STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MINERAL POINT FEDERATION OF TEACHERS and WISCONSIN FEDERATION OF TEACHERS, AFL-CIO Complainants, vs. MINERAL POINT UNIFIED SCHOOL DISTRICT and ROBERT A. FLUM Respondents.	Case II No. 20885 MP-671 Decision No. 14970-A

Appearances:
Goldberg, Previant and Uelmen, Attorneys at Law, by Mr. John Williamson, appearing on behalf of Complainants.
Kramer, Nelson and Kussmaul, Attorneys at Law, by Mr. John Kramer, appearing on behalf of Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Mineral Point Federation of Teachers and Wisconsin Federation of Teachers, AFL-CIO having filed a complaint on October 8, 1976 with the Wisconsin Employment Relations Commission alleging that Mineral Point Unified School District and Robert A. Flum had committed certain prohibited practices within the meaning of Section 111.70(3)(a)1, 3 and 5 of the Municipal Employment Relations Act; and the Commission having appointed Stephen Schoenfeld, 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 hearing on said complaint having been held at Mineral Point, Wisconsin on January 25, 1977 and March 21, 1977 before the Examiner, and briefs having been filed by both parties with the Examiner; and the Examiner having considered the arguments, evidence and briefs and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Mineral Point Federation of Teachers, affiliated with the Wisconsin Federation of Teachers, AFL-CIO, hereinafter referred to as Complainant, is a labor organization.

2. That the Wisconsin Federation of Teachers, AFL-CIO, is a labor organization.

3. That the Mineral Point Unified School District, hereinafter referred to as Respondent or District, is a Municipal Employer; that Robert A. Flum is employed by Respondent as its superintendent and functions as its agent; that the Board of Education, hereinafter referred to as Board, of the Mineral Point Unified School District is an agent of Respondent and is charged under the laws of the State of Wisconsin with the possession, care, control and management of the property and affairs of Respondent.

4. That at all times material herein, Complainant and Respondent were signators to a collective bargaining agreement covering wages, hours and other conditions of employment of teachers in the employ of Respondent;

that Respondent and Complainant had negotiated a staff cut procedure and that said procedure had the same force and effect as all the other provisions of the labor agreement; and that said agreement contained the following provisions relevant herein:

"IV. Board of Education Rights:

Nothing in this agreement shall interfere with the right of the Board in accordance with applicable law, rules, and regulations to:

Carry out the statutory mandates and goals assigned to the Board utilizing personnel, methods and means in the most appropriate and efficient manner possible.

Manage the employees of the district; to hire, promote, transfer, assign, or retain employees in positions within the school system and in that regard to establish reasonable work rules.

Suspend, demote, discharge, or take other appropriate disciplinary action against the employees for just cause.

Plan, direct and control activities of the school system.

Schedule classes and assign work loads.

Determine teaching methods and subjects to be taught to maintain the effectiveness of the school system.

Determine teaching complement and create, revise and eliminate positions.

The foregoing enumerations of the rights and functions of the Board shall not be deemed to exclude other functions of the Board not specifically set forth, the Board retaining all functions not otherwise specifically nullified by this agreement.

It is agreed that the Federation has the right to challenge the Board in the exercise of any of the functions set out in this agreement and such challenge shall be made through the grievance procedure.

V. Grievance Procedure:

This grievance procedure is designed to insure adequate consideration of all grievances either individual teacher or group, arising under this agreement. For the purpose of this agreement, a grievance is defined as any complaint involving the interpretation, application or alleged violation of specific provision of this agreement.

Grievances shall be processed in accordance with the following procedures:

A. Level One--An ernest [sic] effort shall first be made informally between the teacher or group of teachers and the building principal within five school days following the day the condition causing the grievance occurred.

B. Level Two--If the grievance is not resolved in Level One, the grivance [sic] may be presented to the superintendent in writing no later than five school days after the Level One discussion. The superintendent may determine whether the nature of the grievance would warrant calling a meeting with the Federation's Executive Board. The teacher involved may be present at such meeting and shall be present if requested by either the superintendent or the Executive Board. The superintendent will be expected to reply in writing to the aggrieved person within five school days after receipt of the grievance.

C. Level Three--Should the aggrieved teacher feel the condition is not remedied to his or her satisfaction after the second level, he or she may within ten school days after written response from the superintendent file the grievance in writing to the Clerk of the Board of Education. The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issue involved, the agreement provision(s) involved, and the relief being sought. A grievance not timely filed with the Board shall be deemed finally resolved against the grievant. The Board shall consider the grievance in closed session at its regular meeting or at any special meeting called for that purpose in the interim. The Board shall within ten school days after the meeting advise the grievant and the Mineral Point Federation of Teachers in writing of the action taken with regard to the grievance.

D. Level Four--If the grievant is not satisfied with the action taken by the Board, he or she may, within ten days of receipt of the written notice from the Board, file a request with the Clerk of the Board for advisory arbitration of the grievance.

A board of arbitration shall be formed consisting of two Board Members appointed by the Board President, and two members of the Federation appointed by the Federation President, and these four shall select a fifth impartial member who is neither a member of the Board or of the teaching staff. The Board of Arbitration will make a recommendation for the disposition of the grievance within 30 school days following appointment of the fifth member. The decision of the Board of Arbitration shall be advisory.

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XII. Teacher Salary Schedule 1975-76

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I. Re-employment of Teachers Removed from System due to Reduced Enrollment:

Any teacher being removed from the system due to reduced enrollment will be given an opportunity to be considered for re-employment if there is an opening for which that teacher is qualified.

. . ."

"STAFF CUT PROCEDURE

The Board of Education recognizes that the size of the district staff will, of necessity, have to be decreased in the future due to decreasing student enrollment. While it is expected that normal annual staff retirements and resignations will account for most necessary staff decreases, there shall no doubt be occasions when they won't and it will be necessary for the Board to choose between and among staff to determine whose employment shall be terminated.

The administrative staff will thoroughly analyze staff needs for as far in the future as possible to determine well in advance what positions are to be dropped. The Superintendent will submit recommendations to the Board no later than January relative to staff needs and staff cuts for the following school year. The Board of Education has the final authority to determine staff and what positions shall be either added or deleted.

When the Board has determined that a position is to be eliminated and it is necessary to select between two or more individuals as to which specific individual's employment shall be terminated in a given subject area or grade level the following teachers will be considered:

Grades K-6: Teachers of the specific grade level position to be eliminated as well as those teachers assigned one level above and one level below the position to be eliminated.

Grades 7-12: Only those teachers who teach the majority of their time in the subject area position to be eliminated.

From among the teachers being considered for employment termination, the initial criteria for termination shall be seniority--the individual who has been in the employ of the district for the shortest period of time shall be terminated. The date of initial district employment is considered to be the first day of classes the teacher teaches.

If two or more teachers have the same seniority and it is the lowest seniority of those considered, the teacher will be terminated who, in the combined judgement of the Superintendent and supervising principal, is doing the least effective job of teaching. The Superintendent and supervising principal will base their evaluations on classroom and teaching observations and supportive written documentation."

5. That during the course of the 1975-76 school year, Respondent decided to eliminate, in the 1976-77 school year, some teaching positions, and therefore non-renewed a number of teachers; that subsequent to the decision to non-renew a number of teachers, Respondent purported to create some new positions; and that in the 1976-77 school year there were three courses in mathematics and three courses in general science to be taught.

6. That Mrs. Laura Clarke and Mr. Robert Severson were employed by Respondent during the 1975-76 school year as teachers and were two of the teachers affected by the decision to reduce the teaching staff; that Clarke is certified to teach in the areas of mathematics, general science and biology in grades 7 through 12; that during the 1975-76 school year, she taught science to three 7th and two 8th grade classes; that Severson,

who has less seniority than Clarke, is certified to teach in the areas of broad field social studies, general science, earth science, and geography in grades 7 through 12; that during the 1975-76 school year he taught social studies and science classes.

7. That Clarke, who was non-renewed as a full-time teacher for the 1976-77 school year, was subsequently offered a part-time teaching position, teaching three mathematics courses for the 1976-77 school year; that Clarke did not accept said position; that Severson, who was initially non-renewed for the 1976-77 school year, was ultimately awarded a teaching contract as a full-time teacher to teach two social studies and three general science courses during said school year; and that if Clarke had been offered two or more of the science courses she had taught in the 1975-76 school year along with the mathematics courses she had been offered in the 1976-77 school year, she would have continued as a full-time teacher in the 1976-77 school year.

8. That Clarke maintained that the Respondent, by awarding Severson a full-time teaching position and offering her a part-time teaching position, had violated the parties' collective bargaining agreement; that Clarke filed a grievance alleging that the Respondent had breached the labor agreement (staff cut procedure); that it is Clarke's position, inter alia, that the Respondent knew when she was non-renewed, or shortly thereafter, that there were mathematics and science courses to be taught in the 1976-77 school year for which she was certified to teach, and that by not offering her the option of retaining at least two of the science courses she had taught in 1975-76, and by assigning said courses to Severson, who had less seniority, and by not being offered the science courses Severson taught during the 1975-76 school year, she had been denied a full-time teaching position at the expense of a junior employe; and, according to Clarke, the Respondent's conduct in this regard violated the staff cut procedure which had been agreed to by the parties.

9. That Clarke's grievance had been denied at the earlier steps of the grievance procedure and consequently the parties had processed said grievance to level four of the grievance procedure; that on May 25, 1977, Mr. Robert Gurian, a staff representative for the Wisconsin Federation of Teachers, submitted the following letter to Mr. George Farrell, President of the Mineral Point Board of Education:

> "Pursuant to the grievance filed by Ms. Laura Clarke concerning her non-renewal, the Union requests the processing of this grievance to Level 4 of the grievance procedure. As you are aware, the Wisconsin Employment Relations Commission will not appoint an arbitrator in the case of advisory arbitration.
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> It is customary in the case of private arbitration for the Board and the Union to share the cost of a neutral arbitrator. If this is acceptable, the Union shall appoint the two members of the Federation to serve on the arbitration panel. Upon notification of the two Board members selected by you, the four members of the panel can meet to select a fifth impartial member. It is our hope that in the selection process for the fifth member, that the Board be prepared to discuss the names of professional arbitrators with experience in the arbitration field.
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> If you have any questions, please call me."

that after receipt of said request, the matter was referred by the Board to its July, 1977 meeting; and that on July 16, 1976, Flum responded to Gurian's request as follows:

> "With reference to your letter of May 25, 1976 to Mineral Point Board of Education President, George Ferrell, [sic] dealing with the grievance filed by Ms. Laura Clarke,

please be advised that Mr. Ferrell [sic] has appointed board members Alvin Goninen, Jr. and Mrs. Phyllis Bennett to serve on the Board of Arbitration.

When the MPFT president has appointed the two members of the Federation to the Board of Arbitration, please let me know who they are so I can arrange a meeting for the purpose of selecting a fifth member to serve on the Board of Arbitration."

10. That Messrs. Frederick Getman and John Jenkin, both of whom were teachers employed by Respondent, were selected as the representatives of Complainant to serve on the arbitration panel; that Getman was selected in late May, 1976 and Jenkin was appointed in mid-July, 1976; that during the latter part of July or early August, 1976, Getman, by phone, contacted Mrs. Phyllis Bennett, a member of the Board and one of the Board's representatives who had been chosen to serve on the arbitration panel, and informed her as to the identity of the Complainant's representatives on the arbitration panel; that said notification was the first time the Respondent had been apprised as to whom the Complainant had chosen to serve on the arbitration panel along with the Board's representatives; that during this conversation and during subsequent conversations that ensued between the parties, Getman expressed interest in having the fifth panel member appointed.

11. That during part of the period between the end of July or early August and September 15, 1976, Goninen was in the hospital and Bennett took a brief vacation; and that Goninen's employment required him to be away from Mineral Point a substantial amount of time.

12. That the representatives of the parties who were to serve on the arbitration panel met on September 15, 1976 in order to select a fifth member of said panel; that the Board's representative indicated that they would like to have someone from Mineral Point to serve on the panel as the fifth member, and suggested that Judge Walsh, a retired Iowa County Judge, or Gwen Trelow, a retired Mineral Point teacher, serve as the fifth member; that the Complainant's representative indicated that it was Clarke's preference to have a "professional arbitrator" serve as the fifth panel member and Getman suggested that either a Mueller or Rausch serve as the fifth member of the arbitration panel; 1/ that the Board's members indicated they were not familiar with these names and therefore requested that the full names, addresses, occupations, who they worked for and any other background information relevant to said individuals be supplied to them; that Getman indicated he would attempt to supply some background information concerning these people; that neither Getman nor any representative of Complainant ever furnished such information; that no representative of the Complainant ever indicated to the Board's representative that such information could or could not be obtained.

13. That the Board's representatives never indicated that they would not accept a professional arbitrator or that it would not accept the recommendation of Complainant's representatives to serve on the arbitration panel; that the Board's representatives did not take the position that they would not go along with a "professional arbitrator" because of the additional costs, and that the parties never reached an impasse over the resolution of said issue.

1/ Getman did not have any personal first hand knowledge about these individuals. He had obtained these names from Gurian and the record does not indicate that the first names of these people were given to the Board's representatives.

14. That the only time the parties physically spent together in attempting to select the fifth member of the arbitration panel was the September 15, 1977 meeting; and that said meeting was the last date the parties had any communication with each other relative to the selection of the fifth member of the panel. 2/

15. That the names of possible individuals to serve on the arbitration panel that were submitted by Complainant's representatives were not rejected by the Board's representatives; that the Board's representatives were ready to meet at any time to arrive at the selection of the fifth member of the arbitration panel; that the Board's representatives were waiting for the Complainant's representatives to supply them with some biographical information concerning the "professional arbitrators" that Complainant wanted as a fifth member of the panel; that subsequent to the September 15th meeting, Goninen contacted the Wisconsin Association of School Boards to ask for names of people that might be acceptable and for a brief resume concerning them; that Goninen obtained the names of Robert Mueller, Arlan Christenson, and Howard Bellman; that Goninen was prepared to furnish these names to the Complainant's representatives when the parties met again; that the parties never reached an impasse over the selection of the fifth member of the arbitration panel; that Respondents did not refuse to proceed to advisory arbitration or obstruct the Complainants from proceding to advisory arbitration; that the Complainants did not pursue the grievance through level four of the grievance procedure; that by so doing, Complainants have not exhausted the contractual grievance procedure agreed to by the parties; and that on October 8, 1976 the complaint herein was filed.

16. That Respondent's decision to non-renew Clarke as a full-time teacher for the 1976-77 school year was not motivated by any anti-union animus or for reasons related to the exercise of her rights under sec. 111.70(2) of the Municipal Employment Relations Act.

Based on the above and foregoing Findings of Fact, the Examiner makes and renders the following

CONCLUSIONS OF LAW

1. That the failure of Complainant to exhaust the grievance procedure precludes any consideration of the merits of Laura Clarke's grievance insofar as it avers that Respondent violated the collective bargaining agreement (staff cut procedures) when non-renewing Clarke for the 1976-77 school year.

2. That Respondents, by the acts of its agents in not offering Clarke a full-time teaching position for the 1976-77 school year, did not discriminate against her because of her lawful, protected exercise of her rights under sec. 111.70(2) of the Municipal Employment Relations Act, and did not commit a prohibited practice within the meaning of sec. 111.70(3)(a) 3 or 1 of the Municipal Employment Relations Act.

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

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2/ Bennett, contrary to Getman, indicated that Getman, on September 16th, had agreed to furnish the names and background information on two additional professional arbitrators.

ORDER

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

Dated at Madison, Wisconsin, this 31st day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSIN

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Alleged violation of the Collective Bargaining Agreement

The Complainants basically contend that the Respondent circumvented the staff cut procedures and consequently breached the parties' collective bargaining agreement by non-renewing Clarke and Severson and instead of terminating Severson, offering him, instead of Clarke, a full-time position for the 1976-77 school year. Complainant argues that the Respondent was dilatory in its attempt to resolve this dispute through the grievance procedure and was not interested in an advisory award. Consequently, the Complainant maintains that the Respondent's subversion of the grievance procedure should not now be utilized to prevent the Commission from resolving this dispute. Furthermore, Complainants allege that there is no certainty that the parties would ever reach advisory arbitration at least without litigation as they were not able to reach agreement on the arbitrator, as the contract provides no mechanism for resolving an impasse over said issue. Complainants argue that there is no reason to assume an advisory award would resolve this dispute. Finally, since the hearing has already been conducted, the Complainants urge the Commission to retain jurisdiction over the entire matter.

On the other hand, Respondent maintains that the Commission has no jurisdiction over the alleged contractual dispute until such time as the Complainant has exhausted the grievance procedure. The Respondent contends that the Complainant was dilatory in the processing of the grievance and that it was not dilatory in that it attempted to discharge its duty to select the fifth member of the arbitration panel in good faith. Respondents claim that although their preference was that a member of the community be appointed as the fifth member of the panel, the Board assented to consider persons suggested by Complainant if Complainant would identify these persons by their full names, residence, occupation, and other identification and that Complainant agreed to do so. The Respondent avers that the four members would have ultimately agreed on the fifth member and if such agreement was not reached, either party could have applied to Iowa County court for the designation of the fifth member by the court. Finally, the Respondent contends that the Complainants decided not be be bound by Level Four of the grievance procedure and circumvented same in order to attempt to proceed in another forum before the Wisconsin Employment Relations Commission.

The threshhold question that must be considered by the Examiner is whether the Complainants herein exhausted all the steps of the grievance procedure, for, if it is determined that Complainants failed to exhaust all the steps of the grievance procedure, the Examiner will refuse to assert the jurisdiction of the Commission. 3/ The Commission has previously indicated that even in cases where the parties to a collective bargaining agreement have agreed to advisory arbitration as the culmination of the grievance procedure, a party seeking relief under sec. 111.70, Stats, must first exhaust said grievance procedure before the Commission will

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3/ Lake Mills Joint School District No. 1 (11529-A, B) 7/73; Oostburg Joint School District No. 1 (11196-A) 11/72.

invoke its jurisdiction. 4/ The Commission will usually not assert its jurisdiction in order to ascertain if there has been a substantive violation of the labor contract absent exhaustion of all steps of the grievance procedure, with the aspiration that the procedure that the parties have agreed to might settle the matter in dispute without the need to resort to litigation. 5/

Although the Complainant claims it was the Respondents who were dilatory in proceeding to Level Four of the grievance procedure, the record belies such a contention. After Gurian requested the Board to proceed to arbitration on May 25, 1976, it was not until mid-July that Complainants even appointed its second member to the panel and furthermore, it was not until the end of July or early part of August that the Complainant's representatives on said panel communicated their identity to the Respondent's representatives on the Board. If the Complainant really wanted to have this matter move along with great dispatch, it would have been reasonable for them to appoint its members to the arbitration panel on or about the time they requested that the matter be submitted to advisory arbitration and to have apprised the Board of same shortly thereafter. In light of the totality of circumstances surrounding the conduct of the parties in this matter between the last part of July or the first part of August, when the identity of the Complainant's representatives were divulged to the Respondent's representative for the first time, and mid-September, when the parties all met for the first time, said period does not constitute an unusual delay, especially when you consider: (1) Goninen was in the hospital part of this time: (2) his employment required him to be away from Mineral Point a substantial amount of time; and (3) Bennett took a brief vacation during this period of time. The fact that the Complainants made little or no movement from the time of their May 26th letter to their phone call to Bennett, and their failure to even submit the full names of the persons they were suggesting indicates to the Examiner that they are in no position to accuse the Respondents of being dilatory, especially when Complainant made no specific demands to set an immediate time for a meeting.

Although the Board desired to have a member from the community serve as the fifth member of the arbitration panel, it never indicated it would not accept a "professional arbitrator" as requested by Complainants. In support of this contention, subsequent to the September 15, 1976 meeting, Goninen obtained the names of three "professional arbitrators" from the Wisconsin Association of School Boards and was prepared to present them to the Complainant; however, instead of participating at the meeting to resolve the selection of the fifth member of the arbitration panel, the Complainants filed the instant prohibited practice action on October 8, 1976. Since Getman presented only sketchy and incomplete information at the September 15th meeting about the names of possible appointments to the arbitration panel, it was certainly reasonable for the Board members to request additional information. Getman agreed to attempt to obtain such information but never got back to the Board members concerning same. In light of the incomplete information supplied by Getman and the representation that he would attempt to secure additional information, it is also easy to understand why the Board's members were waiting until Getman got back to them before another meeting was scheduled. Getman never got back to the Board and instead, the complaint was filed herein.

4/ Lake Mills Joint School District No. 4, supra. The duty to arbitrate is not obviated merely because the parties have agreed to advisory arbitration rather than final and binding arbitration. See Alma United School District No. 3 (11628) 2/73; Unified Joint School District No. 1, City of Tomahawk et al. (13766-A) 4/76.

5/ Lake Mills Joint School District No. 4, supra.

Clearly, Clarke's grievance did not proceed through Level Four of the grievance procedure and the Respondents are not culpable for the failure of the parties to proceed to advisory arbitration, as they were prepared to meet and probably agree that the fifth member be a "professional arbitrator" since they had obtained the names of three such individuals and were prepared to submit same to the Complainant's representatives. Even if the parties were ultimately unable to agree as to the selection of the fifth member of the arbitration panel, the parties could have petitioned the courts or the Commission for the appointment of the fifth member. 6/

Inasmuch as the Complainant's failure to exhaust the grievance procedure was not the result of Respondent's wrongful refusal to proceed to advisory arbitration and since the record indicates that the Respondents are willing to proceed to advisory arbitration, it would be inappropriate for the Examiner to consider the merits of the contractual dispute herein, since it would be in contradistinction to the apparent intent of the parties to have such disputes resolved under the grievance procedure, and in particular, pursuant to the advisory arbitration provision in their contract. Therefore, the allegations in the complaint relating to any contractual violations have been dismissed.

Alleged violation of Clarke's statutory Rights

Complainants also allege that Respondents discriminated against Clarke and otherwise interfered with her rights under the Municipal Employment Relations Act by retaining, instead of Clarke, a person with less seniority than she.

Complainants have the burden of proving by a clear and satisfactory preponderance of the evidence that Respondent's non-renewal of Clarke was based, at least in part, on anti-union consideration. 7/ To prevail, Complainants must establish that Clarke was engaging in protected activity, that Respondent had knowledge of such activities, that Respondent bore animus against Clarke because of such activity, and that, finally, Respondent's stated reason for non-renewing Clarke as a full-time teacher for the 1976-77 school year was pretextual in nature, or that one of the reasons for Respondent's failure to renew Clarke's teaching contract on a full-time basis was based on the fact that Clarke had engaged in protected activity.

The record is clear that Clarke, as a past president of the Mineral Point Federation of Teachers engaged in protected concerted activities and that Respondents were aware that Clarke was involved in the exercise of such activities. However, the Examiner concludes that Complainants failed to prove, by a clear and satisfactory preponderance of the evidence, that

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6/ Although it is the Commission's policy not to appoint a member of its staff to serve as an arbitrator when the parties have chosen advisory arbitration as the culmination of the grievance procedure, the Commission will, upon request, furnish the parties an ad hoc panel of names from which an arbitrator can be selected to render an advisory arbitration award.

7/ St. Joseph's Hospital (8787-A, B) 10/69, 12/69; Earl Wetenkamp d/b/a Wetenkamp Transfer and Storage (9781-A, B, C) 3/71, 4/71, 7/71 and AC Trucking Co., Inc., (11731-A) 11/73.

Respondent's non-renewal as a full-time teacher for the 1976-77 school year was based in part on anti-union considerations. The record does not support a finding indicating hostility on the part of Respondent's agents toward Clarke for engaging in protected concerted activity.

Although the Complainant argues that every action on the part of Respondent in non-renewing Clarke arose out of some hidden animus, the record does not support such a charge. The strongest evidence proffered by Clarke, which even suggested that Respondents harbored any animus against her, was based on her "feelings". Clarke admitted it was a "subjective feeling" and could not name any persons or recite any specific words which had been made to her by any agent of Respondents. Although the Complainants contend that proof of a contract violation reinforces the claim of illegal motivation, for the reasons espoused earlier, the Examiner refuses to invoke the jurisdiction of the Commission over the alleged contract violation. The record simply does not support a finding that the Respondents harbored any anti-union animus against Laura Clarke or that the decision to non-renew her as a full-time teacher for the 1976-77 school year was based on such animus. Therefore, the allegations in the complaint relating to the denial of Clarke's statutory rights have been dismissed.

Dated at Madison, Wisconsin, this 31st day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner