

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**WISCONSIN HEIGHTS FEDERATION OF TEACHERS,
LOCAL 1917, WHFT, AFT-WISCONSIN**

and

**THE BOARD OF EDUCATION OF THE WISCONSIN
HEIGHTS SCHOOL DISTRICT**

Case 40
No. 69815
MA-14750

Appearances:

David Friedman, 30 W. Mifflin St., Suite 1001, Madison, WI 53703, Attorney for the Board of Education of the Wisconsin Heights School District.

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ARBITRATION AWARD

Pursuant to the terms of the 2009-2011 collective bargaining agreement (CBA) between the The Board of Education of the Wisconsin Heights School District (the District) and Wisconsin Heights Federation of Teachers, Local 1917, WHFT, AFT-Wisconsin, AFT, AFL-CIO (the Union), the parties selected me from a panel of arbitrators generated by the Wisconsin Employment Relations Commission to hear and resolve a dispute between them. The dispute involves the interpretation and application of the CBA regarding the nonrenewal, following the 2009-2010 football season, of the Grievant's extra-curricular assignment as head coach of the high school football team for the 2010-2011 season.

A hearing in the matter took place on September 15, 2010, at the Village Hall in Black Earth, Wisconsin. There is no stenographic or other transcript of the proceedings. The parties thereafter filed written briefs, the last of which was received on October 19, 2010.

ISSUE

The parties were unable to agree on a statement of the issue; however, they submitted their proposed statements in writing and expressly authorized me to state the issue after considering their proposals.

The Union proposes the following statement of the issues:

Did the employer violate the provisions of the collective bargaining agreement, particularly Article X, Section F, paragraph 2, or Article VI, Section A, paragraph 3, when it did not continue the extra-curricular activities contract of bargaining unit member Joe Marx?

If so, what should be the remedy?

.....

The District proposes the following statement of the issue:

Does Article VI, Section A, paragraph 3 of the collective bargaining agreement between the Board of Education of the Wisconsin Heights School District and the Wisconsin Heights Federation of Teachers Local 1917, WHFT, AFT-Wisconsin, AFT, AFL-CIO apply when the Board decides not to reissue an extra-curricular activities contract?

.....

I find the issue is appropriately stated as follows:

Did the just-cause standard set forth in Article VI, Section A, ¶ 3, of the CBA apply to the Board's nonrenewal of the Grievant's extra-curricular assignment as head coach of the high school football team?

I frame the issue as whether the just-cause standard set forth in Article VI, Section A, ¶ 3 applied to the Board's nonrenewal decision, rather than whether the Board violated that provision, because the parties clarified during hearing that 1) the merits of whether there was indeed just cause not to renew the Grievant's extra-curricular assignment were not at issue; and 2) if I were to find that the just-cause standard set forth in Article VI, Section A, ¶ 3 did apply to the Board's nonrenewal decision, the parties have stipulated to, and I would award, the following remedy: the District shall pay the Grievant the salary he would have been paid, had his extra-curricular activities contract as head high school football coach been renewed for the 2010-2011 school year, without requiring the Grievant to provide any additional coaching service. Also part of this stipulated remedy is the Grievant's agreement to resign his extra-curricular assignment as head high school football coach upon receipt of the District's payment.

RELEVANT CONTRACTUAL PROVISIONS

The contractual provisions of particular relevance to the disposition of the issue are Art. VI, § A, ¶ 3, and Art. X, § F, ¶ 2.¹ These provisions respectively read as follows:

ARTICLE VI – Working Conditions

Section A – Dismissal Policy

.....

3. A non-probationary teacher shall not be refused employment, dismissed, suspended, discharged or disciplined except for just cause.

.....

ARTICLE X – Salary and Teacher Welfare

.....

Section F – Extra-Curricular Activities

.....

2. Extra-Curricular assignments shall continue from year to year. Extra-curricular assignments are independent of teaching assignments, and as such, are issued as separate contracts.

STIPULATED FACTS

The parties stipulated at hearing that from the start of the 2004-2005 school year through the 2007-2008 school year, Larry Black was the Superintendent. Thereafter, starting with the 2008-2009 school year, Mark Elworthy was employed in that position. Finally, the parties stipulated that when the Grievant's extra-curricular activities assignment as head football coach was not renewed, the Grievant was a non-probationary teacher and a bargaining unit member.

¹ Other provisions pertinent to the parties' bargaining history are noted where appropriate in the following subsection of this decision, "II. Contracts and Bargaining History".

BACKGROUND

I. OVERVIEW OF GRIEVANCE AND NATURE OF PROOF

From the 2003-2004 through the 2009-2010 school years, the Grievant served as head football coach under successive individual contracts. The various individual contracts into which the Grievant entered with the Board included language that expressly subjected those contracts to any and all provisions of the CBA's.

Following the 2009-2010 football season in January, 2010, the Board removed the Grievant as head football coach. The Union filed a grievance on January 27, 2010, alleging that the removal of the Grievant from this position was without just cause and therefore in violation of the CBA.

II. CHRONOLOGY OF CBA'S AND BARGAINING HISTORY

The following is a chronology of relevant provisions in the CBA's to which the Grievant was subject, pertinent changes made to such contractual language, and relevant bargaining history.

A. 2003-2004 Contract Period

The contract covering 2001-2003 contained the following language in Article XI (entitled, "Salary and Teacher Welfare"), § D (entitled, "Extra-Curricular Activities"), ¶¶ 1-2:

1. Extra-curriculars shall be compensated according to schedule as in Appendix II.
2. Extra-curricular assignments shall continue from year to year.

In the course of contract negotiations on February 10, 2003, the Board of Education (BOE) proposed the following change in the contractual language:

BOE PROPOSAL (FROM 2/10/03 BOE Proposals):

Extra-curricular duties (as delineated in Appendix II) shall continue from year to year absent an unsatisfactory overall review by an administrator. After there has been an evaluation and recommendation by an administrator for continuation of a coaching assignment, the coaching assignment will continue for the next year.

Approximately three months later, on May 12, 2003, the Board offered the following draft language regarding extra-curricular assignments:

Extracurricular assignments will be made yearly, based on prior year contract status and a satisfactory administrative evaluation. If the previous year's evaluation is unsatisfactory, specific, measurable goals will be jointly identified by the staff member and an administrator. If, by the end of the following year's season, the goals are not met to the satisfaction of the administrator, a contract will not be issued.

Notwithstanding the Board's proposals, the parties did not agree to any amendments to Article XI, § D, ¶ 2; therefore, the language in that provision for the 2003-2005 contract continued to read:

2. Extra-curricular assignments shall continue from year to year.

B. 2005-2007 Contract Period

During negotiations in April, 2005, the Board's proposed changes to the contract included deleting this language in Article XI, § D, ¶ 2, and replacing it as follows:

2. ~~Extra-curricular assignments shall continue from year to year.~~ Extra-curricular assignments are independent of teaching assignments, and as such, are issued as separate contracts. These assignments are made by the district on an annual basis.

In addition, the Board proposed to delete the existing language in Article XI, § D, ¶ 3 (signified by a strikethrough, below) and to replace it with the following language:

3. ~~Teachers desiring to be relieved of an assignment for the subsequent year shall so notify the Board of Education prior to March 1 and the extra-curricular assignment shall be made on March 15.~~ WHFT members who wish to be relieved of an extra-curricular duty for the next contract year are to notify their principal in writing no later than the following dates. If the district decides to relieve a WHFT member of an extra-curricular duty for the next contract year, notification will be made in writing no later than the following dates. Earlier notification by either party is encouraged whenever possible.

Fall activities	December 15
Winter activities	April 15
Year-around activities	April 15
Spring activities	June 30

The following month, on May 12, 2005, the Union offered a counterproposal that incorporated some of the Board's proposed changes. However, the Union's counterproposal also suggested language (indicated by italicized print), which, *inter alia*, expressly subjected the nonrenewal of extra-curricular duty to the grievance procedure and a just-cause standard. Under this Union counterproposal, Article XI, § D, ¶¶ 2 and 3 read as follows:

2. ~~Extra-curricular assignments shall continue from year to year.~~ Extra-curricular assignments are independent of teaching assignments, and as such, are issued as separate contracts. These assignments are made by the district on an annual basis *and are continuous upon a positive evaluation.*
3. ~~Teachers desiring to be relieved of an assignment for the subsequent year shall so notify the Board of Education prior to March 1 and the extra-curricular assignment shall be made on March 15. Members who wish to be relieved of an extra-curricular duty for the next contract year are to notify their principal in writing no later than the following dates. If the district decides to relieve a member of an extra-curricular duty for the next contract year, notification will be made in writing no later than the following dates. The reasons for the nonrenewal shall be in writing. Letters of nonrenewal are subject to the grievance procedure. Non-renewal shall only be for just cause.~~ Earlier notification by either party is encouraged whenever possible.

Fall activities	December 15
Winter activities	April 15
Year-around activities	April 15
Spring activities	June 30

In a document dated May 19, 2005, from Superintendent Larry Black to the “Board of Education Negotiations Committee and WHFT Negotiations Team”, Superintendent Black charted the “Status of All Proposals Exchanged Between District and WHFT as of the Conclusion of 5/16/05 Negotiations Session”. Included in the chart in a box entitled, “Topic” was the following entry: “Clarify language that states ‘Extra-curricular assignments shall continue from year to year,’ as well as notification deadlines.” In the box corresponding to this topic with the heading, “Status as of 5/16” is entered, “discussed three times” and in the box corresponding to this topic entitled, “Notes”, the entry reads, “Retain current contract language”.

Approximately two weeks later, Larry Black, Jim Schroeder, and Kathy Chin collaboratively drafted a document labeled as confidential and entitled, “Summary of Tentative Settlement for 2005-2007 Reached Between the District and the WHFT on May 31, 2005”. The language in Article XI, § D, ¶ 2 that both the Board and the Union had proposed to delete and supplant with their own proposed language remained unchanged. Also added to this unchanged provision was the following language identified by italicized print:

2. Extra-curricular assignments shall continue from year to year. *Extra-curricular assignments are independent of teaching assignments, and as such, are issued as separate contracts.*

In addition, the following changes were made to Article XI, § D, ¶ 3:

3. ~~Teachers desiring to be relieved of an assignment for the subsequent year shall so notify the Board of Education prior to March 1 and the extra-curricular assignment shall be made on March 15. Members who wish to be relieved of an extra-curricular duty for the next contract year are to notify their principal in writing no later than the following dates:~~

Fall activities	December 15
Winter activities	April 15
Year-round activities	April 15
Spring activities	June 30

The above language for Article XI, § D, ¶¶ 2 and 3, as set forth in the “Summary of Tentative Settlement for 2005-2007 Reached Between the District and the WHFT on May 31, 2005” ultimately was incorporated into the ratified 2005-2007 contract under Art. X, § E, ¶¶ 2 and 3.²

This contract was signed and sealed on August 25, 2005; however, during the following months of September and October, 2005, the Board issued extra-curricular contracts for the 2005-2006 school year that contained “Notes” at the bottom of the page. These Notes stated in part:

2. The removal of an employee from an extra-curricular assignment or the failure to renew this Contract is not subject to the provision of Section 118.22 of the Wisconsin Statutes or the just cause standards in the teachers’ collective bargaining agreement.^[3]

On October 24, 2005, following discussions with Union representatives regarding Note #2, Larry Black issued a memo to WHFT Members addressing the note. His memo provided a revised Note #2 that superseded the Note #2 the Union had found objectionable and that deleted the language disclaiming the applicability of the just cause standard in the CBA to the removal of an employee from an extra-curricular assignment. The memo stated:

² There is a minor difference between the language in Article XI, § D, ¶ 3, as set forth in the “Summary of Tentative Settlement for 2005-2007 Reached Between the District and the WHFT on May 31, 2005” and the corresponding language, as set forth in the 2005-2007 ratified contract. The former document contains the word, “principal”, while the latter contains the word, “principals”. Whether the use of the plural rather than singular form was inadvertent or deliberate, I find the change to be insignificant and immaterial to my analysis.

³ Sec. 118.22, Stats., not dispositive here, details the requirements for renewing teacher contracts. Subsection (4) states, “A collective bargaining agreement may modify, waive or replace any of the provisions of this section as they apply to teachers in the collective bargaining unit, but neither the employer nor the bargaining agent for the employees is required to bargain such modification, waiver or replacement.”

The purpose of this memo is to summarize the results of discussions I have had with WHFT Co-presidents Jim Schroeder and Kathy Chin regarding Note #2 which appears at the bottom of Extra-curricular Activities Contracts issued to WHFT members during September and October of 2005. This note reads: *“The removal of an employee from an extra-curricular assignment or the failure to renew this Contract is not subject to the provisions of Section 118.22 of the Wisconsin Statute [sic] or the just cause standards in the teachers’ collective bargaining agreement.”*

This memo establishes a new Note #2 which reads as follows: *“The removal of an employee from an extra-curricular assignment or the failure to renew this Contract is not subject to the provisions of Section 118.22 of the Wisconsin Statute [sic].”*

As agreed to with Jim and Kathy, new contracts will not be issued. Rather, this memo serves as notice that the new Note #2 supersedes the original Note #2 and applies to all individual Extra-curricular Activities Contracts issued to date.

The new Note #2 will replace the old Note #2 on all future individual Extra-curricular Activities Contracts issued during the term of the 2005-2007 agreement between the WHFT and the District, unless mutual agreement is reached on alternative language.

(Emphasis in original).

C. 2007-2009 Contract Period

A memo dated May 24, 2007, from the Board of Education Negotiations Committee to the WHFT Negotiations Committee charts the “Negotiation Items for 2007-2009 Contract with WHFT”. Listed as an “Item” of “Second Priority”, meaning to be addressed that year “if possible and if time allows”, was “Just cause”. Corresponding to the item of just cause under the column entitled, “Notes for Initial Exchanges” was the statement, “Stipulate that ex-curricular assignments are not covered”. However, no such proposed stipulation is included in the Board’s proposed changes to contract language set forth in subsequent documents dated June 27, 2007 and July 11, 2007. Moreover, as of July 19, 2007, the Union had rejected the Board’s proposal on just cause for extra-curricular assignments. Only notice and release provisions set forth in Article X, § E – language not determinative of the issue before me – were discussed and ultimately amended.

III. THE GRIEVANT’S INDIVIDUAL CONTRACTS WITH THE BOARD

As noted above, from the 2003-2004 through the 2009-2010 school years, the Grievant served as head football coach under successive individual contracts, which included language that expressly subjected those contracts to any and all provisions of the CBA’s. The individual contracts for years 2003-2004 and 2004-2005 combined all assignments in the same contract.

Beginning with the contract year 2005-2006, the extra-curricular assignments were issued in separate contracts, independent of teaching assignments.⁴

The language in “Note # 2” that had been included in the Grievant’s and other teachers’ 2005-2006 extra-curricular activities contracts, language to which the Union had successfully objected, also was included in the Grievant’s 2006-2007 extra-curricular activities contract.⁵ Nevertheless, this objectionable language did not appear in the Grievant’s 2007-2008 extra-curricular activities contract or in any other subsequent extra-curricular activities contracts he signed. The memo that Larry Black had issued on October 24, 2005, specified, “The new Note #2 will replace the old Note #2 on all future individual Extra-curricular Activities Contracts issued during the term of the 2005-2007 agreement between the WHFT and the District, unless mutual agreement is reached on alternative language.”

ANALYSIS

I must decide whether the just-cause standard set forth in Article VI, Section A, ¶ 3, of the CBA applied to the Board’s nonrenewal of the Grievant’s extra-curricular assignment as head coach of the high school football team.⁶ In so doing, I note that “[a]rbitrators have the authority to use principles of contract law in resolving disputes under collective bargaining agreements.” *MADISON TEACHERS INC. V. MADISON METROPOLITAN SCHOOL DIST.*, 2004 WI APP 54, ¶ 17, 271 WIS. 2D 697, 711, 678 N.W.2D 311, 318. Indeed, “in the context of construing terms of a collective bargaining agreement, arbitrators have utilized rules, standards, and principles borrowed from the jurisprudence developed by courts to resolve disputes over the meaning of terms in contracts.” *Id.*, 2004 WI APP 54, ¶ 15, 271 WIS. 2D AT 710, 678 N.W.2D AT 317, *CITING FRANK ELKOURI & EDNA ASPER ELKOURI, HOW ARBITRATION WORKS* 431 (ALAN MILES RUBEN ED., 6TH ED. 2003). *SEE ALSO WISCONSIN LAW ENFORCEMENT ASS’N, LOCAL 1 V. STATE, DEPT. OF TRANSP.*, 2010 WI APP 27, ¶ 16, 323 WIS. 2D 444, 455-456, 780 N.W.2D 170, 176 (same).

⁴ The Grievant and the Board signed a 2005-2006 extra-curricular activities contract in December of 2005.

⁵ Again, the objectionable language stated, “The removal of an employee from an extra-curricular assignment or the failure to renew this Contract is not subject to . . . the just cause standards in the teachers’ collective bargaining agreement.”

⁶ Art. VI, § A, ¶ 3 states, “A non-probationary teacher shall not be refused employment, dismissed, suspended, discharged or disciplined except for just cause.” Art. X, § F, ¶ 2 states, “Extra-Curricular assignments shall continue from year to year. Extra-curricular assignments are independent of teaching assignments, and as such, are issued as separate contracts.”

Accordingly, I note the following helpful principles of contract interpretation:

The primary goal in contract interpretation is to “give effect to the parties’ intent, as expressed in the contractual language.” *SEITZINGER V. CMTY. HEALTH NETWORK*, 2004 WI 28, ¶ 22, 270 Wis. 2d 1, 676 N.W.2d 426. We interpret the language “consistent with what a reasonable person would understand the words to mean under the circumstances.” *Id.*

“Where the terms of a contract are clear and unambiguous, we construe the contract according to its literal terms.” *GORTON V. HOSTAK, HENZL & BICHLER, S.C.*, 217 Wis. 2d 493, 506, 577 N.W.2d 617 (1998). When the contract language is ambiguous, however, . . . evidence extrinsic to the contract itself may be used to determine the parties’ intent. . . .” *SEITZINGER*, 270 Wis. 2d 1, ¶ 22, 676 N.W.2d 426.

MARYLAND ARMS LTD. PARTNERSHIP V. CONNELL, 2010 WI 64, ¶ 22, 326 Wis. 2d 300, 311, 786 N.W.2d 15, 20-21 (ELLIPSES SUPPLIED). “Contract language is considered ambiguous if it is susceptible to more than one reasonable interpretation.” *KERNZ V. J.L. FRENCH CORP.*, 2003 WI App 140, ¶ 16, 266 Wis. 2d 124, 137, 667 N.W.2d 751, 757, *QUOTING DANBECK*, 245 Wis. 2d 186, ¶ 10, 629 N.W.2d 150.

I. THE PARTIES EFFECTIVELY ASSUME CONTRACTUAL AMBIGUITY.

In this case, although the Union asserts that the contract language is unambiguous, both parties primarily support their arguments by extensive reliance on extrinsic evidence, rather than on the “literal terms” or plain meaning of the contract. The extrinsic evidence proffered during the arbitration consisted primarily of testimony and documents regarding:

- provisions of, and amendments to, the various CBA’s into which the Union and Board entered during the period the Grievant served as football coach – particularly provisions regarding just cause and extra-curricular activities assignments;
- bargaining history – *i.e.*, contract negotiations, proposals and counterproposals; and
- the successive individual contracts into which the Grievant entered with the Board.

Thus, notwithstanding any assertions of an absence of ambiguity, the parties’ arguments are *de facto* premised in large measure on the existence of contractual ambiguity, a premise I will accept to address their arguments.⁷

⁷ In addition, at least arguably supporting a finding that the contractual language in question is ambiguous is the absence of 1) any definition of “employment”, as the term is used in Art. VI, § A, ¶ 3 of the CBA, 2) any provision

II. EXTRINSIC EVIDENCE SUPPORTS THE APPLICATION OF THE JUST-CAUSE STANDARD, AS SET FORTH IN ARTICLE VI, SECTION A, ¶ 3, TO THE BOARD'S NONRENEWAL DECISION.

The parties primarily dispute the meaning and significance, rather than the substance, of the extrinsic evidence regarding whether the just-cause standard set forth in Art. VI, § A, ¶ 3 applied to the Board's decision not to renew the Grievant's extra-curricular assignment as head football coach. Upon review of the evidence, I find that the just-cause standard did so apply.

First, the bargaining history and evolution of the various CBA's and individual contracts reveals continual and varied but unsuccessful efforts by the Board to delete or at least dilute the provision in Art. XI, § D, ¶ 2, stating that "Extra-Curricular assignments shall continue from year to year. Negotiations during the 2003-2004 contract period witnessed a proposal by the Board to modify this language by restricting continuation of extra-curricular assignments to situations lacking unsatisfactory review by an administrator. The Board subsequently proposed other language conditioning continuation of contracts on performance evaluations. However, ultimately, the Board's efforts were unsuccessful, as the continuation language remained unchanged.

During the 2005-2007 contract year, the Board proposed to delete the continuation language in Art. XI, § D, ¶ 2 and add language clarifying that extra-curricular assignments are independent and separate contracts.⁸ The Union's counterproposal initially accepted the deletion of the continuation language – but conditioned on the inclusion of other language expressly stating that "Letters of nonrenewal are subject to the grievance procedure" and "Nonrenewal shall only be for just cause." A reasonable inference is that the Union was only willing to give up the continuation language if the Board would agree to the Union's proposed language expressly affording the protection of the grievance procedure and just cause in situations involving the nonrenewal of extra-curricular assignment contracts.

The parties ultimately agreed to add language to Article XI, § D, ¶ 2, specifying that "[e]xtra-curricular assignments shall continue from year to year", "are independent of teaching

expressly addressing whether the nonrenewal of an extra-curricular assignment constitutes "refusing employment" within the meaning of Art. VI, § A, ¶ 3, or 3) any provision expressly stating that the renewal of an extra-curricular assignment is or is not subject to the just-cause standard set forth in Art. VI, § A, ¶ 3. "As a general matter, it has long been a rule of contract construction in Wisconsin that 'the meaning of particular provisions in the contract is to be ascertained with reference to the contract as a whole.'" *COMMERCIAL UNION MIDWEST INS. CO. v. VORBECK*, 2004 WI APP 11, ¶ 11, 269 Wis. 2d 204, 214, 674 N.W.2d 665, 670, *QUOTING FOLKMAN*, 2003 WI 116, ¶ 24 (CITATION OMITTED).

⁸ The District notes Ms. Taranto's handwritten notes on the Board's proposal, one of which inquires whether "any districts have just cause for extracurriculars"? The District opines that if just cause already existed, one would expect a declaration to that effect in lieu of her handwritten inquiry. The District's conclusion is speculative; we do not know the reason for her curiosity about other districts. Perhaps, for example, she thought that such information would support the equity or fairness of what she thought to be the correct interpretation of the CBA.

assignments, and as such, are issued as separate contracts”. However, the continuation language again remained unchanged: “Extra-Curricular assignments shall continue from year to year.”

The events relating to, and following, the Board’s issuance of contracts in September and October, 2005, containing the objectionable Note #2 vigorously support the applicability of the just-cause standard to nonrenewal of extra-curricular assignments. Larry Black discussed with Union representatives their objections to the Note’s disclaimer of the applicability of the just-cause standard to nonrenewal of extra-curricular assignments. Following these discussions, Mr. Black issued a memo setting forth a revised Note #2 that expressly superseded the original Note #2. The revised Note #2 omitted the objectionable language that disclaimed the applicability of the just-cause standard.

That the objectionable language was not physically deleted from the 2005-2006 and 2006-2007 contracts is of little import and does not resuscitate the District’s position. Black’s memo specified, “The new Note #2 will replace the old Note #2 on all future individual Extra-curricular Activities Contracts issued during the term of the 2005-2007 agreement between the WHFT and the District, unless mutual agreement is reached on alternative language.” The parties may have simply deemed it unnecessary in light of this statement to physically edit each individual contract issued during the 2005-2007 period. In any event, the New Note #2 was to replace the old Note #2 on all future individual extra-curricular activities contracts issued during the term of the 2005-2007 agreement “unless *mutual* agreement is reached on alternative language.” (Emphasis added). No evidence suggests that the Union ever agreed to alternative language reverting to the original Note #2. To the contrary, following 2005-2007 (the period during which, according to Larry Black’s memo, the new Note #2 was to replace the old Note #2), amended individual contracts were issued that no longer contained the old Note #2. This series of events strongly evinces a mutual agreement between the parties that the just cause standard in the CBA applied to the nonrenewal of extra-curricular assignments, including the Grievant’s football coaching.

During the 2007-2009 contract period, the Union rejected the Board’s “Second Priority Item” to “Stipulate that ex-curricular assignments are not covered”. Focusing on the word, “Stipulate”, the District suggests that the Board was merely seeking acknowledgment of its continuing position that the just-cause standard was inapplicable to the nonrenewal of extra-curricular contracts. But in light of the totality of the preceding events – especially Larry Black’s treatment of Note #2 – I believe a more reasonable interpretation is that the District simply sought a stipulation to a position that the current and previous versions of the CBA did not recognize. Furthermore, the Union rejected the Board’s proposal.

III. THE DISTRICT'S OTHER ARGUMENTS DO NOT ALTER MY CONCLUSION THAT THE JUST-CAUSE STANDARD APPLIES TO THE NONRENEWAL OF EXTRA-CURRICULAR CONTRACTS.

The District's other arguments ultimately are unavailing. It argues, for example, that other collective bargaining language supports the District's interpretation that the just cause standard did not apply to the nonrenewal at issue. In particular, the District refers to language addressing the evaluation and formal observation of teachers that is absent regarding extra-curricular assignments. The District thus concludes, "If the just cause standard applies to extra-curricular activities, it would be logical to have the same procedures that are used for determining a teacher's continued job status applied to the extra-curricular assignments – especially language dealing with evaluations as evaluations have a major role in determining whether there is just cause." (Dist. Br. 9-10).

I disagree. The absence of a comparable type and degree of observation and formal evaluation of those engaging in extracurricular assignments does not preclude or militate against the application of a just cause standard. As a matter of public policy, moreover, the resources a District wishes to commit to observing and evaluating teaching logically would surpass the resources it expends observing and evaluating extracurricular assignments, including coaching athletics. While I recognize the benefits of extra-curricular activities and the value of athletic coaches, the latter are charged with responsibilities relating to voluntary student activities in which only a fraction of the student body participates. Accordingly, I would not expect coaching high school athletics to be subject to the same kind and degree of observation and evaluation to which teaching is subject.

The District also maintains that the Union has waived its right to claim that the just cause standard applies to extra-curricular contracts, because it did not file any prohibited practice complaints when the objectionable language in the original Note #2 was included in the 2005-2006 and 2006-2007 extra-curricular contracts.

Again, I am unpersuaded. The Union chose to resolve its objections to Note #2 informally by speaking with Larry Black, rather than by filing complaints. After these discussions, Mr. Black issued a memo setting forth a revised Note #2 that expressly superseded the original Note #2 and that omitted the objectionable language for the contract period 2005-2007. Following that contract period, moreover, the objectionable language was removed from the individual teaching contracts. There was thus no "inaction" here on the Union's part – let alone any inaction comparable to that which resulted in a waiver of the Union's right to bargain in the prohibited practice cases the District cites.⁹

⁹ SEE CITY OF APPLETON, DEC. NO. 18451-B (DAVIS, 9/81) AFF'D BY OPERATION OF LAW (WERC, 6/82); CITY OF KAUKANA (FIRE DEPARTMENT), DEC. NO. 27027-A (NIELSEN, 8/92).

CONCLUSION

For all of the foregoing reasons, I conclude that the just-cause standard set forth in Article VI, Section A, ¶ 3, of the CBA applied to the Board's nonrenewal of the Grievant's extra-curricular assignment as head coach of the high school football team. Accordingly, I am awarding the Grievant the following remedy to which the parties stipulated at hearing. The District shall pay the Grievant the salary he would have been paid, had his extra-curricular activities contract as head high school football coach been renewed for the 2010-2011 school year, without requiring the Grievant to provide any additional coaching service. Moreover, the Grievant shall resign his extra-curricular assignment as head high school football coach upon receipt of the District's payment.

Dated at Madison, Wisconsin, this 18th day of January, 2011.

John C. Carlson, Jr. /s/

John C. Carlson, Jr., Arbitrator