

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LANCASTER EDUCATION ASSOCIATION, :
JOSEPH PAHR and RICHARD RICH, :
 :
Complainants, :
 :
vs. : Case I
 : No. 18297 MP-397
 : Decision No. 13016-B
LANCASTER JOINT SCHOOL DISTRICT NO. 3 :
and BOARD OF EDUCATION OF LANCASTER :
JOINT SCHOOL DISTRICT NO. 3, :
 :
Respondents. :
 :

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW AND MODIFYING EXAMINER'S ORDER

Examiner George R. Fleischli having, on June 26, 1975, issued his Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, in the above entitled proceeding, wherein the above named Respondents were found to have committed prohibited practices within the meaning of Sections 111.70(3)(a)1, 4 and 5 of the Municipal Employment Relations Act, and wherein the Respondents were ordered to cease and desist therefrom, and to take certain affirmative action with respect thereto; and the above named Respondents having, pursuant to Section 111.07, Wisconsin Statutes, timely filed with the Commission a petition for review and brief in support thereof, and the above named Complainants having filed a brief in opposition to the petition for review; and the Commission having reviewed the entire record in the matter, including the petition for review, the brief in support thereof, and the brief in opposition thereto, and being fully advised in the premises, and being satisfied that the Examiner's Findings of Fact and Conclusions of Law be affirmed, but that, however, the Order issued by the Examiner be modified;

NOW, THEREFORE, it is

ORDERED

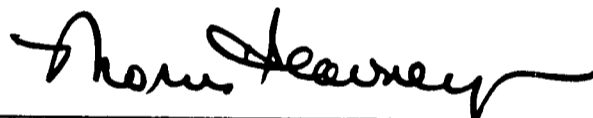
1. That the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact and Conclusions of Law issued in the above entitled matter as its Findings of Fact and Conclusions of Law.
2. That the Wisconsin Employment Relations Commission hereby adopts paragraphs 1, 2.(a) and 2.(b) of the Examiner's Order issued in the above entitled matter as a portion of its Order.
3. That the Wisconsin Employment Relations Commission hereby modifies paragraphs 2.(c), (d) and (e) of the Examiner's Order, so that those paragraphs of the Commission's Order now read as follows:

- (c) Notify Joseph Pahr, in writing, of the reasons for his removal as head football coach, assistant track coach, and as instructor of physical education and health at the high school for the school year commencing in the fall of 1974 and any year thereafter, if any, and in addition, if so requested, by either Joseph Pahr and/or the Lancaster Education Association, grant Joseph Pahr a hearing with respect to said action taken by the Respondents. Further, pay Pahr the difference, if any, between the total salary he would have received during the school years 1974-75 and 1975-76 as head football coach, assistant track coach, and as instructor of physical education and health at the high school, and the total salary he actually received during said two school years.
- (d) Notify, in writing, the Lancaster Education Association of its intent to comply with the instant Order, and in the same mailing, include a copy of the notice attached hereto and marked Appendix "A". Such notice shall be signed by the President of the Respondent Board.
- (e) Notify the Commission within ten (10) days of the date of this Order as to what steps it has taken to comply with said Order.

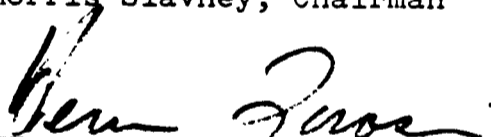
Given under our hands and seal at the City of Madison, Wisconsin, this *22nd* day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner

APPENDIX "A"

NOTICE TO THE LANCASTER EDUCATION ASSOCIATION

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify the Lancaster Education Association, as the collective bargaining representative of teachers in our employ, that:

WE WILL rescind [or revise] the policy, adopted at our February 18, 1974 meeting, of not providing a statement of reasons for non-renewal in the case of non-renewals or consideration of non-renewal of contracts and WE WILL continue the policy of providing a statement of reasons in such cases to employes represented by the Lancaster Education Association.

WE WILL rescind the policy, adopted at our March 11, 1974 meeting, of not appointing assistant coaches to coaching assignments outside of the building in which they teach and WE WILL NOT follow said policy in practice.

WE WILL NOT hereinafter refuse to bargain with the Lancaster Education Association, or otherwise interfere with the rights of the employes represented by the Lancaster Education Association, by making unilateral changes in said School Board policies, or any other School Board policies which pertain to wages, hours and working conditions of employes represented by the Lancaster Education Association, without first notifying the Lancaster Education Association of the proposed change and offering to bargain and, if requested, bargain with the Lancaster Education Association concerning the proposed change.

WE WILL notify, in writing, Joseph Pahr of the reason for his removal as head football coach, assistant track coach, and as instructor of physical education and health at the high school for the school year commencing in the fall of 1974 and any year thereafter, if any, and if so requested, by either Joseph Pahr and/or the Lancaster Education Association, grant Joseph Pahr a hearing with respect to said action taken by the Respondents.

WE WILL pay Joseph Pahr the difference, if any, between the total salary he would have received during the school years 1974-75 and 1975-76 as head football coach, assistant track coach, and as instructor of physical education and health at the high school, and the total salary he actually received during said two school years.

BOARD OF EDUCATION, LANCASTER JOINT
SCHOOL DISTRICT NO. 3

By _____
President

Dated this _____ day of _____, 1976.

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW AND MODIFYING EXAMINER'S ORDER

The Examiner's Decision:

The facts as found by the Examiner are not in dispute, 1/ and, therefore, the Commission affirms same.

In his Conclusions of Law, the Examiner concluded that the Board violated its duty to bargain in good faith with the Association in the following respects:

- (A)
1. By unilaterally adopting a policy of not furnishing a statement of reasons for non-renewal, or in consideration of same, of teachers.
 2. By unilaterally adopting a policy of not appointing assistant coaches to positions outside the buildings in which they normally teach, and, subsequently, by unilaterally rescinding said policy.

The Examiner further concluded that the Board violated the collective bargaining agreement existing between the Board and the Association in the following respects:

- (B)
1. By refusing to furnish Pahr the specific reasons for his non-renewal of his assignment as head football coach, and by depriving Pahr of the opportunity to participate in a hearing with regard to said determination, in violation of Articles 16 and 20 of the collective bargaining agreement.
 2. By implementing the policy set forth in paragraph (A) 2. above, in not assigning Rich, as assistant senior high basketball coach, and as to Pahr, in not assigning the latter as assistant track coach, in violation of Articles 16 and 20 of the collective bargaining agreement.

The Examiner's Order:

The Examiner ordered the Board to cease and desist from unilaterally changing conditions of employment without affording the Association the right to bargain thereon, and to take the following affirmative action:

1. Rescind or revise the policy set forth in paragraph (A) 1., supra.
2. Rescind the policy set forth in paragraph (A) 2., supra.
3. Offer Pahr reinstatement to the head football coaching position, to the assistant track coaching position, and as instructor of physical education and health at the high school, for the 1975-76 school year and to make him whole in the sum of \$500 lost for the 1974-75 school year. 2/

1/ In the petition for review the Respondents took no exception to the Findings of Fact.

2/ The Respondents were also ordered to post notices and to notify the Commission as to compliance.

The Petition for Review:

Respondents contend that the legal conclusions relied upon by the Examiner in providing the relief set forth in paragraph (B) 1. and 2. above, raised substantial questions concerning law and administrative policy. The Respondents argue that the Management Rights provision in the collective bargaining agreement grants the Board the unfettered right with respect to the selection of coaches, in the absence of a specific or express provision in the agreement as to which individual receives such an assignment or other extra curricular activity. Further, Respondents argue that the coaching duties performed by Pahr were not performed by him as a "teacher," and, therefore, the provisions of the collective bargaining agreement are not applicable to said coaching duties. The Respondents also contend that, assuming the extra curricular duties are duties performed by teachers, the remedy to be fashioned must harmonize with the Management Rights provision. 3/

The Position of the Complainants:

In a brief opposing the petition for review, the Complainants would have the Commission affirm the Examiner's decision in all respects, and specifically contend as follows:

1. The Management Rights clause is subject to the other provisions of the collective bargaining agreement.
2. That Pahr, in his role as a coach, was occupying a position assigned to a teacher, and, therefore, such position is covered by the agreement.
3. That Pahr was reduced in rank and compensation without just cause in violation of the agreement.

Discussion:

The Respondents' argument with respect to the impact of the Management Rights provision was also raised before the Examiner. We agree with the Examiner's rationale and conclusion that said provision is limited by other terms of the collective bargaining agreement and the provisions of the Municipal Employment Relations Act, and that the changes in policy with regard to assignments of assistant coaches pertained to wages, hours and working conditions. We further agree with the Examiner's conclusion, and rationale in support thereof, with respect to Pahr's reduction in rank, by being relieved from his head football coaching duties, without notice of the specific reason or reasons therefor, and by depriving Pahr of the opportunity to participate in a hearing with respect thereto, as provided in the collective bargaining agreement.

Like the Examiner, we cannot accept the arguments of the Respondents that Pahr, as a coach, was not performing a role as a "teacher." Pahr's individual teaching contract for the year 1973-74 specifically set forth, in part,

" . . . that the Teacher is to perform services as assigned in a district school as follows: Boys Physical Ed. & Health for a term of 190 days for the sum of \$11,395.00* . . .

*Includes extra pay for: Head Football Coach \$750.00, Ass't. Track \$300.00"

3/ No exceptions were taken as to the remaining Conclusions of Law and Order issued by the Examiner.


Further, the collective bargaining agreement sets forth "Salary allowances for co-curricular activities and other service." Such co-curricular activities included coaching assignments. Had the parties intended that coaching assignments by teachers were not to be covered by the provisions of the collective bargaining agreement, there would be either (1) no need to include a salary schedule for coaches in said agreement, ^{4/} or (2) the agreement could have contained a specific reference exempting coaching assignments from specific provisions in the agreement. We have, therefore, affirmed the entire Conclusions of Law of the Examiner.

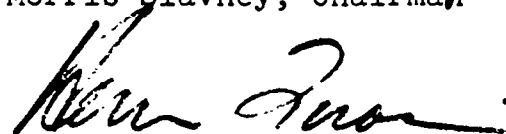
It is to be noted that we have adopted the Examiner's Order with the exception of a portion of the Order relating to Pahr. We have not ordered the Board to reinstate Pahr to all of his coaching duties or to his duties as an instructor of physical education and health at the high school, but rather, we have required that Pahr be given a written notice of the reason for his removal as head football coach and assistant track coach, as well as his removal as an instructor of physical education and health at the high school. In addition we have ordered that Pahr be given a hearing, if so requested, with respect to his being relieved from said duties. If, after said hearing, Pahr is not reassigned said duties, and Pahr and/or the Association are of the belief that such action of the Board was without just cause, either Pahr and/or the Association may pursue their rights under the Municipal Employment Relations Act on the merits with respect thereto. ^{5/}

However, we are ordering the Board to pay Pahr the difference, if any, between the total salary he would have received during the school years 1974-75 and 1975-76, as head football coach, assistant track coach and as instructor of physical education and health at the high school, and the total salary he actually received during said two school years. We are providing the latter relief because of the Board's failure, to this date, to comply with its obligation under the collective bargaining agreement, to grant Pahr his rights thereunder.

Dated at Madison, Wisconsin, this *22nd* day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner

^{4/} The Examiner so concluded.

^{5/} To determine whether the collective bargaining agreement has been violated.