

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

SALEM CENTRAL UNITED EDUCATORS

and

CENTRAL HIGH SCHOOL DISTRICT OF  
WESTOSHA

Case 25  
No. 47563  
MA-7309  
(Roert Edgington Removal)

Appearances:

Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202-3101 by Mr. Daniel Vliet, Attorney at Law appearing on behalf of the Central High School District of Westosha.

Southern Lakes United Educators / Council 26, 124 South Dodge Street, Burlington, WI 53105 by Mr. Dennis Eisenberg, Executive Director appearing on behalf of the Salem Central Education Association

ARBITRATION AWARD

The Salem Central Education Association (hereinafter referred to as the Association) and Central High School District of Westosha (hereinafter referred to as the District) jointly requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen of its staff as arbitrator of a dispute over the District's failure to offer Robert Edgington a contract as head coach of the high school's football program for the 1992-93 school year. The undersigned was so designated. The parties requested an award be issued within a brief time after the hearing, and it was agreed that the Award would be issued by August 3rd. A hearing was held on July 24, 1992 at which time the parties were afforded full opportunity to present such testimony, exhibits, stipulations, other evidence and arguments as were relevant to the dispute. No stenographic record was made, and no post-hearing briefs were filed.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

ISSUE

The parties agreed that the following issue should be determined herein:

"Did the Board violate the collective bargaining agreement, and if so, what shall the remedy be?"

RELEVANT CONTRACT LANGUAGE

**ARTICLE I  
RECOGNITION**

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**B. BOARD OF EDUCATION**

Except as specifically modified by this agreement, Central High School District of Westosha represented by the Board of Education of said District ... retains without limitation all powers, rights and authority vested in the Board by the State of Wisconsin and the United States, including the administrative agencies created by said state and federal law. The Association further recognizes the rights of the Board to ... select and terminate teachers, and after the probationary period, to discipline, suspend, non-renew, reprimand and discharge teachers for just cause.

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**ARTICLE VIII  
MISCELLANEOUS PROVISIONS**

**A. TEACHER RIGHTS:**

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When the Board meets for the purpose of considering demotion or disciplining of any teacher, or for the taking of formal action on any such matter, it shall be in closed session. The teacher shall be given written notice of any evidentiary hearing or any meeting at which final action may be taken. The teacher may, upon receipt of such notice, demand that the hearing or meeting be held in open session. The teacher shall have the right to have a representative of the Association present at the closed session.

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**F. ASSIGNMENT TO EXTRA-CURRICULAR DUTIES:**

It shall be the right of the Board to assign extra-curricular duties to qualified teachers within the District. Such assignment shall be made in the following manner:

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3. The Board agrees that a person will not be removed from an extra-curricular position for an arbitrary and/or capricious reason.

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In addition to the above quoted provisions of the collective bargaining agreement, the arbitrator has reviewed and considered the applicability of Article V§H, Appendix D and the

Board's unilateral policy establishing a progressive discipline procedure for District employees.

## DISCUSSION

This case arises from the decision of the School Board on April 7, 1992, to offer the position of head football coach to Tim Svendsen rather than to physical education teacher Robert Edgington, who had been head coach from 1987-88 through the 1991-92 school year. This decision was made on the recommendation of Athletic Director Kris Allison and District Administrator Gerald Sorenson. A grievance was filed on May 1st, challenging the procedure used for terminating Edgington's coaching duties and the validity of the decision itself. The grievance was denied by the Board on May 28th, citing the Board's right to remove a person from an extra-curricular position so long as it does not do so for "arbitrary and/or capricious reasons." The Board cited at least four grounds for the removal, including:

1. Lack of cooperation with the Athletic Director, coaching staff, teaching staff and administration.
2. Failure to follow budgetary guidelines and failure to comply with district purchasing procedures.
3. Failure to comply with district policies
4. Failure to properly administer the football program.

The Association argues that the offer of a contract to Svendsen constitutes a disciplinary act against Edgington, and must be supported by just cause under Article I, §B. This interpretation would render Article VIII, §F(3) a nullity. Article VIII establishes an arbitrary and capricious standard for removal from extra-curricular duties, and by its plain language, controls this case. Article I goes to the employee's status as a teacher in the District, which is completely unaffected by his removal from the coaching position.

As to whether the accusations against Edgington meet the contract's standard as being neither arbitrary nor capricious, I find that there is some substance to the allegations that he failed to follow District policies regarding weight room use, use of purchase orders, and keeping the practice field free of clutter from paper cups. There is also support for the assertion that Edgington showed unwillingness to change his methods and procedures upon request of the athletic director, had poor communications with his assistant coaches and in at least one instance failed to adhere to rules regarding eligibility. The District's case overstates his deficiencies in most of these areas, and the grievant's failings might well not satisfy a "just cause" standard for removal. As noted, however, the Board need only show that its decision was not arbitrary or capricious. There is a sufficient factual basis so that a prudent person or body in the normal course of its affairs could have reached the same conclusion as the Board did here.

Turning to the procedural objections raised by the Association, on the state of this record the arbitrator cannot conclude that the progressive discipline policy applies to extra-curricular

assignments. The policy is unilateral and no evidence was presented concerning past applications to either teaching personnel or extra-curricular assignments. Given the paucity of evidence, the arbitrator must credit Administrator Sorenson's testimony that the Board, in adopting the unilateral policy, did not contemplate extending progressive discipline to extra-curricular assignments.

The final question is whether the Board violated the TEACHER RIGHTS provision of Article VIII by failing to Edgington written notice of his contemplated removal and a right to appear with an Association representative before any decision was made. This provision has never been applied to a removal from an extra-curricular position in the past. On its face, it would appear directed towards disciplinary actions against teachers in their capacity as teachers, rather than as coaches. Assuming for the sake of argument that this provision does apply to a Board decision to not offer an extra-curricular contract, the reinstatement remedy sought would not be appropriate in this specific case. The grievant had an opportunity to present his case to the Board through a hearing in May, albeit from a more difficult position than he otherwise would have occupied. The Board, in possession of the correct facts as found in this hearing, would still have had sufficient basis under the arbitrary and capricious standard to terminate the grievant's services. Thus I conclude that the procedural defect, if any, did not affect the substantive basis for the decision to terminate the grievant's coaching job. In making this observation, I neither conclude that Article VIII §A applies to extra-curriculars nor condone a refusal to extend notice to an employee before adverse actions are taken against him. I simply conclude that the outcome of this particular case is unaffected by Article VIII §A.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

EXPEDITED AWARD

The District did not violate the collective bargaining agreement. The grievance is denied.

Signed and dated this 3rd day of August, 1992 at Racine, Wisconsin:

Daniel Nielsen /s/  
Daniel Nielsen, Arbitrator

