

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ST. CROIX EDUCATION ASSOCIATION,
AND MR. JACKSON GRANGER,

Complainants,

vs.

ST. CROIX JOINT SCHOOL DISTRICT NO.
1, VILLAGES OF SOLON SPRINGS, ET. AL;
THE BOARD OF EDUCATION OF ST. CROIX
JOINT SCHOOL DISTRICT NO. 1, VILLAGES
OF SOLON SPRINGS, ET. AL.; AND MR.
RONALD HOLLSTADT, 1/,

Respondents.

Case I
No. 17640 MP-329
Decision No. 12498-A

Appearances:

Wisconsin Education Association Council, by Mr. John A. DeMars,
Organizational Specialist, appearing on behalf of
Complainants.

Marcovich and Cochrane, Attorneys at Law, by Mr. Toby E. Marcovich,
appearing on behalf of Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The St. Croix Education Association and Mr. Jackson Granger having filed a prohibited practice complaint with the Wisconsin Employment Relations Commission, herein Commission, alleging that the St. Croix Joint School District No. 1, Villages of Solon Springs, et. al.; the Board of Education of St. Croix Joint School District No. 1, Villages of Solon Springs, et. al.; and Mr. Ronald Hollstadt have committed certain prohibited practices; 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 Superior, Wisconsin, on May 7 and 8, 1974, before the Examiner; and the parties thereafter having filed briefs which were received by January 10, 1975; 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 the St. Croix Education Association, herein Complainant, is a labor organization which at all times material hereto has been the exclusive collective bargaining representative of certain certified teaching personnel employed by the St. Croix Joint School District No. 1, Villages of Solon Springs, et. al.

2. That the St. Croix Joint School District No. 1, Villages of Solon Springs, et. al., and the Board of Education of St. Croix

1/ Hollstadt's name has been corrected to reflect its correct spelling.

Joint School District No. 1, Villages of Solon Springs, et. al., herein Respondent, operate a school system in the Solon Springs, Wisconsin area and is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes; and that Ronald Hollstadt was employed as Respondent's Superintendent during the 1972-1973 school year.

3. That Complainant and Respondent were parties to a collective bargaining agreement which was effective from September, 1972 to September, 1973, and that said contract stated that teachers could only be discharged for "cause" by providing, in Article 3, Section A, entitled "Responsibilities", that:

"A. The Board's right to operate and manage the school system is recognized, including the determination and direction of the teaching force, 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; and to discipline and discharge teachers for cause."

4. That the contract also contained a grievance procedure in Article 4 which culminated in advisory arbitration; and that said Article provided in part that:

"ARTICLE IV. GRIEVANCE PROCEDURE

A. Purpose--The purpose of this procedure is to provide an orderly method for resolving differences arising during the term of this Agreement. A determined effort shall be made to settle any such differences through the use of the grievance procedure, and there shall be no suspension of work or interference with the operations during the term of the Agreement.

B. Definition--For the purpose of this Agreement a grievance is defined as any complaint regarding the interpretation or application of a specific provision of this Agreement.

C. Grievances shall be processed in accordance with the following procedure:

Step 1.

- a. An earnest effort shall first be made to settle the matter informally between the teacher and his immediate supervisor.
- b. If the matter is not resolved, the grievance shall be presented in writing by the teacher to the immediate supervisor within five (5) days after the facts upon which the grievance is based first occur or first become known. The immediate supervisor shall give his written answer within five (5) days of the time the grievance was presented to him in writing.

Step 2 If not settled in Step 1, the grievance may within five (5) days be appealed to the superintendent of schools. The superintendent shall give a written answer no later than ten (10) days after receipt of the appeal.

Step 3 If not settled in Step 2, the grievance may within ten (10) days be appealed to the Board of Education. The Board shall give a written answer within thirty (30) days after receipt of the appeal.

Step 4 In order to process a grievance to advisory arbitration, the following must be complied with:

1. Written notice of a request for such arbitration shall be given to the Board within ten (10) days of receipt of the Board's last answer.
2. The matter must have been processed through the grievance procedure within the prescribed time limits.
3. The issue must involve the interpretation or application of a specific provision of the Agreement.

. . ."

5. That Jackson Granger, herein Granger, at all times material hereto has been a teacher of industrial arts in Respondent's school system from the time of his hire in 1969 to the time of his discharge in 1973; that, pursuant to Respondent's request, Granger also taught social studies in the 1972-1973 school year; and that Respondent non-renewed Granger's teaching contract on March 14, 1973, because Granger allegedly had not properly maintained the shop area and its equipment, and because Granger supposedly had failed to obtain the appropriate certification in social studies.

6. That Respondent at all times material hereto has never evaluated its teachers in writing; that Respondent has never advised its teachers as to the criterion Respondent utilizes when it orally evaluates teachers; that the only written record in existence regarding Granger's work prior to the 1972-1973 school year were hand-written notations made by Respondent's former Superintendent of Schools, David Welter; that Welter orally evaluated Granger on or about February 1, 1971, and that Welter's handwritten notations of that evaluation provide:

"Evaluation of Jack Granger

Date: January 25, 1971

By: Dave Welter

Observation: Many opportunities over the two year period of time beginning in September of 1969.

Strengths: Control of students is excellent, gets along well with faculty, is cooperative and pleasant in working with administration, is willing to work with student on extracurricular activities, works well with students - faculty, parents

Interviewed
on 2-1-71
overall rating
good

Areas for possible improvement:

Should not complete personal projects in school shop, could do more planning in area of enlargement of shop facilities, could provide more direction in leading students toward the use of more complex equipment and the construction of more complex projects, should keep shop in cleaner condition could keep a better accounting of tools and equipment, should do research in new areas and include in curriculum."

7. That prior to the commencement of the 1972-1973 school year, Respondent's then Superintendent of Schools, Ronald Hollstadt, asked Granger to teach social studies for the forthcoming school year; that Granger had never previously taught social studies; that Hollstadt and Granger at that time reviewed Granger's qualifications and they then both believed that Granger had the requisite qualifications to teach social studies; and that pursuant to Hollstadt's request that he do so, Granger taught social studies through the 1972-1973 school year.

8. That during the 1972-1973 school year, Hollstadt spoke to Granger on three separate occasions regarding the conditions of the shop area and its equipment, and that Hollstadt did so at the direction of Respondent's Board of Education.

9. That the first such conversation occurred in the early part of the 1972-1973 school year when, in his words, Hollstadt spoke to Granger about the shop "curriculum, improving the shop, and a little bit about cleanliness"; that in response, Granger studied the materials supplied to him by Hollstadt regarding curriculum at another school and independently contacted other individuals in the area regarding curriculum; and that Granger also cleaned the shop area by removing wood scraps, by sweeping the floor and by cleaning certain shop equipment.

10. That Hollstadt's second conversation with Granger took place in about December, 1972; that Hollstadt there expressed more concern about the condition of the shop and its equipment; that Hollstadt then stated that one of the members of Respondent's Board of Education was "quite upset" about the condition of the shop; that Hollstadt then specifically pointed out that some of the electric saws had no guards, that a grinder lacked a tool rest and guard, that a pulley on a lathe was defective, and that certain welding equipment was unsafe; and that Granger thereafter corrected some, but not all, of the items mentioned by Hollstadt.

11. That Hollstadt spoke to Granger a third time in about January, 1973 ^{2/} at which point Hollstadt again discussed the shop and its equipment; that Hollstadt there advised Granger to repair some of the items which they had earlier discussed and which had not yet been repaired; and that Granger thereafter cleaned up the shop and stored some of the hand tools which had previously been left on the floor, but that Granger did not immediately repair all of the faulty equipment and tools which needed repair.

12. That in one of their conversations (unspecified), Hollstadt also told Granger that a sander lacked a vacuum attachment and that there was an exposed electrical wire on a certain switch plate; and that Granger immediately covered the exposed wire.

^{2/} Unless otherwise noted, all dates hereinafter refer to 1973.

13. That prior to February 26, Hollstadt never informed Granger that he would be disciplined if he did not clean up the shop and repair faulty equipment, and similarly, Hollstadt never indicated previously thereto that there was a question regarding Granger's qualifications to teach social studies.

14. That Respondent's Board of Education by letter dated February 26, advised Granger of his possible non-renewal for the 1973-1974 school year when it informed him that:

"The Board of Education of the St. Croix School District No. 1 at the February 19, 1973 regular school Board meeting, voted to issue a notice of consideration of nonrenewal of your contract for the ensuing (1973-74) school year for the following stated reasons:

1. Failure to file in the office of the school district administrator a proper certification for teaching social studies.
2. Failure to maintain a safe environment in the shop.
3. Failure to maintain the shop equipment in a safe condition.

The Board of Education would also like to inform you of the following:

1. A private conference pursuant to s.118.22 of the Wisconsin Statutes will be provided to the teacher if requested by the teacher in writing within 5 days of the receipt of the notice;
2. That the teacher may be represented at the conference;
3. That the teacher may request a hearing in addition to or without requesting the private conference; that the hearing must be requested in writing within (5) days of receipt of the notice if a private conference is timely requested and the teacher appears for the conference, then the teacher may request a hearing, in writing, within (3) days after the conference is held;
4. That, in the event a private conference is requested and held, the school board will (unless the hearing is waived in writing by the teacher) withhold making its decision on nonrenewal until after the period for requesting a hearing has expired, and if a hearing is timely requested, the school board shall make its decision after the hearing is completed; that the hearing will be conducted in private unless the teacher requests a public hearing;
5. That the teacher may appear at the hearing with and be represented by counsel and may respond to the reasons for nonrenewal and present evidence in refutation of the reasons;
6. That the conference and/or hearing will be held and completed, the board's decision made and the teacher notified thereof on or before March 15, 1973."

15. That following receipt of said notification, Granger cleaned up the shop and repaired some equipment; that Granger thereafter orally told Hollstadt that he wanted a hearing with the Board regarding his

proposed non-renewal; that Granger never indicated that he also wanted a private conference; and that pursuant to Granger's request, Hollstadt informed Granger by letter dated March 5 that:

"A hearing is scheduled for you with the Board of Education on Tuesday, March 13, 1973, at 7:30 p.m."

16. That Respondent's Board met with Granger and Complainant Representative Bruce Oradie on March 13; that Oradie there said that Granger's contract should be renewed and that Granger should be given an opportunity to clean up the shop area.

17. That Hollstadt on or about that day recommended to the Board that it should renew Granger's contract and that, as a disciplinary measure, Respondent should instead only deny Granger a merit increase.

18. That Respondent rejected Hollstadt's recommendation and on the next day, March 14, decided to non-renew Granger's teaching contract for the 1973-1974 school year; and that Respondent advised Granger by letter that day that:

"The Board of Education of the St. Croix School District No. 1 at a special meeting of the Board on March 14, 1973, voted to nonrenew your contract for the ensuing (1973-74) school year.

This decision was made after your scheduled hearing on March 13, 1973, and based upon the following stated reasons:

1. Failure to file in the office of the school district administrator a proper certification for teaching social studies.
2. Failure to maintain a safe environment in the shop.
3. Failure to maintain the shop equipment in a safe condition."

19. That prior to non-renewing Granger's teaching contract, some Board members throughout the 1972-1973 school year had received complaints from parents and students regarding the conditions of the shop; that some Board members had visited the shop area during the course of the 1972-1973 school year; that Board member Victor Wester visited the shop several times in 1972-1973 and on each occasion Wester observed that the shop was "pretty well messed up and stuff spread over the place"; that other Board members also toured the shop at night in 1972-1973 after Board meetings had been concluded and there observed that the shop was always untidy; and that Board members visited the shop on the evening of March 13, the night of Granger's hearing, at which time they again observed that the shop was unclean, that some hand tools were in bad condition, that there were open paint containers and gasoline cans stored in the shop area, and that certain equipment still had not been repaired.

20. That in deciding not to renew Granger's contract, Respondent placed primary emphasis on the condition of the shop and its equipment; that in Hollstadt's words, "the social studies certification certainly was important to the Board but I think they leaned towards the other two much more"; that Hollstadt never told Granger prior to his non-renewal that his social studies certification was improper; that Granger requested on March 14 that Respondent accord him an opportunity to secure the necessary seven credits he needed for certification in social studies; that Respondent never responded to this request; that Respondent in the past had requested special waivers from the State Department of Education so that certain teachers could teach, even though they lacked the requisite certification; and that Respondent never considered asking for a similar waiver for Granger.

21. That on or about March 20, a survey was taken of the shop equipment which showed that certain equipment was not yet repaired; that, for example, certain welding goggles did not have lenses in place; that a belt sander lacked a vacuum attachment; that several saws had poor guards; that a disc sander had exposed electrical wires; that a lathe had a broken pulley; and that several grinders lacked guards.

22. That on or about April 9, Granger informed Respondent, inter alia, that, "[I] hereby request a hearing relative to the Board's action to nonrenew [my] contract for the 1973-1974 school year."

23. That in response thereto, Hollstadt advised Granger by letter dated April 18, that:

"The Board of Education has denied your request for a hearing for as stated in a letter to you on March 5, 1973, your hearing was scheduled for and held on March 13, 1973, and you were notified of the action of the Board for non-renewal."

24. That Granger wrote Hollstadt by letter dated May 4 that:

"I received your letter of April 18th denying a hearing. I feel however that the reasons stated for nonrenewal are for violation of Article 3, Section A under responsibility. The action taken is a form of discipline and is for cause.

If the board was not satisfied with performance they should have denied an increment on the pay scale pursuant to Article 8 of the master contract.

Therefore this is to notify you that I am processing this as a grievance and am notifying the local association so they can appoint an employee representative."

25. That by letter dated May 7, Hollstadt advised Granger that:

"We are in receipt of your letter of May 4, 1973, requesting the processing of a grievance. However, it is felt that since you were granted a hearing under the Wisconsin State Statutes earlier this year, you are not entitled to a grievance procedure at this time."

26. That subsequent thereto, Respondent, at all times material hereto, has refused to process Granger's grievance regarding his non-renewal.

27. That Respondent and Complainant subsequently executed a joint stipulation on December 13 wherein they advised the Commission, inter alia, that:

"The grievance procedure of the Agreement operating between the parties provides for advisory arbitration by an independent arbitrator, or secondarily by WERC staff, as the terminal stage of that procedure.

The parties herein jointly stipulate their agreement to waive the portion of the grievance procedure concerning advisory arbitration in that they concur that no final settlement of the matter can be achieved through its' [sic] use.

The parties take this step to allow WERC, through the prohibited practices procedures, to affect a final and binding resolution of the disputed non-renewal."

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

CONCLUSIONS OF LAW

1. That Respondent did have "cause" to non-renew Granger's teaching contract, that such non-renewal was not in breach of the collective bargaining agreement and that, therefore, Respondent's action in non-renewing Granger's teaching contract was not violative of Section 111.70(3)(a)5 of the Municipal Employment Relations Act, herein MERA.

2. That Respondent's refusal to process a grievance regarding Granger's non-renewal was violative of Article 4 of the collective bargaining agreement and, therefore, violative of Section 111.70(3)(a)5 of MERA.

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

ORDER

1. IT IS ORDERED that the complaint allegation relating to Respondent's non-renewal of Granger's teaching contract be, and the same hereby is, dismissed.

2. IT IS FURTHER ORDERED that Respondent, its officers and agents, shall immediately:

- (1) Cease and desist from refusing to comply with any of the terms of the collective bargaining agreement, including Article 4 therein which provides for a grievance procedure.
- (2) Take the following affirmative action which the Examiner finds will effectuate the policies of MERA:

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 5th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Complainant alleges that Respondent lacked sufficient "cause" to non-renew Granger's teaching contract and that, as a result, Respondent's action violated Article 3 of the contract which specified that Respondent can only "discipline and discharge teachers for cause." In support therefore, Complainant in effect argues that Respondent deprived Granger of certain procedural protections in non-renewing his contract, including Respondent's failure to warn Granger of possible disciplinary action if he did not improve the conditions in the shop, as well as Respondent's supposed failure to accord Granger a requested hearing on his non-renewal. Further, Complainant contends that Granger should have been given an opportunity to obtain the proper social studies certification, particularly where, as here, Granger taught social studies at the specific request of the Respondent. Complainant asserts that in any event, non-renewal was too harsh of a disciplinary measure, and that Respondent instead should only have deprived Granger of his merit increase. Further, Complainant maintains that Respondent improperly refused to process Granger's grievance and that its refusal to do so was violative of the contractually established grievance procedure.

Respondent, on the other hand, contends that Granger was repeatedly warned to improve the shop area; that Granger refused to do so despite these warnings; and that, therefore, Respondent had sufficient cause to non-renew Granger. Respondent also contends that it accorded Granger his requested hearing over his non-renewal. As to Granger's subsequent grievance, Respondent alleges that it was not required to consider the grievance on grounds that the grievance was untimely and because, in its words, "the grievance procedure is not the proper recourse for the renewal of a teaching contract, but rather the hearing procedure under Wisconsin Statutes 111.70".

In resolving these issues, the undersigned has been presented with some conflicting testimony regarding certain material facts. 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.

With the foregoing in mind, the two complaint allegations will be discussed separately.

Granger's Non-Renewal

At the outset, it is appropriate to first discuss Complainant's allegation that Granger requested a conference and a hearing regarding his proposed non-renewal and that, despite this request, Respondent granted Granger only a conference (which was held on March 13) and that Respondent did not thereafter accord Granger his requested hearing. Contrary to Complainant's allegations, however, the record in its totality establishes that Granger did not ask for a conference and that his sole request for a hearing was granted when he met with the Board of Education on March 13. Thus, Hollstadt credibly testified that Granger never requested a conference. Further, although Granger now claims that he thought that the March 13 hearing was only a conference, Granger in fact was notified on March 5 that "a hearing is scheduled for you with the Board of Education on Tuesday, March 13" In light of that language, the record shows Granger was specifically advised that he would be granted a hearing, not a conference, on

March 13. In view of these factors, the record fails to support the claim that Respondent denied Granger a conference regarding his proposed non-renewal.

The undersigned does find, however, in agreement with Complainant, that Respondent lacked "cause" to non-renew Granger's contract because Granger lacked the requisite certification to teach social studies.

Here, the record shows that Respondent asked Granger to teach social studies at the outset of the 1972-1973 school year; that Hollstadt then knew that this area was outside of Granger's primary teaching field which was industrial arts; that both Granger and Hollstadt then believed that Granger was qualified to teach social studies; that Respondent thereafter never advised Granger that he lacked the proper qualifications in social studies; that Respondent could have obtained a special waiver for Granger to continue teaching social studies for one more year; and that Respondent refused Granger's request that he be accorded an opportunity to obtain the proper certification. In light of the above, Granger cannot be faulted in any way for the fact that he was belatedly told he lacked the proper qualifications for an area outside of his major field, and subsequently denied a reasonable opportunity to obtain them. Additionally, the record indicates, via Hollstadt's testimony, that Respondent seized upon this issue as another justification for non-renewing Granger's contract, when, in fact, its real reason for doing so was the condition of the shop and its equipment. Accordingly, based upon the foregoing, the undersigned concludes that Granger's lack of certification in social studies did not constitute sufficient "cause" to warrant Granger's non-renewal.

Left, then, is the question of whether Granger improperly maintained the shop and its equipment, the remaining grounds given by Respondent in support of its decision to non-renew. Inasmuch as these two areas are closely related, they shall be hereinafter treated as one.

As correctly noted by Complainant, there are a number of factors which mitigate against Granger's non-renewal and which tend to show that Respondent's action in this matter is subject to legitimate challenge. For example, Respondent has never provided its teachers, including Granger, with any written evaluations and it has failed to advise teachers of the criterion it utilizes in evaluating them. In the absence of such information, it is obviously somewhat difficult for teachers to know how Respondent is evaluating their work. Thus, Granger had no written evaluations to advise him that his work was unsatisfactory. Instead, he was only advised orally by Hollstadt on three separate occasions to improve the condition of the shop. At that time, Hollstadt never indicated to Granger that he would be disciplined if he did not improve the condition of the shop and its equipment. Following these conversations with Hollstadt, Granger made some attempts to carry out Hollstadt's directives. Additionally, it is noteworthy that Granger had been employed as a teacher for the past several years and that his prior work was apparently considered satisfactory by Respondent, as evidenced by the fact that Granger's prior work was rated as "good" by then Superintendent Welter. Also significant is Hollstadt's recommendation that Granger's work derelictions for the 1972-1973 school year were not sufficient to warrant non-renewal. Rather, Hollstadt recommended a much lighter form of discipline, i.e., the denial of a merit increase. Standing alone, and under other circumstances, such aforementioned factors may well tend to establish that Respondent lacked sufficient "cause" to non-renew Granger's contract.

However, the aforementioned considerations do not stand in isolation, but rather, they are counterbalanced by various other factors which support Respondent's non-renewal. Thus, although Granger received an overall favorable evaluation for his work prior to the 1972-1973 school year,

Granger admitted that Welter told him in 1971 that he should maintain the shop in better condition. As a result, he was put on specific notice that Respondent was not satisfied with this particular area of his work. More importantly, inasmuch as Hollstadt spoke to him on three separate occasions during the 1972-1973 school year, Granger also knew that Respondent's concern over this issue had continued. Indeed, Granger knew that it was a matter of great concern, since Hollstadt specifically told him in their conversation in December, 1972 that one of the Board members was "quite upset" over the condition of the shop.

This knowledge aside, Granger nonetheless repeatedly refused to exercise any initiative in properly maintaining either the shop or its equipment, until first prodded to do so by Hollstadt. As a result, Granger failed to make obvious repairs on certain electrical shop equipment which posed potential safety hazards, e.g., the absence of guards on certain saws and grinders, a broken pulley on a lathe, defective welding equipment, exposed electrical wires on a switch plate, etc. Granger also permitted hand tools to be scattered throughout the shop and, further, indiscriminately stored materials and gasoline. Additionally, Granger failed to take adequate steps to properly clean the shop, with the result being that the shop was almost always dirty and in complete disarray. When asked to explain this lack of cleanliness, Granger testified that students sometimes cleaned off table tops after the floor had been swept, and that, therefore, the floor again became dirty. Upon further questioning, Granger said that although he had directed students to first clean the table tops before the floor was to be swept, that they did not always do so because, in his words, "if you are directing youngsters, why they don't respond like troops in the regiment". Although that is obvious, the fact nonetheless remains that Granger was the teacher for such youngsters and that part of his job duties called for proper supervision when they cleaned the shop.

In light of these latter factors, it is most clear that Granger simply was not properly performing his job, despite the fact that Hollstadt, repeatedly, had told Granger to improve. For, one of the single most important duties performed by a shop teacher is teaching students on how to properly care for equipment and to ensure that the work area is as safe as possible. This is a basic lesson which shop students must carry with them in the future, long after they have completed their shop classes. As such, it is far more important than either knowing how to use a particular piece of equipment or making a given shop project. Here, by showing a complete disregard for the condition of the shop and its equipment, Granger obviously failed to provide the proper environment under which this lesson could be learned.

Since this duty goes to the very core of Granger's job as an industrial arts teacher, it follows that Granger did not have to be told that he might be disciplined if he did not improve. That is something that Granger, as a professional industrial arts teacher, either knew or should have known would happen if he did not improve the condition of the shop and its equipment, after he was repeatedly told to do so by Hollstadt. That is especially so, where, as here, the contract does not provide for such a warning, either oral or written. For, as noted in Lockheed Aircraft Corp., 28 LA 829, 831 (Hepburn, 1957) "just cause requires that employees be informed of a rule, infraction of which may result in suspension or discharge, unless conduct is so clearly wrong that specific reference is not necessary." (Emphasis supplied). Here, inasmuch as Granger's work derelictions were "so clearly wrong", Respondent was not required to specifically advise him of that fact.

Accordingly, since the proper maintenance of the shop and its equipment is so essential in the teaching of industrial arts and as Granger failed to perform this crucial job duty, and because Granger failed to immediately correct this situation when repeatedly told to do so, and inasmuch as the shop was still in poor condition on March 13, the day prior to Granger's non-renewal, the undersigned finds that on balance, and despite the existence of what would otherwise be mitigating factors, the record establishes that Respondent had "cause" to non-renew Granger's contract. In so finding, the undersigned is mindful that non-renewal is the most extreme action that Respondent could have taken under the circumstances and that Respondent had the discretion to impose a lighter disciplinary measure if it had chosen to do so. Be that as it may, the contract nonetheless does not require progressive discipline. As a result, Respondent cannot be legally required to follow such a procedure especially where, as here, Granger has failed to perform a crucial job function, despite Respondent's repeated requests that he do so. Based upon these factors, the undersigned therefore also concludes that Respondent's decision to non-renew Granger's contract was not too severe a form of discipline which violated the contractually mandated "cause" proviso.

As a result, this complaint allegation shall be dismissed.

Respondent Refusal to Process Granger's Grievance

Irrespective of whether Respondent had sufficient "cause" to non-renew his contract, Granger nonetheless had a contractual right to file a grievance over his non-renewal and to have that grievance considered by Respondent.

That right is grounded in Article 4, Section b, of the contract which provides that "a grievance is defined as any complaint regarding the interpretation or application of a specific provision of this Agreement." (Emphasis added) Here, Granger sought to grieve over the application of the "cause" provision contained in Article 3 of the contract. As such, it involved "the interpretation or application of a specific provision of this Agreement" and therefore was a valid grievance as that term is defined in the contract.

In defense of its refusal to process the grievance, Respondent claims only that: (1) the grievance was untimely filed; and (2) the instant matter is not subject to the arbitration procedure. Point (1) is without merit as the record fails to establish that the question of timeliness was initially given as a reason for not considering Granger's grievance. Accordingly, Respondent cannot now raise such a belated defense which is nothing more than a patent afterthought. As to point (2), the contract, as noted above, on its face clearly includes questions of non-renewal within its definition of a grievance.

In light of the above, the undersigned therefore finds that Respondent violated Article 4 of the contract when it refused to con-

sider Granger's grievance, and that such conduct was violative of Section 111.70(3)(a)5 of MERA. 3/

Dated at Madison, Wisconsin this 5th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Amedeo Greco
Amedeo Greco, Examiner

3/ Inasmuch as Respondent has agreed to waive the contractual provision dealing with advisory arbitration and to, instead, have the issues herein be decided on their merits in the instant forum, there is no reason to now require that Respondent consider the merits of that grievance.