

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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|--|---|----------------------|
| GAIL ANDERSEN, MARJORIE BIERBRAUER, | : | |
| ALICE EARLY, JENNIFER HASKINS, BETH | : | |
| HAWKINS, MARGARET KITZE, ROSEMARY LYNCH, | : | |
| ELEONORE RICHARDS, JANE SCHOBERT, JOAN | : | |
| SVEEN and the RIVER FALLS EDUCATION | : | |
| ASSOCIATION, | : | Case II |
| | : | No. 17983 MP-367 |
| Complainants, | : | Decision No. 12754-D |
| | : | |
| vs. | : | |
| | : | |
| JOINT SCHOOL DISTRICT NO. 1, CITY OF | : | |
| RIVER FALLS, ET. AL., and PAUL W. | : | |
| PROESCHOLDT, | : | |
| | : | |
| Respondents. | : | |
| | : | |

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOLLOWING HEARING ON COMPLIANCE

On April 23, 1975 Examiner Marvin L. Schurke issued his Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled matter wherein he found, inter alia, that the above-named Respondents had committed a number of prohibited practices within the meaning of Section 111.70(a)(3) and 1 of the Municipal Employment Relations Act and wherein he ordered the Respondents to cease and desist therefrom and to take certain affirmative action with respect thereto. On March 26, 1976, the Commission affirmed the decision of Examiner Schurke and directed the Respondents to notify the Commission as to what steps they had taken to comply with its order. On May 25, 1976 the Respondents notified the Commission with regard to the steps they had taken during the pendency of the instant matter to comply with the intent of the Commission's order. On June 7, 1976 the Complainants, by their counsel, advised the Commission in writing that they disputed whether a number of the actions allegedly taken by the Respondents constituted compliance with the intent of the Commission's order. Respondents thereafter advised the Commission in writing that if the actions taken were not deemed compliance with the order and enforcement proceedings were instituted, it would contest the validity of the Commission's decision. Thereafter, enforcement proceedings were instituted by the Commission. On September 20, 1977, the Honorable John G. Bartholomew, Circuit Judge for the Pierce County Circuit Court, issued a memorandum decision wherein he affirmed and enforced the decision of the Commission but indicated his intent to remand the matter to the Commission for the purpose of reviewing its order with respect to the individual Complainants involved as to their employment following the hearing before the Examiner. On January 3, 1978, the Court entered its Order and Judgment. No appeal of the Court's order and judgment was taken. The Court on May 24, 1978, returned the record to the Commission for further proceedings consistent with its order and judgment. Hearing on said matter was conducted on July 12 and 13, 1978 at Hudson, Wisconsin before Examiner Amedeo Greco, a member of the Commission's staff. The parties thereafter filed briefs which were received by October 10, 1978. The Commission 1/ having

1/ The parties notified the Commission in writing that they had no objection to the Commission issuing the initial decisions herein, based on the record before the Examiner.

been advised of the premises, hereby issues its Supplemental Findings of Fact, Conclusions of Law and Order Following Hearing on Compliance.

SUPPLEMENTAL FINDINGS OF FACT

1. Following the conclusion of the hearing before Examiner Schurke, the District has never tendered part-time reading teacher Gail Andersen an 80% teaching contract. Instead, the District for the 1974-1975 school year tendered Andersen a 50% teaching contract. It has continued to tender, and Andersen has accepted, a 50% teaching contract for the subsequent 1975-1976, 1976-1977, 1977-1978, and 1978-1979 school years. During those years, Andersen was able and willing to teach on an 80% teaching contract basis. The District has not proven that it had a legitimate business justification for not giving Andersen an 80% teaching contract for any of those years. In addition, the District throughout that time had work available for Andersen. The monetary difference represented by a 50% teaching contract versus an 80% teaching contract from the 1974-1975 school year to and including the present 1978-1979 school year is \$18,402.66.

2. Following the close of the hearing before Examiner Schurke, the District has never offered part-time reading teacher Eleonore Richards a 60% teaching contract. Richards did not teach for the District for the 1974-1975 school year, or any any year thereafter. Richards apparently was unable to teach following the termination of the 1974-1975 school year and, as a result, she is not seeking any backpay for any year other than the 1974-1975 school year. Richards would have accepted a 60% teaching contract for the 1974-1975 school year, had it been offered. During said school year, the District had work available for Richards. The monetary total represented by a 60% teaching contract for Richards for the 1974-1975 school year is \$6,614.58.

3. The District offered part-time educable mentally retarded teacher Alice Early a 50% teaching contract for the 1974-1975 school year. During said year, Early taught seven students and was scheduled to teach four hours, which was half the normal number of hours expected of a full-time teacher. During the 1973-1974 school year, Early was under a 50% teaching contract. During that school year, five students were originally enrolled in her classes, but only four students actually attended her classes. At the outset of the 1973-1974 school year, then Superintendent of Schools Paul Proescholdt advised Early that in the following year, when there would be more students in her class, her position would increase in relation to the increase in the enrollment. In January, 1974, Proescholdt reiterated to Early that her contract percentage would increase if the enrollment in her classes increased. Had the District offered Early a 1974-1975 teaching contract based on the increase in her student enrollment, she would have received a 70% teaching contract. The District has offered no legitimate business justification as to why it did not increase the amounts of Early's teaching contract during the 1974-1975 school year. The difference between Early's 50% teaching contract and a 70% teaching contract is \$1,716.75. Since the 1975-1976 school year, Early has taught on a full-time basis and she has received a full-time contract. As a result, she is not seeking any backpay following the 1974-1975 school year.

4. During the 1974-1975 school year, the District cut back part-time speech teacher Margaret Kitze from a 75% teaching contract to a 50% teaching contract. It did so because it then discovered that Kitze was erroneously listed for teaching ten teaching modules, when in fact she was only teaching eight modules per day. The District at that time also discovered that it had accorded Kitze too much preparation and conference time vis-a-vis its full-time teachers.

The District has tendered Kitze a 50% teaching contract from the 1974-1975 school year to the present. Throughout that time, Kitze has continued to teach on a half-time basis. The record establishes that the District had a legitimate business justification for cutting back on Kitze's contract percentage.

Based upon the above Supplemental Findings of Fact, the Commission makes and enters the following

CONCLUSIONS OF LAW

1. The District has failed to comply with the terms of the original order herein by refusing to tender Gail Andersen an 80% teaching contract for any of the years in question.
2. The District has failed to comply with the terms of the original order herein by refusing to tender Eleonore Richards a 60% teaching contract for the 1974-1975 school year.
3. The District has failed to comply with the terms of the original order herein by refusing to tender Alice Early a 70% teaching contract for the 1974-1975 school year.
4. The District has not failed to comply with the terms of the original order herein by refusing to tender Margaret Kitze a 75% teaching contract during any of the years herein.

Based upon the above Supplemental Findings of Fact and Conclusions of Law, the Commission makes and enters the following

ORDER

IT IS ORDERED that Joint School District No. 1, City of River Falls, et. al., its officers and agents, shall immediately:

1. Cease and desist from refusing to tender Gail Andersen an 80% teaching contract.
2. Take the following affirmative action which the Commission finds will effectuate the policies of the Wisconsin Employment Relations Act:
 - a. Immediately offer to Gail Andersen an 80% teaching contract.
 - b. Pay to Gail Andersen the amount of money that she would have received had the District offered to her an 80% teaching contract for the 1974-1975 school year up to and including the 1978-1979 school year. Said sum totals \$18,402.66.
 - c. Pay to Eleonore Richards the amount of money that she would have received had the District offered to her a 60% teaching contract for the 1974-1975 school year. Said sum totals \$6,614.58.
 - d. Pay to Alice Early the amount of money that she would have received had the District offered to her a 70% teaching contract for the 1974-1975 school year. Said sum totals \$1,716.75.

3. 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.

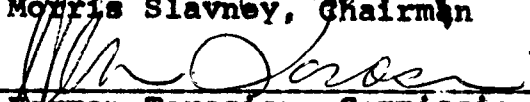
Given under our hands and seal at the City of Madison, Wisconsin this 17th day of January, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING SUPPLEMENTAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER FOLLOWING HEARING ON COMPLIANCE

The Association contends that the District has failed to comply with the Commission's remedial Order regarding teachers Andersen, Richards, Early and Kitzke. 2/ More particularly, the Association asserts that the District improperly refused to tender Andersen an 80% teaching contract, as it was required to do under the Commission's original order. It therefore asks for the monetary difference between Andersen's 50% teaching contract and the sum she would have received had she been offered an 80% teaching contract. Since Andersen has continued to work for the District on a 50% basis up to the time of the hearing, the Association asks for such backpay from the time of the 1974-1975 school year up to the present. As to Richards, the Association's backpay claim is limited to the 1974-1975 school year. Since Richards did not work that school year, the Association is requesting the monetary sum that Richards would have earned had she been tendered a 60% contract for that year. With respect to Early, the Association asserts that she should have been awarded a 100% contract in 1974-1975 on the ground that she was teaching a full complement of students. The Association also asserts that the District improperly reduced Kitzke's teaching contract from 75% to 50% and that, therefore, the District is obligated to pay Kitzke the monetary difference between a 75% and a 50% contract from the time of the 1974-1975 school year up to the present.

The District, on the other hand, asserts that it has complied with the Commission's earlier order in all respects. As to Andersen and Richards, the District contends that in fact they were never offered 80% and 60% teaching contracts for the 1974-1975 school year and that, as a result, the District was never obligated to offer them said contract percentages for that year. In this connection, the District asserts that part-time work based on these percentages was not available since the District had decided to create one full-time and one half-time position for the 1974-1975 school year. As to Early and Kitzke, the District maintains that the original order did not mandate a specific contract percentage for them and that the District subsequently had legitimate business reason for not offering Early a 100% contract in 1974-1975 and that said business reasons also justified its failure to award Kitzke a 75% contract from 1974 to the present. The District also argues that the Commission's order was limited to the 1974-1975 school year and that it had no effect on Complainants for the years subsequent thereto.

With respect to this last point, the Commission finds that the entry of its original order herein clearly contemplated restoration of the status quo ante which would have continued to exist, but for the District's unlawful discriminatory conduct. Accordingly, the District was required to take the affirmative action noted in the order so as to restore the status quo ante. There is nothing in said order, however, which states that its remedial provisions are limited only to the 1974-1975 school year. Indeed, since Examiner Schurke's decision was dated April 23, 1975, at a time when the 1974-1975 school year was almost completed, it should be clear to all that the remedial

2/ The Association at the hearing stated that the District does not owe part-time teacher Beth Hawkins any backpay and that her status is not in issue. As a result, and because the record shows that Hawkins is not entitled to any backpay, the Commission has not addressed itself to the status of Hawkins.

action ordered therein would not necessarily be limited to the almost completed 1974-1975 school year. Accordingly, the District was required to restore the status quo ante and to continue it in effect until such time as legitimate, non-discriminatory business considerations dictated otherwise.

In fact, the record herein discloses that some such business considerations warranted some of the District's subsequent actions. As a result, the Commission, for the reasons noted below, has concluded that such actions are proper. On the other hand, the record also discloses that the District has not complied with other parts of the original remedial order, thereby perpetuating the discrimination it initially levied against said teachers in the 1973-1974 school year. Since the District had been under a continuing duty to restore the status quo ante by taking certain affirmative action to remedy said discrimination, it therefore follows that the District has continued to discriminate against its employees if remedial such action has not been taken.

Turning now to the specifics herein, the District acknowledges that it has not offered Andersen an 80% teaching contract, despite the fact that it was ordered to do so in Examiner Schurke's original order. As a defense, the District asserts in its brief that there is "absolutely no evidence before the Commission that a firm decision was ever made by the School District to award Gail Andersen an 80% contract for 1974-1975."

This contention is without merit. Thus, in his accompanying memorandum, Examiner Schurke found that "supervisory personnel of the School District took action to arrange with Andersen, and place her in the proposed schedule for an increase of her contract to 80%." Going on, Examiner Schurke also found that "The hiring of a full-time teacher to replace her is viewed merely as the vehicle by which the pretextual discharge was to be accomplished." To rectify said discriminatory conduct, the Examiner ordered the District to immediately offer Andersen an 80% teaching contract, and to make her "whole for any loss of benefits or pay she may have suffered by reason of the discrimination against her." Thereafter, the Commission on March 26, 1976 issued an "Order Affirming Examiner's Findings of Fact, Conclusions of Law and Order", wherein it adopted Examiner Schurke's Order in its entirety, including that part of Examiner Schurke's order which ordered immediate reinstatement of Andersen to an 80% teaching contract. Thereafter, Judge Bartholomew of the Circuit Court of Pierce County on January 3, 1978, issued an "Order and Judgment" wherein he held that the Commission's Findings of Fact and Conclusions of Law were correct and that said matter was thereby confirmed. Judge Bartholomew went on to add that the matter should be

"remanded to the commission for the purpose of reviewing its order as to the individuals involved as to their employment following the hearing, and to make amendments thereto if necessary to effectuate the purposes of the Municipal Employment Relations Act. . . ." (emphasis supplied.)

Judge Bartholomew also added that, but for any such possible matters pertaining to the remand, the "present order and judgment of the court to otherwise be deemed final." By virtue of the underlined phrase noted above, it is clear that the instant remand was to be limited solely to post-hearing facts, and that all other respects of the Commission's order were affirmed in their entirety, including the Examiner Schurke's conclusion that the District had initially offered Anderson an 80% teaching contract and his concomitant order that Andersen be offered an 80% teaching position. That that was so is reflected by Judge Bartholomew's accompanying "Memorandum Opinion" wherein he noted that:

"the record supports the inferences drawn by the examiner, as well as his findings of fact, conclusions of law and resulting order."

In light of the above, it is therefore clear that Examiner Schurke's order was affirmed by both the Commission and the Court. As a result, the District is now precluded from relitigating facts which occurred before the original hearing, as the Examiner's findings with respect to said facts are res judicata. There is no merit, therefore, to the District's current position that the District never intended to offer Andersen an 80% contract for the 1974-1975 school year, as Examiner Schurke has already decided that issue adversely to the District. 3/

It follows, then, that the District has continued to refuse to abide by Examiner Schurke's original order which ordered her reinstated to an 80% teaching position. The District has therefore refused to erase the original discrimination levied against Andersen, as it has refused to undertake the affirmative action required, i.e., to offer her an 80% contract. The results of said discrimination are therefore still present up to the time of the instant hearing.

As a result, the District is required to make Andersen whole by paying to her the difference between what she would have earned under an 80% teaching contract and the amount which she in fact received under her 50% teaching contract. Since the District has not yet eradicated the effects of its original discriminatory action against Andersen up to the time of the compliance hearing, the District owes Andersen backpay for each of the years since the 1974-1975 school year that it has deprived her of an 80% teaching contract. As noted in the attached order, said sum, up to and including the 1978-1979 school year, totals \$18,402.66. If the District fails to offer Andersen such an 80% teaching contract during the 1978-1979 school year, the District shall be under a continuing obligation to offer said contract until such time that it does so. As a result, the \$18,402.66 backpay figure will be adjusted upwards in the future if an 80% teaching contract is not offered during the present school year.

In so finding, the Commission is aware of the fact that the District at some future point may legitimately conclude that there is no 80% teaching position for Andersen. Accordingly, nothing herein should be construed to mean that the District must keep Andersen under such a contract in perpetuity. To the contrary, our findings herein are predicated only upon the fact that the District has not yet remedied the unlawful discrimination it levied against Andersen for the 1974-

3/ At the instant hearing, the Examiner ruled, pursuant to a timely objection, that the District was precluded from litigating the question of whether the District discriminated against Anderson and Richards by refusing to offer them the 80 and 60% contracts previously promised to them, as such matters had already been decided. The Examiner made clear, however, that the District was not precluded from introducing general background evidence regarding said matters, provided that said evidence did not go to the question of whether the District originally discriminated against Andersen. (Transcript V.1, P. 82.) Thereafter, the District made an offer of proof which was limited in asserting that the District's refusal to offer Andersen an 80% contract was not based on anti-union considerations. (Transcript V.1, p. 87, 88.)

1975 and subsequent years. Once the District fully remedies said discrimination by awarding Andersen full backpay and an 80% teaching contract, as was originally ordered, legitimate business conditions may then dictate that such an 80% teaching position is no longer needed.

Turning to the issue of teacher Richards, the District contends in its brief that "there is no evidence to support a conclusion that the School District had any firm plans to hire Eleonore Richards as a 60% teacher in 1974-1975" and that "Richards was not the victim of discrimination."

Again, this contention, like the one the District has made with reference to Andersen, is without merit. Thus, Examiner Schurke noted in his Memorandum that:

"the substitution of a full-time employe for the part-time employes, particularly after detailed discussions were held with Richards and Andersen concerning the sharing of the additional authorized half-time position, is viewed by the Examiner as a means to drive out one or both of the incumbent part-time teachers in furtherance of the School District's established motivation to avoid bargaining concerning part-time employes."

As a result, Examiner Schurke found that Richards was entitled to a 60% contract, and ordered that Respondent offer such a contract to Richards.

Thereafter, and as noted above, Examiner Schurke's order, which expressly referred to the fact that Respondent had to tender Richards a 60% contract, was affirmed by the Commission and subsequently by Judge Bartholomew. In such circumstances, it is clear that the Court has affirmed Examiner Schurke's finding that Respondent's refusal to grant Richards a 60% teaching contract was based on anti-union discriminatory reasons in violation of Section 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act. Since such issue is res judicata, Respondent is now precluded from litigating of that same issue in the instant forum. Furthermore, as Respondent admittedly has refused to offer Richards a 60% teaching contract for the 1974-1975 year, Respondent thereby has failed to comply with the original order herein. 4/ To rectify said unlawful refusal, Respondent is required to pay Richards the difference between what she earned and what she would have earned in 1974-1975 had she been tendered such a contract. As the record establishes that said difference amounts to \$6,614.58, Respondent shall immediately pay to Richards that sum. Since the Association makes no claim for backpay to Richards after the 1974-1975 school year,

4/ It is immaterial that the District offered Richards a 100% contract for the 1974-1975 school year, as Examiner Schurke found that the District created the 100% position in order to force either Andersen or Richards to quit. Since Richards, like Andersen, had family responsibilities which prevent her from taking a full-time position, and inasmuch as the District was apparently aware of the fact when it created the full-time position, the District's subsequent offer of a 100% contract to Richards was an empty gesture, one which it knew would be rejected.

and inasmuch as the record establishes that no such backpay is warranted after that year, Respondent has no backpay liability following the 1974-1975 school year.

Turning now to the status of Alice Early, Examiner Schurke noted in his memorandum that:

"Alice Early had both a contract percentage and a class enrollment in 1973-1974 which was lower than that associated with her position in 1972-1973. The Complainants ask for an order for a 75% contract for 1974-1975 based on a predicted increase in enrollment for the school year which began after the close of the hearing herein. The Examiner is reluctant to enter such an order because of its speculative nature. No complaint is advanced concerning the level of Early's employment for 1973-1974 or the reduction she had from the level in 1972-1973, and it appears therefore that there exists or can be derived some mutually acceptable formula for determination of Early's contract percentage in relation to her class enrollment. The accompanying Order directs reinstatement of Early to a level of employment consistent with her class enrollment during 1974-1975, as determined by the formula previously applied to her employment."

Accordingly, Examiner Schurke's order provided that the District:

"(2) Offer to Alice Early and Margaret Kitze immediate and full reinstatement to their former positions or positions of such greater contract percentage as is warranted by increases in enrollment in courses or programs involved in such former positions, without prejudice to their seniority, benefits or other rights and privileges previously enjoyed by them, and make them whole for any loss of benefits or pay they may have suffered by reason of the discrimination against them."

In its brief, the District correctly notes that "the Commission's order did not identify a specific contract for Alice Early . . ." The reason for said omission, however, rests on the fact that the then Superintendent Proescholdt in 1973 and 1974 did not clearly advise Early as to how much greater her contract percentage would be for the 1974-1975 school year. Thus, according to Early's uncontradicted testimony at the instant hearing, Proescholdt at a pre-hiring interview in 1973 told Early that "the following year, when there were more students, that the position would increase in relation to the increase in the enrollment". 5/ Early went on to add that Proescholdt reiterated this fact to her in January, 1974. 6/ In the original hearing before Examiner Schurke, Early also testified that Proescholdt told her in January, 1974 that while it was very unlikely that she would not receive a full-time contract for the next school year, that, in his words, "it might be a higher percentage because of the increased enrollment." 7/

5/ Transcript V.1, p. 8.

6/ Transcript V.1, p. 18.

7/ Transcript p. 133.

In such circumstances, it is clear that Early was told that her contract percentage for the 1974-1975 school year would be directly related to the student enrollment in her classes. It was for that reason that Examiner Schurke noted in his memorandum that:

"The accompanying Order directs reinstatement of Early to a level of employment consistent with her class enrollment during 1974-1975, as determined by the formulas previously applied to her employment."

This statement by Examiner Schurke clearly recognized that Early's contract percentage was related to "her class enrollment" and that said contract was to be determined by the "formulas previously applied to her employment". The accompanying order therefore specified that the District offer Early reinstatement to her former position or position "of such greater contract percentage as is warranted by increases in enrollment. . . ." The order, then, merely carries out Proescholdt's promise to Early that her contract would increase if her enrollment increased. Since, however, Proescholdt did not know what said increased enrollment would be, he was unable to promise Early a specific contract percentage.

As to Early's 1974-1975 student enrollment, the record shows that whereas there were five students enrolled in the 1973-1974 year, there were seven students enrolled in the 1974-1975 school year. 8/ In the years following the 1974-1975 school year, Early served as a full-time teacher. In the 1975-1976 school year, for example, Early taught eight students. For both the 1976-1977 and 1977-1978 school years, Early taught seven students. In such circumstances, it is readily apparent that because of the unique teaching situation encountered in teaching the educably mentally retarded, an increase in student enrollment resulted in an increase in a teacher's contract percentage. As a result, and pursuant to Superintendent Proescholdt's statements to Early in 1973 and 1974 that increased student enrollment would result in a higher contract percentage, Early was therefore entitled to receive a higher contract percentage for the 1974-1975 school year. 9/

As to the question of what said percentage should have been, Proescholdt advised Early in January, 1974 that she would not receive a full-time contract, even though her enrollment might increase in the following year. As a result, Early was not entitled to a full-time contract for the 1973-1974 school year, even though the number of students she taught that year, seven, was the same number as she ultimately taught as a full-time teacher in other years. In such circumstances, the Commission concludes that Early should have been offered a 70% contract for the 1974-1975 school year, as such percentage reflected Proescholdt's promise that Early's contract would be raised in proportion to the increase between Early's 1973-1974 enrollment and the enrollment in the following year.

Early is therefore entitled to receive the monetary difference between a 50% versus a 70% teaching contract for the 1974-1975 school

8/ While it is true that only four students actually attended Early's classes for that year, it is also true that five students were actually enrolled. Since Examiner Schurke's Order specified that Early's contract was to be based upon "her class enrollment", it is the increase in said enrollment, rather than actual students who attended classes, which is dispositive of Early's contract percentage.

9/ In this connection, it should be noted that the District failed to offer any legitimate business consideration as to why Proescholdt's promise of an increased teaching contract was not carried out.

year. The record shows that Early received \$4,333.00 in 1974-1975, and that she would have received \$8,665.00 as a full-time teacher for that year. Since 70% of \$8,665.00 is \$6,065.50, Early was entitled to receive \$6,065.50 for the 1974-1975 school year. However, as Early received only \$4,330.00 that year, she is entitled to the difference between \$6,065.00, which she should have earned, and \$4,330.00, which she did earn, the difference of which is \$1,735.00. Since Early was paid an additional \$100 to supervise students that year, said sum must be subtracted from the \$1,735.00, which leaves \$1,635.00. In addition, Early is entitled to receive retirement benefits of \$81.75, which represents the 5% retirement benefits on the \$1,635.00 figure. Thus, the total backpay which the District owes Early for the 1974-1975 school year is \$1,716.75.

Left, then, is Margaret Kitze. As to her, Examiner Schurke noted in his memorandum that:

"Margaret Kitze had received some indication that her contract percentage might be reduced because of reduced enrollments, and then later received indications that her contract percentage for an equal number of classes might be reduced by rescheduling all of her classes into the afternoons. Other evidence in the record indicates that part-time teachers were not provided with paid preparation time and other time benefits made available to full-time teachers, and the Examiner concludes that the number of hours taught, regardless of their scheduling, is the pertinent factor for determining her contract percentage. Since Kitze has apparently already been reinstated, the effect of the accompanying Order, if any, will be to adjust her compensation for 1974-1975 consistent with the formula applied to her employment during her prior years of employment with the School District."

Examiner Schurke therefore ordered that the District offer Kitze reinstatement to her former position or position of "such greater contract percentage as is warranted."

In its brief, the District argues that Kitze's 50% teaching contract was warranted for the 1974-1975 school year and all subsequent years thereafter.

The Commission finds merit in the District's position. Thus, during the 1973-1974 school year, Kitze was employed under a 75% teaching contract. In the Fall of 1973, Principal Grant Hanson discovered that although Kitze was listed as teaching ten modules per day on the schedule, she in fact was only teaching eight modules per day. Hanson also then learned that Kitze was receiving more preparation and conference time than was warranted. Accordingly, Hanson recommended that Kitze's preparation and conference time be reduced and that she be given a 50% teaching contract for the 1974-1975 school year, and that was done. In recommending said reduction, Hanson credibly testified at the instant hearing that his recommendation was not based on any of Kitze's union activities, as he was totally unaware of them at that time, but rather, because Kitze was receiving an inordinate amount of preparation time and because her prior schedule did not reflect the actual hours that she taught. Subsequent to the 1974-1975 school year, Kitze continued to teach under a 50% contract up to the time of the instant hearing. Throughout those years Kitze taught one half the number of hours taught by a full-time teacher.

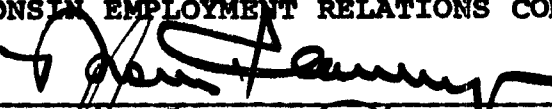
In such circumstances, the Commission finds that the District had a legitimate business justification for cutting back on Kitze's teaching contract for the 1974-1975 school year and all subsequent years thereto, as the record establishes that Kitze's reduced contract

percentage was not based on anti-union discriminatory considerations. Accordingly, and since Examiner Schurke did not find that Kitzel's proposed reduction in hours was based on anti-union considerations, and since Examiner Schurke specifically found that Kitzel's contract should be based upon "the number of hours taught, regardless of their scheduling . . .", the Commission concludes that the District has not failed to comply with Examiner Schurke's order when it cut back Kitzel's contract percentage to reflect the number of hours that she actually taught. As a result, the Association's claim to the contrary must be rejected.


Dated at Madison, Wisconsin this 17th day of January, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

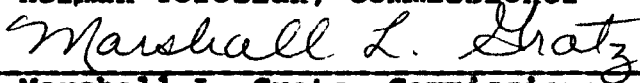
By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Marshall L. Gratz, Commissioner