

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NORTHLAND PINES EDUCATION ASSOCIATION,	:	
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Complainant,	:	
	:	Case 33
vs.	:	No. 45703 MP-2485
	:	Decision No. 26908-A
NORTHLAND PINES SCHOOL DISTRICT,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Mr. Gene Degner, Director, WEAC UniServ Council #18, P.O. Box 1400,  
 Drager, O'Brien, Anderson, Burgy and Garbowicz, S.C., P.O. Box 639,

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 Eagle

FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

Amedeo Greco: Hearing Examiner: Wisconsin Education Association Council UniServ Council #18, herein the Association, filed a prohibited practices complaint with the Wisconsin Employment Relations Commission on May 6, 1991, alleging that the Northland Pines School District, herein District, had unlawfully violated the terms of the parties' collective bargaining agreement by improperly awarding the position of Building Contact Person at the Eagle River Elementary School to Lois E. Steiner rather than to Peter J. Bugni and by retaliating against the Association for filing a previous grievance over a similar situation at another school.

The Commission thereafter appointed the undersigned to make and issue Findings of Fact, Conclusion of Law, and Order as provided for in Sec. 111.07(5), Wis. Stats., and hearing subsequently was held in Eagle River, Wisconsin on June 28, 1991. The parties thereafter filed briefs which were received on August 20, 1991.

Having considered the arguments and the record, the Examiner makes and files the following Findings of Fact, Conclusion of Law, and Order.

FINDINGS OF FACT

1. The Association, located at P.O. Box 1400, 719 West Kemp Street, Rhinelander, Wisconsin, is a labor organization which represents certain regularly employed classroom teachers, librarians, and guidance counselors employed by the District.

2. The District, a municipal employer, has offices at 501 West Pine Street, Eagle River, Wisconsin. It operates a high school, a middle school, and four (4) elementary schools. At all times material herein, Jann Peterson has been the District Administrator and has acted on the District's behalf.

3. The parties are privy to a 1989-1992 collective bargaining agreement which contains a grievance procedure which does not result in final and binding arbitration.

4. Said contract provides, inter alia, in Section XII, Section E, entitled "Policies Relating to Salaries", that:

"All openings in the field of extra-curricular work shall be posted and may be published to secure applications for the positions either from the teaching staff members or the public. No appointment shall be made until ten (10) days have elapsed after posting. All applications shall receive full consideration with the final determination of the appointees being made by the Board. WIAA approval would be required for any work hired from other than teaching ranks of the school district. If two persons, who are in the Board's opinion, equally qualified apply for the same position, the teaching staff member shall be awarded the position."

5. Appendix "B" in the 1989-1990, 1990-1991, and 1991-1992 contractual salary schedules for extra-curricular activities provide for the yearly compensation to be paid to the Building Contact Persons at the St. Germain, Conover, Land O'Lakes, and Eagle River elementary schools, with the stipend varying for each of these schools. The first three elementary schools do not have designated building principals, as the Building Contact Persons are in charge of routine administrative matters. The Building Contact Persons at St. Germain and Land O'Lakes are non-teachers and are outside the teacher's bargaining unit; the Building Contact Person at the Conover school is a teacher in the bargaining unit.

6. In 1989 a dispute arose between the parties over whether the District had improperly awarded the position of Building Contact Person for the St. Germain Elementary School to a non-bargaining unit member. Since the contract does not provide for arbitration, the Association filed a prohibited practices complaint with the Wisconsin Employment Relations Commission alleging that said selection violated Article XII of the contract. Wisconsin Employment Relations Commission Hearing Examiner Jane B. Buffett subsequently ruled in April, 1990, that the District had violated the contract because it did not give full consideration to the qualifications of a bargaining unit member who was passed over for said position. 5/ As a remedy, she ordered the District to rescind its award of said position to the non-bargaining unit member; to repost it; and to thereafter properly evaluate all candidates for the position.

5/ Northland Pines Education Association v. Northland Pines School District, Case No. 29, No. 42229, MP-2230, Dec. No. 26096-A (4/90).

7. The matter was then appealed to the full Commission which, with some modifications, affirmed Hearing Examiner Buffett's decision in September, 1990. 6/ In doing so, the Commission found that the District had not given "full consideration" to all of the job applicants because the District did not have any written job qualifications for the job against which the job applicants could be measured; because neither applicant was given any job application blanks; because neither candidate was interviewed; because the District tried to dissuade the unsuccessful candidate from applying; and because the District improperly wanted to reward the successful bidder because she had previously performed some of the disputed duties without receiving any extra compensation.

8. In response, the District established hiring criteria for said position; reposted it; and again awarded it to a non-teacher after interviewing both candidates. The Association grieved said selection at the first step of the grievance procedure, but it then dropped the matter and did not file a prohibited practices complaint.

9. The District on January 2, 1991, posted the position for a Building Contact Person at Eagle River Elementary School, a newly-created position which provided for a stipend of \$1637 a year. Said posting did not list the qualifications for said position or its job duties.

10. The job description for said position provides:

Building Contact Person

Duties

1. Develop, under the district elementary principal's direction, schedules for fire and emergency drills, lunches and playground, lyceum buses, parent-teacher conferences, special classes and traveling teachers in the building(s).
2. Assist teachers, bus drivers, etc., in minor discipline problems when needed.
3. Acquire needed substitutes for classroom teachers, not involving special or traveling teachers.
4. Provide and disseminate information to pupils, parents and staff.
5. Attend personnel interviews at the discretion of the district elementary principal.
6. Maintain general public relations.
7. Handle minor public concerns and problems.
8. Cause to have removed from the premises, members of the public who may be a threat to the peace or safety of the school.

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6/ Northland Pines Education Association v. Northland Pines School District, Case 29, No. 42229, MP-2230, Decision No. 26096-C (9/90).

9. Handle emergency situations until the district elementary principal can be contacted.
10. Be responsible for seeing to the after hours security and public use of the building.
11. Coordinate the duties of the local non-certified personnel under the direction of the district elementary principal.
12. Be responsible for the picking up of mail, and parcel pick-ups and drops during the school year and summer.
13. Work closely with the building secretary, janitors, and maintenance personnel.
14. Assemble the staff periodically to discuss mutual building concerns and problems.
15. Keep the district elementary principal informed of all happenings and events.
16. Person must be a full time employee.

11. Three people applied for said position -- Peter J. Bugni, an elementary school teacher at Eagle River Elementary School and a bargaining unit member; part-time cook's helper Linda S. Moon; and Lois E. Steiner, a secretary at the Eagle River Elementary School who had previously been performing some of these job duties for the past 15 years or so and who had not received any extra compensation for doing so. None of the applicants were required to submit either resumes or detailed job applications. Bugni requested and received copies of the Building Contact Person's job duties and the hiring criteria used by the District in filling said position before he applied for it.

12. These candidates were subject to the same hiring criteria previously adopted by the Board in response to the earlier prohibited practices complaint regarding the St. Germain position. 7/ It provided:

#### HIRING CRITERIA

- Principal's recommendation
- Knowledge of the position
- Awareness of the community and its needs
- Possess communication skills (oral and written)
- Certification in first aid and CPR
- Ability to:

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7/ The District supplied the Commission with this hiring criteria as part of its efforts to comply with the Commission's decision in this earlier matter.

- . handle emergency situations
- . function with the least amount of interference with normal classroom activities
- . work well with parents and community leaders
- . coordinate emergency plans for evacuation of building(s) for fires and other emergencies
- . handle building and grounds security
- . work with bus contractors and drivers for efficient and safe bus transportation
- . be responsible for mail and other delivery services
- . schedule public use of school facilities and maintain required forms

13. Steiner was the only applicant certified in first aid and CPR.

14. Bugni and the other two applicants were interviewed on January 18, 1991, for about 45 minutes by School District Administrator Peterson and Eagle River Elementary School Principal Gene Olson. They then asked the following interview questions of each applicant:

- 1) Why did you apply for this position?
- 2) What do you consider the role of a Building Contact Person?
- 3) What responsibilities does the Building Contact Person Position require?
- 4) What is the Building Contact Person's responsibility to overall school discipline? (outside of the classrooms, hallways, bathrooms, etc.)
- 5) What type of working relationship would you strive to develop with members of the elementary staff?
- 6) How would you resolve a parent-teacher conflict?
- 7) Do you have certification in First Aid and CPR?
- 8) What is your major strength?
- 9) What is your major weakness?
- 10) What organizations do you belong to in the Eagle River area?
- 11) How would you handle emergencies during the day?

15. Olson and Peterson independently graded the applicants, with Olson giving grades of 58, 45 and 46, respectively to Steiner, Bugni and Moon, and Peterson respectively giving grades of 56, 50 and 40 to the three.

16. At the end of Bugni's interview, and even before they interviewed Steiner, Olson told Bugni that Steiner probably would get the job. Throughout this process, no written or oral tests were given and no questions were asked about their individual skills.

17. During the interview, Olson discussed Bugni's prior opposition to the selection of a non-teacher at St. Germain for the Building Contact Person position and why the Association insisted upon the selection of a teacher for such positions. During that discussion, Bugni stated that some of the job duties for the Building Contact Person at the Eagle River Elementary School should be performed by teachers.

In late January, Olson again broached this subject with Bugni by asking how he could properly represent him as a Building Contact Person given the fact that he, Olson, was persona non grata with the Association, and thereby placing Bugni in a conflict of interest. Olson's selection of Steiner over Bugni was not based on any unlawful, discriminatory considerations since his selection of Steiner was only based upon legitimate factors relating to her qualifications.

18. Olson wanted Steiner to get the job in part because she had been doing it previously and because she would still be doing some of the job duties in issue even if someone else were awarded the position.

19. Earlier, Carol Smart, the Association's chief negotiator, suggested to Olson in either November or December, 1990 that Steiner be awarded the job

without any formal posting and that she not be called a Building Contact Person. Olson rejected that suggestion because the District has obtained legal advice to the effect that that could still cause some legal difficulties for the District.

20. On or about January 28, 1991, the District informed Bugni of his rejection and the District's Board of Education, pursuant to Peterson's written February 18, 1991 recommendation, formally awarded said position to Steiner. Peterson's written recommendation provided:

I consider all three candidates to be very good. However, based on the results of my evaluation, I am recommending Lois Steiner for the position. The following factors were primary considerations in my decision:

- 1) EXPERIENCE  
She has performed the duties required of a building contact person in an exemplary manner for the past thirteen years (twenty five years of service to the district).
- 2) AVAILABILITY TO PERFORM THE DUTIES  
Mrs. Steiner is available to function effectively as building contact person with the least amount of interference. She does not have the responsibility of instruction of students, and her other duties do not require her presence in a classroom setting. She is in the building and accessible at all times.

21. Bugni subsequently unsuccessfully grieved his non-selection by claiming that the District had violated Section XII, Part E, of the contract, hence leading to the instant proceeding.

22. In filling this position, the District was not motivated by any union animus.

Upon the basis of the foregoing Findings of Fact, the Examiner makes the following

#### CONCLUSION OF LAW

The District has not violated either Sec. 111.70(3)(a)1, Stats. or Sec. 111.70(3)(a)5, Stats. in awarding the position of Building Contact Person at Eagle River Elementary School to Lois Steiner, rather than to bargaining unit member Peter J. Bugni.

On the basis of the above Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

#### ORDER 4/

It is ordered that the instant complaint be, and it hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 15th day of November, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco /s/  
Amedeo Greco, Examiner

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4/ 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 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.

NORTHLAND PINES SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

POSITIONS OF THE PARTIES:

Association:

In support of its prohibited practices complaint, the Association primarily argues that when, as here, job applicants are equally qualified and apply for the same position, the teaching staff member must be awarded the position under Article XII, Section E, of the contract and that, furthermore, "the District predetermined that a non-bargaining unit member would get this position before it was ever posted." The Association thus asserts that the District went out of its way to select Steiner, a non-bargaining unit member, because it "wanted to retaliate against the Association for filing a grievance on this matter previously." It also claims that the duties of a Building Contact Person "parallel very closely those of teacher qualifications and that they should not be mistaken for the manipulative duties of handing out papers, typing, etc." which are normally assigned to the elementary school secretary. As a remedy, the Association's complaint requests that the District be ordered to repost this position; that an appropriate cease and desist order be issued and ordered posted; that Bugni be awarded loss of pay and interest; and that it be reimbursed for processing this matter.

District:

In response, the District maintains that it complied with the Commission's mandate following the issuance of its decision regarding the St. Germain Building Contact Person position; that the Board was impartial in its decision-making process; that even without Olson's evaluation, the award to Steiner was proper; and that the Association's "real reason" for filing the instant grievance is to relitigate the St. Germain issue.

DISCUSSION

The resolution of this issue must start out by first noting that the position of the Building Contact Person is an extracurricular activity - one which the contract expressly recognizes can be awarded to either a bargaining unit or non-bargaining unit individual. Hence, there is no merit to the Association's assertion that the duties of this position closely parallel those of a teacher's qualifications as the Building Contact Persons at the Conover and St. Germain elementary schools, who are not teachers, perform their duties as well as the Building Contact Person at Land O'Lakes, who is a teacher. Indeed, the Commission itself, in its earlier decision held that "the Building Contact Person (sic) responsibilities are substantially different from the normal classroom responsibilities of a teacher."

Secondly, there is no merit to the Association's charge that the District selected a non-bargaining unit member in order to retaliate against the Association for filing its complaint over the St. Germain matter. The District in fact did what it did here precisely because it did not want to appear arbitrary; because it believed, rightly or wrongly, that Steiner was the better applicant; and because it wanted to follow the procedures mandated by the Commission in the earlier prohibited practices' complaint lodged against it by the Association.

That is why it insisted on posting this position and why it rejected the Association's request to informally give Steiner the job under either a different title or to simply pay her for doing her additional duties without calling her a Building Contact Person. For if the District had accepted this suggestion, there is no assurance that it would not have faced another grievance from individual teachers alleging that it was sidestepping the contract. Having been burned once over the improper filling of the St. Germain slot, it had good reason to be gun-shy over any such additional charge of impropriety.

Moreover, the District has the clear contractual right to formally post and fill this position in accord with the pertinent contractual provisions. That being so, there is no valid reason for it to abdicate this right under the circumstances presented here.

The Association is more on the mark when it complains that Olson in effect decided to hire Steiner for this position even before the formal application and interview process were over, as he told teacher Carol Smart in November or December, 1990, that Steiner deserved this position and since he thereafter told Bugni even before he interviewed Steiner that she probably would get the job.

The penultimate question here thus becomes whether his views so tainted this process so as to warrant setting aside Steiner's selection. This, in turn, involves the clash of two competing principles -- Bugni's contractual right under Article XII, Section E, to receive "full consideration" for this position and to be awarded it if all other factors are equal on the one hand, and the District's corollary right under the same provision to determine

whether, in its "opinion", the applicants were "equally qualified".

Here, it must be concluded that Bugni was not as qualified as Steiner in part because she, unlike him, is certified in first aid and CPR while Bugni is not. The District therefore could rightly determine that Bugni had failed to meet all of the posted requirements for the job. 8/

Secondly, since Steiner over the last 15 years already has been performing some of the Building Contact Person's job duties, she clearly has far more experience than Bugni. This was a legitimate factor for the District to consider because the Commission's prior decision stated that:

"notwithstanding any contrary opinion or implication contained in the Examiner's decision, we believe the District is entitled to use 'experience' as one of the qualifications it considers."

The record here shows that the District did precisely that and that that perhaps was the chief reason she was awarded the position over Bugni.

It may nevertheless be argued that the District gave too much weight to this factor and that, as a result, Bugni was never given the same "full consideration" that he otherwise would have received had Steiner's experience been discounted. But that was the District's call to make since it has the right to determine reasonable job qualifications, how much weight is to be given to particular qualifications, and who in its "opinion" should have been given the job.

That is also why there is no merit to the Association's additional assertion that the District improperly considered the fact that Steiner could perform the duties of a Building Contact Person with less classroom disruption than if Bugni were awarded the position, as he would have needed to sometimes leave his classroom to perform some of these duties if he got the position. This is a matter which goes directly to the District's right to manage its operations in as efficient a way as possible, and that it is the kind of factor which the District could rightfully consider when determining which of the competing applicants could best, in its opinion, perform those duties.

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5/ The Union asserts that this requirement was imposed to insure that Steiner got this job over Bugni. However, the first aid and CPR requirements were first included in the hiring criteria for the St. Germain position several months earlier, hence showing that it was unrelated to the controversy here.

Based upon this record, it must be concluded that the District properly exercised this right and that, accordingly, its selection of Steiner over Bugni was not violative of the contract. 9/

In light of the above, I therefore conclude that the complaint should be dismissed in its entirety.

Dated at Madison, Wisconsin this 15th day of November, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco /s/  
Amedeo Greco, Examiner

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9/ It perhaps should be noted that this finding is limited to the very narrow facts of this case which show that the District has very broad discretion in selecting employes for various extracurricular activities, as the contract expressly gives it the right to select such employes based upon its "opinion" of who is best qualified.