

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON TEACHERS INCORPORATED,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case LXIX
	:	No. 21821 MP-764
MADISON METROPOLITAN SCHOOL DISTRICT,	:	Decision No. 15629-A
CITY OF MADISON, VILLAGES OF MAPLE BLUFF:	:	
AND SHOREWOOD HILLS, TOWNS OF MADISON,	:	
BLOOMING GROVE, FITCHBURG, BURKE AND	:	
WESTPORT; THE BOARD OF EDUCATION OF	:	
MADISON METROPOLITAN SCHOOL DISTRICT,	:	
CITY OF MADISON, ET AL.,	:	
	:	
Respondents.	:	
	:	

Appearances:

Kelly and Haus, Attorneys at Law, by Mr. Lee Cullen, appearing on behalf of the Complainant.
Mr. Gerald C. Kops, Assistant City Attorney, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having on June 27, 1977 filed a complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondents had committed certain prohibited practices within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act (MERA); 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 a hearing on said complaint having been held before the Examiner in Madison, Wisconsin on November 2, 1977 and November 3, 1977; and the parties having submitted briefs until January 30, 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 Madison Teachers Incorporated, herein Complainant, is a labor organization and the certified exclusive collective bargaining representative of:

" . . . all regular full-time and regular part-time certificated teaching personnel employed by Madison Metropolitan School District, including psychologists, psychometrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading, University Hospital teacher, trainable group, librarians, guidance counselors, teachers on leave of absence, teachers under temporary contract, but excluding on-call substitute teachers, interns and all other employees, principals, supervisors and administrators."

2. That Madison Metropolitan School District, City of Madison, et al., herein Respondent District, is a municipal employer, and that the Board of Education of Madison Metropolitan School District, City of Madison, et al.,

herein Respondent Board, is a public body charged under the laws of the State of Wisconsin with the management, supervision and control of the District and its affairs.

3. That since at least the 1973-1974 school year, certain teachers employed by the Respondent District and represented for the purposes of collective bargaining by Complainant have asked for and received permission from Respondent District to split the teaching responsibilities of one position between two individuals; that Chris Thomas and Linda Gennrich decided to share a teaching position during the 1977-1978 school year; that they worked out the specific manner in which they would share the position and that said arrangement was subsequently approved by Gerry Dowden, their school principal; that administrative personnel employed by Respondents have on occasion answered a variety of questions from bargaining unit members who are job sharing regarding subjects such as fringe benefits and seniority rights; and that teachers who participate in the splitting of a position generally receive regular part-time teaching contracts from Respondent District.

4. That on or about September 28, 1976, Douglas S. Ritchie, Superintendent of Schools of Respondent District, established a Committee on Alternative Employment Structures which consisted of both teachers and administrators employed by Respondent District who the Superintendent had invited to participate; that Complainant did not participate in the formation or operation of said Committee; that on November 11, 1976, as a part of its deliberations, the Committee sent a survey to all teachers employed by Respondent District which asked for opinions about a variety of different employment structures including the sharing of a single teaching position with another teacher; and that in the November 11, 1976 issue of "As I See It", a newsletter from Ritchie to all professional staff, the Superintendent noted that a Committee on the concept of "job sharing" had been established and would "attempt to set up a structure of what opportunities there are in job sharing."

5. That on December 3, 1976, John Matthews, Complainant's Executive Director, sent a letter to John Coughlin, who was representing Respondent District during collective bargaining with Complainant over the 1977-1978 contract, which stated that "the MTI negotiating team requests the parties to bargain wages, hours, and conditions of employment relative to 'job sharing' at the next mediation session"; that at a subsequent mediation session, Coughlin indicated that the Respondent District was not interested in discussing the subject of job sharing; that the subject of job sharing was never again raised during the bargaining sessions between the parties which ultimately led to agreement on a 1977-1978 collective bargaining agreement.

6. That on December 6, 1976, Matthews wrote Ritchie the following letter:

"RE: Alternative Employment Study Committee

Dear Doug:

We write concerning the above-named committee which was unilaterally established by the Madison Metropolitan School District to study alternative methods of employment for teachers; namely, job-sharing. Inasmuch as job-sharing affects wages, hours, and working conditions, MTI views same as a mandatory subject of bargaining. Furthermore, MTI is of the opinion that the District is bargaining with individuals other than the designated agents of MTI, the certified bargaining agent. This is in violation of the contract and Chapter 111.70 (MERA).

Given declining enrollments, we agreed that job-sharing, as an alternative to teacher layoffs, should be examined. However, the District is still obligated to discuss this issue solely with MTI. If the District wishes to pursue this matter, MTI stands willing to negotiate relative to same. In the interim, MTI demands that the District cease and desist from discussing job sharing, or other items which affect wages, hours, and working conditions, with individuals other than authorized agents of MTI.

We look forward to hearing from you in this regard."

and that Matthews received no response; that on January 25, 1977, Matthews again wrote Ritchie asking for a response to the December 6, 1976 letter; that on or about January 27, 1977, Ritchie responded with the following statement:

"My information was that you demanded to discuss this first at a mediation session but then it never came up. We are studying job sharing but we are not considering changing any working conditions, salaries, benefits, etc. If you would like to see a preliminary working copy of a report, you are welcome. If and when the committee develops alternative structures I plan to call you for a meeting. It is surprising how much interest there is in this."

that on January 28, 1977, Matthews wrote Ritchie again "offering to bargain" about job sharing and on February 2, 1977, Ritchie responded with a note which stated "we may have some definitive structures to talk about soon. I will let you know."

7. That in March, 1977, the Committee on Alternative Employment Structures issued its report which included recommendations about "job sharing"; that the March, 1977 edition of the Madison Metropolitan School District Staff News contained the following story:

"JOB SHARING PLAN IS READY

The final touches have been put to the proposal that will make a job-sharing plan available for teacher commitment. In March teachers will be notified of a meeting to be held in the Administration Building at which time those interested in a commitment for next fall can discuss arrangements with others interested in the concept, and/or with those who are currently job-sharing.

Four hundred sixty teachers responded to the survey that was made last November indicating an interest in some kind of alternative employment. Some indicated an interest in position changes, i.e., exchange teaching, switch-sharing, or teaming; while others were interested in a reduced time commitment, i.e., job-sharing, reducing responsibility, easing into early retirement, part-time.

Concentrating on the area that seemed to stimulate the most interest, job-sharing, the Committee on Alternative Employment Structures stepped up its efforts to complete the proposal as staff cutbacks became a fact of life. Stepping up the study was not a simple task because of the vagaries of putting together a plan to answer the needs of many individuals when its success is so dependent upon human interaction and contractual obligations. At the outset the study seemed to indicate more advantages to teachers and to administration than disadvantages. But in trying to cover all bases for a plan to fit the entire district, the

committee discovered distinct disadvantages to both. The Committee's report cites both the advantages and disadvantages and relates some of the survey comments.

Being printed now, the report will be available to teachers in March. Committee members, Wanda Warner, Helen LaBell, Steve Kailin, Hada Ellinger, Patricia Dumke and Walter Argraves are urging teachers to read this report thoroughly before making any final decision about job-sharing. Having worked very hard to bring some employment alternatives to Madison teachers, it is the committee's hope that if this pilot program is viable for teachers, the plan may be adaptable for other employees as well."

8. That on May 19, 1977, June 16, 1977 and June 22, 1977, Complainant again requested bargaining about the subject of job sharing; and that on June 22, 1977, Matthews received the following letter from Richard D. Kopp, president of Respondent Board:

"The Board of Education deliberated your request to bargain on the impact of the reduction in staff and on the subject of job sharing at its meeting on June 20, 1977.

On the advice of Counsel, the Board does not feel that it has any statutory or contractual obligation to bargain these issues at this time."

9. That Respondent District has not implemented any job sharing plan, but that informal job sharing arrangements continue to be present in various schools.

10. That on or about February 15, 1977, after the parties had settled their 1977-1978 contract, Respondent District sent preliminary notices of non-renewal to 99 teachers pursuant to its efforts to achieve a reduction in staff for the 1977-1978 school year.

10. That the possibility of layoffs and the problems raised thereby triggered further bargaining by the parties and on May 24, 1977, Complainant and Respondent entered into a Memorandum of Agreement which, in part, contained the following provisions:

"This memorandum is made and entered into this 24th day of May, 1977, by and between the Madison Metropolitan School District (hereinafter the District) and Madison Teachers Incorporated (hereinafter MTI). Such shall remain in effect and shall be considered to be binding upon the parties hereto, unless modified, in writing, by the parties. It should be noted that certain sections of this Agreement contain termination dates.

. . .

SECTION VI

CHILDREARING LEAVE OF ABSENCE

This Section shall run concurrent with the Teachers' Collective Bargaining Agreement between the parties and therefore expire October 15, 1978. However, should this provision not be renewed, teachers on leave as of October 15, 1978, for whom leave has been approved prior to October 15, 1978, shall be permitted to continue such leave as approved.

1. Childrearing Leave - A teacher requesting a leave for the purpose of childrearing shall submit such request in writing not less than thirty days prior

to the date such is to become effective, to the Director of Employee Services. For unusual circumstances said time limit can be waived by the Director.

- a. Such leave shall be granted on an unpaid basis to allow teachers to care for their child(ren) who are ill or handicapped and/or to rear their pre-school aged child(ren), step child(ren), or foster child(ren).
 - b. Teachers on such leave shall be replaced by replacement teachers pursuant to Section IV B of the Collective Bargaining Agreement, unless there are teachers on layoff who hold certification which will allow them to replace the teacher on leave. In such cases as the latter, the teacher on layoff shall replace the teacher on leave pursuant to the terms set forth in Section V of this Memorandum.
 - c. Childrearing leave may not exceed one year unless an extension is approved by the Director of Employee Services.
 - d. Requests for extensions of such leave may be denied by the Director of Employee Services. Denial of such a request for an extension of such a leave, may be appealed [sic] to arbitration pursuant to the Grievance Procedure as set forth in the Collective Bargaining Agreement.
2. It is further agreed to amend the Collective Bargaining Agreement Section VI E, by deleting the final paragraph of said Section and replacing it with the terms and conditions set forth in Section VI e of this Memorandum.

SECTION VIII

TEACHER EMERITUS EARLY RETIREMENT PROGRAM

This Section shall run concurrent with the 'Teacher Collective Bargaining Agreement between the parties, and therefore expire October 15, 1978. Until June 30, 1980, said program shall be reviewed annually by the parties.

Planning an early retirement program represents an effort to deal with a most unusual environment. Such can accomplish a great deal if it is sensitive to these complex issues as well as to the individual needs of employees. Such an early retirement program must address the individual needs of teachers, while, at the same time, be of assistance to the District. The undersigned are of the opinion that the Teacher Emeritus Early Retirement Program meets those objectives.

The program and its purposes are well defined and set forth herein. Yet these purposes provide flexibility and establish guidelines within which the program can be further developed.

STATEMENT OF PURPOSE

1. To provide reasonable financial assistance to teachers who desire to retire early with dignity.

2. To provide opportunities, through financial assistance during the transition, to teachers who wish to change careers.
3. To provide retirement assistance to teachers who have made a commitment to education as their life's work.
4. To provide services to teachers involved in planning for retirement.
5. To assist in reducing staff through attrition.

GUIDELINES FOR OPERATION

1. The program shall be completely voluntary.
 2. Only teachers as defined in MTI's 'Teacher' Collective Bargaining Agreement with the District may participate in this program.
 3. The Eligibility Factor for a teacher to participate shall be as set forth in Section III-O of the Collective Bargaining Agreement, i.e., the participants age and total service to the Madison Metropolitan School District, including annexed Districts, must total at least eighty (80) years.
 4. Teachers must have been actively working under a fulltime contract to be eligible to participate and be at least 55 years of age to be eligible.
 5. The program will begin August 1, 1977.
 - *6. Participants must enroll, by signing an agreement form mutually developed by the parties and provided by the District, by February 15, with termination of their current individual teacher contract effective at the end of the then current school year in which they wish to begin participation in the program. Insurances provided by the Collective Bargaining Agreement will be paid, on the basis provided in the Agreement, through August 31.
- *For 1977 only, said early retirement agreement must be signed by June 15, 1977.
7. Should the participant elect to return to active employment as a teacher in the District, said individual shall apply for a vacant position through the Director of Employee Services and, all other factors being equal, will be given preference for said position.
 8. Should the District or MTI wish to re-open any portion of this program, during the duration of same, the party so desiring may do so by serving a ten day notice to the other party. However, it is expressly noted that any re-structure shall not cause participants to receive less than their existing level of benefits as set forth under 'Operational Criteria.'
 9. Said program is subject to all applicable laws or judicial findings.
 10. In the event of the death of a participant, the benefits under this program shall cease at the end of the pay period in which death occurs.

OPERATIONAL CRITERIA

1. Compensation, under the program, shall be considered a retirement benefit and shall be paid monthly, by the District, to the participating teacher. Such compensation may be received over a period from one (1) up to and including three (3) years, at the option of the participant, but shall not exceed the District's fiscal year in which the participant becomes age sixty-five (65). Payment shall be made only for the duration of the teacher's participation in the program and shall cease upon the employee's death or exhaustion of funds or the fiscal year in which the participant becomes age sixty-five (65), whichever occurs first.
2. The participant may receive only the funds in a given year which are due him/her for that year; i.e., if under a three (3) year program and the individual elects to receive his/her funds over a three (3) year period, then only a maximum of one-third (1/3) of the total due the participant for the three (3) year period may be received by him/her in any one (1) given year. In no instance, however, shall a participant receive more compensation in one (1) year than one-third (1/3) of the total compensation due said participant.
3. Compensation shall be calculated as specified below.
 - a. Retirement Remuneration - The District will provide compensation at the rate of twenty percent (20%) of the participant's final annual individual teacher's contract (i.e., for the last year taught) multiplied times three (3).
 - b. Severance Pay - The \$400 provided under Section III-O of the Collective Bargaining Agreement shall be included for participants who qualify under the criteria set forth in said Section. Such may be received, at the option of the participant as provided above, or at the conclusion of their Emeritus status.
 - c. Accumulated Sick Leave Payment - Funds, for this compensation provision, shall include an amount equal to one-fourth (1/4) of the teacher's accumulated personal illness leave at the time of enrollment in the program multiplied by the teacher's daily rate of pay under their final regular teaching contract. The use of such accumulated leave, however, shall not exceed forty-five (45) days.
4. Such funds as noted above shall then be distributed, in whole or in part, at the option of the participant, to the health and life insurance carriers, which carriers underwrite the Group Life/Group Hospital and Surgical Insurance Programs per Sections VII C & D of the MTI 'Teacher' Collective Bargaining Agreement with the District; to the Wisconsin State Teachers Retirement System; to an annuity program authorized under Section VII-G of the aforementioned agreement; or directly to the participant.
5. It is further agreed by the parties to this Agreement, that participants in the Teacher Emeritus Early Retirement Program shall be eligible for participation in the Group Hospital and Surgical Insurance Program and Life Insurance Program as set forth in MTI's 'Teacher' Collective Bargaining Agreement with the District. Teachers and their

spouse, regardless of whether both are employees, may elect separate single plans under the above with the premium for both individuals paid from the above-noted funds.

6. Participants shall contract to perform a minimum of 20 days of work for each year of compensation. Such shall not exceed sixty (60) days per individual for the three-year period of participation in the program. Said duties shall be professional and mutually agreeable between the District and the participant as to the time and nature of the duties. Such work may include, but not be limited to, development of curriculum, development of instructional materials, individual tutoring, demonstration teaching and similar duties, except replacing teachers during a work stoppage. Substitute teaching may be permitted by mutual agreement between the participant and the District, but shall not exceed ten days per year per participant. The District will advise the Executive Director of MTI, on a timely basis, of such substitute service.

If the participant is unable to perform such work, benefits under the program will cease, and the participant will be compensated by the use of unused, but accumulated personal illness leave.

7. It is further agreed that the individual may elect to substitute in the District. Such service shall be compensated for as set forth in the United Substitutes Organization-MTI Collective Bargaining Agreement between the District and MTI and shall have no effect on the individual's participation in this Program.

PROCEDURES TO EFFECT PARTICIPATION

1. The teacher indicates interest in the Program by writing the Director of Employee Services.
2. The teacher schedules a joint counseling session with the Supervisor of Employee Benefits and with a representative designated by MTI, if the teacher so desires.
3. Work activities shall be identified and compensation calculated.
- *4. The teacher must sign an Agreement for participation in the Teacher Emeritus Early Retirement Program by February 15 to participate effective with the ensuing fiscal year. Such signing shall be the participant's resignation from the teaching staff of the District.

*For this year only, the agreement must be signed by June 15, 1977.

5. Compensation and Insurance arrangements are established.
6. Payment of compensation begins September 10."

that said bargaining also resulted in the amendment of Article IV B and P of the parties' bargaining agreement which left said agreement with the following status:

"IV - Individual Contract - B

B. SUBSTITUTES, NEW HIRES (TEACHERS)
AND REPLACEMENT TEACHERS

1. Per Diem Substitutes

Substitutes shall be retained by the Madison Metropolitan School District for teachers absent up to the equivalent of one semester.

2. Replacement Teachers

a. Such teachers shall be hired by the Board of Education, under temporary contracts as per the specifications of the Agreement, to replace teachers whose position becomes temporarily vacant for more than one semester. However, if a position becomes temporarily vacant through the last day of the school year and there are teachers on the layoff list who are certified to teach in the vacant position, the District will offer such teachers employment under a regular teaching contract to fill such vacant positions according to the recall procedure set forth in Section IV-P(3) of the Agreement. Should the teacher temporarily vacating the position not return to his/her former assignment, the teacher re-employed from the layoff list who fills such assignment shall continue in that assignment.

b. The Director of Employee Services timely forwards to Madison Teachers, Inc. a list of names of those teachers granted one year temporary contracts and the reasons therefore. [sic]

3. New Hires

Permanent positions vacated for one semester or more due to the resignation, dismissal, death or other permanent action of a contracted teacher shall be filled by the Board of Education by hiring a teacher under a regular contract granting them all the rights, privileges and obligations of the Agreement.

Permanent positions permanently vacated for less than one semester shall be filled by the Board of Education by hiring teachers on a temporary contract, and such teachers will be considered replacement teachers, and said teacher will have no reemployment rights under the Agreement.

. . .

P. REDUCTION IN STAFF

1. Seniority

a. Regular or Title Contract Teacher

Seniority except as noted below, within the Madison Metropolitan School District is established by the total years of continuous service as a teacher in the District under regular or title contract with such calculation commencing with the first day for which compensation was paid to the teacher by the District followed by continuous service. An approved leave of absence shall not constitute a break in seniority.

For teachers employed prior to 5/24/77, seniority shall be established by the total years of continuous service as a teacher in the District with such calculation commencing as of the first (1st) day taught followed by continuous service. An approved leave of absence shall not constitute a break in seniority.

For teachers employed prior to 8/1/76, seniority shall be established as of the first (1st) day taught while employed by the District.

b. Temporary contract teachers

Teachers who are newly employed after August 23, 1977 under temporary contract and who subsequently are employed for the school semester immediately following the temporary contract period, under either regular or title contract, shall have their seniority date established commencing the first day compensated under temporary contract. Teachers who are currently employed (1976-77) under temporary contract and who are employed under temporary contract for the first semester of 1977-78, will be considered new employees per the above (IV P 1 b).

c. No teacher shall receive credit toward their seniority based on temporary contract employment except as per IV P 1 (b).

2. Assignment to Surplus Pool.

a) A 'surplus teacher' is defined as any teacher presently teaching on a regular full time or regular part time contract who has been declared by their principal to be above staff requirements because of reduced pupil enrollment or substantial change in the instructional program. Surplus declarations shall be made on the following bases: [sic]

1) Elementary and Middle Schools

Teachers shall be declared surplus in the inverse order of seniority, as defined above, except where the instructional requirements of the school are disrupted. It is understood that in making the necessary adjustment in assignments within a school after declarations of surplus that prior experience and certification of the remaining school staff will be duly considered.

2) High Schools

Teachers, within a department, shall be declared surplus based upon inverse seniority, as defined above, and certification.

b) When it becomes necessary to declare a teacher(s) surplus, volunteers shall first be requested. If no volunteers are available or if there is an insufficient number of volunteers, then the principal shall declare teacher(s) to be Surplus Teachers in the manner as set forth above. Should a person volunteering to be surplus result in the remaining teachers being uncertified to teach the

remaining assignments, the principal shall not be bound to accept the volunteer as surplus.

- c) Declarations of surplus must be made by July 1 for the ensuing school year or the fall semester of the ensuing school year and by December 1 for the spring semester of the school year.
- d) A surplus teacher shall be re-assigned pursuant to their preference among vacant positions for which they are certificated. Preference for said re-assignment shall be based upon seniority in the Madison Metropolitan School District among those surplus teachers with prior experience in the grade level and/or department and/or program in the available vacancy. Should the teacher have no preferences among the available vacancies, said teacher may be re-assigned in accordance with Section IV-F (Involuntary Transfer) to any position for which they are certificated. Full-time teachers shall not be re-assigned to positions which are less than full-time. For teachers holding part-time contracts, every reasonable effort shall be made to re-assign them to positions of at least the same percentage of contract currently held.
- e) Any teacher(s) declared surplus under the provisions herein shall be provided written notice of same by the date set forth in (c) above. Notice(s) shall also be sent, on a timely basis, to the Executive Director of Madison Teachers by the Director of Employee Services regarding such declaration of surplus.

3. Layoff

- a) Should it become necessary to reduce the number of teachers employed by the District for the ensuing school year due to a substantial decrease in pupil population within the District, or lack of funding, the Board may release the necessary number of teachers, following the expiration of their individual contract with the Board. However, such action can only be taken via the inverse order of seniority, as defined above, within the instructional level, grade level or subject area. A teacher, who is laid-off as herein set forth shall be permitted to replace (bump) the teacher with the least seniority in a position for which she/he is certificated. Twenty (20%) percent of the positions subject to layoff may be excluded from the layoff procedure in order to accommodate the District's Affirmative Action Program. Such twenty (20%) percent shall not be less than five (5) persons. The latter provision may be implemented at any time the minority population of this Collective Bargaining Unit falls below the community norm.

The Superintendent shall select from among those certificated teachers, with appropriate certification, in relation to the vacancy who have the same Seniority and who are eligible for layoff pursuant to the above.

- b) Recall - Any additional employment by the District following the layoff will be first offered to those previously laid-off in the order of seniority of those on layoff status, should they still wish to resume

employment in the Madison Metropolitan School District provided they hold proper certification for the position.

1. An 'overload' assignment must first be offered, on the basis of seniority, to those teachers on layoff who hold certification appropriate to teach classes contractually provided for as 'overloads'.
2. The District shall have the option, based upon the needs of the District, to increase the percentage of contract of those currently employed under part-time contract or to assign teachers on lay-off under such circumstances.
3. Of those teachers on layoff status, a full-time teacher may refuse any offer of employment as a teacher with the District at less than a full-time contract and still retain recall rights for future offers of employment. A part-time teacher on layoff may refuse any offer of employment as a teacher with the District on a full-time contract basis and still retain recall rights for future offers of employment. However, a part-time teacher on layoff who refuses any offer of any part-time employment as a teacher with the District forfeits all recall rights for future offers of employment. A full-time teacher on layoff who refuses any offer of any full-time employment as a teacher with the District forfeits all recall rights for future offers of employment.

c) A teacher, while on lay-off, may, at their option, be placed in the substitute pool."

12. That on February 23, 1977, May 19, 1977, June 16, 1977, and June 22, 1977, Complainant demanded that Respondent District bargain about the impact of layoffs on the members of the bargaining unit and that on June 22, 1977, Respondent District refused to bargain about the impact of layoffs as indicated by the letter from Kopp to Matthews found in Finding of Fact No. 8.

13. That on September 14, 1977, Complainant, at the request of Respondent District, submitted the following twelve specific proposals relating to the impact of layoffs:

"MADISON TEACHERS INCORPORATED
SEPTEMBER 14, 1977

NEGOTIATION PROPOSALS RE: IMPACT OF LAYOFF

1. Severance Pay

When a teacher is placed on layoff status he/she shall receive a severance payment equivalent to one month of his/her regular salary (calculated at the ten pay plan). (100% of contractual salary).

2. Income Contingency

If a certificated teacher of the Board of Education becomes entitled to unemployment compensation pursuant to Wisconsin

Statutes and/or any applicable federal unemployment compensation program the Board of Education shall continue to pay ninety per-centum (90%) of the teacher's full salary during the period of unemployment up to the week in which the teacher is no longer entitled to unemployment compensation; however, such payment shall be reduced by an amount equal to the amounts paid to the teacher as unemployment compensation. The first such payment, however, shall be at the teacher's full rate.

If an unemployment compensation claim is contested, the Board of Education shall continue to pay the teacher's full salary during the period of unemployment up to a maximum of the number of teaching days following the date of separation equal to the number of personal illness leave days said teacher has accumulated providing the teacher files a written request for such payment with the Board of Education. When a contested claim is settled in favor of the teacher, the provisions of the preceeding [sic] paragraph shall be applied retroactively and the number of personal illness leave days consumed credited to the teacher.

3. Job Search

- a. A teacher who is notified that he/she is being considered for layoff may use his/her current or accumulated personal illness and/or if such has been exhausted his/her personal leave days for the purpose of searching for a new position.
- b. If a teacher is laid off effective at the end of his/her then current contract, but is then recalled for or during the ensuing school year, the District shall reimburse the teacher for all costs incurred in searching for successor employment.

4. Placement Credit

A teacher who is recalled from layoff status shall receive full credit on the salary schedule for teaching experience and/or other work experience and educational improvement acquired during his/her layoff. Said credit shall be used in establishing the salary placement schedule of the recalled teacher.

5. Maintenance of Accrued Benefits

A teacher who is recalled from layoff status shall return to said employment with all benefits accrued prior to layoff.

6. Accrual of Seniority

A teacher who is laid off shall accrue seniority while on layoff. For the purposes of accruing seniority, layoff shall not constitute a break in seniority.

7. Preference for Rehires in Reassignments to Schools

A teacher who is recalled from layoff before the start of a new school year shall have first preference for his/her same position of the previous school year, or for a similar position at the same school, if same becomes available.

8. Continuance of Health and Life Insurance

A teacher on layoff may choose to maintain coverage under group life insurance and/or group hospital and surgical insurance. The teacher shall pay the entire cost of premiums for such coverage. However, the teacher may apply current or accumulated personal illness leave towards the payment of such insurance while he/she is on layoff status.

9. The Impact of Layoff on Remaining Bargaining Unit Teachers

If a staff reduction at a school results in an increase in the pupil-teacher ratio at the grade level or department program, the following remedy shall be applied:

For the first two pupils and each pupil thereafter in excess of the teacher's assignment for the previous year and/or the total number of pupils for whom a teacher is responsible as set forth in Section V-D, the teacher shall receive, for the duration of the existing situation, the exclusive assistance of a school aide at the rate of one-hour per day for each pupil. Said aide shall work at the direction of the teacher.

10. Impact on Team Teachers

When a member of a 'team' is laid off, the remaining team members shall receive an additional half-hour planning period per day for the purpose of preparing their program with the new team member. If the District's failure to re-assign a new members pursuant to Section IV, results in an increased pupil-teacher ratio, then the following remedy shall apply:

For the first two pupils and each pupil in excess of the team's previous year's assignment and/or the total number of pupils for which a team is responsible, the team shall receive, for the duration of the existing situation, the exclusive assistance of a school aide at the ratio of one-hour per day for each pupil.

11. Planning Time for Recalled Teachers

If a recalled teacher is assigned to a program requiring a new preparation, he/she shall be compensated at his/her then current contractual salary for the week prior to the commencement of the school calendar, as defined in Section V-O in order to prepare for his/her duties. However, if the teacher chooses not to work during this week, he/she shall receive an additional duty-free half-hour per day for class preparation during his/her first semester of recall.

If a teacher is recalled after the commencement of the new school year, he/she shall receive an additional duty-free half-hour per day for class preparation for the equivalency of one semester.

12. Recall of those already Employed.

In the event that a laid off teacher is employed by another School District or any other educational institution, or by an employer who elects not to timely release the 'teacher', then said 'teacher' shall be allowed to complete his/her

obligation to said employer before returning to the Madison Metropolitan School District. Said teacher shall suffer no penalty under such circumstances. Until said teacher is able to return to the District, his/her position will be filled by a replacement teacher as set forth in Section II-B."

14. That on October 13, 1977 Respondent District informed Complainant that it was willing to bargain with respect to Complainant's proposals 1, 2, 3 and 8, but unwilling to bargain regarding any of the remaining proposals.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That Respondents Madison Metropolitan School District, City of Madison, et al., and Board of Education of Madison Metropolitan School District, City of Madison, et al., by refusing to bargain with Complainant Madison Teachers Incorporated about certain of Complainant's proposals regarding the impact of layoffs, have not committed a prohibited practice within the meaning of Section 111.70(3)(a)4 of MERA.

2. That the activity of the Committee on Alternative Employment Structures set forth in Findings of Fact Nos. 4 and 7 herein did not constitute individual bargaining by Respondents Madison Metropolitan School District, City of Madison, et al. and Board of Education of Madison Metropolitan School District, City of Madison et al. with employees represented for purposes of collective bargaining by Complainant Madison Teachers Incorporated, and thus said Respondents did not thereby commit prohibited practices within the meaning of Sections 111.70(3)(a)1 or 4 of MERA.

3. That Respondents Madison Metropolitan School District, City of Madison, et al. and Board of Education of Madison Metropolitan School District, City of Madison et al. by approving job sharing arrangements developed by bargaining unit members represented by Complainant Madison Teachers Incorporated and answering informational requests from bargaining unit members participating in job sharing arrangements regarding their entitlement to fringe benefits and seniority rights, did not engage in individual bargaining with employees represented for the purposes of collective bargaining by Complainant Madison Teachers Incorporated, and thus did not thereby commit prohibited practices within the meaning of Sections 111.70(3)(a)1 or 4 of MERA.

4. That Respondents Madison Metropolitan School District, City of Madison, et al., and Board of Education of Madison Metropolitan School District, City of Madison, et al., by refusing to bargain with Complainant Madison Teachers Incorporated regarding job sharing and the impact of job sharing, have not committed a prohibited practice within the meaning of Section 111.70(3)(a)4 of MERA.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

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

Dated at Madison, Wisconsin this / 5th day of MAY, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Peter G. Davis
Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Complainant alleges that Respondents committed prohibited practices within the meaning of Section 111.70(3)(a)4 of MERA by refusing to bargain with Complainant during the term of the parties' current contract over the issues of impact of layoff and job sharing. Complainant also asserts that Respondents have engaged in individual bargaining over the issue of job sharing and thereby have committed prohibited practices within the meaning of Sections 111.70(3)(a)1 and 4 of MERA. Respondents deny that they have illegally refused to bargain over said subjects by asserting that Complainant has waived its right to bargain the impact of layoff; that job sharing is a permissive subject of bargaining about which Complainant has no right to bargain; and that Complainant has waived its right to bargain impact of job sharing. Respondents also deny that they have engaged in individual bargaining.

DISCUSSION:

The Wisconsin Employment Relations Commission has concluded that a municipal employer's duty to bargain continues during the term of a collective bargaining agreement with respect to all mandatory subjects of bargaining except those which are embodied in the terms of the agreement or those with respect to which the employee representative has waived interim bargaining through bargaining history or specific contractual language. 1/ Thus, Respondents have a duty to bargain with Complainant during the term of the existing agreement over impact of layoff and job sharing if said issues are mandatory subjects of bargaining which are not embodied in the agreement and with respect to which Complainant has not waived its right to bargain. Waiver will not be found absent clear and unmistakable evidence indicating same. 2/

Impact of Layoff

It is undisputed that the impact of layoff is a mandatory subject of bargaining under MERA. 3/ It is equally clear that Respondents, with several limited exceptions, are refusing to bargain over said subject and that said refusal is premised upon Respondents' belief that they have already bargained impact of layoff with Complainant and that the resultant contractual language indicates that Respondents have met their duty to bargain over said subject. Complainant admits that the parties' current contract contains a layoff provision but asserts that said language only deals with the procedural aspects of layoff and not the "actual impact" of that procedure on bargaining unit members. The undersigned finds Complainant's asserted distinction to be non-existent. The procedure by which layoffs are to be accomplished falls within the confines of "impact of layoff" every bit as much as any of the proposals which Complainant now wants to bargain. It therefore being clear that the parties' contract is not silent on the mandatory subject of impact of layoff, it must be

1/ City of Brookfield (11489-B) 4/75; Nicolet Jt. High School Dist. No. 1 (12073-B, C) 10/75.

2/ City of Milwaukee (13495) 4/75; City of Menomonie (12674-A, B) 10/74; Fennimore Jt. School Dist. (11865-A, B) 7/74; Madison Jt. School Dist. (12610) 4/74; City of Brookfield (11406-A, B) aff'd Waukesha County Cir. Ct. 6/74.

3/ City of Brookfield v. WERC (Waukesha County Circuit Court, Case No. 34582) 3/25/76.

concluded that Respondents have no duty to bargain over said subject during the term of the current agreement. It should be clear, however, that if Respondents voluntarily wish to bargain with Complainant over the impact of layoff, they are certainly free to do so.

Job Sharing

The Commission has concluded that the Municipal Employer's duty to bargain under Section 111.70(3)(a)4 of MERA includes an obligation to bargain in good faith with the employees' collective bargaining representative before making a change during the term of the parties' bargaining agreement which is primarily related to employees' wages, hours and conditions of employment or which will have an impact thereupon when implemented ^{4/} However, as indicated earlier, the Municipal Employer's duty to bargain and the Union's right to same may be waived by the terms of the parties' bargaining agreement and/or pertinent bargaining history. ^{5/} In the instant matter, Complainant alleges that job sharing primarily relates to employees' wages, hours and conditions of employment and thus is a mandatory subject of bargaining; that in the fall of 1976 Respondents began to implement a formal job sharing program which differed from the scattered informal job sharing arrangements of past years; and that Respondents' refusal to bargain about job sharing constitutes a prohibited practice under MERA.

Initially, the Examiner is confronted with the question of whether job sharing is a mandatory subject of bargaining. In Unified School Dist. No. 1 of Racine Co. v. WERC, ^{6/} the Wisconsin Supreme Court stated that the test to be applied under MERA to determine whether a subject is a mandatory or permissive subject of bargaining is ". . . whether a particular decision is primarily related to the wages, hours and conditions of employment of the employees or whether it is primarily related to the formulation or management of public policy. Where the governmental or policy dimensions predominate, the matter is properly reserved to decision by the representative of the people." Applying this test to the issue of job sharing, it is clear that such a program has a direct and substantial relationship to both the employees' wages, hours and conditions of employment and the Respondents' educational policy judgments as to whether job sharing is a valid and viable alternative for the delivery of educational services and as to what level of staffing it should maintain. However, it is the undersigned's judgment that these "governmental or policy dimensions" predominate and thus it is concluded that the decision to establish a job sharing program is a permissive and not a mandatory subject of bargaining. However, Respondents must bargain about the substantial impact which such a program would have upon the wages, hours and conditions of employment of bargaining unit employees.

Having concluded that the impact of job sharing is a mandatory subject of bargaining, the Examiner turns to the question of whether Respondents unilaterally implemented a job sharing program during the 1976-1977 school year. The record reveals that for several years, individual teachers have successfully sought to work out arrangements with Respondents whereby two teachers would share the duties and responsibilities of a single

^{4/} City of Beloit (11831) 9/74; aff'd in relevant part, nos. 144-272 and 144-406 (Dane Co. Cir. Ct.) 1/31/75; app'd to Wis. Sup. Ct.; aff'd 6/2/76 Oak Creek-Franklin Jt. School Dist. No. 1 (11827) 9/74; aff'd No. 144-473 (Dane Co. Cir. Ct.) 11/75.

^{5/} City of Madison (15095) 12/76; Middleton Jt. School Dist. No. 3 (14680-A) 6/76; City of Green Bay (12411-A, B) 4/76; Milwaukee County (12739-A, B) 2/75.

^{6/} 81 Wis. 2d 89 (1977).

teaching position. Such teachers receive regular part-time teaching contracts from Respondent District and generally establish the specific manner in which a position will be "shared" through mutual agreement with their partner and their school principal. Complainant contends that beginning in the fall of 1976, Respondents began to take steps to transform these scattered informal relationships into a "formal systematic job sharing program" and to communicate the availability of that program to all teachers. It bases this contention upon the activity of the Committee on Alternative Employment Structures, the publicity which said Committee received within the bargaining unit, the participation of various administrative personnel in the establishment of several job sharing positions during the 1977-1978 school year and Superintendent Ritchie's November, 1977 statement that job sharing existed at some schools. However, all of the foregoing could reasonably be found to only constitute evidence that the informal job sharing arrangements of the past were continuing, albeit in possibly greater numbers, due to a growing awareness of such an option in the bargaining unit. Indeed, Maurice Sullivan, Director of Employee Services for Respondent District, testified that although the Respondent District had studied job sharing, no program had in fact been implemented. Ritchie's January 27, 1977 response to Matthews' January 25, 1977 bargaining request supports this testimony. In light of the foregoing, the Examiner concludes that the record does not contain sufficient evidence to support a finding that there has been a change in the status of job sharing. Absent such a finding, Complainant's primary "unilateral change" theory must be rejected. However, as Complainant points out, Respondents' duty to bargain in the instant situation does not hinge exclusively upon a change having occurred. As discussed earlier with regard to the impact of layoff, Respondents have a duty to bargain over all mandatory subjects during the term of the 1977-1978 contract if the parties' bargaining agreement is silent on said issue and if Complainant has not waived its right to bargain by its conduct or by contractual language. Having already concluded that the impact of job sharing is a mandatory subject of bargaining, the undersigned turns to the remaining questions of whether Complainant waived its right to bargain and whether the subject of impact of job sharing is already embodied in the parties' contract.

As indicated earlier, waiver can be based upon bargaining conduct or contract language. The record reveals that on December 3, 1976, during bargaining for the 1977-1978 contract, Matthews requested that Respondents bargain about job sharing at the next mediation session. At the next session, Coughlin informed Matthews that the Respondents were not interested in bargaining about job sharing. The subject of job sharing was never again raised at the bargaining table. It is the Examiner's belief that by its conduct at the bargaining table, Complainant waived its right to bargain about the impact of job sharing for the term of the 1977-1978 contract. Complainant sought to bargain about said subject, was rebuffed, did not subsequently raise the issue and thereafter signed a contract. If such conduct were not found to constitute a waiver, Complainant would be free during the term of the agreement to resurrect any issue on which it failed to achieve its bargaining goals. This finding of waiver is not altered by the fact that on December 6, 1976, Matthews also wrote Ritchie and inter alia indicated an interest in bargaining about job sharing. Having received no response to said letter during bargaining, and having heard from the Respondents' bargaining representative that Respondents were not interested in bargaining about job sharing, Complainant should reasonably have concluded that Respondents' bargaining table stance did indeed represent Respondents' position. As indicated earlier, Complainant's failure to pursue the issue of job sharing after being rebuffed constitutes a waiver of the right to bargain about said subject. Having reached this conclusion, the Examiner need not resolve the issue of whether the subject of the impact of job sharing is already embodied in the parties' agreement.

Individual Bargaining

It has already been concluded herein that Respondents have no statutory duty to bargain upon Complainant's request regarding the decision to establish a job sharing program because said decision is a permissive subject of bargaining. However, should Respondents voluntarily decide to initiate bargaining about either the decision to establish a job sharing program or the mandatory subject of the impact of job sharing on wages, hours and conditions of employment, they must bargain with Complainant, the collective bargaining representative of its employees, and not with individual bargaining unit members. Complainant asserts that Respondents, through the activity of the Committee on Alternative Employment Structures and certain administrative personnel, have indeed engaged in such individual bargaining and thereby violated Sections 111.70 (3) (a) 1 and 4 of MERA.

With respect to the activity of the Committee on Alternative Employment Structures, including its solicitation of bargaining unit sentiment and subsequent preparation of a report on Alternative Employment Structures, the undersigned simply cannot conclude that said activity constitutes bargaining with employees. Turning to an examination of the activity of certain administrative personnel upon which Complainant relies, the record reveals that in at least one job sharing situation the teachers involved worked out all the mechanics of how the job responsibilities would be shared and that said agreement was subsequently approved by the school principal. The record also indicates that administrative personnel have on occasion answered questions from participants in job sharing arrangements regarding fringe benefits and seniority rights. The Examiner concludes that neither this stamp of approval by a principal nor the informational responses of administrative personnel constituted bargaining by Respondents with individual bargaining unit members. Thus, Complainant's allegations in this regard must be dismissed.

Dated at Madison, Wisconsin this 1st day of May, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Peter G. Davis
Peter G. Davis, Examiner