STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION, Complainant, vs. RACINE UNIFIED SCHOOL DISTRICT, Respondent.	Case LXXV No. 31314 MP-1456 Decision No. 20735-A

Appearances:
Schwartz, Weber & Tofte, Attorneys at Law, by Mr. Robert K. Weber, 704 Park Avenue, Racine, Wisconsin 53403, for Complainant.
Melli, Shiels, Walker & Pease, S.C., Attorneys at Law, by Mr. Jack D. Walker, 119 Monona Avenue, P.O. Box 1664, Madison, Wisconsin 53701, for Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Racine Education Association having on January 13, 1983 filed a complaint with the Wisconsin Employment Relations Commission alleging that the Racine Unified School District has committed prohibited practices within the meaning of Sections 111.70(34)(a)1 and 5 of the Municipal Employment Relations Act; and the Commission having appointed David E. Shaw, 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; and hearing on said complaint having been held on September 30, 1983 1/ at Racine, Wisconsin before the Examiner; and the parties having filed post-hearing briefs which were exchanged on October 31, 1983; and the Examiner having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Racine Education Association, hereinafter the Association, is the certified exclusive collective bargaining representative of all regular full-time and regular part-time certified teaching personnel employed by the Racine Unified School District and is a labor organization having its principal offices located at 701 Grand Avenue, Racine, Wisconsin; and that at all times material herein James Ennis has been, and is, the Executive Director of the Association.

2. That the Racine Unified School District, hereinafter the District, is a municipal employer having its principal offices located at 2220 Northwestern Avenue, Racine, Wisconsin.

3. That the Racine/Kenosha Community Action Agency, Inc., hereinafter the CAA, is a private, non-profit agency with offices at 72 Seventh Street, Racine, Wisconsin and 2000 - 63rd Street, Kenosha, Wisconsin; that among the various anti-poverty programs CAA administers it is responsible for the Racine Head Start Program and the Burlington Head Start Program; that up until sometime in August of 1983 CAA had delegated the responsibility for administering the operation of the Racine Head Start Program to the District with the CAA retaining overall responsibility for the Program; that the arrangement between CAA and the District relative to the Racine Head Start Program was set forth in contract form; that CAA

1/ The parties and the Commission engaged in extensive efforts to resolve this dispute and the dispute in Case LXXII No. 30477 MP-1390, including mediation, but were unsuccessful.

prepares a grant request for funding for the Racine Head Start Program with input from the District; that said grant request is submitted to the District's Board of Education for approval and then to the federal government's Department of Health, Education and Welfare/Office of Child Development; that for the 1982-83 school year and prior years the Racine Head Start Program was located at the District's Garfield Elementary School, and the principal at Garfield was also the Director of the Racine Head Start Program; that the District was responsible for paying the salaries of the Director and the Director's Secretary; and that for the 1982-83 school year, and the prior years that the District was responsible for the Racine Head Start Program, the teachers in said Program were under contract to the District, were issued individual teaching contracts by the District and were under the District's supervision.

4. That at all times material herein the teachers in the Racine Head Start Program were members of the bargaining unit represented by the Complainant Association; that said teachers were covered by the terms and conditions of the collective bargaining agreement between the Association and the District; that said collective bargaining agreement expired on August 24, 1982; and that the parties had not yet reached agreement on a successor agreement at the time of the hearing in this matter.

5. That the "1981-82 HEAD START CONTRACT" between the CAA, as "Grantee," and the District, as the "Delegate Agency," contained the following "Special Conditions" at page 15:

SPECIAL CONDITION I

By October 1, 1981, any person who has been employed in a Head Start Classroom for three years or longer and now has primary responsibility for directing the daily activities of the children (i.e., the Head Start classroom teacher) must have:

1. A CDA credential, or

2. A bachelor's degree in early childhood education and appropriate supervised experience or with a more advanced degree in early childhood education and appropriate supervised experience, or

3. By participating in CDA training which will lead to a CDA credential within two or three years.

By October 1, 1981, all Full Year Head Start classrooms must have, as the teacher having primary responsibility for directing the daily activities of the children,

1. A CDA, or

2. A person with a bachelor's degree in early childhood education and appropriate supervised experience or with a more advanced degree in early childhood education and appropriate supervised experience, or

3. A person participating in CDA training who will attain the CDA credential within two or three years.

For the 1981-82 school year all Delegate Agency teachers must meet the above printed requirements. The names and documentation that the persons named meet the requirements must be submitted to the Grantee by September 18, 1981.

The Delegate Agency assumes full responsibility for providing the required training opportunities for other staff as required by ACYF regulations.

SPECIAL CONDITION II

1. All Head Start teachers will be required to enroll and participate in CDA training and complete the requirements for the Child Development Associate credential.

2. All Head Start staff will be required to participate in Head Start Supplementary Training and all other in-service and career development training activities.

3. The Delegate Agency must develop and submit to the Grantee, an in-service training plan for staff and parents by October 1, 1981.

6. That the Chairman of the Board of Directors of the CAA, Lee Thomas, on April 16, 1982 signed and approved CAA's proposed program and grant request to be submitted to the District's Board of Education, and ultimately submitted to HEW, requesting federal funding for the Racine Head Start Program for the 1982-83 school year; that said proposed program/grant request contained the following "special conditions":

SPECIAL CONDITION

By October 1, 1982, any person who has been employed in a Head Start classroom for three years or longer and now has primary responsibility for directing the daily activities of the children (i.e., the Head Start classroom teacher) must have:

1. A CDA credential, or

2. A bachelor's degree in early childhood education and appropriate supervised experience or with a more advanced degree in early childhood education and appropriate supervised experience, or

3. Be participating in CDA training which will lead to a CDA credential within two to three years.

By October 1, 1982, all Full Year Head Start classrooms must have, as the teacher having primary responsibility for directing the daily activities of the children,

1. A CDA, or

2. A person with a bachelor's degree in early childhood education and appropriate supervised experience or with a more advanced degree in early childhood education and appropriate supervised experience, or

3. A person participating in CDA training who will attain the CDA credential within two to three years.

Training

a. All Full Year Head Start grantees and delegate agencies whose program year begins on or after October 1, 1977, must modify their career development and training plans to include a priority emphasis on CDA training for classroom staff through in-service or pre-service training, through participation in HSST/CDA training or through organizing or arranging training from other sources (where available).

b. All Head Start classroom staff should be encouraged to participate in CDA training in accordance with the priorities set forth in these regulations (Regulations Plan Development, (a), 4) and in Head Start Grantee and Delegate Agency career development and training plans.

c. Any Head Start classroom staff person participating in HSST/CDA training, can be expected to take up to two years of this training to attain competence. A third year of training may be needed depending on the time the trainee is able to allocate to this effort. For those trainees who are in CDA training longer than two years,

the training plan should indicate steps to insure that specific areas are identified in which the individual needs training and that future training will specifically address the trainee's identified needs.

For the 1982-83 school year all Delegate Agency teachers must meet the above printed requirements. The names and documentation that the persons named meet the requirements must be submitted to the Grantee by September 17, 1982.

The Delegate Agency assumes full responsibility for providing the required training opportunities for other staff as required by ACYF regulations.

7. That the "1982-83 HEAD START CONTRACT" entered into by the CAA and the District, and covering the 1982-83 school year, contained the same two "special conditions" regarding CDA certification and training set forth as "SPECIAL CONDITION I" and "SPECIAL CONDITION II" in the "1981-82 HEAD START CONTRACT," with the exception that the dates indicated were September and October of 1982 and the 1982-83 school year.

8. That at all times material herein James McGowan was the coordinator or contact person at CAA responsible for dealing with the District relative to the Racine Head Start Program; that for eight years, including the 1981-82 school year, Patricia Stephens-Rogers was the Principal at Garfield Elementary School and the Director of the Racine Head Start Program; that while Stephens-Rogers was Director, McGowan had indicated to her a number of times that, in his opinion, the teaching staff in the Head Start Program had to have CDA certification and had to continue in-service training in order to continue teaching in the Program; that while she was Director of the Racine Head Start Program Stephens-Rogers was aware of what constituted an alternative equivalent of a CDA certificate and it was her understanding that possession of the equivalent was sufficient to continue teaching in the Program; that for the 1981-82 school year and prior years the teachers in the Racine Head Start Program were not required by the District to possess a CDA certificate or to participate in CDA training in order to teach in the Program, although the teachers had been made aware at various times that McGowan considered the CDA certificate to be a necessary requirement for teaching in the Program; and that only one teacher in the Program, Carolyn Jackson Smith, possessed a CDA certificate.

9. That on May 6, 1982, Stephens-Rogers sent the following memorandum to McGowan:

DATE: May 6, 1982

TO: Jim McGowan

FROM: P. Stephens-Rogers

RE: CDA

Enclosed are forms and print-outs that came to the office regarding CDA training, specifically for Connie Linton in Burlington.

Connie has completed the CDA training and did pass the L.A.T. evaluation.

Since the thrust for CDA is so strong overall recently, I have informed all returning Head Start teachers that all eight will be involved in this training effort for 1982-83. Carolyn Smith has already completed the CDA training.

If there are questions, please call at 632-6478.

Thank you -

10. That Stephens-Rogers discussed the topic of CDA certification and training with the teachers in the Racine Head Start Program, but did not tell them they would be required to have a CDA certificate or participate in CDA training; and that Stephens-Rogers left the employ of the District sometime after the end of the 1981-82 school year.

11. That in May of 1982 a meeting was held at the Ramada Inn in Racine, Wisconsin for the purpose of reviewing and voting on CAA's program proposal/grant request for the 1982-83 Racine Head Start Program; that parents, program staff and Community representatives for the Head Start Program were present at said meeting; that at said meeting the program proposal/grant request was passed around for all to see; that Carolyn Jackson Smith was present at said meeting and read the "special conditions" included in the program proposal/grant request; that Jackson Smith at the time interpreted those "special conditions" to require either a CDA certificate or its equivalent; and that the parents, staff and program representatives at said meeting voted on CAA's program proposal/grant request.

12. That on July 1, 1982 James Ferguson assumed the duties of Principal at Garfield Elementary School, as well as the duties of Director of the Racine Head Start Program; that McGowan, on behalf of CAA, prepared the 1982-83 Head Start Contract between CAA and the District; that Ferguson received the draft of said contract and compared it with the 1981-82 Head Start Contract between CAA and the District; that in reviewing the 1982-83 Head Start Contract Ferguson became aware of the "Special Conditions" regarding CDA certification and training in that contract; that before signing said contract Ferguson contacted Stephens-Rogers and discussed the "special conditions" with her; that as a result of Ferguson's conversation with Stephens-Rogers it was his understanding that said "special conditions" had been in past contracts between CAA and the District and had not been implemented or enforced and that they probably would not be enforced in the future; that Ferguson signed the 1982-83 Head Start Contract on behalf of the District, as did the District's Acting Superintendent; that Ferguson mentioned the "special conditions" in the 1982-83 Head Start Contract to the teachers in the Head Start Program and, at their request, showed them said contract; and that Ferguson indicated to the teachers that McGowan did not consider being certified in Early Childhood Education to be the equivalent of having a CDA certificate or as satisfying the "special conditions" in the contract.

13. That early in the 1982-83 school year a meeting was held among the Head Start staff, Ferguson and McGowan; that said meeting was part of the regularly scheduled Friday in-service; that McGowan had asked to attend said meeting; that at said meeting McGowan indicated that he felt the teachers should have a CDA certificate in order to continue teaching in the Head Start Program and he briefly explained the process for obtained CDA certification and handed out related materials to the staff; and that James Ennis, the Association's Executive Director, was also present at said meeting.

14. That on December 15, 1982 Ennis sent the following memorandum to the Chairman of the Board of Directors of the CAA:

> TO: Lee Thomas, Chairman, Board of Directors
> Racine/Kenosha Community Action Agency, Inc.
>
> FROM: James J. Ennis, Executive Director
>
> DATE: December 15, 1982
>
> SUBJECT: Violations of Rights of Teachers (Per Our Monday Discussion)
>
> Enclosed is the information of the Racine Education Association as it relates to our continuing problems with the agency you head.
>
> Specifically, we find that over a period of two years the actions, behaviors and attitudes of one James McGowan have been reprehensible. We did deal with this problem directly with McGowan and Ms. Henry over one year ago. We believed the problem solved (in fact, informed it was solved). We have dealt with the District's branch of the rights of the Racine Education Association by the filing of an unfair labor practice.

If you cannot find some way to correct the problem and remove McGowan from any contact or purported authority over Unified teachers, we will sue you, your Board and agency.

The harm and harrassment of teachers (who have done a very good job for children and parents) by your agency has and is uncalled for. When your agency goes to the extent it has to attempt to intimidate teachers, it causes some real question of what others may face in dealings with you. If this were the first or only instance, it could be overlooked.

And finally, if you will look at the June 18, 1982 letter from Region V, you will see on page 5 that there is a clear policy which says CDAs are not required.

We have lost patience with your agency, but because of my personal and professional experience with you as a Unified administrator, I would, on your word, be prepared to meet to straighten this mess out.

JJE/db

Enclosure

that along with his memorandum Ennis sent the position paper of the Department of Health and Human Services, Region V, Administration for Children, Youth and Families, the federal agency to which the grant request for the Racine Head Start Program is made, stating that agency's position as of June 18, 1982 regarding CDA equivalents; and that said position paper stated in relevant part:

REGION V POSITION PAPER ON CDA EQUIVALENTS

Region V ACYF has an established goal of having a teacher with a CDA certificate or a CDA equivalent in each Head Start classroom. This policy statement has been developed in response to the numerous grantee requests for clarification of what constitutes a "CDA Equivalent".

The education departments in five of the six states in Region V issue teaching certificates for preschool teachers and there have been many questions as to whether or not a holder of one of these certificates has a CDA Equivalent. While the procedures and specific requirements for these early childhood teaching certificates vary from state to state, all share certain common elements: All require a bachelor's degree from an accredited institution; a core of courses in early childhood education/child development; and a supervised practicum with preschool children. Each of these certificates explicitly stated that the holder is licensed to teach groups of prekindergarten age children.

Following examination of these state systems for certifying preschool teachers, Region V ACYF has extended the category of CDA Equivalent to include Head Start teachers with early childhood teaching certificates in the states of Illinois, Indiana, Michigan, Minnesota and Wisconsin. This extension applies only to the teaching certificates identified below in this policy statement. It does not apply to early childhood teaching certificates which cover primary grades, K-3 or other elementary certification.

. . .

STANDARD CDA EQUIVALENT

In Head Start policy statements a CDA Equivalent is defined as a bachelor's or more advanced degree in early childhood education or child development with a 12-week supervised practicum with three, four or five-year-old children. Any teacher who has both an appropriate degree and

the requisite 12 week supervised practicum with pre-school children meets the requirement for a CDA Equivalent. It is not an ACYF requirement that teachers with a CDA Equivalent degree have a state teaching certificate.

. . .

ALTERNATE CDA EQUIVALENT FOR WISCONSIN

The Wisconsin Department of Public Instruction grants an Early Childhood - Nursery School Certificate and an Unlimited Certificate in Early Childhood covering both nursery school and kindergarten. A Head Start classroom teacher in Wisconsin who has either an Early Childhood - Nursery School Certificate or an Unlimited Certificate in Early Childhood may be considered to have a CDA Equivalent.

. . .

15. That in response to Ennis' letter of December 15, 1982, the Chairman of CAA's Board of Directors, Lee Thomas, sent the following letter to Ennis on January 11, 1983:

January 11, 1983

James J. Ennis
Racine Education Association
701 Grand Avenue
Racine, WI 53403

Dear Mr. Ennis:

Your memorandum of December 15, 1982 was discussed at our last Board of Directors meeting and referred to the Personnel Committee for disposition. The Personnel Committee's disposition, with Board concurrence is outlined below.

1. Our contract for Head Start is with the Racine Unified Schools, not individual teachers. Any problem, complaint, grieviance (sic), etc. which the teachers feel they have should be directed to Racine Unified Schools; not Racine/ Kenosha Community Action Agency. We do not have any authority over the Garfield Teachers and have never tried to exercise any.

2. Enclosed is a copy of the Head Start Regional Office Position Paper on CDA and equivalents. We agree with you that the CDA Credential is not required as long as teachers have the appropriate acceptable equivalent. You were present at a meeting when Mr. McGowan emphatically stated to the teachers, as well as all others present, that the CDA is not required if a person has an acceptable equivalent and further that the training offered was strictly on a voluntary basis. No attempt was ever made to coerce anyone to take CDA training.

3. We feel that the acquisition of the CDA Credential would be mutually beneficial and encourage any Head Start Staff Person who is interested in possessing a credential which is an accurate indicator of competence for working with Preschool children to take the necessary steps to acquire the credential.

4. On May 6, 1982, we were informed by Pat Rogers, then Head Start Director at Garfield, that all returning Head Start Teachers would be involved in CDA training (see copy of memorandum enclosed). We were never informed that any change had been made in that decision.

5. The CDA credential is a means of enhancing previous academic experiences and teacher employability; however, any teacher who otherwise meets the minimum requirements for teaching in a Head Start classroom, and who does not wish to avail herself of the CDA credential should certainly not do so. We will continue to offer the training for those persons who voluntarily want to take it and whose involvement will be beneficial to them and to the Head Start Program.

We feel the foregoing adequately addresses your concerns.

Sincerely,

Lee A. Thomas /s/
Lee A. Thomas, Chairman
Board of Directors
Racine/Kenosha Community Action Agency

copy: Del Fritchen
Jim Ferguson

LAT/ljs
Enclosures

16. That on January 13, 1983, the Association, by its Executive Director, James Ennis, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission wherein it alleged that the District had unilaterally altered the status quo during negotiations for a successor labor agreement between the parties, and after the expiration of the previous agreement on August 24, 1982, by entering into the 1982-83 Head Start Contract with the CAA, which contract requires the teachers in the Racine Head Start Program to take additional courses to obtain a CDA certificate that was not previously required and that the District failed to bargain over the change or impact of said change; and that Ennis sent said complaint on January 10, 1983.

17. That at no time material herein did Ferguson, or anyone else acting on behalf of the District, tell the Racine Head Start Program teaching staff that if they did not obtain CDA certification, they would not be able to teach in said Program; that at no time material herein did Ferguson, or anyone acting on behalf of the District, require the Racine Head Start Program teaching staff to participate in CDA training for the 1982-83 school year; that at no time material herein did any of the teachers in the Racine Head Start Program participate in CDA training; that during the 1982-83 school year the Head Start teachers participated in Head Start Supplementary Training and related in-service as they had in past years, however, the in-service in 1982-83 was primarily working on the Early Childhood curriculum; that Ferguson advised said teachers that the District would not require them to obtain CDA certification or participate in CDA training until forced to do so by the CAA and the federal government; that Ferguson did not take any steps to have "Special Condition I" and "Special Condition II" deleted from the 1982-83 Racine Head Start Contract; and that at no time material herein did the CAA require that the teachers in Racine Head Start Program obtain a CDA certificate.

18. That at no time material herein did the District or any of the agents or officers, unilaterally change the hours and/or working conditions of the teachers

Sections 111.70(3)(a)1 and 5, or any other section, of the Municipal Employment Relations Act.

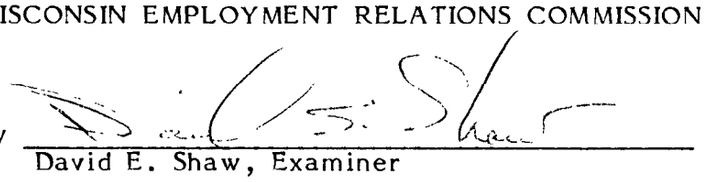
Based upon the above Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER

IT IS ORDERED that the Complaint filed herein be, and same hereby is, dismissed in its entirety. 2/

Dated at Madison, Wisconsin this 12th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
David E. Shaw, Examiner

2/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner 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.

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

(Footnote Two Continued on Page Ten)

2/ (Continued)

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.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On January 13, 1983 the Complainant Association filed a complaint of prohibited practices with the Commission wherein it alleged that the Respondent District had altered the status quo during the hiatus period following expiration of the parties' prior labor agreement and during negotiations on a successor agreement without bargaining with the Association over that change or its impact, in violation of Sections 111.70(3)(a)1 and 5 of the Municipal Employment Relations Act.

The Association contends that by entering into the 1982-83 Head Start Contract with the Racine/Kenosha Community Action Agency, Inc., (CAA) the District agreed to impose a new job qualification requirement on its Head Start teaching staff, and notes that this was not discussed with the Association or the teachers prior to entering into that contract with a third party.

As a basis for its allegation the Association points to "SPECIAL CONDITION II" in the 1982-83 Head Start Contract which states that the Head Start teachers would be required to participate in CDA training and to complete the requirements for CDA certification, and that the teachers would also be required to participate in Head Start Supplementary Training and other career development training activities. The Association then cites the signatory provision in the Contract whereby the signors agree to "comply fully with all provisions of this Contract."

The Association contends that neither the State of Wisconsion nor Region V of the ACYF, the federal agency to whom the Head Start grant request is made, requires that the Head Start teachers be CDA certified, rather, Region V has indicated that either an Early Childhood Nursery School Certificate or an Unlimited Certificate in Early Childhood is an acceptable equivalent in Wisconsin. Thus, the "special conditions" in the contract were not required by the State, and to impose them violated the teachers' individual teaching contracts which only required evidence of qualifications by a license or certificate as required by the State.

The additional obligations imposed by the 1982-83 Head Start Contract also violated the status quo between the District and the Association since they constituted a change in a mandatory subject of bargaining, i.e., selection criteria for staffing specialty schools. Citing Milwaukee Bd. of School Directors, (20093-A) 2/83. It is also contended by the Association that the procedure for obtaining CDA certification, observations by an evaluation team from Washington, D.C., was a change from the evaluation standards and procedures in the expired labor agreement. Again, such standards and procedures are mandatory subjects of bargaining and could not be changed without first bargaining such changes with the Association. Citing Beloit Education Association v. WERC, 73 Wis. 2d 43 (1976).

The Association asserts that the waiver provisions found at Article III, paragraphs 6 and 7, of the parties' expired labor agreement do not apply to this dispute, since they expired on August 24, 1982 and were subsequently found to be permissive subjects of bargaining. Citing Racine Unified School District (19980-B, 19981-B) 1/83. Thus, any allegations by the District that similar "special conditions" existed in the 1981-82 Head Start Contract are irrelevant. The Association could not challenge those provisions in that contract until the parties' labor agreement expired, and the threats to eliminate the teachers' jobs were not made until the fall of 1982.

According to the Association, whether or not those threats were actually carried out, they posed a real danger to the teachers. The District's representative, Patricia Stephens-Rogers, guaranteed to the CAA that the Head Start teachers would comply with the special conditions at page 15 of the 1982-83 Head Start Contract. At the time she made that guarantee Stephens-Rogers did not know she would be replaced by a successor who did not intend to follow through on her promise. Also significant is that the proposal/grant request eliminated the

"special conditions" that were in the 1981-82 Head Start Contract, but they were reinserted into the 1982-83 Contract and clearly could have been enforced.

It is also contended that the District had an affirmative duty to bring the Head Start Contract into compliance with the parties' labor agreement. Instead the District's representative, Ferguson, signed the 1982-83 Contract knowing it contained the "special conditions." Ferguson's assertion that he did not feel they were enforceable is contradicted by his testimony that he believed the Contract to be a binding document between the District and the CAA.

That the Contract created a real danger to the teachers is evidenced by the fact that the coordinator of Head Start from the CAA did not quit demanding the teachers obtain the CDA certificate until the Association intervened. Also, the teachers suffered a real loss in that normal preparation time and in-service time was lost due to the requirements of "SPECIAL CONDITION II" that such time be spent on Head Start Supplementary Training during the 1982-83 school year.

As relief the Associate requests that the District be ordered to bargain in good faith in future situations of this sort.

The District asserts that none of the required elements of a refusal to bargain prohibited practice are present in this case and that the Association's claim is frivolous. On that basis the District moves the Examiner to award costs and attorneys feees against the Association.

In support of its position the District makes a number of arguments. Regarding the Association's claim the the District changed the status quo by entering into the 1982-83 Head Start Contract with CAA which required the teachers to have CDA certification, the District contends there was no change. The provision in question was identical to the provision in the 1981-82 contract.

The District further asserts that even if it had been a change, it was a change imposed by the CAA, not the District, as a condition of obtaining federal funds. Moreover, if it had been a change by the District, it was not a change in a mandatory subject of bargaining. Citing Brown County (19042) 11/81. There is no claim or evidence of any bargainable impact of such a policy and, in any event, the parties already have layoff and transfer provisions in their expired labor agreement.

The District notes that the testimony of Mitchell and Ferguson demonstrates that nothing was done to anyone as a result of anything having to do with having or not having a CDA certificate.

Finally, the District contends that the Association's Executive Director, Ennis, knew of the alleged change at least as early as the meeting he attended with McGowan early in the 1982-83 school year. There is no evidence, however, that the Association ever demanded to bargain on the subject with the District, or that the Association ever made a bargaining proposal on the subject.

Since these same issues have been repeatedly litigated with always the same result, the complaint should be dismissed as frivolous and costs and attorneys fees awarded to the District.

DISCUSSION

It is first noted that although the Association alleged in its complaint that the District violated Sections 111.70(3)(a)1 and 5 of MERA, the parties have litigated the dispute so as to include a refusal to bargain allegation. For the following reasons the Examiner has concluded that the District has not committed any probibited practices in this case.

The Association alleges that the District unilaterally changed the status quo as to the requirements for teaching in the Racine Head Start Program by entering into the 1982-83 Head Start Contract with the CAA. The evidence in the record establishes that this was not the case. The 1981-82 Head Start Contract between the District and the CAA contained the same "special conditions" regarding such requirements. Those "special conditions" called for teachers in the Head Start Program to have a CDA certificate, or one of two other alternatives, and to participate in CDA training and complete the requirement for CDA certification. Regardless of the fact that the 1982-83 Contract contained "SPECIAL CONDITION II,"

which the proposal/grant request had left out, the evidence indicates that the District and the CAA still considered a degree in Early Childhood Education to be an appropriate equivalent of a CDA certificate as they had in the past. Ferguson testified that after checking with his predecessor, Stephens-Rogers, he signed the 1982-83 contract on behalf of the District with the understanding that any requirement in the contract relative to requiring the teachers to possess a CDA certificate had not been, and would not be, enforced.

That McGowan, the representative of the CAA for the Head Start Program, might have continued to push the CDA certification and participation in CDA training is not sufficient to prove that the 1982-83 contract changed the requirements for teaching in the Racine Head Start Program. It is clear from the record that McGowan had pushed for CDA certification and training in the past and been unsuccessful with the identical "special conditions" in the Head Start Contract. Also, one of the Head Start teachers, Jackson-Smith, testified that she had obtained her CDA certificate several years before due to their having been told that such certification could be considered necessary to continue teaching in the program.

Furthermore, as evidenced by Thomas' letter to Ennis, the CAA did not consider a CDA certificate a necessary requirement to teach in the Head Start Program as long as teachers had an acceptable, appropriate equivalent. Both Ennis and the CAA were aware that the regional office of the federal agency viewed a degree in Early Childhood - Nursery School or an Unlimited Certificate in Early Childhood as acceptable equivalents for a CDA certificate in Wisconsin.

There is no evidence in the record to indicate that the District or the CAA construed the "special conditions" in the 1982-83 Head Start Contract differently from the identical "special conditions" in the preceding contract. The testimony of another Head Start teacher, Janet Mitchell, and the Director, Ferguson, establishes that no teacher in the Racine Head Start Program was told by anyone from the District that for the 1982-83 school year she/he would have to obtain a CDA certificate or participate in CDA training in order to continue teaching in the Program.

The Association contends that the fact that the "special conditions" were present in the 1981-82 Head Start Contract is irrelevant since the Association was unable to bargain over those conditions due to the waiver clauses in the parties' 1979-82 labor agreement. Further, the District was obligated to bring the Head Start Contract in line with the parties' labor agreement.

There are several problems with the Association's contentions. First, the testimony of Jackson-Smith and Stephens-Rogers indicates that the CDA requirement has been around in some form for years and predates the parties' 1979-82 labor agreement. It also appears that for just as long the District and the CAA have agreed that having a CDA equivalent is sufficient, and that McGowan has pushed to have the teachers obtain the CDA certificate as he did at the start of the 1982-83 school year. Secondly, the teachers and Ennis heard McGowan again state his position at the meeting early in the 1982-83 school year, shortly after the parties' labor agreement expired on August 24, 1982. Yet, even with the labor agreement expired, the Association never demanded to bargain over those "special conditions," rather, it argued that a CDA equivalent was all that was required by law. The record indicates that the District and the CAA, the agency McGowan worked for, agreed with the Association and the teachers, and that it was only McGowan who took a different position. Finally, regarding the need to make the Head Start Contract comply with the parties' expired labor agreement, there is no evidence in the record from which to conclude that the "special conditions" contained in the 1981-82 Head Start Contract, and repeated in the 1982-83 Contract, were not present in the Head Start contracts that predated the parties' 1979-82 labor agreement. There also has been no showing that the "special conditions" would violate any particular provision of the labor agreement. Without such evidence it cannot be concluded that the "special conditions," as applied by the District and the CAA as requiring only a CDA equivalent, imposed a change in the status quo over which the District was required to bargain.

Relative to the Association's assertion that the teachers suffered a loss by being required to participate in Head Start Supplementary Training during the 1982-83 school year, Mitchell testified that the teachers had participated in such in-services during the the 1981-82 school year, as well as in prior years. Mitchell also testified that during the 1982-83 school year the teachers in fact worked on

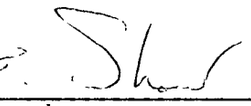
the Early Childhood curriculum as their in-service, and that they did so because it was something the Head Start teachers, themselves, wanted to do.

On the basis of the foregoing, it has been concluded that the District, by entering into the 1982-83 Head Start Contract, did not change the status quo and did not impose, or threaten to impose, a new requirement that affected the teachers' ability to continue teaching in the Head Start Program. It is, therefore, unnecessary to decide whether such a requirement is to be considered a mandatory subject of bargaining.

The District contends that the Association's complaint in this case is frivolous, and therefore, the District should be awarded costs and attorneys fees. The Commission clarified its policy on the award of attorneys fees in Madison Metropolitan School District, 3/ wherein it stated that no costs or attorneys fees would be awarded in complaint or arbitration proceedings before the Commission or its staff, "unless the parties have agreed otherwise, or unless the Commission is required to do so by specific statutory language." The only exception noted was where, under certain circumstances, an employe has been denied fair representation. 4/ Since there has been no showing that the parties agreed that the losing party would pay the other's costs and attoreys fees, and the Examiner is not aware of any statutory requirement that he provide such relief, the District's request for costs and attorneys fees is denied.

Dated at Madison, Wisconsin this 12th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
David E. Shaw, Examiner

3/ 16471-D (5/81); affirmed in relevant part, sub nom, Madison Teachers, Inc. v. WERC, 115 Wis. 2d 623 (1985) Ct. of Apps. IV.

4/ Ibid, p. 10.