STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS AND NORRIS RAWHOUSER,

Complainants,

vs.

COOPERATIVE EDUCATIONAL SERVICE AGENCY NO. 4 and the BOARD OF CONTROL OF COOPERATIVE EDUCATIONAL SERVICE AGENCY NO. 4; RICE LAKE JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF RICE LAKE JOINT DISTRICT NO. 1; TURTLE LAKE CONSOLIDATED JOINT DISTRICT NO. 3 and the BOARD OF EDUCATION OF TURTLE LAKE CONSOLIDATED JOINT DISTRICT NO. 3; CUMBERLAND COMMUNITY JOINT DISTRICT NO. 2 and the BOARD OF EDUCATION OF CUMBERLAND COMMUNITY JOINT DISTRICT NO. 2; AMERY JOINT DISTRICT NO. 5 and the BOARD OF EDUCATION OF AMERY JOINT DISTRICT NO. 5; BARRON JOINT DISTIRCT NO. 1 and the BOARD OF EDUCATION OF BARRON JOINT DISTRICT NO. 1; BIRCHWOOD JOINT DISTRICT NO. 4 and the BOARD OF EDUCATION OF BIRCHWOOD JOINT DISTRICT NO. 4; BRUCE JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF BRUCE JOINT DISTRICT NO. 1; CAMERON JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF CAMERON JOINT DISTRICT NO. 1; CHETEK AREA JOINT DISTRICT NO. 5 and the BOARD OF EDUCATION OF CHETEK AREA JOINT DISTRICT NO. 5; CLAYTON JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF CLAYTON JOINT DISTRICT NO. 1; CLEAR LAKE JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF CLEAR LAKE JOINT DISTRICT NO. 1; FLAMBEAU JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF FLAMBEAU JOINT DISTRICT NO. 1; FREDERIC COMMON JOINT DISTRICT NO. 3 and the BOARD OF EDUCATION OF FREDERIC COMMON JOINT DISTRICT NO. 3; GRANTSBURG INTEGRATED SCHOOLS and the BOARD OF EDUCATION OF GRANTSBURG INTEGRATED SCHOOLS; LADYSMITH JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF LADYSMITH JOINT DISTRICT NO. 1; LUCK JOINT SCHOOL DISTRICT NO. 3 and the BOARD OF EDUCATION OF LUCK JOINT SCHOOL DISTRICT NO. 3; MINONG JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF MINONG JOINT DISTRICT NO. 1; OSCEOLA JOINT DISTRICT NO. 2 and the BOARD OF EDUCATION OF OSCEOLA JOINT DISTRICT NO. 2; PRAIRIE FARM JOINT DISTRICT NO. 5 and the BOARD OF EDUCATION OF PRAIRIE FARM JOINT DISTRICT NO. 5; ST. CROIX FALLS JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF ST. CROIX FALLS JOINT DISTRICT NO. 1; SHELL LAKE JOINT SCHOOL DISTRICT NO. 1 and the BOARD OF EDUCATION OF SHELL LAKE JOINT SCHOOL DISTRICT NO. 1; SIREN CONSOLIDATED SCHOOLS and the BOARD OF EDUCATION OF SIREN CONSOLIDATED SCHOOLS; SPOONER JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF SPOONER JOINT DISTRICT NO. 1; UNITY JOINT DISTRICT NO. 4 and the BOARD OF EDUCATION OF UNITY JOINT DISTRICT NO. 4; WEBSTER JOINT DISTRICT NO. 1 and the BOARD OF EDUCATION OF WEBSTER JOINT DISTRICT NO. 1; WEYERHAUSER JOINT DISTRICT NO. 3 and the BOARD OF EDUCATION OF WEYERHAUSER JOINT DISTRICT NO. 3; BARRON COUNTY BOARD OF SUPERVISORS; BARRON COUNTY HANDICAPPED CHILDREN'S BOARD: and JOINT EDUCATIONAL COOPERATIVE,

Respondents.

Case II
No. 18382
MP-400
Dec. No.
13100-G

[WERC is using the following electronic file name: 13100-GX]

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

Examiner Byron Yaffe, on December 29, 1977, issued his Findings of Fact, Conclusions of Law and Order, wherein said Examiner found that Cooperative Educational Service Agency No. 4 and the Board of Control of Cooperative Educational Service Agency No. 4, herein CESA No. 4, had committed certain prohibited practices within the meaning of the provisions of the Municipal Employment Relations Act, herein MERA, and wherein he also dismissed all allegations against the remaining Respondents. On January 9, 1978, Examiner Yaffe issued an Order Amending Findings of Fact, Conclusions of Law and Order. Thereafter, Complainants and CESA No. 4 filed petitions for review of the Examiner's decisions, pursuant to Section 111.07(5), Stats. Briefs in support of their petitions were filed by July 13, 1978. A brief was also jointly filed on behalf of the School District of Birchwood and the School District of Chetek in opposition to Complainants' petition for review, as well as a joint brief on behalf of the Cumberland Joint School District No. 2, Turtle Lake Consolidated Joint District No. 3, Rice Lake Joint District No. 1, Weyerhauser Joint District No. 3, Shell Lake Joint School District No. 1, Luck Joint School District No. 3, Frederick Common Joint District No. 3, Amery Joint District No. 5, Clayton Joint District No. 1, and Osceola Joint District No. 2, in opposition to Complainants' petition for review. The latter brief was filed on August 14, 1978. The Commission has reviewed the entire record, the petitions for review, the briefs filed in support thereof, and the briefs filed in opposition to Complainants' petitions for review.

NOW, THEREFORE, it is

ORDERED

A. That the Examiner's Findings of Fact be, and the same hereby are, affirmed in their entirety.

B. That all of the Conclusions of Law issued by the Examiner, except for Conclusion of Law No. 13, are affirmed in their entirety.

C. That Conclusion of Law No. 13 is hereby revised to read as follows:

> 13. CESA No. 4 violated Article VIII, Section E, by failing at any time after February 20, 1975 to send a letter recommending Rawhouser for employment to the districts within its geographical jurisdiction and by failing to make a good faith effort to assist Rawhouser in setting up interviews in districts which had positions available through CESA No. 4, which he was certified to fill, and thereby committed prohibited practices within the meaning of Section 111.70(3)(a)5, Stats.

The Examiner's order is hereby revised to read as follows:

IT IS ORDERED that the Cooperative Educational Service Agency No. 4, its Board of Control, and its officers and agents shall immediately:

1. Cease and desist from:

(a) Non-renewing the teaching contracts of teachers because of their involvement in lawful concerted activity on behalf of Northwest United Educators;

(b) Discriminating against laid off employes on the basis of their lawful concerted activities by failing to make an affirmative, good faith effort to offer such employes re-employment to vacant positions which they are certified to fill;

(c) In any other manner unlawfully interfering with, restraining or coercing, or discriminating against any of its employes in the exercise of their rights under Section 111.70(2), Stats.; and

(d) Violating the terms of Article VIII, Section E of the collective bargaining agreement between itself and Northwest United Educators by failing to send all districts within its jurisdiction letters recommending laid off teachers for positions and by failing to assist such teachers in setting up interviews in districts wishing to utilize CESA No. 4 services which said teachers are certified to provide.

2. Take the following affirmative action which will effectuate the purposes of the MERA:

(a) Send to all school districts within CESA No. 4's jurisdiction a letter recommending Rawhouser for employment;

(b) Assist Rawhouser in setting up interviews in school districts wishing to utilize CESA No. 4 services which he is certified to provide;

(c) Notify all CESA No. 4 employes in the professional teacher bargaining unit by mailing to their residence and all superintendents in the school districts located within CESA No. 4's jurisdiction, by mailing to their office addresses, copies of the notice attached hereto and marked "Appendix A" which notice shall be signed by Respondent CESA No. 4's Agency Coordinator; and

(d) Make Norris Rawhouser whole for any loss in pay which he suffered by reason of Respondent CESA No. 4's prohibited practices by payment to him of a sum of money, including the value of fringe benefits specified in the Examiner's memorandum, which he would have received from the time of his termination to the earlier of:

(1) the date Respondent CESA No. 4 extends to him an unconditional offer of reinstatement to a substantially equivalent position, or

(2) the end of the first full school year (late August-early June) beginning after CESA No. 4's compliance with 2(b) above and after the January 1 following CESA No. 4's compliance with 2(a), above;

less any amount of money he earned or received that he otherwise would not have earned, as well as the legal rate of interest thereon. Backpay due Rawhouser shall be computed on an annual basis in the manner set forth in the Examiner's memorandum;

(e) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin this 8th day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

_____
Marshall L. Gratz, Commissioner

(b) Discriminating against laid off employes on the basis of their lawful concerted activities by failing to make an affirmative, good faith effort to offer such employes re-employment to vacant positions which they are certified to fill;

(c) In any other manner unlawfully interfering with, restraining or coercing, or discriminating against any of its employes in the exercise of their rights under Section 111.70(2), Stats.; and

(d) Violating the terms of Article VIII, Section E of the collective bargaining agreement between itself and Northwest United Educators by failing to send all districts within its jurisdiction letters recommending laid off teachers for positions and by failing to assist such teachers in setting up interviews in districts wishing to utilize CESA No. 4 services which said teachers are certified to provide.

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By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

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Marshall L. Gratz, Commissioner

APPENDIX A

Notice

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 you that:

1. WE WILL NO LONGER discriminate against Norris Rawhouser in his efforts to gain re-employment with CESA No. 4 because of his activities on behalf of Northwest United Educators and we will actively and in good faith seek to assist him in acquiring a position which he is certified to fill.

2. WE WILL immediately make Norris Rawhouser whole for any loss of pay he suffered as a result of his unlawfully discriminatory non-renewal and our subsequent discriminatory treatment of him in his efforts to obtain re-employment with CESA No. 4.

3. WE WILL NOT in any other manner interfere with the rights of our employes under the Municipal Employment Relations Act.

COOPERATIVE EDUCATIONAL SERVICE AGENCY NO. 4

By _____
Agency Coordinator

Dated this _____ day of _____, 197_.

COOPERATIVE EDUCATIONAL SERVICE AGENCY NO. 4, II, No. 13100-G

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

The Examiner's Decision

The Examiner primarily found that CESA No. 4 discriminated against Rawhouser in violation of Section 111.70(3)(a)1 and 3 because of his concerted activities on behalf of Northwest United Educators, and that furthermore, it unlawfully refused to assist Rawhouser find employment with the districts herein in violation of Section 111.70(3)(a)5 Stats. To rectify said violations, the Examiner ordered that CESA No. 4 reinstate Rawhouser to his former or substantially equivalent position and that it make him whole for any loss of pay he may have suffered. The Examiner also found that none of the remaining Respondent school districts committed any prohibited practices with respect to Rawhouser.

In arriving at said conclusions, the Examiner made a number of Findings of Fact and Conclusions of Law. More particularly, the Examiner made the following Conclusions of Law: (1) Respondents who were joined in the case on May 9 and July 8, 1975 may not be held liable for any prohibited practice which was based upon conduct which occurred more than one year prior to said date; (2) no contractual violation of Article VIII, Section A of the CESA No. 4 NUE agreement may be found based upon conduct which occurred more than one year prior to the date the just cause issue was raised; (3) that while the one-year statute of limitations began to run on the date Rawhouser received notification of his non-renewal, said statute also bars relief for certain contractual violations which occurred prior to the one-year period of limitation preceding the dates Respondents were joined herein; (4) matters herein are not res judicata; (5) the complaint herein is not subject to the provisions of Section 118.26 and 59.76, Stats.; (6) Respondents have waived their right to claim that Complainants have failed to exhaust their contractual remedies; (7) CESA No. 4's non-renewal of Rawhouser was violative of Section 111.70(3)(a)1 and 3, Stats.; (8) CESA No. 4 violated the same provison by failing to assist Rawhouser find a position after he was non-renewed; (9) Respondents did not violate Article VIII, Section A of the CESA No. 4 NUE contract, as such agreement was not retroactive; (10) the contractual just cause provision in the CESA No. 4 NUE contract does not cover laid off employes; (11) CESA No. 4's failure to offer Rawhouser a school phychologist position in the Spooner and Webster districts was not violative of Section 111.70(3)(a)5 of MERA; (12) Article VIII, Section H of the CESA No. 4 NUE contract accords all employes laid off after January 1, 1974 the rights contained in Article VIII, Sections E, F, G, of said contract; (13) CESA No. 4 violated Article VIII, Section E of the CESA No. 4 NUE contract by failing, after February 20, 1974, to assist Rawhouser in finding a job; (14) CESA No. 4 is liable for its prohibited practices and it has the ability to comply with the back pay order herein; (15) Complainants failed to join in a timely manner the districts which used Rawhouser's services in 1973-1974; (16) Complainants' failure to timely join some of the parties herein is not necessary in order to remedy the violation found herein; (17) certain of the districts herein cannot be held jointly liable for CESA No. 4's unlawful conduct; (18) CESA No. 4 was not acting as the agent of the districts herein when it discriminated against Rawhouser; (19) the districts which used Rawhouser's services during the 1973-1974 school year are not liable for CESA No. 4's unlawful treatment of Rawhouser; (20) certain districts herein are not liable for CESA No. 4's conduct based upon an agency theory; (21) certain districts which contacted CESA No. 4 for psychological services are not joint employers with CESA No. 4; (22) CESA No. 4 is independently

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By _____
Agency Coordinator

Dated this _____ day of _____, 197_.

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liable for the contractual violations herein; (23) the complaint allegations against all of the Respondents, with the exception of CESA No. 4, are dismissed in their entirety, and (24) all allegations against the Joint Educational Cooperative are hereby dismissed.

Complainants' Petition for Review

Complainants' brief argues that the Examiner erred in finding that: (1) the statute of limitations prevented other school districts from being named as Respondents in the second and third amended complaint; (2) the Respondent school districts are not joint employers with CESA No. 4 for purposes of Rawhouser's non-renewal; (3) the school districts (other than CESA No. 4) did not violate Rawhouser's statutory or contractual rights; (4) Rawhouser's non-renewal was not a continuing violation; (5) Rawhouser's non-renewal was not violative of any portion of the collective bargaining agreement; and (6) CESA No. 4 should not immediately reinstate Rawhouser.

CESA No. 4's Petition for Review

CESA No. 4 has excepted to numerous Findings of Fact found by the Examiner. Thus, CESA No. 4 asserts in its brief, that "The Examiner clearly erred in his understanding and concept of how CESA No. 4 obtained services for the member school districts and made use of its coordinator, Board of Control and Advisory Committee." In support of said allegation, CESA No. 4 attacks a number of the Examiner's Findings of Fact. CESA No. 4 also asserts in its brief that "The Examiner's Finding of union animus on the part of CESA No. 4 was clearly erroneous and not supported by the clear and satisfactory preponderance of the evidence." Going on, CESA No. 4 maintains that "The Examiner made a grievous error in a date at Finding No. 13 of the Conclusions of Law and the same had to have had a profound and erroneous effect on Finding No. 7 of the Conclusions of Law." In addition, CESA No. 4 claims that "The Examiner created a remedy that raises a number of substantial questions of law and/or administrative policies and that the same is erroneous and unlawful . . ." Lastly, CESA No. 4 asserts that "The Examiner erred in finding that Article VIII, Section H of the NUE CESA No. 4 master contract afforded employees laid off after January 1, 1974 all of the rights contained in Article VIII, Section E."

Briefs in Opposition to Complainants' Request for Review

The School District of Birchwood and the School District of Chetek filed a joint brief in opposition to Complainants' request for review wherein they primarily asserted that the Examiner correctly concluded that the statute of limitations precluded finding that said districts had violated any provisions of MERA.

A similar joint brief was filed on behalf of the Cumberland Community Joint District No. 2, Turtle Lake Consolidated Joint District No. 3, Rice Lake Joint District No. 1, Weyerhauser Joint District No. 3, Shell Lake Joint School District No. 1, Luck Joint School District No. 3, Frederic Common Joint District No. 3, Amery Joint District No. 5, Clayton Joint District No. 1 and Osceola Joint District No. 2. Said joint brief maintains that the Examiner's dismissal of all allegations against said Respondents should be affirmed because: (1) "the statute of limitations runs from the accrual of a cause of action until the joinder of the party against whom recovery is sought;" and (2) "The evidence was insufficient for the Examiner to impute liability to the Respondent school districts based upon either the theory of joint employment or principle-agent."

Discussion:

The Commission will first consider Complainants' Petition for Review.

In their petition for review, Complainants argue that "The statute of limitations did not prevent the joinder of Respondents school districts." The affect of said statute was thoroughly discussed by Examiner Yaffe in his memorandum. For the reasons noted therein, we also conclude, as did the Examiner, that the Complainants' amended complaint constituted a new cause of action and that, as a result, the statute of limitations started to run against the named school districts on the date on which said amended complaint was filed. We also find, as did the Examiner, that Rawhauser's non-renewal constituted a single event with respect to which the statute of limitations began to run and that said non-renewal did not constitute a continuing violation which may otherwise have made the statute of limitations inapplicable.

With respect to Complainants' other major claim in its brief -- that Respondent school districts were joint employers -- that issue was also extensively discussed by Examiner Yaffe in his memorandum. Having reviewed the matter, the Commission concludes that Examiner Yaffe's findings and conclusions to the effect that said districts do not constitute a joint employer are correct and we affirm same.

Complainants also argue, on review, that the Examiner erred in finding: (1) that the school districts did not violate Rawhouser's statutory or contractual rights; and (2) that Rawhouser's non-renewal was not violative of any portion of the collective bargaining agreement. Again, the Examiner correctly dealt with these issues in his memorandum and as a result the Examiner's findings are hereby affirmed.

Left for consideration is Complainants' argument that the Examiner erred in failing to order CESA 4 to immediately reinstate Rawhouser. As noted below, the Commission has considered the entire question of proper remedy and it has, for the reasons noted herein, modified the Examiner's order in this regard.

As to CESA No. 4's Petition for Review, it first argues that the Examiner erred in detailing CESA No. 4's operations. More particularly, CESA No. 4 alleges that the Examiner failed to more adequately detail the workings of CESA No. 4's Advisory Council.

CESA No. 4, however, does not clearly spell out how the Examiner's alleged factual errors on this issue affected the Examiner's ultimate conclusions of law. In any event, the Commission finds that the Examiner correctly detailed CESA No. 4's major operations and that, as a result, his Findings of Fact should not be modified as the proposed modifications advanced by CESA No. 4 do not affect the ultimate disposition herein.

CESA No. 4 next argues that the Examiner erred in finding that CESA No. 4 bore animus toward Rawhouser. The Commission rejects this argument, however, as the totality of the record establishes, as found by the Examiner, that such animus existed. 1/

1/ With regard to motivation, we agree with the Examiner's analysis of the law and rationale at pp. 44-48 of his Memorandum. In any event, Mount Healthy City School District Board of Education v. Doyle, 45 U.S.L.W. 4079 (1977), cited by CESA No. 4 does not set forth the standard applicable under MERA herein. See, Muskego Norway School District No. 9 v. WERC, 35 Wis. 2d 540 (1971).

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With respect to Complainants' other major claim in its brief -- that Respondent school districts were joint employers -- that issue was also extensively discussed by Examiner Yaffe in his memorandum. Having reviewed the matter, the Commission concludes that Examiner Yaffe's findings and conclusions to the effect that said districts do not constitute a joint employer are correct and we affirm same.

Complainants also argue, on review, that the Examiner erred in finding: (1) that the school districts did not violate Rawhouser's statutory or contractual rights; and (2) that Rawhouser's non-renewal was not violative of any portion of the collective bargaining agreement. Again, the Examiner correctly dealt with these issues in his memorandum and as a result the Examiner's findings are hereby affirmed.

Left for consideration is Complainants' argument that the Examiner erred in failing to order CESA 4 to immediately reinstate Rawhouser. As noted below, the Commission has considered the entire question of proper remedy and it has, for the reasons noted herein, modified the Examiner's order in this regard.

As to CESA No. 4's Petition for Review, it first argues that the Examiner erred in detailing CESA No. 4's operations. More particularly, CESA No. 4 alleges that the Examiner failed to more adequately detail the workings of CESA No. 4's Advisory Council.

CESA No. 4, however, does not clearly spell out how the Examiner's alleged factual errors on this issue affected the Examiner's ultimate conclusions of law. In any event, the Commission finds that the Examiner correctly detailed CESA No. 4's major operations and that, as a result, his Findings of Fact should not be modified as the proposed modifications advanced by CESA No. 4 do not affect the ultimate disposition herein.

CESA No. 4 next argues that the Examiner erred in finding that CESA No. 4 bore animus toward Rawhouser. The Commission rejects this argument, however, as the totality of the record establishes, as found by the Examiner, that such animus existed. 1/

1/ With regard to motivation, we agree with the Examiner's analysis of the law and rationale at pp. 44-48 of his Memorandum. In any event, Mount Healthy City School District Board of Education v. Doyle, 45 U.S.L.W. 4079 (1977), cited by CESA No. 4 does not set forth the standard applicable under MERA herein. See, Muskego Norway School District No. 9 v. WERC, 35 Wis. 2d 540 (1971).

Left, then, for consideration, is the reply brief in opposition to Complainants' petition for review which was filed by certain Respondent school districts. For the reasons noted by the Examiner, the Commission finds merit to the claims made therein that: (1) the statute of limitations runs from the accrual of a cause of action until the joinder of the party against whom recovery is sought; and (2) that the record evidence was insufficient to find said districts liable upon either a joint employment or principal-agent theory.

With respect to the Examiner's Conclusions of Law, the Commission finds that all of the conclusions, save one, are correct. As a result, they are hereby affirmed. However, the Commission also finds that the Examiner erred in Conclusion of Law No. 13 wherein he found that CESA No. 4 violated Article VIII, Section E of the CESA No. 4 NUE agreement by failing after February 20, 1974 to assist Rawhouser to find a position in any of the school districts herein, and that said contractual breach was violative of Section 111.70(3)(a)5, Stats. In fact, the record establishes that CESA No. 4 violated said provision after February 20, 1975. We have, therefore, amended Conclusion of Law No. 13 accordingly.

We affirm the Examiner's order for the reasons set forth in the Examiner's decision in all respects save one. We so affirm for the reasons set forth in the Examiner's decision. In the portion of the order that we have amended, the Examiner ordered that CESA No. 4 make:

> Rawhouser whole for any loss in pay which he suffered by reason of Respondent CESA No. 4's prohibited practices by payment to him of a sum of money, including the value of fringe benefits specified herein, which he would have received from the time of his termination to the date Respondent CESA No. 4 extends to him an unconditional offer of reinstatement to a substantially equivalent position . . . ."

Under the proposed order, CESA No. 4's backpay liability towards Rawhouser will continue to mount until such time as it offers him an unconditional offer of reinstatement. While such a make whole order is appropriate in most cases, we do not believe that such open-ended liability period is proper in the context of the unique facts herein.

For, the proposed order fails to provide for the possibility that, despite full compliance with the balance of the order, CESA No. 4 may nonetheless be unable to effect such a reinstatement because of circumstances beyond its control. For, in this connection, the record shows that Rawhouser can be offered reinstatement only if there is sufficient demand for his services among the Respondent school districts. However, since said school districts themselves have not been found herein to have committed a prohibited practice against Rawhouser, there is no affirmative obligation upon them in the order to rehire Rawhouser. To the contrary, the most that can be expected of said districts is that they will not unlawfully discriminate against Rawhouser in the future if there is a position for which he is qualified. As a result, it follows that it may be out of CESA No. 4's control as to whether Rawhouser can be re-employed in the future. We, therefore, have placed a limitation on the period of backpay liability after compliance with the balance of the order.

In implementing the above order we note that even if CESA No. 4 were to immediately comply with our order upon the issuance of the decision herein, it is questionable as to whether CESA No. 4 in fact could properly assist Rawhouser obtain a position, as the districts herein may have already completed their hiring for the next school year. If, however,

Rawhouser can be immediately placed for either this or the next school year, CESA No. 4's backpay liability shall end when he is reinstated. On the other hand, if no such position is available, CESA No. 4 in that event is required by January 1, 1980 to help assist Rawhouser secure a position for the following school year. If a position is found for him at that time, CESA No. 4's backpay liability shall end when Rawhouser is reinstated for the 1980-1981 school year. In that way, CESA No. 4's backpay liability shall run from the time of Rawhouser's termination to the date of his rehire or the outset of the 1980-1981 school year. If no such position is available for the 1980-1981 school year following CESA No. 4's compliance with our order, CESA No. 4's backpay shall include the entire 1980-1981 school year, after which time its backpay liability shall terminate. At the same time, if CESA No. 4 chooses not to immediately comply with our order, its backpay liability shall continue until the end of the first full school year, following CESA No. 4's compliance before January 1 of any year [modified-order paragraph 2(a)]. Thus, for example, if CESA No. 4 does not begin to assist Rawhouser in finding a position until January 1, 1981, its backpay shall terminate with the commencement of the following 1981-1982 school year if a position is then found for him. However, if no position is then available, despite CESA No. 4's good faith efforts, its backpay liability shall continue until the end of the following 1981-1982 school year, at whcih time it shall be extinquished.

By virtue of the above formula, the Commission finds that a proper balance has been struck between Rawhouser's right to re-employment and CESA No. 4's right to avoid open-ended liability for a situation over which it does not have full control. While such a remedy is somewhat unorthodox, we nonetheless find, for the reasons noted above, that the unique facts of this case warrant a remedy which is tailored to the particular facts herein.

Dated at Madison, Wisconsin this 8th day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian, Commissioner

Marshall L. Gratz
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