

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOYCE PAULSON and the NORTHWEST
UNITED EDUCATORS,

Complainants,

vs.

PRAIRIE FARM JOINT SCHOOL DISTRICT
NO. 5,

Respondent.

Case I
No. 17966 MP-364
Decision No. 12740-A

Appearances:

Mr. James T. Guckenberg, Mr. Alan Manson and Mr. Robert West,
Representatives, NUE, appearing on behalf of the Complainants.
Mr. L. R. Reinstra, Attorney at Law, appearing on behalf of the
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Joyce Paulson and the Northwest United Educators, on May 22, 1974, having filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission alleging that Prairie Farm Joint School District No. 5 has committed certain prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Thomas L. Yaeger, a member of its staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Barron, Wisconsin, on June 24, 1974, before the Examiner; and the parties thereafter having filed briefs with the final brief being received by January 30, 1975; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Northwest United Educators, hereinafter referred to as NUE, is a labor organization having its principal office at 515 North Main Street, Rice Lake, Wisconsin 54868.

2. That Prairie Farm Joint School District No. 5, hereinafter referred to as the District, is a Municipal Employer engaged in the provision of public education; that Irvin Lotz and William Vincent, hereinafter referred to as Lotz and Vincent, at all times pertinent hereto were respectively District Administrator and Elementary Principal and Assistant District Administrator for the Respondent District and, as such, are agents of the District.

3. That Joyce Paulson, hereinafter referred to as Paulson, is an individual residing at Almena, Wisconsin 54805; and that during the 1972-1973 school year Paulson was employed as a teacher by the District and is a member of the NUE.

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4. That on March 12, 1973, Lotz, by authority of Respondent District Board of Education, hereinafter Board, mailed an individual teaching contract for the 1973-74 school year to Paulson; that said contract was for the position of one-half time kindergarten and one-half time motor perceptual development teaching; that Paulson received said teaching contract on or before March 15, 1973; and that Paulson signed said contract on Sunday, April 15, 1973, and returned it to Vincent's office on Monday, April 16, 1973.

5. That upon receipt of Paulson's teaching contract on April 16, 1973, Vincent turned it over to Lotz; that Lotz attended a regular Board meeting on the evening of April 16, 1973, and notified said Board that Paulson had turned her contract in on April 16, 1973, as had another District teacher; that the Board then voted not to accept the aforesaid teaching contracts inasmuch as they had not been returned by April 15, 1973; and that subsequent to its aforesaid decision not to accept Paulson's teaching contract, the Board directed its agents, Lotz and/or Vincent, both of whom attended the Board meeting, to inform Paulson of the action taken by it with respect to her contract.

6. That on April 17, 1973, pursuant to the Board's direction, Vincent informed Paulson of the Board's decision to invalidate her teaching contract because it had not been turned in by April 15, 1973; that Vincent also told Paulson that she would have to reapply for her position if she wanted to be considered for employment the following year; and that Paulson inquired as to what procedures were to be followed in view of the Board's decision and was told by Vincent to see Lotz in that regard.

7. That on April 24, 1973, Paulson met with Lotz and was told by him that the Board had not accepted her teaching contract and that she would have to reapply if she wanted a position for the next school year.

8. That on July 2, 1973, Paulson appeared at a Board meeting to discuss her teaching contract for the 1973-74 school year; that Paulson told the Board that she had a valid contract for the 1973-74 school year; that the Board told her she would have to reapply as a new employee if she wished to continue teaching in the District and that there were positions available; and that subsequent to the aforesaid July 2, 1973 meeting with the Board, Paulson did not and has not reapplied for a teaching position with the District.

9. That on August 21, 1973, an in-service meeting was held for all District teachers and presided over by Lotz; that Paulson was in attendance at the aforesaid meeting; that in response to an inquiry by a teacher present at said meeting as to why Paulson had not been introduced, Lotz said she was no longer employed by the District; that at the conclusion of the aforesaid in-service meeting, Vincent, who also attended the meeting, told Paulson that she need not report to the elementary school inasmuch as she did not have a teaching position with the District.

10. That on or about August 22, 1973, Paulson spoke with Mr. Henney, a teacher employed by the District, about her predicament; that as a result of said conversation, Paulson contacted James Guckenberg, Executive Director of NUE, and explained to him that she was told not to report to the elementary school; that Guckenberg told Paulson the NUE would look into her case further and that negotiations were still in progress with the District on a collective bargaining agreement for the 1973-74 school year; that there had not been a collective bargaining agreement with teachers employed by the District for the 1972-73 school year; and that between August 22, 1973 and October 29, 1973, the date

on which agreement between the District and the Association was reached, the parties to said agreement made no provision during the course of bargaining to protect teacher tenure for the period from July 1, 1973 through October 29, 1973.

11. That the next contact Paulson had with the NUE about her case was on October 1, 1973, when, in response to Mr. Guckenberg's prior request, she sent the following letter addressed to him:

"Dear Mr. Guckenberg:

I wish to have the N.U.E. Represent me in the case of my 1973-74 teaching contract with the Prairie Farm School board."

12. That on or about October 29, 1973, negotiations between the NUE and the District resulted in a collective bargaining agreement for teachers, for 1973-74; that said collective bargaining agreement was signed in late November 1973, and contained the following provisions relevant herein:

"ARTICLE I

RECOGNITION

The Board acting for said District recognizes 'NUE' as the exclusive and sole bargaining representative for all certified teachers of the District engaged in teaching, including classroom teachers, librarians, (all hereinafter referred to as 'teachers') whether under contract, on leave, employed or to be employed by the District.

. . .

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.

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. Days shall mean school days.

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 principal.

b. If the matter is not resolved, the grievance shall be presented in writing by the teacher to his principal within five days after the facts upon which the grievance is based first occur or first become known. The principal shall give his written answer within five 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 days be appealed to the Superintendent of Schools. The Superintendent shall give a written answer no later than ten days after receipt of the appeal.

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

. . .

ARTICLE VI

RENEWAL OF CONTRACTS AND DISCHARGE

A. The Board will give written notice of termination or non-renewal of teacher contracts for the ensuing year on or before March 15. The teacher must accept or reject the contract in writing no later than April 15.

B. Teachers who are not to be retained will be notified in writing on or before February 28.

C. Contracts cannot be terminated without mutual consent during the period for which they are written.

D. No teacher shall be discharged, nonrenewed, suspended or reduced in compensation without cause. All information forming a basis for discharge, nonrenewal, suspension or reduction in pay shall be made available to the teacher.

. . .

ARTICLE XIV

COMPENSATION

A. Placement on salary schedules (Appendix A) shall be in accordance with teachers [sic] years of experience and highest degree earned. Salary adjustments will be made annually on September 15.

. . .

ARTICLE XVI

DURATION

The provisions of this Agreement will be effective as of the 1st day of July, 1973, and shall continue and remain in full force and effect as binding on the parties until the 30th day of June, 1974. This Agreement shall not be extended orally and it is expressly understood that it shall expire on the date indicated.

. . .

APPENDIX A

. . .

GENERAL PROVISIONS

1. This is a 189 day schedule including 180 teaching days.

. . ."

13. That on or about the last week of January, 1974, Guckenberg became aware that Paulson had not received a copy of the 1973-74 collective bargaining agreement negotiated between the NUE and the District and thereupon made arrangements for a copy of said agreement to be given to her; that Paulson received a copy of said agreement on February 2, 1974; that upon receipt of said agreement Paulson contacted Guckenberg and together they reviewed the steps of the grievance procedure provided for in said agreement; that this was the first contact Paulson had with the NUE since her October 1, 1973 letter to Guckenberg; that on February 14, 1974, subsequent to the aforesaid discussion with Guckenberg, Paulson contacted Vincent to arrange for an informal conference concerning her 1973-74 teaching contract; and that Vincent told Paulson he would have to seek legal advice before he could reply to her request.

14. That on February 7, 1974, Paulson authorized the NUE to file the following grievance with Respondent District:

"STATEMENT OF GRIEVANCE: I received a contract for teaching at Prairie Farm for the 1973-74 school year. I signed and returned the contract on April 16 because April 15 fell on a Sunday in 1973. I reported to work on the first day of the 1973-74 school year and was told I did not have a job. This action, on the part of the Board of Education, is in violation of the Master Agreement between NUE and the Board for the term of July 1, 1973 to June 30, 1974. The action of the Board specifically violates, Article VI, Sections B, C, & D.

ACTION REQUESTED: I request that I be reinstated as a teacher at Prairie Farm with full rights and privileges retroactive to the first day of the 1973-74 school year including salary and fringe benefits."

that by letter dated February 7, 1974, Guckenberg advised Vincent:

"On Monday, February 4 at 4:30 p.m., Ms. Joyce Paulson requested a private conference with you regarding her employment status.

Her request was in accordance with Article IV, Grievance Procedure, C. Step 1. a. of the Master Agreement between the Prairie Farm Board of Education and Northwest United Educators which states as follows:

'An earnest effort shall first be made to settle the matter informally between the teacher and his principal.'

Since you have not attempted to meet with Ms. Paulson, we are now submitting the grievance in writing to you."

15. That by letter dated February 12, 1974, Respondent's attorney answered Paulson's aforesaid grievance:

As you may be aware, the contract became [sic] into existence last fall and became effective as of October 29, 1973.

It is my understanding that your contract was not renewed because you failed to timely file an application for renewal. Because you failed to renew your contract, a replacement was hired. However, a full time teaching position in a Title I program for motor perception development was available and you were invited to apply in early July, 1973. This position was held open until August 21, 1973. In spite of this, you failed to file an application for this job. As a result, you were not an employee at the time the employment contract became effective and, therefore, you do not qualify to file a grievance under the procedures set forth in that contract.

Thank you."

16. That by letter dated February 18, 1974, Paulson advised Lotz:

"I am not satisfied with the disposition of the grievance in step one. Therefore I am appealing the matter to you."

17. That by letter dated March 25, 1974, Respondent's attorney advised Paulson:

"The Prairie Farm School Board has requested that I respond to your letter of March 11, 1974 in which you enclose a copy of a complaint. As I had indicated in a previous letter which I had forwarded to you dated March 4, 1974, the grievance procedure set forth in the NUE agreement concerns proceedings for resolving difference arising during the term of the agreement. It would appear that any complaint which you had arose out of an incident which occurred prior to the effective date of this agreement and, therefore, is not a proper matter to be considered under the grievance procedure.

In that same letter I further explained the basic position of the School Board that since you were not an employee on the effective date of the agreement, you are not entitled to benefits under the agreement, including the use of grievance procedures.

Your most recent letter indicates that you had given authority for another person to sign the grievance in your behalf. Please forward the power of attorney or other written authorization which you had granted in regard to any person signing the grievance in your behalf.

On behalf of the School Board I again reiterate that the reasons set forth in a letter dated March 4, 1974 and reiterated in this letter, your complaint is hereby denied."

18. That after the grievance had been processed in accordance with the grievance procedure of the collective bargaining agreement set out above, the complaint herein was filed.

19. That the 1973-74 collective bargaining agreement, in addition to the general retroactivity language appearing in Article XVI, provides for specific retroactivity in the case of the 189 day schedule provided for in Appendix A, and the annual salary adjustments to be made on September 15, as provided for in Article XIV; that none of the remaining contractual provisions provide for specific retroactivity; and, that

Article VI (D) wherein it provides "shall be discharged" implies an element of futurity and reflects the intent that non-economic standards be applied prospectively.

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

CONCLUSIONS OF LAW

1. That Joyce Paulson and the Northwest United Educators are proper parties in interest in the instant proceeding.
2. That the complaint is not barred by the one-year statute of limitations provided for in Section 111.07(14), Wisconsin Statutes.
3. That the District did process Paulson's grievance as provided for in the collective bargaining agreement and, therefore, has not committed and is not committing a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.
4. That Article VI of the collective bargaining agreement set out above is not to be applied retroactively to conduct that antedates the consummation of said collective bargaining agreement.
5. That, by refusing to let the Complainant Paulson report to the elementary school on August 21, 1973, the Respondent District has not violated the provisions of Article VI of the collective bargaining agreement set out above and, therefore, has not committed and is not committing a 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 in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 30th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pleadings and Procedure

On May 22, 1974, Joyce Paulson and the Northwest United Educators jointly filed a complaint with the Wisconsin Employment Relations Commission alleging that the Prairie Farm Joint School District violated the collective bargaining agreement between the District and the Union on August 21, 1973 by terminating Joyce Paulson's employment. Complainants alleged further that the District also violated the collective bargaining agreement by refusing to allow Joyce Paulson to grieve her termination.

The Respondent filed an answer on June 11, 1974, wherein it admitted the existence of the collective bargaining agreement with the Union, but alleged that Joyce Paulson was not an employee during the time the collective bargaining agreement was in effect inasmuch as she failed to return her teaching contract for the 1973-1974 school year in a timely fashion and, therefore, she did not have standing to invoke the grievance procedure. The Respondent also affirmatively pleads that the Commission is without jurisdiction because more than one year has elapsed since the District refused to accept Joyce Paulson's teaching contract and it is this action by the District and not the actions on August 21, 1973 that form the basis for the complaint.

A hearing was held in the matter on June 17, 1974, at Barron, Wisconsin. The Examiner received his copy of the stenographic transcript made herein on July 31, 1974. The parties had agreed at the time of hearing that briefs would be filed within 30 days of receipt of transcript with reply briefs to be filed after exchange of the aforesaid briefs. By October 21, 1974, no briefs had been received by the Examiner and he inquired of the parties with respect to their intentions in this regard. The Examiner received the Complainant's brief on October 24, 1974. Respondent lettered the Examiner on November 4, 1974, and said it intended to file a brief within 15 days, however, Respondent's brief was not received until January 31, 1975.

Jurisdiction

The Respondent claims the Commission is without jurisdiction because more than one year elapsed from the District's refusal to accept Joyce Paulson's 1973-74 teaching contract on April 16, 1973, and filing of the complaint herein on May 22, 1974. Section 111.70 (4)(a) of the Municipal Employment Relations Act (MERA) provides:

"Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter except that wherever the term 'unfair labor practices' appears in s. 111.07 the term 'prohibited practices' shall be substituted."

Section 111.07(14) provides:

"The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged."

Section 893.48, Wisconsin Statutes provides:

"The periods of limitation, unless otherwise specifically prescribed by law, must be computed from the time of the accruing of the right to relief by action, special proceedings,

defense or otherwise, as the case requires, to the time when the claim to that relief is actually interposed by the party as a plaintiff . . ."

The Commission has previously held that where a collective bargaining agreement provides procedures for the voluntary settlement of disputes arising thereunder it will not entertain a complaint, on the merits, that either of the parties has violated said agreement before the parties have exhausted said voluntary procedures for resolving disputes. 1/ In effectuating this policy the Commission has concluded that a cause of action involving an alleged violation of contract does not arise until the grievance procedure has been exhausted and, the one-year period of limitation for the filing of a complaint is computed from the date when the grievance procedure was exhausted, provided the Complainant has not unduly delayed the grievance procedure. 2/

The evidence establishes that Paulson authorized the NUE to file a grievance on her behalf with the District concerning her 1973-74 teaching contract and said grievance was filed on February 7, 1974. The District answered the grievance in writing at Step 1(b) on February 12, 1974, wherein it denied the grievance. On February 18, 1974, the grievant Paulson appealed the grievance to step 2 of the procedure. On March 4, 1974, the District filed its written answer to the grievance at step 2, wherein it denied the grievance. On March 11, 1974, Paulson appealed her grievance to the third and final step of the grievance procedure and on March 25, 1974, the District filed its written answer denying the grievance.

The grievance procedure was exhausted when the District gave its written answer to the grievance, at the third and final step of said procedure, on March 25, 1974. The complaint was filed on May 22, 1974, well within the one-year period of limitation provided for in Section 111.07(14), Wisconsin Statutes. Therefore, the Commission does have jurisdiction to hear and decide the complaint filed herein.

Violation of Article VI - Grievance Procedure

The grievance filed on February 7, 1974 stated:

"STATEMENT OF GRIEVANCE: I received a contract for teaching at Prairie Farm for the 1973-74 school year. I sign and returned the contract on April 16 because April 15 fell on a Sunday in 1973. I reported to work on the first day of the 1973-74 school year and was told I did not have a job. This action, on the part of the Board of Education, is in violation of the Master Agreement between NUE and the Board for the term of July 1, 1973 to June 30, 1974. The action of the Board specifically violates, Article VI, Sections B, C, & D.

ACTION REQUESTED: I request that I be reinstated as a teacher at Prairie Farm with full rights and privileges retroactive to the first day of the 1973-74 school year including salary and fringe benefits."

1/ Harley-Davidson Motor Co., (7166) 6/65; Appleton Memorial Hospital, (14964) 11/71.

2/ Ibid.

On February 12, 1974, the District filed a written response to the grievance at step 1(b) wherein it said that Paulson had not returned her teaching contract within the time provided and thereafter did not reapply. Consequently, the District concluded she was not an employee of the District on July 1, 1974, the effective date of the 1973-74 collective bargaining agreement and, therefore, not eligible to file a grievance. On February 18, 1974, Paulson appealed the grievance to step 2 of the grievance procedure and the District responded in writing on March 4, 1974. The District's answer at step 2 denied the grievance for substantially the same reasons as were given in its answer at step 1(b) of the grievance procedure. Then, on March 11, 1974, Paulson appealed her grievance to the third and final step and on March 25, 1974, the District's written answer denied the grievance for the reasons given in earlier answers.

On the basis of the above, there can be no doubt that Paulson's grievance was processed through each step of the grievance procedure with the District giving its written response thereto at each step as required by the collective bargaining agreement. The District's answer to the grievance, wherein it claims that Paulson was not entitled to file a grievance, is not tantamount to refusing to process the grievance but, rather, raises an affirmative procedural defense to the grievance. The grievance was appealed through each step of the procedure and answered by the District at each step. The District, by answering the grievance at each step, complied with the provisions of Article VI of the contract and, thus, was not in violation thereof.

Termination

Complainant Paulson was proffered a 1973-74 teaching contract by the District on March 15, 1973. She signed said contract and returned it to the District on Monday, April 16, 1973. At a District School Board meeting on April 16, 1973, the Board voted not to accept the contract because it believed Section 118.22(2), Wisconsin Statutes required said contract to be accepted by Paulson on or before April 15, 1973. Section 118.22(2) states:

" . . . 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. . . ."

Subsequent to the Board's refusal to accept Paulson's teaching contract she was so notified by her elementary principal on April 17, 1973. Then, pursuant to her request, the Board met with Paulson on July 2, 1973, to discuss her 1973-74 teaching contract. At that meeting the Board told her she would have to reapply if she wished to teach in the District for the 1973-74 school year. Paulson insisted and continues to insist that she had a valid teaching contract for the 1973-74 school year and, consequently, did not and has not reapplied for a teaching position with the District.

The first in-service day for teachers for the 1973-74 school year was held on August 21, 1973. Paulson was in attendance for the general meeting but was not introduced. After the meeting broke up and teachers were to report to their schools, Paulson was informed by Vincent the elementary school principal, that she need not report to the school as she was no longer an employee of the District.

Complainants allege that, inasmuch as Paulson had a valid teaching contract for the 1973-74 school year, the District discharged Paulson by its refusal to permit her to report to her school on August 21, 1973. Complainants argue that Paulson returned her contract on time and in compliance with Section 118.22(2), Wisconsin Statutes by virtue of the fact that April 15, 1973, fell on Sunday and Section 990.001(b), Wisconsin Statutes, excused performance until April 16, 1973, the Monday following.

Section 990.001(b) provides.

If the last day within which an act is to be done or proceeding had or taken falls on a Sunday or legal holiday that act may be done or the proceeding had or taken on the next secular day."

Therefore, Complainants conclude, that because no reason other than that she was not an employee of the District was given for not allowing her to report to school, the discharge of Paulson was without cause and in violation of Article VI of the 1973-74 collective bargaining agreement requiring that discharges be for cause.

The District's defense to the claimed violation of contract is that on April 16, 1973, by virtue of Paulson's untimely acceptance of her 1973-74 teaching contract, she could not be considered an employee of the District for the 1973-74 school year. Thus, when her 1972-73 teaching contract expired she was no longer an employee of the District, and that said expiration occurred prior to July 1, 1973, the effective date of the collective bargaining agreement. Therefore, Respondent concludes Paulson was not protected by the 1973-74 collective bargaining agreement.

The Union's case, viewed in the most favorable light, is that Paulson had a valid 1973-74 teaching contract, and her discharge was without cause. Assuming, arguendo, this to be true, the Examiner finds no basis for concluding there was a violation of the 1973-74 collective bargaining agreement.

A critical issue presented herein, which neither Complainant nor Respondent dealt with in their presentations, concerns the effect of the general retroactivity clause contained in Article XVI of the collective bargaining agreement. Generally speaking, contracts are antedated for the purpose of retroactive implementation of wage increases and other economic items capable of such treatment. However, with respect to many of the noneconomic provisions of a labor agreement it is not feasible to turn back the clock and undo what was otherwise properly done. This is particularly true where the parties' prior actions were in accordance with a then existing standard of conduct.

A careful review of the subject collective bargaining agreement reveals that, notwithstanding the general statement concerning retroactivity contained in Article XVI the parties specifically set forth a salary schedule providing for a 189-day work schedule. Furthermore, in Article XVI dealing with compensation, the parties provided for salary adjustments to be made on September 15, whereas said adjustments would have otherwise occurred sometime after October 29, 1973. However, there is no specific reference to retroactivity in Article VI(D) dealing with discharge. Indeed, Article VI(D) provides "no teacher shall be discharged . . ." and although "shall" denotes an obligation, it also implies an element of futurity. (Emphasis added) Thus, the Examiner concludes that Article VI(D) of the collective bargaining agreement should be given only prospective application in the absence of specific language to the contrary.

Just as significant, however, is the absurd result that would occur if all of the noneconomic provisions of the collective bargaining agreement were treated as though they were retroactive from

October 29, 1973 to July 1, 1973. The Union would have us believe that Paulson was discharged on August 21, 1973, without cause and in violation of Article VI of the agreement. Assuming, arguendo, that to be true, in order for her to obtain any relief under the collective bargaining agreement Article IV would require that Paulson have submitted a grievance in writing to her principal five days after August 21, 1973, when she allegedly first became aware of her alleged discharge. Inasmuch as there was no grievance procedure in existence, and just as the District would have had no reason to believe there was any "cause" standard to be complied with in discharging Paulson, she would have no reason to believe there was a grievance procedure that allowed her to challenge the District's actions. Thus, both parties' actions can be explained in light of the conditions existing when they acted.


Therefore, it would be an unreasonable construction to now find that the parties intended the standard of "cause" to be applied retroactively to action taken by the District during the period July 1, 1973 through October 29, 1973, lacking clear and unmistakeable evidence of such intent appearing in Article VI(D). Furthermore, were the Examiner to have concluded that the "cause" standard should be applied retroactively on the basis of the general retroactivity language appearing in Article XVI, then there would be no basis for excusing the filing of a grievance by Paulson within five days of August 21, 1973. The record establishes that her grievance was not filed until February 4, 1974.

Concerning the issue of whether Paulson had a valid teaching contract for the 1973-74 school year, the Commission has no jurisdiction to enforce the provisions of Section 118.22 Wisconsin Statutes and ought not to interpret or apply said provisions unless it is necessary to the determination of an issue properly before the Commission. Inasmuch as the Examiner had concluded that even if Paulson had a valid 1973-74 teaching contract, the District's action did not violate the 1973-74 collective bargaining agreement, and, therefore, it is unnecessary to interpret and apply the provisions of Section 118.22 to determine the validity of said 1973-74 teaching contract.

Based on the above and foregoing analysis, the Examiner has concluded that the "cause" standard of the collective bargaining agreement is to be applied prospectively and, therefore, Respondent could not have violated said agreement by its actions of August 21, 1974. The complaint filed herein has therefore been dismissed.

Dated at Madison, Wisconsin this 30th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner