STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS, Complainant, vs. SCHOOL DISTRICT OF CHETEK, Respondent.	:	Case V No. 21263 MP-710 Decision No. 15210-A

Appearances:
Robert West, Executive Director, Northwest United Educators, appearing on behalf of Complainant.
Coe, Dalrymple, Heathman & Arnold, S.C., Attorneys at Law, by Edward J. Coe, appearing on behalf of Respondent.

INTERIM FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Northwest United Educators filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission on January 19, 1977 alleging that Respondent had violated section 111.70(3)(a)5 of the Municipal Employment Relations Act. The Commission appointed Ellen J. Henningsen, 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 sections 111.70(4) and 111.07, Stats. A hearing was held in Barron, Wisconsin on February 16, 1977. At the hearing Complainant orally amended the complaint to include additional factual allegations in support of its contention that Respondent had violated section 111.70 (3)(a)5. Post-hearing briefs were submitted by Complainant and Respondent. The Examiner, having considered the evidence and arguments presented by the parties, makes and issues the following Interim Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Complainant, Northwest United Educators, is a labor organization and is the exclusive collective bargaining representative for the professional employes of Respondent, School District of Chetek.

2. Respondent, School District of Chetek, is a public school district and a municipal employer.

3. Complainant and Respondent are parties to a collective bargaining agreement with a duration from July 1, 1975 to June 30, 1977 which provides for final and binding arbitration.

4. June Brodt has been employed by Respondent as a part-time teacher of junior and senior high school home economics and health for approximately 12 years. Her teaching contract for most of those years, including the 1975-1976 school year, but excluding the 1976-1977 school year, was 60 percent of full-time.

5. In March of 1976 Respondent issued Brodt a 40 percent of full-time teaching contract for the 1976-1977 school year. Brodt, represented for collective bargaining purposes by Complainant, grieved the reduction of her contract. The grievance was not resolved by the

parties and accordingly was submitted to final and binding arbitration pursuant to the parties' collective bargaining agreement.

6. Thomas L. Yaeger was appointed Arbitrator to resolve Brodt's grievance. On December 20, 1976, prior to the beginning of the second semester of the 1976-1977 school year, Yaeger issued his Arbitration Award which in pertinent part provided that:

> On March 12, 1976, the School Board Clerk mailed a 40% teaching contract for the 1976-1977 school year to Brodt. This represented a reduction in hours of teaching load from her 1975-1976 school year teaching contract of 60% of full-time.
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> . . .
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> What the Board did was to reduce Brodt's teaching load from 60% of full-time to 40% of full-time.
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> . . .
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> The ultimate burden of proof in establishing cause rests with the District once a prima facie case has been made by the Union. Herein the Union made such a case once it was established [that] Brodt's contract has been reduced to 40% of full-time from 60% and her salary is calculated as a percentage of the salary schedule. While the District attempted to establish cause, its evidence fell far short of the mark. In the first place, it never directly linked the declining enrollment and reduction in courses to Brodt's teaching load. Indeed, the Union adduced unrebutted evidence that enrollment had not declined in Brodt's classes nor had any of her classes been dropped from the curriculum. Thus, the inescapable conclusion is that the District failed to prove that it had cause to reduce Brodt's contract to 40% thereby reducing her compensation for the 1976-77 school year.
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> Based upon the foregoing and the record as a whole, the undersigned enters the following
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> AWARD
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> That the District did not have cause to reduce Brodt's teaching contract to 40% of full-time for the 1976-77 school year and, therefore, the District shall immediately issue a new teaching contract to Brodt for the 1976-77 school year for at least 60% of full-time. Further, the District shall immediately reimburse Brodt for the compensation loss she experienced by being reduced to 40% of full-time.

7. On January 24, 1977, in reponse to Arbitrator Yaeger's Award, Respondent issued a new individual teaching contract providing for 60 percent of the pay that Brodt would have received had she been employed at full salary.

8. Respondent uses flexible modular scheduling. A module consists of twenty minutes; one school day consists of twenty modules while a school week of five days consists of 100 modules.

9. Prior to Respondent's implementation of the Arbitration Award, Brodt had been working under a schedule for the second semester of the 1976-77 school year which provided for 16 modules of teaching and 14 modules of preparation time. She was required to be in school 30 or 34 modules a week.

10. On January 31, 1977, in response to the Arbitration Award, Respondent issued a new schedule to Brodt which included the

schedule mentioned in Finding of Fact #9 and which provided for an additional 26 or 30 modules of scheduled time. Twenty-two of the additional modules were study hall and four modules were open laboratory. 1/ A teacher is required to be in the classroom during "open lab" periods to individually assist students. This post-arbitration teaching schedule required Brodt to be in school 60 modules a week. Prior to this schedule, Brodt had never been assigned a study hall. The highest number of study hall modules a teacher had been assigned prior to Brodt's 22 was 12.

11. On February 10, 1977 Respondent issued Brodt a check in the sum of $1,121.86, such sum constituting reimbursement for the compensation loss that Brodt experienced by being reduced to a 40 percent of full-time teaching contract.

12. Respondent has issued Brodt a teaching contract for the 1976-1977 school year for 60 percent of full-time and has reimbursed her for the compensation loss she experienced by being reduced to 40 percent of full-time.

13. The Arbitration Award is not definite with respect to whether Brodt's schedule could be modified or increased by Respondent.

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

CONCLUSION OF LAW

The December 20, 1976 Arbitration Award of Thomas L. Yaeger is not a definite Award within the meaning of section 298.10(1)(d), Wis. Stats., and thus the Examiner will not assert the jurisdiction of the Wisconsin Employment Relations Commission to determine whether Respondent has violated section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

IT IS HEREBY ORDERED that the arbitration proceeding involved be, and the same hereby is, remanded to Arbitrator Thomas L. Yaeger for the purpose of issuing a new Award which clarifies whether Respondent was permitted to modify or increase June Brodt's schedule and which includes a remedy addressing that issue.

IT IS FURTHER ORDERED that the Examiner will retain jurisdiction of this matter pending issuance of the new Award and, upon the

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1/ Brodt testified that her post-arbitration second semester schedule provided for 16 modules of teaching, 14 modules of preparation time, 22 modules of study hall, four modules of open lab and four modules of lunch. She also testified that the only difference between her pre-arbitration schedule and her post-arbitration schedule was the addition of 22 modules of study hall and four modules of open lab. Thus, according to her pre-arbitration schedule, she would have been scheduled to be in school 34 modules a week, including four modules for lunch. The principal testified, however, that Brodt was scheduled to be in school 30 modules a week, according to her pre-arbitration schedule. This difference, which apparently is due to some confusion about lunch modules, is not critical to this case and thus the Examiner has characterized her pre-arbitration schedule as requiring her attendance at school 30 or 34 modules a week and has characterized her post-arbitration schedule as adding 26 or 30 modules a week to her schedule.

issuance of said Award, will determine whether Respondent has violated section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin this 30th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner

MEMORANDUM ACCOMPANYING INTERIM FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The complaint alleges that Respondent has violated section 111.70 (3)(a)5 of the Municipal Employment Relations Act (MERA) by failing to implement the Arbitration Award concerning June Brodt. 2/ At the time the complaint was filed, Respondent had taken no steps to implement the Award. Subsequent to the filing of the complaint and before the hearing, Respondent reimbursed Brodt for the loss of salary she had experienced due to the reduction of her contract from 60 percent of full-time to 40 percent of full-time. Respondent also issued Brodt a contract which compensated her at 60 percent of the full-time salary and issued her a new teaching schedule which increased her scheduled time from 30 or 34 modules a week to 60 modules a week. Thus, Respondent has complied with those parts of the Award which require payment of lost wages and future payment at 60 percent of a full-time salary.

POSITIONS OF THE PARTIES

In dispute is the nature of the new schedule which was issued in conjunction with the 60 percent of full-time contract in response to Arbitrator Yaeger's Award. Complainant argues, and the complaint was orally amended during the hearing to establish the basis for such argument, that the new schedule "exceeds the scope of the Award" in two ways. First, Complainant argues that the pre-arbitration contract and schedule was found by the Arbitrator to be a 60 percent of full-time load, although Respondent was compensating Brodt as if she had a 40 percent full-time load. Therefore, Respondent should either have increased Brodt's compensation to 60 percent without changing her schedule or should have increased her compensation in accordance with the increase in her schedule. Complainant argues that Respondent increased Brodt's schedule to 75 percent of full-time in response to the Award and thus the Award requires Brodt to be compensated at 75 percent of full-time salary.

The second way that the new schedule "exceeds the scope" of the Award is the addition of the 22 modules of study hall. The addition of such a large amount of study halls to Brodt, who had never been assigned study halls before, was not contemplated by the Award and amounts to harassment of Brodt for pursuing her grievance.

Respondent denies that it has refused to comply with the Arbitration Award and argues that it has fully complied with the Award by issuing a 60 percent contract to Brodt and by reimbursing her for the wages she lost by being reduced from a 60 percent to a 40 percent of full-time contract. The new schedule issued to Brodt does not exceed the Award; it equals 60 percent of a full-time load as Brodt is scheduled to be in school 60 modules a week out of a total of 100 modules a week. In addition, Respondent argues that the Award does not describe the type of duties to be assigned when issuing a 60 percent contract to Brodt and, therefore, Respondent has not exceeded the Award by assigning study hall and open laboratory duties to Brodt.

2/ Section 111.70(3)(a)5 provides that it is a prohibited practice for a municipal employer to violate the terms of a collective bargaining agreement, including an agreement to abide by an arbitration award.

DISCUSSION

The Commission has applied the standards set forth in section 298.10, Wis. Stats., in the review and enforcement of arbitration awards under MERA. 3/ This section provides that an arbitration award can be vacated:

> (a) Where the award was procured by corruption, fraud or undue means;
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> (b) Where there was evident partiality or corruption on the part of the arbitrators or either of them;
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> (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
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> (d) Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

Although neither Complainant nor Respondent argued that the standards set forth in section 298.10, Wis. Stats., were applicable to the instant proceeding, the Examiner believes that these standards, in particular section 298.10(1)(d), provides an appropriate framework within which to evaluate the Award.

The Arbitrator concluded:

> That the District did not have cause to reduce Brodt's teaching contract to 40% of full-time for the 1976-1977 school year and, therefore, the District shall immediately issue a new teaching contract to Brodt for the 1976-1977 school year for at least 60% of full-time. Further, the District shall immediately reimburse Brodt for the compensation loss she experienced by being reduced to 40% of full-time.

It is clear from the above portion of the Award that the Arbitrator required Respondent to raise Brodt's salary from 40% to 60% of a full-time salary. Respondent has complied with this requirement. The issue of Brodt's work schedule or workload 4/ was not specifically addressed in the conclusion and thus the Arbitrator has not specifically stated what, if anything, was to be done regarding Brodt's schedule; that is, was Respondent required to leave her schedule unchanged or was it permitted to increase or modify her schedule in any way. It is unclear whether the Arbitrator meant to include salary alone or workload and salary within the term "contract." If the latter is the case, it is still unclear, as explained below, whether the Arbitrator intended that Brodt's schedule could be increased.

The basis for the Arbitrator's conclusion that Respondent did not have cause to reduce Brodt's contract is the following paragraph.

3/ City of Franklin (11296) 9/72.

4/ The Examiner uses the terms schedule and workload interchangeably.

> The ultimate burden of proof in establishing cause rests with the District once a prima facie case has been made by the Union. Herein the Union made such a case once it was established [that] Brodt's contract had been reduced to 40% of full-time from 60% and her salary is calculated as a percentage of the salary schedule. While the District attempted to establish cause, its evidence fell far short of the mark. In the first place, it never directly linked the declining enrollment and reduction in courses to Brodt's teaching load. Indeed, the Union adduced unrebutted evidence that enrollment had not declined in Brodt's classes nor had any of her classes been dropped from the curriculum. Thus, the inescapable conclusion is that the District failed to prove that it had cause to reduce Brodt's contract to 40% thereby reducing her compensation for the 1976-1977 school year. [Emphasis added.]

The implication of the above paragraph is that Brodt's workload had not been decreased from her workload during the 1975-1976 school year but remained the same. From that implication one could infer that the Arbitration Award would not permit Respondent to increase Brodt's schedule, as it did, from 30 or 34 modules a week to 60 modules a week.

However, the implication that Brodt's workload had not been decreased seems to be contradicted by other statements made by the Arbitrator in his Award. For instance, the Arbitrator wrote that the 40% contract ". . . represented a reduction in hours or teaching load from her 1975-1976 school year teaching contract of 60% of full-time." The Arbitrator also wrote that "what the Board did was to reduce Brodt's teaching load from 60% of full-time to 40% of full-time." If the Arbitrator found that Brodt's workload had been reduced, as these comments indicate, then Respondent could have increased Brodt's workload or schedule and been in compliance with the Arbitration Award.

Because the Arbitrator did not specify whether or not he intended that Brodt's schedule or workload could be increased, the Examiner concludes that the Arbitrator has not issued a definite award upon the subject matter submitted to him, within the meaning of section 298.10(1)(d), Wis. Stats. The Examiner is thus unable to reach any decision regarding whether Respondent, by increasing Brodt's schedule, failed to implement the Arbitration Award and thereby violated section 111.70(3)(a)5 of MERA. Therefore, the Examiner has remanded the arbitration proceeding to the Arbitrator to resolve the ambiguity concerning Brodt's schedule. A decision on Complainant's allegation that Respondent has violated MERA can only be made after the Arbitrator has issued the new Award. Accordingly, the Examiner has retained jurisdiction of the matter.

The Examiner has made no ruling on the second issue raised by Complainant -- that the assignment of 22 modules of study hall amounted to harassment of Brodt for pursuing the grievance -- because the outcome before the Arbitrator on remand may have some bearing on the resolution of that issue.

Dated at Madison, Wisconsin this 30th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner