STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEVE WELSH, Complainant, vs. JOINT SCHOOL DISTRICT NO. 15, BARNEVELD, WISCONSIN, Respondent.	Case II No. 17691 MP-336 Decision No. 12538-A

Appearances:
Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, appearing on behalf of Complainant.
Kramer, Nelson & Azim, Attorneys at Law, by Mr. John N. Kramer, on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Steve Welsh, an individual teacher, having filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, alleging that the Joint School District No. 15, Barneveld, Wisconsin, has committed certain prohibited practices; and the Commission, having appointed Robert M. McCormick, a member of the Commission's staff, to act as Examiner and 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 Dodgeville, Wisconsin, on June 17, 1974, 1/ before the Examiner, at the outset of which the parties stipulated to limit the scope of the hearing to the affirmative defense pleaded in Respondent's Answer; and the parties thereafter having filed briefs and were afforded extended time to file reply briefs to November 4, 1974, Complainant having filed one on October 4, 1974; 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 Steve Welsh, hereinafter referred to as Complainant, or Welsh, is an individual residing at 309 Oak Street, Mount Horeb, Wisconsin, who was employed by Respondent Joint School District No. 15, Barneveld, Wisconsin, from January 1, 1969, as a classroom teacher for the 1972-73 academic school year, until his employment was terminated at the end of his individual employment contract for the 1972-73 school year.

2. That Joint School District No. 15, Barneveld, Wisconsin, hereinafter referred to as the Respondent or District, is a public school district organized under the laws of the State of Wisconsin, and a

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1/ Unless otherwise noted, all dates hereinafter refer to 1973.

Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act (MERA); that the Board of Education of Joint School District No. 15, Barneveld, hereinafter referred to as the Board, is a public body charged under the laws of the State of Wisconsin, with the management, direction and control of said Respondent District and its affairs.

3. That the Barneveld Education Association, hereinafter the Association, is a labor organization which, at all times material herein, has been the exclusive bargaining representative of teachers employed by Respondent.

4. That the Board and the Association, though having failed to execute a collective bargaining agreement, after reaching an accord for a 1971-1972 agreement, did administer a collective bargaining agreement covering salaries, and a limited number of working conditions of teachers for the 1971-1972 school year, that said agreement contained no provision for a grievance or arbitration procedure, that said agreement included among its provisions, the following material herein:

> 15. It is understood and agreed that all rules and regulations pertaining to the complete operation of the entire Barneveld School System shall not be construed (interpreted) to protect the ineffective and/or inefficient teacher, and the Board of Education reserves the legal right to terminate the contract of any teacher for non-compliance of any one or all existing rules, regulations, and state laws.
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> . . .
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> 17. The teacher's contract(s) shall be reviewed prior to the beginning of each school year. The review shall be made in accordance with all policies approved by the Board of Education."

5. That at least from September of 1971 up to March 15, 1973, the only existing limitation, contractual or otherwise, upon the Board's authority to renew, or not to renew, the individual contract of any teacher in its employ, was the statutory requirements contained in Chapter 118.22, Wis. Stats. (1971) which provides:

> 118.22 Renewal of teacher contracts
>
> . . .
>
> (2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employe at the direction of the board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such notice is given on or before March 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year on or before March 15, shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

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

6. That the Association and the Board engaged in protracted negotiations over the period from September, 1972 at least through May 1, 1973, in an effort to reach an accord over the terms of a succeeding 1972-73 master agreement; that on February 22, during a hiatus period between viable collective agreements, the Board sent Welsh a preliminary notice that it was considering the nonrenewal of his teaching contract; that on March 13, the Board, after having followed the procedures required by Section 118.22, did in fact advise Welsh of its action not to renew his contract for the 1973-74 school year.

7. That on May 31, the Board and the Association executed a successor collective bargaining agreement for a two-year term, which included a formal grievance procedure, but made no provision for binding arbitration of unresolved grievances; that said agreement included among its terms the following material herein:

"ARTICLE V BOARD FUNCTIONS

. . .

The Board's functions shall include, but not be limited to the following:

. . .

8. The nonrenewal and discharge of teachers in accordance with the terms of this Agreement.

. . .

ARTICLE VI GRIEVANCE PROCEDURE

. . .

C. General Procedures
1. Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum. The time limits specified may, however, be extended by mutual agreement.

. . .

4. At all levels of a grievance after it has been formally presented, at least one member of the Association's grievance committee shall attend any meetings, hearing, appeals, or other proceedings required to process the grievance.

. . .

D. Initiation and Processing
1. Level One. The grievant will first discuss his grievance with his principal or immediate supervisor, either directly or with the Association's designated representative.

2. Level Two

a.) If the grievant is not satisfied with the disposition of his grievance at Level One, he may file the grievance in writing with the district administrator.

. . .

3. Level Three

a.) If the grievant is not satisfied with the disposition of his grievance at Level Two, he may file the grievance in writing with the Board within five (5) school days after a decision by the District Administrator or fifteen (15) school days after he first filed the grievance with the District Administrator, whichever is sooner.

b.) The Board will meet with the grievant and the Association representative for the purpose of resolving the grievance within ten (10) school days after receiving the written grievance, or at its next regularly scheduled board meeting.

c.) The Board shall give a written final answer within five (5) school days after the regular or special meeting at which the grievance was scheduled for consideration in compliance with (b) above.

. . .

ARTICLE XIII DISCIPLINE PROCEDURE

A. In recognition of the concept of progressive corrective action, the Board shall notify a teacher of any alledged [sic] delinquencies, indicate correction expected, and indicate a reasonable period for correction. Such notification shall be reported promptly to the offending teacher.

B. A teacher shall be entitled, upon request, to have a representative of the Association present when being reprimanded, warned or disciplined for any infraction of rules or delinquency in professional performance.

. . .

E. A teacher shall not be refused employment, dismissed, removed, discharged or suspended except for inefficiency, immorality or for willful and persistent violation of reasonable regulations of the school district or for other good cause.

ARTICLE XIV COMPENSATION

A. Salary Schedule

1. The basic salaries of teachers covered by this Agreement are set forth in Appendix A which is attached to and incorporated in this Agreement. Such salary schedule shall remain in effect during the term of this Agreement.

. . .

ARTICLE XVIII TERM OF AGREEMENT

A. This Agreement shall become effective July 1, 1972, and shall remain in effect through June 30, 1974. This Agreement

may be extended in writing by mutual consent of the parties provided that all provisions are applicable during such extension.'

8. That on October 29, Welsh filed a written grievance challenging the nonrenewal of his contract with a Principal, which was rejected by the Respondent at said level for failure to follow the grievance procedure, that subsequently the Respondent rejected Welsh's grievance at the Administrator's level, and on November 30, in a letter signed by the District Administrator, the Board advised Welsh in writing of its rejection of his grievance on substantive and procedural grounds, which letter reads in material part as follows:

"The Board of Education, Joint District No. 15, Barneveld, Wisconsin met with you at your request regarding the non-renewal of March 1973, Wednesday, November 28, 1973.

The Board's reply to your grievance is as follows:

The non-renewal proceedings were completed in compliance with Wis. Stats. 118.22 which stipulate final notification on or before March 15, in this case, of 1973. The Master Contract was not signed until May 31, 1973. Therefore the grievance proceedure [sic] contained in the Contract was not in effect at the time the non-renewal was completed, by fully complying with Wis. Stats. 118.22.

. . ."

9. That on February 26, 1974, Welsh filed a complaint of prohibited practice with the Wisconsin Employment Relations Commission, avering that the Board violated the progressive-corrective action and nonrenewal requirements of Article XIII of the 1972-74 collective bargaining agreement, by its failure to renew his individual teacher contract on March 13, 1973 and in that regard, charging a Board violation of Section 111.70(3)(a)5 of MERA.

10. That over the period from at least February 23 through March 13, the time-frame in which the Board considered and acted on Welsh's nonrenewal, the Association and the Board had made no contemporaneous bargain affecting the Board's authority to renew, or nonrenew, any teacher's contract, that in the course of the contracting parties' 1972-73 negotiations, between July 1, 1972 and May 30, 1973, the hiatus period between viable contracts, they did not agree upon a specific preservation of any, then pending, teacher complaints over matters of tenure or working conditions, which might otherwise later be treated as viable grievances under the 1972-74 collective bargaining agreement.

11. That the 1972-74 collective bargaining agreement executed on May 31, contained a general effective-date provision in Article XVIII, Term of Agreement; that said collective agreement also contained a specific time-frame, namely, the whole of the 1972-73 school year for the implementation of a salary schedule contained in Article XIV and Appendix A, that the annexed salary schedule, Appendix A, sets forth the gradation of improved salary levels for teachers, based upon service and credit attainment, to be effective for the whole school year 1972-73, as well as 1973-74; that said 1972-73 school year commenced on or near September 1, 1972; that the Board in fact paid said salary improvements for teachers retroactively to July 1, 1972, that said salary provision, with appendix, is the only contractual term contained in the 1972-74 agreement, other than the general reference in Article XVIII, which specifically provides for an effective date for a benefit, or condition, as of the beginning of the 1972-73 school year.

12. That the 1972-74 collective bargaining agreement contained several provisions governing benefits and working conditions for teachers, which were couched in language indicating immediate or future implementation of such terms from date of execution; that among such provisions were: Appendix D and Article XV, relating to a school calendar for the 1973-74 school year; teacher-preparation time, Article VII-E; duty-free lunch hour, K; Board evaluation of teachers contained in Article XII; and discipline procedure contained in Article XIII-A and B; that said clauses reflect the application of non-economic, contractually imposed, standards prospectively from May 31, 1973.

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

CONCLUSIONS OF LAW

1. That the contractual provisions relied upon by the Complainant Welsh, namely, the general retroactivity clause, setting forth July 1, 1972 in Article XVIII and the nonrenewal standards contained in Article XIII-E, as the basis for overturning the Board's nonrenewal of his contract on March 13, 1973, must be considered in the light of surrounding circumstances including other contractual provisions in order to determine whether the contracting parties intended to apply the contractually-imposed standards governing nonrenewal, retroactively, to the Board's nonrenewal of any teacher prior to May 31, 1973.

2. That when Article XVIII and Article XIII-E, are considered in light of other provisions within the "four corners of the 1972-74 collective bargaining agreement," namely, the clauses relating to calendar, preparation time, evaluation of teachers, discipline, and duty-free lunch, it becomes apparent that the contracting parties intended by such usage to apply their contractual language governing nonrenewals of teachers, Article XIII-E, only prospectively from May 31, 1973.

3. That as of March 13, 1973, there existed no viable contractual standard, such as that contained in Article XIII-E, of the 1972-74 agreement, which could have applied to the Respondent Board's act of nonrenewal of Complainant Welsh's individual-teacher contract; and that therefore, Respondent Joint School District No. 15, Barneveld, did not violate the terms of the 1972-74 collective bargaining agreement by its nonrenewal of Steve Welsh's teacher contract on March 13, 1973 and, therefore, did not commit, and is not committing, any prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the complaint of prohibited practices filed in the instant proceeding be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 25th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Robert M. McCormick, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FACTS.

The record reflects a stipulated set of facts and a stipulated issue, the latter described below and under Analysis and Conclusions.

PLEADINGS, PROCEDURE & POSITIONS.

The Complainant filed a complaint with the Commission alleging, inter alia:

". . .

3. That at all times material hereto Respondent . . . and the [Association] were parties to a certain collective bargaining agreement whose terms provided [in part] that:

. . .

'A teacher shall not be refused employment . . . removed . . . except for inefficiency, immorality or for willful and persistent violation of reasonable regulations . . . or for other good cause.'

4. Said agreement provided further in Article XVIII that its effective date shall be 'July 1, 1972' and was to 'remain in effect through June 30, 1974'.

. . .

9. That on or about March 13, 1973, Complainant received notice from Respondent that it had in fact voted . . . to nonrenew [his] teaching contract for the 1973-74 . . . school year.

10. . . . that said nonrenewal was in violation of the . . . cited provisions of said agreement."

That Complainant Welsh further alleged that Respondent, by engaging in such conduct, did violate Section 111.70(3)(a)5 of MERA, and requested inter alia, in his prayer for relief that Respondent be ordered to reinstate Complainant and offer him a teaching contract for the 1973-74 academic school year.

The Respondent District, in Answer, generally admitted the execution of a 1972-73 collective bargaining agreement on May 31, 1973; admitted the existence of the "term of agreement" clause with a July 1, 1972 effective date and admitted that said agreement contained certain standards governing Board evaluation of teachers, corrective action and nonrenewal and dismissal of teachers. However, the Board denied that any viable collective agreement was "in force and effect" at the time of Welsh's nonrenewal and alleged as an affirmative defense, inter alia:

"That the contract of . . . [Welsh] was not renewed for . . . 1973-74 as the result of procedures by the Board occurring in . . . March of 1973 . . . all . . . in compliance with Section 118.22 Wisconsin Statutes; . . . that the agreement . . . between . . . [the Board] and the . . . Association was negotiated, made and entered into subsequent to March 15, 1973, being May 31, 1973. That said agreement was by its terms retroactive . . . affect[ing] salary but . . . would not invalidate an action otherwise valid."

At outset of hearing, the parties stipulated that the Examiner should limit the scope of hearing to the threshold issue raised by the Board's affirmative defense, namely, whether the 1972-74 collective bargaining agreement executed on May 31, 1973, applied to the Board's nonrenewal of Welsh on March 13, 1973.

Complainant Welsh contends that said agreement contains language in Article XVIII which is clear and unambiguous establishing an effective date for all of its terms as of July 1, 1972. Complainant argues that said agreement provides, in specific terms in Articles XII and XIII, that the Board is to follow certain standards when evaluating its teachers and in dispensing corrective action, and that Article XIII requires that the Board only nonrenew a teacher for "good cause."

Complainant points out that the controlling contractual standard governing nonrenewal makes no exception with respect to the Board's nonrenewal of teachers' contracts on or near March 15, 1973, including that of Welsh.

Complainant cites certain authorities 2/ for the proposition that where an employer implements a salary increase retroactively by force of an adopted effective date in a labor agreement, as the Board did here when it paid salary improvement back to July 1, 1972, that such a retroactive payment manifests the plain meaning of the language in the effective date provision, namely, that all provisions are intended to be retroactive. Complainant urges that this is the thrust of Article XVIII, which term obliges the Board to apply the "good cause" standard in the nonrenewal provision to nonrenewals predating the execution date of said agreement. Complainant argues that the Board has presented no evidence of mistake, fraud or coercion here. Similarly, there is no evidence that the parties adopted any written exceptions to the retrospective application of "good cause", which might otherwise defeat retroactive application of said standard to Welsh's nonrenewal. Complainant urges that though the burden may now be distasteful to the Board, it is nonetheless bound in accordance with its clearly expressed, written commitment, to make all of its contractual obligations effective as of July 1, 1972. 3/

The Complainant further argues that Article XVIII contains a zipper clause which terms preclude the Examiner from going outside of the clear and unambiguous language as to effective date.

The Board contends that the threshold issue for determination merely involves a problem of contractual interpretation, which requires that the Examiner apply the controlling rules of contract interpretation just as would arbitrators or the courts. It urges that the language of Article XVIII is not to be examined in a vacuum as suggested by Complainant. The Board argues that the intent of the parties, reflected by their usage in the term of agreement and Dismissal clauses, must be discerned from the remaining usage within the "four corners of the agreement", considered in the light of surrounding circumstance.

The Board urges that as of February-March, 1973, there was no contractual limitation in existence which could be said to restrict the Board's statutorily regulated discretion to nonrenew any teacher. It precisely followed the nonrenewal procedures of Section 118.22. The contractual parties subsequently executed an agreement 2-1/2 months after said nonrenewal.

2/ Citing - arbitral authorities: International Metal Products, 35 LA 60 (1959 - Hayes); Birmingham Slag Co., 31 LA 320 (1958).

3/ Citing: Bostwick v. Mutual Life Insurance Co., 116 Wis. 392 (1902), Clem v. Pitts, 46 Wis. 2d 35 (1970), Hanz Trucking, Inc. v. Harris Brothers Co., 29 Wis. 2d 254 (1965) -- the latter case, the Court gave effect to the "plain meaning" of the contract language.

Welsh did not file a grievance until the following October, in contrast to the fact that the Association, proximate to May 31, did not file a grievance challenging any teacher nonrenewal made in the previous March. The Board contends that the general retroactivity clause contained in the provision relating to Term of Agreement, was intended to apply only to economic benefits. It notes that the salary schedule and appendix makes specific provision for the application of salary increments for the complete 1972-73 school year, i.e., effective July 1, 1972. The Board in fact paid salary increments retroactively to July 1. Evidence of surrounding circumstances relating to its discretion, to nonrenew by any given March 15th, makes clear that it engaged in a legal act on March 13, when it nonrenewed Welsh in accordance with the statutory proscription of Section 118.22.

The Board further requests that the Examiner take judicial notice of other "surrounding circumstances" gleaned from the apparent common experience of school board-teacher negotiations, where the economic package is generally made retroactive by just such a term of agreement provision, but where the contracting parties otherwise apply, prospectively from the execution date of an agreement, certain economic benefits impossible of retrospective application. Such an example would be an improved insurance package. Similarly, noneconomic items relating to standards of conduct controlling Board action and which relate to teacher working conditions, such as supervisory evaluation visits of teachers per school year, are implemented prospectively.

The Board urges that it becomes apparent, that as of May 31, the contracting parties did not "intend to provide for the retroactive application of this contract in a manner so that an otherwise valid nonrenewal of the Complainant . . ., fully accomplished on March 13, . . . would be invalidated by the negotiated contract . . . [of] May 31." The Respondent requests that the complaint filed herein be dismissed.

ULTIMATE FACTS AND CONCLUSIONS.

The Complainant and Board stipulated that the Examiner defer making a record with regard to the allegations in the complaint covering the claimed Board's violation of the "good cause" standard of Article XIII of the agreement, and further agreed that the threshold issue for determination could be described as follows:

> "Did the contracting parties, when executing the agreement on May 31, 1973, intend, by their adoption of an 'effective-date' provision, Article XVIII [July 1, 1972], to apply the collective bargaining agreement and the 'good cause' standard of Article XIII retroactively to the Board's action of March 13, 1973, namely, to the nonrenewal of Welsh's individual teaching contract?"

The Examiner concludes that the Board, in argument set forth in its brief, has correctly stated the axiom of contract interpretation governing courts and arbitrators interpreting labor agreements, which is favored by Wisconsin law. Whether the forum be that of a court in a Section 301 forum in the private sector, an arbitrator, or an examiner under Section 111.07 (in both the private or public sectors), where the interpretation of a labor agreement is necessary to determine whether there has been a contract violation, the arbitrator or examiner must discern the parties' intent in their contractual usage in light of the "surrounding circumstances." Some of the extrinsics which constitute elements of surrounding circumstances to be examined when interpreting labor agreements, are bargaining-table conduct and past practice under the contract, which the U. S. Supreme Court alluded to when it stated:

". . . as the practice of the industry and the shop is equally a part of the collective bargaining agreement although not expressed in it . . ." 4/

The Examiner concludes that said axiom has long been favored in Wisconsin and that arbitrators and courts have also searched for the intent of the parties (as a part of such surrounding circumstances) within the four corners of the agreement, by examining their usage in related contractual terms. 5/

Therefore, the Examiner rejects the contention of the Complainant that the language of Article XVIII, relating to effective dates (arguably to control all the terms of the agreement), must be exculpated from the remaining language of the contract and in effect, from the surrounding circumstances, and be given their common thrust under the "plain meaning" axiom. In the same vein, the Examiner rejects Complainant's contention that resort may not be had to sources outside of the plain language of Article XVIII, because of the presence of the so-called "zipper clause". 6/

The undersigned shall discern the parties' intent in light of the surrounding circumstances, including the fact of the hiatus period between viable agreements, the statutory procedures governing nonrenewals and the remaining contract usage of the parties in their collective bargaining agreement executed on May 31, 1973. Resort to such sources for discovery of the intent of the parties is in harmony with the "Archibald" proposition, "that a written instrument must be read with the eyes of those to whom it is addressed." 7/

The ultimate facts reveal that in the months of February and March, 1973, the parties were in the midst of bargaining for a 1972-74 agreement, that their predecessor agreement was to cover the 1971-72 school year and contained no formal grievance procedure and no terms otherwise limiting the Board's statutory authority to nonrenew a teacher. Section 118.22 obliged the Board: to give a teacher it planned to nonrenew, a preliminary notice in February of its intent in that regard; required it to grant the teacher a conference, and finally prescribes formal Board action to nonrenew by March 15th of a school year. The record discloses that the Board complied with all of said statutory requirements and nonrenewed Welsh's individual teaching contract for the 1973-74 school year on March 13.

Neither Welsh nor the Association filed any challenge to the Board's action proximate to the nonrenewal. Between the dates of March 13 and May 31, the latter being the date of execution of the new comprehensive master agreement, there existed no grievance procedure. Similarly, during such hiatus period, which period coincides with the date of Welsh's nonrenewal, there existed no contractual limitation upon the Board's discretion

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4/ Steel Workers v. Warrier & Gulf Navigation Company, 363 U.S. 574, 46 LRRM 2416, 2419 (1960).

5/ Cutler Hammer Inc. v. Industrial Commission, 13 Wis. 2d 618, 625 (1956), McCormick on Evidence, Section 219 (1965 ed.).

6/ Mayville Joint School Dist. No. 5, (WERC - 11186-A, B), 10/74.

7/ Cox, Reflections Upon Labor Arbitration, 72 Harv. L.R. 1482, 1515 (1959).

to nonrenew. The record further discloses no interim agreement which can be said to preserve any then existing challenges, or potential grievances of teachers, who may have been nonrenewed, dismissed or suspended in the course of the 1972-73 school year prior to the execution date of the 1972-74 agreement.

Arbitrators are also reluctant to give retrospective effect to contractual standards to apply to employer conduct, which occurred prior to the contractually imposed limitations, unless there exists a clearly expressed intent to make the non-economic aspect of a contract, i.e., governing working conditions and grievances, retroactive. 8/

The conduct of the contracting parties from July 1972 to May 31, 1973, reveals that no limiting standards, governing the Board's right to nonrenew a teacher's contract, was ever then imposed. The agreement adopted and executed on May 31, provides specifically for a general effective date of July 1, 1972, and further provides in the wage provision and appendix for retroactive wage increments back to July 1, 1972. However, in spite of the presence of the July 1 effective date in the agreement, the parties made provision for standards to govern Administration and Board conduct with respect to teacher preparation time, duty-free lunch periods, teacher evaluation, discipline of teachers and school calendar. In all of these instances the language of said controlling provisions suggest prospective implementation of the imposed contractual standards from May 31 forward, and which clauses read in material part as follows:

"ARTICLE VII WORKING CONDITIONS

. . .

E. Preparation

All teachers shall average at least one preparation period per day.

. . .

8/ For situations where a union made claim for fringe benefit improvements to be made retroactive by force of the general effective date of the contract, and where the applicable contracts, either expressly or by implication, separately treated wage improvements as being retroactive, arbitrators seldom give retroactive effect to vacation or holiday pay improvements simply on the expressed effective date of a contract, where the parties have not specifically made the holiday or vacation provision retroactive.

See: R. D. Werner Co. Inc. & Machinist Lodge #2032, 55 LA 303 (1970 - Kates), and the citations of arbitral authority therein at 55 LA 305; Reactive Metals Inc., CCH-65-2 Arb. par. #8510 (1965 - Waldron); Publishers Ass'n. of New York City, 33 LA 681 (1959 - P. Seitz); Similarly - major medical premiums held not retroactive for an eight-month period prior to execution date - Great A & P Tea Co. & Assoc. Food Distributors of New England, Local 158, 51 LA 1058 (1968 - Moran);

To the Contrary - See: International Metal Products Co., 33 LA 80 (1959 - Hayes) - medical plan held to be retroactive on basis of the general effective date clause alone, with no other evidence that contract contained specific retroactivity for wages; arbitrator gave no weight to employer's parol as to a contemporaneous oral accord, (the writer would distinguish - for the underlined factor).

A. Duty-free Lunch Hour

All teachers shall be given a duty-free lunch period at least thirty continuous minutes.

. . .

ARTICLE XII TEACHER EVALUATION

. . .

1. Periodic classroom visitations with such monitoring or observations to be conducted openly . . . 'Periodic' shall be interpreted to mean no less than three (3) . . . observations prior to 1 March of each year.

. . .

ARTICLE XIII DISCIPLINE PROCEDURE

A. In recognition of the concept of progressive corrective action, the Board shall notify a teacher of any alledged [sic] delinquencies, indicate correction expected, and indicate a reasonable period for correction. Such notification shall be reported promptly to the offending teacher.

. . .

ARTICLE XV CALENDAR

. . .

The school calendar as negotiated for the term of this Agreement shall be as set forth in Appendix C.

. . .

[Appendix C - sets forth a school calendar for 1973-74, only.]"

The clear import of the aforementioned provision calls for Board performance under the standards and limitations imposed, prospectively from May 31st. The school year 1972-73 had but a few days remaining in its term when the master contract for 1972-74 was executed. Therefore, the Examiner, upon examining the Term of Agreement provision, Article XVIII and the nonrenewal language of Article XIII, in light of the surrounding circumstances, concludes that such language is ambiguous as to possible retrospective application of the "good cause" standard to a nonrenewal perfected by the Board by March 13, 1973. The intent of the contracting parties in that regard is made clear by the import of several other noneconomic provisions, set forth supra, and by the context in which the 1972-74 negotiations were cast, namely, that the Board had only to comply with the statutory procedures in 118.22, when it decided to nonrenew a teacher's contract prior to May 30, 1973. Therefore, the Examiner concludes that the parties intended by their adoption of Article XVIII to make only certain economic items retroactive to July 1, 1972; and it is further concluded that the parties did not intend to apply the nonrenewal-good-cause standard of Article XIII to the otherwise legal act of the Board in nonrenewing Steve Welsh's teacher contract on March 13, 1973, pursuant to Wis. Stats, Section 118.22.

For the above recited Findings of Fact and Conclusions of Law, and discussion supporting same, the complaint filed herein has been dismissed.

Dated at Madison, Wisconsin, this 28th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert H. McCormick, Examiner