STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| NORTHWEST UNITED EDUCATORS, Complainant, | : | |
| vs. | : | Case V<br>No. 21263 MP-710 |
| SCHOOL DISTRICT OF CHETEK, Respondent. | : | Decision No. 15210-B |

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.

## FINDINGS OF FACT, CONCLUSIONS 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 by refusing to implement an Arbitration Award. 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. On January 30, 1978, the Examiner issued Interim Findings of Fact, Conclusion of Law and Order wherein she remanded the matter to the Arbitrator for clarification of his Award and further retained jurisdiction of the matter. 1/ On June 23, 1978, the Arbitrator clarified his Award and on June 26, 1978, Complainant requested the Examiner to resolve the remaining issue. The Examiner, having considered the evidence and arguments presented by the parties, makes and issues the following Findings of Fact, Conclusions of Law and Order. 2/

## 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. Duane Fjelstad is employed by Respondent in the capacity of junior/senior high school principal and, as such, acted as Respondent's agent.

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

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1/ School District of Chetek (15210-A) 1/78.

2/ For purposes of clarity, the Examiner will repeat some of the interim findings of fact.

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

5. In March of 1976 Respondent issued Brodt a forty 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 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 response to Arbitrator Yaeger's Award, Respondent issued a new individual teaching contract providing for sixty 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 one hundred 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 sixteen modules of teaching and fourteen modules of preparation time. She was required to be in school thirty or thirty-four modules a week.

10. On January 31, 1977, in response to the Arbitration Award, Principal Fjelstad issued a new schedule to Brodt which included the schedule mentioned in Finding of Fact #9 and which provided for an additional twenty-six or thirty modules of scheduled time. Twenty-two of the additional modules were study hall and four modules were open laboratory. 3/ A teacher is required to be in the classroom during

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3/ Brodt testified that her post-arbitration second semester schedule provided for sixteen modules of teaching, fourteen modules of preparation time, twenty-two 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 twenty-two 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 thirty-four modules a week, including four modules for lunch. The principal testified, however, that Brodt was scheduled to be in school thirty 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 thirty or thirty-four modules a week and has characterized her post-arbitration schedule as adding twenty-six or thirty modules a week to her schedule.

"open lab" periods to individually assist students. This post-arbitration teaching schedule required Brodt to be in school sixty 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 twenty-two was twelve.

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 forty percent of full-time teaching contract.

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

13. On January 30, 1978, this Examiner issued Interim Findings of Fact, Conclusion of Law and Order wherein the Examiner determined that the Arbitrator's December 20, 1976 Award was not definite with respect to whether Brodt's schedule could be modified or increased by Respondent and therefore remanded the matter to the Arbitrator to clarify the issue. Pursuant to the Examiner's remand, the Arbitrator, on June 23, 1978, issued a clarification of his Award which provides in pertinent part that:

> ". . . [T]he question presented by the grievance was a reduction in compensation without cause. Thus, my award was intended only to deal with that question (reduction in compensation) and did not require the District to give [Brodt] any particular type or amount of work pursuant to said 60% of full-time (compensation) contract. Thus, any questions concerning the make-up of the grievant's teaching load under the 60% contract for the 1976-77 school year ordered by the undersigned are not within the scope of my initial award and, therefore, should be treated as new issues or grievances."

14. Respondent's assignment of twenty-two modules of study hall supervision a week to Brodt was not intended to harass Brodt.

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

## CONCLUSIONS OF LAW

1. Respondent, having issued a sixty percent of full-time contract to June Brodt and having reimbursed her for lost compensation, has complied with the December 20, 1976 Arbitration Award of Thomas L. Yaeger and thus has not committed a prohibited practice within the meaning of section 111.70(3)(a)5 of MERA.

2. Respondent, by increasing June Brodt's schedule to sixty modules a week, has not failed to comply with the December 20, 1976 Arbitration Award of Thomas L. Yaeger and thus has not committed a prohibited practice within the meaning of section 111.70(3)(a)5 of MERA.

3. Respondent, by assigning twenty-two modules of study hall supervision a week to June Brodt, has not failed to comply with the December 20, 1976 Arbitration Award of Thomas L. Yaeger and thus has not committed a prohibited practice within the meaning of section 111.70(3)(a)5 of MERA.

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

ORDER

IT IT HEREBY ORDERED that the complaint, as amended, be, and the same hereby is, dismissed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner

## MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS 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. 4/ 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 sixty percent of full-time to forty percent of full-time. Respondent also issued Brodt a contract which compensated her at sixty percent of the full-time salary and issued her a new teaching schedule which increased her scheduled time from thirty or thirty-four modules a week to sixty modules a week. At the hearing Complainant amended the complaint to allege that Respondent had failed to implement the Arbitration Award by taking action that "exceeded the scope of the Award" in two ways: (1) increasing Brodt's work schedule without a commensurate increase in her pay and (2) assigning her to supervise twenty-two modules of study hall a week.

In regard to the first claim, Complainant argues that the pre-arbitration contract and schedule were found by the Arbitrator to be a sixty percent of full-time load, although Respondent was compensating Brodt as if she had a forty percent of full-time load. Therefore, Respondent should either have increased Brodt's compensation to sixty 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 seventy-five percent of full-time in response to the Award and thus the Award requires Brodt to be compensated at seventy-five percent of full-time salary.

In regard to the second claim, Complainant argues that the addition of such a large number of study halls to Brodt, who had never been assigned study hall before, amounts to harassment of Brodt for pursuing the grievance.

On January 30, 1978 the Examiner issued Interim Findings of Fact, Conclusion of Law and Order wherein the Examiner noted that:

> "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.

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4/ 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.

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."

On June 23, 1978 the Arbitrator issued a clarification of his Award, as noted in Finding of Fact 13 of this decision. The Examiner will now rule on whether Respondent failed to implement the Arbitration Award, thus violating section 111.70(3)(a)5 of MERA.

The Arbitrator concluded in his clarified Award that "any questions concerning the make-up of the grievant's teaching load under the 60% contract for the 1976-1977 school year ordered by [the Arbitrator] are not within the scope of my initial award. . . ." Therefore, the Arbitrator did not have before him and did not resolve the question of whether Respondent could increase or modify Brodt's work schedule. Accordingly, the Examiner must rule that Respondent, by increasing Brodt's schedule to sixty modules a week, did not fail to implement the Arbitration Award and thus has not committed a prohibited practice within the meaning of section 111.70(3)(a)5 of MERA.

The second issue before the Examiner is whether Respondent, by assigning Brodt twenty-two modules or seven hours and twenty minutes of study hall supervision a week, failed to comply with the Award. Complainant claims that Respondent did not intend to comply with the Award by making this assignment but, instead, intended to harass Brodt and that, therefore, Respondent has not complied with the Award. 5/ For the reasons discussed below, the Examiner concludes that Respondent did not intend to harass Brodt by this action and thus has not failed to comply with the Award. First, as noted in Finding of Fact 13, the Arbitrator did not "require the District to give [Brodt] any particular type or amount of work pursuant to said 60% of full-time . . . contract." Therefore, the Award simply did not involve the issue of whether Respondent could assign Brodt study hall supervision and, if so, how many modules. Second, the record contains no direct evidence of an intent to harass Brodt. Third, the record contains no evidence that Respondent had viable alternatives in determining how to assign Brodt responsibilities. In fact, the unrebutted evidence presented by Principal Fjelstad indicates the contrary. Fjelstad, in his transmittal letter to Brodt concerning her post-Arbitration Award schedule, explained that "[t]here are no additional classes for you to teach due to the decreased enrollment in Home Economics 8." In addition, Fjelstad testified that Brodt had asked to divide a class into several smaller sections for the 1976-1977 school year and that he had to deny her request because to do what she requested would have caused scheduling conflicts with other classes. Thus, there appears to have been no alternatives for Respondent. Therefore, the Examiner concludes that the assignment of twenty-two modules of study hall supervision a week to Brodt did not amount to harassment, that Respondent has not failed to comply with the Arbitration Award and that Respondent has not committed a prohibited practice within the meaning of section 111.70(3)(a)5 of MERA.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner

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5/ Complainant has not alleged that Respondent's action in assigning the study hall modules constitutes a prohibited practice under any section of MERA other than section 111.70(3)(a)5.