

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GREEN BAY EDUCATION ASSOCIATION and FRANK BAUTISTA,	:	
	:	
Complainants,	:	
	:	
vs.	:	Case XXIV
	:	No. 20533 MP-627
	:	Decision No. 14698-A
JOINT SCHOOL DISTRICT NO. 1, CITY OF GREEN BAY and TOWNS OF ALLOUEZ, BELLEVUE, DE PERE, EATON, GREEN BAY, HUMBOLDT and SCOTT, and the BOARD OF EDUCATION OF JOINT SCHOOL DISTRICT NO. 1, GREEN BAY, WISCONSIN ET AL.,	:	
	:	
Respondents.	:	
	:	

Appearances:

Kelly and Haus, Attorneys at Law, by Mr. Robert Kelly, Esq., and Mr. Lee Cullen, Esq., on behalf of Green Bay Education Association and Frank Bautista.

Parins and McKay, S.C., Attorneys at Law, by Mr. J. D. McKay, Esq., on behalf of Joint School District No. 1, City of Green Bay and Towns of Allouez, Bellevue, De Pere, Eaton, Green Bay, Humboldt, and Scott, and the Board of Education of Joint School District No. 1, Green Bay, Wisconsin et al.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Green Bay Education Association and Frank Bautista having filed a prohibited practices complaint with the Wisconsin Employment Relations Commission, herein Commission, alleging that Joint School District No. 1, City of Green Bay and Towns of Allouez, Bellevue, De Pere, Eaton, Green Bay, Humboldt and Scott, and the Board of Education of Joint School District No. 1, Green Bay, Wisconsin, et al. have committed a prohibited practice within the meaning of Section 111.70(3)(a)1 and 5 of the Municipal Employment Relations Act, herein MERA; and the Commission having appointed Amedeo Greco, a member of the Commission's staff, to act as Examiner to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held in Green Bay, Wisconsin on August 11, 12, and 13, 1976, at Green Bay, Wisconsin before the Examiner; and the parties having thereafter filed briefs and reply briefs; and the Examiner having considered the evidence and arguments of counsel, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Green Bay Education Association, hereinafter the Association, is a labor organization and at all times material herein was the exclusive bargaining representative of all regular full-time and regular part-time certificated teaching personnel employed by the Board, including classroom teachers, librarians, guidance counselors, psychologists, psychometrists, social workers, teachers of the homebound, department chairmen, unit leaders, job placement counselors, teachers on leave of absence, and certified physical and occupational therapists; but excluding superintendents, principals, and supervisors; and that the Association has its principal office in Green Bay, Wisconsin.

2. That Joint School District No. 1, City of Green Bay and Towns of Allouez, Bellevue, De Pere, Eaton, Green Bay, Humboldt and Scott, and the Board of Education of Joint School District No. 1, Green Bay, Wisconsin, et. al, herein Respondents or the District, constitutes a Municipal Employer within the meaning of Section 111.70(1)(2) of MERA; that the District's principal office is located in Green Bay, Wisconsin; and that the District is engaged in the providing of public education in the Green Bay, Wisconsin area.

3. That the Association and the District have been privy to a series of collective bargaining agreements; that the evaluation procedures in such contracts have generally been the same; and that the 1976 collective bargaining agreement provided in part at Article XI, entitled "Evaluation Procedures":

"L. No teacher will be disciplined, reprimanded, reduced in rank or compensation, suspended, demoted, transferred, terminated or otherwise deprived of any professional advantage without cause. In no case will this be done publicly unless so requested by the teacher. Any such action, including adverse evaluation of teacher performance, will be subject to the grievance procedure set forth in this Agreement."

4. That the 1976 contract provides for a grievance procedure which culminates in final and binding arbitration; that said procedure stated, inter alia that:

The grievance procedure shall not apply in cases of non-renewal of individual employment contracts.

5. That Frank Bautista has been employed by the District as an elementary stringed music teacher since about 1970; that Bautista during his tenure has taught at several different schools; and that in the Spring of 1976 Bautista was non-renewed for the 1976-1977 school year.

6. That Helen Ferslev has served as the director of the District's elementary education; that Ferslev met with Bautista on June 6, 1973, and there discussed Bautista's work; and that by a memo dated June 12, 1973, Ferslev advised Bautista:

"As a result of our conference on June 6, these were the things mentioned to merit your continuing efforts:

- I. Create an atmosphere of motivation in music
 - A. Through your interest shown toward the child as an instrumentalist
 - B. In the progress made by the child
 - C. Through planned sequence of growth
- II. Have a group practice weekly in each building
- III. Give strict attention to development of techniques
- IV. Follow up immediately when any child is not at practice or fails to bring his instrument
- V. Take a course this summer to develop your teaching skills.
Examples:
 - techniques of teaching strings
 - beginning ensemble groups
 - Suzucki method
 - Child Growth & Development

VI. Develop a sequence chart for children. Examples:

- A. I know the first position
- B. I can hold the bow correctly
- C. I can tune my instrument to correct pitch
- D. I can find _____ (D,A) scale accurately
- E. I can play these tunes correctly

VII. Become a more positive and aggressive person with a noticeable interest in the teaching of strings.

VIII. Recruitment - Visit all classrooms and invite children to participate in the program. Give them ideas of what to expect. Show them by playing what they should be able to play after six weeks, six months, a year.

IX. Have conferences with parents and/or telephone calls and notes. Be positive when possible. You might wish to send a note inviting parents to come in at lesson time. Take some time at regular parent-teacher conference time to schedule special conferences.

X. Keep your principals informed by:

- A. Giving them copies of schedules, notes, names of students you are working with, changes in any of the above.
- B. Talking with each one from time to time about the program in that building. They will be a great source of help to you as you meet problems.
- C. Invite them to see some of the things you are doing."

7. That despite Perslev's suggestions, Bautista refused to take a summer course in 1973; and that during the 1973-1974 school year, Bautista failed to: (1) have a group practice weekly in each building; (2) failed to develop sequence charts for his students; (3) failed to always have conferences with parents; and (4) failed to always inform his principals.

8. That at all times material herein, Les Skornicka has been department chairman for the elementary music program; that Skornicka evaluated Bautista in April 1974; and that Skornicka's evaluation stated in part:

"1. VARIES INSTRUCTIONAL METHODOLOGY TO PROVIDE FOR INDIVIDUAL DIFFERENCES.

Most all of Mr. Bautista's students receive personalized instruction and the individual differences are met for each student.

2. PRESENTATION OF CURRICULUM OR SUBJECT.

The curriculum and course of study implemented by Mr. Bautista should be made more exciting to the student. The progress is not always rapid enough and becomes boring to the student. Too much time is sometimes spent on repetition and repeating of lessons which makes students feel insecure.

3. ESTABLISHES A CLASSROOM CLIMATE TO ENCOURAGE AND TO AID THE LEARNING PROCESS.

A more relaxed atmosphere with the student is needed. His approach and feeling toward students is fine. A more jovial and not quite so serious climate with a more definite firmer vocabulary would help his situation.

4. SELECTS AND USES INSTRUCTIONAL MATERIALS AND MEDIA TO IMPLEMENT THE LEARNING PROCESS.

The selection and use of materials are satisfactory, challenging as well as inspirational. New innovations, such as more public and student presentations, are needed to help motivate and develop interest in future string players. Group performance started too late to be effective or well done at concerts. Does not present spring concerts at each of the schools at which he teaches and does not include all of the string students he teaches when he does give a performance.

5. EVALUATES THE LEARNING PROCESS IN SUCH A MANNER TO ACCENTUATE INDIVIDUALIZED INSTRUCTION USING A VARIETY OF TECHNIQUES.

Mr. Bautista evaluates his students daily but could evaluate his results more seriously by trying to inspire his students, administrators, and parents to a greater height of anxiety. This is difficult to do in our present way of life, but extra effort should be put forth by Mr. Bautista in order to be more accountable to students, parents, and administrators.

6. PERSONAL - PROFESSIONAL

In my observations and personal contact with Mr. Bautista I have found him to be a likeable, christian gentleman with many fine characteristics. He has some difficulty in relating to administrators, parents, and students because they possible [sic] do not understand him or has not made the effort to relate to them. He has a warm personality but it does not tend to reach the student deep enough to make the necessary impression or dent needed in music education in order to achieve the desired results. His instrumental string program began with a large number of students but by the end of the school year a great percent seem to lose interest and drop out. This is the concern of several elementary administrators and myself. More thought and self analysis should be given by Mr. Bautista to try to discover the answer in maintaining a respectable string enrollment in several of the elementary schools at which he teaches. Mr. Bautista is cooperative and serious about his work and has made progress in many areas over the previous year."

that in response, Bautista wrote on Skornicka's evaluation, inter alia.

The evaluator was never in my classroom during this school year, 1973-74, therefore, all the above information must be based on unobserved situations or on the complaints from the 1/10 percent dropouts.

To be fair in evaluations please trust me by discussing any complaint or situation with all involved parties and myself. Any other method produces unreliable data and distorted opinions.

9. That in February, 1975, some of Bautista's students of the Beaumont Elementary School circulated a petition which called for Bautista's removal; that said petition provided:

"This is a petition for a new conductor for we can have a better sounding group.";

that at least 19 students signed said petition; that Roger Winnie was principal of the Beaumont School; that Winnie on February 25, 1975, and March 4, 1975, discussed the situation with Bautista; that Winnie then prepared a memorandum of the incident; that Bautista refused to sign said memorandum; and that Winnie summarized the situation by noting:

"It would appear that you have unsatisfactory rapport with at least half of your students here at Beaumont. They feel you do not truly care about their progress because of 'reading books and eating during our lessons.' They are still embarrassed about last years' concert and it would appear because of this they question your ability to teach them. Unfortunately, they compare you to Mr. Gruetzman and to the other music teachers they are now working with, ie., piano, Saturday orchestra, etc. Student concern about the lack of variety in lessons should also be considered as the students claim they are kept on the same lesson for a long time and become bored. Students are also concerned about the shortness of their lesson time. I realize there may be a scheduling problem but care must be taken that each child's scheduled time is used to its fullest advantage. This has been an unfortunate incident but I believe you should be able to gain some insight into your problems by carefully analyzing this."

10. That Bautista conducted a string concert on May 23, 1975, among some of his students; that Skornicka attended that concert; that neither Skornicka nor anyone else on the District's behalf spoke to Bautista regarding the contents of said concert; that Skornicka prepared a memorandum for Ferslev regarding said concert; that there is no evidence that said memorandum was ever placed in Bautista's personnel file; and that that memorandum provided:

"After hearing the performance tonight, I would like to make the following evaluation:

I find the string performance and teaching Mr. Bautista is doing is very inferior, disgusting, and unacceptable, and embarrassing to the Elementary Music Department.

I heard no intonation, sound, precision, or solid rhythm. Music performed in 3/4 meter sounded like some players were playing another rhythm. Lack of control by the director was also evident which was partly the problem. No evidence of musicianship existed.

The performance was so poor I squirmed in my chair for 30 minutes. Mr. Bautista has no self respect, lacks musical knowledge and good teaching techniques. How any instructor can be satisfied with such very poor performance is beyond me. Mr. Bautista either has a poor ear for music or does not know what a good performance should sound like.

As I said in many previous evaluations, he does not prepare his groups soon enough and tries in a few weeks to make a performing group present a program which is embarrassing to the music program in our schools.

Lack of maturity in his performance group is due to the very high percentage of beginners (4th graders) with not enough 5th and 6th graders who drop out of his program each year.

Mr. Bautista does not demand enough from his students and is content with work that is poor. His personality is reflected in his teaching and performance (flat, lack of spirit, no drive or fire -- it is pathetic.)

I'm sure the tape of his performance will bare out my evaluation.

It behoves me how an educational system as large as ours will tolerate such mediocracy in music instruction. I know hundreds of future boys and girls will be deprived of good instruction if Mr. Bautista is to be retained as a string instructor in the schools.

I would recommend Mr. Bautista observe and listen to some of our tapes made by Mr. Gruetzman's string groups, possibly he may awaken to the fact what can and should be done.

In my thinking, his work is not justifiable or worth the investment in salary and equipment."

11. That earlier, on April 4, 1975, Bautista was evaluated by Forgie and other elementary school principals; that said evaluation was subsequently withdrawn after Bautista's protest; that another evaluation was compiled on June 3, 1975, by the same personnel; that that evaluation did not mention the above noted May 23, 1975 concert; that that evaluation provided in part:

6. Personal - professional.
Summary Statement(s):

He is a kind person, a gentleman and a capable musician. Somehow he lacks the ability to motivate, stimulate or impress students and administrators.

He has an obligation to be at the scheduled school on time; it is difficult to justify a half day instructor for five students. There is a lack of ensemble performance groups in some schools. This is a large factor in developing student interest and enthusiasm to play an instrument. Students develop poise when performing with and for other students. If Mr. Bautista follows through on the above he should have a greater holding power on his students, therefore, he will be working with students having at least one year of strings. At present the majority of the students are fourth graders.

RECOMMENDATION(S) OF THE EVALUATOR(S):

The following recommendations suggested by Miss Ferslev, 6/12/73, have not been fulfilled:

- a. Group practice is not followed in three buildings.
- b. Take a course this summer to develop your teaching skills. Examples: Techniques of teaching strings; Beginning ensemble groups; Suzuki Method; Child growth and development.

- c. Develop a sequence chart for children. Examples:
I know the first position; I can hold the bow correctly; I can tune my instrument to correct pitch; I can find ____ (D,A,) scale accurately; I can play these tunes correctly.
- d. Have conferences with parents and/or telephone calls and notes. Be positive when possible. You might wish to send a note inviting parents to come in a lesson time. Take some time at regular parent-teacher conference time to schedule special conferences.
- e. Keep your principals informed by: Giving them copies of schedules, notes, names of students you are working with, changes in any of the above, and talking with each one from time to time about the program in that building. They will be a great source of help to you as you meet problems; invite them to see some of the things you are doing.

It is also the collective recommendations of the undersigned that you consider the following:

- a. Present a daily individual pupil progress report - a specific listing of pupils worked with; each day's activities which includes music book, page, his opinion of progress, techniques learned, assignment for next lesson, along with any telephone calls and/or parent contacts made that day.
- b. Report to the office at the time of your arrival and departure, checking with building principal or secretary on duty.
- c. Start small group ensemble practice at least by the beginning of the second quarter.

12. That Bautista did not comply with all of the aforementioned recommendations during the subsequent 1975-1976 school year; that for example Bautista again refused to take a summer course; that Bautista did not have group practices in each building; that Bautista did not immediately make sequence charts for all of his pupils; that Bautista did not always hold conferences with parents; that Bautista did not always keep his principals informed of what he was doing; and that Bautista did not always report in and out at the office, as requested.

13. That during the 1975-1976 school year, Bautista taught at seven elementary schools: Beaumont, Kennedy, McArthur, Tank, Keller, Chappell, and Elmore; that the principals at said schools were Rodger Winnie, John Jirikovec, Ted Herzog, Graydon Axtell, Ken Krueger, Amelia Forgie, and Harvey Rilly respectively; that at all times herein said individuals have acted as the District's agents; that Respondent has a policy under which its administrators must state by December 1 of each year as to whether any teachers are being considered for non-renewal; that on November 24, 1975 the aforementioned seven principals notified Ferslev that:

It is the recommendation of the following principals that the contract of Frank Bautista (instrumental music) not be renewed.

14. That the aforementioned seven principals evaluated Bautista on approximately 21 occasions throughout the 1975-1976 school year; that approximately 13 of those evaluations occurred after November 24, 1975; that there is no evidence that any other teachers were evaluated so frequently; that said evaluations criticized various parts of Bautista's work performance; that other parts of said evaluations praised Bautista; and that Bautista in many cases refused to accept the recommendations provided for in said evaluations.

15. That by letter dated February 24, 1976 Theodore Houle, the District's Administrative Assistant-Personnel, advised Bautista that:

"This is to inform you that the Green Bay Board of Education is considering the nonrenewal of your teaching contract for the 1976-77 school year. This consideration comes as a result of a recommendation to the Board by its administration.

This letter is being written to comply with Section 118.22 of the Wisconsin Statutes. These conditions are as follows:

- 1) At least 15 days before giving formal written notice of nonrenewal, the employing school board must inform the teacher by preliminary written notice that the school board is considering nonrenewal of the teacher's contract and that, if the teacher files a request with the school board within five days after receiving the preliminary notice, the teacher has the right to a private conference with the school board prior to being given written notice of refusal to renew his contract.
- 2) The decision not to renew must be made by a majority vote of the full membership of the school board.
- 3) The formal written notice of refusal to renew must be given to the teacher on or before March 15. (This date may be mutually waived)

16. That by letter dated March 2, 1976, and pursuant to Bautista's earlier request, Houle advises Bautista that the reasons for his proposed non-renewal were:

- "1. The teacher is unable to consistently retain students in the program.
2. The teacher lacks trustworthiness, as evidenced by inaccurate information provided on reports.
3. The teacher is often tardy to his assigned schools.
4. The teacher is unable to properly coordinate and organize his schedule and to adhere to the same.
5. The teacher's student recruitment and parent contact is ineffective.
6. There is poor student participation in the programs at the schools assigned to this teacher.
7. Final concert performances of poor quality indicate that the teacher is unable to meet the musical needs of intermediate students.

8. The teacher has developed poor interpersonal relationships with members of the professional staff, students and parents.
9. The teacher has failed to accept constructive criticism, instruction and positive direction from superiors who have attempted to point out and correct professional difficulties."
17. That by letter dated April 27, 1976, Houle advised Bautista that:

"This letter is to inform you that at its meeting on April 26, 1976, the Board of Education, Joint School District No. 1, City of Green Bay et. al., voted to non-renew your teaching contract for the school year 1976-77.

Thank you for your service to the School District."

18. That the district had just cause to non-renew Bautista's contract for the 1976-1977 school year.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That Respondents have not violated Section 111.70(3)(a)5, nor any other section of MERA, by non-renewing the teaching contract of Frank Bautista.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 17th day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Complainant primarily 1/ asserts that the District lacked cause to non-renew Bautista's teaching contract, as is required under Article XI of the collective bargaining agreement which states that a teacher can be non-renewed only for cause. The District, on the other hand, maintains that such cause existed, and it sites in support thereof nine reasons as to why such cause existed.

In considering the issues herein, the undersigned has been presented with some conflicting testimony regarding certain material facts. Accordingly, it has been necessary to make credibility findings, based in part on such factors as the demeanor of the witnesses, material inconsistencies, and inherent improbability of testimony, as well as the totality of the evidence. In this regard, it should be noted that any failure to completely detail all conflicts in the evidence does not mean that such conflicting evidence has not been considered: it has.

Furthermore, it is appropriate at this time to discuss the Complainant's claim that the District is precluded from relying on any post November 24, 1975 incidents as a basis for Bautista's non-renewal. In support of this claim, the Complainant in essence argues that the seven principals on November 24, 1975 decided that Bautista should be non-renewed and that they thereafter build a "book" on Bautista to support that conclusion. Accordingly, Complainant contends that post November 24, 1975 evidence should not be considered on the ground that it is "inherently tainted."

Since Bautista was evaluated on approximately twenty some occasions during the 1975-1976 school year, there can be no denying the fact that Bautista was the subject of an inordinate number of evaluations. Furthermore, it is true, as noted above, that the seven principals on November 24, 1975 indicated that Bautista might not be renewed for the forthcoming school year.

But, the record further reveals that the November 24, 1975 statement was only a preliminary recommendation in that the District has a policy under which it must be notified of all possible non-renewals by December 1. Furthermore, all of the principals who testified on this subject credibly testified that they evaluated Bautista in the hope that that would improve his teaching. In such circumstances, the record fails to show that the November 24, 1975 statement had the degree of finality ascribed to it by Complainant, and the record is completely barren of any evidence that the principals bore any malice towards Bautista which manifested itself by trying to build a "book" on him. As a result, the District is not precluded from relying on post November 24, 1975 incidents to support its decision to non-renew.

1/ Complainant also contends that Bautista was improperly evaluated. As the record fails to show this to be the case for the 1975-1976 school year, the critical time herein, this allegation is hereby dismissed.

However, another problem exists with reference to the District's reliance on facts which occurred outside of the 1975-1976 school year. Thus, it is well established that:

the failure of the employer to notify employees of alleged infractions at the time of occurrence precludes him from using the notations to support disciplinary action at a later date, since employees should not be required to disprove stale charges 2/

Applying that principle here, it must be concluded that the District is likewise precluded from relying on facts which occurred outside the 1975-1976 school year. Such facts, however, can be considered for background purposes to determine the general quality of Bautista's past work record.

It should also be noted that Complainant argues in its brief that "Bautista was given no consistent standard to follow." In this connection, it is true that some of the principals herein made conflicting demands on Bautista. Yet, Bautista should have expected some such variance, as it is unreasonable to assume that the seven principals herein would necessarily agree on all aspects of a musical program. Indeed, Bautista in the past never claimed that conflicting advice by principals was a problem. Furthermore, the fact remains that Bautista was evaluated in June, 1975 by all seven principals and was there told by them to do certain things. Yet, despite such a unanimous recommendation, Bautista, as noted in greater detail below, failed to heed many of those recommendations. In such circumstances, the record fails to establish that Bautista was not given a consistent standard to follow.

Along this same line, the record does show that some of the principals herein have made contradictory findings regarding certain aspects of Bautista's personality. Thus, whereas some principals assert that Bautista could not be trusted, others have specifically noted that Bautista was very trustworthy. Again, whereas some principals claim that Bautista does not get along well with others, certain other principals have praised Bautista for his tact. This split opinion by the District's own witnesses is a very formidable problem since it serves to undermine some of the District's claims. Accordingly, the Examiner has in the main ignored certain criticisms which are not backed up by objective evidence.

With the foregoing considerations in mind, it is now appropriate to examine each of the nine reasons which the District has advanced in support of Bautista's non-renewal.

1. Non-retention

Based largely on a survey that it conducted in 1975, the District contends that Bautista was "unable to consistently retain students in the program". Complainant, in turn, argues in its brief that "Bautista does least well of all comparable teachers, but the spread is not sufficiently great to constitute cause for non-renewal".

2/ How Arbitration Works, Elkouri and Elkouri, p. 639, BNA, 1973.

The record is somewhat unclear as to whether Bautista was personally responsible for his low retention rate. Thus, while Bautista's rate of retention was lower than that of other teachers, it is not at all clear as to whether Bautista himself was responsible for his lower retention rate, as outside factors may have influenced whether his particular students wanted to remain in the music program.

2. Lack of student participation

Somewhat related to the above problem is the District's claim that there was inadequate student participation at some of the elementary schools where Bautista taught.

On this point, there is no question but that there was very low student participation at certain schools. Furthermore, it appears that student participation at certain schools was much higher under Bautista's predecessors. While it can be argued that Bautista was responsible for the low student participation, the Examiner finds that on balance there is insufficient evidence to clearly establish that Bautista was the cause of this problem.

3. Student recruitment and parental contact

The District contends that Bautista was unsuccessful in his recruitment efforts and that Bautista maintained ineffective contact with parents.

The question of student recruitment is a difficult one, as different teachers follow different recruitment devices. Here, while Bautista did attempt to recruit students, the record indicates that Bautista sometimes failed to undertake all of the preparations for a well organized recruitment drive. For example, Bautista once tried to have a recruitment drive at the Chappell School with no advance notice to anyone. Furthermore, Bautista repeatedly refused to have school concerts at certain schools, despite the fact that such concerts were a good recruiting device.

Turning to parental contact, the record shows that Bautista several years ago once took a student's violin bow for the purpose of having it fixed in Chicago. Despite repeated parental complaints, the bow was not returned to the student for approximately one year. However, since this incident occurred well outside of the 1975-1976 school year, the Examiner is unable to give it much weight for the reasons noted above.

4. Trustworthiness

In support of this allegation, the District in essence argues that Bautista supplied incorrect information to his superiors and that he filed erroneous mileage reimbursement reports.

As to the mileage reports, Bautista credibly testified that he made a good faith mistake in filing certain reports and that he filed others because he was unaware of the District's changed policy regarding reimbursement.

Turning to the supplying of information, the record does show that Bautista occasionally provided inaccurate information to his superiors regarding various aspects of the music program. For example, Bautista listed as current students certain individuals who had stopped taking music lessons. In his defense, Bautista claimed that those students were marked as participating in the program, when they were not, because he was then in the process of attempting to talk them into remaining in the program.

In agreement with the District, the Examiner does find that Bautista sometimes did provide inaccurate information to his superiors. It is difficult to say, however, as to whether Bautista deliberately supplied such information.

5. Relationships with others

Numerous District witnesses testified in effect that Bautista had difficulty in dealing with the professional staff and students.

Inasmuch at least nineteen students in 1974 signed a petition for Bautista's removal, there is some merit to the District's contention that Bautista may have experienced difficulty in relating to students. However, since that event did not occur during the 1975-1976 school year, it cannot be relied upon as a basis for non-renewal. The District also points to the time that a student was crying in Bautista's class. But, since there is no evidence that Bautista precipitated that problem, Bautista cannot be faulted for his conduct during the crying incident.

Bautista's dealings with the professional staff, on the other hand, did leave a great deal to be desired. Thus, Bautista once refused to sign an October 21, 1975 evaluation, despite the fact that he was required to sign all evaluations. Additionally, and as noted in greater detail below, Bautista repeatedly refused to accept suggestions from his superiors. In fact, Bautista frequently questioned the ability and motives of others, when they tried to help him. While some of Bautista's objections may have been well taken, it is clear that certain other comments were hardly justified. Accordingly, it must be concluded that Bautista did have poor relationships with at least some members of the professional staff.

6. Tardiness

As correctly noted by the District, Bautista was tardy at certain assigned schools. Thus, Ferslev credibly testified that Bautista was "frequently tardy" at Chappel School and Riley and Krueger stated that Bautista was tardy at least once at their schools. Axtell also credibly testified that Bautista was tardy approximately seven times at Tank School, and that that tardiness ranged from five to eighteen minutes.

In his defense, Bautista claimed that he sometimes had car trouble, that the school clocks were wrong, and that he was sometimes slowed down by snow.

Since there was no evidence adduced to the effect that the school clocks were wrong, the Examiner discounts this claim. As to Bautista's claims regarding car trouble and snow problems, there is insufficient evidence that Bautista's repeated tardiness was always caused by those problems.

7. Scheduling

The District contends that Bautista was "unable to properly coordinate and organize his schedule and to adhere to the same".

The record shows this to be so, as Bautista's classes frequently extended past their scheduled times. As a result, students were forced to return late to their regular classrooms, thereby disrupting those classes. Additionally, other students frequently were required to wait around and to start their music lessons late. This improper scheduling was a continuous problem throughout the 1975-1976 school year, despite the fact that Bautista was repeatedly warned by several principals to better coordinate his schedule.

8. Final concert performances

The District contends that Bautista conducted year end student concerts "of poor quality [which] indicate that the teacher is unable to meet the musical needs of intermediate students". The District particularly points to Bautista's May 23, 1975 concert, which Skornicka described in a letter to Ferslev, and which is set forth in Finding of Fact number 10 above. 3/

Inasmuch as the May 23, 1975, concert occurred outside of the 1975-1976 school year, and because that concert occurred before Bautista was evaluated for the 1974-1975 school year, and for the reasons noted above, the District is precluded from claiming that that concert in part constituted cause to terminate Bautista during the subsequent school year. That is particularly so, where as here, the District did not even allude to that concert when it issued its June 3, 1975 evaluation of Bautista, which is set forth in Findings of Fact number 11, above. As the June 3, 1975 evaluation was issued two weeks after the May 23, 1975 concert, the District had an ample opportunity to bring its criticisms of that concert to Bautista's attention at that time. By failing to do so, the District is estopped from now relying on that concert as one of the reasons it decided to non-renew Bautista.

Similarly, the District is precluded from relying on events which occurred after it decided to non-renew Bautista. Accordingly, the District cannot rely on Bautista's Spring 1976 concert for the proposition that that concert was of poor quality.

9. Failure to accept criticism and positive direction.

As its final reason for non-renewing Bautista, the District contends that

"the teacher has failed to accept constructive criticism, instruction and positive directions from supervisors who have attempted to point out and correct professional difficulties."

The record supports this contention. Thus, while Bautista occasionally did accept criticism and attempted to correct professional difficulties, the record establishes beyond any question that Bautista more often than not refused to accept suggestions on how to improve his work.

Thus, by way of background, Bautista ignored many of Ferslev's 1973 suggestions wherein Ferslev suggested that Bautista: (1) have a group practice weekly in each building; (2) develop a sequence chart 4/ for children; (3) keep principals informed of his work; (4) take a summer course to develop teaching skills, and (5) contact parents. Since Bautista's refusal to heed these recommendations occurred outside of the 1975-1976 school year, his conduct at that time is not dispositive as to whether the District had cause to non-renew him during the 1975-1976 school year. Nonetheless, this incident serves as background material to subsequent events.

3/ As noted above, and contrary to Complainants' assertion, there is no evidence that this letter was ever made a part of Bautista's personnel file.

4/ A sequence or progress chart marked the progress that each child had made in the musical program. Under such a chart, each child was given a different color star for a particular facet of musical achievement.

Thus, Bautista was again advised at the end of the 1974-1975 school year that he had failed to (1) give group practice in all buildings; (2) take a summer course to improve teaching skills; (3) develop a sequence chart for children; (4) have conferences and telephone calls with parents; and (5) keep principals informed of his activities. In addition, Bautista was told to report to the school office whenever he arrived at or left a building.

Upon being informed of these deficiencies, it is most significant that Bautista lashed back at the seven principals and there generally attacked their ability. Thus, when they asked how they could help him, Bautista questioned whether anyone could play a stringed instrument, whether they were qualified in the area of strings, and whether they were qualified in the area of psychology. Going on, Bautista asked that they not make hasty statements, that they should ask for clarification when in doubt, that they should have confidence in him, that they should spend at least half a day in evaluating him, that unfair conclusions about his work should be avoided, that he would try to increase enrollment, and that "bad things" should not be said. Generally absent from this exchange was any indication that Bautista wanted assistance or that he would try to implement some of the suggestions then being made.

Thereafter, Bautista refused to immediately follow the above noted recommendations during the 1975-1976 school year. For example, Bautista never took the recommended summer course. 5/ Additionally, based upon the credited testimony of building principals, Bautista did not have group practices in all buildings. Indeed, the record shows that Bautista repeatedly refused to comply with requests to hold such group practices. Furthermore, Bautista did not finish all of the sequence charts until the middle of the 1975-1976 school year, even though that such charts could have been prepared much earlier. Moreover, despite specific instructions to keep them abreast, Bautista frequently failed to inform building principals of his activities. Bautista also failed to have requisite conferences with parents and children. By the same token, Bautista repeatedly failed to report to the school office upon his arrival or departure.

Additionally, certain principals throughout the 1975-1976 school year repeatedly asked Bautista to conduct in school concerts with the students of their school. Despite the fact that such concerts had been given by Bautista's predecessors, and even though some principals demanded that such concerts be held, Bautista steadfastly refused to conduct such concerts.

Conclusion:

In light of the aforementioned considerations, the record establishes as invalid some of the reasons which the District had advanced in support of its non-renewal of Bautista. Thus, there is no basis for concluding that Bautista was necessarily responsible for either the low student retention rate of his students or the amount of student participation in his musical program. Similarly, there are no grounds for finding

5/ Although Bautista in the past may have taken the summer courses in issue, the record indicates that the District had a reasonable basis for concluding that refresher courses would have aided Bautista's teaching. For the same reason, the District had the right to insist that Bautista compile sequence charts, as such charts may have served as a learning tool.

Bautista guilty of poor student recruitment or poor parental contact. Additionally, the District has not proven that Bautista was untrustworthy or that the quality of concert performances warranted non-renewal.

But, it is clear that Bautista was frequently tardy and that he repeatedly failed to properly schedule his classes. Furthermore, Bautista did have poor relations with at least some of the staff members. Much more significant however is the fact that Bautista repeatedly refused to accept criticism and positive direction. For, on this point, the record is replete with instances of where Bautista steadfastly refused to immediately comply with reasonable work directives.

Based upon the latter factors, particularly Bautista's pronounced refusal to follow reasonable directives, it must be concluded that the District did have cause to non-renew him. Accordingly, the complaint is hereby dismissed.

Dated at Madison, Wisconsin this 17th day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner