

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I
No. 15890 MP-153
Decision No. 11189-A

in a district in and about Brillion, Wisconsin and has its offices at 315 South Main Street, Brillion, Wisconsin; that Gaylord Unbehaun, hereinafter referred to as Respondent Unbehaun, is employed by the Municipal Employer as its Superintendent of Schools, and that Richard Cross, hereinafter referred to as Respondent Cross, is employed by the Municipal Employer as Principal of Brillion High School.

4. That the Municipal Employer has recognized Complainant Association as the exclusive collective bargaining representative of all certified teaching personnel including classroom teachers, teachers designated as principals, teachers for exceptional children, guidance counselors, librarians, and regular part time teachers employed by the Municipal Employer but excluding substitute teachers, principals, assistant principals, elementary and secondary administrators and coordinators, non-instructional personnel such as nurses, social workers and office clerical, maintenance and operating employees and all other employees of the Municipal Employer; and that the Municipal Employer and Complainant Association were parties to a collective bargaining agreement effective for the period July 1, 1971 through June 30, 1972 which contained the following provisions pertinent hereto:

"Article XIX

TEACHER EVALUATION

A. All teachers new to the Brillion System beginning with the 1971-72 school year shall be carefully supervised for a period of three (3) years. During this probationary period such teachers may be terminated or their contracts not renewed for any reason. During this period, administration (sic) personnel will make every effort to visit classes taught by a probationary teacher for four (4) full class periods per year in the junior and senior high schools and the equivalent of one-half day each semester in the elementary schools.

B. The purpose for such visitation is not only to observe the teacher in the classroom situation but to evaluate and guide such teachers in a positive and helpful way. Accordingly, the evaluator's observations will be discussed candidly with the teacher and copies of all written reports on such class visitations shall be given to the teacher. The teacher shall sign the evaluator's copy acknowledging receipt of the teacher's copy.

C. Regular teachers shall be given a copy of any evaluation reports prepared by their superiors and shall have the right to discuss such a report with their superiors before it is submitted to central administration or put into their personnel files. The teacher shall sign the evaluator's copy acknowledging receipt of the teacher's copy.

D. Any complaints regarding a teacher made to the administration by any parent, student or other person shall be promptly called to the teacher's attention at the discretion of the superintendent.

E. No regular teacher who has completed the three year period shall be discharged or his contract not renewed

for arbitrary or capricious reasons. If a teacher has a complaint concerning a discharge or non-renewal, the teacher may either request a private conference with the Board or may pursue the grievance procedure of this contract. If the teacher follows the grievance procedure and the complaint is not there resolved, the complaint may be taken to arbitration as provided herein.

ARTICLE XX

GRIEVANCE PROCEDURE

The purpose of this procedure is to provide an orderly method for resolving grievances. A grievance is a difference which arises concerning the application or interpretation of this agreement. A determined effort shall be made to settle any such differences at the lowest possible level in the grievance procedure. Meetings or discussions involving grievances or these procedures shall not interfere with teaching duties or classroom instruction.

STEP I

An earnest effort shall first be made to settle the matter informally between the teacher and his or her principal or immediate supervisor in person within five full school days following the day the condition causing the grievance occurred.

The aggrieved person at his or her own option may be accompanied by one other member of the association when presenting the grievance.

The principal or immediate supervisor shall attempt to reach a satisfactory solution to the grievance within two school days of the time the grievance was received.

STEP II

If the grievance is not settled in Step I, the grievance may be reduced to writing and presented personally to the superintendent of schools no later than five school days after informal settlement discussions at Step I failed to result in agreement. Again in this step the aggrieved person may at his or her option be accompanied by one other member of their group when presenting their grievance.

The superintendent will be expected to reply in writing to the aggrieved person within five school days after receipt of the grievance.

STEP III

Should the aggrieved person still feel the condition is not remedied to their satisfaction after Step II, he or she may within five school days after written response from the superintendent in Step II again restate their case in writing addressed to the Board of Education. This written grievance must be presented personally to the superintendent with a request that their grievance be entered on the agenda for the Board of Education. The

superintendent may determine whether the nature of the grievance would warrant calling a special meeting of the Board as soon as possible to dispose of the problem or whether it should be heard at the next regularly scheduled meeting.

The Board of Education may hear the grievance at a regular, special, or an adjourned executive session at their option. The aggrieved person will be present personally and may, at their option, be accompanied by up to three other members of the association or other representatives.

. . . ."

5. That on June 10, 1971, Respondent Unbehaun tendered Complainant Peters a contract for employment by the Municipal Employer as a teacher in the aforesaid collective bargaining unit; that a copy of the aforesaid collective bargaining agreement was enclosed with said contract; and that the letter covering transmittal of said employment contract contained a statement urging Peters to read the collective bargaining agreement, with particular reference to Article XIX thereof.

6. That Complainant Peters commenced her employment with the Municipal Employer in the autumn of 1971 as a teacher at Brillion High School; that Peters was assigned to teach two sections of English at the 9th grade level, two sections of English at the 12th grade level, and one section of Speech; that Peters was also assigned to conduct study halls in the Library of the Brillion High School; and that Peters was assigned, and received extra compensation for, duties as Forensics coach for Brillion High School.

7. That, at the outset of the 1971-1972 school year, all teachers new to Brillion High School attended inservice sessions wherein Respondent Cross explained the evaluation procedure which he used; that copies of the evaluation form to be used by Cross were distributed to all such teachers, including Complainant Peters; and that such teachers were instructed concerning the use of said forms for self-evaluation and the use of said forms during conferences concerning the evaluation of the teacher.

8. That, on or about September 8, 1971, a conference of Forensics coaches was held at Valders, Wisconsin; that attendance at said conference was a requirement of Complainant Peters' employment with the Municipal Employer; that, prior to September 8, 1971, Respondent Unbehaun reminded Complainant Peters of her obligation to attend said conference; that, shortly prior to September 8, 1971, Peters sought to be excused from the requirement of attendance at said conference for personal social reasons; that such permission was denied; that Peters nevertheless failed to attend said conference; that Peters advanced in uncorroborated excuse that she was unable to attend the Forensics conference due to a mechanical breakdown of her car; and that the Respondents have not accepted the excuse advanced by Complainant Peters as a sufficient excuse for her failure to attend the Forensics conference at Valders, Wisconsin, on September 8, 1971.

9. That, on various occasions during the period commencing with the beginning of the 1971-72 school year, Respondent Cross visited Complainant Peters' classes for the purpose of observing and evaluating Peters' work.

10. That, at various times and from various sources, Respondents Cross and Unbehaun were made aware of the existence of and continuation of a problem of maintaining student discipline in classes and study halls conducted by Complainant Peters; that, on several occasions, students assigned to study halls wherein Peters was charged with responsibility for maintaining student discipline caused disturbances which were overheard by Respondent Unbehaun in his office adjacent to the room in which said study halls were conducted; and that Respondent Unbehaun investigated the disturbances and determined that the disturbances were originating among students under the control of Complainant Peters.

11. That, during the course of her employment by the Municipal Employer, Complainant Peters shared classroom facilities with other teachers employed by the Municipal Employer; that Respondent Cross received reports concerning articles thrown from the windows of classrooms used by Peters or found on the ground outside of such classrooms; that a coat owned by another member of the faculty, educational displays and physical equipment in certain of the classrooms shared by Peters were damaged; and that investigation concerning said incidents was not carried out by the Respondents in a manner so as to ascertain the responsibility, if any, of Complainant Peters with regard to such damage.

12. That Complainant Peters met with Respondent Cross on various occasions during the period commencing with the beginning of the 1971-72 school year and ending on March 13, 1972; that, during the course of such meetings, Cross related his observations and evaluations to Peters with regard to certain of the incidents which had occurred in Peters' classes and study halls; and that Peters acknowledged that she did experience some problems with maintaining student discipline.

13. That, at various times during Complainant Peters' employment with the Municipal Employer, Respondents Cross and Unbehaun were informed of incidents wherein the subject matter used in Peters' classes was objectionable to the person or persons making the complaint; that, however, the Respondents did not investigate said complaints in such a manner as to ascertain the responsibility, if any, of Peters for the selection or use of such topics; that, during the course of Peters' employment, Cross made suggestions that greater emphasis be placed on written work in Peters' classes; and that such suggestions resulted from an observation by Cross of Peters' classes and a determination that the oral discussion conducted by Peters was weak and suffered from a lack of preparation.

14. That Respondent Cross received a questionnaire concerning Speech activities in the Brillion High School; that Cross delivered said questionnaire to Complainant Peters for completion; that Peters completed said questionnaire and placed it in the mail; that, thereafter, Cross was advised that the questionnaire had not been received by the party conducting the survey; and that nothing in the evidence of record indicates that the reason for the nonreceipt of said questionnaire is chargeable to Complainant Peters.

15. That, at various times during her employment by the Municipal Employer, students in Complainant Peters' classes were engaged in the preparation of and presentation of plays and skits; that, for the purposes of rehearsal of such plays and skits and for other purposes such as assisting in the grading of objective examinations, Peters permitted certain of her students, individually or in groups, to

go to various parts of the Brillion High School building to pursue their assigned activities; that Peters made arrangements for the supervision of such students by other members of the faculty or staff of the Municipal Employer; but that such arrangements proved to be insufficient and that certain students assigned to Peters' classes were found in unsupervised areas.

16. That, on February 29, 1972, the Municipal Employer, by Unbehaun, notified Complainant Peters that the Board of Education was considering nonrenewal of her teaching contract and that Peters had a right, upon request, to a private conference with the Board of Education concerning the nonrenewal of her teaching contract; that request for such a conference was made; that on March 13, 1972, Respondent Unbehaun delivered to Complainant Peters a letter setting forth the reasons for the consideration of nonrenewal of her teaching contract, including: "problem of maintaining student discipline", "failure to demonstrate good judgment in the assignment of subjects for classroom discussion and to plan proper balance in assignments...", "failure to meet contractual obligations", and "assignment of students to unsupervised areas"; that, on the same date, Respondent Cross delivered to Complainant Peters an evaluation report concerning Peters, and notes made by Cross concerning his visits to Peters' classes.

17. That, on March 14, 1972, Complainant Peters, with the assistance of Complainant Association, participated in a conference with the Board of Education concerning the nonrenewal of Complainant Peters' teaching contract; that, thereafter, said Board of Education concluded not to renew Complainant Peters' teaching contract, for the reasons listed in Respondent Unbehaun's letter to Peters under date of March 13, 1972; and that Complainant Peters was advised of said decision by letter dated March 15, 1972.

18. That, on March 20, 1972, Complainant Peters initiated Step I of the grievance procedure set forth in the collective bargaining agreement, alleging that the evaluation report and visitation reports previously referred to were in violation of the collective bargaining agreement, and further alleging that their use by the Board of Education as a basis for nonrenewal of her teaching contract violated the collective bargaining agreement.

19. That no resolution of said grievance was achieved at Step I of the grievance procedure, and, on March 27, 1972, Complainant Association advanced the grievance of Complainant Peters to Step II of the grievance procedure.

20. That no resolution of the grievance was achieved at Step II of the grievance procedure; that the grievance was advanced to Step III of the grievance procedure; that, on April 21, 1972, the Board of Education responded to said grievance in a letter wherein it contended that the grievance was not timely filed within the meaning of the collective bargaining agreement; that said grievance was placed on the agenda of the Board of Education, and the Complainants herein were invited to present their views, facts and evidence in support of their position on the issue of timeliness; that the Association, by its representative and by its attorneys, presented arguments to the Board of Education; and that, on May 23, 1972, the Board of Education denied the grievance on the basis that it was not timely filed under the terms of the collective bargaining agreement.

21. That the collective bargaining agreement does not contain provisions for arbitration of disputes other than disputes concerning the discharge or nonrenewal of a "regular" teacher; and that the issues joined in this proceeding are not within the scope of such arbitration provision.

22. That there is evidence of record that some of the reasons asserted by Respondent Unbehaun in his letter of March 13, 1972 for the nonrenewal of Complainant Peters have a basis in fact; and that Respondent Municipal Employer has met the requirement imposed by the collective bargaining agreement for the nonrenewal of Complainant Peters.

23. That the parties, through collective bargaining, negotiated changes in the language of Article XIX of their collective bargaining agreement; and that such changes are incorporated into a collective bargaining agreement effective for the period July 1, 1972 through June 30, 1974.

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

CONCLUSIONS OF LAW

1. That, to the extent that Complainant Peters was advised, prior to March 13, 1972, of accusations of misconduct on her part, grievances concerning the truth or falsity of such accusations are time-barred by the applicable collective bargaining agreement and are excluded from a determination in this proceeding.

2. That the grievance concerning the nonrenewal of Complainant Peters, which was filed on March 20, 1972 and processed thereafter through all of the steps of the grievance procedure, was timely filed as to said nonrenewal and is properly before the Wisconsin Employment Relations Commission in this proceeding.

3. That the Respondents had reasons for the nonrenewal of Complainant Peters, within the meaning of the applicable collective bargaining agreement; and that the Respondents have not violated and are not violating Section 111.70(3)(a)5 of the Municipal Employment Relations Act with respect to such nonrenewal.

4. That any issues remaining concerning compliance with the provisions of the 1971-72 collective bargaining agreement are moot, due to the obsolescence of that agreement and its replacement by a new agreement which is the product of collective bargaining between Respondent Municipal Employer and Complainant Association.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint filed in the above entitled matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 19th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The allegations of the complaint are limited to allegations that the Respondents violated a collective bargaining agreement and thereby violated Section 111.70(3)(a)(5) of the Municipal Employment Relations Act. The Answer filed by the Respondents denies violation of the collective bargaining agreement and alleges that the Complainants failed to comply with the grievance procedure contained in the applicable collective bargaining agreement. Hearing was held before the Examiner on November 7, 8, 9, 10, and 16, 1972 at Chilton, Wisconsin. The transcript of those proceedings, amounting to 419 pages, became available on February 15, 1973. Both parties filed briefs and reply briefs, the last of which was received on April 10, 1973.

COMPLIANCE WITH CONTRACTUAL PROCEDURES

There is no question that the nonrenewal of a probationary teacher is excluded from the coverage of the arbitration provisions of the collective bargaining agreement. In the absence of such coverage, the Commission will assert its jurisdiction to make determinations on the merits of contract disputes. The Respondents cite authority for the proposition that such determinations will not be made where the complaining party has not complied with the grievance procedures contained in the collective bargaining agreement. The Respondents contend that the grievance filed by the Association and Mrs. Peters on March 20, 1972 was not timely filed within the meaning of the applicable agreement. The agreement contains a requirement that a grievance be initiated within five full school days following the day the condition causing the grievance occurred. Observations were made throughout the year and discussions were held throughout the year, but no grievance was filed until written materials concerning those observations were delivered to Mrs. Peters.

The Complainants contend that Mrs. Peters was unaware of the existence of a potential grievance until she was given copies of the administration evaluations of her. Those documents were delivered on March 13, 1972, and they allegedly contain many complaints and criticisms which had not previously been communicated to Mrs. Peters. The Complainants contend that the Respondents' timeliness argument calls upon Mrs. Peters to have filed grievances within five days of the time the administration failed to notify her of a given complaint. They contend that the grievance was timely filed following the time the administration actually notified her of its complaints.

It is clear that Mrs. Peters had some discussions with members of the school administration throughout the September, 1971 - February, 1972 period, that some of the conversations were devoted to problems of discipline existing in Mrs. Peters' classes, and that there has not been a complete breakdown of communications. To the extent that Mrs. Peters was advised of accusations of misconduct prior to March 13, 1972, her grievance is now time barred and the Complainants cannot circumvent their failure to file timely grievances concerning such incidents by now advancing a broad claim that the total supervision provided to Mrs. Peters was inadequate. The grievance filed on March 20, 1972 was not made a part of the record in this proceeding, but references to the

grievance made in the complaint and in the testimony indicate that the grievance alleged that the nonrenewal of Mrs. Peters violated the agreement. Certainly, the position taken by the Complainants in this proceeding is that the nonrenewal violated the agreement. The grievance was timely filed as to the nonrenewal, and is not time barred in that regard.

POSITION OF THE COMPLAINANTS

The Complainants contend that the question to be answered in this case is whether or not Administrators Unbehaun and Cross fulfilled the obligations of Article XIX of the agreement, in coming to grips with what they perceived as a problem situation. The Complainants would have this question answered in the negative. The Complainants cite several incidents and complaints which were brought to Mrs. Peters' attention prior to March 13, 1972, but contend that most of the charges against Mrs. Peters were not brought to her attention until that date. Thus, it is contended that it was only on March 13 that Mrs. Peters was informed that other teachers had complained about the conditions of her classroom. Similarly, a student complaint dated November 24, 1971 was called to Mrs. Peters' attention much later, and was then communicated with the inference that it was not taken seriously by the school administration. The Complainants contend that Mrs. Peters' failure to attend the Valders forensic conference was due to factors beyond her control, and that reliance on that incident as a basis for nonrenewal is unjustified. Further, they allege that the administration failed to fully investigate many of the accusations against Mrs. Peters, and that full investigation would have revealed that Mrs. Peters was not guilty or not as guilty as the administration believed. It is alleged that the administration failed to provide Mrs. Peters positive and helpful guidance, that the administration withheld complaints which had been made by outsiders concerning Mrs. Peters, and that the administration was less than candid in its communications with Mrs. Peters prior to the events surrounding the nonrenewal. It is alleged that, because of failures on the part of the administration, Mrs. Peters was not made aware of the administration's dissatisfaction until it was too late for her to effect corrective measures. Since it would be impossible to know the nature, extent and success of any corrective measures which might have been taken, the Complainants contend that Mrs. Peters should be reinstated to her teaching position and be given opportunity to take such measures.

POSITION OF THE RESPONDENTS

The Respondents contend that Mrs. Peters was provided with all of the observations, assistance and supervision required by the collective bargaining agreement. They allege that the principal made every effort to, and in fact did, observe Mrs. Peters work for the required number of class periods, that he attempted to assist Mrs. Peters in every way possible, and that they actually did somewhat more than the minimum requirement of the agreement. The Respondents contend that Mrs. Peters was told of the administration's reluctance to renew her contract at a point somewhat earlier in time than she is willing to admit, and that her denials on this and other matters where the testimony is in conflict should not be credited. Contending that the collective bargaining agreement did not require written reports of observations be given to the teacher contemporaneously to the observation, the Respondents urge a finding that their delivery of written materials to Mrs. Peters on March 13, 1972 was not tardy and not in

violation of the agreement. While the Respondents admit that the administration received a host of complaints with regard to Mrs. Peters, they contend that the administration had discretion to withhold the details of such complaints and that no provision of the collective bargaining agreement requires that the administration notify the teacher of the existence of such complaints. Apart from the other issues joined here, the Respondents contend that, regardless of any violation of the observation, notice and supervision provisions upon which the Complainants rely, the broad authority of the Board of Education to nonrenew probationary teachers "for any reason" is not limited by or conditioned upon compliance with the evaluation procedures or any other provision of the agreement.

DISCUSSION

Given opportunity for a complete review and analysis of the provisions of the applicable collective bargaining agreement, made away from the hearing room and the urgency of the arguments and counter-arguments of counsel for the parties, it becomes apparent to the Examiner that the record made heretofore in this proceeding is far more lengthy than is necessary for a determination of the propriety of the nonrenewal of Mrs. Peters' teaching contract. Four of the five days of hearing in this matter and approximately three-quarters of the transcript were devoted to the presentation of the Complainant's case-in-chief. Numerous issues of fact have been joined, as much of the evidence adduced by the Complainants goes to the truth or falsity of various charges made by the school administration against Mrs. Peters, or to the demonstration of facts or circumstances tending to mitigate Mrs. Peters' responsibility for certain incidents. Numerous credibility questions arose as the Respondents proceeded with their case-in-chief and both parties presented rebuttal evidence. However, under the language of the applicable collective bargaining agreement, resolution of many of these issues is not required prior to reaching the ultimate issue in the case.

The Complainants' theory of the case is somewhat complicated: that Mrs. Peters did some things wrong, but not all of the things with which she was eventually charged by the school administration; that the school administration did a poor job of investigation in some instances and failed to give Mrs. Peters contractually required notice of deficiencies which were perceived to exist, so that Mrs. Peters did not know that she was doing anything wrong; that Mrs. Peters was denied opportunity to make efforts at improvement which she might have made in the face of contractually sufficient notice; that, as a result of lack of notice, Mrs. Peters may have repeated her earlier errors; that the Respondents relied on Mrs. Peters' actual and alleged errors as a basis for nonrenewal while the Respondents in fact contributed to those errors by their failure to give contractually required notice; and that the nonrenewal is therefore invalid. This sequence is logical and tenable until one applies it to the language of the collective bargaining agreement and discovers a fatal weakness in its founding premise. The Examiner is aware of collective bargaining agreements which authorize termination of the employment of probationary employees for any reason or for no reason. The agreement involved in the instant case sets a standard a cut above that just suggested, by precluding the termination of the employment of probationary teachers "for no reason", but the "for any reason" language of the agreement in dispute constitutes the most minimal standard for review. Accepting the premise that reasons which are themselves the product of employer conduct or which exist because of the failure of the employer to disseminate its expectations to its employee might not be charged against the employee, the Complainants' theory of the case here nevertheless fails to recognize that the Board

of Education is authorized to nonrenew a probationary teacher for the first or only thing the teacher ever does wrong. On motion of the Respondents, the Examiner excluded an entire line of questioning whereby the Complainants attempted to adduce evidence to vary the unambiguous terms of the collective bargaining agreement, in violation of the parol evidence rule. Said ruling is reaffirmed here. The agreement language is: "During this probationary period such teachers may be terminated or their contracts not renewed for any reason." Nothing in this agreement requires that the nonrenewal be "fair" or that the employer have "good reasons", "sufficient reasons", "substantial reasons", or "just cause" to nonrenew a probationary teacher. On the contrary, the parties stipulated to the admission in evidence of the Brillion Education Association's initial bargaining demands for the 1971 - 1972 collective bargaining agreement, which contain language imposing a "just cause" standard for review of all discipline, reprimand, and deprivation of professional advantage for all teachers. The concept of a probationary period, the "for any reason" standard made applicable to probationary teachers, and the "arbitrary and capricious" standard made applicable to regular teachers who have completed the probationary period represent a significant departure from the form of employment security initially sought by the Association in bargaining. While it is a matter of record that the parties negotiated changes into their collective bargaining agreement for 1972 - 1974, some of which have a relation to the issues raised in this case, they did not tamper with the standard of review for probationary teachers. The language of the agreement is clear and simple, and the scope of inquiry in this case is limited to the question of whether or not Brillion Joint School District No. 2 had "any reason" to nonrenew Mrs. Peters' teaching contract.

This case does not present a situation where no reason has been given by the Respondents for their action with regard to Mrs. Peters. In a letter to Mrs. Peters under date of March 13, 1972, Superintendent Unbehaun stated, inter alia:

"The Board of Education is considering not renewing your teaching contract for 1972-73 for the following reasons:

1. Problem of maintaining student discipline - some examples of which are:
 - a. Students throwing article out of window.
 - b. Calls from superintendent to provide assistance to study hall control.
 - c. Complaints from faculty members who must share the same room about condition of the room, bulletin board, etc.
 - d. Student conduct in the classroom.
2. Failure to demonstrate good judgment in assignment of subjects for classroom discussion and to plan proper balance in assignments in relation to the total written curriculum.
3. Failure to meet contractual obligations.
 - a. Attendance at conference forensic meet.
 - b. Questionnaire on speech activities.
4. Assignment of students to unsupervised areas."

If the Respondents have "any reason" for their action concerning Mrs. Peters, it must be found among the reasons provided to Mrs. Peters.

Problem of Maintaining Student Discipline

The problem of maintaining student discipline heads the list of reasons stated in the March 13, 1972 letter, and the evidence clearly indicates that such problems were a dominant factor in the decision on nonrenewal. Under the heading: "The Supervision Afforded to Mrs. Peters Did Not Meet The Requirements Of The Collective Bargaining Agreement", the Complainants open their argument in their brief with the statement: "Mrs. Peters concedes that during her employment with the Brillion School District, she did experience some problems with maintaining discipline, but feels that these problems were not unusual for a first year teacher." In view of the minimal employment security protection provided by the collective bargaining agreement, this is a significant concession on the part of the Complainants directly in response to the primary allegation against Mrs. Peters.

There is testimony of record concerning articles thrown from the windows of Mrs. Peters' classroom or found on the ground outside that classroom. The testimony is mixed, and some of the evidence on the employer side is burdened with hearsay and inferences from circumstantial facts, so that a conclusion of responsibility on the part of Mrs. Peters is several steps removed from the individual items of evidence. While evidence that Mrs. Peters had participated in, condoned, or otherwise contributed to student misconduct in this regard would constitute a reason within the meaning of the agreement, the evidence is regarded by the Examiner as inconclusive for the purpose of this limited inquiry.

The high school library is adjacent to the office occupied by the Superintendent of Schools. During the year of Mrs. Peters' employment in the Brillion school system, study halls were conducted in that library and, at various times, Mrs. Peters was charged with the responsibility for maintenance of student discipline in that library study hall. Superintendent Unbehaun testified that on more than one occasion he was distracted from his work in his office by noise emanating from the library, whereupon he entered the library area and discovered that the disturbance was originating among students who were under Mrs. Peters' supervision. There is a direct conflict of testimony as to whether Unbehaun or Principal Richard Cross ever mentioned the situation to Mrs. Peters, but assuming, arguendo, that the school administration violated the so-called notice provisions of the collective bargaining agreement by failing to fully and candidly disclose the negative inference drawn from this situation to Mrs. Peters, the Respondents were nevertheless entitled to rely on the first such incident as a reason for nonrenewal. The Examiner fully realizes that this is a harsh result, but such a result flows directly and necessarily from the harsh standard imposed upon probationary teachers by the parties through their collective bargaining.

There is considerable testimony concerning the placement of responsibility for damage to classroom facilities used by Mrs. Peters' classes, much of which is also burdened with hearsay and is subject to differing interpretations. This evidence is also regarded as inconclusive for the purposes of this limited inquiry.

Information concerning student conduct in Mrs. Peters' classroom came to the attention of the school administration from several sources, including staff, student and parent complaints as well as formal and informal observations made by Principal Cross. The emphasis in testimony in this proceeding has been on the observations made by Cross, as reflected in evaluation notes prepared by Cross and delivered to Peters on March 13, 1972. Numerous negative items are found among

those notes, including comments indicating a lack of involvement of the entire class, groups of students carrying on conversations apparently unrelated to the class work, lack of teacher preparation, and difficulty in communicating assignments to the students. While there is considerable conflict between the testimony of Cross and the testimony of Peters as to many of the incidents incorporated in the evaluation notes, and further conflict in testimony as to the nature and extent of any discussion of those problems between Cross and Peters, the record would not support the conclusion that each and every one of the negative comments made by Cross was without basis in fact. This is particularly the case in view of the general concession, already discussed, that Mrs. Peters had some problems with the maintenance of student discipline. Regardless of the source of its knowledge, it is clear that the school administration became aware of the existence of problems of student discipline in Mrs. Peters' classes and that such knowledge led to the negative recommendation concerning Mrs. Peters.

Failures Concerning Assignment and Curriculum

On at least one occasion, students in Mrs. Peters' speech class exceeded the bounds of good taste in the selection of a skit topic, and the incident has been acknowledged by Mrs. Peters as being one of some embarrassment to her. Mrs. Peters terminated the skit when its inappropriate content became known to her. Other speech topics considered inappropriate by the school administration are referred to in the record, but the record fails to make a direct connection between Mrs. Peters and the suggestion of those topics. The Examiner regards the evidence on this issue as inconclusive.

Both parties acknowledge that Principal Cross detected some lack of preparation on the part of Mrs. Peters, that he concluded that her oral discussions were weak, and that he suggested that Mrs. Peters place greater emphasis on written work in her classes. The weaknesses initially detected could constitute reason for nonrenewal. Since notification of the weakness and suggestion for improvement is acknowledged, it would also appear that later incidents where lack of preparation and misplaced emphasis was detected would not be tainted within the Complainants' theory of the case.

Failure To Meet Contractual Obligations

Mrs. Peters was the forensics coach for the Brillion High School as well as a classroom teacher in that school. The school administration attached some importance to Mrs. Peters' attendance at a conference of forensics coaches at Valders, Wisconsin early in the school year, and there is testimony that Mrs. Peters was twice reminded of her obligation to attend that conference. Shortly prior to the conference in question, Mrs. Peters sought to be excused from attendance at the conference for reasons of a personal social nature. Permission was denied by the school administration, but Mrs. Peters nevertheless absented herself from the forensics conference. Mrs. Peters has advanced an excuse based on the breakdown of her car, but her testimony in this proceeding leaves a number of questions unanswered. The conference was a requirement of her employment, and it would appear that the burden of persuasion as to the validity of her excuse fell upon Mrs. Peters and that the party to be persuaded is the school administration. The school administration has heard her testimony in this proceeding, but the Respondents have not indicated in any way that they have withdrawn this allegation against Mrs. Peters. The excuse advanced by Mrs. Peters is not supported by any corroborating evidence and seems somewhat lame in the context of her previous request for

exemption from the requirement to attend. The incident clearly constitutes a negative item in Mrs. Peters' record upon which the Respondents could rely for purposes of nonrenewal. The requirement to attend a conference of forensics coaches did not arise again during the remainder of Mrs. Peters' employment, so it is also difficult to envision the manner in which a lack of compliance with the so-called notice provisions of the agreement could have prejudiced Mrs. Peters in any way.

Mrs. Peters' testimony concerning the preparation and mailing of the disputed speech activities questionnaire immediately after she received it stands unrefuted in the record, and it is concluded that the allegation against her for failure to meet contractual obligations in connection with that questionnaire is without basis in fact.

Assignment of Students to Unsupervised Areas

Mrs. Peters provided a pass to two of her students on one occasion, with instructions to the students that they report to her on their way from their study hall to the location designated in the pass. It is unrefuted that she changed her mind after they reported to her room, and kept the students at that location rather than sending them to the area originally designated. Another teacher followed up on the pass and discovered that the students were not in the location designated on the pass, but this certainly does not prove that the students were in an unsupervised area.

Mrs. Peters sent other students to various locations in the building to practice speech class activities. Mrs. Peters' testimony is that the students were never completely unsupervised, since she had arranged for other teachers or a secretary to oversee their activities. The Respondents contend that some students were turned loose without supervision. It is apparent that Mrs. Peters may have placed too much trust in the students, and that they misbehaved once outside of her immediate supervision. Complaints were received from teachers other than those with whom Peters had made arrangements for supervision of the students, indicating that some slippage occurred between the activity intended by Peters and the actual activity of the students. As the assigned teacher, Mrs. Peters must assume responsibility for the misconduct and any insufficiency in her arrangements for alternate supervision.

CONCLUSION

Based on the foregoing, it is apparent that some of the reasons asserted by the school administration for its nonrenewal action against Mrs. Peters have a basis in fact, and that the Respondents have met the standard imposed by the collective bargaining agreement for nonrenewal of a probationary teacher. Accordingly, no violation of the collective bargaining agreement is found which could be remedied by reinstatement of Mrs. Peters to her teaching position.

A number of issues remain, lying within an area bounded on one extreme by matters which should properly have been the subject of earlier grievances and are now time barred, and bounded on the opposite extreme by matters which did not come to Mrs. Peters' attention until the conference with the Board of Education on March 14, 1972, or thereafter. The Examiner finds that those issues are now moot and that a determination of those issues is unnecessary. Nothing in the record indicates that any grievance other than that of Mrs. Peters is now pending under the language of Article XIX of the 1971 - 1972 collective bargaining agreement. The language pertinent to the issues raised in this case was changed by the parties in several

significant respects in their 1972 - 1974 collective bargaining agreement. While there is evidence of record which could support a conclusion that the Respondents violated certain of the requirements of Article XIX of the 1971 - 1972 collective bargaining agreement, the maximum remedy which could flow from the lengthy process of decisionmaking which would be required to resolve all of the potential issues raised in this record would be an order that the Respondents cease and desist from violation of contract language which is now obsolete. Such an order would be of no guidance to the parties, and would be an unnecessary exercise of the processes of the Commission.

Dated at Madison, Wisconsin, this *19th* day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Marvin L. Schurke*
Marvin L. Schurke, Examiner