

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

POTOSI EDUCATION ASSOCIATION, Complainant,

vs.

SCHOOL DISTRICT OF POTOSI, Respondent.

Case 30
No. 62361
MP-3937

Decision No. 30697-B

Appearances:

Ms. Joyce Bos, Executive Director, South West Education Association, 960 North Washington Street, P.O. Box 722, Platteville, Wisconsin 53818-0722, for the labor organization.

Ms. Eileen Brownlee, Kramer, Brownlee & Infield, LLC, Attorneys at Law, 1038 Lincoln Avenue, P.O. Box 87, Fennimore, Wisconsin 53809-0087, for the municipal employer

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING COMPLAINT**

On May 7, 2003, the Potosi Education Association filed a complaint with the Wisconsin Employment Relations Commission by which it alleged that the Potosi School District had violated certain unspecified sections of 111.70, Wis. Stats., by its decision to reduce the hours of Pam Fritz in the 2001-2002 school year. On September 3, 2003, hearing in the matter was scheduled for October 23, 2003. On October 1, 2003, the District filed a Motion to Dismiss, claiming that the underlying dispute had never been submitted to the grievance procedure, and that the complaint was time-barred. On October 10, 2003, the Association filed a response, in which it acknowledged the matter had not been grieved. On October 14, 2003, I issued an Order to Clarify Complaint, in which I directed the Association to specify the sections of 111.70, Stats., which it claimed the District had violated, and the dates of the act(s) allegedly constituting said violation. The Association filed its response on October 17, 2003, clarifying

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that the predicate act was taken on May 20, 2002, and that the statutes alleged to have been violated were Secs. 111.70(3)(a) 5 and (3)(a)1, Wis. Stats. In a telephone call on October 20, 2003, Association representative Bos further clarified the complaint by amending paragraph (f) to reflect that Fritz's reduction in hours were for the 2002-2003 school year. Also on October 20, 2003, District representative Brownlee renewed her motion to dismiss the complaint. On the basis of the pleadings and supplemental submissions, I now issue the following

FINDINGS OF FACT

1. Potosi Education Association is a labor organization with offices in care of the South West Education Association, 960 North Washington St., Platteville, Wisconsin, 53818. At all times material, Joyce Bos has been an Executive Director of SWEA, and as such an authorized agent of the PEA.

2. The School District of Potosi is a municipal employer with offices at 128 Highway 61 North, Potosi, Wisconsin. At all times material, Atty. Eileen Brownlee has been the attorney of record for the district in this proceeding.

3. From 1999-2001, the parties maintained and enforced a collective bargaining agreement governing the wages, hours and conditions of employment of school district professionals employed by the District. As of the filing of the complaint herein, the collective bargaining agreement between the parties was in hiatus.

4. The 1999-2001 collective bargaining agreement between the parties contains Article XXII – Layoff Clause, establishing the procedure the District is to follow when it determines to eliminate or reduce a teaching position.

5. The 1999-2001 collective bargaining agreement between the parties contains Article IX – Grievance Procedure, which establishes the procedure by which a teacher, group of teachers, or the Association may complain about an alleged “violation, misinterpretation or inequitable application” of any of the terms of the collective bargaining agreement. The Article IX grievance procedure culminates in an appeal to the Board of Education, and does not include final and binding arbitration of disputes.

6. Pam Fritz and Terry Downs both taught seventh grade art during the 2001-2002 school year.

7. During the 2001-2002 school year, the District determined to eliminate a section of seventh grade art for the 2002-2003 school year.

8. On or about May 20, 2002, the District reduced Pam Fritz from 60% to 50% FTE.

9. Neither Fritz nor the Association filed a grievance over the May 20, 2002 reduction in hours.

On the basis of the above and foregoing Findings of Fact, I reach the following

CONCLUSION OF LAW

1. As the parties' 1999-2001 collective bargaining agreement had expired at the time this dispute arose, there can be no violation of Sec. 111.70(3)(a)5, Wis. Stats.

2. As the Association declined to file a grievance in the matter, I am without jurisdiction to hear a complaint alleging a violation of Sec. 111.70(3)(a)4, Wis. Stats.

3. There being no allegations of interference, restraint or coercion, the allegation of a violation of Sec. 111.70(3)(a)1, Wis. Stats., is purely a derivative complaint.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, I hereby make and issue the following

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ORDER DISMISSING COMPLAINT

The complaint in this matter is hereby dismissed in its entirety.

Dated at Madison, Wisconsin, this 21st day of October, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart Levitan /s/

Stuart Levitan, Examiner

POTOSI SCHOOL DISTRICT

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINT**

The Potosi Education Association has brought this complaint, alleging the Potosi School District committed prohibited practices in its decision to reduce the contractual workload of teacher Pam Fritz. The District has moved to dismiss on various procedural grounds. While certain facts are open to dispute (e.g., the exact nature of Fritz' employment status), the pleadings and supplemental submissions do establish sufficient facts for me to address, and endorse, the District's motion.

The most important of those facts is the one that establishes that, at the time the District reduced Fritz's hours in May 2002, the collective bargaining agreement between the parties had expired. It is well-settled that, when a collective bargaining agreement has expired, a party's "conduct could not violate an existing collective bargaining agreement." LANCASTER SCHOOL DISTRICT, DEC. NO. 29777-A (Shaw, 5/2000). See also, CITY OF EAU CLAIRE, DEC. NO. 29364-C (WERC, 12/2002). Accordingly, I have dismissed the allegation of a violation of Sec.111.70(3)(a)5.

In the event the Association might seek to amend its complaint by alleging a violation of Sec. 111.70(3)(a)4, I address that as well, and again find the Association procedurally barred from proceeding. Here the fatal flaw is not the expiration of the agreement, but the Association's failure to utilize a salient feature of the agreement, namely the grievance procedure.

It is well-settled that the grievance procedure in an expired contract is part of the status quo during a contract hiatus. In SCHOOL DISTRICT NO. 6, CITY OF GREENFIELD, DEC. NO. 14026-B (WERC, 11/77), the Commission held that:

Unlike an arbitration provision, however, the grievance procedure comes within the rule that an employer must maintain the status quo of conditions contained in the expired agreement. Although utilization of the grievance procedure upon expiration of the agreement cannot culminate in final and binding arbitration, for the noted reasons peculiar to the wholly contractual nature of arbitration, the grievance procedure is the established channel for discussing employe dissatisfactions respecting the established terms and conditions of employment about which the employer mandatorily is required to bargain. The grievance procedure, upon expiration, becomes the vehicle for bargaining over employe dissatisfactions. (footnote omitted) After contract expiration, the grievance does not concern the employer's contractual obligations, but rather the

employer's duty not to change established terms until it discharges its duty to bargain about those proposed changes, the grievance procedure itself is the established mechanism for resolving alleged departures from the terms and conditions. A contrary holding that the established mechanism for day-to-day dispute resolution evaporates on contract expiration, would exacerbate tensions in the employment relationship as the parties seek a successor agreement and, the Commission is persuaded, would gravely frustrate the overall legislative objective to secure labor peace.

Reviewing the policy considerations recited in GREENFIELD two decades later, the commission was persuaded that exhaustion of the status quo grievance procedure should be required as a pre-condition to assertion of jurisdiction over duty to bargain complaints which allege a violation of the status quo. In RACINE UNIFIED SCHOOL DISTRICT, Dec. No. 29203-B (WERC, 12/98), the commission stated clearly and unequivocally that "as to all complaints filed after the date of this decision, we will not assert jurisdiction over alleged violations of the status quo unless any applicable grievance procedure contained in the expired contract has been utilized and exhausted."

In the proceeding before me, the Association could complain that the District violated the terms of an expired collective bargaining agreement – that is, that it refused to maintain the terms of the status quo. But as the RACINE case holds, in order to pursue such a complaint as a prohibited practice, the Association must have first availed itself of the grievance procedure, if applicable. Here, there was and remains such a procedure, which the Association acknowledges it did not use.

While the Association may have thought, as its representative contended in her submission of October 10, 2003, that such a grievance would have been an empty exercise, it was a procedural predicate for proceeding on a prohibited practice complaint. Having failed to utilize and exhaust the applicable grievance procedure, the Association could not now seek to have the Commission assert jurisdiction over the alleged violation of the status quo.

Having dismissed the complaint alleging a violation of sec. 111.70(3)(a)5, I turn now to the allegation concerning 111.70(3)(a)1. Because it is clear from the pleadings that this alleged violation is a derivative one, and does not pertain to any independent acts of interference, restraint or coercion, I have dismissed that count as well.

Dated at Madison, Wisconsin, this 21st day of October, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart Levitan /s/

Stuart Levitan, Examiner