

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAUK PRAIRIE EDUCATION ASSOCIATION  
AND WILMA HENNING,

Complainants,

vs.

SCHOOL BOARD OF SAUK PRAIRIE PUBLIC  
SCHOOLS,

Respondent.

Case IV

No. 17292 MP-293

Decision No. 13141

Appearances:

Mr. Edward B. Hogenson, Field Consultant, Wisconsin Education Association Council, on behalf of Sauk Prairie Education Association and Wilma Henning.

Ela, Christianson, Esch, Hart & Clark, Attorneys at Law, by Mr. Ronald J. Kotnik, on behalf of the School Board of Sauk Prairie Public Schools.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission, herein Commission, in the above-entitled matter; and a consolidated prohibited practice and unit clarification hearing <sup>1/</sup> having been held on December 3, 1973, at Baraboo, Wisconsin, before Hearing Officer, George R. Fleischli, a member of the Commission's staff; and the parties thereafter having filed briefs; and the Commission 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 Sauk Prairie Education Association, herein Association, is a labor organization within the meaning of Section 111.70(1)(4) of the Wisconsin Statutes, and is the recognized bargaining representative of certain teaching personnel employed by the Sauk Prairie School District for purposes of collective bargaining on wages, hours, and conditions of employment.

2. That Sauk Prairie School District, herein Respondent, is a public school district organized under the laws of the State of Wisconsin and is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act, herein MERA.

3. That the Board of Education of the Sauk Prairie School District, herein Respondent, is a public body charged under the laws of Wisconsin with the management, supervision, and control of the School District and its affairs.

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<sup>1/</sup> The unit clarification determination, centering on whether Complainant Henning was in the bargaining unit, is discussed in a separate decision issued today.

4. That the Association and the Respondent were parties to a collective bargaining agreement for the 1972-73 school year, which contained provisions relating to wages, hours and conditions of employment; and that Article I of said agreement entitled "Recognition" provided in part:

"Section 1.1 The School Board of Sauk Prairie Public Schools, hereinafter referred to as the Board, recognizes that teaching is a profession. The Board recognizes the Sauk Prairie Education Association, hereafter referred to as the Association, as the exclusive representative for staff members of the Sauk Prairie School District engaged in teaching. This shall encompass all contracted and certificated teachers, head teachers, department heads, special teachers, guidance counselors, librarians, and teachers teaching one-half time or over, who are now employed or are to be employed by the School District."

5. That Article III of the agreement entitled "Board Security" provided:

"Section 3.1 The Board shall retain exclusive rights and authority to operate and manage the school system. Such powers and rights shall include the determination and direction of teaching force, the right to plan, direct and control school activities of any type; to schedule classes and assign work loads; to determine teacher staff; to create, revise and eliminate positions; to establish and require observance of reasonable policies, rules, and regulations for students and all employees; to select teachers; and to discipline, discharge, and terminate teachers for just and reasonable cause(s).

Section 3.2 The foregoing enumeration of the functions of the Board shall not exclude other unidentified functions of the Board conferred upon it by State of Wisconsin Statutes or State Department of Public Instruction regulations.

Section 3.3 Nothing in this Article is to be construed as limiting the negotiability of any items related to wages, hours, and conditions of employment.

Section 3.4 The Board hereby notes and recognizes the value and importance of professional staff participation in studies and discussions relating to students, building construction and maintenance, and matters regarding the instruction of pupils, and suggests the Board and Superintendent seek advice and counsel of the staff whenever considered advisable and pertinent."

6. That Article VI of the agreement contained a grievance-arbitration provision which culminated in final and binding arbitration for certain issues.

7. That during the 1971-1972 school year, Complainant Wilma Henning, an individual residing at 510 Jackson Street, Sauk City, Wisconsin, was employed as a full-time elementary teacher at the Respondent's Merrimac School, at which time she was in the collective bargaining unit; that Henning became ill during the 1971-1972 school year; that Henning subsequently returned to work in the Spring of 1972, at which time she was relieved of her prior teaching duties and, instead, was assigned to certain other duties; that by letter dated March 13, 1972, Respondent, over the signature of its District Superintendent, Gerald A. Eyler, informed Henning that she would not be offered a teaching position for the 1972-1973 school year, but rather, that Henning would be offered

employment as a teacher's aide; that Henning subsequently accepted the aide position and worked as a teacher's aide for the 1972-1973 school year, during which time she was not in the bargaining unit; 2/ that Henning received neither a teaching contract nor a non-renewal notice by March 15, 1973; that Henning informed Respondent by letter dated April 11, 1973 that she considered herself a teacher who was entitled to continuing employment with Respondent for the next school year pursuant to Section 118.21 3/ of the Wisconsin Statutes; and that by letter dated April 17, 1973, Respondent replied that Henning was a teacher's aide, and not a teacher, and that, therefore, she was not entitled to continued employment as a teacher.

8. That Henning thereafter filed a grievance over Respondent's refusal to grant her continued employment as a teacher; that Henning subsequently met with Respondent's Superintendent of Schools, Jerry Jones, to discuss this issue; that Henning and Jones were unable to resolve the matter; that the Association thereafter requested Respondent to arbitrate the question of whether Henning was entitled to continued employment under Section 118.21, Wisconsin Statutes; and that Respondent refused to proceed to arbitration on the grounds that Henning was outside the collective bargaining unit and therefore not covered by the contractual arbitration procedure.

9. That Respondent's Board met on May 29, 1973, and July 2, 1973, and there denied Henning's grievance; that the Association, by letter dated August 10, 1973, requested Respondent to provide Henning with copies of those May 29 and July 2, 1973, minutes "which relate to her grievance"; and that Respondent failed to supply such requested information on the grounds that the requested minutes were confidential.

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

#### CONCLUSIONS OF LAW

1. That, since Wilma Henning was not in the teacher bargaining unit for the 1972-1973 school year, and therefore not covered by the contractual grievance-arbitration provision which was applicable only to said unit employees, Respondent, School Board of Sauk Prairie Public Schools, was not under any contractual duty to arbitrate Henning's grievance; and that, therefore, said Respondent's refusal to arbitrate the question of Henning's continued employment as a teacher was not violative of Section 111.70(3)(5) of the Municipal Employment Relations Act.

2. That Respondent, School Board of Sauk Prairie Public Schools, by its refusal to provide Henning with copies of its May 26 and July 2 1973 minutes, or by its conduct respecting Henning's right to have the Complainant Sauk Prairie Education Association represent her in the processing of her "grievance" has not, and is not, committing any prohibited practice within the meaning of the Municipal Employment Relations Act.

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2/ For the reasons noted therein, the Commission has determined in its related unit clarification decision issued today that Henning was employed as a teacher's aide for the 1972-1973 school year, and as such she was not in the teacher's bargaining unit.

3/ Section 118.21(1) provides in part that if a school board fails to give either notice of renewal or notice of non-renewal by March 15, that a "teacher" then has the option of accepting continued employment as a teacher, provided that the teacher so notifies the school board by April 15.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and enters the following

ORDER

IT IS ORDERED that the complaint filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin this 8<sup>th</sup>  
day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Complainants assert that Respondent committed prohibited practices by: (1) refusing to proceed to arbitration regarding a "grievance" filed by Complainant Henning; (2) coercing Complainant Henning during the processing of her "grievance"; and (3) refusing to supply Henning with certain requested information pertaining to her "grievance". These allegations are discussed seriatim.

1. RESPONDENT'S REFUSAL TO PROCEED TO ARBITRATION

This allegation maintains that Henning was a teacher covered by the collective bargaining agreement, including the contractual grievance-arbitration procedure; that pursuant thereto, Henning filed a grievance regarding Respondent's admitted refusal to offer Henning employment as a teacher for the 1973-1974 school year; that the Association requested Respondent to arbitrate the question of Henning's status; that Respondent thereafter refused to proceed to arbitration; and that this refusal to comply with the contractual arbitration procedure constituted a prohibited practice.

In the companion unit clarification determination issued today, the Commission has found that Henning was hired as a teacher's aide, that she primarily worked as a teacher's aide for the 1972-1973 school year, and that, therefore, she was not in the collective bargaining unit which is limited to teachers "teaching one-half time or over". That being so, it follows that, on the face of the agreement, Henning was not covered by any of the contractually established arbitration procedure which was applicable only to unit personnel. As a result, neither Henning nor the Association has any contractual right to insist that Respondent arbitrate the question of whether Henning should have been hired as a teacher for the 1973-1974 school year. Accordingly, Respondent's refusal to do so was not violative of the contract and, therefore, this complaint allegation must be dismissed.

2. RESPONDENT'S ALLEGED COERCION AND INTERFERENCE

On this issue, it is alleged in the complaint that Respondent has "sought to deter and discourage" Henning from pursuing "her contractual right" provided for in Section 4.1 of the contract, which provided in essence that every teacher shall have the right to join the Association. In support thereof, Complainants allege that Superintendent Jones had several conversations with Henning during the processing of her grievances wherein Jones in effect told Henning that she would be better off if she did not have the Association represent her, that he, Jones, was fighting the Association in the grievance, and that Henning did not have to stand by the Association. Jones denied these statements.

In resolving this issue, the Commission notes that it is the Complainants who have the burden of proving that Respondent, in fact, engaged in the conduct alleged, and that Complainants must prove this allegation by a "clear and satisfactory preponderance of the record evidence . . ." 4/ On this point, the record establishes that the only proof offered by Complainants in support of this allegation was Henning's testimony that Jones had made the statements in issue. Since Jones flatly denied making such statements, the Commission

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finds it necessary to make a credibility finding regarding the conflicting testimony offered by Henning and Jones. In so doing, the Commission finds it significant that Henning did not supply the dates on which the alleged conversations occurred, and further, that Henning's testimony in other areas was frequently marred by contradictions when she was subjected to cross-examination. Accordingly, and because of Jones' denial, the Commission finds that he did not make the statements alleged. That being so, it follows that there is no merit in this complaint allegation.

3. RESPONDENT'S REFUSAL TO SUPPLY REQUESTED INFORMATION

The gravamen of this allegation is that Respondent violated Article IV of the contract when it refused to furnish Henning with copies of the minutes for May 29, 1973 and July 2, 1973, School Board meeting, wherein the Board discussed Henning's then pending "grievance", in executive session.

The Commission finds that Respondent's refusal to supply this information was not unlawful since, as noted above, Henning was not covered by the contract and thereby had no contractual rights to either receive the kind of information requested herein or to arbitrate her underlying "grievance". It is also significant that Complainants have failed to prove the relevancy of that requested information to Henning's "grievance".

Dated at Madison, Wisconsin this 8<sup>th</sup> day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner