

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WAUWATOSA EDUCATION ASSOCIATION,	:	
ELEANOR HOEHN, JOANNE PETERSON,	:	
	:	
Complainants,	:	
	:	Case XVIII
vs.	:	No. 20627 MP-636
	:	Decision No. 14760-A
SCHOOL BOARD OF THE WAUWATOSA	:	
PUBLIC SCHOOLS,	:	
	:	
Respondent.	:	
	:	

Appearances:

Perry & First, Attorneys at Law, by Mr. Richard Perry, appearing on behalf of the Complainants.
Davis, Kuelthau, Vergeront, Stover & Leichtfuss, S.C., Attorneys at Law, by Mr. Walter S. Davis, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On June 28, 1976, the above-named Complainants filed a complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondent had committed certain prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act. The Commission appointed Marshall L. Gratz, a member of its staff, to act as examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter in accordance with Sections 111.70(4)(a) and 111.07(5), Stats. The Examiner conducted hearing in the matter at Milwaukee, Wisconsin on November 11, 1976, a briefing schedule was established at the conclusion of the testimony, and the Examiner declared the hearing at an end on that date. Thereafter, on March 15, 1977, Complainants filed a Motion to Reopen Hearing which was opposed by the Respondent and granted by the Examiner. Further hearing was then held in the matter on September 7, 1977 at Milwaukee, and the last of the parties' post-hearing briefs was received on October 25, 1977. On the basis of the record, and upon consideration of the arguments and briefs of Counsel, the Examiner makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent School Board of the Wauwatosa Public Schools, referred to herein as the District, is a municipal employer, is responsible

for the operation of the Wauwatosa Public Schools, and maintains its principal offices at 7420 West State Street, Wauwatosa, Wisconsin 53213. At all material times, the District's Superintendent of Schools, John S. Fochs, and its Assistant Superintendent, Kenneth L. Christensen, were authorized agents of the District.

2. Complainant Wauwatosa Education Association, referred to herein as the Association, is a labor organization with a mailing address at all material times of Suite 301, 10201 West Lincoln Avenue, West Allis, Wisconsin 53227. At all material times, the Association has been recognized by the District as the exclusive collective bargaining representative of a bargaining unit consisting of the District's nonsupervisory professional personnel.

3. Complainants Eleanor Hoehn and Joanne Peterson are individuals, municipal employes, and members of the bargaining unit noted in Finding 2, above. Hoehn resides at 3143 North 94th Street, Milwaukee, Wisconsin, and Peterson resides at 7124 West Beloit Road, West Allis, Wisconsin.

4. As of the times material herein, the various agreements resulting from periodic rounds of collective bargaining between the Association and the District had not been collected in a conventional master collective bargaining agreement document. Instead, said agreements were reduced to writing in one or more of the following official District documents: the Bylaws and Rules of the School Board, The Faculty Handbook, or the Administrative Handbook. Among those agreements were the following, each of which constitutes a collective bargaining agreement in effect between the District and the Association at all material times:

[Class Assignments Agreement:]

Class Assignments

No change will be made in the number of class assignments for teachers without mutual consent of the Wauwatosa Education Association and the Board of Education except as in conformance with Article X, Section 5 C, of the Bylaws and Rules of the Board of Education, which states, 'teachers who substitute for a colleague will be compensated at the rate of \$5.00 per class period. Those who are assigned an additional teaching section at the junior or senior high school level on a semester or yearly basis will be compensated at the rate of \$500 per semester or \$1,000 per year.

These will be implemented only in emergency situations and on a voluntary basis.

[Assignments and Transfers Agreements:]

B. Assignments & Transfers

1. The Board of Education shall determine the assignments of teachers in accordance with their teaching certification, class schedules, and instructional responsibilities. Any changes concerning the above will be discussed by the administration with the professional staff member concerned.

(Nego. 5/70 p. 1)

2. One of the major responsibilities of the Superintendent of Schools is the assignment of instructional personnel. It is his further responsibility to effect any and all transfers, reassignments, [sic] or relocations involving staff members (subject to the approval of the Board of Education) that will insure the most effective instructional program for those students who are attending the public schools.

(Nego. 5/71 p. 7)

3. The reassignment of staff members may become necessary to meet changes in enrollment, the implementation of new programs, the adoption of a new organizational structure, and to meet unanticipated needs resulting from resignations, long-term illnesses, or death of a staff member.

(Nego. 5/71 p. 7)

4. Should the transfer of a teacher from one assignment to another become a necessity, a genuine effort shall be made to make the reassignment known at the earliest possible date. The staff member involved shall be contacted personally and the reasons for the proposed transfer explained.

While mutual agreement is desirable and will be sought, the final responsibility for the decision shall continue to be with the Superintendent of Schools.

(Nego. 5/72 p. 7)

5. Teachers desiring a voluntary transfer may submit a written request to the Superintendent of Schools, stating their preferences for a new assignment. The request shall be carefully reviewed by the administration with the consultation of principals and/or supervisors concerned and the coordinators. If a vacancy occurs and the transfer is in the best interest of the teacher and the school system, in general, it shall be honored.

(Nego. 5/71 p. 8)

6. Should an involuntary transfer or assignment become a necessity and the teacher become dissatisfied and request a release from his or her contract, approval shall be honored in accordance with the terms of the contract.

(Nego. 5/71 p. 8)

7. All assignments shall be made without regard to age, race, creed, color, religion, nationality, sex, or marital status. Each teacher shall be notified in writing of his tentative assignment for the subsequent school year prior to June 1.

(Nego. 5/71 p. 8)

8. Assignments of teachers to the Milwaukee County Children's Home are predicated upon requirements of the Bureau for Handicapped Children and the State Department of Public Instruction. To be eligible for state aids, the classroom teachers must be certified for teaching classes for the mentally retarded and/or the emotionally disturbed. Exceptions are in the special areas of art, music, and physical education.

(Nego. 5/72 p. 7)

[Class Load Agreements:]

CLASS LOAD

A. Teacher - Pupil Ratios

The Board of Education shall continue in its effort to maintain reasonable teacher-pupil ratios in all of the classes in the Wauwatosa Public Schools in accordance with the recommendations set forth by the State Department of Public Instruction.

Every attempt shall be made to maintain the size of classes which involve laboratory work or work by pupils at individual stations; i.e., typing, science, art, shop, and home economics, to the number of stations available.

In addition, every effort possible will be made to adjust class loads by the building principals, in cooperation with the faculty members concerned, within the first week of the semester. Under no condition should the class size or class load be such that it will not result in effective instruction.

(Nego. 5/73 p. 1 - Reaffirmed 74)

B. Changes in Teaching Load or School Hours

A change in the teaching load that would be in excess of the district's policy and an extension of the school hours over and above those indicated in the Bylaws would be negotiable.

The district's current policy for teaching loads in the junior and senior high schools is as follows:

Junior High Schools	-- 5 class periods and one homeroom
Senior High Schools	-- 5 class periods; one preparatory period and one cooperative study period.

Any deviations from the above teaching loads may be made by the principal with mutual agreement by the teacher and with the approval of the Superintendent of Schools; however, any assignment that results in a greater amount of teacher time than the policy indicates must be with the teacher's approval and in accordance with the 'Extra Pay for Extra Services' schedule.

(Nego. 9/75)

5. [sic]The Board of Education will continue in their efforts to maintain a reasonable teacher-pupil ration [sic] in the formation of its classes. It shall be the policy of the Board of Education that class sizes can, and should, vary according to the area being taught, the abilities and interests of students and the broad educational objective of a particular area of study.

[Association Recognition Agreement:]

ASSOCIATION RECOGNITION

- A. The Board of Education recognizes the Wauwatosa Education Association as the exclusive bargaining agent on all matters relating to wages, hours, and conditions of employment for the non-supervisory teachers, as indicated in the negotiation unit as of March 31, 1965, including art, music, foreign language, physical education, reading and special services personnel - social workers, psychologists, homebound instructors, speech correctionists, librarians, guidance counselors, stage technical director, and teaching department chairmen, but excluding per diem teachers, interns, recreational directors, principals, assistant principals, consultants, coordinators, and all other administrative and supervisory personnel, office and clerical employees, and all other employees.

(Nego. 5/71 p. 1)

- B. All matters pertaining to the wages, hours and working conditions of professional employees, as agreed to in formal negotiation, are an expression of the policy of the Board of Education in the City of Wauwatosa, Wisconsin and are subject to amendment, modification, suspension, or repeal in any particular through negotiation between the Wauwatosa Education Association and the Board of Education.

(Nego. 5/71 p. 3)

[Teacher Policy Involvement Agreement:]

TEACHER POLICY INVOLVEMENT

- A. Areas of Involvement

The school administration will continue to carry out its [sic] cooperative staff policy in the formulation of recommendations to the Board of Education in the areas of instruction, curriculum studies, inservice programs, textbook adoptions, and building planning.

(Nego. 5/72 p. 8)

B. Selection of Committees

These committees will be a combination of teachers and administrative personnel, and, whenever possible, approximately fifty percent of the committee will be comprised of teachers. Teachers to serve on such committees will be selected from a listing of interested and qualified teachers submitted by the Wauwatosa Education Association. The administration shall reserve the prerogative of appointing additional teachers to a committee other than those on the W.E.A. listing if it is in the best interest of the committee and the school system.

(Nego. 5/72 p. 8)

C. Released Time for Committees

A reasonable amount of released time shall be granted for committee work when deemed necessary by the membership of the committee and the administration to carry out the assignment satisfactorily.

(Nego. 5/72 p. 8)

5. The District and Association were also parties, at all material times, to a grievance procedure agreement for resolving, inter alia, disputes concerning the meaning and application of the agreements set forth in Finding 4, above. Said grievance procedure does not provide for final and binding resolution of unresolved disputes of that nature.

6. Throughout the 1974-75 school year and for a period of time prior thereto, Hoehn and Peterson shared the professional librarian duties at the Wauwatosa West High School and were assisted by one nonprofessional library clerk, and, apparently, certain parent volunteer clerks and one or more student clerks.

7. By April 12, 1975, the District had knowledge that the sole professional librarian position at its Whitman Junior High School would become vacant for the 1975-76 school year.

8. In early August, 1975, the District Board approved District administration recommendations that, effective at the beginning of the 1975-76 school year, the following changes in library organization and staffing would be implemented:

- a. the number of professional librarian positions at each of the District's two high schools would be reduced from two to one;

- b. a nonprofessional position known as Student Supervisor would be created at the West High School to assist the professional librarian (it is unclear but immaterial herein whether a similar position was created at the East High School);
- c. one of the East High School professional librarians would be involuntarily reassigned (i.e., involuntarily transferred) to perform library processing services in the District's Central Office; and
would be
- d. Peterson / involuntarily reassigned to fill the Whitman vacancy noted in Finding 7, above.

The District administration made the above recommendations in response to an earlier Board directive that it identify program or staff reductions that would least affect the total instructional program for the Board to consider as means of cost-savings to cope with State-imposed budget limitations and negative aids formulations.

9. The only District-initiated contact with Peterson concerning her reassignment to Whitman was by a letter dated and mailed on Friday, August 15, 1975, which read as follows:

Dear Mrs. Peterson:

A determination has been made that the professional library staff at each of our senior high schools would be reduced from two to one librarian. Arrangements have therefore been made for the reassignment of a librarian for each school, one being assigned to the Central Library Processing Center with the remaining vacancy being in the library at Whitman Jr. High School.

Because of this need and since you are qualified and certified at the junior or senior high school level, it would be most advantageous to reassign you to that vacancy at Whitman for the next school year.

Should you have any particular question about this transfer please feel free to contact my office by calling 258-3330. However, you may find it most helpful to arrange to visit the Whitman library and to discuss the assignment with Mr. James Snow, principal, at your earliest opportunity.

It is our hope that the summer has been pleasant for you and that the opportunity to serve as librarian at Whitman will be most enjoyable.

Sincerely,

Kenneth L. Christensen
Assistant Superintendent

Peterson received said letter on or about the afternoon of Monday, August 25 because it had been misaddressed to Peterson's former

residence despite the fact that, earlier in the summer, the District had correctly addressed paychecks to Peterson at her Beloit Road residence.

10. Immediately upon receipt of said letter, Peterson phoned Christensen, learned that he was out, and reached him by phone the following day. In that conversation, answering Peterson's questions, Christensen informed Peterson that the decisions to reduce the high school library professional staffs and to reassign her to Whitman had been made in August; that the reductions were due to financial burdens imposed on the District by State aid formulas; and that although the District had been interviewing outsiders for the Whitman vacancy, Peterson was selected to fill it once the District decided to reduce the high school library professional staffs. Christensen also reiterated his hopes that Peterson would find the Whitman position to her liking and that she would visit the Whitman library and discuss the assignment with the Whitman principal at Peterson's earliest opportunity.

11. Peterson did not visit the Whitman library or discuss the assignment with the Whitman principal until the beginning of the 1975-76 school year.

12. The first District-initiated contact with Hoehn concerning the changes in West High staffing occurred when she met with the West High principal, one Rasmussen, at the latter's request, on the Monday preceding the first in-service day of the 1975-76 school year. Rasmussen explained the financial considerations leading to the changes and agreed with Hoehn's assessment that the changes would result in an overall reduction in the West High library program because Hoehn would not be able to perform all of Peterson's duties.

13. The decisions noted in (a)-(d) of Finding 8, above, were implemented at the outset of the 1975-76 school year. Shortly thereafter, Rasmussen and Hoehn met and agreed that the audio-visual aids ordering and routing functions for West High should remain centralized in the library.

14. Since the aforesaid staffing changes in the West High library, Hoehn has performed some of the job functions previously performed by Peterson; the Student Supervisor assigned to the West High library has performed some of the job functions previously performed by Peterson, and has received an extra-duty stipend in connection with her performance of some audio/visual-related duties; Hoehn has worked longer and harder than was the case when Peterson shared the professional librarian responsibilities at West High; Hoehn has continued to

perform certain professional librarian services not expressly assigned to her or expected of her by the District; and, in various respects, the quality and availability of professional librarian services to the students and faculty of West High has been reduced.

15. On or about August 26, 1975, the following grievance was filed:

TEACHER GRIEVANCE

Grievants:	Eleanor Hoehn JoAnne Peterson Linda Stelsel
Teaching Assignments:	Library Instruction
Schools:	West High School and East High School
Date Grievance Filed:	August 26, 1975

I. Statement of Facts

On August 15, 1975, Ms. Peterson received a letter notifying her of the District's intent to transfer her from the position of library media instructor at West High School to the position of librarian at Whitman Jr. High.

The effect of this transfer will reduce the number of librarians at West High and will therefore result in a change in the number of class assignments for Ms. Hoehn by increasing the number of total students and classes in her charge during any given class period. This change in the number of class assignments was made without the mutual consent of the Wauwatosa Education Association and with no indication to the grievants or the Association that said change was the result of an emergency situation.

This transfer will double the class size of Ms. Hoehn and cause her to assume all responsibilities of the audio visual/media center at West High as well as all duties previously assigned to her and will therefore not insure the most effective instructional program for the affected students.

Ms. Catherine Manning gave notice of her intent to vacate the library position, to which Ms. Peterson has now been transferred to [sic], as early as May of 1975.

The affected teachers were not involved in the formulation of the policy of reducing the teacher-pupil ratio in the area of library instruction and the District's de-emphasis of library/media instruction on the high school level.

This transfer will result in a library class size policy which is not consistent with state standards and further does not maintain current class sizes for those pupils involved in laboratories and work in individual stations.

The reduction in the number of library positions at West High will establish a class load and size which will not result in effective instruction.

II. Negotiations Agreements, Laws, and Past Practices Violated

- A. *"Class Assignments" Faculty Handbook, Page 2 (Agreed upon between the Association and the School Board May 1968)*

- B. "Assignments and Transfers" Faculty Handbook, Page 7
(Agreed upon between the Association and the School Board May 1971 and 1972)
- C. "Teacher Policy Involvement" Faculty Handbook, Page 8,
(Agreed upon between the Association and the School Board May 1972)
- D. "Class Load" Faculty Handbook Page 1 (Agreed upon
between the Association and the School Board May 1973)

III. Remedy Sought

- A. The immediate transfer of Ms. Peterson to her former position as instructor of library/media at West High School.
- B. A committee shall be established comprised of administrators selected by the superintendent and teachers selected by the Association to review the District's policy regarding library class sizes at the high school level and the utilization of media centers and instructors in the high school library program.

Signature of Teacher(s) and/or
Association Representative:

During the course of the processing of said grievance, the name of Linda Stelsel as one of the grievants was withdrawn; the District Board's Hearing Committee's written disposition of the matter, dated December 11, 1975 and concurred in by the full Board on June 9, 1976, concluded as follows:

The transfer of Mrs. Peterson to Whitman Junior High School was not in violation of any previous agreements between the W. E. A. and the Board of Education. Miss Hoehn should discuss her alleged excessive work load with the school principal so that he can analyze the functions she performs as compared to the duties assigned to her with the view of eliminating those functions which she deems appropriate but are not within the scope of her duties as librarian[;]

and the grievance procedure was exhausted without resolution of any portion of the grievance. On June 10, 1976, Complainants filed the instant complaint, alleging the same facts as were set forth in the grievance, above.

16. Neither Hoehn's formal instructional activities nor any of her other job functions in 1975-76 constituted "class assignments" within the meaning of that term intended by the parties in their CLASS ASSIGNMENTS agreements, above. Hence, any increases in such activities or functions experienced by Hoehn in 1975-76 did not constitute a change by the District in the number of Hoehn's class assignments within the meaning of said agreements.

17. In its assignment of Peterson to fill the Whitman professional librarian vacancy, the District did not fail to act "in accordance with her teaching certification, class schedules or instructional responsibilities" as those terms were used by the parties in their ASSIGNMENTS AND TRANSFERS agreement (1), above.

18. The District met its ASSIGNMENTS AND TRANSFERS agreement (1) obligation that changes concerning the assignments of teachers will be discussed with the staff member concerned by the administration when Christensen had the telephone conversation with Peterson noted in Finding 10, above, notwithstanding the fact that Peterson initiated said telephonic contact.

19. The parties' ASSIGNMENTS AND TRANSFERS agreement (2), above, reserves to the District the right to transfer, reassign and relocate staff members in the manner which, in the judgment of the Superintendent and with Board approval, will insure the most effective instructional program for those students who are attending the public schools in the District. Neither the Superintendent nor the Board have been shown to have arbitrarily, discriminatorily or capriciously exercised said right to make that judgment in deciding to reassign Peterson to fill the Whitman vacancy.

20. The District's decisions to eliminate and create positions noted in Finding 8, above, constituted "the adoption of a new organizational structure" within the meaning of ASSIGNMENTS AND TRANSFERS agreement (3), above. Moreover, "a change in enrollments" within the meaning of said agreement (specifically a decline therein at the lower grades) made the District's previously anticipated transition from grade 10-12 high schools to grade 9-12 high schools infeasible, and thereby made the elimination of one professional librarian at each high school a viable alternative. The resultant reassignment of Peterson to Whitman thus became necessary both to meet changes in enrollment and to meet the adoption of a new organizational structure, within the meaning of said agreement.

21. The delay between early-August (when the District decided to transfer/reassign Peterson to Whitman) and the August 15 date of mailing of a letter to her to that effect, as well as the District's election under the circumstances to send notice thereof by mail rather than to communicate it by telephone or in person, both demonstrate the absence of the "genuine effort . . . to make the reassignment known at the earliest possible date" required by ASSIGNMENTS AND TRANSFERS agreement (4), above.

22. Neither the mailing of the August 15 letter with Christensen's offer to answer questions Peterson might have concerning her reassignment, nor the fact that Christensen spoke by telephone with Peterson when the latter initiated a call to him, nor any other District action constitutes compliance with the ASSIGNMENTS AND TRANSFERS agreement (4) requirement that the staff member involved in a reassignment be "contacted personally" by District officials.

23. Neither by the suggestions in Christensen's August 15 letter, nor in his telephone conversation with Peterson noted in Finding 10, above, nor in any other way did the District comply with the ASSIGNMENTS AND TRANSFERS agreement (4) requirement that mutual agreement to reassignments will be sought by the District.

24. Peterson did not request either a voluntary transfer or a release from her individual teaching contract at any material time herein.

25. The Complainants have not proven that the reassignment of Peterson to Whitman was predicated upon age, race, creed, color, religion, nationality, sex or marital status. Nor have Complainants shown that Peterson was not notified in writing as to her tentative assignment for the 1975-76 school year prior to June 1, 1975, as that assignment was then contemplated by the District.

26. The TEACHER-PUPIL RATIOS portions of the CLASS LOAD agreements, above, were not intended by the parties to be applicable to the professional librarians employed in the District's high school libraries.

27. The Complainants have failed to prove by a clear and satisfactory preponderance of the evidence that the District has required Hoehn to carry a teaching load that exceeds the equivalent of the "5 class periods; one preparatory period and one cooperative study period" specified as the District's current policy for teaching loads in the senior high school in the CHANGES IN TEACHING LOAD OR SCHOOL HOURS portions of the CLASS LOAD agreements, above.

28. The Complainants have not shown the District to have conducted itself in a manner that repudiates the ASSOCIATION RECOGNITION agreement, above.

29. The Complainants have failed to prove the nature of the cooperative staff policy referred to in the TEACHER POLICY INVOLVEMENT agreements in Finding 4, above. While the decisions noted in Finding 8, above, were not the product of, or otherwise considered by a joint faculty-administration committee such as is referred to in said agreements, such does not establish that the District committed a violation thereof.

CONCLUSIONS OF LAW

1. The District violated a collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employees, and thereby committed prohibited practices within the meaning of Section 111.70 (3)(a)5, Stats., by violating the ASSIGNMENTS AND TRANSFERS agreement (4) noted in Finding 4, above, in the following ways:

- a. by failing to make a genuine effort to make Peterson's reassignment to Whitman known to her at the earliest possible date;
- b. by failing to "contact [Peterson] personally," within the meaning of said agreement, concerning her reassignment to Whitman; and
- c. by failing to seek Peterson's agreement to be reassigned to Whitman.

2. Except as noted in Conclusion 1, above, the District has not been shown to have violated a collective bargaining agreement or, therefore, to have committed prohibited practices within the meaning of Section 111.70(3)(a)5, Stats., in connection with its decisions noted in Finding 8, above, or its implementation thereof.

ORDER

1. The School Board of the Wauwatosa Public Schools, its officers and agents, shall immediately:

- a. cease and desist from violating the terms of collective bargaining agreements that are currently in effect or that come to be in effect hereinafter between it and the Wauwatosa Education Association as regards the timing, mode, and content of communications to professional staff members of whom the District is contemplating reassignment; and

- b. take the following affirmative actions which the examiner deems proper to effectuate the purposes of the Municipal Employment Relations Act:

- (1) notify its employees in the bargaining unit represented by the Wauwatosa Education Association of the contents of the attached Notice by causing same to be signed by the Board President and Superintendent of Schools, and posting copies of said Notice so executed for a period of sixty (60) days in conspicuous locations where notices to said employees are customarily posted, and by taking steps to assure that said copies are not removed, covered or defaced during said posting period; and

(2) notify the Wisconsin Employment Relations Commission in writing within 20 days of the date of this order as to what steps have been taken to comply with the instant order.

2. Except as provided in Order paragraph 1, above, the Complaint filed in the instant matter shall be, and hereby is, dismissed.

Dated at Milwaukee, Wisconsin this 29th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

NOTICE TO ALL NONSUPERVISORY PROFESSIONAL PERSONNEL

Pursuant to an order issued by a Wisconsin Employment Relations Commission examiner following a hearing on a complaint of prohibited practices filed by Wauwatosa Education Association, Eleanor Hoehn, and Joanne Peterson; and in order to effectuate the purposes of the Municipal Employment Relations Act; you are hereby notified as follows:

Neither the Board of Education of the Wauwatosa Public Schools nor any of its officers or agents shall violate the terms of collective bargaining agreements between the Board and the Wauwatosa Education Association, including such agreements as relate to the timing, mode, and content of communications to professional staff members of whom the District is contemplating reassignment.

Board President

Date

Superintendent of Schools

Date

THIS NOTICE SHALL REMAIN POSTED FOR A PERIOD OF SIXTY (60) DAYS AND SHALL NOT BE DEFACED OR COVERED BY OTHER MATERIALS.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Complainants (Hoehn, Peterson and Association) allege that the District violated existing Association-District collective bargaining agreements on the subjects of

- class assignments
- assignments and transfers
- teacher policy involvement
- association recognition, and
- class load

by alleged acts and omissions related to its August, 1975 reduction from two to one professional librarian(s) at West High School and its transfer/reassignment^{1/} of Peterson from a position as the second professional librarian at West High to a position as the sole professional librarian of Whitman Junior High. Complainants further allege that they exhausted the applicable grievance procedure and that said procedure does not culminate in a final and binding means of settling unresolved grievances.

By way of remedy, the complaint contains a request that the District be ordered to cease and desist from such violations, to transfer Peterson back to her former West High position, to pay Hoehn \$1000 per school year compensation for her increased load, and to comply with whatever other relief the WERC deems appropriate. At the close of the hearing, the Association clarified its request regarding reinstatement so as to request that a second librarian position be reestablished at West High and that Peterson be offered reinstatement therein. In its brief, the Association reiterated an additional requested remedy that had also been set forth in the original grievance but not in the complaint itself. That request is for an order that the District participate in the establishment of a joint administrator-teacher committee "to review the District's policy regarding library class size at the high school level and the utilization of media centers and instructors in the high school library program."

^{1/} The terms "transfer" and "reassignment" both appear applicable to the change experienced by Peterson at the outset of 1975-76. The two terms are therefore used interchangeably herein.

The District, in its answer, admits that it is bound by the Association-District agreements recited in the complaint, among others, but denies that it violated same and requests dismissal of the complaint on that basis.

The parties' specific contentions regarding the alleged violations of the provisions referred to above are noted in the discussion of each set forth below. The basic factual background of those disputes is set forth in the Findings, above.

Alleged Violation of CLASS ASSIGNMENTS Agreement

The District admitted in its answer that it was bound to a CLASS ASSIGNMENTS agreements as noted in Finding 4.

Complainants contend that the District's reduction from two to one West High professional librarian(s) constituted implementation of a "change . . . in the number of class assignments for [a] teacher [namely Hoehn] without mutual consent of the . . . Association . . ." when the District was neither "in an emergency," operating "on a voluntary basis," compensating a teacher at the rate of \$5.00 per class period for substituting for a colleague, nor compensating Hoehn at the rate of \$1000 per year.

The District apparently contends that librarians do not have "class assignments," so that the above provision is not at all applicable to librarians.

While it is clear from the ASSOCIATION RECOGNITION clause that Hoehn, as a holder of a professional librarian position, is a "teacher" within the parties' parlance, the Association has failed to show that Hoehn had a specific number of "class assignments" or of "teaching sections" in 1974-75 that was changed or added to in 1975-76. For, those latter two terms appear, from the context of the above contractual provision and from the hearing testimony concerning Sophomore English sections,^{2/} to refer to an assignment to teach a specific (generally unchanging) group of students a particular subject matter over the course of a semester or a year.

While Hoehn formally taught Sophomore English students about the library and its use during some 28 (55 minute) periods in 1974-75 and some 36 periods in 1975-76, that instruction consisted of only four periods with any given group or "section" of such students, and all

^{2/} E.g., tr. at 82.

such formal instruction was completed in September-October of 1974-75 and in September-November of 1975-76. Hence, due to the changing identity of the student groups taught and the nonsemesterly and non-yearly extent of Hoehn's formal instruction load, the terms "class assignment" and "teaching section," as used in the CLASS ASSIGNMENTS agreement as interpreted above, are inapplicable to Hoehn's formal instructional activities.

For the same reasons, those terms are also inapplicable to the reference guidance provided by Hoehn to individual students coming to the library on their own, in small groups, or with an entire class.

For the foregoing reasons, no violation of the CLASS ASSIGNMENTS agreement, above, has been found to have been committed by the District in the instant circumstances.

Alleged Violation of ASSIGNMENTS AND TRANSFERS Agreements

The District and Association are parties to ASSIGNMENTS AND TRANSFERS agreements, in effect at all material times, which consist of the eight numbered elements noted under that heading in Finding 4, above. Number references herein are to those elements.

Complainants contend that the District violated (3), by reassigning Peterson from West to Whitman because that reassignment did not "become necessary to meet changes in enrollment, the implementation of new programs, the adoption of a new organizational structure, [or] to meet unanticipated needs resulting from resignations, long-term illnesses, or death of a staff member." Complainants apparently further complain that said reassignment was implemented in a manner inconsistent with the requirements of (4), in that: the reassignment was not made known at the earliest possible date in view of the District's knowledge in April of the vacancy at Whitman to which Peterson was re-assigned; Peterson, the staff member involved, was not contacted personally before the reassignment was decided upon; Peterson was not informed before the reassignment was decided upon what the reasons for the reassignment were; and mutual agreement was not sought before the reassignment was implemented.

The District contends that its actions violated none of the provisions in (1) through (8), for the following reasons. Agreement (1) was not violated since it applies only to assignments and the instant situation was a transfer, not an assignment or reassignment. Even if (1) applies, it was not violated since, if reassigned, Peterson was assigned to a position in accordance with her teaching certification. Agreement (2) expressly recognizes management's ultimate decisionmaking

authority in matters of transfers, reassignments or relocations involving staff members. The reasons given Peterson for her transfer-- "negative aids and staff reductions"--plausibly fall within the category of reasons defined by (3). Since the decision to transfer Peterson was made in early August, she was informed "at the earliest possible date" by the August 15, 1975 letter from Christensen, and the reasons for the action were explained to Peterson by Christensen in a personal contact immediately thereafter; hence (4), above, was not violated. Agreement (5) applies only to voluntary transfers and is therefore inapplicable. Agreement (6) is inapplicable since Peterson did not request to be released from her teaching contract. There is no claim that Peterson's tentative assignment was not provided to her in writing prior to June 1; hence no violation of (7) has been alleged or proven. And finally, (8) is inapplicable since no assignment to the Milwaukee County Children's Home is involved.

Regarding (1), the examiner rejects the District's proposed narrow interpretation of the term "assignments of teachers" but nonetheless finds no violation to have been proven on the instant facts. Peterson's certification includes the junior high school library work to which she was reassigned. No conflict with class schedules or other instructional responsibilities has been proven. Finally, it is undisputed that Christensen discussed the change in Peterson's assignment with her shortly after Peterson's receipt of the August 15 letter. The facts that Peterson initiated that discussion and that it took place after the decision to effect the reassignment of Peterson had been made do not affect the examiner's conclusion that the District administration fulfilled its quite limited obligation under the terms and context of sentence two of (1) to discuss the change in Peterson's assignment with Peterson, "the professional staff member concerned."

No violation of (2) has been proven, if indeed one is claimed. For, that provision is a general reservation to the Superintendent and Board of the right to reassign, transfer or relocate staff members. Even if it were assumed that the "that will . . . schools" portion of that provision constitutes a limitation on rights reserved by the balance of the provision, it seems clear that the judgment as to which transfers, reassignments or relocations "will insure the most effective instructional program . . . " is reserved to the judgment of the Superintendent and the Board. Here, the Superintendent, at the direction of the Board, sought to achieve cost savings with actions --including those at issue herein--which were designed "to reduce programs or staff that would least effect [sic] the total instructional

program."^{3/} Thus, even if an implicit limitation on the rights reserved in (2) were recognized such as would prohibit the exercise of same in an arbitrary, capricious or discriminatory manner, no such abuse of managerial discretion has been demonstrated herein.

If (3) were interpreted as prohibiting reassignments of staff members except in the circumstances specified therein as those in which "reassignment . . . may become necessary," no violation thereof would be made out on the instant facts. For, the staffing changes of which Peterson's transfer was a part reflected the District's "adoption of a new organizational structure" in the sense that one professional librarian position was eliminated at each of the high school libraries,^{4/} and a nonprofessional Student Supervisor position was created^{5/} (at least at the West library). Moreover, the record reveals that West High was staffed with two librarians in anticipation that it would become a grade 9-12 facility as part of a conversion to a middle school concept rather than a junior high school concept.^{6/} However, the District's plans in the latter regard were abandoned when K-5 enrollments unexpectedly decreased rapidly.^{7/} Hence, said "changes in enrollment" made the reduction from two to one professional librarian(s) at West High feasible as a means of achieving the Board's cost-savings objectives, thereby bringing the instant situation within the purview of the "changes in enrollment" portion of (3). Of course, if the "may become necessary" reference in (3) is viewed as a merely precatory description of a mutually recognized but nonexclusive listing of possible causes the the exercise of management's right reserved in (2), then there would clearly be no violation of (3) to be found herein.

^{3/} Tr. 120.

^{4/} The record reveals that the term "library" has several synonyms in educational parlance. The examiner's use of the term does not reflect a judgment as to whether "library" is a term more appropriate to describe the District high school facilities involved than some other title.

^{5/} It may also be that the librarian transferred from East High School filled a newly created professional librarian position in the Central Office, but the record is not sufficiently clear in that regard to rule out the possibility that said employe simply filled a vacancy that had occurred there. See, Tr. 99-100; Exh. 1.

^{6/} Tr. 114-116.

^{7/} Tr. 118.

With regard to the requirements of (4), the record reveals that although the District knew of the Whitman vacancy in question by April 12, it took outsiders' applications and did some interviewing before deciding in "early" August^{8/} to reduce its high school libraries from two to one professional librarian(s) and to reassign Peterson to fill the Whitman vacancy. The only communication on the subject to Peterson initiated by the District was Christensen's letter (Finding 9) which was apparently mailed on Friday, August 15. Peterson's receipt of that letter was delayed until approximately Monday, August 25 because the letter had been addressed to Peterson's former residence rather than to her current one. While the District appears to have been responsible for misdirecting the letter (inasmuch as it used Peterson's new address for mailing of earlier summer paychecks), the record does not suggest that the misdirection was intentional. Nevertheless, the delay in notifying Peterson between an "early" in August decision until a mid-August letter appears to the Examiner to be inconsistent with the "genuine effort . . . to make known at the earliest possible date" requirement in (4). So does the District's choice of a letter rather than a phone call as the means of communication with Peterson about the matter, in view of the proximity to the beginning of the 1975-76 school year.

Furthermore, especially in view of the nearness of the decision to the beginning of the new school year, the District's efforts at communication violate the spirit and letter of the "personally contact," and "mutual agreement . . . [to] be sought" portions of (4), as well. Unlike the "discussion" requirement of (1), the "personally contact" requirement in (3) appears in a context which clearly implies that the District is to initiate the personal contact for the purposes of explaining the reasons for a proposed transfer and to seek the agreement of the employee involved. The District's failure to initiate a personal contact with Peterson is not obviated by either the fact that such a contact was later initiated by Peterson or by the suggestions in Christensen's letter that Peterson could contact Christensen or the Whitman principal about the assignment. Christensen did explain the reasons for the transfer when Peterson called him after receiving the letter. But in that conversation, as in the letter, he presented the reassignment as a fait accompli, rather than in the manner prescribed

8/ Tr. 115-116. To the same effect was Peterson's hearsay testimony that an outside applicant told her in the first week in August that the District was then no longer interviewing for the Whitman vacancy because it had been filled. (Tr. 99.)

in (4), to wit, as a "proposed" action to which Peterson's agreement was sought. Hence, in each of the above respects, the District violated (4).

The provisions in (5) through (8) are clearly inapplicable to the instant circumstances and so no violation thereof has been found. Specifically, no request either for a voluntary transfer or for release from a teaching contract is involved herein. No discrimination of the sort identified in the first sentence of (7) has been alleged or proven, and there is no proof that Peterson was not notified prior to June 1 of her tentative assignment for the subsequent school year, as it was then contemplated by the District.

Alleged Violation of CLASS LOAD Agreements

The parties' CLASS LOAD agreements in effect at material times include, inter alia, those noted under that heading in Finding 4.

Complainants allege that, by its reduction from two to one librarian at West High the District: doubled the pupil-teacher ratio for library instruction there; further deviated from the applicable recommendation set forth by the State Department of Public Instruction (DPI); and did so without making any effort to maintain the existing ratio or even a reasonable ratio. Complainants further contend that the resultant class size and class load for Hoehn "will not result in effective instruction."

The District, on the other hand, contends that all of the CLASS LOAD language, above, is inapplicable since, on its face and as discussed by the Association during bargaining, it is addressed only to traditional academic classes and to specifically enumerated non-desk classes, not to counselors or to librarians. In any event, the District argues that the DPI standards referred to are for "Instructional Materials Centers" (IMC), a concept never adopted by the District, and therefore are not applicable herein. Even if applicable, the District contends that it has met the requirements of those standards; and that even if it hasn't, it is only required to make a reasonable effort to maintain the DPI's standards, and the Association has not proven that it has failed to make such efforts.

The examiner has concluded that the TEACHER-PUPIL RATIOS provisions, above, are not applicable to the District's libraries^{9/} for

^{9/} See Note 4, above.

the following reasons. The Association's proposed interpretation of the first paragraph thereof would give no effect whatever to the term "in all of the classes." As was the case in the discussion of "class assignments" above, it appears in this context as well that the parties have used the term "class" to refer to a specific (generally unchanging) group of students being taught a particular subject matter over the course of a semester or year.^{10/} The concerns expressed by the Association during the bargaining concerning the TEACHER-PUPIL RATIOS language above focused exclusively on "classes" in that sense; no mention was made of counselors' or librarians' situations.^{11/} Furthermore, by all accounts, the District has never attempted to comply with the DPI recommendations for pupil-librarian ratios.^{12/} Yet, while the belief that the District has never complied with those DPI recommendations appears to be unequivocal, at least among the District's librarians,^{13/} there is no evidence that such was ever the subject of a grievance or other complaint before the instant situation arose.

Hence, no violation of the TEACHER-PUPIL RATIOS agreements has been found herein.

Regarding the CHANGES IN TEACHING LOAD OR SCHOOL HOURS language, as noted in the earlier discussion of CLASS ASSIGNMENTS, the number of periods during which Hoehn formally taught Sophomore English students about the library and its use increased in 1975-76. Hoehn's testimony also indicates that in other respects she has worked harder and longer since becoming the sole professional librarian at West High. Nevertheless, assuming arguendo (without deciding) that the "district's policy for teaching loads in the junior and senior high schools" is at all applicable to librarians, the examiner cannot conclude herein that Hoehn has been required to carry a load that exceeds "5 class periods; one preparatory period and one cooperative study period." For, even if the evidence concerning Hoehn's 1975-76 workload were deemed sufficient to show that she is exceeding the prescribed load

^{10/} The American Heritage Dictionary of the English Language (1970) defines "class" as, inter alia, ". . . A group of students meeting to study the same subject. . . . The period during which such a group meets. . . ."

^{11/} Tr. 123-124.

^{12/} The District has, instead, conformed its pupil-librarian ratio to the requirements of the North Central Association of Colleges and Schools. Tr. 125-127.

^{13/} Tr. 65.

limit (if applicable) during her normal work day, it is not possible from the instant record to discern to what extent it has been Hoehn's personal dedication rather than management's directives or requirements that would have led to that result. Hoehn appears from the record to be a highly dedicated professional and a person who is strongly committed to maintaining the highest possible standards of service to faculty and students, and she admitted that she was performing certain professional librarian functions that have never been expressly assigned to or requested of her by the District.^{14/} Moreover, the District Board's grievance disposition, in concurring with the conclusion of its Hearing Committee quoted in Finding 15, above, reflects a willingness on the part of the District to provide clarification of the District's requirements of her, should Peterson desire same. For the foregoing reasons, no violation of the CHANGES IN TEACHING LOAD OR SCHOOL HOURS portion of the CLASS LOAD agreements noted above has been made out herein.

Alleged Violation of ASSOCIATION RECOGNITION Agreement

The ASSOCIATION RECOGNITION agreement in effect at all material times reads as quoted in Finding 4.

Since the Association has not specified the nature of the alleged violation of the above provision either in the original grievance, the complaint, its hearing presentation, or its brief, it therefore may have been cited solely for the purpose of establishing that the "non-supervisory teachers" expressly included in the bargaining unit includes "librarians."

The District contends that the above language creates no contractual rights and places no restrictions on the rights of management.

In any event, given the absence of proof herein that the District has acted in such a way as to repudiate the inclusion in the unit of librarians, the examiner finds no violation of the above language in the instant facts. Neither the evidence that the District does not deem the CLASS ASSIGNMENTS or CLASS LOAD provisions to apply to librarians nor any other evidence herein supports the allegation that the District has repudiated or violated the ASSOCIATION RECOGNITION agreement noted above.

^{14/} Tr. 96

Alleged Violation of TEACHER POLICY INVOLVEMENT Agreement

The language of the TEACHER POLICY INVOLVEMENT agreement in effect between the parties read as noted under that heading in Finding 4.

The alleged violation of the above language appears to be that embodied in the complaint (and grievance) paragraph which reads, "The affected teachers were not involved in the formulation of the policy of reducing the teacher-pupil ratio in the area of library instruction and the District's de-emphasis of library/media instruction on the high school level."

The District contends that the above provisions are inapplicable because they apply only to formulation of school administration-initiated recommendations in specified areas whereas the instant actions were initiated by the Board itself (which decided to cut the budget and to do so where the least effect on instruction would result) and in an area of overall educational policy vested by law in the Board which is outside those to which the above provisions relate.

The examiner has found no violation of the TEACHER POLICY INVOLVEMENT PROVISIONS noted above. For, in general, Complainants have not proven the nature of the "policy" that the District therein agreed to "continue to carry out." There is also no showing that under said "policy," all recommendations within the specified "areas of involvement," without exception, must be submitted for joint committee consideration before a recommendation for Board action is presented by the administration. Without a clearer statement to the latter effect in the language or clear proof of a past practice to that effect, the examiner is unwilling to conclude that the Board is without the authority to unilaterally obtain from the administration recommendations as to the means of attaining near-term cost-savings, without first submitting the matter for consideration to a joint committee. It may also be noted that the Board was not without teacher inputs regarding library organization, operation, and staffing policies at the time the instant decisions were made. On the contrary, a parent-teacher-student-administrator committee referred to as the State Standards Committee (of which Complainant Peterson was a member) had issued an 89 page report entitled "Recommendations for Wauwatosa Public Schools' Libraries" in May of 1975.^{15/} For those reasons, and without determining whether

^{15/} Exhibit 23.

library staffing falls within any of the specified "areas of involvement," the examiner has found no violation of the above provisions.

Remedy

The District's ASSIGNMENTS AND TRANSFERS agreement violations found herein probably contributed significantly to the personal anguish experienced in the matter by Peterson, and they reflected a general disregard for the agreed-upon procedures set forth in portion (4) noted above. Therefore, the examiner has found it appropriate to order the District to cease and desist from such violations in the future and to notify the bargaining unit employees of its intent not to commit such violations in the future.^{16/}

The order requested regarding a joint committee to review certain library-related matters would not be proper since no TEACHER POLICY INVOLVEMENT agreement violation has been found herein.

The additional remedies requested--such as reestablishing the second professional librarian position in the West High library, offering Peterson reinstatement to that position, and providing certain make-whole relief--have not been ordered, for the following reasons. The violations found relate to the manner in which the District exercised its rights to take the actions involved, not to the absence of the District's ultimate rights to take those actions. Moreover, the violations appear to be the product of inattention to the agreed-upon procedures, rather than part of a deliberate scheme designed to defeat the underlying purposes of the procedural protections involved by, e.g., intentionally delaying notice to Peterson to prevent her from effectively protesting the actions of the District involved. Finally, under all of the circumstances, no additional remedial order appears necessary to prevent recurrence of the violations found.

Dated at Milwaukee, Wisconsin this 29th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

^{16/} While the cease and desist order has been drawn so as to relate only to the types of violations found herein, the Notice to employees has been fashioned in broader terms to avoid the unintended implication that the District might intend to violate agreements with the Association in other respects.