

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KIMBERLY EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case VIII
	:	No. 16843 MP-244
	:	Decision No. 11924-B
BOARD OF EDUCATION, KIMBERLY JOINT	:	
SCHOOL DISTRICT NO. 6,	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. Donald W. Dickinson, Field Representative, Wisconsin Education Association Council, appearing on behalf of the Complainant.

Melli, Shiels, Walker & Pease, Attorneys at Law, by Mr. James K. Ruhly, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above named Complainant having, on May 31, 1973, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the above named Respondent had committed prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and a hearing on said complaint having been held at Appleton, Wisconsin, on July 12, 1973, Howard S. Bellman being present; 1/ and the Commission having considered the evidence and arguments, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Kimberly Education Association, hereinafter referred to as the Complainant, is a labor organization having its offices at c/o Glenn G. Schiebel, 207 Jean, Combined Locks, Wisconsin 54113.

2. That Board of Education, Kimberly Joint School District No. 6, hereinafter referred to as the Respondent, is a Municipal Employer engaged in the operation of a public school system in a district in and about Kimberly, Wisconsin; that the Respondent has its principal offices at 217 East Kimberly Avenue, Kimberly, Wisconsin 54136; that Ray H. Hamann is employed by the Respondent as its District Administrator; and that Marie Couillard is employed by the Respondent as Principal of Janssen and Ryan schools.

3. That at all times material herein the Respondent has recognized the Complainant as the exclusive collective bargaining

1/ Mr. Bellman was appointed as an Examiner on June 7, 1973 (Dec. No. 11924) and said appointment was set aside following Mr. Bellman's appointment to the Commission, by an Order (Dec. No. 11924-A) dated November 13, 1973.

representative of all contracted professional teaching personnel employed by the Respondent; that the Complainant and the Respondent were parties to a collective bargaining agreement effective for the school year commencing August 28, 1972 (except for summer school, which commenced June 1, 1972) and terminating on June 8, 1973; that said collective bargaining agreement contained no provision for the final and binding resolution of disputes concerning the interpretation or application of the provisions of said agreement; and that said agreement contained the following provisions pertinent hereto:

"ARTICLE II. MANAGEMENT RIGHTS

- "2.1 The operation of the school system and the determination and direction of the teaching force, including the right to plan, direct and control school activities, to schedule classes and assign workloads; to determine teaching methods and subjects 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 contracts; and to discipline and discharge contracted teachers for cause are the functions and rights of the Corporation, and shall be limited by specific and express terms of this agreement and Wisconsin Statutes.
- "2.2 Immediate suspension of work shall be initiated by the District Administrator when a professional staff member is involved in habitual intoxication, drug addiction, moral turpitude, or mental incompetence.
- "2.3 In the interests of student welfare the Association agrees that it will not contest through grievance procedures, discharges for "just cause". "Just cause for discharge" shall be construed so as to include unsatisfactory completion of a 3-year probationary period, habitual intoxication in public or habitual intoxication proved by medical determination, conviction for drug addiction, action involving moral turpitude, (sic) and court-finding of incompetence. Dismissal for "just cause" shall render the individual teacher contract null and void.
- "2.4 Unsatisfactory completion of a 3-year probationary period shall be construed to mean that the Corporation reserves the right to dismiss a contracted teacher when it has been determined by supervisory personnel that the individual demonstrates a lack of teaching skills, ineffective discipline, undesirable work habits, poor health, excessive tardiness, or other undesirable traits. Incidents involving the preceding listed conditions shall not be subject to grievance procedures; however, these members of the Association may have recourse through the W.E.R.C.
- "2.5 All written reports of inefficiency for contracted professional teaching personnel who have

completed satisfactorily a 3-year probation term shall be filed with the Professional Rights and Responsibility Committee Chairman of the Association within 48 hours of observance. If charges for discipline, demotion, or discharge are not sustained after hearing witnesses, under Article IV Grievance Procedure, the affected employee's record shall be cleared and reimbursement made if loss of wages ensued. Charges shall be specific and the employee notified within forty-eight hours (48) in writing after they have been observed by supervisory personnel. All discharges and suspensions, except those involving probationary personnel and those itemized under 2.3, shall be subject to review; and under specified conditions, subject to ultimate mediation or arbitration procedures.

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

"2.7 It is agreed that the Association has the right to challenge the Corporation in the exercise of any of the rights and functions set out in this Article and such challenge except those in Articles 2.3 and 2.4 shall be made through grievance procedure or through future negotiations with the Association.

. . .

"ARTICLE XX. INDIVIDUAL TEACHER RIGHTS

"20.1 Any formal written evaluation of a teacher's work performance shall be conducted openly and with full knowledge of the teacher.

"20.2 The teacher of whom a formal evaluation has been made shall be given a copy of it, and shall be provided the opportunity to discuss the evaluation with the evaluator prior to its being included in the teacher's permanent file.

"20.3 Teachers shall have the right, upon written request to the District Administrator, to review their personnel files, excluding anything that was received in confidence such as information from placement bureaus, credentials, letters of recommendation, medical information, and police reports. The Corporation will supply forms for this purpose, and these forms will be available in the building principal's office. The Corporation reserves the right to require 24 hours (one normal working day) notice in advance of the requested review, commencing with receipt of the request at the Administrative Offices in the presence of the District Administrator or his appointed representative.

"20.4 Due process will be guaranteed to those teachers being considered for non-renewal of contract except in cases of staff reduction."

4. That Maureen Hussey has been employed by the Respondent as a teacher for a period in excess of three years; that Hussey had satisfactorily completed the probationary period specified in Sections 2.3, 2.4 and 2.5 of the aforesaid collective bargaining agreement prior to any of the events or occurrences relevant to the instant case; that Hussey was employed as a part time teacher during the term of the aforesaid collective bargaining agreement and was assigned to teach a morning session of Kindergarten at the Respondent's Janssen School; and that Hussey's employment was covered by the aforesaid collective bargaining agreement at all times pertinent hereto.

5. That, on or about October 23, 1972, Couillard conducted a classroom visitation in a class conducted by Hussey; that Couillard prepared a written report concerning said visit and presented same to Hussey; that said report contained satisfactory ratings and remarks complimentary to Hussey; that Hussey countersigned said report; that no copy of the written report of the classroom visitation of October 23, 1972 was furnished to the Professional Rights and Responsibilities Committee of the Complainant; and that no grievance arose with respect to the procedures followed in the reporting of the classroom visitation of October 23, 1972.

6. That Couillard was ill and absent from duty during the months of November, 1972 and December, 1972; that Couillard returned to duty on a part time basis during the month of January, 1973; that, following Couillard's return to duty, disagreements occurred between Couillard and Hussey concerning certain obligations of Hussey's employment, including: attendance at teachers' meetings conducted after the close of the normal school day, a summer session report, and a report concerning Kindergarten students to be transferred to other schools for the next year; that Couillard and Hussey discussed each such incident at about the time of its occurrence; that these discussions did not result in the withdrawal of any of Couillard's criticism's of Hussey's conduct in these incidents; and that no disciplinary action was initiated against Hussey at or about the time of, or following the occurrence of any of the foregoing matters.

7. That the evaluation practices in effect in the school system operated by the Respondent call for the preparation of a "year-end" report by each Principal concerning each teacher working under each Principal, and submission of same to the District Administrator on or before February 1 of each year; that it was also the practice that such evaluations could be withdrawn by the Principal subsequent to such submission; that in such report the Principal rates nine specific "Personal Characteristics" of each teacher, as well as five specific areas of "Teacher-Pupil Relationships"; that the ratings may be (a) Outstanding, (b) Very Good, (c) Satisfactory, (d) Needs Improvement, and (e) Unsatisfactory; that, due to her illness and absence from duty, Couillard was unable to comply with the deadline for preparation and submission of her year end reports; that Couillard prepared her year end reports for the 1972-1973 school year without making reference to the year end reports made on teachers for previous years; that Couillard's year end report for the 1972-1973 school year concerning Hussey contained certain ratings which were lower than the comparable ratings given to Hussey on her year end report for the 1971-1972 school year, including four ratings of: "needs improvement"; that such ratings reflected the disagreements, mentioned above, which had occurred between Couillard and Hussey; that no rating contained in the year end report on Hussey for the 1972-1973 school year was

inconsistent with the ratings given to Hussey on the report prepared following the classroom visitation of October 23, 1972; that no copy of Couillard's year end report concerning Hussey was furnished to the Professional Rights and Responsibilities Committee of the Complainant; and that no nonrenewal or other disciplinary action was commenced against Hussey as a result of Couillard's year end report concerning Hussey for the 1972-1973 school year.

8. That Couillard made a copy of her year end report concerning each teacher available to each teacher by placing a copy of same in the teacher's school mail box; that some of the teachers at Janssen School received their copy of Couillard's year end report on Friday, February 16, 1973; that Hussey did not receive her copy of Couillard's year end report until Monday, February 19, 1973; that Hussey realized, immediately upon receiving her copy of the year end report, that said report contained "needs improvement" ratings; that Hussey made no effort on February 19, 1973 to arrange for a conference with Couillard for discussion of the year end report; and that Hussey took the year end report home, compared it with her year end report for the previous year, and prepared a letter to Couillard concerning the contents of the year end report.

9. That Couillard attended a meeting at the office of the District Administrator on the morning of February 20, 1973; that during the course of said meeting Couillard submitted her year end reports to the District Administrator; that, during the course of said meeting, Hussey made a request to Couillard's secretary for a conference with Couillard on the same date; that Couillard was contacted by telephone and consented to return to Janssen School for an appointment with Hussey; that Couillard and Hussey met on February 20, 1973 for a period of approximately 20 minutes; that, during the course of the latter meeting, Couillard and Hussey disagreed over the contents of the year end report; and that Couillard did not withdraw or modify her year end report concerning Hussey.

10. That a grievance was filed under the collective bargaining agreement on behalf of Hussey, alleging procedural violations in connection with the preparation and submission of the year end report concerning Hussey for the 1972-1973 school year; that said grievance was processed through the steps of the grievance procedure to the District Administrator; that the District Administrator remanded the grievance to Couillard with instructions for further discussion of the year end report between Couillard and Hussey; and that, thereafter, Couillard and Hussey met for a period in excess of one hour and had discussion of the year end report concerning Hussey for the 1972-1973 school year.

Upon the basis of the above and foregoing findings of fact, the Commission makes the following

CONCLUSION OF LAW

1. That the year end report submitted by Couillard concerning Hussey for the 1972-1973 school year was not a report of inefficiency within the meaning of Section 2.5 of the collective bargaining agreement between the Complainant and the Respondent; that the year end report submitted by Couillard concerning Hussey for the 1972-1973 school year was conducted within the requirements of Section 20.1 of the collective bargaining agreement between the Complainant and the Respondent; that Hussey was given a copy of the year end report submitted by Couillard for the 1972-1973 school year and was afforded adequate opportunity for discussion of same within the meaning of Section 20.2 of the collective bargaining agreement between the Complainant and the Respondent; and that therefore the Respondent,

Board of Education, Kimberly Joint School District No. 6, has not violated the collective bargaining agreement between it and Kimberly Education Association, with respect to the grievance of Maureen Hussey, and has not committed, and is not committing, prohibited practices within the meaning of Section 111.70(3)(a)(5) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing findings of fact and conclusion of law, the Commission makes the following

ORDER

IT IS ORDERED that the complaint initiating the instant matter be, and the same hereby is, dismissed.

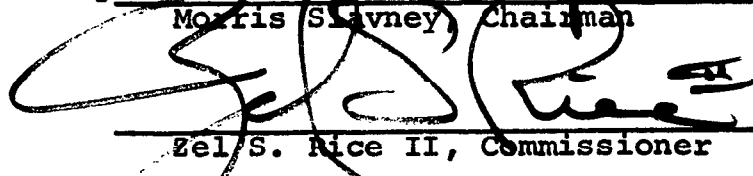
Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner



Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

In its complaint, filed on May 31, 1973, the Kimberly Education Association alleged that the Kimberly Joint School District No. 6 committed prohibited practices within the meaning of Section 111.70 (3)(a)5 of the Municipal Employment Relations Act by violating the collective bargaining agreement existing between the parties by failing to properly interpret and apply Section 2.5 of Article II and Sections 20.1 and 20.2 of Article XX with respect to teacher Maureen Hussey. The complaint alleged, in this regard, that the Respondent (1) failed to submit a written evaluation of inefficiency made on Hussey to the Professional Rights and Responsibilities Committee of the Complainant, (2) conducted a formal written evaluation of Hussey without being open and without the full knowledge of Hussey, and (3) denied Hussey adequate opportunity to discuss said evaluation prior to the submission for filing of said evaluation. On June 7, 1973, the Commission appointed Howard S. Bellman, then a member of its staff, to act as Examiner pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act. On June 19, 1973, the Respondent filed its answer wherein it denied violating any provision of the collective bargaining agreement as alleged by the Complainant.

A hearing was held at Appleton, Wisconsin, on July 12, 1973, and the transcript of those proceedings was issued on October 15, 1973. Briefs were filed by both parties on November 13, 1973, and on the same date the Commission set aside the appointment of Examiner Bellman, who had by then been appointed to the Commission, and transferred the case to the Commission. Reply briefs were filed by both parties on November 23, 1973.

This case arises out of a grievance under a collective bargaining agreement. The agreement establishes a procedure for the resolution of differences concerning the meaning, interpretation or application of the agreement. However, the grievance procedure terminates in advisory arbitration, and makes no provision for the final and binding resolution of contract disputes. The parties did not process the instant grievance through the advisory arbitration step of the grievance procedure, but at the outset of the hearing in this case the Respondent indicated that it was not making any objection based on the fact that the grievance procedure had not been completed prior to the filing of the complaint in the instant matter.

The record discloses the following facts as background to the instant grievance: The grievant, Maureen Hussey, had been employed by the Respondent in teaching positions for more than six years at the time the instant grievance arose. The grievant had completed her probationary period and had received satisfactory evaluation reports during prior years, and no issue is raised herein concerning her previous employment record. For reasons which are not in issue in this proceeding, the Respondent reduced the grievant's employment to a one-half time position during the 1972-1973 school year, and during that year the grievant was assigned to teach a morning session of Kindergarten at the Respondent's Janssen School.

The grievant's immediate supervisor during the 1972-1973 school year was Principal Marie Couillard, who divided her time between Janssen School and another school operated by the Respondent. On or about October 23, 1972, Couillard made a classroom visitation in the grievant's class, and a report of that visitation was prepared by Couillard reflecting satisfactory ratings. The classroom visitation report was presented to the grievant and was countersigned by the grievant.

Principal Couillard was absent from duty due to illness during the months of November and December, 1972, and returned to duty on a part-time basis, primarily in the afternoons, during the month of January, 1973.

Separate notices were issued by Couillard, on January 4, 1973, and by District Administrator Ray H. Hammann, on an undisclosed date prior to January 8, 1973, announcing a meeting of all kindergarten teachers scheduled for 3:30 P.M. on January 10, 1973. The grievant did not attend that meeting, and an issue arose between the grievant and Couillard concerning the obligation of the grievant to return to the school after her normal work day to attend staff meetings scheduled at the end of the regular school day. A second dispute arose between the grievant and Couillard over a summer session report which Kindergarten teachers were to turn in on January 31, 1973. Thirdly, the grievant and Couillard fell into disagreement over a report concerning Kindergarten students who would be transferred to other schools for the next year. Couillard testified that the three incidents just described affected the troublesome portions of her evaluation of the grievant.

It is the practice in the Respondent's school system that a so-called "year-end" evaluation report concerning each teacher in the system is prepared and presented to the District Administrator on or before February 1. Due to her illness and absence, Couillard was unable to meet that deadline, and her year-end evaluation reports were not submitted to the Superintendent until February 20, 1973. Couillard's year-end evaluation report concerning the grievant indicates four areas in which the grievant has been rated as "needs improvement". Those, and certain other ratings contained in the report, are lower than the ratings received by the grievant on her year-end evaluation report for the previous year.

The issues in this case concern the procedures followed in the preparation and submission of the year-end report on the grievant for the 1972-1973 school year. No issue is joined in this proceeding concerning the merits of the various incidents and charges which constitute the basis for some of the entries on that report.

THE POSITION OF THE COMPLAINANT:

The complaint alleges violation of three separate provisions of the agreement, the full texts of which are set out in the findings of fact.

With respect to Section 2.5 of the agreement, the Complainant contends that common sense and usage would indicate that any evaluation "would be an efficiency report (or inefficiency report)." The Complainant points out that none of the three forms used in the District for reports is designated as an inefficiency report, and argues that any use of any of those forms is subject to the requirement that a copy be provided to the Professional Rights and Responsibilities (PR&R) Committee of the Association. Further, the Association contends that the District Administrator's own instructions to the first line supervisors mandated submission of a copy of each report to the PR&R Committee, thereby demonstrating an interpretation of the agreement identical to that urged here by the Association.

Turning to Section 20.1 of the agreement, the Association contends that a violation of the agreement is demonstrated by the testimony of Mrs. Couillard that she knew that the grievant probably was not aware that certain incidents would be reflected in the year-end report, and by the testimony of the grievant that she had no prior knowledge of the alleged deficiencies which appeared on that

report. The Association urges interpretation of the agreement as requiring that the teacher be made aware of those items which will be used to determine the quality of the evaluation, and contends that the Respondent has failed to comply with the agreement in this regard.

Based on the testimony of the grievant that she did not receive her copy of the year-end evaluation report until the morning of February 19, 1973, and was unable to arrange a conference with Couillard until after the report had been submitted to the Superintendent on February 20, 1973, the Association contends that the grievant has been denied the opportunity for discussion specified in Section 20.2 of the agreement. The Association contends that the submission of such reports to the Superintendent of Schools for filing is the significant point in time to be considered, and that such submission is tantamount to filing. [Responding to evidence that the report in issue had not been included in the grievant's permanent file at the time of the hearing in this case, the Association argues that other testimony indicates that the report has been, and is, slated for inclusion in the grievant's permanent file, and that the Respondent's arguments in this regard are merely superficial.]

THE POSITION OF THE RESPONDENT:

The Respondent contends that the 1972-1973 year end report concerning the grievant was not a report of inefficiency within the meaning of Section 2.5 of the agreement. Although the term itself supplies barely a hint of the parties' intent, the Respondent convincingly adduced evidence of bargaining table discussions and past practice, which indicates the parties' mutual understanding regarding the definition of the word "inefficiency", as used in Section 2.5 of the agreement. Thus, a report of inefficiency has been defined by practice and negotiations' discussion as one which contains one or more "unsatisfactory" ratings on the evaluation form or one which, though not containing any unsatisfactory rating, might later be used against the teacher in disciplinary proceedings. Consistent with this interpretation, the Respondent concedes that it has relinquished its ability to use the report in question in any disciplinary proceeding against the grievant, because of its failure to timely provide a copy of that report to the PR&R Committee of the Association. 1/

With regard to Section 20.1 of the agreement, the Employer asserts that no rating on the year-end report is inconsistent with the report of the one classroom visitation conducted by Couillard, and, as we have found, that there is no claim or evidence that the Respondent conducted any surreptitious surveillance of the grievant. The Respondent also relies on the fact that each of the three above-described incidents reflected in the year-end report was discussed with the grievant at the time of its occurrence.

The Respondent contends that the completed year-end evaluation forms were placed in the mailboxes of each of the teachers at Janssen School on the afternoon of Thursday, February 15, 1973, and that the report in question was therefore available to the grievant somewhat before the date she claims to have received it. It further contends that the grievant had adequate opportunity for discussion of the report. The Respondent also urges that the significant point in time

1/ We understand Complainant's argument that this interpretation does not promote "progressive" handling of teacher inadequacies, and allows for avoidance of Association participation in such cases, but must accept the practice as reflective of mutual intent.

for the purposes of Section 20.2 of the agreement is the point of inclusion in the teacher's permanent file, and that the report could have been withdrawn by the Principal at any time prior to such filing. Finally, as evidence of the adequacy of the opportunity for discussion which has been provided to the grievant, the Respondent points out that the decision of the District Administrator on the instant grievance at the third step of the grievance procedure constituted a remand of the grievance to the Principal for further discussion of the report between the Principal and the grievant, and that such discussion did take place.

DISCUSSION:

The position taken by the Association with respect to the types of reports to be delivered to the PR&R Committee is somewhat strained, and not accepted as persuasive. The presence of the words "of inefficiency" in Section 2.5 of the agreement implies that some distinction exists within the class of "all written reports", while the position taken by the Association would make such a distinction irrelevant. The language of Section 2.5 has been included in the agreements between the parties for several years, and the record indicates that the school administration has turned over only selected reports to the PR&R Committee. However, there is no evidence of previous or pending grievances on this issue. The testimony concerning discussions of Section 2.5 of the agreement during the most recent bargaining between the parties, although somewhat ambiguous, and the continuation of the same language in the current agreement without demand for change, lend support to the Respondent's argument that its present interpretation of the language in question accurately represents the intent of that language.

While the District Administrator's written instructions to his evaluators for 1971-1972 tend to support the position asserted by the Association, it is apparent from the record as a whole that these instructions were inoperative and were subsequently revised to delete the statement in question.

The year-end report concerning the grievant contained some "needs improvement" ratings, but it contained no "unsatisfactory" ratings and has not been used against the grievant. We conclude that it was not a report of "inefficiency" within the meaning of Section 2.5 of the agreement, and that no violation of the agreement flowed from the failure of the Respondent or provide a copy of that report to the PR&R Committee of the Association.

Neither party adduced any evidence concerning the bargaining history of Section 20.1 of the agreement, nor is there any evidence concerning past practices within the school system with regard to the conduct of formal written evaluations. The language of Section 20.1 would, on its face, forbid any surreptitious surveillance or other secretive evaluation techniques, but the Respondent correctly points out that the record is devoid of evidence of any such conduct. The interpretation urged by the Association goes beyond the language "conducted openly and with full knowledge of the teacher" and seems to require that formal written evaluation reports reflect only such criticisms as meet certain procedural and substantive standards set forth in its argument. However, the record fails to support any finding herein that this contended connotation reflects the mutual intent of the contracting parties, and is certainly too much to be inferred from the evidence herein.

The record discloses that Couillard and the grievant had the disagreements mentioned above during the course of the year, and that those incidents were the subjects of discussions between Couillard and the grievant at the time each incident occurred. The evidence

does not disclose, as the Complainant contends, that these discussions "settled" these disagreements so as to render their reflection in the teacher's evaluation inappropriate. Although it is obvious that it would probably have been better had the Principal advised the teacher that these incidents might be reflected on the year end evaluation, and some corrective possibilities may have been lost by her failure to do so, we cannot find thereupon that these discussions violated the requirement of openness of Section 20.1. It may be that these sessions were misleading to the grievant, but the Principal's conduct was not closed or without the grievant's knowledge, except to the extent that the grievant was not specifically warned that the incidents were going to appear on her evaluation. However, we hold that the contract language invoked does not warrant our finding a waiver by the Respondent of its right to reflect conduct on an evaluation without such a warning.

We note that neither party has argued that the terms "openly" and "inefficiency" are terms of art with accepted definitions in this context. Thus, the mutual intent of both of these terms is now subject to proof in this proceeding.

The alleged violation of Section 20.2 of the agreement has many facets. At the outset, a question of credibility exists over the date on which the report in question was available to the grievant. Mrs. Couillard testified that the report was placed in the grievant's school mailbox on Thursday evening. The grievant testified to her regular practice of checking her school mailbox at 8:30 A.M. on school days, and to her presence in the school on Friday morning. If Mrs. Couillard is correct and if the grievant followed her usual practice on Friday, February 16, the situation remains unexplained. However, the urgency of the grievant's reaction to the "needs improvement" ratings of the report, and her actions on the evening of Monday, February 19, indicate to the Commission that the grievant received her copy of the report on Monday. In view of the conclusions which follow, the Commission has not specifically resolved the question of when the report was first available to the grievant.

The evaluation process was affected by a degree of urgency during the 1972-1973 school year, due to the illness and extended absence of Mrs. Couillard. The term "year-end report" is a misnomer. These reports are actually prepared close to mid-year, at a time selected by the school administration to correspond with the statutory deadlines for the commencement of nonrenewal proceedings against teachers. We take notice of the requirement of Section 118.22, Wisconsin Statutes, that such proceedings must be commenced by notice to the teacher prior to March 1. By the time that Mrs. Couillard actually submitted her "year-end" reports to the District Administrator they were 20 days overdue according to the District's internal deadline and only 8 days remained before the statutory deadline. Mrs. Couillard was under pressure to submit her reports to the District Administrator as soon as possible and, while the time between preparation and submission may have been shortened this year, there is no evidence of any motivation to discriminate against the grievant or to contrive to deprive her of adequate opportunity for discussion.

The grievant realized immediately upon receiving the report that it contained some "needs improvement" ratings, but she made no effort on Monday to arrange for a meeting with Couillard to discuss the report. Instead, the grievant took the report home, compared it with her year-end report for the previous year, and prepared a two page letter to Couillard concerning the report. (It may be noted that although the grievant took the time to engage in this comparison, the record indicates that the 1972-1973 report was prepared without reference to the report for the previous year, and a request for a conference made

on Monday could have led to a discussion prior to the submission of the report or to a delay of the submission date.)

The year-end reports for all teachers were in the possession of the District Administrator as of the date of the hearing in this matter, but had not been physically included in the permanent files of the teachers. The Respondent bases part of its defense on the claim that the report concerning the grievant and the others like it had not been "filed" within the meaning of the agreement. The testimony indicates, however, that such reports were intended for inclusion in the permanent files. It appears that only a clerical function remained to be accomplished, and the position taken by the Respondent here is overly technical.

More significant is the evidence that the grievant was provided with an opportunity for discussion of the evaluation report subsequent to its submission to the District Administrator, and that a Principal is at liberty to withdraw or modify any such evaluation report subsequent to submission to the District Administrator. Even assuming, arguendo, that the conflict over the date when the evaluation was issued is resolved in favor of Hussey, and that Couillard made the statement attributed to her during her discussion with the grievant on February 20, that: "discussion was possible; however, no changes would be made and the report was already turned in", any denial of the "opportunity to discuss the evaluation" required by Section 20.2 would seem to have been remedied by the District Administrator's remand of the matter to Couillard with instructions to have a further discussion of the report with the grievant.

The February 20 discussion between the grievant and the Principal lasted only 20 minutes and was an unpleasant experience in the view of the grievant, while the discussion held in March, 1973, pursuant to the remand of the grievance, lasted more than an hour and is described as cordial. The Commission, apparently unlike the Complainant, is impressed with the remedial effect of this later discussion between the teacher and the Principal. It is in the best spirit of a grievance procedure to generate reconsiderations upon review at higher levels, and we do not regard an employer's action on this basis as too late to cure an earlier defect. Taking the record as a whole, there has been no denial of opportunity for discussion, and no violation of Section 20.2 of the agreement.

We conclude that the procedures followed by the Respondent in the preparation and transmittal of the year end report concerning the grievant for the 1972-1973 school year did not violate the collective bargaining agreement between the Complainant and the Respondent.

The grievant's fears that permanent damage has been done by the Respondent's alleged nonadherence to the procedures which the instant complaint seeks to enforce should be mitigated by the facts that no action, which the Commission views as disciplinary or otherwise punitive, has been commenced on the basis of the evaluation in question, and that the Respondent asserts that no such action, including nonrenewal, may be so grounded. We disagree with the Complainant that any documented criticism is punitive, and reject that concept as totally incompatible with the concept of progressive or therapeutic evaluations that the Complainant espouses.

Dated at Madison, Wisconsin, this ^{Nth} day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner