

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LADYSMITH-HAWKINS EDUCATION ASSOCIATION, :  
Complainant, : Case I  
vs. : No. 20557 MP-630  
LADYSMITH-HAWKINS SCHOOL SYSTEMS, : Decision No. 14719-A  
JOINT DISTRICT NO. 1, :  
Respondent. :  
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Appearances:

Mr. Alan Manson, Executive Director, Northwest United Educators,  
appearing on behalf of the Complainant.  
Merriam and Weiler, Attorneys at Law, by Mr. Daniel B. Merriam,  
appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having on June 8, 1976 filed a complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondent committed a prohibited practice within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Peter G. Davis, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law, and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been held before the Examiner in Ladysmith, Wisconsin on September 14, 1976; and the Examiner having considered the evidence and arguments of counsel makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Ladysmith-Hawkins Education Association, herein Complainant, is a labor organization functioning as the exclusive collective bargaining representative of all certified teaching personnel employed by the Ladysmith-Hawkins School Systems, Joint District No. 1.
2. That Ladysmith-Hawkins School Systems, Joint District No. 1, herein Respondent, is a municipal employer.
3. That at all times material herein Complainant and Respondent were parties to a collective bargaining agreement covering the wages, hours and conditions of employment of the employees represented by the Complainant and that said agreement contained the following provisions:

"ARTICLE VI

GRIEVANCE PROCEDURE

Section A

A grievance shall be defined as any complaint regarding wages, hours, or conditions of employment as set forth in this document.

. . .

#### Step 4

If the aggrieved person is not satisfied with the disposition of the grievance at Step 3, or if no decision is rendered by the Board within the 10 days as specified in Step 3, he may request in writing that the Association submit his grievance to binding arbitration. The request for binding arbitration must be made within 15 days from the last day (10th) of the Step 4 deadline. If the Association or its appointed Committee determines that the grievance is meritorious and that submitting it to binding arbitration is in the best interests of the school system, it may submit grievance to binding arbitration within 15 days after receipt of a request by the aggrieved person.

Within 10 school days after such written notice of submission to binding arbitration, the Board and the Association or its appointed Committee will agree upon a mutually acceptable arbitrator and will obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator, or to obtain such a commitment within the specified period, both parties shall jointly file a written request with the Wisconsin Employment Relations Commission to appoint an arbitrator to determine the matter. The Wisconsin Employment Relations Commission will appoint a member of its staff to act as arbitrator. The arbitrator so selected will confer with representatives of the Board and the Association or its appointed Committee and hold hearings promptly and will issue his decision on a timely basis. The arbitrator's decision will be in writing and will set forth his findings of fact, reasoning, and conclusions of the issues submitted. The decision of the arbitrator will be binding . . .

### ARTICLE VII

#### WORKING CONDITIONS AND INDIVIDUAL RIGHTS

. . .

#### Section D

No teacher shall be disciplined, reprimanded, or deprived of any professional advantage without just cause. Whether just cause exists in any case shall be subject to the grievance procedure.

### ARTICLE XVII

#### STAFF REDUCTION

In the event of population decline, school district change, or other factors, it becomes necessary to reduce the number of instructional members, teachers shall be laid off in the inverse order of their initial employment. A teacher whose position is eliminated shall either:

1. Be transferred to a vacant position for which he is qualified; or

2. Replace the teacher with the lowest seniority anywhere within the school system in the area in which said laid-off teacher is qualified.

Staff members being considered for layoff will be notified by March 1.

When seniority for any two or more qualified teachers is equal, then other factors will be used by the school district in determining the individuals to be laid off. The specific rationale for choice shall be written and furnished to the affected individuals and the association within five days of said decision.

Negotiated insurance programs paid by the school district may be continued by the laid-off teacher, however, teachers shall be responsible for all costs which were normally paid by the employer.

In the event a teacher accepts a position with the school district outside of the professional bargaining unit, he shall retain the unit seniority rights he had accrued at the time of accepting such position. Teachers on laid-off status shall be given the first opportunity to be placed on the substitute list, or in the event of rehiring, the laid-off teacher will get first chance at the vacancy for a 1-year period."

4. That on April 24, 1975 Tina Faust signed a "Professional Employee Contract" offered by the Board of Education of the Ladysmith-Hawkins School Systems, Joint District No. 1 for the 1975-1976 school year; that said document contained the following provision:

"This contract is issued and accepted by both parties with the understanding that it will not be renewed under any circumstances for the 1976-1977 school year";

and that Tina Faust was non-renewed on February 12, 1976.

5. That on March 15, 1976 Tina Faust filed a grievance which stated:

" . . . On March 11, 1976, at a private conference held at the request of Tina Faust, the Ladysmith-Hawkins Board of Education sustained its action of February 12, 1976 in which the Board non-renewed the teaching contract of Tina Faust; moreover, the Board explained for the first time the facts surrounding the decision to non-renew the contract. The Board termed the non-renewal of the contract a 'layoff.' The Board stated that the competency of the teacher was not an issue. The Board stated that while the Board's position was one of observing the state laws and master contract provisions applicable to non-renewal, it felt the individual teaching contract of Tina Faust for the 1975-76 school year was not subject to all the provisions of the collective bargaining agreement between the Board and the Ladysmith-Hawkins Education Association.

These actions on the part of the Board are in violation of the terms of the collective bargaining agreement between the Board of Education of the Ladysmith-Hawkins Schools and the Ladysmith-Hawkins Education Association. Specifically, they violate Article I Section B, Article II Section B, Article IV Section A, Article VII Section D, Article XV Section A, and Article XVII.

Action Requested: The action requested is that Tina Faust be issued a regular teaching contract for the 1976-77 school year; and that no recriminations be made against Tina Faust by the Board or its agents; and that she have the full rights and privileges of a regular employee.";

that said grievance was processed through the various steps of the grievance procedure contained in Article VI of the collective bargaining

agreement; that on April 27, 1976 the Complainant informed the Respondent by letter that it wished to submit the Faust grievance to arbitration; and that on May 4, 1976 the Respondent refused to proceed to arbitration of said grievance contending "that Miss Faust's grievance is not applicable under the existing master contract."

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

#### CONCLUSIONS OF LAW

1. That the March 15, 1976 grievance regarding the non-renewal of Tina Faust raises a claim which on its face is covered by the terms of the parties' collective bargaining agreement.
2. That Ladysmith-Hawkins School Systems, Joint District No. 1, has violated and continues to violate the terms of Article VI of the collective bargaining agreement existing between it and the Ladysmith-Hawkins Education Association by refusing to arbitrate the grievance of Tina Faust and thus has committed and continues to commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Conclusions of Law, the Examiner makes the following

#### ORDER

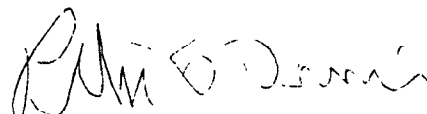
That the Ladysmith-Hawkins School Systems, Joint School District No. 1, its officers and agents shall immediately:

1. Cease and desist from refusing to submit the Faust grievance to arbitration.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of Section 111.70 of the Municipal Employment Relations Act.
  - (a) Comply with the arbitration provisions of the collective bargaining agreement existing between it and the Ladysmith-Hawkins Education Association with respect to the Faust grievance.
  - (b) Notify the Ladysmith-Hawkins Education Association that it will proceed to arbitration of the Faust grievance.
  - (c) Participate with the Ladysmith-Hawkins Education Association in the arbitration proceedings before the arbitrator with respect to the Faust grievance.
  - (d) 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.

Dated at Madison, Wisconsin this 30th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Section 111.70(3)(a)5 of the Municipal Employment Relations Act makes it a prohibited practice for a Municipal Employer "to violate any collective bargaining agreement agreed upon by the parties . . . including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement . . ." When interpreting said provision with respect to questions of procedural and substantive arbitrability the Commission has followed the federal substantive law set forth in the Trilogy cases 1/ and John Wiley and Sons, Inc. vs. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964). Thus in actions seeking enforcement of arbitration provisions contained in collective bargaining agreements, the Commission will give such clauses their fullest meaning and restrict itself to a determination of whether the party seeking arbitration makes a claim which, on its face, is covered by the bargaining agreement. 2/ Therefore, the issue before the Examiner is limited to a determination of whether the Faust grievance is arbitrable under the parties' bargaining agreement.

Article VI of the parties' bargaining agreement defines a "grievance" as " . . . any complaint regarding the wages, hours, and conditions of employment set forth in this document." The Faust grievance alleges that the Respondent violated numerous provisions of the bargaining agreement, including Article VII and Article XVII, when it non-renewed Faust. The Respondent's refusal to arbitrate is premised upon its belief that the grievance does not raise issues which are governed by the collective bargaining agreement inasmuch as non-renewals are not subject to any provisions of said agreement. The Respondent further asserts that any issues with respect to compliance with statutory requirements when it non-renewed Faust have clearly been resolved in its favor as a result of the dismissal of Complainant's writ of mandamus action by the Rusk County Circuit Court.

Giving the contractual definition of "grievance" its fullest meaning and noting that the Faust grievance alleges numerous contractual violations, the Examiner can only conclude that the Faust grievance states a claim which on its face is covered by the bargaining agreement and thus that it is arbitrable under the parties' bargaining agreement. The issue of whether the non-renewal is in fact subject to any provision of the bargaining agreement will be decided by the arbitrator. It thus should be clear that this decision does not constitute any determination with respect to the merits of the Faust grievance. The instant decision merely indicates that the Respondent has a duty to arbitrate any grievance stating a claim which on its face is covered by the bargaining agreement, even if said grievance may appear to be totally lacking in merit.

Dated at Madison, Wisconsin this 30th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Peter G. Davis, Examiner

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- 1/ Steelworkers vs. American Mfg. Co., 353 U.S. 564 (1960); Steelworkers vs. Warrior and Gulf Navigation Co., 353 U.S. 574 (1970); Steelworkers vs. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).
- 2/ Oostburg Joint School Dist., (11196-A) 11/72; Monona Grove Joint School Dist., (11614-A) 7/73; Weyerhaeuser Joint School Dist., (12984) 8/74; Portage Joint School Dist. No. 1, (14372-A) 8/76; Spooner Joint School Dist. No. 1, (14416-A) 9/76.