

4. That John Andersen commenced his employment with the District in January 1976 as a Choral Instructor for Junior and High School Choirs on a half-time basis, under a one-fourth of a year teaching contract; that during the spring of 1976 Walker spoke to Andersen relative to Andersen's contemplated employment for the 1976-1977 school year, and therein Walker stated that Walker desired Andersen to be the sole instructor for the 5th and 6th grade band, and to also be responsible for the entire music program for students in grades 7 through 12, which included vocal, instrumental and co-curricular duties, including being in charge of the band at football games; that, in response, Andersen advised that he would assume such duties; that on May 10, 1976, Andersen executed a "Teacher's Contract" for the year 1976-1977, at an indicated salary of \$9,038; that such contract reflected such salary to be at a step characterized as "BA + 15, Step 1"; that said contract indicated that said salary was "To be adjusted upon settlement of Master Agreement for 1976-77 school year"; that prior to May 16, 1976, Andersen accepted and signed a "Contract Addendum," whereby he agreed to perform, in the 1976-1977 school year, in addition to other contract duties, "Chorus Extra Curricular" for an additional \$100; and further, that on July 16, 1976, Andersen accepted and signed an additional "Contract Addendum," wherein Andersen agreed to perform duties relating to the 1976 "Summer Music Program" for the sum of \$346.

5. That on August 2 or 3, 1976, Walker requested Andersen to prepare the band for the New Auburn Bicentennial parade; that Andersen indicated that the band had not rehearsed since the previous May, and, therefore, it was impossible to prepare the band for such participation; that prior to the parade Juanita Torgerson, the president of Music Parents, an organization of parents whose children were in the band, as well as in other school musical groups, indicated to Andersen that the New Auburn Lions Club desired the band to ride in a truck in the parade; that Andersen told Torgerson that it "was all right" with him, but that there was no time to rehearse, but that the students could do so in the school band room, and, further, that it was his opinion that the school's insurance would not cover the student band members in such an activity; that thereafter Torgerson spoke to Walker with respect to said conversation, and Walker, who, at the time was not aware of Andersen's stated belief in regard to insurance coverage, advised Torgerson that the school insurance would cover the student band in the parade; that, however, the band did not participate in the parade; and that shortly thereafter Torgerson informed Walker that Andersen had previously told her that it was Andersen's opinion that the school insurance would not cover the student band in the parade.

6. That Andersen, at his request, was excused, for personal reasons, from being present during band performances at football games on September 3 and 10, 1976; that on September 16, 1976, and during the time when representatives of NUE and the District were engaged in negotiations on a collective bargaining agreement to succeed the agreement which expired on June 30, 1976, Walker, in a conversation with Andersen, indicated that (a) Andersen's community image had suffered as a result of his absences at the September 3 and 10 football games, and that Andersen should make every attempt to attend future events; (b) concern had been expressed by parents that 5th grade band lessons had not been started and may not start until March 1977; (c) Andersen was to discuss complaints regarding school music programs with Walker and not with teachers or members of the community; and (d) only Walker would make statements to parents regarding school procedures or insurance liability; that also during said conversation Walker requested Andersen to assume additional extra-curricular duties, previously performed by Andersen's predecessor, to which Andersen replied that he could either file a grievance or request additional compensation, and

in reply, Walker stated that should Andersen not sign such additional extra-curricular contract Andersen could be non-renewed the following school year, based on a low evaluation of Andersen's extra-curricular duties for the 1976-1977 year; that Walker also advised Andersen that it would be possible to grant Andersen an additional \$700 for such extra-curricular music contract; that on or about the same date Andersen reduced the matters discussed in said conversation to writing, in the form of a memorandum addressed to Walker, indicating that copies thereof were being sent to Brenda Balzer, the Unit Director of the bargaining unit, and head of its bargaining team, and also to Robert West, Executive Director of NUE, and that said memorandum was as follows:

Mr. Walker, I wish to make sure that I understand your instructions with regard to our conversation on the above day. It is my understanding that:

- A. My community image is suffering due to my excused absences at football games on Sept. 3 and Sept. 10.
- B. Concern has been expressed that 5th grade band lessons have not been started and may not start until March.
- C. According to your instructions I may not discuss any complaints I have about the music program with any teachers or community members. Any complaints I have should be discussed with you only.
- D. Any statements about school procedures or liability will be made by you.
- E. If I do not accept extra-curricular (sic) contract for this academic (sic) year I will be non-renewed. My non-renewal will be based on a low evaluation of my extra-curricular (sic) duties for the 1976-77 academic (sic) year. In addition the co-curricular (sic) music contract will be applied to the regular teachers contract for the 1977-78 academic (sic) year.

Your attention on this memo will be appreciated.

7. That on September 21, 1976, following a conversation with school custodians with regard to the condition of Andersen's music room, Wiswall visited the room, finding it in disarray; and that in said regard, Wiswall sent Andersen a memorandum on said date, advising Andersen to keep the "instruments, equipment and furniture in an orderly condition"; and that thereafter Wiswall discussed the matter with Andersen, who indicated that he would correct the matter.

8. That on Monday, October 4, 1976, following the homecoming weekend, and after visiting Andersen's music room, Walker wrote the following memorandum to Andersen:

Today at about 2:40 I had the opportunity of walking into your classroom and observing the facility in a disorderly state. Parts of band uniforms were lying on the floor, band hats were lying at various spots around the room, chairs and stands were disorderly and disorganized, storage room and closet doors were left open, miscellaneous shoes and cover shoes were lying around the room on cabinets and chairs. The door to the classroom was open and unlocked. All in all, the classroom appeared very disorderly.

Please make every effort to insure that the equipment and supplies are stored away properly. Work consciously to improve the condition of the music facility. Your cooperation is greatly appreciated.

9. That prior to October 8, 1976, Andersen had requested a leave of absence to attend the Wisconsin State Music Conference on October 28 and 29; that on October 8, Walker, in a memo to Andersen, denied such request, indicating that:

Your presence in the classroom providing programs to the students is presently the priority we are concerned with. The availability of funds for workshop attendance is also a concern in reaching this decision.

10. That, pursuant to the District's "Teacher Manual," report cards of 7th through 12th grade students were to be prepared for each of two six-week periods, the first period to be graded on October 6, 1976, and mailed to the parents on the following day; that Andersen, along with six other teachers, did not complete said grading reports until October 11, 1976, a fact which was called to Walker's attention in a memorandum from Wiswall, dated October 12.

11. That on November 9, 1976, Andersen directed a memorandum to both Walker and Wiswall, wherein Andersen requested to be released from his 7th hour study hall assignment, contending that such time could be put to better use than monitoring 6 - 8 students, since his music students "need more attention"; and that although this request was denied, Wiswall indicated to Andersen that Wiswall would arrange for Andersen "to get in the time he wants with his people."

12. That on November 11, 1976, Walker visited Andersen's classroom, and on November 15 issued the following evaluation, which was signed by Andersen on said date:

OBSERVATION:

Grade system maintained and up to date. Lesson plans too sketchy -- should be daily.

Band rehearsing numbers for music program. Students generally attentive. Some students not participating. Teacher not observant of entire environment -- student with feet up on chair; students gum chewing; music stands balancing on edge of step; storage cabinets all open; percussion students fooling around. Dismissal of student to put instruments away is disorderly. Dismissal of students to lunch also not good.

RECOMMENDATIONS & COMMENTS:

Teacher initially this year exhibited a very hostile and negative attitude toward the administration and administrative policies. Questions regarding the teacher's commitment to be involved in co-curricular activities discussed in the interview process were raised. Teacher's action to constructive criticism was reactive rather than responsive.

Areas in which the teacher should improve are as follow:

1. Teacher should read and follow all administrative policies completely and carefully.
2. Teacher should be supportive and responsive to administrative requests.
3. Teacher should refrain from making negative and derogatory statements to others (staff, students, parents). If valid complaints exist, make them directly to the administration.
4. Classroom control -- teacher must take a stronger stance on discipline.
 - a) Observe classroom behavior carefully.
 - b) Correct negative behavior immediately.
 - c) Take command during set-up and dismissal of class to encourage orderly and reasonable action by students -- dismiss small groups rather than full groups.
 - d) Teacher, not bell, should dismiss students.
5. Maintenance of classroom -- teacher must insure proper maintenance of facility and equipment.
 - a) Observe facility and equipment location.
 - b) Music stands should be located away from edges of steps.
 - c) Equipment, uniforms and materials should be put away properly to insure longer life and to avoid damage.
 - d) Classroom should be neatly organized at the end of the day to insure that custodial staff can clean without difficulty.
6. Planning -- teacher should use appropriate plan forms provided to each teacher. Plans should be daily.

Failure to improve upon the above mentioned deficiencies shall constitute reasonable grounds for non-renewal of your contract for the 1977-1978 school year. I hope marked improvement can be noted in your performance by February of 1977.

. . .

Please see me for an appointment to discuss this evaluation.

13. That Anderson on November 17 gave Walker the following written response to Walker's evaluation:

Mr. Walker and I have agreed that considerable (sic) progress has been made on items 1-2-3 of the evaluation. Item number 5 parts C and D are no longer an issue (October 14 memo). Uniforms and materials are stored in their proper place and room is in (sic) an orderly condition. Storage facility was not inspected at this time but room is in neat condition.

Mr. Walker was informed of problem involved with music stand by tympani-riser is too small to accommodate (sic) tympani and stand; a new arrangement will be tried for safety purposes. (5B) Percussion students fooling around were seventh graders who had no assigned part to play due to size (9) of the percussion section. Mr. Walker suggested giving students practice pads so the (sic) may play along without disturbing band balance.

I will change lunch dismissal and set up procedure to facilitate more orderly action on student's part. Students are dismissed in small groups for lunch. (4 C-D)

Lesson plans will be turned in on proper forms; they will be made daily. In defense of my sketchy weekly lesson plans, I must state due to the nature of the class I must listen and correct problems which are not apparent until the music is heard. It is very difficult to use daily lesson plans.

Mr. Walker has asked me to state any unfair observations in this evaluation. I will do so now.

A. I have 66 students grades 7-12. It is difficult to be observant of entire environment at one time. I must conduct, follow 13-15 lines of music, set a tempo, listen for mistakes, cue students in and turn noise into music. A classroom teacher can lecture and observe students at the same time. I must be totally involved in the music. However, I agree with Mr. Walker that gum chewing and feet on chairs are not appropriate class room behavior, and I will strive to correct such behavior.

B. Mr. Walker stated he would put on evaluation the band sounded good when he was observing. I would like to add that I have received compliments from Mr. Walker on several occasions (sic) concerning the sound of the band or choirs. (Half time shows, N.A.S.H. meeting and homecoming.) In addition there are three choirs and four bands in operation. (Senior high band, fifth grade, sixth grade and Jazz ensemble, Senior high choir, Junior high choir, and swing choir) I am concerned that none of the positive things I have done are present in this evaluation.

C. One final remark, due to the nature of music, not all students will participate all the time.

14. That again Andersen, along with six other teachers failed to complete their grade reports which were due on November 18, 1976; and that on November 22 Andersen, as well as the other six teachers received a memorandum from Wiswall to that effect.

15. That on December 1, 1976, Andersen was among twenty-four teachers who signed the following memorandum which was delivered to Walker on the latter date:

We, the undersigned, are ceasing the following duties as of December 6, 1976: Bus Duty, Hall Duty, and Detention Duty. We want serious bargaining.

NUE--New Auburn

16. That on December 3, 1976, Walker sent copies of the following memorandum to Andersen and the other teachers who had executed the December 1 memorandum to Walker:

As a teacher in the School District of New Auburn, along with carrying out regular teaching responsibilities in the classroom, you are required to carry out other nonteaching responsibilities in the district. Among these responsibilities are included recess, hall, bus and detention duties.

The 1975-76 Master Agreement, Administration Policy Manual, Staff Orientation (Beginning of year), and Duty Roster clearly outlined each teacher's responsibility in this regard. Further, at teachers meetings since the beginning of the year the administration has re-emphasized the importance of carrying out these supervisory tasks around the building.

A teacher's failure to carry out responsibilities regarding supervisory duties shall be considered a conscious, willful act intended to disrupt the discipline and order of the school climate. Such teachers are in violation of school board and administration policy as well as the Master Agreement of 1975-76.

A teacher observed failing to carry out all of his or her responsibilities in this district shall be subject to disciplinary action. Administrative action when such situations occur will be forthcoming. Such actions will include:

1. Verbal and written reprimands to teacher.
2. Suspension of teacher with recommendation for loss of pay during suspended days prior to board hearing.
3. Suspension of teacher with recommendation for immediate termination of employment with district.

Make sure you, as a teacher, are carrying out all of your responsibilities of your job. This will insure a healthy, safe, and orderly learning environment for the students of New Auburn as well as an enjoyable work environment for you.

Thank you for your cooperation.

17. That on December 7, 1976, twenty-five teachers, including Andersen, failed to sign in as being present, as required in the Teachers Manual, and as a result, Walker, on said date, issued the following memorandum to said teachers:

You have failed to sign in this morning. As a teacher in the School District of New Auburn, you have been requested to check in and check out in the administrative office upon arriving and departing the building. You should clearly be aware of your responsibility in this regard as we have discussed this procedure during staff orientation at the beginning of the year. The Teachers Manual also clearly spells this procedure out. Further, you have been carrying out this procedure for four months.

The reason for this procedure is to facilitate determining if people are in the building and we can insure that class situations are covered without having to check room to room in the morning. This process also facilitates contacting teachers when phone calls are received.

Your continued failure to sign in and sign out will result in disciplinary action including verbal and written reprimands, suspension pending a board hearing, and termination of your employment contract. Please make sure you are fulfilling your responsibility as a teacher in the School District of New Auburn and make sure you sign in upon arriving in the morning and to sign out before departing in the evening.

Be sure to sign out before departing school today. Thank you for your cooperation.

18. That on December 3, 1976, Wiswall visited Andersen's classroom for the purpose of evaluating Andersen; that on December 8, 1976, Andersen sent Wiswall the following request with regard to Andersen's "Study Hall Assignment":

I wish to be relieved of my seventh hour study hall assignment as of Term IV 1976-77 school year. My music students have a solo and ensemble contest coming (sic) up in February so they will be needing extra help to prepare for this contest. My predecessor (sic) had no study hall assignment for semester II 1976 and he was half time. This year I am doing both choir and band duties and I have the study hall. I don't believe I am utilizing my time in a wise manner. Your attention to this matter is appreciated. At the moment I am watching 6 students.

and that on an undisclosed date thereafter Wiswall, in a note to Walker, indicated that he was referring Andersen's request to Walker for final action, indicating that Wiswall had discussed the matter with Andersen, wherein Wiswall indicated that he did not know whether the request could be granted, and, further, Wiswall advised Walker that Wiswall would facilitate time for Andersen until February 19 by shifting the study hall back to the band room; and that unless Walker could find someone to take Andersen's last hour study hall, Wiswall recommended that Andersen not be relieved of such assignment.

19. That on December 17, 1976, after the choir had appeared on television the previous day, Wiswall sent the following memorandum to Andersen:

I want to commend you on the way the chorus behaved before, during, and after their performance (sic) yesterday. They reflected well upon the school and on you. Good job.

20. That on December 20, 1976, Andersen filed the following two grievances, which were received by Walker on the same date:

STATEMENT OF GRIEVANCE

I was hired on January 12, 1976. I was placed on the B.S. + 15 lane for salary purposes. At the time I had a B.S. + 24. I never received a copy of the Master Agreement so I assumed B.S. +15 was the last lane before the masters degree step. I request as a remedy, I be compensated for lost wages as a result of this error.

STATEMENT OF GRIEVANCE

I have a bachelor's degree with 26 credits beyond. I am presently being paid at a B.S. + 15 rate. This is a violation of the Master Agreement Appendix A-Salary Schedule. I request as a remedy, I be placed on the B.S. + 24 lane and be reimbursed for wages lost due to this error.

21. That on an undisclosed date Walker denied the first grievance on the basis that it was untimely filed, and further that the District had no documentation on file regarding Andersen's transcript; that Andersen did not process said grievance further; and that Walker granted the second grievance, resulting in Andersen receiving an adjustment in his salary.

22. That on December 21, 1976, Wiswall submitted to Anderson a copy of his evaluation of Andersen as a result of Wiswall's visit to Andersen's room on December 3; and that such evaluation read as follows:

December 3, 1976 Class: Junior High Chorus
Time: 11:03 Activity: Listening to tape
of concert, singing.

Condition of Room

Room was generally in order. Instruments put away. All music in storage. Earlier problems with your room have been worked out between you and the custodial staff.

Teacher's Preparation

Due to the special nature of the activity I realize that it is difficult to design lesson plans for substitutes. For your own use I am satisfied that the planning that you do is adequate.

Instructional Activity

From this observation and other observations made informally I believe that you work efficiently with your music groups. In this instance I believe that you did get your objectives accomplished. I am concerned with your control of the junior high chorus. In this situation there is ample opportunity for the boys to talk and misbehave. We have discussed ways of modifying their behavior but I think that you should exercise more control over their behavior. That is a very hard group to control but to fully accomplish your objectives in that group you must exert your authority. I will support you in any reasonable action you must take to discipline that group in chorus.

In this instance they were disruptive. Their postures were very bad for this activity. They did not respond to you and even my presence in the room did not help control their almost constant talk.

I do not believe the problem exists to the same extent in senior high chorus, but we discussed various measures to deal with habitual disrupters. These situations are unique in the school setting for their potential problems in discipline. Yet, I feel that you should be more firm in dealing with habitual talkers. I will support you in dealing with these students.

I will deal with your instructional program as follows:

- (1) Individualized instruction with students: I think that your program - within the constraints of time - operates effectively. I would like to see you do more grouping of instruction in sections rather than individual lessons but this is something that you must decide. I believe that your program is dealing well with the individual music student.
- (2) Performing groups: Your recent Christmas and TV performances indicate that you are doing well with these groups. The Christmas concert went very well and indicated your ability to organize and supervise this activity. As I indicated in my memo, your trip to Eau Claire reflected well on your ability to supervise these students. Your pep band is excellent and you have worked well with them during the games.
- (3) General music program: I believe that you have the right objectives when you stress the importance of music education. I think that your program here is well-balanced but remind you that you must work within the constraints of a small school.

Professional Posture

In your work with me during extracurricular activities you have shown a willingness to put forth extra effort. I think you, in your capacity of band director and as a teacher, serve the school well in extracurricular activities. You have been willing to work for me in supervision and have shown a good attitude when asked to use the music room. I believe that you have been conscientious in doing your duties. You will have to keep better supervision of students on detention in your room.

Students seem to relate well to you. You deal effectively with the music parents and I feel you are well received in the community.

EVALUATION

The only serious concern I have with your teaching performance is the maintenance of discipline in your choral groups. Your work with individual students, your performing groups, and your general music education program is adequate. I must see better control of the senior high chorus before making a decision on renewal of your contract.

RECOMMENDATIONS

- (1) Assert your authority in the choral groups to control their behavior. Use the discipline system for those who respond to it. For those who will not respond to detentions refer to me and we will modify their behavior.
- (2) Develop a capacity for serving both girls and boys athletics. I will work with you on this problem.

(3) Develop a general music program to use in junior high as an alternative to the chorus approach.

(4) Keep better records and control of your detentions in your room.

(5) Keep an orderly band room. New locks on the doors should insure a safe place for all instruments.

23. That on January 10, 1977, representatives of the NUE and the District executed a collective bargaining agreement covering wages, hours and working conditions of teachers, guidance counselors and librarians in the employ of the District, for a term commencing July 1, 1976 through June 30, 1978; and that said agreement contained, among its provisions, the following material herein:

ARTICLE V - CONDITIONS OF EMPLOYMENT

Section A -- Discipline and Discharge

1. A teacher hired by the district shall serve a probationary period of three (2) (sic) full school years, during which he will be given guidance, assistance and recommendations for improvement. A teacher may be disciplined, discharged or non-renewed during the probationary period without recourse to the grievance procedure.

24. That on an undisclosed date in January 1977, Andersen issued a detention to a student, who, on the same date served this detention in Andersen's room after school, apparently without Andersen's knowledge, although Andersen was present in the room; that following said period of detention, said student left school and started walking to his home, some ten miles from school, in sub-zero weather, and a parent of another student picked up the student and drove him to his home; that District policy required teachers who imposed detention to require the student involved to take a notice to his parents, prior to serving the detention, in order to apprise the parents with notice that the student was to serve detention; that one of the parents was required to sign such notice, indicating that the parents would be aware of the date on which such detention would be served, in order that the parents could arrange for transportation for said student; that on said occasion Andersen did not provide such notice; that the parent who picked up the detained student later called Walker and expressed concern with respect to the matter; and that Walker then informed Wiswall of the matter, and the latter spoke to Andersen in regard thereto.

25. That on January 19, 1977, Andersen failed to note on his daily first hour student attendance report that a student was absent; and that on the same date Andersen received a memorandum from Wiswall that such reports must be accurate.

26. That, pursuant to his extra-curricular contracts, Andersen had the responsibility to chaperone at a basketball game on the night of January 21, 1977, in addition to chaperoning the Junior Class dance that evening, as well as being in charge of the band for the dance; that on January 20, 1977, Andersen filed the following grievance with Wiswall with respect to such duties:

S T A T E M E N T O F G R I E V A N C E

As a person under an extra-curricular music contract, under the terms of that contract I am responsible for the safety, well being and behavior of my students, I cannot be held responsible for both my students and act as a chaperone. I must fulfill the terms of one contract or another, not both.

As a remedy, I propose that I be released from my chaperone duties, (sic) If this is not possible, I propose that there be no band on the nights I must chaperone.

27. That sometime during the school day of January 21, 1977, a number of Andersen's students visited his office in the music room and therein indicated they were unhappy with the grades given to them by Andersen; that during said event, tempers flared and Andersen told the students to leave "if they didn't like it"; that the students left and congregated in the hall outside the music room; as a result, Wiswall overheard their noisy conversation and inquired from said students as to the cause thereof; and that thereupon Wiswall requested the students and Andersen to come to Wiswall's office, where the episode was discussed.

28. That on Friday, January 21, 1977, and prior to the evening thereof, Wiswall obtained a substitute for a portion of Andersen's chaperone duties that evening; that, upon being advised thereof by Wiswall, Andersen informed Wiswall that he was withdrawing his grievance with regard to the matter; that on Monday, January 24, 1977, after Andersen's grievance and Wiswall's attachment thereto to the effect that Andersen was satisfied that the matter had been resolved had come to Walker's attention, Walker contacted Andersen to determine, in fact, whether the grievance had been resolved; and that upon being advised by Andersen that he had withdrawn the grievance, Walker saw no need to formally respond to same.

29. That on Wednesday, January 26, 1977, Wiswall directed the following memorandum to Andersen with respect to the incident set forth in paragraph 27 hereof, as follows:

In regards to that incident in your office on Friday, January 21. Remember that you must retain your composure when confronted by students. You cannot respond to them in anger or without thinking about the consequences of your actions or words. You cannot tell students to 'leave if they don't like it'. If you expect them to comply with school rules do not give them the option of breaking those rules by leaving your classroom without permission.

30. That also on Wednesday, January 26, 1977, Walker called Andersen into his office and there advised him that Walker intended to recommend to the District's Board that Andersen be non-renewed for the coming school year; that on February 9, 1977, Walker directed a letter to the District's Board recommending that Andersen be non-renewed for the coming school year, also indicating in said letter as follows:

. . . This recommendation is made after careful review of the district's needs and the teacher's personnel file and teaching performance.

In making this recommendation, I refer the board to the teacher's personnel file and current year communications. . . .

31. That about the same time Walker also recommended that eight additional teachers be non-renewed for the 1977-1978 school year, three because of budget limitations, and the others on the basis of claimed deficiencies as teachers; that prior to making such recommendations with respect to Andersen and the other teachers, Walker conferred with Wiswall, who supported Walker's intentions with regard to such recommendations.

32. That by letter dated February 11, 1977, the Clerk of the District's Board advised Andersen that the Board was considering his non-renewal, and that if Andersen desired to meet with the Board prior to its final decision in the matter he should make a written request therefor; that Andersen did so, and such conference was scheduled for March 3, 1977; that prior to such conference Walker furnished the Board with a detailed resume of the reasons supporting his recommendation that Andersen be non-renewed; that such resume referred, by reference, to various Board policies involved, the incidents involved, the dates on which such incidents were observed, and by whom, as well as identifying the individual who spoke to Andersen regarding each specific incident, all as follows:

Specific Policy	Teacher Deficiencies/Concerns of Admin.	Date Observed	Recommendations & Asst. for Teacher Improvement
DISCIPLINE			
I-4, 50, 66 II-6, 8, 16, 17, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 35, 44, 47, 48, III-9, 11, 18, 23, 25, VI-1	Inadequate student control & maintenance of classroom discipline.	Wiswall 2-3-77 Walker 11-11-76 Wiswall 12-3-76	Written Memo (Wiswall) 2-3-77 Written Eval. (Walker) 11-11-76 Conf. (Walker) 11-17-76 Written Eval & Conf. (Wiswall) 12-22-76
PREPARATION			
I-4, II-50	Improper & inadequate planning for instruction.	Wiswall 12-3-76 Walker 11-11-76	Conference (Walker) 12-22-76 Written Eval. (Walker) 12-21-76 Conf. (Walker) 11-17-76 Written Eval. (Walker) 11-11-76
SAFETY			
I-54, II-74	Poor supervision & maintenance of neat, healthful, safe & orderly classroom.	Walker 11-11-76 Walker 10-4-76 Wiswall 9-21-76	Written Eval. (Walker) 11-11-76 Conf. (Walker) 11-17-76 Memo (Walker) 10-4-76 Memo (Wiswall) 9-21-76
CARE FOR SCHOOL PROPERTY			
II-74, 79, 81, III-9	Inadequate care for classroom facility, equipment & supplies.	Walker 11-11-76 Walker 10-4-76 Wiswall 9-21-76	Written Eval. (Walker) 11-11-76 Conf. (Walker) 11-17-76 Memo (Walker) 10-4-76 Memo (Wiswall) 9-21-76

Specific Policy	Teacher Deficiencies/Concerns of Admin.	Date Observed	Recommendations & Asst. for Teacher Improvement
I-6, II-49	PROFESSIONAL CONDUCT Unprofessional or uncooperative conduct in working & communicating with staff & students.	Wiswall 1-26-77	Memo (Wiswall)
		Walker 12-1-76 Walker 11-11-76	1-26-77 Letter (Walker) 12-3-76 Conf. (Walker) 11-17-76 (Written Eval. (Walker) 11-11-76
I-3, 52, 53, II-1, 2, 4, 56, 57, 58, 59, 60, 61, 62, III-26, 27, 28, 29, 30, 31	STUDENT RECORDS Failure to maintain or report student records & attendance promptly & properly.	Wiswall 1-19-77	Memo (Wiswall)
		Wiswall 12-3-76	1-19-77
		Wiswall 11-18-76	Written Eval. & Conf. (Wiswall)
		Wiswall 10-11-76	12-22-76 Memo (Wiswall) 11-22-76 Memo (Wiswall) 10-12-76
I-56 V-1	ATTITUDE Dissatisfaction with work load & assigned responsibilities	Wiswall 1-20-77	Discussion (Wiswall)
		Wiswall 12-8-76	1-20-77
		Walker/Wiswall 11-9-76	Discussion (Wiswall) 12-76
		Walker 9-14-76	Discussion (Wiswall) 11-76
			Discussion (Walker) 9-14-76 Discussion (Walker) 8-76
I-56, II-1, 2, 5	POLICY ADHERENCE & ENFORCEMENT Failure to follow administrative policy & procedure.	Walker 12-7-76	Written Eval. & Conf. (Wiswall)
		Walker 12-3-76	12-22-76 Letter (Walker) 12-7-76

33. That following said conference, which was held on the date scheduled, and at which Andersen was represented by the Executive Director of NUE, the Clerk of the District's Board, by letter dated March 14, 1977, advised Andersen that the Board had determined not to renew Andersen for the 1977-1978 school year; that of the other seven teachers whom Walker had recommended be non-renewed, the Board did renew the three teachers whom Walker had recommended non-renewal because of budget limitations, one was renewed without any conditions attached, three of the other teachers were offered probationary contracts, while one teacher, in addition to Andersen, was non-renewed; and that on an undisclosed date after March 14, 1977, Walker inserted the words "Should be done with him" on the file copy of the above-noted March 14 letter to Andersen; that Walker placed such notation on said letter since Andersen, being a probationary teacher, had no contractual right to proceed to arbitration with respect to the District's decision not to renew him; and that no similar notation was placed in the files of the other teachers, who Walker had recommended not be renewed, since said remaining teachers were regular, and not probationary, teachers.

34. That Walker's recommendation to the District's Board that Andersen be non-renewed for the school year 1977-1978, as well as the action of the members of the District's Board in non-renewing

Andersen, was not motivated as a result of the exercise of Andersen's right to file grievances on his own behalf, or because of the exercise of his right to engage in any other protected concerted activity.

Upon the basis of the above and foregoing Revised Findings of Fact, the Commission makes and issues the following

REVERSED CONCLUSION OF LAW

That the School District of New Auburn, its officers and agents, did not commit any prohibited practices within the meaning of any provision of the Municipal Employment Relations Act with respect to the non-renewal of teacher John Andersen.

Upon the basis of the above and foregoing Revised Findings of Fact and Reversed Conclusion of Law, the Commission makes and issues the following

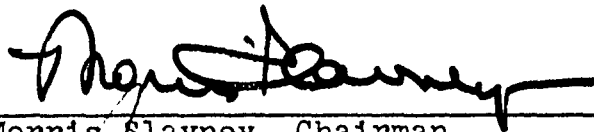
REVERSED ORDER

IT IS ORDERED that the complaint filed herein be, and the same hereby is, dismissed in its entirety.

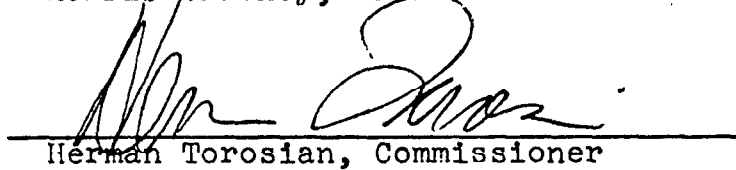
Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER REVISING EXAMINER'S FINDINGS OF FACT AND
REVERSING CONCLUSION OF LAW AND ORDER

The Examiner's Decision

The Examiner basically found that (1) the filing of three grievances by Andersen on his own behalf constituted protected concerted activity; (2) Superintendent Walker was aware of such activity; (3) Walker's animus as a result of such activity was established in a conversation with Andersen wherein Andersen advised Walker that he had withdrawn his third grievance, and that thereupon Walker informed Andersen "Well, if your teaching improves within a week or two I won't non-renew you."; and (4) Walker, by denying making such statement, chose to try to hide his true motivation for making such statement, and, therefore, it was logical for the Examiner to assume that Walker was hostile against Andersen because of the latter's protected grievance activity, as reflected by a notation entered in Andersen's file, after the latter had been formally advised of the decision of the District's Board not to renew his teaching contract, namely, "Should be done with him."

The Examiner concluded that the District committed a prohibited practice, and the District was ordered to reinstate Andersen and make him whole for any loss of pay suffered by him as a result of his non-renewal.

The Petition for Review

The District timely filed a petition requesting the Commission to review and reverse the Examiner's decision. Therein the District specifically took exception to two of the Examiner's Findings of Fact, namely, that Walker made the statement to Andersen upon learning that Andersen had withdrawn his third grievance, ^{2/} and the inference of "hostility" based on the notation in Andersen's file. ^{3/} The District also takes exception to the other inferences and assumptions of the Examiner, contending that they were unsupported by the evidence.

In its petition the District also contends that in the conduct of the hearing the Examiner committed "prejudicial procedural error as shown at pages 99 to 118 of the transcript when the examiner disregarded his objectivity and became a vigorous cross-examiner of the employer's witness. That bias carried through to the Findings of Fact and Conclusions of Law and is evidenced by the memorandum wherein the examiner piled inference upon inference to reach a desired conclusion."

Discussion

The Commission has reviewed the entire record, the briefs filed with the Examiner, and also the briefs filed in support of, and in

^{2/} Paragraph 21 of the Examiner's Findings of Fact.

^{3/} Paragraph 22 of the Examiner's Findings of Fact.

opposition to, the petition for review, and it also has conferred with the Examiner regarding his credibility findings. ^{4/}

Andersen's Concerted Activity

The Association contends and it is not contested that the three grievances filed by Andersen on his own behalf constituted protected concerted activity. The Examiner, in his Findings of Fact, sets forth the grievances in full; however, the Examiner did not include the full facts surrounding the disposition of such grievances. Andersen apparently accepted the position of the District that his first grievance had been untimely filed. The second grievance was granted, apparently after the Association and the District had reached an accord on a new collective bargaining agreement, and the third grievance was withdrawn by Andersen almost immediately after filing same with Principal Wiswall, after the latter had obtained a substitute for one of the two duties grieved by Andersen.

The record establishes, and the Examiner so found, that Andersen, along with other teachers, on December 1 signed and submitted a memo to Walker to the effect that said teachers would cease bus, hall and detention duties as of December 6, and further that Andersen, as well as other teachers, had failed to sign in as being present on December 7. The record establishes that such activity occurred as a result of teacher dissatisfaction with the state of the bargaining on a new collective bargaining agreement. The Examiner summarizes Walker's responses to such activities as indicating to the teachers involved that they would be subject to disciplinary action. We deem that the full responses be set forth and examined in determining whether they bear on any indication, one way or the other, as to whether Walker bore any animus to not only Andersen, but also to other teachers, because of their concerted activity. We have done so in Finding 16.

Andersen's Performance as a Teacher

In an attempt to establish that the District's action in non-renewing Andersen was not based on the exercise of Andersen's right to engage in lawful concerted activity, the District produced evidence as to Andersen's performance as a teacher, namely, his shortcomings with respect to discipline, and other non-educational duties and responsibilities. In some instances we have revised various Findings of Fact of the Examiner in order to reflect the totality of the events involved, as well as including findings of fact not made by the Examiner. For example, the Examiner failed to find that Andersen's extra-curricular assignments were contractual in nature. The plain reading of his third grievance establishes such a fact. Otherwise there is an inference that such duties were voluntary. Again, the Examiner in paragraphs 12 and 13 of his Findings, did not fully set forth all the material facts surrounding the events involved, such as the circumstances which occurred on January 21 when Andersen

^{4/} Pursuant to the requirement of the Supreme Court (Carley Ford, Lincoln, Mercury v. Bosquette (1976), 72 Wis. 2d 569, 575, 241 N. W. 2d 596, 599; Appleton v. ILHR Department (1975), 67 Wis. 2d 162, 169-172, 226 N. W. 2d 497), the Commission certifies that, as to the Commission's Findings of Fact involving determinations contrary to those of the Examiner which also involved credibility resolutions, the Commission, before issuing its final decision, met with the Examiner, consulted with him, and discussed with him his personal impressions of the witnesses in respect to their credibility. Further, the reasons for departing from the Examiner's findings are explained in the memorandum.

met with students. We believe that all the facts surrounding that event are material. 5/ The Examiner also glossed over the event in January relating to the detention of a student as set forth in his finding in paragraph 13. Our finding regarding the incident 6/ indicates that the event involved more than the failure to give parents advance notice of an intended detention. In his finding, paragraph 16, the Examiner does not include the reasons why Andersen's requests to attend conferences and to be relieved of study hall assignments were turned down by Walker. The facts, as set forth by the Examiner, leads to a possible inference that Walker had no basis for denying same. We have set forth the basis therefor in our revised findings. 7/

The Examiner's Finding of Animus

As stated by the Examiner in his Memorandum, the Association must prove, by a clear and satisfactory preponderance of the evidence, that the District's non-renewal of Andersen was based, at least in part, by the exercise of Andersen's right to engage in protected concerted activity. The Examiner made no specific Finding of Fact to the effect that Andersen was non-renewed because of the exercise of such right. The Examiner included such a "finding" in his Conclusion of Law, as follows:

The District violated Section 111.70(3)(a) (1) and (3) of MERA by non-renewing Anderson (sic) because of Anderson's (sic) concerted protected activities.

The Examiner's rationale in support of such a factual determination is reflected in his Memorandum as follows:

Turning to the question of animus, the record shows that Walker advised Anderson (sic) on January 25, 1977, just five days after Anderson (sic) filed his third grievance, that he would be non-renewed. At that time, Anderson (sic) indicated that he was withdrawing his earlier January 20, 1977 grievance. According to Anderson, (sic) Walker was surprised at that fact, and replied, 'Well, if your teaching improves within a week or two I won't non-renew you.'

Although Walker denied making this latter statement, his denial is discredited. Instead, the Examiner credits Anderson's (sic) account of this meeting. In doing so, the Examiner concludes, based primarily on the respective demeanor of the two witnesses, that Anderson (sic) was the more credible witness.

Having therefore found that Walker made the foregoing statement, it is clear that Walker's remark was based on the fact that Anderson (sic) had withdrawn his latest grievance. For, the necessary implication of the remark was that Walker would reconsider his non-renewal decision

5/ See paragraph 26, Revised Findings of Fact.

6/ See paragraph 24, Revised Findings of Fact.

7/ See paragraphs 9 and 11, Revised Findings of Fact.

in light of Anderson's (sic) dropping of the grievance. That being so, it can be inferred, and I so find, that Walker was very concerned over Anderson's (sic) prior grievance activity and that such activity must have played an adverse role in Walker's decision to non-renew Anderson. (sic) In so finding, the Examiner notes that Walker chose to try to hide his true motivation for making this statement by denying that he said it. Based upon the totality of this record, it is therefore logical to assume that Walker's true motivation was an illegal one, one which Walker did not want to come to light for fear that it would expose the true reason for his non-renewal of Anderson. (sic)

Standing alone, the above clearly shows that Walker resented Anderson's (sic) grievance activities. Another example of such resentment, albeit not so direct, was Walker's earlier exchange with Anderson (sic) in September 1976. At that time, Anderson (sic) said that he would file a grievance if he did not receive added compensation for his extra-curricular duties. In this connection, Walker conceded that Anderson (sic) in fact was not required to accept such extra-curricular assignments. Yet, despite that fact, Walker, who was under the mistaken belief that such activities had to be performed, responded to Anderson (sic) by saying that he would be non-renewed if he did not accept the extra-curricular assignments. However, since Anderson (sic) never indicated that he would not perform such activities, there certainly was no reason for Walker to threaten him with non-renewal. Here, it can be inferred that Walker did so because he resented the fact that Anderson (sic) had threatened to file a grievance over the matter.

It should be noted that Andersen's testimony with regard to his conversation with Walker on or about January 26, 1977, was not adduced on direct examination of Andersen, but rather on cross-examination by Counsel for the District. Walker's version of the matter involves two conversations with Andersen on two separate dates. Walker testified that on January 24, after observing a note from Wiswall to the effect that Andersen dropped the grievance, Walker contacted Andersen to determine, in fact, whether the grievance had been resolved, and upon being so advised by Andersen, Walker felt no need to formally respond to same. Walker testified that on January 26 he informed Andersen that Walker intended to recommend that Andersen be non-renewed. Walker denied making the statement to the effect that if Andersen's performance as a teacher improved within a week or two Walker would not non-renew Andersen. The Examiner chose to believe Andersen's version of the conversation based on the respective demeanor of the two witnesses.

If, in fact, Walker had made the statement attributed to him, in light of Andersen's previous reaction in pursuit of what he deemed to be unwarranted or improper treatment with regard to wages and working conditions, it seems strange indeed that the record is totally absent of any evidence indicating that Andersen, in any way, attempted to discover what caused Walker, some two weeks later, not to recommend that Andersen be renewed.

The Examiner's discussion with respect to extra-curricular assignments fails to consider the fact that such assignments were contractual in nature, and that Andersen was paid additional sums for performing same. The failure of Andersen to voluntarily accept such contractual assignments could very well have resulted in a determination not to renew him.

It should be noted that the Examiner engaged in an intensive cross examination of Walker, over the objection of the District's Counsel. Such examination occupied some twenty pages of a transcript of one hundred twenty-five pages. Despite the length of such examination, the Examiner put no questions to Walker regarding the statement which Andersen alleged was made by Walker on January 26 with respect to his non-renewal. Further, even assuming that Andersen's version reflected the actual event, it does not necessarily follow that Walker made the remark because Andersen had dropped the grievance. Had Walker made the statement, it is just as reasonable to assume that Andersen from then on would perform all the duties he had contracted to perform.

The Examiner, in support of his conclusion that Walker was hostile towards Andersen's grievance activities, also stated in his Memorandum as follows:

Additionally, it is of some significance that Walker wrote on his copy of a March 14, 1977 letter to Anderson (sic) the notation 'Should be done with him.' Walker was unable to cite any other example of where any other similar such notation was made on the file of any other teachers. Walker attempted to justify the latter fact on the grounds that he had not had time to make similar notations for other teachers and because grievances were pending for other teachers. The Examiner discredits this proffered explanation as it fails to adequately explain why no such notation was made on the files of those teachers who were slated for non-renewal, but who were kept on as regular teachers. Accordingly, it can be inferred that the above cited notation reflected Walker's hostility towards Anderson. (sic) In light of the record herein, which shows that Walker resented Anderson's (sic) grievance activities, it is logical to assume that such hostility was directed towards Anderson's (sic) grievance activities.

We reject the Examiner's rationale with regard to the inference attached to the notation involved. The Examiner failed to find as a fact that Andersen was the only teacher, among those recommended by Walker for non-renewal, who was a probationary teacher, and, therefore, Andersen's non-renewal was not subject to the grievance and arbitration provisions of the collective bargaining agreement. The remaining teachers so adversely affected by Walker's recommendations, and the District's action thereon, could pursue such action by filing grievances, and if necessary, through arbitration.

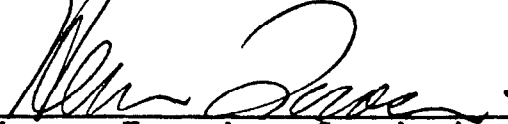
In light of the above, we cannot accept the Examiner's conclusion as to credibility crediting Andersen's version of his conversation with Walker concerning Walker's intent to recommend that Andersen not be

renewed. The Examiner's conclusion that Andersen was not renewed because of his grievance activity, in our opinion, is not supported by a clear and satisfactory preponderance of the evidence. On the contrary, the weight of the evidence establishes that the District non-renewed Andersen solely on his deficiencies in his non-instructional duties as a teacher. We have, therefore, reversed the Examiner and have dismissed the complaint filed herein.

Dated at Madison, Wisconsin, this 26th day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner