

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

Petitioners,

-vs-

Case No. 2160

THE WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Respondent.

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WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION,

Petitioner,

-vs-

Case No. 2193

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

Respondents.

Decision No. 11196-B

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The above entitled related actions, which were consolidated by stipulation, will be decided together. The issues were submitted on briefs and oral arguments, the last memorandum having been received from counsel for the WERC on May 30, 1974. Attorney Alvin Kloet appeared for Oostburg Joint School District No. 14 and Board of Education of Oostburg Joint School District No. 14 (hereinafter referred to as Board of Education.) The Wisconsin Employment Relations Commission (hereinafter referred to as WERC) appeared by Charles Hoornstra, Assistant Attorney General and Attorney Bruce F. Ehlke appeared for the Intervenors, Oostburg Education Association & Ruthanne Meyer (Johnston).

#### STATEMENT OF FACTS

On March 2, 1972, Ruthanne Meyer, a teacher employed by the Board of Education, received notice that she was not being offered a teaching contract for the 1972-73 school year. Miss Meyer requested a formal hearing from the Board of Education who denied this request. Believing she had a contractual right to remain at her job unless terminated for cause under Article II of the Master Agreement between the Board of Education and the Oostburg Education Association of which she was a member, Miss Meyer attempted to use the grievance procedure outlined in Article V(D) of the Master Agreement. The Board of Education, throughout, denied that non-renewal was the same as termination and claimed Miss Meyer had no grievance which could be arbitrated. Miss Meyer and the Oostburg Education Association filed a complaint with the WERC, alleging that the Board of Education committed prohibited practices within the meaning of Sec. 111.70(3)(a) 5, Wisconsin Statutes.

The WERC assigned an examiner to hold a hearing on the complaint. The examiner made findings of fact and conclusions of law and ordered the Board of Education to arbitrate. The Board of Education appealed this order to the WERC. After the WERC affirmed the order of the examiner, the Board of Education asked this court for review. The WERC, in the meantime, requested this court to enter a judgment and decree pursuant to Sec. 111.07(7), Wisconsin Statutes, confirming and enforcing all of the provisions of the orders.

The briefs submitted raise a number of issues and the arguments in support of the positions of the respective parties. The issues will be considered separately.

I. ARE SECTIONS 111.70(3) STATS. DEALING WITH PROHIBITED PRACTICES BY A MUNICIPAL EMPLOYER AND 118.22 STATS. DEALING WITH RENEWAL OF TEACHER CONTRACTS IN CONFLICT OR ARE THEY MUTUALLY EXCLUSIVE?

The general rule is that a specific statute, such as Sec. 118.22, Wis. Stats., prevails over a general one in the case of conflict, such as Sec. 111.70, Wis. Stats. Board of Education v. WERC, 52 Wis. (2d) 625, 640, 191 N.W. (2d) 242 (1971). However, the two statutes do not conflict. Sec. 118.22, Wis. Stats., gives the minimum procedures for notice and hearing required by the legislature before a school board can decide not to rehire a teacher. This statute was enacted to safeguard a teacher's interest in continued employment. Sec. 111.70, Wis. Stats., gives teachers and other municipal employees the right to collectively bargain in areas that pertain to wages, hours and conditions of employment. It appears that the rationale behind both these statutes is a legislative desire to provide teachers and municipal employees with procedures and organizations that will enable them to look after their interests.

The Board of Education contends that this court should differentiate between public and private employees and between teachers and other municipal employees on public policy grounds. However, the legislative intent manifest in Sec. 111.70, Wis. Stats., does not support this contention. Sec. 111.70(1)(a), Stats. specifically lists a school district as a municipal employer. In Sec. 111.70(1)(b) teachers are not listed as an exemption from the classification of municipal employees. Collective bargaining provisions for municipal employees should be liberally construed because it is illegal for such employees, including teachers, to strike. Thus, municipal employees, more than private employees, need to know that they can rely upon grievance procedures and arbitration to make their position and complaints on hours, wages and employment conditions clear.

II. DOES SEC. 111.70 STATS. AUTHORIZE THE BOARD OF EDUCATION TO BARGAIN AWAY ITS SOLE POWER TO TERMINATE A TEACHER'S EMPLOYMENT OR TO REFUSE TO RENEW A TEACHER'S CONTRACT?

The Board of Education contends that any contract they made which limited the sole power to employ and discharge teachers delegated to them as a municipal corporation by the legislature would be an ultra vires one. The general rule is that, absent statutory authorization to do so, a municipal employer cannot contract away its absolute power to hire and remove employees. Adamczyk v. Caledonia, 52 Wis. (2d) 270, 275, 190 N.W. (2d) 137 (1971). See also 4 McQuillin, Municipal Corporations (3d Ed.) Sec. 12.249, pp. 303-306. Sec. 111.70(17)(d) Wis. Stats., gives petitioners the statutory authorization to enter into a contract where they agree to "terminate" employment only for cause, as follows:

"The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours, and conditions of employment of the employees." (Emphasis supplied) See School Directors v. Fifield, 315 A. (2d) 473, 85 LRRM 2939 (1974) in which the Vermont Supreme Court held that a Vermont statute similar to Sec. 111.70, Wis. Stats., required the Danville school board to negotiate with representatives of the teachers' association. Furthermore, under Sec. 111.70(3)(a)4, Wis. Stats., a municipal employer cannot refuse to bargain collectively and negotiate a contract with a representative of a majority of its employees.

While the master contract in the Vermont case is more definite in that it specifically states that the grievance procedures apply to non-renewal of a teacher's contract, assuming, but not deciding, that the Master Agreement in these actions applies to non-renewal of teachers' contracts, the Board of Education is bound to abide by the contract. To do so does not abrogate its statutory authority in regard to renewals.

III. DOES THE FACT THAT THE MASTER AGREEMENT UNDER WHICH THE CLAIM IS MADE HAS EXPIRED AFFECT CLAIMANT'S RIGHTS?

If Miss Meyer had a claim which constitutes a grievance under Article V (A)(1) and which the Board of Education refused to submit to arbitration, Article V (C)(3) of the Master Agreement should apply. It provides as follows:

"In the event a grievance is filed so that sufficient time as stipulated under all levels of the procedure cannot be provided before the last day of the school term, should it be necessary to pursue the grievance to all levels of the appeals, then said grievance shall be resolved in the new school term in September under the terms of this agreement and this article, and not under the succeeding agreement."

This grievance was not settled during the 1971-72 school year because of the Board of Education's insistence that no grievance, as defined by the Master Agreement, existed. It would be inequitable to deny Miss Meyer her right to arbitration merely because during the time the Board of Education believed she did not have such a right, the 1971-72 Master Agreement expired. The contract in effect at the time of the alleged grievance applies.

IV. IS THE ISSUE OF NON-RENEWAL OF A TEACHER'S CONTRACT THE SAME AS TERMINATION AND THEREFORE SUBJECT TO ARBITRATION UNDER THE GRIEVANCE PROCEDURE?

The WERC found that the Board of Education had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5. of the Stats., by refusing to proceed to arbitration on a grievance involving the non-renewal of the teaching contract pursuant to the Master Agreement.

Counsel for the Board of Education argues that non-renewal of a teacher's contract is not included in the Master Agreement as one of the things which must be submitted to arbitration. Article II of the Master Agreement says that the Board of Education has the power to "select and terminate teachers for cause." Miss Meyer and the Oostburg Education Association and the WERC claim that termination includes non-renewal.

A grievance is defined under Article V (A) (1) of the Master Agreement as "a claim based upon an event or condition which affects 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." A dismissal falls within the category of "wages, hours and conditions of employment." Richards v. Board of Education, 58 Wis. (2d) 444, 460b (1973). Rehearing.

While the Board of Education claims it is obvious that "termination" and "non-renewal" are two separate and distinct matters and that the Master Agreement deals only with termination, the record is not that clear. In Exhibit 7 the President of the Oostburg Board of Education refused in writing to secure an arbitrator, saying: "Hiring and terminating employees is a managerial prerogative." (Emphasis supplied). In Exhibit 15 the attorney for the Board of Education stated in writing that ". . . the termination of Miss Meyer's contract was not a grievance. . ." (Emphasis supplied). It appears that the members of the Board of Education themselves did not consistently recognize a difference between "termination" and "non-renewal".

The Board of Education relies on Richards, supra, for the proposition that dismissal (which they equate with termination) is different from non-renewal. What Richards, supra, at p. 460b said was that " 'dismissal' as that word is used in the master agreement means to remove from employment and not the failure to 'renew' plaintiff's one-year contract under the same terms as it had contained before." (Emphasis supplied). In other words, the Wisconsin Supreme Court examined the master agreement in Richards and, from the agreement and the record, analyzed the intentions of the parties, and decided, that in that case, dismissal was different than renewal. It did not decide that non-renewal was different than termination. Article III (A)(3) of the master agreement in Richards, supra, states that the functions of the Board of Education include the right to:

"Suspend, demote, discharge or take other appropriate disciplinary action against the employee for just cause. . ."

In contrast to the language in Richards, Article II of the Master Agreement in this case merely says that one of the functions of the Board of Education is "to select and terminate teachers for cause."

By using the terms "suspend", "demote", "discharge" and "disciplinary action" in conjunction, the intention of the parties to the master agreement in Richards appears to be that just cause is required before the school board can fire a teacher in the middle of his contract. Because only the term "terminate" is utilized and because it is contrasted with the term "select", the intention of the parties to the Master Agreement in the instant case may have been that the school board has the sole power to chose which person it wishes to employ as a teacher and that it has the sole power to end or to refuse to extend the contract of a teacher for cause.

Furthermore, there is an important factual distinction between this case and Richards. In Richards the plaintiff was rehired for the next year, albeit not under the same terms as previously. In this case Miss Meyer's employment with the Board of Education came to an end altogether.

Thus, there is a question of interpretation as to the meaning or application of the provisions of the Master Agreement to non-renewal of a teacher's contract. This being the case under the definition of "grievance" Miss Meyer has a claim which is subject to the arbitration provision of the Agreement.

#### CONCLUSION

Accordingly, this court affirms the order of the Wisconsin Employment Relations Commission and denies the relief sought by the Oostburg Joint School District No. 14 and Board of Education of Oostburg Joint School District No. 14. This decision does not mean that Miss Meyer's teaching contract must be renewed. It does not mean that non-renewal of a teacher's contract can only be for cause. This decision means that Miss Meyer's claim must be submitted to an arbitrator who must first determine whether under the terms of the Master Agreement non-renewal of her teacher's contract is subject to arbitration and if so, what relief should be afforded to her.

Dated this 6th day of June, 1974.

Respectfully submitted,

John G. Buchen /s/  
Acting Judge