

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MENOMONIE EDUCATION ASSOCIATION and :   
WILLARD KRANTZ, :   
:   
Complainants, :   
:   
vs. : Case X :   
: No. 17488 MP-310 :   
: Decision No. 12385-B :   
JOINT SCHOOL DISTRICT NO. 1 OF :   
MENOMONIE, ET. AL., 1/ BOARD OF :   
EDUCATION OF JOINT SCHOOL DISTRICT NO. 1:   
OF MENOMONIE, ET. AL., and MELVIN :   
BOLLOM, Superintendent of Joint School :   
District No. 1 of Menomonie, et. al., :   
:   
Respondents. :   
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Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce Ehlke, appearing on behalf of Complainants.  
Solberg & Steans, Attorneys at Law, by Mr. Jack E. Joyce, appearing on behalf of Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Menomonie Education Association and Willard Krantz having filed a prohibited practices complaint with the Wisconsin Employment Relations Commission, herein Commission, alleging that Joint School District No. 1 of Menomonie, et. al., Board of Education of Joint School District No. 1 of Menomonie, et. al., and Melvin Bollom, Superintendent of Joint School District No. 1 of Menomonie, et. al., have committed prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes; and the Commission having appointed Amedeo Greco, 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 Menomonie, Wisconsin, on February 5 and March 5, 1974, before the Examiner; and the parties having thereafter filed briefs and reply briefs; and the Examiner having considered the evidence, and arguments of Counsel, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Menomonie Education Association, herein Complainant, is a labor organization and at all times material herein was the exclusive bargaining representative of teachers employed by Joint School District No. 1 of Menomonie, et. al.

1/ Respondents' names were amended at the hearing.

2. That Joint School District No. 1 of Menomonie, et. al. and the Board of Education of Joint School District No. 1 of Menomonie, et. al., herein Respondent, constitute a Municipal Employer within the meaning of Section 111.70(1)(2) of the Wisconsin Statutes, and that Respondent is engaged in the provision of public education in its district with its principal office at Menomonie, Wisconsin.

3. That at all times material hereto, Melvin Bollom has been the Superintendent of Schools for Respondent School District and that Willard Krantz was employed as a teacher by Respondent School District during the 1972-1973 school year.

4. That Complainant and Respondent were signators to a collective bargaining agreement for the 1972-1973 school year which covered the wages, hours and working conditions of teachers employed by Respondent; that said agreement provided that "a teacher shall not be refused employment, dismissed, suspended, or discharged except for just cause"; that the agreement also contained a grievance-arbitration procedure; that Respondent proposed to terminate Krantz in March 1973; 2/ that Complainant filed a grievance over the proposed termination; and that the parties were unable to resolve that grievance, after which they proceeded to arbitration.

5. That an arbitration hearing was held in April regarding Krantz's termination; that during the course of said hearing the parties agreed to withdraw the matter from arbitration and to enter into a settlement agreement, herein settlement, which provided:

"CONDITIONS OF RE-EMPLOYMENT - WILLARD KRANTZ

- 1) Acceptance of and successful implementation of school district curriculum including A.A.A.S. science, Addison-Wesley math, Ginn reading etc.
- 2) Acceptance of supervisor/principal suggestions and direction in a professional manner and elimination of negativism toward the school district and administration. Tempermental outburst against adults will end.
- 3) Regularly scheduled administration/M.E.A. sessions would be attended for the purpose of assisting in overcoming existing problems relating to 1 and 2 and classroom methodology, student control and rapport, and improved relations with faculty.
- 4) The board of education will make a decision by February 1, 1974, on whether the problems and appropriate communication/cooperation and 1-3 are resolved to their satisfaction and whether non-renewal for 1974-75 is necessary.
- 5) Following an indepth evaluation by a psychiatrist, it would be agreeable that Mr. Bollom and the doctor could confidentially review the evaluation and should it be job related and seen as advantageous to have psychiatric counseling, such counseling would be commenced.

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2/ Unless otherwise indicated, all dates herein refer to 1973.

- 6) A transfer, self-contained classroom, non-multi-unit probationary one year teaching contract (1973-74) would thus be issued if deemed as appropriate by the psychiatrist and voided accordingly at anytime (sic) the psychiatrist might feel it inappropriate for Mr. Krantz to teach.
- 7) It would be agreed all parties hereto would approach the 1973-74 school year with the desire to make the intent and desire to constructively assist Mr. Krantz to a successful teaching year.
- 8) No W.E.R.C. arbitrator would be involved in any possible non-renewal proceedings but other recourse, such as a three-member panel (with the neutral party selected jointly from a five member list submitted by A.A.A. or other agreed-upon agency) would be open for hearing argumentation of the case."

6. That in executing this settlement, there was no agreement between the parties regarding: (1) the meaning of the phrase "indepth evaluation"; (2) whether the report prepared by the doctor would have to be in writing; and (3) whether Bollom and the doctor could review the evaluation in private, outside the presence of either Krantz or any of his agents.

7. That Krantz, who had never visited or been treated by a psychiatrist previously, agreed to the settlement because he believed that psychiatrist testing would establish that he was fit to teach, and that the Union, which suggested this course of action, did so for the same reason.

8. That shortly after the execution of said settlement, Krantz twice visited psychiatrist Dr. Carol Larson in early May for the purpose of securing the evaluation provided for in the agreement; that Krantz then underwent psychiatric testing; and that after the completion of said testing, Dr. Larson indicated to Bollom in May that her results were inconclusive and that more testing was necessary.

9. That Krantz thereafter spoke to Bollom about the matter and secured Bollom's approval to see another psychiatrist; that Krantz on or about June 5 then visited with psychiatrist Dr. Thomas G. Bieter; that Dr. Bieter had Krantz undergo additional psychiatric testing and interviews on June 5, June 12, and June 23; that Dr. Bieter requested Krantz to ask Bollom to supply additional information regarding the scope of the evaluation and that Krantz did so in June; and that Bollom initially failed to supply such information and did not do so until about one month later.

10. That Dr. Bieter met with Krantz and Bollom on July 10 for two hours, at which time Dr. Bieter twice informed Bollom that Krantz was capable of teaching and that he, Bieter would be happy to have Krantz teach his children; that Dr. Bieter's recommendation, in which his associate Dr. Lloyd Sines concurred, was made on the basis of the testing which Krantz had undergone for Dr. Bieter; that Dr. Bieter at that time was, in his words, "absolutely convinced" that he had sufficient information to make a decision as to whether Krantz was fit to teach; that Bollom at that time told Dr. Bieter that he, Bieter, needed more factual information regarding Krantz; and that Bieter then agreed that Bollom could provide such information, if he so desired.

11. That Bollom refused to accept as correct Dr. Bieter's July 10 favorable recommendation regarding Krantz because, in Bollom's words:

"my position as an evaluator of a teacher is equivalent in preparation and training to a medical doctor, that I should be as knowledgeable about whether a teacher is capable of teaching as what Dr. Bieter is in determining something medically speaking, that I was in the best position, at that point, to know that [Krantz] was incapable of going into the classroom."

12. That Bollom by letter dated July 19 wrote to Dr. Bieter; and that rather than containing any pertinent factual information, that letter, according to Dr. Bieter, contained a "series of questions and a series of suppositions."

13. That in response to said letter, Dr. Bieter by letter dated August 7 advised Bollom in pertinent part that:

"I would be happy at any time to have a confidential review of Mr. Krantz' evaluation with you provided that Mr. Krantz is willing to share with you the outcome of his evaluation here."

That Dr. Bieter also stated therein:

"As I indicated to you when you and I and Mr. Krantz met on July 10th, 1973, a psychiatric evaluation is something which is specifically defined by those involved in the mental health profession. The fact that you may wish to go beyond what is customarily considered to be psychiatric evaluation as a general concept does not mean that such a request can be granted . . . Mr. Krantz has received his psychiatric and psychological evaluation as requested and (sic) Conditions of Re-employment Willard Krantz. The confidential review is available to you if you wish to pursue it." (emphasis supplied)

14. That on August 7 Dr. Bieter also forwarded to Krantz a four-page written report which was based on the above-noted psychiatric testing; and that in said report, Dr. Bieter concluded in pertinent part:

"In conclusion it was my professional opinion that no formal diagnosis of psychological pathology can be made on Willard Krantz. As is borne out in the interview and in the testing it is obvious that Mr. Krantz is an extremely sensitive individual quick to respond to inequities in situations that he perceives around him. His manner of dealing with these situations is very direct and may be quite threatening to those whom he is confronting. However this is not evidence of or the basis of psychopathology and cannot be regarded as such. There is absolutely no reason that this man could be considered to be misplaced in a classroom and there is no reason to withhold the recommendation for his continued functioning as a career teacher. I am most happy to make that recommendation." (emphasis supplied)

15. That upon receipt of Dr. Bieter's report, Krantz immediately attempted to contact Union representative Roland Gilligan; and that Krantz was unable to meet with Gilligan until approximately August 17 due to the fact that Gilligan was out of town.

16. That Bollom informed Dr. Bieter by letter dated August 9 that:

"In summary, our request, our need is: (1) answers to our questions in the letter of July 19, 1973, and (2) a separate definitive statement from a psychiatrist saying that it is appropriate that Mr. Krantz be issued a teaching contract, or that it is inappropriate to issue a contract or that clarifies (sic), quote: 'A unilateral agreement is something that we cannot be a party to at this time' as meaning that a definitive statement that it is appropriate to issue a contract will not be forthcoming at this time."

17. That on or about August 8 or 10, at the latest, Bollom learned that, because of declining student enrollment, there would not be available the type of teaching position for Krantz provided for in the settlement agreement; and that Bollom did not advise either Krantz or the Union of this fact.

18. That, instead, by letter dated August 15, Bollom informed Krantz and Union representatives Gilligan and Dennis Kropp inter alia that:

"As you know, the beginning of school is upon us. As yet, no contract has been issued to Mr. Krantz because of the failure to complete the terms of the agreement signed by the four involved parties. From my perspective, the failure is not the fault of any of the four parties signing the agreement.

Never-the-less (sic), we do not have a basis (or any information) from which a contract can be issued. I can assure you of our desire and attempt to fulfill all aspects of the agreement. However, the following items are missing:

(1) A definitive statement from a psychiatrist to the school district indicating it is his recommendation that Mr. Krantz be issued a contract and return to the classroom.

(2) Answers to the school districts' questions requested by the psychiatrist (both through Mr. Krantz and directly) which would in effect define the scope (type) of evaluation and the information desired have not been forthcoming (sic) in spite of the psychiatrist's request for the questions and the indication he would proceed (sic) to answer them immediately.

(3) A confidential conference (as per the agreement) has been repeatedly requested, but not granted to date.

(4) The one statement that seems most pertinent, and just received from the Tri-County Mental Health Clinic, is; 'A unilateral agreement is something that we cannot be a party to at this time.'

Thus, with no time whatever remaining and with the necessity of meeting student needs, I see no alternative but for us to proceed (sic) on the basis that Mr. Krantz is no longer an employee of the school district. . . I am sure you and the courts would agree that we have been most reasonable in waiting until the last day (Friday, August 17) before pro-

ceding (sic) to an alternative means of meeting our staff needs and that we could not wait until 8:00 a.m. (August 20) to fulfill our faculty needs.

I would be most happy to meet with you concerning this matter."  
(emphasis supplied)

19. That prior to sending this August 15 letter, Bollom did not: (1) ask Krantz and/or the Union to show and discuss with him the results of Dr. Bieter's August 7 evaluation; (2) indicate to Krantz and/or the Union that he, Bollom, wanted to speak to Dr. Bieter about his August 7 report; and (3) inform either Krantz or the Union that he had to immediately learn the results of Dr. Bieter's evaluation before he could determine whether to reinstate Krantz.

20. That upon receipt of Bollom's August 15 letter, Union representative Gilligan on August 17 telephoned Bollom about this matter and read to him over the telephone, in its entirety, the above-quoted conclusions Dr. Bieter had reached in his August 7 report, which are noted in paragraph 14 above.

21. That during said telephone conversation with Gilligan, Bollom: (1) did not question the authenticity of Dr. Bieter's report; (2) did not indicate that he did not understand Dr. Bieter's conclusions; (3) did not say that he immediately needed to see Bieter's entire report before deciding whether to reinstate Krantz.

22. That by letter dated August 17, Gilligan forwarded to Bollom and to Respondents' attorney, Stevens Riley, a photostatic copy of Bieter's aforementioned conclusions in which he found that Krantz was fit to teach.

23. That in response to said letter, Bollom advised Gilligan by letter dated August 20 that:

"Thank you for your letter of August 17, 1973. As per the reasons stated in my recent letter, we have had no information or input from anyone, including Mr. Krantz, that could concretely give us the foundation on which we could issue a contract to Mr. Krantz. For those reasons, as previously stated, we had to proceed to an alternative means of meeting the district's needs.

In addition, I would respond to the new piece of information you enclosed. Beside the fact that it wasn't received until the day teachers were at work and that it is, in a sense, an out-of-context portion of an over-all evaluation and in several respects does not meet the agreed to 'conditions of re-employment,' it also raises several other possible questions and/or poses potential problems for the students.

1. The implication seems rather clear that the evaluation, by its nonrelease, may contain information that would be pertinent in our considerations of re-employment?
2. The evaluative tests may be the same as administered by the other psychiatrist (Dr. Larson) and from which she felt considerable additional evaluation and background study was necessary before she could make any recommendation?

3. Dr. Bieter refers to inequities about which he has no first hand knowledge. If parents, teachers, and administrators can document this, it seems Dr. Bieter's comments/statements lack a basis of fact and that non-existent perceived inequities are a concern we specifically have asked about and have not yet received an answer?
4. Psycho-pathology (sic), with its varied interpretations, was not a requested form of evaluation and seems to be an inferred symptom not raised by any of the involved parties.
5. It appears Dr. Bieter wrongly paralleled (sic) an evaluation with investigating the possibilities of psychological pathology?
6. Dr. Bieter makes reference to a recommendation he has not yet made.
7. Without knowledge of the reasons our school district and at least one other school district felt Mr. Krantz was possibly (sic) misplaced in the classroom, and without any classroom observation or without conferring with anyone who was aware of his classroom performance, it would be most interesting for us to find out on what basis of fact he can make a statement about why he is or is not misplaced in the classroom?

Our immediate response to Tri-County Mental Health Clinic's requests, as well as additional initiatives (letters) on our part to complete all aspects of the conditions-of-re-employment, document our desire (and personal concern for Mr. Krantz) to have had this matter settled at an early date.

If you would care to meet further on this matter, please call me."

24. That Gilligan and Bollom thereafter agreed to meet on this matter on or about August 23 and that this meeting was subsequently canceled; and that the parties again agreed to meet on or about August 28, with Dr. Bieter present, and that this meeting also did not take place, this time, because of Gilligan's unavailability.

25. That Gilligan thereafter met with Bollom on or about September 5 at which time they discussed the Krantz situation; that during said meeting Gilligan placed on Bollom's desk and accorded Bollom the opportunity to read Dr. Bieter's entire August 7 four (4) page report in which Dr. Bieter recommended that Krantz be given a teaching position; that Bollom refused to look at said report at that time; and that, as of the time of the instant hearing, Bollom has never read the contents of that report.

26. That following Bollom's refusal to look at Dr. Bieter's report, Gilligan by letter dated September 10 forwarded a copy of that report, in its entirety, to Respondents' then attorney, Stevens L. Riley.

27. That Union and Krantz have fully complied with the terms of the settlement agreement and that Respondent has nonetheless refused to reinstate Krantz to the teaching position specified therein.

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

CONCLUSIONS OF LAW

1. That the settlement agreement executed between Respondent, the Complainant, and Krantz, constitutes a collective bargaining agreement within the meaning of the Municipal Employment Relations Act, herein MERA.
2. That Respondent has refused, and is refusing, to abide with the terms of said settlement agreement, and thereby has committed a prohibited practice within the meaning of Section 111.70 of the MERA.

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 Respondent Joint School District No. 1 of Menomonie, et. al., Board of Education of Joint School District No. 1 of Menomonie, et. al., and Melvin Bollom, Superintendent of Joint School District No. 1 of Menomonie, et. al., their officers and agents, shall immediately:

1. Cease and desist from refusing to adhere to the terms of the settlement agreement which Respondent and Complainant executed in April, 1973.
2. Take the following affirmative action which the undersigned finds will effectuate the purposes of the MERA.
  - (a) Immediately comply with the terms of the aforementioned settlement agreement by reinstating Willard Krantz to the teaching position specified therein or a substantially equivalent position, and by paying to Willard Krantz a sum of money equal to that which he would have earned, including all benefits, had he been reinstated, less any amount of money that he earned or received during that part of the school year that school was in session that he otherwise would not have earned or received had he been teaching. In computing this backpay, Willard Krantz is entitled to deduct from his interim earnings any reasonable expenses which he incurred in securing additional employment.
  - (b) Notify all employees, by posting in conspicuous places in its offices where employes are employed, copies of the notice attached hereto and marked "Appendix A" which notice shall be signed by Respondent, and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by other material.
  - (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 10<sup>th</sup> day of July, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Amedeo Greco  
Amedeo Greco, Examiner



APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employes that:

1. WE WILL comply with all of the terms of the April, 1973 settlement agreement reached with Menomonie Education Association and Willard Krantz.
2. WE WILL immediately reinstate Willard Krantz to the teaching position specified in that agreement, or a substantially equivalent position, and we will pay to Willard Krantz a sum of money equal to that which he would have earned, including all benefits, had he been reinstated.
3. WE WILL NOT in any other or related matter interfere with the rights of our employes, pursuant to the provisions of the Municipal Employment Relations Act.

By

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Joint School District No. 1 of  
Menomonie, et. al.

Dated this                    day of July, 1974.

This notice must be posted for thirty (30) days from the date hereof and must not be altered, defaced or covered by any material.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

As noted above, the primary issue herein is whether Respondent has complied with the terms of the April settlement agreement which centered on conditions surrounding Krantz's status as a teacher.

The Union maintains that Krantz has fulfilled all of the conditions set forth in the settlement which he was expected to perform, including the requirement that he take and pass a psychiatric examination, and that Respondent has nonetheless refused to reinstate Krantz, in violation of that settlement.

Respondent, on the other hand, denies that it has breached the settlement agreement. It affirmatively defends primarily 3/ on the grounds that: (1) the Union and/or Krantz refused to allow Bollom to have a "confidential" conversation with Dr. Bieter, regarding Krantz's evaluation; (2) Krantz did not undergo the kind of "indepth evaluation" provided for in the settlement; and (3) Respondent never received timely notice from Dr. Bieter that Krantz was fit to teach.

In resolving the merits herein, the undersigned has been presented with conflicting testimony regarding certain material facts. Much of this conflict centers on testimony between Bollom and other witnesses. Accordingly, it has been necessary to make credibility findings, based in part on such factors as the demeanor of the witnesses, material inconsistencies, and inherent probability of testimony, as well as the totality of the evidence. In this regard, it should be noted that any failure to completely detail all conflicts in the evidence does not mean that such conflicting evidence has not been considered: it has. Based upon such factors, the undersigned has concluded that any part of Bollom's testimony which conflicted with the testimony of other witnesses must be discredited in its entirety, as Bollom simply was not a credible witness.

One such area in which Bollom's testimony is specifically discredited is his assertion that the parties agreed in executing the April settlement that the psychiatric evaluation therein was to be privately discussed by Bollom and the doctor alone, without the presence of either Krantz and/or his representative. This was flatly denied by Union representative Dennis Kropp who credibly testified that there was no agreement for such a private conference.

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3/ Respondent also argues in its brief, for the first time, that the Union has not proven that Krantz complied with the first three conditions in the settlement agreement. Since Respondent's answer to the complaint claimed only that the Union had not complied with conditions five and six of the settlement, those dealing with psychiatric testing, and as Respondent reiterated in its opening statement that it was only those conditions which were in issue when its attorney stated that "based upon conditions 5 and 6, [Respondent] is not required to offer a contract until those conditions are filled.", and inasmuch as Bollom made no claim during the hearing that his decision not to rehire Krantz was based on the fact that Krantz had not complied with conditions one through three, the record shows that this belated defense is totally without merit and that no further discussion is needed.

Moreover, had there been such an agreement, it is only reasonable to assume that it would have been specifically spelled out in the agreement, as it entailed a most sensitive matter, the waiver of a doctor-patient confidentiality. Instead, the agreement only provided that following an indepth evaluation by a psychiatrist, Bollom and the doctor at that point could "confidentially review the evaluation". There is nothing in this language to the effect that such a review would be only between Bollom and the doctor. Bollom himself implicitly acknowledged this in his July 19 letter to Dr. Bieter wherein he alleged that the agreement provided for "(2) a confidential review of the evaluation by doctor and administrator (only) . . ." (emphasis supplied). That Bollom believed it necessary to insert the word "only" in this letter indicates that he himself realized that the agreement did not provide for the type of private conference he was demanding, and that he was then insisting on a condition not previously agreed to by the Union. Therefore, in the absence of a clear statement to the contrary, it is reasonable to assume that the confidential review provided for in the agreement referred to one in which Bollom, the doctor, and Krantz and/or his representative, together, would discuss Krantz's evaluation with the understanding that the matters discussed therein would not be publicly disseminated.

This interpretation is buttressed by the testimony of Dr. Bieter who testified that it is unusual to have such a conference without the patient being present, and that his professional understanding of the phrase "confidential review" is that a psychiatrist will discuss an evaluation with the patient and others together, with the understanding that they do not release it to others. Accordingly, when Krantz offered in their July 10 joint meeting to let Bollom and Dr. Bieter speak in private, outside his presence, Dr. Bieter insisted that Krantz then remain.

Since, then, Bollom did attend a two-hour review on July 10 where Dr. Bieter told him that Krantz was fit to teach, and inasmuch as Bollom did not thereafter ask for another such joint review where Krantz and/or his agents would be present before <sup>4/</sup> he decided that Krantz could not be rehired for the job provided for in the agreement, it is obvious that Krantz and the Union have complied with that part of the agreement which stated that Bollom was entitled to speak to the doctor regarding Krantz's evaluation.

As another defense, Respondent alleges that Krantz has not undergone the "indepth" evaluation by a psychiatrist provided for in the agreement because: (1) the evaluation performed on Krantz was not as extensive as it should have been; (2) Dr. Bieter refused to specifically consider and discuss in the evaluation several points raised by Bollom; and (3) Bollom was unable to understand Dr. Bieter's ultimate report.

In support thereof, Respondent points to the testimony of Dr. Larson, the first psychiatrist Krantz visited, who testified that in her opinion Dr. Bieter did not perform an "indepth" evaluation and

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<sup>4/</sup> As noted below, Bollom admitted that he knew by August 8, that the teaching position specified in the settlement could not be filled because of declining student enrollment. It is immaterial, therefore, that a subsequent August 28 joint conference was not held, as planned, since by that time Respondent could not in any event have offered such a position to Krantz.

that she, Larson, needed more information before determining whether Krantz was fit to teach. In considering this contention, the undersigned is mindful that Dr. Larson's testimony must be accorded considerable weight because of her professional expertise and her neutrality in this proceeding.

Upon further questioning, however, Dr. Larson significantly modified her prior testimony. For, Dr. Larson went on to add there were no right or wrong answers to some of the psychiatric testing performed herein on Krantz and that:

". . . it is, indeed, possible for someone to take the MMPI [a psychiatric test] at different points in time to produce a profile that is differing enough so that you can draw different conclusions from it."

Going on, Dr. Larson also acknowledged that Dr. Bieter could reasonably have concluded only one month after her testing, and based on the same type of testing that she herself had given earlier, whether Krantz was capable of teaching. Dr. Larson also conceded that there was no generally accepted meaning of "indepth evaluation" among psychiatrists.

Dr. Bieter corroborated this latter point when he testified that "There is no particular cookbook formula" as to what constitutes an "indepth evaluation", and that "it can be regarded as standard practice either way" as to whether to talk to individuals other than the person being tested. Dr. Bieter added that he did not conduct a more extensive evaluation on Krantz because that would have only have elicited causative factors explaining Krantz's personality. That, said Dr. Bieter, was not needed here because "the purpose of a psychiatric evaluation is to determine current functioning of the individual being evaluated", something Dr. Bieter had already determined because he and the other doctor who evaluated Krantz were, in his words, "absolutely convinced that we had sufficient information in interviewing and testing Mr. Krantz." Based upon the availability of such information, Dr. Bieter declared that his four-page written August 7 report on Krantz constituted an "indepth evaluation".

In addition to Dr. Bieter's expert testimony, there are certain other factors which indicate that Respondent's interpretation of the phrase "indepth evaluation" is incorrect. Thus, the settlement itself provides that, following an "indepth evaluation", and if recommended by a psychiatrist, Krantz would then be required to undergo psychiatric counseling (it must be emphasized here that no such recommendation was in fact made by any of the doctors involved). That being so, it seems clear that the requirement for an "indepth evaluation" was not meant to take the place of extensive psychiatric analysis and counseling, but rather, was but a preliminary step to determine whether Krantz was fit to teach. Moreover, it is also significant to note the prohibitive costs entailed in the extensive evaluation which Respondent now insists was a condition precedent to Krantz's rehire. Commenting on this, Dr. Bieter testified that such an evaluation would cost, at least, between ten and twenty thousand dollars.<sup>5/</sup> In the absence of clear contrary language, it is unreasonable to assume that the parties contemplated that Krantz would undergo such an enormous personal

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<sup>5/</sup> Dr. Larson verified this when she stated that: "to have pursued an indepth evaluation at [Krantz's] expense would have really been financially quite burdensome."

expense, especially where, as here, there is no history of psychiatric disorder, and where the evaluation in issue was only an initial step to determine whether Krantz was capable to teach. 6/

Similarly, the undersigned finds no merit in Respondent's additional claim that Dr. Bieter was obligated to specifically consider each and every question Bollom raised in his July 19 letter to Dr. Bieter. Thus, as noted by Dr. Bieter, that letter did not contain any factual information regarding Krantz's background, but rather, contained only "a series of questions and a series of suppositions." Dr. Bieter added that some of the matters raised by Bollom were covered in the testing and interviewing which preceded his July 10 meeting with Bollom and Krantz. Dr. Bieter also stated that the specifics raised by Bollom are not usually discussed with others when the results of an evaluation are given. Rather, said Dr. Bieter, it is customary only to relay the conclusions reached. This practice of not relating all the details of a psychiatric evaluation was verified by Dr. Larson who testified that: (1) she generally does not go over such details with an employer who wants to know whether an employe can return to work; and (2) in her opinion, Dr. Bieter's report was even "more specific" than one she would have completed.

In light of the above-noted considerations, the undersigned finds that Krantz did undergo an "indepth" psychiatric evaluation, as provided for in the settlement agreement. For, even though there was a divergence of opinion on some points by Dr. Bieter and Dr. Larson as to what constituted an "indepth" evaluation, the totality of their testimony established that Dr. Bieter's evaluation conformed with generally accepted medical standards. Accordingly, and inasmuch as Respondent itself correctly concedes in its brief that "psychiatry is not an exact science and two psychiatrists may not agree on all the concepts involved in the practice of psychiatry," and since Respondent tacitly agreed to be bound by Dr. Bieter's recommendation when it agreed that Bieter could evaluate Krantz, the record clearly establishes that Dr. Bieter's evaluation fully comported with the terms of the settlement.

As a result of that evaluation, the record establishes that Dr. Bieter categorically concluded that Krantz was capable to teach and that Bollom was advised of this conclusion. Thus, in their July 10 two-hour meeting with Krantz present, it is undisputed that Dr. Bieter twice told Bollom that Krantz was fit to teach and that he, Bieter, would be happy to have Krantz teach his children. Although Bollom vainly sought to claim that Dr. Bieter's July 10 recommendation was tentative, the facts show otherwise. Krantz, for example, credibly testified that Dr. Bieter told Bollom on July 10 that he had made up his mind that Krantz could return to teaching. This testimony was corroborated by Dr. Bieter who credibly testified that he "had reached a pretty conclusive opinion at that time". In spite of this testimony, Respondent alleges that Dr. Bieter's conclusion must have been tentative on July 10 because Dr. Bieter still had not received certain information from Bollom. In fact, however, as credibly testified to by Dr. Bieter, it was Bollom who insisted on July 10 that Dr. Bieter

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6/ In its brief, the Union claims that the issuance of a contract to Krantz and the commencement of the psychiatric evaluation were to occur roughly simultaneously and that "[N]either event was a precondition to the occurrence of the other (footnote citation omitted)." This assertion is without merit as the record facts clearly establish that the obtaining of a favorable psychiatric recommendation was a condition precedent to Krantz's rehire.

received more information, even though, as noted above, Dr. Bieter and his associate than "were absolutely convinced that we had sufficient information". Since the subsequent materials forwarded by Bollom to Dr. Bieter on July 19 did not contain any new factual information bearing on the evaluation, and as Dr. Bieter's recommendation of July 10 was conclusive, it is clear that Dr. Bieter on July 10 definitively recommended to Bollom that Krantz was fully capable of teaching.

The record further shows that the communication of this definitive favorable recommendation was subsequently followed by another. For, based on the uncontradicted, credible testimony of Union representative Gilligan and Krantz, <sup>7/</sup> it is undisputed that on August 17, before school opened for the year, Gilligan telephoned Bollom and read to him, verbatim, the concluding remarks Dr. Bieter had reached in his August 7 Report wherein Dr. Bieter found:

"In conclusion it is my professional opinion that no formal diagnosis of psychological pathology can be made on Willard Krantz. As is borne out in the interview and in the testing it is obvious that Mr. Krantz is an extremely sensitive individual quick to respond to inequities in situations that he perceives around him. His manner of dealing with these situations is very direct and may be quite threatening to those whom he is confronting. However this is not evidence of or the basis of psychopathology and cannot be regarded as such. There is absolutely no reason that this man could be considered to be misplaced in a classroom and there is no reason to withhold the recommendation for his continued functioning as a career teacher. I am most happy to make that recommendation." (emphasis supplied)

On the same day, Gilligan mailed a copy of the above-quoted extract to Bollom and Respondent's then attorney, Stevens Riley. Coupled with Dr. Bieter's earlier July 10 recommendation, this subsequent information informed Bollom that Dr. Bieter had indeed found that Krantz was fully capable of returning to the classroom as a teacher.

In its brief, Respondent takes issue with the fact that the Union waited about ten days before relaying Dr. Bieter's conclusion to Bollom and that the Union there failed to supply Bollom with a copy of Dr. Bieter's entire report. As to the time lag involved, Krantz and Gilligan credibly testified that the delay was caused by the fact that Gilligan was out of town from about August 8, the day Krantz received Dr. Bieter's report, to August 17. Since Gilligan was representing Krantz in this matter and therefore had to be consulted regarding the contents of Dr. Bieter's report before the Union could act, and because of the fact that Bollom himself waited about eight days before contacting the Union regarding the report (while at the same time professing that speed was of the essence), the undersigned finds that neither the Union nor Krantz acted unreasonably and that, for the reasons noted below, this brief delay did not materially affect Respondent's refusal to rehire Krantz.

Similarly immaterial was the fact that the Union did not immediately make available to Bollom a complete copy of that report. Explaining why they were reluctant to provide Bollom with such a complete copy,

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<sup>7/</sup> Bollom professed that he did not recall this crucial conversation.

both Krantz and Gilligan credibly testified that Bollom in the past had released sensitive, confidential medical information to them regarding other individuals. That, coupled with Bollom's steadfast efforts throughout this matter to undermine the settlement agreement, certainly constituted a valid reason as to why the conveying of such information to Bollom had to be handled with extreme caution. Additionally, as noted below, the full report was not needed as Bollom himself asked in his August 9 letter to Dr. Bieter, for "a definitive statement from a psychiatrist saying that it is appropriate that Mr. Krantz be issued a teaching contract" (emphasis supplied). Significantly, Bollom at that time was not demanding the full report. Moreover, and most importantly, any claim that the full report was needed in deciding whether to rehire Krantz is utterly belied by Bollom's own admission at the hearing that, even though he has been accorded ample opportunity to do so, he has never read that report. In light of that testimony, which establishes beyond question that Bollom did not have even the faintest concern as to what the report contained, and since Union representative Kropp credibly testified that no agreement was ever reached with Respondent as to whether the report had to be reduced to writing, there is no merit, obviously, to the allegation that the Union's failure to supply that written report on August 17 breached the settlement.

Having received Dr. Bieter's above-noted favorable recommendation on August 17, Bollom nonetheless asserted at the hearing that: (1) he did not understand Dr. Bieter's above-noted August 7 conclusion; and (2) this information was untimely because it was received after Respondent had already decided that it could not recall Krantz to the teacher opening specified in the settlement.

Point (1) is totally without merit as the record fails to establish that Bollom could not understand the meaning of Dr. Bieter's August 7 evaluation. For, if in fact Bollom had such a real misunderstanding, he certainly would have said so to Gilligan on August 17 when Bollom first learned of Dr. Bieter's favorable conclusion. That he failed to do so indicates that he had no difficulty in comprehending its meaning at that time. Similarly, Bollom did not profess any lack of understanding in his August 20 letter to Gilligan wherein Bollom went into a detailed discourse on Dr. Bieter's conclusion. Indeed, by raising such specific detailed question, that letter, reprinted in paragraph 23 of the above Findings of Fact, makes clear that Bollom fully understood the meaning of Dr. Bieter's recommendation, but that he, Bollom, nonetheless disagreed with it. Further, if in fact Bollom did have any questions regarding the report, he need only have picked it up from his desk and read it in its entirety to fully understand its meaning, when given the opportunity to do so by Gilligan on September 5. Bollom's refusal to do so, however, along with his failure to raise the matter with Gilligan in either the August 17 telephone conversation or his August 20 letter, coupled with his refusal to ever read the report, establishes beyond any question that Bollom's belated, professed misunderstanding has no basis in fact.

In addition to the aforementioned defenses, Respondent also claims that receipt of Dr. Bieter's favorable recommendation was untimely in that it was received only after Respondent had already made its teaching assignments for the 1973-1974 school year. This claim rings hollow for the following reasons:

First, as noted above, Dr. Bieter unequivocally did inform Bollom on July 10 that Krantz was capable of teaching. This communication

was made well before what Respondent asserts was the deadline for determining its teaching needs.

Secondly, Bollom's actions and testimony on this point demonstrate that this allegation is totally pretextual. Thus, by letter dated August 9 Bollom advised Dr. Bieter that (1) since school was less than two weeks away, he, Bollom, wanted a "confidential conference" with Dr. Bieter as soon as possible to discuss Krantz; and (2) Bollom at that time needed answers to the questions he posed in his July 19 letter to Dr. Bieter along with a "separate definitive statement from a psychiatrist" indicating whether or not Krantz would be issued a teaching contract.<sup>8/</sup> Since Dr. Bieter by letter dated August 7 had earlier informed Bollom that he, Bieter, would meet with Bollom only if Krantz agreed to such a meeting, and inasmuch as Bollom made absolutely no attempt whatsoever to secure Krantz's approval for such a meeting before he decided not to rehire Krantz as a teacher, it is clear that Bollom knew full well that Dr. Bieter would turn down his renewed demand for a private meeting.<sup>9/</sup> Similarly, inasmuch as Dr. Bieter in his August 7 letter to Bollom had already alluded to Bollom's July 19 questions, it is clear that Bollom knew that his renewed demand for such answers would also be rejected by Dr. Bieter. Further, the record establishes that, via Gilligan's telephone call on that day, Bollom on August 17 was in fact subsequently presented with a "separate definitive statement" from Dr. Bieter to the effect that Krantz was capable to teach, just as Bollom had requested. However, as he chose to ignore that recommendation, it is obvious that Bollom's August 9 request for same was not based on any good faith attempt to learn what Dr. Bieter had in fact found. Instead, viewing the August 9 letter in its entirety, it is crystal clear that Bollom was then interested only in building a record in which he superficially appeared reasonable, when in fact, for the reasons noted below, he was interested only in doing everything possible within his power to avoid rehiring Krantz.

Bollom followed this same pattern in his subsequent August 15 and 20 letters to Gilligan. On August 15, for example, Bollom stated he needed (1) a definitive statement from a psychiatrist as to whether Krantz should be rehired; (2) answers to Bollom's July 19 questions to Dr. Bieter; and (3) a private conference with Dr. Bieter. As noted above, Bollom knew full well that Dr. Bieter had earlier indicated that he would not answer all of the July 19 questions and that the settlement agreement did not provide for a private conference between Bollom and Dr. Bieter. Thus, as was his practice, Bollom again demanded conditions which he knew could not be met. Similarly, Bollom's call for a "definitive statement" from Dr. Bieter regarding Krantz's ability to teach, is likewise hollow for the reason noted above. It is also interesting that in the same August 15 letter Bollom stated that:

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<sup>8/</sup> Bollom did not forward a copy of that letter to either Krantz or Gilligan, thereby keeping them in the dark as to what he was doing.

<sup>9/</sup> Bollom admitted that Dr. Bieter specifically told him that he, Bieter, would not hold a conference unless the patient was present.



"I am sure you and the courts <sup>10/</sup> would agree that we have been most reasonable in waiting until the last day (Friday, August 17) before proceeding to an alternative means of meeting our staff needs and that we could not wait until 8:00 a.m. (August 23) to fulfill our faculty needs." (emphasis supplied)

The clear import of this statement is that Respondent had to know by August 17 as to whether Krantz could return. Since Gilligan on August 17 telephonically told to Bollom a verbatim account of Dr. Bieter's favorable recommendation, and as Bollom did not then indicate that he personally had to see all of Dr. Bieter's report that day before deciding whether to restate Krantz, Bollom obviously received sufficient information before his own imposed August 17 deadline. Yet, Krantz was not rehired.

Bollom's August 20 letter to Gilligan was in the same vein. There, Bollom stated that he "had no information or input from anyone, including Mr. Krantz, that could concretely give us the foundation on which we could issue a contract to Mr. Krantz." In fact, Bollom at that time knew full well that Dr. Bieter had specifically recommended that Krantz be rehired. Bollom then went on to question the fact that Dr. Bieter's August 7 conclusion was "an out of context portion of an over-all evaluation". Inasmuch as Bollom on August 9 and August 15 asked Dr. Bieter and Gilligan respectively only for "a definitive statement from a psychiatrist" as to whether Krantz was fit to teach, and since such a statement was supplied to Bollom, this belated insistence on the full report was obviously nothing more than another example of Bollom's practice of injecting new objections and roadblocks to Krantz's rehire. In an attempt to make it appear that the recommendation was incomplete and incorrect, Bollom went on in his August 20 letter to attack the validity of Dr. Bieter's recommendation. That Bollom would make such an attack is not at all surprising when it is remembered that Bollom is a self-proclaimed expert in the field, who believed that he knew more than Dr. Bieter. For, as noted above, Bollom believed that:

"My position as an evaluator of a teacher is equivalent in preparation and training to a medical doctor, that I should be as knowledgeable about whether a teacher is capable of teaching as what Dr. Bieter is in determining something medically speaking, that I was in the best position, at that point, to know that [Krantz] was incapable of going into the classroom." 11/

This purported expertise aside, the fact nonetheless remains that Bollom initially agreed to be bound by Dr. Bieter's recommendation, and that

10/ That Bollom believed it necessary to speak of "the courts" in this letter, at a time when there was absolutely no suggestion by anyone that this matter would be litigated, is further indication that Bollom was writing only to build a record for himself.

11/ This statement is significant in that it shows that Bollom's mind was made up that Krantz was not capable of teaching. That being so, it is obvious that Bollom was not in the least interested in Dr. Bieter's report which concluded that Krantz in fact was able to teach, and that Bollom was determined to ignore the favorable recommendation contained therein.

that recommendation was based on generally accepted medical standards. Accordingly, there is no point in discussing all of Bollom's specific objections in detail as they are immaterial.

In addition to raising false issues and vainly trying to erect new objections in the above-noted August 9, 15, 17, and 20 letters, Bollom's testimony regarding the teaching position supposedly available for Krantz was conflicting and evasive. For example, Bollom at first said he waited until around August 28 before making "the final decision on what we had to do to run the school" i.e., whether Krantz could be rehired. Bollom changed this testimony upon further questioning and admitted that the August 28 deadline referred only to a non-teaching job. As to the type of teaching position provided for in the settlement, one involving a self-contained, non-multi-unit classroom, Bollom testified on the first day of the hearing that he had decided by August 15 that Krantz could not fill that position. One month later, Bollom testified that he and other administrators decided on August 19 or 20, or at the "last possible moment", that there would be no teaching position available for Krantz at the Coddington School, the position in question. Bollom again changed this testimony and asserted that he met with other administrators on this matter on August 8, 10, 14, and 17, and that the decision was made sometime on those dates. By his own testimony, then, Bollom knew by August 8 that there was a serious question as to whether there would be sufficient student enrollment to warrant the type of teaching position provided for in the settlement. Notwithstanding such knowledge, Bollom nonetheless made it appear in his August 9 letter to Dr. Bieter and his August 15 letter to Gilligan that such a teaching position was still available for Krantz, provided only that he, Bollom, received a satisfactory evaluation from Dr. Bieter. It was immaterial, therefore, that Bollom failed to receive all the information he was then demanding, as Bollom had already decided by then that the teaching position provided for in the settlement was non-existent.

Thus, when asked what would have happened had he received a favorable, satisfactory recommendation from Dr. Bieter by August 1, Bollom finally admitted, and then only after extensive questioning, that:

"We probably would have gone to a layoff which we have done even this past year."

In the context of the record herein, it can be inferred, and I so find, that it was this fear of layoff, (which if effectuated may have constituted a per se violation of the settlement agreement), coupled with Bollom's absolute conviction that he knew more than Dr. Bieter, and that in his opinion Krantz was unfit to teach, that motivated Bollom in his determination not to rehire Krantz. The rest of Bollom's self-serving, contorted, contrived explanations were mere window dressing which Bollom erected in a vain attempt to hide these stark facts.

Accordingly, and as the record establishes that Krantz and the Union did fully comply with the terms of the settlement agreement, the undersigned concludes that Respondent's refusal to rehire Krantz for the teaching position specified therein violated the terms of the April settlement agreement and that Respondent should be ordered to remedy that prohibited practice in the manner described above.

Dated at Madison, Wisconsin, this            day of July, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Ameceo Greco, Examiner