent and said Complainant, and therefore in said regards Respondent did not commit a prohibited practice in violation of 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

IT IS ORDERED that Respondent, School District of Shell Lake, shall immediately take the following affirmative action which the Examiner finds will effectuate the policies set forth in the Municipal Employment Relations Act:

1. That, upon request, bargain with the Complainant, Northwest United Educators, regarding a wage for the Athletic/Activities Director position for the 1980-81 school year.
2. Make the grievant whole for his loss of a preparation period for the 1980-81 school year by paying to him \$1,565 which is equal to 1/7 of his appropriate teacher's wage for that year.
3. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed as to all violations of the Municipal Employment Relations Act alleged, but not found herein. 1/

Dated at Madison, Wisconsin this 17th day of December, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis McGilligan, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The instant complaint was filed on April 14, 1982. The Examiner scheduled a hearing for June 2, 1982 which was subsequently postponed to September 30, 1982. The Respondent filed an Answer on August 18, 1982. A transcript was issued in the matter on October 11, 1982. The parties completed their briefing schedule on November 18, 1982.

COMPLAINANT'S POSITION:

The complaint alleges that Respondent negotiated the wages for the Athletic/Activities Director position with the grievant without involving Northwest United Educators in violation of Article XXIX of the collective bargaining agreement and Section 111.70(3)(a)4 of the Municipal Employment Relations Act. The complaint also alleges that Respondent violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act by failing to comply with the provisions of the agreement in its failure to provide a preparation period or appropriate compensation to the grievant for the 1980-81 school year and for its reduction of the grievant's percentage of employment for the 1981-82 school year.

In support of the above contentions, the Complainant first argues that the Respondent negotiated individually with the grievant while he was a member of the bargaining unit without notification to Complainant of these negotiations. In this regard, the Complainant maintains that Respondent unilaterally established the wages for the Athletic/Activities Director assignment of the grievant for the 1980-81 school year which resulted in the grievant being paid \$3,130.

The Complainant next argues that if the grievant was not informed when he was hired for the 1980-81 school year that he would not have a regular preparation period then the Respondent violated Articles VI and XIII of the agreement by not providing such a preparation period while doing so for all other bargaining unit members. In the alternative, the Complainant argues that if the grievant was informed by the Respondent that his wages for the Athletic/Activities Director assignment were to involve a total of \$3,130 for both assignments and a preparation period, then the Respondent violated Section 111.70(3)(a)4 of Municipal Employment Relations Act by improperly negotiating with the grievant.

Finally, the Complainant argues that the Respondent acted improperly by removing the Athletic/Activities Director assignment from the grievant for the 1981-82 school year. In this regard the Complainant points out that although the aforesaid position was eliminated the duties and responsibilities attached to same were reassigned to a non-bargaining unit employe. The Complainant contends that the Respondent made such a reassignment without prior discussions with the grievant in violation of Article XII of the agreement. The Complainant also contends that it was denied the opportunity to bargain with respect to the Respondent's decision to "in effect, subcontract bargaining unit work."

For a remedy the Complainant asks with respect to the 1980-81 school year that the grievant be paid 1/7 of a full time wage for the preparation period he missed. In this regard, the Complainant asks the Examiner to order the Respondent to pay the grievant \$1,565 plus interest for the missing preparation period. With respect to the Respondent's removal of the extra assignment for the 1981-82 school year, the Complainant requests that the grievant should be paid for the position of Athletic Director for the 1981-82 school year and reinstated to said position for 1982-83.

RESPONDENT'S POSITION:

The Respondent initially argues that the refusal to bargain issue is not properly before the Examiner. In support thereof, the Respondent points out that the grievance filed by the Complainant contains "no allegation that the pay rate for the Athletic/Activities Director was not negotiated with the union." Consequently, the Respondent asks that the Examiner dismiss this allegation of the Complainant.

Secondly, the Respondent maintains that the grievant was compensated for a preparation period during the 1980-81 school year. In this regard the Respondent claims since the grievant's individual contract is unclear whether the \$3,130.00 includes the 1/7 preparation time as required by the contract the Examiner must consider other evidence. The Respondent contends such evidence includes unrefuted testimony that Superintendent Johnson explained to the grievant, prior to the grievant's signing of the contract, that the \$3,130.00 included the 1/7 preparation time. The Respondent also contends that assignment of 1/7 base salary value to the Athletic/Activities Director position and assignment of the remaining 1/7 compensation value for the preparation time (equaling 2/7 time which when added to the 4/7 teaching time totals the grievant's 6/7 teaching contract for 1980-81) is supported by the background history leading up to the creation of the new position and by the language of Article XXIX governing amounts paid for extra curricular duties.

Lastly, the Respondent argues that it had the authority under Article IV and Article XXIX of the agreement to eliminate the Athletic/Activities Director position for the 1981-82 school year. The Respondent adds that it was fully justified, due to budgetary considerations, when it acted to eliminate the aforesaid position.

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. 2/ 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 the aforesaid grievance.

SUBSTANTIVE ISSUES:

Refusal to Bargain:

Complainant argues both a contractual and statutory refusal to bargain violation by the Respondent. Article XXIX clearly provides that if the Respondent adds a new extra curricular position it must negotiate the wages for said position with the Complainant. The record also supports a finding that the Respondent unilaterally established a wage rate for the newly created position of Athletic/Activities Director during the 1980-81 school year without either notifying or offering to bargain with the Complainant over same. However, the Respondent argues that the Complainant failed to raise the refusal to bargain issue in the written grievance. An examination of the grievance supports this contention. Nor is there any evidence to suggest that the Complainant raised said issue during the processing of the grievance. Therefore, the Examiner dismisses this portion of the complaint.

A question remains with respect to the alleged statutory violation. In Beloit Education Association v. WERC 3/ and United School District of Racine County v. WERC, 4/ the Court set forth the test for determining whether a proposal was a mandatory subject of bargaining as whether said proposal is primarily related to wages, hours and conditions of employment or whether it is primarily related to the formulation or management of educational or public policy. Applying that test here, there can be no doubt that wages paid a bargaining unit employe for performing the duties of a newly created extra curricular position is a mandatory subject of bargaining. In fact, there is no dispute by the parties

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

3/ 72 Wis. 2d 42, (1976).

4/ 81 Wis. 2d 89, (1977).

over same herein. A municipal employer has a duty to bargain to impasse during the term of an existing labor agreement regarding any mandatory subject of bargaining not dealt with in the contract or where the labor organization has not waived its right to insist upon said bargaining. 5/ In the instant case the Respondent did not notify the Complainant of its unilateral wage schedule for the new Athletic/Activities Director position at any time material herein nor did the Complainant waive its right to bargain over same. In addition, the record is clear that the parties did not establish a wage rate for said position within the meaning of Article XXIX of the agreement. Therefore, based on the above, the Examiner finds that the Respondent failed to bargain collectively with the Complainant over the wages it paid the grievant for performing the duties of the aforesaid position during the 1980-81 school year in violation of Section 111.70(3)(a)4 of the Municipal Employment Relations Act.

Preparation Period:

The Complainant argues that the grievant did not receive a preparation period during the 1980-81 school year as required by the contract while the Respondent takes the opposite position.

Superintendent Johnson testified that he explained to the grievant, prior to the grievant's signing of his individual teacher's contract, that the \$3,130.00 for the Athletic/Activities Director position included the 1/7 preparation time. However, Superintendent Johnson's testimony was often contradictory. 6/ The grievant, on the other hand, stated clearly that he was not told by the Superintendent until the end of the 1980-81 school year that the preparation period had been built into the payment for the aforesaid position. 7/ Nor is it likely, if the grievant had been told of such an arrangement by Superintendent Johnson, that the grievant would have agreed to what in effect amounted to a 1/7 time reduction in his pay for performing the same duties in the 1980-81 school year that he performed during the 1979-80 school year. 8/ Finally, the grievant's individual teacher's contract for the school year in question indicates clearly that the grievant was paid \$3,130.00 at 2/7 time solely for his duties as Athletic/Activities Director. Said contract says nothing about a preparation period being included in that payment. Based on all of the above, the Examiner finds it reasonable to conclude that the Respondent denied the grievant a preparation period for the 1980-81 school year in violation of Article XIII of the parties' agreement thereby violating Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Elimination of the Athletic/Activities Director Position:

The Respondent eliminated the above position for the 1981-82 school year and reassigned the position's duties to the high school principal and others. The Complainant cites a number of contract provisions in support of its position that the Respondent could not take such action. However, there is nothing in those contract provisions relied upon by the Complainant or any other part of the contract, which prohibits the Respondent from taking the above action. To the contrary, Article IV and Article XXIX of the agreement when read together clearly give the Respondent the authority to eliminate the aforesaid position and reassign its duties. In addition, the Respondent did not object in the past when the Athletic/Activities Director duties were performed by a non-bargaining unit employe - the grievant himself. In view of the above, the Examiner finds that the Respondent did not violate the agreement by taking the aforementioned actions and therefore the Examiner dismisses this complaint allegation.

5/ City of Kenosha (16392-A) 12/78.

6/ T. 32-33.

7/ T. 11.

8/ T. 22.

Remedy:

For the foregoing reasons the Examiner has found that the Respondent violated Section 111.70(3)(a)4 and 5 of the Municipal Employment Relations Act by its actions in refusing to bargain a wage for the Athletic/Activities Director position during the 1980-81 school year and by failing to provide the grievant with a preparation period for said school year and has dismissed all other allegations that the Respondent violated the Municipal Employment Relations Act by its other actions complained of herein. The Examiner has also ordered appropriate remedial action by the Respondent as noted in the Order portion of this decision. In ordering appropriate remedial action, the Examiner has denied the Complainant's claim for interest on make whole monies since the Complainant was unable to cite any contractual or statutory language in support of its position requesting same. Nor is there any basis in the record for awarding such a request.

Dated at Madison, Wisconsin this 17th day of December, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner