

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
THE SCHOOL DISTRICT OF
RHINELANDER
Requesting a Declaratory Ruling
Pursuant to Section 111.70(4)(b),
Wis. Stats., Involving a Dispute
Between Said Petitioner and the
RHINELANDER TEACHERS
ASSOCIATION, WFT, AFT, AFL-CIO

Case VIII
No. 27774 DR(M)-172
Decision No. 19761

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Ronald J. Rutlin, 408 Third Street, Wausau, Wisconsin, appearing on behalf of the Municipal Employer.
Habush, Habush & Davis, S.C., Attorneys at Law, by Mr. John S. Williamson, Jr., 777 East Wisconsin Avenue, Milwaukee, Wisconsin, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSION OF LAW
AND DECLARATORY RULING

On April 9, 1981 the School District of Rhinelanders filed a petition, requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling, pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act concerning the mandatory or permissive nature of a proposal made in negotiations by the Rhinelanders Teachers Association, WFT, AFT, AFL-CIO. Hearing in the matter was conducted on July 9, 1981, Sherwood Malamud, Examiner, being present. Briefs, reply briefs, as well as a brief amicus curiae filed by the Wisconsin Education Association Council, were all submitted by February 1, 1982, and the Commission having considered the record, arguments and briefs in the matter, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the School District of Rhinelanders, hereinafter the District, is a municipal employer and it maintains its principal offices at Acacia Lane, Rhinelanders, Wisconsin 54501.

2. That the Rhinelanders Teachers' Association, WFT, AFT, AFL-CIO, hereinafter referred to as the Association, is a labor organization, and it maintains its principal offices at 707 Birch St., Rhinelanders, Wisconsin 54501.

3. That at all times material herein, the Association has been the recognized exclusive collective bargaining representative of all certified professional employees of the District, including teaching personnel, guidance counselors, and department heads, and excluding administrators and coordinators, all principals (including teaching principals) and all supervisors, non-instructional personnel, office clerical, maintenance, and operating employees, athletic director, interns, practice teachers, teachers aides, school psychologists, school social workers, and substitute teachers; that in said relationship the District and the Association are parties to a collective bargaining agreement, which by its terms has been effective from August 27, 1980 to August 26, 1982; that said agreement contains among its provisions a provision permitting either party to "reopen" said agreement during the 1981-1982 school year as to three (3) language items in the agreement; that said agreement also sets forth the following material herein:

ITEM 5 - FIRMNESS OF CONTRACT IN RELATION TO
EXTRA-CURRICULAR DUTIES

An addendum to the contract shall be issued by the District to the individual teacher based on the extra-curricular duties as assigned in the previous year, unless

1. A teacher requests a change in the assignment of extra-curricular duties for the next school year by June 1. Such request will be evaluated on merits and the availability of a satisfactory replacement, and granted if possible, or
 2. The administration requests a change in the extra-curricular duties of the teacher by June 1.
4. That attached to said collective bargaining agreement and included therein as "Appendix C" was the "Extra-Curricular Schedule", setting forth the following extra-curricular duties:

HIGH SCHOOL ATHLETICS

GIRLS

Basketball -Head
Ass't. 1

Catalina

Cheerleading

Gymnastics -Head
Ass't. 1

Swimming -Head
Ass't. 1

Tennis -Head
Ass't.

Track -Head
Ass't.

Volleyball -Head
Ass't. 1
Freshman

BOYS and/or GIRLS

Baseball -Head
Ass't.

Softball -Head
Ass't.

Cross Country -Head

Skiing -Head
Ass't.

Golf -Head

R - Club

Equipment Manager

Coach During Christmas
Vacation only

BOYS

Basketball -Head
Ass't. 1 (2)
Freshman (2)

Football -Head
Ass't. 1 (3)
Ass't. 11 (1)
Freshman 1
Freshman 11 (2)

Hockey -Head

Swimming -Head
J.V.
Diving

Tennis -Head
Ass't.

Track -Head
Ass't. 1

Wrestling -Head
Ass't. 1
Freshman

ELEMENTARY ATHLETICS

BOYS and/or GIRLS

Basketball

Football

Soccer

Softball

Volleyball

HIGH SCHOOL NON-ATHLETICSAudio-VisualAuditorium LightingChessDebate -Head
Ass't. (2)Dramatics -2 Productions
Ass't.Forensics -Head
Ass't. (2)Forestry CampingInstrumental ConcertJunior Class Advisor (3)Senior Class Advisor (1)Student CouncilStudent Council Book StoreVocal ConcertNewspaper AdvisorYear Book AdvisorTeachers Who Serve at
Commencement ExercisesTicket TakersChaperonesJUNIOR HIGH SCHOOL ATHLETICSGIRLSBasketball - 8th
7th
Intramural (2)CheerleadingGymnastics - Head
Ass't.TennisTrack - Head
Ass't.BOYSBasketball - 8th
7th
IntramuralFootball -Head
Ass't. 1 (3)
Intramural (2)TennisTrack - Head
Ass't.WrestlingJUNIOR HIGH SCHOOL NON-ATHLETICSForensics - Head
Ass't. (3)Instrumental ConcertStudent Council - Head
Ass't.Vocal ConcertYearbook

5. That at all times material herein the District, along with over 400 school districts in Wisconsin, has been a member of the Wisconsin Interscholastic Athletic Association, hereinafter referred to as the WIAA, which has among its purposes the organization and control of athletic programs involving students attending public schools operated by various school district members, and in said regard, among other things, the WIAA requires that athletic coaches of sport activities, engaged in by students in grades 7 through 12, be certified teachers, except when special permission is obtained otherwise; and that the District herein has opted to provide students attending the schools operated by it with the opportunity to participate in various extra-curricular activities, including sports, as part and parcel of the District's educational program, and in that regard it has opted for the decision that such activities generally be under the guidance and leadership of the professional employees in its employ, whose regular primary assignments involve teaching duties.

6. That one of the language provisions proposed to be reopened by the Association was Item 5, and in said regard the Association proposed that the language in said Item be changed to read as follows:

An addendum to the contract shall be issued by the District to the individual teacher based on the extra-curricular duties as assigned in the previous year, unless

1. A teacher requests a change in the assignment of extra-curricular duties for the next school year by March 15.

2. Change June 1 to March 15.

7. That during the initial bargaining session, the District advised the Association that it deemed the Association's proposal to amend Item 5 to be a permissive, rather than a mandatory subject of bargaining, and claimed therefore that the District had no enforceable duty to bargain collectively with respect thereto; that the Association expressed a contrary view, which resulted in the filing of the instant petition by the District.

8. That the Association's proposal at issue herein would grant a teacher the right to reject the extra-curricular assignment held during the preceding school year; that at least a substantial majority of the extra-curricular assignments listed in Appendix C of the parties' 1980-1982 contract reflect the District's determination as to the manner in which its students should be educated; that the District's determination as to whether to use teachers for extra-curricular assignments and what qualifications teachers should have to fulfill said assignments are both decisions which primarily relate to the formulation or management of educational or public policy.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

1. That as the proposal submitted by the Rhinelander Teachers Association, WFT, AFT, AFL-CIO could prevent the School District of Rhinelander from assigning qualified teachers to direct extra-curricular activities, said proposal is not a mandatory subject of collective bargaining within the meaning of Secs. 111.70(1)(d), 111.70(2) and 111.70(3)(a)4 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DECLARATORY RULING 1/

1. That the School District of Rhinelander has no mandatory duty to bargain collectively with Rhinelander Teachers Association, WFT, AFT, AFL-CIO, with respect to the latter's proposal relating to the assignment of the extra-curricular duties set forth in Appendix C of the parties' 1980-1982 collective bargaining agreement.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

(Footnote 1 continued on Page 5)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND DECLARATORY RULING

Background

The facts pertinent and material to the disposition of the issues involved in the instant matter are sufficiently set forth in the Findings of Fact and we see no need to repeat them in this memorandum. The Commission has been requested to determine whether the proposal of the Association relating to the assignment of extra-curricular duties to teachers is a mandatory subject of bargaining.

The Positions of the Parties

Basically the District contends that the assignment of extra-curricular duties is primarily related to the formulation of educational policy, and in support thereof cites Beloit Education Association v. WERC 2/, and Unified School District of Racine County v. WERC 3/, in addition to cases issued in jurisdictions other than Wisconsin. 4/ It argues that the assignment of such duties to its professional employees represented by the Association is generally regarded as falling within the scope of duties and responsibilities ordinarily performed by similar personnel employed in other public school districts. It emphasizes the analysis set forth by the Commission in the City of Wauwatosa 5/, wherein this agency expressed itself with respect to the scope of job analysis, as well as the Commission's decision in Milwaukee Board of School Directors 6/, in which the Commission concluded that the scheduling of activities beyond the teacher work day was important to the educational process. The District further contends that it has demonstrated that the ability of a teacher applicant to perform a coaching duty, or other extra-curricular activity, is given great weight in the hiring of such an applicant.

The Association argues that its proposal fundamentally and essentially relates to wages, hours and conditions of employment. It attempts to distinguish the Commission's decision in Milwaukee Board of School Directors, from the instant matter, contending that the proposal involved herein would not prevent the District from providing extra-curricular activities, whereas the proposal in the Milwaukee case would have precluded such assignments. The Association claims that its proposal may have an indirect impact on extra-curricular activities cut only in the same manner that a demand for a large salary increase would impact on the scheduling of curricular activities, and accordingly, the Association concludes that its proposal relates to a mandatory subject of bargaining.

The Wisconsin Education Association, in its brief, supports the Association's position, and characterizes the proposal as relating to a voluntary overtime provision. WEAC argues that the proposal does not preclude the District from maintaining its extra-curricular program, and contends that the principle established in City of Wauwatosa is limited to duties performed during the teacher's regular work day.

The reply briefs filed by the District and Association support their arguments set forth in their initial briefs.

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

3/ 81 Wis. 2d 89, (1977).

4/ Parrish v. Moss, 200 Misc. 375, 106 NYS 2d 577 and 107 NYS 2d 580 (1951); Dist. 300 Ed. Assn. v. Board of Education, 31 Ill. App. 3rd 550 (1975); Bd. of Ed. City of Ashbury Park v. Ashbury Park Ed. Assn., 145 N.J. Super 495 (1976).

5/ Dec. No. 15917, (11/77).

6/ Dec. No. 17504, (12/79).

Discussion

In Beloit and again in Racine, 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 the essence of educational policy is the school district's decision as to which academic classes and extra-curricular activities its students should have available to them. 7/ After making this decision, the question then becomes what type of person will direct those activities and what qualifications should such persons be required to possess. We believe that such decisions are so intimately related to the school district's judgment as to how its extra-curricular program can best serve the students' educational needs that they, like the choice of which activities to provide, are primarily related to basic educational policy rather than to wages, hours and conditions of employment. We therefore conclude that a district's decisions regarding what type of persons (teachers or non-teachers) will direct extra-curricular activities and what qualifications they should possess are not mandatory subjects of bargaining.

The Association's proposal would give a teacher the right to refuse the extra-curricular assignment which that teacher held during the preceding school year. This proposal does not infringe upon the District's right to determine what activities will be available. Nor does it impinge upon the District's decision as to whether teachers should direct the activity because the District presumably could assign a different teacher to the activity in question. However, as earlier discussed, the question of what qualifications are necessary to direct the activity remains a matter of public or educational policy 8/ which need not be bargained. Having determined what qualifications are appropriate, the District, as indicated by the Court in Beloit in its discussion of a layoff proposal, retains the right to insist that qualified individuals be available to direct an activity. Here if the incumbent teacher were the only qualified individual available for the assignment, the proposal in question would interfere with the District's right to have qualified employees inasmuch as the District, under the Association's proposal, could not insist that the qualified incumbent take the assignment. Given this potential infringement due to the lack of an assurance that a qualified teacher would be available, the proposal in question is found to be permissive. 9/

In reaching this conclusion the Commission has considered the Association's arguments regarding the undeniable effect which the performance of extra-curricular duties has upon an employee's hours. However the Commission must conclude that where, as here, a proposal may prevent the District from providing students with qualified direction of extra-curricular activities, the educational policy dimensions of such a proposal predominate over the effect upon hours. It is also clear that the Association has the right to bargain over the impact which extra-curricular assignments have upon hours of work.

7/ Beloit, supra.


8/ See City of Madison, 16590(10/78); Milwaukee Sewerage Commission, 17302 (9/79); City of Waukesha, 17830 (5/80); and Brown County, 19041 (11/81) wherein we held that the Employer need not bargain over the minimum qualifications for a job but must bargain over the selection criteria to be applied to qualified applicants.

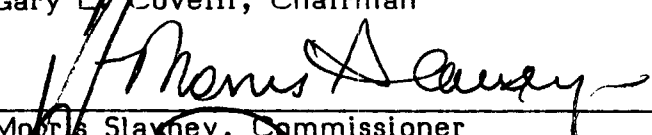
9/ As the parties chose not to litigate the issue of whether certain extra-curricular assignments may be so far removed from an educational policy determination that a staffing decision would constitute a mandatory subject of bargaining, it is inappropriate and the record does not allow any comment as to whether any such assignments are found in Appendix C. Suffice it to say that as the proposal in question applied to all such assignments and as the substantial majority of the listed activities unquestionably relate to educational policy determinations, such an activity by activity analysis is also unnecessary.

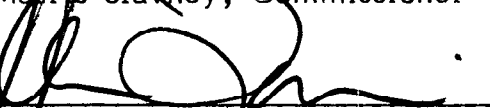
As to the impact of Richards v. Board of Education 10/, we do not find a determination regarding the applicability of Sec. 118.22, Stats., to extra-curricular assignments to be relevant herein. The Legislature's choice of which teaching assignments should receive statutory protection simply does not impact in any substantial manner upon a determination as to whether a matter is primarily related to the determination of educational policy.

Dated at Madison, Wisconsin this 19th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

10/ 58 Wis. 2d 444 (1973).