

ALBANY EDUCATION ASSOCIATION
and JAMES THALACKER,

PETITIONERS,

vs.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

RESPONDENT.

MEMORANDUM

DECISION

Case No. 147-132

Decision No. 12232-C

This is a proceeding for judicial review of an order of the respondent Wisconsin Employment Relations Commission (WERC). The case was brought before WERC upon a complaint by the petitioners against the Albany Joint School District No. 8 and the Board of Education thereof (the Board) alleging that the Board had violated sec. 111.70(3)(a) 5., Stats., by refusing to accept the terms of an arbitration award which the parties had previously agreed to accept as binding. The WERC examiner decided against the petitioners and dismissed the complaint. The examiner's decision was fully affirmed by the WERC commissioners.

The arbitration in question dealt with the timeliness of an attempt by the Board to "non-renew" the teaching contracts of petitioner Thalacker (and two other teachers) following the 1972-73 school year. The arbitrator issued a decision on August 23, 1973, in which he concluded that "the notices of non-renewal to each of the grievants was untimely and therefore not effective so as to terminate their employment" and that "each of the said grievants' teaching contracts then in force continued for the ensuing school year". His award was "[t]hat the grievance be, and the same hereby is, sustained and the Employer is directed to issue 1973-74 teacher contracts to each of the grievants".

At no point in time subsequent to the issuance of the award did the Board issue a contract to Thalacker. However, on July 13, 1973, the Board inadvertently sent him a filled out form contract which he signed and returned. The form contract was preceded by a letter sent by the Board to Thalacker on July 10, 1973 stating that it would consider his teaching contract "null and void" unless he became certified to teach chemistry in time for the 1973-74 school year. By the time he received this letter, it was too late for him to enroll in a summer course in chemistry, and as a consequence was unable to and did not obtain the certification specified in the letter.

The Board did not allow Thalacker to resume his teaching during the 1973-74 school year, claiming that his contract was void under sec. 118.21 (1), Stats., because he was not certified to teach chemistry. That section provides, in pertinent part:

"A teaching contract with any person not legally authorized to teach The named subject ...shall be void." (Emphasis supplied.)

If there was any compliance with the arbitrator's directive that Thalacker be issued a contract for the 1973-74 school year, it was by means of the contract issued him in July. It is the petitioners' position that this contract was not valid and enforceable because it was sent to Thalacker by inadvertence and because the Board at no time indicated an intention to honor it. The court disagrees with that position. The inadvertence was only one-sided. While mutual mistake may be a ground for asserting that a contract is invalid, this ground is inapplicable here. Thalacker did not know that the contract was sent to him by mistake and could justifiably treat it as binding on both parties. This is true whether or not there was any subsequent indicium by the Board of affirmance or ratification. Therefore, the Board's inadvertence in issuing the contract in July did not preclude that contract from being valid.

The petitioners further contend that the Board invoked sec. 118.21, Stats., to declare the contract void only as a pretext to avoid complying with the arbitrator's award. They point out that that section declares a contract void where the teacher is not certified to teach "the named subject", while the form contract issued to Thalacker on July 13, 1973 does not name any subject at all but describes his duties merely as "teacher". Attorney Kittelsen, who represented the Board at the WERC, explained at that hearing the legal position taken by the Board. He stated (Transcript page 107):

"On July 10th a letter was sent to Mr. Thalacker stating that he should become authorized in some manner, either -- they could have clearly accepted a temporary permit to teach chemistry, but he should get such permit by August 6th, giving him a reasonable time to do this. The intent of that was that it should be a part of any teaching contract that would be issued to him by whatever means at that time. ... The letter, I think, under the law, integrates in any contract, integrates the various writings involved, including the letter of July 10, 1973 to Mr. Thalacker, that all documents and writings and understandings must be considered together."

Also, in a written memorandum to the examiner subsequent to the hearing, Mr. Kittelsen added:

"It is the contention of respondents that the letter of the School District Administrator to James Thalacker, dated July 10, 1973 ... provided a condition in the teaching contract of James Thalacker wherein the named subject was to be taught and that if certification was not received in chemistry, then, said contract would be void under the law."

The court agrees with the legal position expressed by Mr. Kittelsen and holds as a matter of law that the contract between the Board and Thalacker made in July of 1973 consisted of the writings of July 10 and July 13. The court is also of the opinion that since the subject chemistry was named in the letter, the claim of voidness was raised by the Board in good faith and not as a pretext to circumvent the arbitrator's award.

The court has thus far expressed its view that a teaching contract was issued to Thalacker in July of 1973, that the contract was not invalid by reason of any inadvertence by the Board in issuing it, that the contract consisted of the July 10 letter as well as the form contract of July 13, and that the Board's refusal to perform that contract was based on a tenable claim that it was void under sec. 118.21. Yet the court is forced to conclude that the said contract does not satisfy the mandate of the arbitrator's award.

The arbitrator ordered that Thalacker be issued a 1973-74 contract. In the context of this order, it is clear that the contract to be issued was to be a renewal of the one previously operative. To be in compliance with the arbitrator's order, the contract issued must be a renewal of the previous contract and therefore must not impose any material obligation on Thalacker not present in the previous contract.

Prior to the 1973-74 school year the Board had requested Thalacker to become certified to teach chemistry and had assigned him to teach chemistry. But he was never during that period legally obligated to possess such certification as a written contractual condition.

The form contract issued to Thalacker for the 1973-74 school year does not by its terms require Thalacker to be certified to teach chemistry. However, the Board has asserted and established that the July 10 letter incorporated that certification obligation into the contract that was made. In establishing this, the Board has perhaps proved too much. The contract issued for 1973-74 contains a new material obligation imposed on Thalacker, i.e. certification in chemistry, and is therefore not a renewal of the previous one. The court concludes therefore that the order of the arbitrator was not obeyed by the Board.

The WERC examiner has expressed his opinion in a well-considered and articulate Memorandum. Because the court has arrived at a different legal analysis of the facts, the WERC decision will be reversed. The case will be remanded to WERC for further proceedings consistent with the court's opinion. Counsel for the petitioners may draft an appropriate order.

Dated this 2 day of June, 1976.

BY THE COURT:

Michael B. Torphy, Jr. /s/
Hon. Michael B. Torphy, Jr.
Judge, Circuit Court, Br. 2.