

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS,

Complainant,

vs.

TURTLE LAKE SCHOOL DISTRICT,

Respondent.

Case 36

No. 53117 MP-3071

Decision No. 28580-A

Appearances:

Mr. Kenneth Berg, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, appearing on behalf of the Complainant.

Ms. Kathryn Prenz, Weld, Riley, Prenz & Ricci, S.C., Attorneys at Law, 4330 Golf Terrace, #205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Respondent.

FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Northwest United Educators filed a complaint with the Wisconsin Employment Relations Commission on September 7, 1995, alleging that the Turtle Lake School District committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5, Stats., when it denied Sybil Thompson's request to bump into the consumer economics course following her partial layoff. The Commission appointed Raleigh Jones to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Stats. A hearing was held in Turtle Lake, Wisconsin on January 25, 1996, at which time the parties were given full opportunity to present their evidence and arguments. Afterwards, both parties filed briefs and reply briefs whereupon the record was closed May 14, 1996. The Examiner has considered the evidence and arguments of the parties, and now makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Northwest United Educators (NUE), hereinafter referred to as the Association, is a labor organization which has its offices located at 16 West John Street, Rice Lake, Wisconsin 54868.

No. 28580-A

2. The School District of Turtle Lake, hereinafter referred to as the District, is a municipal employer which has its offices located in Turtle Lake, Wisconsin, and which has a mailing address of P.O. Box 1000, Turtle Lake, Wisconsin 54889.

3. The Association is the exclusive collective bargaining representative for all regular full-time and regular part-time certified teaching personnel of the District. The Association and the District were parties to a collective bargaining agreement from July 1, 1993 until June 30, 1995, which established the wages, hours and conditions of employment for the District's teachers. That agreement contained, among its provisions, the following:

VIII. LAYOFF

A. When the Board in its discretion determines that it is necessary to decrease the number of teachers for any reason other than the teaching performance of a particular teacher or teachers, the Board may lay off, in whole or in part, the necessary number of teachers according to the following procedure:

1. The Board determines the assignment area (certification) in which the layoff shall occur.

...

4. The laid-off teacher shall have bumping rights, based on seniority, into other teaching areas for which he/she is certified. Bumping rights shall be exercised within two (2) weeks of receipt of the layoff notice.

...

XI. BOARD RIGHTS

A. It is recognized that the Board has and will continue to retain the rights and responsibilities to operate and manage the school system and its programs, facilities,

properties and activities of its employees within the scope of their employment. The exercise of Board rights and responsibilities, whether or not specifically hereinafter enumerated, shall not be inconsistent with the terms of this Agreement.

- B. Without limiting the generality of the foregoing paragraph (paragraph A.), it is expressly recognized that the Board's operational and managerial responsibility includes:

...

10. The determination of the size of the working force, the allocation and assignment of work to employes, the determination of policies affecting the selection of employes, and the establishment of quality standards and judgment of employe performance.

11. The determination of the layout and the equipment to be used and the right to plan, direct and control school activities. The determination of the processes, techniques, methods and means of teaching and the subject to be taught.

...

- D. The foregoing enumerations of functions of the Board shall not be considered to exclude other functions of the Board not specifically set forth; the Board retaining all functions and rights to act not specifically nullified by this Agreement.

This Agreement also contained a three-step grievance procedure which culminated with a decision by the School Board. The Agreement does not contain a provision for final and binding

arbitration of grievances.

4. Sybil Thompson is employed by the District as a home economics teacher and is an individual member of the bargaining unit represented by the Association referenced in Finding of Fact 3. Thompson has been employed by the District as a home economics teacher since the 1977-78 school year. She is the District's only home economics teacher. She has a lifetime certificate from the Department of Public Instruction in Home Economics which is now referred to as Family and Consumer Education. She was employed full-time through the 1994-95 school year.

5. In the spring of 1995, students in the District registered for classes for the upcoming 1995-96 school year. Registration helps the administration schedule classes and ascertain staff (teaching) needs, supplies and room assignments. The student registration for classes in the Family and Consumer Education Department was low.

6. At the Monday, May 22, 1995 regular meeting of the Board of Education, the School Board reviewed the student sign-ups for the upcoming 1995-96 school year. After reviewing the low projected student enrollment figures for classes in the Family and Consumer Education Department, the School Board decided to reduce the course offerings in that Department. The Board further decided to effectuate same by implementing a partial layoff in that Department. Since Thompson is the only teacher in that Department, she was selected for the partial layoff. The Board decided to reduce Thompson from full-time to seven-eighths (7/8) time effective with the 1995-96 school year.

7. On May 23, 1995, District Administrator Mark Collins sent Thompson the following letter informing her of her reduced position for the 1995-96 school year:

Dear Ms. Thompson:

At the Monday, May 22, 1995 Regular Meeting of the Board of Education, our School Board reviewed the student sign-ups for the Family and Consumer Education department of your work load for 1995-96. As a result of this review the Board felt they could not justify a full-time position. They voted to reduce your full-time position to seven eighths (7/8) position for 1995-96.

It is my hope that during the 1995-96 school year you will review your program and offerings and try to find a way to recapture the student's interest in your area.

Sincerely,

Mark J. Collins /s/
Mark J. Collins
District Administrator

cc: Jean Moelter, NUE Representative
Employee File

8. In response to her reduction notice, Thompson notified Collins in a letter dated June 1, 1995, that she wished to bump into the consumer economics course pursuant to Article VIII, A, 4 of the labor agreement.

9. In a letter dated June 2, 1995, Collins denied Thompson's request to bump into the consumer economics course. His stated reasons for doing so were that the consumer economics course has been in the Business Education Department for many years and that business education credit has been given for the course.

10. In a letter dated June 14, 1995, Thompson filed a formal grievance with Superintendent Collins over the denial of her request to bump into the consumer economics course. Thompson's grievance was processed through the steps of the grievance procedure noted in Finding of Fact 3 and was eventually denied by the School Board. With this decision the parties completed all the steps of the contractual grievance procedure. Since the grievance procedure does not end in final and binding arbitration, the Association filed a prohibited practice complaint on Thompson's behalf alleging that the District had violated the collective bargaining agreement and, thereby, Sec. 111.70(3)(a)5, Stats.

11. The District's curriculum outline for the consumer economics course contains the following course description:

Consumer Economics is designed to provide an overview of the roles of the individual, business, government, and foreign trade in the American economy. The individual economic roles of earning income, consuming, and performing as a citizen (voter) are also examined.

Students will become familiar with broad economic concepts such as supply and demand and their effects on pricing; why we study Gross National Product and what affects it; economic scarcity and resource allocation; the various types of economic systems; and the relationship between the flow of goods, services and money in our society. Students will develop an awareness of how government legislation affects our economy and in turn influences individual consumer decision making.

Various aspects of consumer activities are covered in the areas of buying, saving, borrowing, investing, and insuring, and taxes. Consumer rights and responsibilities are also addressed.

The consumer economics course has been part of the District's business education curriculum since the 1981-82 school year. Business education credit is awarded for the course. The course has been required for graduation since 1986. The consumer economics course has always been taught by a business education teacher; it has never been taught by a home economics teacher. The course is currently being taught by business education teacher Linda Moen. Moen received overload pay the second semester of the 1995-96 school year. Moen has less seniority than Thompson. Thompson is not licensed in business education.

12. From 1979-81, Thompson taught a people power course as part of the District's then home economics curriculum. The course was not required for graduation. The record does not contain a course description for the people power course. Nevertheless, the record indicates that the following topics were covered in the course, *inter alia*: home buying, decorating a home, selecting clothing, buying appliances, buying clothes, buying food, buying drugs and cosmetics, wardrobe planning, fibers and home furnishings. None of the topics just mentioned are covered in the current consumer economics curriculum referenced in Finding of Fact 11.

13. The District's denial of Thompson's request to bump into the consumer economics course following her partial layoff did not violate the parties' collective bargaining agreement.

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

CONCLUSION OF LAW

The District did not violate the collective bargaining agreement referenced in Finding of Fact 3 by denying Thompson's request to bump into the consumer economics course following her partial layoff. Therefore, the District did not violate Sec. 111.70(3)(a)5, Stats.

Based on the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER 1/

The complaint is dismissed.

Dated at Madison, Wisconsin, this 19th day of July, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner

(Footnote 1/ appears on the next page.)

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.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

TURTLE LAKE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

BACKGROUND

In its complaint initiating these proceedings, the Association alleged that the District committed a prohibited practice in violation of Sec. 111.70(3)(a)5, Stats., when it denied Thompson's request to bump into the consumer economics course following her partial layoff. The District denies it committed a prohibited practice by its conduct herein.

POSITIONS OF THE PARTIES

Association

The Association's position is that the District violated the labor agreement when it denied Thompson's request to bump into the consumer economics course following her partial layoff. According to the Association, Article VIII, A, 4, gives Thompson the right to bump into that course. It makes the following arguments to support this contention.

The Association contends at the outset that although Thompson has never taught the consumer economics course before, she is qualified and certified to do so. To support the premise that she is qualified to teach the course, the Association notes that Thompson once taught a people power course. In the Association's view, that course was similar to the current consumer economics course. The Association asserts that the differences between the people power course and the consumer economics course are of minor importance and not governing of the outcome herein. The Association asserts that not only is Thompson qualified to teach the consumer economics course, she is also certified to teach same. As support for the premise that Thompson is both qualified and certified to teach the existing consumer economics course, the Association relies on a letter from a Department of Public Instruction consultant which indicates without reservation that Thompson could teach the consumer economics course if it was part of the Family and Consumer Education Department.

Next, with regard to the existing placement of the consumer economics course in the Business Education Department, the Association acknowledges that the District's 1981 decision to assign the course to the business education teacher was not arbitrary or capricious. In its view though, the Board's recent decision to not allow Thompson to bump into the class when she was both qualified and certified to do so was arbitrary and capricious.

The Association strongly emphasizes that the consumer economics course could be taught by either Thompson or the business education teacher. Thus, this course cannot be taught just by

the business education teacher. That being so, the Association calls the Examiner's attention to the fact that the business education teacher received overload pay for the second semester of the 1995-96 school year. The Association finds it difficult to accept that the District would choose to pay an overload rate to one teacher while reducing the full-time status of another teacher when both teachers can legitimately teach the consumer economics course.

The Association also emphasizes that it is not asking herein that the Board change its curriculum or its course offerings. In its view, all it is asking is that the District comply with the contractual agreement it made in Article VIII, A, 4 for bumping following a layoff.

With regard to the remedy, the Association asks that Thompson be allowed to bump into the consumer economics course and be made whole for the 1995-96 school year. This proposed remedy would keep Thompson at full-time status. The Association believes this proposed remedy is within the Examiner's authority notwithstanding the District's contention to the contrary.

District

The District's position is that it did not violate the labor agreement when it denied Thompson's request to bump into the consumer economics course following her partial layoff. As background, the District notes that the consumer economics course has been offered in the District's Business Education Department since the 1981-82 school year. The District asserts this course has never been taught by a home economics teacher; instead it has always been taught by a certified business education teacher for business education credit. According to the District, the consumer economics course has been presented from a business world perspective; not a home economics perspective. The District believes that the Board has expressly reserved to itself the right to make the decisions just noted. In its view, the Board has sole discretion to decide whether a course will be offered and, if so, as part of which department's curriculum. In support thereof, it cites Article XI, B, for the proposition that the Board has the authority to allocate and assign work to employees, to determine the policies for selecting employees, to establish quality standards, and to determine the processes, techniques, methods and means of teaching in the subjects to be taught. The District argues that the decisions which the Board previously made concerning the consumer economics course are consistent with the Board's management rights, were not arbitrary or capricious, and were not made in bad faith. The District therefore contends there is no authority, contractual or otherwise, for overriding the Board's policy decisions with respect to the consumer economics course.

With regard to the people power course which Thompson taught in the early 1980's as part of the home economics curriculum, the District asserts that course covered different topics than are covered in the consumer economics course. That being the case, the District submits the people power course was not the same as the consumer economics course.

Next, the District argues it has no obligation to move the consumer economics course from

the business education curriculum into the curriculum of the Family and Consumer Education Department just to accommodate Thompson. As the District sees it, the Association is trying to alter curriculum decisions which were made years ago so that Thompson can teach a business education course under the guise of a home economics course. According to the District, that amounts to interference with the Board's basic educational policy decisions. The District notes that it has made similar decisions involving other courses, to wit: the decision that the animal and veterinary service course would be part of the Agriculture Department rather than part of the Science Department, and the decision that the leisure crafts course would be part of the Family and Consumer Education Department rather than the Art Department. The District submits it made a similar curriculum policy decision years ago when it decided that the consumer economics course would be in the Business Education Department rather than the Home Economics Department. In the District's view, the question here is not whether Thompson could teach the consumer economics course. It notes in this regard that just as a biology teacher could teach veterinary science, and just as an art teacher could teach leisure crafts, a home economics teacher could teach consumer economics if the Board was to offer the course as a home economics course. The District believes that the question herein is whether the Board can be compelled to undo the decisions previously made to offer consumer economics as a business education course and require that business education certification be required as a qualification for teaching the course. The District answers that question in the negative.

Finally, the District believes that the Association's requested remedy (i.e., giving Thompson the right to bump into the consumer economics course) requires removing the consumer economics course from the business education curriculum and adding it (i.e., the course) to the family and consumer education curriculum. According to the District, there is no authority by which that remedy can be granted. The District contends that since the Board has previously decided to offer the consumer economics course for business education credit, a business education license is required of the person assigned to teach the course. Since Thompson is not certified to teach business education, the District submits she does not possess the certification necessary to bump into the course. The District therefore asks that the grievance be denied and the complaint dismissed.

DISCUSSION

It is undisputed that the parties' labor agreement does not provide for grievance arbitration and that the Association has exhausted the procedural requirements of the contractual grievance procedure. As a result, the Examiner will exercise the Commission's jurisdiction under Sec. 111.70(3)(a)5, Stats., to determine if the District's conduct here violated the parties' collective bargaining agreement. 2/

2/ See, Winter Joint School District No. 1, Decision No. 17867-C (WERC, 5/81).

It is noted at the outset that this case does not involve the Board's decision to partially lay off Thompson. Article VIII, A explicitly gives the Board the right to lay off teachers "in whole or in part." The Board decided here to implement a partial layoff in the Family and Consumer Education Department due to low enrollment. The Association acknowledges that the Board was within its contractual rights to do so. Since Thompson is the only teacher in that Department, it logically follows that she was the only employe who could be reduced.

That said, this case involves Thompson's bumping rights following her partial layoff. She wants to bump into the consumer economics course currently taught by the business education teacher. Were that to happen, she would keep her full-time status rather than be seven-eighths (7/8) time. At issue herein is whether she has a contractual right to bump into that particular course.

The parties agree that the contract language applicable here is Article VIII, A, 4. That provision provides as follows:

The laid-off teacher shall have bumping rights, based on seniority, into other teaching areas for which he/she is certified. Bumping rights shall be exercised within two (2) weeks of receipt of the layoff notice.

This section gives those teachers who are laid off bumping rights, based on their seniority, into other teaching areas for which they are certified. Although the term "certified" is not defined, it is implicit from its context that it refers to the certification granted to individuals by the Department of Public Instruction to teach a particular academic subject area. Thus, the only stated qualification for bumping is certification. This means that a teacher who is laid off can bump into those "teaching areas for which he/she is certified" to teach. The bumping which follows a layoff can be either full or partial, depending on the layoff which preceded it. For example, a teacher who was completely laid off could completely bump another teacher. Conversely, a teacher who was partially laid off could bump into a single course. This case involves the latter situation.

As previously noted, Thompson wants to bump into the consumer economics course. The underlying problem with her doing so is that the Board decided in 1981 that the consumer economics course would be part of the business education curriculum and would be offered for business education credit. The course has been taught by a business education teacher since then. The decisions to offer a consumer economics course, what department to place it in, and who teaches it, are educational policy decisions which are vested with the Board pursuant to Article XI, B (the Board Rights provision). There is nothing in the record indicating that these decisions which the Board made years ago were arbitrary and capricious or made in bad faith. Because of the Board's prior decisions to offer the consumer economics course for business education credit as part of the business education curriculum, it follows that business education certification is required to teach the course. Thompson however does not possess business education certification. Since she does not possess the certification necessary to teach consumer economics, she cannot bump into

that course pursuant to Article VIII, A, 4.

Certainly one way to get around the foregoing would be if the consumer economics course was part of the Family and Consumer Education Department and that Department's curriculum rather than the Business Education Department and that Department's curriculum. Were that done, there is no question that Thompson could teach the course (even though she has never previously done so) because it would then be a course in the area she is certified to teach (i.e., Family and Consumer Education). As previously noted though, departmental placement involves an educational policy choice which is vested with the Board pursuant to Article XI, B. School boards commonly make course placement decisions. The record indicates that the consumer economics course could be placed in either the Business Education Department or the Family and Consumer Education Department. The Board decided here to keep the consumer economics course in the Business Education Department instead of moving it into the Family and Consumer Education Department because it wanted the curriculum material to be presented from a business world perspective rather than a home economics perspective. That policy call was the Board's to make. Based on the record herein, there is no reason for the undersigned to second guess same.

The Association cites the arbitration award of Arbitrator Dennis McGilligan in Lake Holcombe School District 3/ to support its position here that Thompson should be able to bump into the consumer economics course. The Examiner finds the Association's reliance on Lake Holcombe misplaced. That case involved whether the grievant therein could bump into assignments for either gifted and talented, at-risk, or supervise the distance learning class. None of these assignments required certification in a given subject area. Instead, certification in any subject area would suffice. Thus, all the foregoing assignments could be performed by any licensed teacher in the District. Arbitrator McGilligan found that the grievant, the most senior employe in the bargaining unit, had a contractual right to bump into the distance learning supervision assignment because it required no specific certification. It is clear from the foregoing that in Lake Holcombe, the Board had not established a specific certification as a qualification for that particular assignment. Here, though, the Board has established a specific certification as a qualification for teaching the consumer economics course, namely business education certification. Given this fundamental difference, Lake Holcombe has no bearing on this case.

Finally, the Association calls the Examiner's attention to the fact that the District chose to pay an overload rate to the business education teacher who taught consumer economics, while Thompson's teaching contract was reduced. However, overload pay is not the issue here. Neither is the equity of the situation just referenced. Instead, the question herein is whether the District is

3/ Lake Holcombe School District, Case 47, No. 45838, MA-6775 (McGilligan, 2/25/92).

contractually obligated to make the consumer economics course part of the Family and Consumer Education Department in order to accommodate Thompson and keep her at full-time status. The Examiner answers that question in the negative.

Based on the foregoing then, it is held that the District's denial of Thompson's request to bump into the consumer economics course following her partial layoff did not violate the parties' labor agreement. Thus, no violation of Sec. 111.70(3)(a)5, Stats., has been found.

Dated at Madison, Wisconsin, this 19th day of July, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner