

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OOSTBURG EDUCATION ASSOCIATION and
RUTHANNE MEYER,

Complainants,

vs.

OOSTBURG JOINT SCHOOL DISTRICT NO. 14
and BOARD OF EDUCATION OF OOSTBURG
JOINT SCHOOL DISTRICT NO. 14;

Respondent.

Case V
No. 15891/AP-154
Decision No. 11196-A

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce F. Ehke,
appearing on behalf of the Complainant.

Chase, Olsen & Kloet, Attorneys at Law, by Mr. Alvin R. Kloet,
appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Oostburg Education Association and Ruthanne Meyer having filed a complaint alleging that Oostburg Joint School District No. 14 and Board of Education of Oostburg Joint School District No. 14 has committed prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes; and the Commission having appointed Herman Torosian, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Oostburg, Wisconsin, on August 31, 1972, before the Examiner; and the Examiner having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant, Oostburg Education Association; hereinafter referred to as the Association, is a labor organization and at all times material herein the exclusive bargaining representative of teachers employed by Oostburg Joint School District No. 14 and Board of Education of Oostburg Joint School District No. 14;
2. That Complainant, Ruthanne Meyer; hereinafter referred to as the Complainant, has been at all times material herein a public school teacher employed by Oostburg Joint School District No. 14 and Board of Education of Oostburg Joint School District No. 14; and that the last individual teaching contract offered to Complainant Meyer and signed by Complainant Meyer was for the 1971-1972 school year;
3. That Respondent, Oostburg Joint School District No. 14 and Board of Education of Oostburg Joint School District No. 14; hereinafter referred to as the Respondent, is a public school district organized under the laws of the State of Wisconsin and that Respondent is a public body charged under the laws of Wisconsin with the management, supervision and control of the district and its affairs;

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4. That, at all times material herein, Complainant Association and Respondent were signators to a collective bargaining agreement with an effective term from August 26, 1971, through August 29, 1972, covering the wages, hours and working conditions of teachers employed by Respondent, and that said agreement, in material part, contained the following provisions:

"ARTICLE II"

BOARD FUNCTIONS

A. The Board's right to operate and manage the school system is recognized including the determination and direction of the teaching force, the right to plan, direct and control school activities; to schedule classes and assign workloads; to determine teaching methods and subject to be taught; to maintain the effectiveness of the school system; to determine teacher complement; to create, revise and eliminate positions; to establish and require observance of reasonable rules and regulations; to select and terminate teachers for cause.

B. The foregoing enumeration of the functions of the Board shall not be deemed to exclude other functions of the Board not specifically set forth, the Board retaining all functions not otherwise specifically nullified by this Agreement."

"ARTICLE V"

GRIEVANCE PROCEDURE

A. Definitions

1. A 'Grievance' is a claim based upon an event or condition which effects the wages, hours, and conditions of employment of a teacher or group of teachers and/or the interpretation, meaning or application of any of the provisions of this Agreement.

D. Initiation and Processing

1. Level One The Aggrieved Person will first discuss his grievance with his principal or immediate supervisor, either directly or through the Association's designated Building Representative, with the objective of resolving the matter informally.

2. Level Two (a) If the Aggrieved person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within ten (10) school days after presentation of the Grievance, he may file the grievance in writing with the Chairman of the Association's Grievance Committee (hereinafter referred to as the 'Grievance Committee') within five (5) school days after the decision at Level One, or fifteen (15) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Chairman of the Grievance Committee will refer it to the Superintendent of Schools.

b. Within ten (10) school days after receipt of the written grievance by the Superintendent, the Superintendent will meet with the Aggrieved person and Association representative in an effort to resolve it.

c. If the Aggrieved person does not file a grievance in writing with the chairman of the Grievance Committee and the written Grievance is not forwarded to the Superintendent within sixty (60) days after the teacher knew or should have known of the act or condition on which the grievance is based, then the grievance will be considered as waived. A dispute as to whether a grievance has been waived under this paragraph will be subject to arbitration pursuant to level Four, paragraph 4, hereof.

3. Level Three (a) If the aggrieved person is not satisfied with the disposition of his grievance at level two, or if no decision has been rendered within ten (10) school days after he has first met with the Superintendent, he may file the grievance in writing with the chairman of the Grievance Committee within five (5) school days after a decision by the Superintendent, or fifteen (15) school days after he has first met with the Superintendent, whichever is sooner. Within five (5) school days after receiving the written grievance, the grievance committee may refer it to the Board if it determines that the grievance is meritorious and that appealing it is in the best interests of the school system. Within ten (10) school days after receiving the written grievance the Board will meet with the aggrieved person and Association representatives for the purpose of resolving the grievance.

4. Level Four (a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Three, or if no decision has been rendered within ten (10) school days after he has first met with the Board, he may, within five (5) school days after a decision by the Board or fifteen (15) school days after he has first met with the Board, whichever is sooner, request in writing that the Chairman of the Grievance Committee submit his grievance to arbitration. If the Grievance Committee determines that the grievance is meritorious and that submitting it to arbitration is in the best interest of the school system, it may submit the grievance to binding arbitration within fifteen (15) school days after receipt of a request by the aggrieved person.

b. Within ten (10) school days after such written notice of submission to arbitration, the Board and the Grievance Committee will agree upon a mutually acceptable arbitrator and will obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator, or to obtain such a commitment within the specified period, both parties shall jointly file a written request with the Wisconsin Employment Relations Commission to appoint an arbitrator to determine the matter. The Wisconsin Employment Relations Commission shall appoint a Commissioner or member of its staff to act as arbitrator.

c. The arbitrator so selected will confer with representative of the Board and the Grievance Committee and hold hearings promptly and will issue his decision on a timely basis. The arbitrator's decision will be in writing and will set forth his findings of fact, reasoning and conclusions of the issues submitted. The arbitrator will be without power or authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this Agreement.

d. In event there is a charge for the service of an arbitrator, including per diem expense, if any, and/or actual and necessary travel and subsistence expenses, or for a transcript of the proceedings, the parties shall share the expense equally."

5. That, by letter dated March 2, 1972, Complainant Meyer was informed by Gilbert Oonk, Clerk of the Board, that the Board had voted not to renew her teaching contract for the following reasons:

- "1. Shown to be irresponsible to her fellow teachers.
2. Shown to be irresponsible to the Administration.
3. Shown to be irresponsible to the students in the classroom.
4. Shown to be irresponsible to her extra curricular assignments."

6. That, by letter dated March 7, 1972, to Wilfred Lensink, President of the Board of Education, Complainant Meyer requested a formal hearing before the Board of Education with right to legal counsel, and that said request was denied by letter dated March 15, over the signature of Lensink, on the basis of the Board's opinion that a hearing had been held at which time Meyer had representation before the Board decided not to renew Meyer's contract.

7. That thereafter by letter to Lensink dated March 17, Mrs. S. Steinbruecker, Chairman, Oostburg Education Association, P.R. & R. Grievance Committee, requested Respondent to submit Complainant Meyer's grievance to final and binding arbitration in accordance with the collective bargaining agreement; that Lensink, by letter dated March 27, informed Steinbruecker the request for arbitration was not granted and that the Board did not consider Meyer's nonrenewal a grievance, and that it did not come under the terms of the collective bargaining agreement.

8. That on April 27, Elinor Hendee, President, Oostburg Education Association, and Complainant Meyer sent the following letter to Lensink:

"By letter dated March 2, 1972, the Board of Education, Oostburg Area Schools, District 14, informed Mrs. RuthAnne Meyer that it had decided not to renew her teaching contract with the district for the 1972-73 school year.

By letter dated March 15, said Board informed Mrs. Meyer that it declined a hearing before the Board to reconsider the decision to terminate her employment in the district.

Mrs. RuthAnne Meyer grieves the action of the Board to terminate her employment for the reason that there is no 'cause', in violation of Article II, paragraph A, page 3, of the Collective Bargaining Agreement between the Oostburg Board of Education and the Oostburg Education Association."

9. That a final request to submit Complainant Meyer's grievance to arbitration was made by Bruce Ehke, Attorney for the Association, by letter to Attorney Alvin Kloet, the Board's Attorney, dated July 7, 1972; and that said request was denied by letter dated July 19 to Attorney Ehke because of the Board's position that the nonrenewal of a teacher contract did not constitute a grievance and was not covered by the terms of the collective bargaining agreement.

10. That the dispute between Complainant and Respondent, with respect to the nonrenewal of RuthAnne Meyer's teaching contract for school year 1972-1973, concerns the interpretation and application of the terms of the 1971-1972 collective bargaining agreement then existing between the Complainant Association and Respondent.

On the basis of the above and foregoing Findings of Fact the Examiner makes the following

CONCLUSIONS OF LAW

1. That the dispute between Complainant Oostburg Education Association and Complainant Ruthanne Meyer concerning the grievance of Ruthanne Meyer, wherein she claimed the nonrenewal of her teaching contract violated the collective bargaining agreement, arises out of a claim which, on its face, is covered by the terms of the collective bargaining agreement which existed between them.

2. That Oostburg Joint School District No. 14 and Board of Education of Oostburg Joint School District No. 14, by its refusal to proceed to arbitration in the matter of the grievance of Ruthanne Meyer, wherein she claimed the nonrenewal of her teaching contract by the Board violated the collective bargaining agreement, has violated and is violating the terms of the collective bargaining agreement which existed between it and Oostburg Education Association, and by such refusal has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes.

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 Oostburg Joint School District No. 14 and Board of Education of Oostburg Joint School District No. 14, its officers and agents shall immediately:

1. Cease and desist from refusing to submit the grievance concerning Ruthanne Meyer to arbitration.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70, Wisconsin Statutes:
 - (a) Comply with the arbitration provisions of the collective bargaining agreement existing between it and Oostburg Education Association with respect to the grievance of Ruthanne Meyer and her claim therein that the Board's refusal to renew her teaching contract violated the terms of the collective bargaining agreement.
 - (b) Notify Oostburg Education Association that it will proceed to such arbitration on said grievance and issues concerning same.
 - (c) Participate with Oostburg Education Association in the selection of the arbitrator to hear said grievance and the issues concerning same, and that pursuant to Article V of the collective bargaining agreement, if the parties are unable to agree upon an arbitrator or to receive such a commitment within the specified time, both parties jointly file a written request with the Wisconsin Employment Relations Commission to appoint an arbitrator to determine the matter.

- (d) Participate in the arbitration proceeding before the arbitrator so selected or appointed on the grievance and the issues concerning same.
- (e) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from receipt of a copy of this Order as to what steps it has taken to comply herewith.

Dated at Madison, Wisconsin, this 17th day of November, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Herman Torosian
Herman Torosian, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On July 25, 1972, Complainant filed a complaint with the Commission alleging that Oostburg Joint School District No. 14 and the Board of Education of Oostburg Joint School District No. 14 had committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes by refusing to proceed to arbitration in violation of Article V of the collective bargaining agreement, on the grievance filed on behalf of Ruthanne Meyer. Said grievance concerns the nonrenewal of Ruthanne Meyer's teaching contract for the 1972-1973 school year. In its answer filed on August 18, 1972, the Respondent alleges the Wisconsin Employment Relations Commission lacks jurisdiction over the Respondent and the subject matter. Further, Respondent denies terminating Ruthanne Meyer but admits that her teaching contract was not renewed for the 1972-1973 school year; that the nonrenewal of a teaching contract is not covered by the 1971-1972 collective bargaining agreement, but rather controlled by Section 118.22 of the Wisconsin Statutes; and that therefore, the nonrenewal of a teaching contract is not a grievance which can be processed through the contractual grievance procedure. However, Respondent further alleges, should the Examiner conclude a grievance does exist, that Complainants did not proceed according to the grievance procedure under Article V of the collective bargaining agreement.

In regard to the jurisdiction issue raised by Respondent, the following sections of the Wisconsin Statutes are pertinent:

Section 111.70(1)(a) states

"(a) 'Municipal employer' means any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state which engages the services of an employee and includes any person acting on behalf of a municipal employer within the scope of his authority, express or implied."

Section 111.70(4) provides

"(a) Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter except that wherever the term 'unfair labor practices' appears in s. 111.07 the term 'prohibited practices' shall be substituted."

111.07 provides that

"Prevention of unfair labor practices. (1) Any controversy concerning unfair labor practices may be submitted to the commission in the manner and with the effect provided in this subchapter, but nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction."

111.70(3)(a)5 provides

"5. To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employees, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such award as final and binding upon them."

From the above it is clear the Wisconsin Employment Relations Commission has jurisdiction to determine whether the Municipal Employer, Oostburg Joint School District No. 14 violated Article V of the 1971-1972 collective bargaining agreement, which provides for final and binding arbitration of grievances, by refusing to proceed to arbitration on the nonrenewal of Ruthanne Meyer's teaching contract, and whether by said refusal as alleged by Complainant, Respondent has committed a prohibited practice within the meaning of 111.70(3)(a)5.

The Respondent does not deny refusing to proceed to arbitration on the grievance of Ruthanne Meyer. The Respondent's position consistently has been that Meyer was not terminated but rather her teaching contract was not renewed; that nonrenewal is controlled by Section 118.22 of the Wisconsin Statutes and not the collective bargaining agreement; and that nonrenewal of a teaching contract is not a grievance under the 1971-1972 collective bargaining agreement.

The question before the Examiner, then, is whether the grievance of Ruthanne Meyer is arbitrable under Article XII.

In what is now commonly referred to as the trilogy cases,^{1/} the U. S. Supreme Court stated that arbitration provisions in collective bargaining agreements will be given their fullest meaning and that the function of the Courts in cases seeking to enforce arbitration provisions in agreements is to ascertain whether the party seeking arbitration is making a claim, which on its face is governed by the collective bargaining agreement.

The Wisconsin Employment Relations Commission adopted said federal law as the policy of the Commission in the Seaman and Wall Corporation case,^{2/} and has consistently applied said policy in numerous cases since that time.^{3/}

Based on the above the more narrowly defined issue is whether the Complainant is making a claim which on its face is governed by the collective bargaining agreement.

In this regard it is noted Article V of the 1971-1972 collective bargaining agreement defined grievance as follows:

"A 'Grievance' is a claim based upon an event or condition which effects the wages, hours, and conditions of employment of a teacher or group of teachers and/or the interpretation, meaning or application of any of the provisions of this Agreement."

Article II of the collective bargaining agreement states that it is a board function "to select and terminate teachers for cause."

Complainant claims Respondent violated Article II when they did not renew Ruthanne Meyer's teaching contract for the year 1972-1973 in that said nonrenewal constituted a "termination" and that said termination was not for cause. It is Respondent's position that nonrenewal does not constitute termination and that nonrenewals are not governed by the collective bargaining agreement, but rather subject to 118.22 of the Wisconsin Statutes. Therefore, Respondent argues nonrenewal of a teaching contract is not a grievance since it does not involve the interpretation or application of a provision of the collective bargaining agreement.

1/ Steelworkers v American Mfg. Co., 363 U.S. 564 (1960); Steelworkers v Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); Steelworkers v Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

2/ Decision No. 5910, 1/62.

3/ See cases in Sec. 1573.1,3 in Digest of Decisions, WERC.

It is the opinion of the Examiner that Complainant's claim that Complainant Ruthanne Meyer was terminated without cause, when Respondent refused to renew her teaching contract for the school year 1972, in violation of Article II, and Respondent's defense that Article II of the agreement does not apply to nonrenewals and that nonrenewals are not terminations, in itself requires an "interpretation and application of Article II of the collective bargaining agreement." More specifically, the question of whether or not "nonrenewal" constitutes "termination" clearly calls for an interpretation of that provision and the word "termination". It may be that in so doing Section 118.22 of the Wisconsin Statutes will have to be considered, and reconciled with the collective bargaining agreement but said determination is for the Arbitrator, as provided in the collective bargaining agreement, and not for the Examiner.

Based on the above the Examiner must conclude Complainant has made a complaint which on its face is governed by the collective bargaining agreement.

Also Respondent in its answer alleges that should the Examiner find Ruthanne Meyer's nonrenewal constitutes a grievance, then it is the Respondent's position that Complainants did not proceed according to the grievance procedure under Article V of the agreement. Although no evidence was produced to support said position, the Examiner would like to make it clear to the parties that procedural defenses for refusing to proceed to arbitration are also for the Arbitrator to determine. The U. S. Supreme Court in John Wiley case,^{4/} declared the following:

"Once it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator."

The above is also the well established policy of the Wisconsin Employment Relations Commission.^{5/}

Finally, it is argued that the Board of Education in no manner terminated Complainant Meyer's teaching contract for the 1971-1972 contract year, and in no way affected any rights or obligations under the 1971-1972 collective bargaining agreement. Said agreement expired August 30, 1972, and Respondent contends that Complainant Meyer cannot allege rights under a contract that does not exist.

Therefore, Respondent claims the Board of Education is not agreeing to arbitrate under the agreement dated August 26, 1971, as to the nonrenewal of Meyer's teaching contract for the school year 1972-1973 has no duty under Section 111.70(3)(a)5, Wisconsin Statutes, to arbitrate the meaning or application of a collective bargaining agreement no longer in existence.

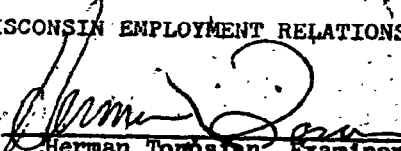
^{4/} 376 U. S. 543, (1964) 55 LRRM 2769.

^{5/} Seaman-Andwall Corp., Supra; Schluter Co., Decision No. 6557, 12/63; Pierce Auto Body Works Inc., Decision No. 6635, 2/64; St. Mary's Hospital, Inc., Decision No. 8675-B, 12/68; and City of Green Bay, Joint School District No. 1, Decision No. 11021-A, 11/72.

The Commission has previously held⁶ that the fact that a collective bargaining agreement has expired does not excuse the Employer from arbitrating a dispute which arose during the term of said agreement. Here, the instant dispute arose during the term of the 1971-1972 agreement and is on its face governed by the collective bargaining agreement. Therefore, the matter must be submitted to an arbitrator and the question of whether or not teacher contract renewals for school year 1972-1973 are covered by the August 26, 1971-August 29, 1972 agreement is for the arbitrator to decide.

Dated at Madison, Wisconsin, this 17th day of November, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Examiner

Safeway Stores, Inc., Decision No. 6883, 9/64; and The Kroger Co.,
Decision No. 7563-A, 9/66.