

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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PATRICK O'CONNELL and WATERLOO	:	
EDUCATION ASSOCIATION,	:	
	:	
Complainants,	:	Case VI
	:	No. 20930 MP-680
vs.	:	Decision No. 15009-A
	:	
WATERLOO JOINT SCHOOL DISTRICT NO. 1,	:	
BOARD OF EDUCATION OF WATERLOO JOINT	:	
SCHOOL DISTRICT NO. 1,	:	
	:	
Respondents.	:	
	:	

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Appearances:

Perry & First, S.C., Attorneys at Law, by Mr. James C. Reiher,  
appearing on behalf of the Complainants.

Melli, Shiels, Walker & Pease, Attorneys at Law, by Mr. James K. Ruhly,  
appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainants having filed a complaint with the Wisconsin Employment Relations Commission on October 21, 1976 alleging that the above-named Respondents had committed certain prohibited practices within the meaning of Section 111.70(3)(a)1, 3 and 5 of the Municipal Employment Relations Act (MERA) by nonrenewing Complainant Patrick O'Connell; 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 hearing on said complaint having been held before the Examiner in Madison, Wisconsin on December 7, 1976, January 6, 1977, January 7, 1977, July 13, 1977, July 14, 1977, August 11, 1977, August 12, 1977 and August 31, 1977; and briefs having been filed until February 9, 1978; 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 Patrick O'Connell, herein Complainant O'Connell, was employed as a teacher by the Waterloo Joint School District No. 1 from the 1971-1972 school year through the 1975-1976 school year during which he was nonrenewed; that the Waterloo Education Association, herein Complainant Association, is a labor organization functioning as the exclusive collective bargaining representative of all full-time and part-time teachers employed by the Waterloo Joint School District No. 1; and that, at all times material herein, Complainant O'Connell was in the collective bargaining unit represented by Complainant Association.

2. That the Waterloo Joint School District No. 1, herein Respondent District, is a municipal employer; and that the Board of Education of Waterloo Joint School District No. 1, herein Respondent Board, is a public body charged under the laws of the State of Wisconsin with the management, supervision, and control of the Respondent District.

3. That during the 1971-1972 school year, Complainant O'Connell became a member of Complainant Association's collective bargaining team and thus in October 1972 was one of five teachers to sign a two year collective bargaining agreement on the Association's behalf which covered

the 1972-1973 and 1973-1974 school years; that Complainant O'Connell was also a member of Complainant Association's grievance committee; that Complainant O'Connell's teaching performance was evaluated by then principal Haffeman in November 1971 during an eighth grade world history class and was found to be generally satisfactory.

4. That in December 1972 Complainant O'Connell received a favorable evaluation from then principal Haffeman after Haffeman had conducted a classroom observation in a political science class; that in January 1973 Complainant O'Connell filed his first grievance against Respondent District based upon his observation of a disciplinary situation involving Haffeman and another teacher; and that after a discussion with Haffeman the grievance was not pursued by Complainant O'Connell or Complainant Association.

5. That at the commencement of the 1973-1974 school year Vincent Barnes replaced Haffeman as high school principal; that at all times thereafter Barnes acted as Respondents' agent; that in January 1974 Barnes conducted an evaluation of Complainant O'Connell during a typing class and recommended inter alia that O'Connell maintain "a little closer control" over student talking; that in March 1974 Dan Meyer became Superintendent of Schools; and that at all times thereafter Meyer acted as Respondents' agent.

6. That in August 1974 Complainant Association and Respondent District signed a two-year collective bargaining agreement covering the 1974-1975 and 1975-1976 school years; that Complainant O'Connell was not a signatory inasmuch as he was no longer on Complainant Association's bargaining team; that said agreement contained new provisions which (1) specified that the form utilized when recording contractually required teacher evaluations would have the evaluator indicate whether or not a teacher's work was satisfactory and whether or not a teacher was therefore being considered for nonrenewal and (2) created "probationary" and "career" classifications for teachers with individuals in the latter category falling within the confines of a "just cause" standard for nonrenewal; that said agreement contained a grievance procedure with the last step being the decision of Respondent Board; and that Article I(2) of the new contract provided:

"2. Complaints regarding a teacher made in writing to the administration shall be discussed with the teacher. The teacher shall affix his/her signature to a document acknowledging that the complaint has been discussed. Any complaint not discussed shall not be placed in the teacher's personnel file. The teacher shall be given an opportunity to respond to and/or rebut such complaints, and shall have the right to submit such response and/or rebuttal in writing to be filed with any such complaint which is placed in the teacher's personnel file. Such response and/or rebuttal shall be submitted to the administration within five (5) days of the discussion with the Administrator. The teacher may be represented by the Association at any meeting regarding any such complaint."

7. That at the start of the 1974-1975 school year Barnes issued a teacher's handbook which contained the following provision:

"Student Discipline

It is most desirable that each teacher solve his or her own discipline problem. One of the basic essentials for teaching success is the ability of a teacher to establish and maintain right relationships with pupils. Pupils prefer teachers who can maintain control. Without control, very little can be taught or learned. 'Not paying attention', 'looking at pictures', 'chewing gum', 'sitting in

the wrong seat' are problems that a professional classroom teacher must solve for himself or herself. This is one of the duties that go along with teaching, for which you receive a salary. Start maintaining control the first day - be firm, fair and understanding, and you will prevent future problems.

In the event that a serious discipline problem does arise and you feel that the assistance of the Principal is needed, offenders may be sent to the office, not to the library, study hall or home. Check with the office as soon as you can to insure that the student went there as directed. Except for minor disturbances all acts of misconduct will be reported to the office in writing. This is necessary if we are to be able to follow up and take corrective measures to assist you in the solution of the problem. Forms are available in the Principal's office.

1. A teacher's responsibility for discipline extends throughout the school.
2. Each teacher should be in the vicinity of their door between classes and about five minutes before classes start in the morning.
3. Students are expected to report to class and stay there for the entire period. There should be little need for student movement in the halls during class time.
4. Be alert for writing on walls, marring desks, etc., not only in your room but also in study halls, lunch room, corridors, etc.
5. Insist that pupils wait to be dismissed by you before leaving your classroom."

8. That on November 22, 1974 Barnes sent Complainant O'Connell a memo indicating that an unnamed parent had expressed some concerns about one of O'Connell's classes and asking that O'Connell meet with him to discuss the situation; that O'Connell refused to acknowledge receipt of the November 22, 1974 memo or to discuss the situation until Barnes identified the parent, which Barnes refused to do; that in addition to the content of Article I(2) of the parties' 1974-1976 contract which was recited in Findings of Fact 6, an existing policy statement by Respondent Board stated:

#### "COMPLAINTS CONCERNING SCHOOL PERSONNEL

Normal procedure for registering complaints shall be through the administrative staff before going to the school Board. At the local school level complaints should be made first to the teacher, then to the principal, and finally to the Superintendent.

Complaints of a general district nature should be made to the Superintendent's office. If after discussing the complaint at the district level, the person, or persons, making the complaint still do not have satisfaction, he, or they, should then present the complaint to the School Board.

No person shall present orally or discuss at any meeting of the School Board complaints against individual employees of the Waterloo School District until after such charges or complaints shall have been presented to the School Board in writing and signed by the person making the charge or complaint. The School Board shall then have a reasonable opportunity to investigate the same and call for discussion.

No charges against an employee of the school will be investigated by the Board unless such charges be in writing and presented to the Board.";

that on December 10, 1974 Barnes notified Complainant O'Connell that a copy of the November 22, 1974 memo would be placed in his personal file because of O'Connell's refusal to acknowledge receipt thereof or to discuss same; that on December 13, 1974 Complainant O'Connell informed Barnes that he was now willing to talk about the November 22 memo, acknowledged receipt of same, and further indicated his intent to grieve the placement of the memo in his file; that on or about December 13, 1974 O'Connell received an evaluation form from Barnes which was the result of a classroom observation conducted on December 3, 1974; that said evaluation noted certain concerns about a lack of student interest, made recommendations for improvement, and rated Complainant O'Connell's work as "unsatisfactory" and "considered for non-renewal"; that on December 17, 1974 Complainant O'Connell grieved the placement of the November 22 memo in his personal file stating that the bargaining agreement did not require a response to anonymous complaints and further asserting that "the situation which I am involved in now creates an unjust pressure on me and is a result of my active participation in the Waterloo Education Association"; that on December 19, 1974 Complainant O'Connell exercised his contractual right to reply to Barnes December 3, 1974 evaluation with a four page letter wherein he responded to Barnes' specific observations and recommendations, suggested that Barnes needed "some supervision in order to be able to properly judge the techniques and competence of a classroom teacher", and requested that Barnes' visits be "accountably frequent".

9. That on December 23, 1974 Barnes sent a memo to Complainant O'Connell indicating that he had observed students "having food in your classroom" on December 20, 1974 and criticizing O'Connell for allowing same; and that O'Connell responded with a January 10, 1975 memo explaining that the food was a result of a "spontaneously planned" action by students.

10. That on January 10, 1975 Complainant O'Connell submitted a response to the parental concerns enumerated in Barnes' November 22, 1974 memo which, pursuant to O'Connell's request, was placed in his personal file; that at approximately the same time Complainant Association submitted a "position paper" to Barnes which accused him of "discrimination and harassing teachers" and stated that "two teachers in particular have received grossly unfair treatment and have been hounded by Mr. Barnes almost daily . . . .", and that on January 13, 1975 Complainant O'Connell filed a grievance asserting that Barnes lacked "just cause" to check "considered for non-renewal" on the December 3, 1974 evaluation form.

11. That on January 21, 1975 Meyer conducted a classroom observation of Complainant O'Connell's first period World History class pursuant to a policy of performing a follow-up evaluation upon teachers who a principal rated "unsatisfactory"; that Meyer evaluated O'Connell's performance as "unsatisfactory" and "considered for non-renewal" noting that "the entire period was chaotic and lacked instructional benefit . . . ."; that Meyer set forth 12 comments and suggestions and indicated that he would return "very shortly" to "check on improvements"; and that Meyer discussed said evaluation with O'Connell on February 3, 1975.

12. That as of February 10, 1975, Complainant O'Connell's December 17 and January 13 grievances had been processed through the intermediate steps of the contractual grievance procedure and were scheduled to be heard by Respondent Board on February 20, 1975; that on February 12 and February 19, 1975 Meyer again conducted a classroom observation of Complainant O'Connell's first period World History class; that Meyer concluded that:

"There has been considerable improvement since my first observation and you are following a number of the ideas that I have suggested. There still is room for improvement, and at this time I do not feel that I can fully say that I can mark your evaluation as totally satisfactory. I will also be marking it in the area of consideration for non-renewal. There is still room for improvement and I think the last few items make some suggestions and implications as to areas we can proceed to work on;"

and that said evaluation was discussed with O'Connell on March 3, 1975.

13. That in mid-February 1975 the chairman of Complainant Association's grievance committee approached Meyer and indicated that Complainant O'Connell's two grievances would be dropped if O'Connell was renewed; that Meyer responded by stating that "the grievances don't scare me"; and that on February 19, 1975 Complainant Association requested a thirty-day postponement of the February 20 grievance meeting which was granted by Meyer.

14. That on February 27, 1975 Complainant O'Connell wrote a disciplinary referral on a student who had allegedly refused to follow O'Connell's instructions to leave the classroom and had subsequently fought with O'Connell; that the student recited a different account of the incident to Barnes; that later that day Barnes suggested to O'Connell that he call the student's parents to explain the matter; that O'Connell did call the student's parents and discussed the incident; that Friday, February 28, 1975 passed without preliminary notice of nonrenewal to O'Connell; that on March 3, 1975 Barnes received a call from the student's mother requesting a conference about the February 27 incident; that on March 4, 1975 the student and his mother met with Barnes and O'Connell; that the differing accounts of the incident remained; that Barnes stated that he would talk to the other students in the classroom in an effort to determine what happened; that this suggestion met with the hearty approval of the parent and O'Connell, though skeptical, made no objection; and that Barnes subsequently interviewed several students regarding the matter.

15. That on March 12, 1975 Barnes conducted a classroom observation of Complainant O'Connell's fourth period World History class, concluded that students lacked respect for O'Connell and refused to follow his instructions, and marked O'Connell as "unsatisfactory" and "considered for non-renewal"; that Barnes discussed said evaluation with O'Connell on March 26, 1975; that on March 19, 1975 Barnes sent a memo to O'Connell setting forth his conclusion about the February 27 incident which stated that both O'Connell and the student shared blame, recommended that O'Connell "try to avoid any type of physical punishment of students", and indicated that a copy of the memo was being placed in O'Connell's personal file; that on March 20, 1975 the chairman of Complainant Association's grievance committee informed Meyer that O'Connell's December 17 and January 13 grievances were dropped; and that on April 2, 1975 Barnes received a letter from Ed Tridle, a regional union representative, suggesting that Barnes' handling of the student incident violated the First Amendment of the U.S. Constitution.

16. That on April 2, 1975 Complainant O'Connell made five disciplinary referrals to Barnes including one which prompted O'Connell to ask Barnes to schedule a meeting with the student's parents; that on April 4 such a meeting was held and O'Connell immediately submitted his summary of the conference to Barnes for placement in his file; that on April 4 O'Connell also grieved Barnes' March 19 summary of the February 27 student incident and its placement in his file; and that on April 7 Complainant Association submitted a "position paper" to "Waterloo School Board and Administrator" which was critical of the manner in which Barnes had handled situations involving parental complaints.

17. That on April 15, 1977, at Complainant O'Connell's request, Barnes conducted a classroom observation of his first period World History

class; that Barnes noted some "favorable things regarding your classroom presentation" but cited O'Connell's performance as "unsatisfactory" and "considered for non-renewal"; that Barnes scheduled a conference with O'Connell to discuss the evaluation for April 23, 1975; that on April 23 O'Connell wrote Barnes and cancelled the conference indicating that he would like to have it rescheduled so that Ed Tridle could be present to discuss both the April 15 evaluation and his entire file; that Barnes rescheduled the conference for 3:30 p.m. on April 25; that at approximately 2:00 p.m. O'Connell wrote Barnes indicating that Tridle couldn't be present and requested another postponement; that at 3:00 p.m. O'Connell was directed to appear in Barnes' office at 3:15 p.m.; that at 3:30 p.m. O'Connell and the chairman of Complainant Association's grievance committee appeared and received a letter from Barnes requesting an explanation of the circumstances surrounding the most recent cancellation; that O'Connell refused to respond orally but indicated that he would do so in writing in several days; that Respondent's legal counsel then informed O'Connell that his continued refusal to respond "might be considered insubordinate"; that the meeting ended shortly thereafter; that on April 28 O'Connell grieved Barnes April 25 letter as an unwarranted reprimand and on May 1, 1975 O'Connell grieved the April 25 remark regarding insubordination; and that the April 28 grievance was not pursued by O'Connell.

18. That on May 20, 1975 Meyer conducted a classroom observation of Complainant O'Connell's third period World History class; that he noted some improvement in teaching technique but rated O'Connell's overall performance as "unsatisfactory" and "considered for non-renewal"; that on May 28, 1975 Respondent Board denied the grievances O'Connell filed on April 4 and May 1, 1975 respectively; that on June 3, 1975 Meyer and O'Connell met to discuss the May 20 evaluation; that during said discussion O'Connell told Meyer that Barnes, at O'Connell's request, had spoken to one of O'Connell's classes about the need to obey O'Connell's directives; that on or about June 3 Meyer suggested that O'Connell should look into other employment and that he, Meyer, could probably write a recommendation which would be of assistance; that O'Connell did not make any response to Meyer's suggestion; that in the spring of 1975 the social studies department, in conjunction with Barnes and Meyer, decided to shift O'Connell from the tenth grade level to the eighth grade level in an effort to aid his disciplinary problems; and that O'Connell did not oppose this shift.

19. That during the 1974-1975 school year Complainant O'Connell submitted approximately 125 out of a total of approximately 150 written disciplinary referrals submitted to Barnes from all teachers regarding tenth grade students; that O'Connell also sent approximately 25 students to Barnes without a written referral form; that from the start of the school year through February O'Connell submitted 12 written referrals with 117 written referrals coming during the period of March through early June; that the referrals involved the use of profanity in the classroom by students including an instance in which O'Connell was called a "fucking bastard", the throwing of objects at other students, and multiple instance of student's refusal to stop talking or engaging in other disruptive behavior; and that a substantial majority of the referrals led to some disciplinary action being taken by Barnes against the student.

20. That during the summer of 1975 Barnes wrote the following letter to Complainant O'Connell:

"Dear Pat:

The hectic pace of the school year has subsided. I would like to take this opportunity to look back on the year that was in order to facilitate improvement for the year that lies ahead.

First, I am cognizant that last year, I made mistakes. I have reviewed my actions during the past year and am confident last year's experience will aid me next year.

My concern in this letter is to share my thoughts on your 1974-75 performance.

As I reflect back, I perceive several major areas which will require your attention and dedication next year. These are areas where your 1974-75 performance was not satisfactory. Substantial improvement will be necessary next year. For the sake of this letter I have divided these areas into three classifications, although there is an interrelationship among these classifications.

1. Discipline Problems: Maintenance of classroom discipline is the foremost difficulty you encountered last year. I reviewed the 'discipline referral' slips submitted to me last year, and recall many discipline referrals not accompanied by a written referral. Last year, I received a total of approximately 340 written referrals. More than one-third were from you. In addition to the 129 written referrals from you, my records show at least 25 additional referrals not accompanied by a written referral.

Considering only the written referrals, I note that roughly 38 different students are involved, or more than one-third of the 10th grade students in your classes. Eight students had more than 4 separate referrals. There were 12 written disciplinary referrals through February, 1975; from March through the end of the school year there were approximately 117. This fact, coupled with the fact that the discipline referrals not accompanied by a written referral occurred primarily in May and June, illustrates that the problem increased as the year progressed.

Most of your written referrals -- probably 125 of them -- concern 10th grade students. I received only 24 written referrals all year from other faculty members concerning 10th grade students.

I recite these statistics because they illustrate several significant concerns. Disciplinary referrals require an investment of administrative time. I had to spend an inordinate amount of time dealing with those problems from your classes. The person primarily responsible for discipline is the teacher.

The figures suggest that your disciplinary problems increased as the year progressed. This indicates that disciplinary problems are directly related to student reaction to your classes. I am not aware of any major instructional change which might account for the increase. If it is true, as the figures indicate, that discipline problems increase as the students become more familiar with you and your teaching style, then perhaps you should consider what factors cause the students' reaction.

Perhaps the most important problem suggested by the figures is that the classroom is not providing a satisfactory learning environment for the students. A disciplinary situation sufficient to result in a disciplinary referral -- i.e., a situation which the teacher is not able to handle -- has to have an adverse impact upon the classroom. It requires the teacher's time and it diverts the attentions of the students. It results in classroom time lost by the student involved. And the effect of a student-teacher confrontation on one classroom may effect many students' attitude in subsequent classes.

I think the figures just discussed confirm, as I told you several times during the year, that the level of class-

room discipline in your classes must improve. Inadequate classroom discipline is not an easy matter to remedy, because the roots of the problem vary. You are the person in the best position to analyze the roots of the problem in your classroom. I will be glad to discuss the matter with you at your convenience; I may have a perspective that will assist you in accurately analyzing the situation.

I consider the discipline problem the number one problem for your reflection this summer and next year. It must improve.

2. Classroom Performance: It is difficult to know the extent to which other observable classroom problems relate to the discipline situation. I reviewed the classroom observation reports for your classes this past year, and the following are areas I hope you'll work in next year.

Students are sometimes asked to do things, such as copying material, without explanation of why they are asked to do it. I think students find such activity more useful and interesting when they have some idea of what the teacher's purpose is. This is an area where some improvement was noted in your performance over the course of last year, but there remains room for continued improvement.

I think it's important that you start off the school year insisting that students complete their assignments. Inform the students of the value you attach to the assignment. This suggestion will require your sensitivity to what is a reasonable assignment and a reasonable value to attach to it. It also requires sufficient flexibility to understand the occasional legitimate 'excuse' for noncompletion. Utilization of this suggestion, with periodic adjustments in assignment quantity and value as necessary, should help you start the year on the right foot.

I think you should strive for a reasonable and consistent level of visual aids utilization. This past year, we received a parental concern that such aids were perhaps being used excessively. After I mentioned this to you, visual aids were seldom utilized. I suggest you strive for a balance that utilizes visual aid as a complement to the textbook and other reading materials. Some improvement was noted in this area last year, but there is room for further improvement.

Third-party suggestions made to you for classroom use should be implemented without disclosure to the students as to who made the suggestion. Where a suggestion advanced by an administrator or a faculty colleague warrants implementation, and you disclose the course of the suggestion, you pass control of the class to a non-present third party. This, in turn, undermines your position in the classroom.

Upon occasion a teacher will turn a class period, or a major portion of it, into a reading/study period. This should not be done, however, when the impetus for doing so is that some students have not adequately prepared an assignment. When it is so used, those students who have prepared the assignment get restless, and those who have not prepared the assignment receive reinforcement for not being prepared. Students sense when a teacher turns a class into a study period out of frustration, and that can exacerbate discipline problems. I think you have used this procedure too often in the past and for the wrong reason.



Begin the year by asserting good discipline, and don't slacken your discipline expectations (although some adjustment in methods may be from time to time required). Don't tolerate student swearing; the more you tolerate it -- or unevenly enforce the prohibition -- the more substantial become the discipline problems.

The same advance pertains to other observable indications of student disrespect and boredom; talking during your presentations, reading magazines, and other difficulties which do not generally result in disciplinary referral notices. Firmness with fairness should be your guide in classroom discipline.

Another thing you might try from the start is providing greater encouragement to the students. Be enthusiastic to their ideas, whether you agree with them or not. Compliment them more when they respond correctly. Make sure the slower students receive commendation and encouragement whenever appropriate.

Finally, I hope you'll continue to work on voice projection and movement around the class.

I think your attention to these matters will reduce your discipline problems while at the same time improving the learning environment in the classroom.

3. Parental Relationships: We exist, of course, to do what we can to educate, stimulate and challenge students. But we cannot ignore the very practical factor that community -- and, in particular, parental -- support and cooperation is imperative to our function.

One incident which arose last year concerned a parental concern raised with me by the parents of one of your students. We got sidetracked from the substance of the concerns into a disagreement over whether disclosure of the parents' name was required by the collective bargaining agreement. At this point I am concerned that the substance of the matter was subordinated. In the future, our positions on procedural matters of disagreement between us should not preclude discussion of the concern which we have an obligation to deal with as educators.

I intend to continue the policy regarding parental requests to sit-through or observe [sic] a teacher's classroom in which their child is a student: I will generally permit a parent to do so, provided the teacher has not [sic] objection. This past year, you consented to having several concerned parents observe your class, and I think that decision was wise. However, when and if, as happened this year, you wish to withdraw your permission after giving it, I think you must assume responsibility for so communicating and explaining to the parents.

Several incidents this year involved parental contact with you -- i.e., the Grundahl and Braunschweig matters -- and for the most part you handled those contacts satisfactorily. One area that may require your attention is your tendency to give evasive answers to questions. I recognize the difficult line between evasiveness and tactfulness, but I don't think a desire for the latter can excuse the former. It's an area we all need to be conscious of, and I raise it for your consideration.

As a result of the above difficulties last year, and at your request and after discussion with your department's faculty, your assignment for the 1975-76 school year is three classes of 8th grade social studies and two classes of typing. We hope this change is [sic] assignment will complement our efforts to improve the difficulties encountered this year as enumerated above. A secondary benefit to the assignment change is that it appears your classrooms will be closer to one another, increasing the time you can be in the classroom before and after the class.

I recommend that, over the summer, you do as much as possible in preparation for the new year, both on the subject matter and in assimilation of suggestions for improvement. I think it would assist both of us if you prepared an outline of what you hope to cover, and in what amount of time. If you do so, I would appreciate receiving a copy to enable me to get an overview of the course and its goals which should enable me to better assist and evaluate you next year.

I am not sending a copy of this letter to the Waterloo Education Association. However, if you wish me to do so, please let me know and I will do so. You may, if you prefer, provide them with a copy directly.

If you have any questions about this letter, I will be pleased to discuss it with you at any time. If I can be of any assistance in your preparation for next year, whether or not raised in this letter please let me know."

21. That at the commencement of the 1975-1976 school year the Student Discipline portion of the teacher's handbook was altered so as to require that all student referrals to the office for disciplinary reasons include a written report; that in October 1975 Respondent Board suspended one of O'Connell's students at his request over the objections of the student's parents, and that on October 16, 1975 Barnes conducted a classroom observation of O'Connell, noted improvement in teaching and class management and rated O'Connell's work as "satisfactory" and "considered for renewal".

22. That on November 10, 1975 Complainant O'Connell sent a form letter to the parents of one student advising them that their daughter was to serve a detention of November 12; that the student failed to serve the detention and on November 13 O'Connell and the student had a confrontation during which O'Connell hit the student in the head with his hand; that on November 14 the student's mother wrote the following letter to O'Connell which was delivered via an administrator.

"Mr. O'Connell:

I want an explanation from you on what occurred yesterday in your classroom with Jenny. I understand spanking is allowed by teachers, to date I have heard nothing of striking the back of the head with one's fist.

My daughter is no angel nor are most 13 year olds. I suggest an adult teacher would gain more respect by using his brain intelligently, rather than lowering himself to the mentality of someone much younger, such as 13 or 14.

My daughter has been instructed to restrain from any activity in your classroom other than schoolwork. I am now instructing you to restrain from any activity, such as physical violence, with my daughter other than vocal instruction.

If you cannot exercise discipline in your classroom with dignity and authority, I seriously question your teaching ability. How can a classroom of students so full of disrespect for you possibly absorb anything you are supposed to be teaching them.

Your actions yesterday antagonized the other students to the point of some leaving the room and others deliberately trying to see how far you would go with physical violence. Example: Jeff K. - you repeatedly pounded his head against the wall.

My impression is that you had a small war waging yesterday with you on one side and the students on the other side.

I protest this action vehemently!";

that on November 15 O'Connell called the parent and received confirmation that she had intended the administration to see the letter; that O'Connell told the parent that he would provide an explanation of the incident; that on or about November 16 Barnes asked O'Connell about the incident; that on November 17 O'Connell sent Barnes the following memo:

"Date: November 17, 1975

Subject: Observations on Mrs. B.'s letter of Nov. 14, 1975.

My observations of Mrs. B's activity and circumstances surrounding her presentation of her letter to the school administration are as follows:

1. Mrs. B. wrote this letter after hearsay evidence was given to her by some persons. Mrs. B. was not present to observe the incidents which she described in her letter.
2. Mrs. B. presented the letter to the school administration with full intention that they view this as a formal complaint against Mr. O'Connell.
3. Mrs. B. had absolutely no conversation with Mr. O'Connell to determine if any of the statement she was making about Mr. O'Connell were true or false.
4. In a telephone conversation after the letter was submitted to the school administration, Mrs. B. admitted that it was her intention to turn in the letter to the school administration prior to having a conversation with Mr. O'Connell about the contents of the letter.
5. From the reaction of some students, it appears that the contents of this letter have been presented to them to make it look as though Mrs. B. is 'telling off' the teacher. It appears that Mrs. B. really wishes to have the image of 'champion' to the alleged oppressed individuals she mentions in her letter, and to therefore encourage them, and their associates in the development of some very negative values and behaviors.
6. The statements she made about me in her letter are not true and certainly the actions of Mrs. B. in this matter speak much louder than the words she used in her letter.
7. It is my view that the letter presented to my employer with the words she has used and the intentions she has

exhibited in this matter, lead me to conclude, with my knowledge of the situation, that Mrs. B. is deserving of an answer from a court of law that her letter about me is libelous!";

that Barnes immediately responded to O'Connell's memo with the following letter.

"Dear Mr. O'Connell:

I have received from you a response dated November 17, 1975 to Mrs. B.'s letter to you dated November 14, 1975, a copy of which Mrs. B. submitted to the administration.

Please advise whether you want your November 17th 'observations' placed in your personnel file.

Last year I instructed you to try to avoid physical punishment in your classroom. I intend to seek clarification from the Board of Education regarding what circumstances, if any, justify imposition of physical punishment by a teacher in the classroom in this district. In the meantime, however, I am directing you to refrain from utilizing physical punishment in your classroom. If a situation arises which you are not able to handle short of physical measures, you are directed to refer such situation to my office.

I think it is appropriate that parental concerns be reduced to writing. To the extent Mrs. B.'s letter contains an erroneous factual recitation of classroom events, you have the opportunity to dispute that recitation. I trust you will provide Mrs. B. with the explanation she requests. I would appreciate your furnishing me with a copy.

You told me today that you tape recorded a telephone conversation with Mr. or Mrs. B. last Friday. I am concerned that such recording may be permissible only with the consent of the other party. Even if such recording without consent is lawful, I think the better procedure is to not tape record without consent. I suggest that you hereafter request the permission of the other party if you intend to tape record a telephone conversation relating in any way to your duties, responsibilities or authorities as an employee of this district.

If you desire to discuss the B. situation, please contact me to arrange a mutually satisfactory time. I think we should do everything possible to prevent reoccurrence of the experience you encountered last year with classroom discipline. I will be contacting Mrs. B. early next week. Please let me know by Friday this week regarding any contact you have with the B.'s.";

that on or about December 2, 1975 Barnes received a note from the student's father stating that they had yet to receive a response from O'Connell; that Barnes immediately informed O'Connell of the note's contents and on December 2 O'Connell wrote the following letter to the parents;

"Date: December 2, 1975

Subject: Comments concerning Mrs. B's letter of November 14, 1975.

It is my view that the tone and content of Mrs. B's letter constitute an act of libel because of the statements she has made about me. Her technique of 'name calling' reflects the fact that she isn't interested in the use of reason. Furthermore it is my view that Mrs. B. truly deserves an

answer from a court of law explaining to her that she is guilty of making libelous statements about me.

It is my view that in this situation Mrs. B.'s daughter was able to outsmart her mother by the story she was given. Mrs. B. then issued her libelous letter without first trying to find out if there was another view that the teacher may have had of the situation.

Enclosed is a copy of a letter dated November 10, 1975, concerning J.B., which I sent prior to the receipt of Mrs. B.'s letter, which was dated November 14, 1975. J. has not served the assigned detention and she is still requested to comply with the school rule in this matter.

I do not feel that I can give Mrs. B. comments on the situation with Jeff because that would not be fair to the student's family if I should offer information concerning that student, or any student, to any person in the community who just happens to be interested.";

that Barnes was aware of the letter's content before it was sent and did not express any disapproval; that on December 3 the student's mother called Barnes, expressed displeasure with O'Connell's December 2 letter and again asked that O'Connell explain the November 13 incident; that Barnes responded to the parents with the following letter:

"I acknowledge Mr. B.'s several telephone calls to me on the evening of December 3, 1975. In those telephone conversations, Mr. B. expressed displeasure at Mr. O'Connell's December 2, 1975 letter and demanded an explanation of the situation that occurred on November 13, 1975.

I have reviewed the November 13th incidents with Mr. O'Connell. I have given what I deem to be appropriate directions to prevent further incidents of the nature expressed in your letter.

I was not present in the classroom on November 13th. I do not know precisely what happened. Mr. O'Connell has indicated that the facts as he perceived them may differ from the facts as you understand them. I do not know specifically in what way(s) Mr. O'Connell disputes the facts as you recite them.

I have noted that you do not consider Mr. O'Connell's December 2nd letter as fulfilling Mrs. B.'s request for an explanation of Mr. O'Connell's indication that he would provide you with an explanation. I will be communicating with Mr. O'Connell regarding his December 2nd letter as soon as possible. You should be hearing further from him.

If your daughter has not yet served the detention assigned on November 10th (referred to in Mr. O'Connell's December 2nd letter), she should do so. It appears that detention was assigned by Mr. O'Connell within the scope of his authority. Please review the detention policy set forth in Mr. O'Connell's November 10th note to you. I will be checking further to see that the detention is served.

Superintendent Meyer is aware of the situation. If you desire to pursue the matter beyond my office, please communicate with him.

We appreciate parental interest in our school district. In situations such as the present one, perhaps a meeting between parent(s), teacher and administration is the best way to resolve misunderstandings and prevent future misunderstandings. Please contact me if you desire a meeting of this sort."

that Barnes sent a copy of said letter to O'Connell along with the following memo:

"Mr. B. has expressed concern to me regarding your December 2nd letter to them. I enclose a copy of my response to those concerns.

You gave me a copy of your December 2nd letter. I have these concerns:

Your letter is the first information I have regarding a November 10th detention assigned to Ms. B. I should have been informed earlier, under the policy which has been communicated to the faculty. The B. situation illustrates the kind of circumstance that requires that I be informed of discipline situations sufficiently serious to warrant detention.

I direct you to comply with that policy and all policies applicable to the professional employees of this school. I also request that you notify me by the 11th of December whether Ms. Behling has served the detention.

I think Mrs. B.'s November 14th letter and Mr. B.'s December 1st letter can be responded to without threats of court action and without disclosure of the names of other students. If you consider her letter libelous, it seems to me you can apprise the B.'s of that fact while at the same time explaining in what particulars you deem it so. This approach would get the facts as you perceive them out on the table, would enable the B.'s to make further inquiry of their daughter, and would perhaps permit amiable resolution of the situation which exists.

I think parents have a legitimate interest in the conduct of the schools. If unfair accusations result from parental concerns, I think we serve the district and its educational function by explaining why the accusations are unfair. Frankly, I do not think the B. matter reached the point where repeated threats of court action and accusations of having been 'outsmarted' are appropriate professional responses to community concerns regarding the public schools. Your December 2nd letter does not strike me as an appropriate attempt to explain your position. I think we should strive to set an example to fairness, rationality and conviction in our contacts with the public, and I do not think your letter advances these goals.

You have had several opportunities to explain to the B.'s your view of what transpired. You have not done so beyond asserting that her view of the facts is untrue. Perhaps it would be better if parents sought out an explanation before communicating written concerns. We do not and cannot incorporate judicial concepts regarding hearsay into our contacts with the public. We do not and cannot establish an inflexible procedure for the expression of community concerns to us.

You have responded to the B.'s criticism by taking the offensive, emphasizing the possible inadequacies in the fac-

tual foundation for the criticism, responding in kind to the assertions, and avoiding any substantive discussion of the merits of the criticism. I don't think school-community relationships is a proper place for such a response.

I think your letter is inappropriate for the reasons stated above. I think the B.'s are entitled to an explanation or clarification of the factual assertions they have expressed. I expect you to provide such an explanation, both in your interest and the interests of the district.

I intend to apprise Mr. Meyer of your December 2nd letter. I consider it to constitute evidence of serious misjudgment on your part. Your reaction to the B.'s letters is the type of reaction I expressed concern about in my July 7, 1975 letter.

Your December 2nd letter to the B.'s is being placed in your personnel file, as is a copy of this letter. Please acknowledge receipt of the copy of the letter which is enclosed and return it to me.";

that O'Connell made no response to said memo; that on December 8, 1975 the parents requested a meeting with O'Connell to discuss the November 13 incident; that on December 12 such a meeting was held and the incident was discussed, and that Barnes subsequently prepared a summary of the conference and placed it in O'Connell's personal file without objection.

23. That on December 15, 1975 Barnes conducted a classroom observation of Complainant O'Connell during two separate classes; that Barnes concluded "in looking back to October 16, 1975's evaluation and comparing it with the third hour class I observed December 15, 1975 I see a deterioration in student behavior and production as well as your daily class room planning" and ranked O'Connell as "unsatisfactory" and "considered for non-renewal"; that on January 2, 1976 Barnes, O'Connell, and a representative of Complainant Association discussed the December 15 evaluation; that shortly thereafter O'Connell submitted a reply to the evaluation which asserted that Barnes was a biased evaluator; and that late in January Barnes recommended to Meyer that O'Connell and another high school teacher be nonrenewed.

24. That on February 2 and February 3, 1976 Meyer conducted classroom observations of Complainant O'Connell; that although Meyer approved of O'Connell's classroom technique, he observed "major problems concerning discipline" which warranted an "unsatisfactory" and "considered for non-renewal" rating; that Meyer and O'Connell met on February 11 to discuss the evaluation; that on February 13, Meyer told Complainant O'Connell that he intended to recommend to Respondent Board that O'Connell be non-renewed; that on February 17 Meyer gave O'Connell preliminary notice of nonrenewal attaching the following statement of reasons:

1. Failure to maintain classroom discipline conducive to a satisfactory learning environment.
2. Failure to achieve or develop satisfactory methods to attain proper discipline in the classroom.
3. Failure to follow administrative directives regarding disciplinary procedures.
4. Failure to achieve and maintain constructive parental relationship.
5. Failure to develop or utilize teaching techniques conducive to a satisfactory level of classroom instruction.;

that pursuant to Complainant O'Connell's request, Meyer advised him that the following specific documents and information would be presented to Respondent Board at the March 9 nonrenewal conference;

"2. the specifics I wish to share with the Board are as follows:

A. For the 1974-75 school year, there were approximately 150 disciplinary situations arising in your classrooms for which you sought the administration's assistance. All but 25 of these were accompanied by written disciplinary referral reports. You initiated these reports, and Mr. Barnes has attempted to photocopy them, but without success. They are available if you wish to review and/or attempt to copy them.

B. For the 1975-76 school year, there have been more than 30 disciplinary situations arising in your classrooms for which you sought the administration's assistance. 13 of these were accompanied by written disciplinary referral reports. They too are available for your review in Mr. Barnes office.

C. Classroom Evaluations:  
December 3, 1974, Barnes  
January 21, 1975 Meyer  
February 12 & 19, 1975, Meyer  
March 12, 1975, Barnes  
April 15, 1975, Barnes  
May 20, 1975, Meyer  
October 16, 1975, Barnes  
December 15, 1975, Barnes  
February 2 & 3, 1976, Meyer

You should have copies of each of these.

D. Miscellaneous:

1. B. situation:
  - a) Your letter of 11-10-75 to Mrs. B.
  - b) Mrs. B.'s letter of 11-14-75 to you
  - c) Your memo of 11-17-75 to Mr. Barnes
  - d) Mr. Barnes' memo of 11-17-75 to you
  - e) Mr. B.'s letter of 12-1-75 to Mr. Barnes
  - f) Your letter of 12-2-75 to Mrs. B.
  - g) Mr. Barnes' letter of 12-4-75 to you
  - h) Mr. Barnes' letter of 12-4-75 to the B.'s
  - i) Mr. Barnes' memo to you of December 17, 1975 with report of December 8, 1975 meeting
2. Parental Complaint, November, 1974:
  - a) Mr. Barnes' letter of 11-22-74
  - b) Your letter of 11-25-74
  - c) Mr. Barnes' letter of 11-26-74
  - d) Mr. Barnes' letter of 12-10-74
  - e) Your letter of 1-10-75
3. Mr. Barnes' letter to you of July 7, 1975
4. Food in classroom incident: Mr. Barnes' memo to you of December 23, 1974 and your response.
5. B incident of 2-27-75, and Mr. Barnes' memo to you of 3-19-75.
6. G incident, your memo of April, 1975."

that the foregoing information was presented to Respondent Board without objection from Complainant O'Connell at the March 9 conference; that no



mention was made by Complainants or Respondents of the grievances O'Connell had filed; that O'Connell made no allegation that the nonrenewal was in any way related to protected concerted activity; that O'Connell did not dispute the information provided to Respondent Board regarding disciplinary referrals; that the number of disciplinary referrals made by O'Connell as of mid-November 1975 and mid-February 1976 exceeded the number of referrals made during comparable periods the preceding year; that as of March 1976 approximately two-thirds of all disciplining referrals involving eighth graders had been made by O'Connell; that one such referral involved a student throwing a piece of modeling clay at O'Connell and hitting him in the eye; that on March 17, 1976 Respondent Board voted to nonrenew O'Connell's contract; that Complainant O'Connell grieved said decision asserting that there was a lack of "just cause" for his nonrenewal; that said grievance contained no allegation that the non-renewal decision was influenced by any protected concerted activity in which O'Connell had engaged; and that said grievance was denied by Respondent Board on May 28, 1976.

Based upon the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. That Respondents Waterloo Joint School District No. 1, Board of Education of Waterloo Joint School District No. 1 did not commit a prohibited practice within the meaning of Sections 111.70(3)(a)1 or 3 of the Municipal Employment Relations Act by nonrenewing Complainant Patrick O'Connell.

2. That Respondents Waterloo Joint School District No. 1, Board of Education of Waterloo Joint School District No. 1, did not violate the parties' 1974-1976 collective bargaining agreement by nonrenewing Complainant Patrick O'Connell and thus did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

That the instant complaint be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 20th day of October, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Complainants allege that Respondents nonrenewed Complainant O'Connell because he had engaged in lawful concerted activity protected by Section 111.70(2) of MERA, and that Respondents thereby committed prohibited practices within the meaning of Sections 111.70(3)(a)1 and 3 of MERA. Complainant also asserts that Respondents nonrenewal of Complainant O'Connell violated the parties' 1974-1976 bargaining agreement in that it was not for "just cause" and thus that Respondents' action constituted a prohibited practice within the meaning of Section 111.70(3)(a)5 of MERA. Respondents deny Complainants' allegations.

DISCRIMINATORY NONRENEWAL

To meet their burden of proof with respect to the discriminatory nature of the nonrenewal, Complainants must prove by a clear and satisfactory preponderance of the evidence that Complainant O'Connell was engaged in concerted activity which is protected by MERA; that Respondents were aware of Complainants' protected concerted activity; that Respondents were hostile toward said activity; and that the nonrenewal was motivated at least in part by Respondents' opposition to said activity. 1/

The record demonstrates that at various times during his employment with Respondent District, Complainant O'Connell was a member of Complainant Association's bargaining team, participated in the processing of grievances on others behalf, and personally filed grievances raising a variety of issues with respect to wages, hours and working conditions. Such actions clearly fall within the confines of lawful concerted activity protected under MERA. There can also be no doubt that at the very least Respondents were aware of part of said activity inasmuch as the majority of Complainant O'Connell's grievances came to Respondent Board's attention. However with respect to the question of whether Respondents were hostile toward Complainant O'Connell's protected concerted activity, the Examiner must conclude that Complainants have failed to meet their burden of proof. Complainants have not presented any substantial evidence which would warrant a finding of animus. Any inference of hostility which Complainants might have the Examiner draw from Respondents denial of the grievances filed by Complainant O'Connell during the 1974-1975 school year simply does not amount to a clear and satisfactory preponderance of the evidence. In light of Complainant's failure to meet their burden of proof in this area, the allegations of discriminatory nonrenewal must be dismissed.

JUST CAUSE

It is undisputed that Article II of the parties' 1974-1976 collective bargaining agreement required that Respondents have "just cause" to non-renew Complainant O'Connell. Respondents contend that Complainant O'Connell's disciplinary difficulties, unsatisfactory evaluations and inadequate responses to parental concerns compel a finding that "just cause" was present for the nonrenewal.

The parties presented the Examiner with an exhaustively detailed view of Complainant O'Connell's life as Respondents' employe during the critical 1974-1975 and 1975-1976 school years. Said presentation revealed

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1/ Drummond Integrated School District (15909-A) 3/78; Village of Union Grove (15541-A) 2/78; City of Beloit School District (14702-B) 3/77.

amazingly little disagreement regarding the events and conversations which occurred during this period. As a result, the conflict between the parties primarily focuses upon the inferences which should be drawn from the largely undisputed facts. Respondents present Complainant O'Connell as a teacher who lost the respect of and ultimately control over his students; who responded to parental complaints in inappropriate ways; and who viewed efforts to support him and improve his teaching performance as part of a conspiracy to drive him from his job. Complainants put forth O'Connell as a teacher who was singled out for elimination by an administration he had the audacity to challenge; who was systematically hounded by administrators, students, and parents; who was never given clear directives as to how to improve; who received unsatisfactory evaluations as punishment for filing grievances; and who received inadequate support in his efforts to maintain discipline in his classes. The undersigned must therefore proceed with an effort to determine which set of inferences receives the most support from the massive record.

The record reveals that Complainant O'Connell entered the 1974-1975 school year with three uneventful years of teaching in Respondent District behind him. His participation in bargaining and the processing of grievances during the 1971-1972 school year and the filing of a grievance during the 1972-1973 school year led to no immediate adverse consequences and Complainant's theory that it ultimately played a part in O'Connell's nonrenewal has already been discounted. He had been satisfactorily evaluated by Barnes during the 1973-1974 school year which was Barnes' first as O'Connell's principal. In late November 1974 Complainant O'Connell and Barnes clashed over O'Connell's obligation to respond to the substance of a complaint from an unidentified parent. O'Connell ultimately grieved the controversy alleging that Barnes' actions were motivated by hostility toward O'Connell's activity on behalf of Complainant Association. The undersigned finds no substantial basis in the record for concluding that Barnes was so motivated or that he was indeed even aware of O'Connell's past concerted activity. It was not until early January 1975 that O'Connell responded to the substance of the parental concern. In the midst of the dispute Barnes evaluated O'Connell in the classroom, found him to be performing unsatisfactorily, and checked the contractually required evaluation form in a manner which reflected his judgement of O'Connell's performance. O'Connell's belligerent response to the evaluation confirms that his relationship with Barnes had now soured to a point just short of rancidity. He thereafter viewed all actions of Barnes with great suspicion. Complainant Association fanned the flames of distrust with its January 1975 position paper attacking Barnes. In mid-January O'Connell grieved Barnes' December evaluation.

In January and February 1975 Meyer conducted follow-up evaluations of O'Connell which also yielded unsatisfactory ratings. The January visitation found "chaotic" conditions with the February visit producing insufficient evidence of improvement. O'Connell didn't grieve either of Meyer's evaluations which both contained recommendations for improvement. Despite the unsatisfactory evaluations Meyer decided not to recommend O'Connell's nonrenewal. Complainants contend that Meyer's decision resulted from a deal between Meyer and Complainant Association revolving around the dropping of O'Connell's grievances. However the evidence of a deal is something less than overwhelming given Meyer's noncommittal response to Complainant Association's proposition. The more reasonable conclusion is that Meyer, in light of the improvement shown by O'Connell in early February, felt that an opportunity for continued improvement was warranted. It is also noteworthy that at this point in the school year O'Connell had submitted a relatively small number of disciplinary referrals and thus would appear to have had control over the students.

On February 27, 1975 Complainant O'Connell fought with a student who had refused to leave his classroom. This incident led to a parental conference and ultimately to Barnes interviewing students in an effort to determine what had actually happened in the classroom. Complainants

allege that Barnes' investigation was calculated to undermine O'Connell and communicate to the students that he was a marked man. The examiner finds no substantial evidence to support Complainant's suspicions and concludes that Barnes was merely attempting to determine what had occurred. It is noteworthy that O'Connell was present when Barnes first indicated that he would talk to other students about the incident and made no protest about Barnes' decision. Shortly after the classroom bout, the disciplinary situation in Complainant O'Connell's classes deteriorated rapidly. Disciplinary referrals, which O'Connell knew were to be utilized only when a teacher could not handle the situation, poured into Barnes' office. In mid-March Barnes observed O'Connell, noted a lack of student respect, and rated him "unsatisfactory". As the referrals continued, Barnes honored O'Connell's request and spoke to one class about the necessity of obedience and respect. A substantial majority of the referrals led to Barnes taking some disciplinary action against the student.

In late April O'Connell's cancellation of a conference on short notice led to a confrontation with Respondents' attorney and formed the basis for two grievances filed shortly thereafter by O'Connell. Complainant O'Connell's disciplinary problems continued as the school year wound down. In late May Meyer observed Complainant O'Connell's classroom performance, found some improvement, but still rated O'Connell as "unsatisfactory".

An overview of the 1974-1975 year finds Complainant O'Connell at odds with Barnes and with a record of disciplinary referrals which was much worse than all the other tenth grade teachers combined. There is no substantial evidence that O'Connell received less support from Barnes than other teachers or that his tenth graders were somehow more unruly than those of his cohorts. Thus one can only conclude that O'Connell himself had simply lost control of his classes by the end of the year to the extent that on approximately 125 occasions after March 1 he was forced to throw a student out of class. Complainants apparently recognized the problem inasmuch as they at the very least acquiesced in the decision to shift O'Connell to the eighth grade in an effort to improve the situation. It is also worth noting that if Respondents were intent upon getting rid of O'Connell, it seems unlikely that they would have supported the shift.

During the summer of 1975 Barnes wrote an extensive letter to Complainant O'Connell detailing O'Connell's problems, making recommendations for improvement and offering to discuss same at any time. In light of this letter and the evaluations which O'Connell received during the 1974-1975 school year, it would be difficult to seriously contend that Complainant O'Connell was not aware of the nature of his problems and of Respondents' recommendations for change. The summer letter can also be reasonably viewed as an attempt by Respondents to help O'Connell even though this perception was probably not shared by its recipient who viewed Respondents' actions with suspicion.

The 1975-1976 school year began well. In mid-October Barnes evaluated Complainant O'Connell and rated his performance as "satisfactory" and "considered for non-renewal". However in mid-November the detention incident occurred and started a conflict with the student's parents and Barnes which spilled into mid-December. Although troubled by O'Connell's failure to raise the matter until the instant proceeding, the undersigned concludes that Barnes was aware of the content of O'Connell's rather inflammatory letter of December 2 prior to its being sent and did not indicate any disapproval of same. This "approval" of his letter requires that the undersigned give no weight to subsequent criticism about the appropriateness of O'Connell's specific response. However, the validity of Respondents' concerns about O'Connell's failure to respond to the substance of the parental inquiry in a prompt manner remains unaffected by the foregoing finding. In mid-December Barnes evaluated O'Connell, found a "deterioration in student behavior" and rated O'Connell as "unsatisfactory" and "considered for non-renewal". Meyer's early February evaluation resulted in a similar rating and shortly thereafter the nonrenewal process


began. The record reveals that the number of disciplining referrals submitted by Complainant O'Connell as of mid-February was greater than for the comparable period the preceding year.

It is the undersigned's judgement that the record does provide sufficient basis for a conclusion that Respondents did have "just cause" to nonrenew Complainant O'Connell. The evidence clearly indicates that O'Connell had a substantial discipline problem which had to have a very negative impact upon the amount of learning which was occurring in O'Connell's classes. While the first part of the 1975-1976 school year did bring some improvement from the horrendous situation at the end of the 1974-1975 year, O'Connell's referral record remained substantially worse than that of any other teacher. There is no convincing evidence that any factor other than O'Connell's own inability to command the respect of the students caused the discipline problem. While it must be concluded, especially in light of Barnes "approval" of the December 2 letter, that O'Connell's handling of parental concerns did not constitute significant misconduct, the record does indicate that his response to parental complaints continued to be conflict oriented which created substantial delays before the substance of a complaint was addressed. There can be no doubt that O'Connell's conduct vis-a-vis parents would, in and of itself, fall far short of constituting "just cause" for nonrenewal. However given the magnitude of the disciplinary problem and the absence of convincing evidence to support Complainants' claims that O'Connell was the victim of a conspiracy, the undersigned must conclude that there was "just cause" for Complainant O'Connell's nonrenewal and that Respondents have thus not committed any violation of the parties' 1974-1976 bargaining agreement.

Dated at Madison, Wisconsin this 20th day of October, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Peter G. Davis, Examiner