

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DENNIS KRAGNESS AND THE NORTHWEST  
UNITED EDUCATORS,

Complainants,

vs.

TURTLE LAKE CONSOLIDATED SCHOOL  
DISTRICT,

Respondent.

Case I  
No. 16480 MP-243  
Decision No. 11929-A

Appearances:

Mr. James T. Guckenberg, Executive Director, Northwest United Educators, appearing on behalf of the Complainants.  
Cwayna, Novitzke, Byrnes & Gust, Attorneys at Law, by Mr. Don Paul Novitzke, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Dennis Kragness and the Northwest United Educators, having filed a complaint of prohibited practices on May 30, 1973, with the Wisconsin Employment Relations Commission, in which they alleged that Turtle Lake Consolidated School District had committed certain prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed George R. Fleischli, a member of the Commission's staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing in the matter having been conducted at Barron, Wisconsin on July 10, 1973, before the Examiner; and the Examiner having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Dennis Kragness, an individual hereinafter referred to as Complainant Kragness or Kragness, was a classroom teacher employed by Turtle Lake Consolidated School District until the end of the 1972-1973 school year when his individual teaching contract expired and was not renewed.

2. That Northwest United Educators, hereinafter referred to as the Complainant Association, is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act, having offices at 515 North Main Street, Rice Lake, Wisconsin and since at least November, 1972 claims to be the legal successor to another labor organization known as Turtle Lake Education Association for the purpose of representing all the classroom teachers employed by Turtle Lake Consolidated School District for purposes of collective bargaining on questions of wages, hours and working conditions.

3. That Turtle Lake Consolidated School District, hereinafter referred to as the Respondent is a public school district organized under the laws of the State of Wisconsin and a Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act.

4. That prior to September 19, 1972, Turtle Lake Education Association was the voluntarily recognized bargaining representative for all classroom teachers employed by the Respondent for purposes of collective bargaining on questions of wages, hours and working conditions; that Turtle Lake Education Association had entered into a collective bargaining agreement with the Respondent covering salaries and other conditions of employment for said teachers for the 1972-1973 school year which contained the following provisions relevant herein:

"CONDITIONS OF EMPLOYMENT

. . .

II. TEACHER STATUS

. . .

E. All teachers new to the Turtle Lake System shall be considered under probation for a period of two years and therefore, frequent supervision of these teachers will be made for the purpose of guiding them in a positive and helpful way.

. . .

V. NON-RENEWAL AND RELEASE OF CONTRACT

A. A teacher whose contract is not to be renewed shall be notified by the general issuance date for all contracts, or February 1, whichever is the earlier. The teacher shall be informed of the reasons for non-renewal in writing and shall have the right to request a hearing by the Board of Education. Said request must be made in writing within fifteen days of the notification of non-renewal. A hearing will be held within 15 days of receipt of written request at which time the teacher involved may have counsel present.

. . ."

5. That, beginning in September, 1972, Turtle Lake Education Association took steps through internal procedures to disaffiliate from its prior affiliation with two parent labor organizations, the Wisconsin Education Association Council and the National Education Association and merge with a number of other local education associations for the purpose of forming and being represented by the Complainant Association, which is affiliated with the Wisconsin Education Association Council and the National Education Association, for purposes of collective bargaining on questions of wages, hours and working conditions; that the procedures followed by the Turtle Lake Education Association in merging with the other local education associations for the purpose of forming and being represented by the Complainant Association, were democratic in the sense that they reflected the wishes of its membership and there is no evidence of a schism or other expression of discontent which might raise a question concerning representation; that since November, 1972 and prior to the hearing herein, the Respondent has met and bargained with representatives of the Complainant Association for purposes of collective bargaining with regard to questions concerning wages, hours and working conditions for classroom teachers employed by the Turtle Lake School District.

6. That on January 30, 1973, Complainant Kragness was notified by letter that the Respondent was considering the non-renewal of his teaching contract for the 1973-1974 school year which letter read in relevant part as follows:

"This is to inform you that the Board of Education of the Turtle Lake Public Schools is considering non-renewal of your teaching contract for the 1973-74 school year for the following reasons:

1. The Agriculture classroom shop, office, laboratory, and equipment appear to be receiving poor care.
2. There appear to be difficulties in your management of your classroom, your study halls, and your field trips.
3. It appears that there has been little progress in improvement of the total agriculture program through the use of farm calls, area resources, summer programs, etc.
4. Enrollments in agriculture classes are very low.

In accordance with Section 118.22 of the Wisconsin Statutes you are advised that if you file a request therefor with the board within 15 days after receipt of this preliminary notice, that you have a right to a private conference with the board prior to being given written notice of renewal or non-renewal."

7. On February 8, 1973, Complainant Kragness notified the Respondent by letter dated February 5, 1973 that he desired a "private conference" with regard to the proposed non-renewal of his teaching contract which letter read in relevant part as follows:

"I am writing in response (sic) to your January 30, 1973 letter stating that the Board of Education is considering non-renewal of my teaching contract for the 1973-74 school year.

In accordance with section 118.22 of the Wisconsin Statutes (sic) I would like to request a private conference with the board."

That on February 20, 1973, it was agreed by Complainant Kragness and the Respondent that a "hearing" which had been set for an earlier date would be postponed until February 26, 1973 which agreement read in relevant part as follows:

"It is hereby declared to be agreeable with the Board of Education of the Turtle Lake School District and Dennis Kragness, Vocational Agriculture Teacher of the Turtle Lake School, that a request for a hearing be postponed until Monday night, February 26 at 8:00 P. M.

The reasons for postponement are:

1. Illness to John Sauerberg, Supervisor of Instruction
2. Number of delegations present
3. Not sufficient time for a proper hearing"

That Complainant Kragness met with the Respondent's Board of Education on February 26, 1973 with his representatives and the Respondent's proposal to non-renew his contract and reasons therefore were discussed; that on March 6, 1973 the Respondent's Board of Education advised Kragness by letter that his contract for the 1973-1974 school year would not be renewed which letter read in relevant part as follows:

"The Board of Education of the Turtle Lake Public Schools has voted not to renew your teaching contract for the 1973-74 school year."

8. That after being advised that the Respondent's Board of Education had voted not to renew his teaching contract for the 1973-1974 school year, Complainant Kragness filed a grievance pursuant to the contractual grievance procedure set out in the collective bargaining agreement wherein he alleged that the Respondent had violated paragraph II E and paragraph V A of the Conditions of Employment set out above; that said grievance was processed through the grievance procedure and when the grievance was not adjusted to the satisfaction of the Complainants, a complaint was filed herein alleging that the Respondent had violated said provisions of the collective bargaining agreement.

9. That Complainant Kragness was originally hired by the Respondent to teach Vocational Agriculture beginning in the fall of 1971 and that he was just completing his second year of employment for the Respondent when the Respondent notified him of his non-renewal; that during the period beginning in the fall of 1971, and ending in February of 1973, Kragness received frequent supervision for the purpose of guiding him in a positive and helpful way from the High School Principal, John Sauerberg, before the Respondent advised him that it was considering the non-renewal of his teaching contract for the 1973-1974 school year.

10. That, by including paragraph V A of the Conditions of Employment in their collective bargaining agreement, the parties intended to increase, by contract, the amount of time required by Section 118.22 (3) of the Wisconsin Statutes for notification that a teacher is being considered for non-renewal and to provide other rights not specifically mentioned in Section 118.22 of the Wisconsin Statutes, and not to establish a new, separate contractual procedure to be followed in addition to the procedures set out in Section 118.22 of the Wisconsin Statutes.

Based on the above and foregoing Findings of Fact the Examiner makes and issues the following

#### CONCLUSIONS OF LAW

1. That the Complainant, Northwest United Educators is the successor to Turtle Lake Education Association for the purpose of representation in collective bargaining and contract administration for all teachers employed in the collective bargaining unit voluntarily recognized by the Respondent, Turtle Lake Consolidated School District.

2. That the Respondent, Turtle Lake Consolidated School District, provided Complainant Dennis Kragness, with frequent supervision for the purpose of guiding him in a positive and helpful way prior to the non-renewal of his teaching contract on March 6, 1973 as required by paragraph II E of the Conditions of Employment contained in the collective bargaining agreement set out above and, therefore, has not committed a prohibited practice within the meaning of Section 111.70(3)(a) 5 of the Municipal Employment Relations Act.

3. That the Respondent, Turtle Lake Consolidated School District, by notifying Complainant Dennis Kragness on March 6, 1973 that it had voted not to renew his teaching contract for the 1973-1974 school year, did not violate paragraph V A of the Conditions of Employment contained in the collective bargaining agreement set out above and, therefore, did not commit a prohibited practice within the meaning of Section 111.70(3)(a) 5 of the Municipal Employment Relations Act.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

That the Complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 2nd day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli  
George R. Fleischli, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

In their complaint, the Complainants allege that the Complainant Association is a successor to the Turtle Lake Education Association, the voluntarily recognized bargaining representative of the teachers employed by the Respondent, and, therefore, has the right as well as the responsibility to enforce the provisions of the collective bargaining agreement entered into between the Turtle Lake Education Association and the Respondent. In addition, the Complainants allege that the Respondent has violated the provisions of that agreement in two respects: (1) by not providing Complainant Kragness with frequent supervision for the purpose of guiding him in a positive and helpful way; and (2) by failing to notify Complainant Kragness that his contract for the 1973-1974 school year had been non-renewed until March 6, 1973.

The Respondent denies that the Complainant Association is a successor to the Turtle Lake Education Association and contends for that reason that the Complainant Association lacks standing to enforce the agreement on its own behalf. The Respondent does not deny that Complainant Kragness has the right to attempt to enforce the provisions of the agreement on his own behalf and may be represented by any representative of his own choosing including the Complainant Association for that purpose. With regard to the two alleged violations of the collective bargaining agreement, the Respondent contends that Complainant Kragness was given frequent supervision within the meaning of paragraph II E of the Conditions of Employment contained in the collective bargaining agreement and that it did not violate V A of the Conditions of Employment contained in the collective bargaining agreement when it non-renewed the teaching contract of Complainant Kragness on March 6, 1973.

Alleged Successor Status of NUE

The law is well established that labor organizations can, for internal reasons deemed sufficient to their membership, merge for the purpose of establishing a new labor organization to represent the employees formerly represented by the merging labor organizations. This is particularly true where the merging labor organizations were affiliated with the same parent labor organizations prior to the merger and the successor labor organization establishes an affiliation with those same parent labor organizations. 1/

Where there is some evidence of a lack of democratic procedures resulting in a schism or other internal disagreement, an employer would be justified in concluding that there is a question concerning representation and insisting that the successor labor organization prove its alleged representative status. Here the procedures followed were designed to reflect the desires of the membership and there is no evidence of any schism or other dissident group. In addition, the records of the Commission indicate that neither the Respondent nor any employe or person acting on their behalf has filed a petition for an election among the employes involved.

The conclusion that the Complainant Association is the successor to the Turtle Lake Education Association in no way affects the collective

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1/ Bancroft Dairy Co. (6148-A) 6/73; Milbrew Inc. (8926-A) 8/69;  
Montgomery Ward & Company Inc. 137 NLRB 346, 50 LRRM 1137 (1962).

bargaining unit; the Complainant Association is the new representative of the teachers employed in the same collective bargaining unit which was voluntarily recognized by the Respondent and not in a new multi-district bargaining unit. A change in the bargaining unit previously recognized, if permitted by law, would require an agreement between the parties or an election or unit clarification proceeding before the Commission.

#### Alleged Lack of Supervision

The collective bargaining agreement places no specific limitation on the Respondent's authority to non-renew the teaching contract of a teacher during the contractual probationary period. The only contractual requirement is that the Respondent provide a probationary teacher with "frequent supervision . . . for the purpose of guiding them [him] in a positive and helpful way." It is the Complainants' contention that the Respondent has failed to provide such supervision and that such failure ought to be a sufficient basis to set aside any effort to non-renew the teaching contract of Kragness.

On the evidence presented, there is no doubt that Complainant Kragness received the kind of supervision called for in the contract. The High School Principal, John Sauerberg, testified at great length about the numerous meetings and sessions he had with Complainant Kragness for the purpose of discussing perceived inadequacies in Kragness' performance. During many of these meetings, positive and helpful suggestions were made and no useful purpose would be served by reciting in detail the content of those discussions which are set out at great length in the testimony of Sauerberg.

#### Alleged Violation of the Contractual Non-Renewal Procedure

The Complainant's argument that the Respondent violated the contractual non-renewal procedure is based upon its claim that the language set out in paragraph V A of the Conditions of Employment contained in the collective bargaining agreement, requires that the Respondent notify a teacher whose contract is being considered for non-renewal that it has actually voted to non-renew his contract prior to February 1, and that since the Respondent did not notify Complainant Kragness that it had voted to non-renew his teaching contract until March 6, 1973, the Respondent has violated that provision of the agreement. The Respondent contends that paragraph V A requires that the teacher be given notice of consideration for non-renewal on or before February 1. The provision in question should be interpreted in light of the bargaining history surrounding its incorporation in the collective bargaining agreement and its modification and application over the years.

Paragraph V A was first incorporated in the collective bargaining agreement covering the 1968-1969 school year. At that time, the Wisconsin Statutes contained a provision regarding the procedure required to be followed in the renewal or non-renewal of a teacher's contract which read in relevant part as follows:

"(2) On or before April 1 of the school year during which a teacher holds a contract, the school board by which the teacher is employed or a school district employe at the direction of the school board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such notice is given on or before April 1, the teaching contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew his contract for the ensuing school year on or before April 1, shall accept or reject in

writing such contract no later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the school board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the school board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing school board shall inform the teacher by preliminary notice in writing that the school board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the school board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the school board prior to being given written notice of refusal to renew his contract." 2/

In the negotiations leading up to the 1968-1969 agreement, the Respondent agreed to the following language which was proposed by the Turtle Lake Education Association.

"V. NON-RENEWAL AND RELEASE OF CONTRACT

- A. A teacher whose contract is not to be renewed shall be notified by the general issuance date for all contracts, or March 1, whichever is the earlier. The teacher shall be informed of the reasons for dismissal either in writing or in person and shall have the right to request a hearing by the Board of Education. Said request must be made in writing within fifteen days of the notification of dismissal."

According to the only witness who was present during those negotiations, the first sentence of the language in question was proposed by the Turtle Lake Education Association, in order to give a teacher "more time" than required by Section 118.22(3) but was intended to be otherwise consistent with the requirements of that statute. It is significant to note in this regard that the language initially agreed to reads substantially the same as the present version except that the notification date has been changed and an additional sentence has been added.

In the negotiations leading up to the collective bargaining agreement for the year 1969-1970, the Turtle Lake Education Association asked to change the notification date of March 1 to February 1 for the purpose of giving "more time" to teachers being considered for non-renewal. The Respondent agreed to this request and the change was made.

The language remained the same in the 1970-1971 contract in spite of the fact that the Respondent did, at one point in the negotiations, suggest that the date be changed back to a later date in order to give the Respondent "more time". The apparent motivation for this request was in response to a request by the Turtle Lake Education Association that the Respondent agree to binding arbitration. The parties did not agree to binding arbitration or to change the date in question.

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2/ Wisconsin Statutes, Section 118.22 (1967). The provisions of this section were changed subsequent to the negotiation of the 1968-1969 agreement and Section 118.22(2) now provides for a March 15 notification date. L. 1969 c. 55 section 78 eff. June 19, 1969.

In the negotiations leading up to the 1971-1972 collective bargaining agreement, the parties agreed to an additional modification of the language in question by adding the last sentence. <sup>3/</sup> The language in question was not changed in the negotiations leading up to the 1972-1973 agreement, which applies to the situation herein, and it still reads as follows:

"V. NON-RENEWAL AND RELEASE OF CONTRACT

- A. A teacher whose contract is not to be renewed shall be notified by the general issuance date for all contracts, or February 1, whichever is the earlier. The teacher shall be informed of the reasons for non-renewal in writing and shall have the right to request a hearing by the Board of Education. Said request must be made in writing within fifteen days of the notification of non-renewal. A hearing will be held within 15 days of receipt of written request at which time the teacher involved may have counsel present."

There has only been one instance where the Respondent has failed to renew the individual teaching contract of a teacher since the incorporation of the language in question in the collective bargaining agreement, that being the case of a third grade teacher whose position was eliminated for the 1972-1973 school year. Although she was subsequently rehired to teach in another position, the teacher in question was notified by letter dated February 1, 1972 as follows:

"On behalf of the Turtle Lake Board of Education, I have been instructed to inform you that the board is eliminating your teaching position because of a lack of enrollment.

The future indicates that the enrollment will be down for several years.

The Board of Education regrets this action very much."

The Complainants contend that this case constitutes an example of how paragraph V A is supposed to be applied since the teacher was notified of the final decision to terminate her employment on February 1, 1972. The Respondent contends that this example is unrelated to the normal operation of the contractual procedure since it involved the elimination of a teaching position rather than the elimination of a teacher for reasons related to her performance as a teacher.

Without attempting to resolve the question of how the contract procedure should have been applied in the example relied on by the Complainants, it is clear that that example provides little guidance as to the proper application of paragraph V A in this case. The best guidance as to the intended application of V A is the bargaining history surrounding its incorporation in the agreement.

If it were not for the statutory requirement of issuing individual teaching contracts, the parties would not have had any reason for negotiating the language in question. Not only did the parties have the

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<sup>3/</sup> It should be noted that the parties substituted the expression "non-renewal" for the word "dismissal" in two places as well.

requirements of Section 118.22(3) in mind when they negotiated the first version of paragraph V A, they apparently did so with the understanding that, although the contract procedure provided more time and other rights not specifically mentioned in Section 118.22(3), the language in question would be consistent with the requirements of Section 118.22(3). As the Respondent points out, it would be illogical and contrary to the best interests of the teacher involved (and perhaps the due process requirements of the Constitution) to require the Respondent's Board of Education to make its final decision under the requirements of Section 118.22(3) before affording the teacher a hearing under the contractual procedure.

It is the Examiner's opinion, based on the bargaining history of the language in question, that paragraph V A was intended to provide additional time and other rights not specifically required by Section 118.22(3) but consistent with those requirements and that it was not intended to establish a separate contractual procedure to be followed after the procedure contained in Section 118.22(3) has been exhausted.

In concluding that the contractual procedure is intended to be consistent with the statutory procedure, the Examiner is not unmindful of the fact that the contractual procedure refers to a "hearing" rather than a "private conference". If the use of the word "hearing" instead of the statutory expression "private conference" in paragraph V A was not inadvertent, <sup>4/</sup> its use would appear to be in recognition of the fact that the teacher has contractual rights in excess of the statutory rights set out in Section 118.22(3). For example, under the contractual procedure a teacher must be informed of the reasons for the proposed non-renewal and has a right to be represented by counsel, two rights not specifically mentioned in Section 118.22(3). Both terms were used interchangeably by the parties herein and it appears that Kragness received all of his contractual rights under paragraph V A at the February 26, 1973 meeting with the Respondent Board of Education even though his letter of February 8, 1973 only asked for a "private conference".

Based on the above and foregoing rationale, the Examiner concludes that the Respondent has not violated either provision of the contract alleged to have been violated by the Complainants and has ordered that the complaint be dismissed.

Dated at Madison, Wisconsin this 2nd day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli  
George R. Fleischli, Examiner

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<sup>4/</sup> The parties apparently used the word "dismissal" instead of the more specific term "non-renewal" in the original version of the language indicating a lack of preciseness in draftsmanship. See footnote 3 above. Also in the handling of this case, the words "hearing" and "private conference" were used interchangeably.