

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WESTERN WISCONSIN TECHNICAL INSTITUTE
FACULTY, LOCAL 3605, WFT, AFT, AFL-CIO
and WISCONSIN FEDERATION OF TEACHERS,
AFT, AFL-CIO,

Complainants,

vs.

WESTERN WISCONSIN VOCATIONAL, TECHNICAL
AND ADULT EDUCATION DISTRICT; ROBERT
RINGDAHL, MYRON BOCKHAUS, JOHN LUCENTE,
ANITA SMITH, LLOYD McCASKEY, LOUIS
YOUNGMAN and JANE TRAVIS,

Respondents.

Case VII
No. 23401 MP-884
Decision No. 16509-A

Appearances:

Habush, Habush & Davis, S.C., by Mr. John W. Williamson, Jr.,
for the Complainants.

Bosshard, Sundet and Associates, by Mr. John Bosshard and Ms. Sabina Bosshard, for the Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

JAMES D. LYNCH, Examiner: Western Wisconsin Technical Institute Faculty, Local 3605, WFT, AFT, AFL-CIO, and Wisconsin Federation of Teachers, AFT, AFL-CIO, hereinafter the Union, filed the instant complaint on August 15, 1978, with the Wisconsin Employment Relations Commission, hereinafter the Commission, wherein it alleged that Western Wisconsin Vocational, Technical and Adult Education District, et al, hereinafter the District, had committed certain prohibited practices under the Municipal Employment Relations Act, hereinafter MERA; the Commission appointed the undersigned on August 22, 1979, to make and issue Findings of Fact, Conclusions of Law and Order as provided for in Section 111.07(5) of the Wisconsin Statutes. Respondents filed motions to dismiss and an answer on November 17, 1979. A hearing was held on March 8 and March 9, 1979; the Union and the District thereafter filed briefs and reply briefs which were received by July 24, 1979.

Having considered the arguments and the evidence, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Union is a labor organization which represents a bargaining unit comprised of all regular contract instructors teaching at least fifty percent (50%) of a full teaching schedule at the District, including department heads and assistant librarians; the Union was certified as the exclusive bargaining representative of these employees by the Commission on May 14, 1976.

2. The District is a municipal employer which operates a vocational, technical educational system in LaCrosse, Wisconsin.

3. Charles Richardson is employed by the District as its Director.

4. Victor Larsen is employed by the District as its Administrator of School Services. He is responsible for programming, instruction and curriculum.

5. Anita Smith is employed by the District as the Chairperson of its Health Occupation Division.

6. Jane Travis is employed by the District as the Associate Chairperson of its Nursing and Allied Nursing Department. Ms. Travis has evaluative responsibility over Margaret Hansen and has had such responsibility since 1974.

7. Florence Campbell was, at all times material hereto, employed by the District as the Program Head of its Vocational Nursing Program. One of her responsibilities was to guide the efforts of the Practical Nursing Faculty of whom Margaret Hansen was a member. She had evaluative responsibility over Ms. Hansen during the 1973-1974 school year.

8. Robert Ringdahl, Myron Bockhaus, Lloyd McCaskey, Louis Youngman and John Lucente were members of the District's Board of Directors during 1977.

9. Margaret Hansen was employed by the District on a full-time basis as an instructor in the Practical Nursing Program beginning in August, 1970. Ms. Hansen has responsibility both for classroom teaching as well as monitoring the progress of students in a clinical setting. She was a member of the bargaining unit represented by the Union.

10. During the 1973-1974 school year, a series of complaints regarding Ms. Hansen's performance of her professional duties began to be heard. These complaints generally related to Ms. Hansen's ability to interact with faculty and students and to her ability to cooperate with the Program Head, Florence Campbell.

11. On August 1, 1974, Ms. Hansen received an evaluation of her teaching for the 1973-1974 school year. The evaluation stated in pertinent part:

. . . occasionally there is a question whether students are being treated equally. Margaret is attempting to be less personally involved with the students. Verbal tone and non-verbal communications when communicating techniques with both students and faculty could be improved.

12. On March 12, 1975, Ms. Hansen received an evaluation of her teaching for the period of August 26, 1974 through January 31, 1975. The evaluation stated in pertinent part:

. . . A problem I have identified through observation that is not directly related to her goals, but essential to their achievement, is a limited capacity to work with others when she is in a non-leadership role. Margaret has a tendency to impose her opinions and past experiences on other faculty members with assigned leadership roles.

13. On August 8, 1975, Ms. Hansen received an evaluation of her teaching for the 1974-1975 school year. The evaluation stated in pertinent part:

Goal 4: Continue positive working relations among the Practical Nursing faculty members.

The Practical Nursing faculty has experienced repeated problems involving individual and team relationships. Margaret, without exception, has been involved in the incidences. Her ability to interact objectively and constructively with team members in the work situation is highly erratic. When disturbed with the work situation, she tends to become stubborn, aggressive, caustic and, at times, emotionally explosive. Although I view the total problem as one of group dynamics, Margaret carries the greatest responsibility for modifying her behavior.

. . .

RECOMMENDATIONS:

. . .

5. Analyze the nature and effect of her communications and work for mature and constructive behavioral responses that are appropriate to the work situation.

14. On March 12, 1976, Ms. Hansen received an evaluation for the period of August 1975 through January 1976. The evaluation stated in pertinent part:

. . . Although Margaret appears to be making a sincere effort, faculty team relationships intermittently continue to be problematic. Margaret becomes involved in activities that tend to isolate her as a member of the faculty team. These activities appear to be interpreted by other faculty members as an attempt to assume control over the teaching/learning situation.

15. In April, 1976 the administration began to receive a number of complaints from students regarding their treatment by Ms. Hansen.

16. In April, 1976 the Union held a rally to mobilize support for its position in the contract negotiations for an initial agreement which were taking place with the District. Members of the Union marched from the campus to the administration office where a Board of Directors meeting was being held. Ms. Hansen participated in the march and carried a sign into the Board meeting. A representative of the Wisconsin Federation of Teachers was granted permission to address the Board and spoke regarding the Union's concerns in the contract talks.

17. On April 15, 1976, Florence Campbell executed her teaching contract for the 1976-1977 school year but resigned from the Practical Nursing Program citing Ms. Hansen's influence as the motivation for her resignation. After counseling by Smith and Travis she relented in her decision.

18. On May 14, 1976, the Commission certified the Union as the exclusive bargaining representative of regular contract instructors teaching at least fifty percent (50%) of a full teaching load in the employ of the District.

19. During May 1976, Larsen met with Smith and Travis to discuss student complaints regarding Ms. Hansen's behavior in the clinical setting.

20. On June 3, 1976, Fred Skarich, Staff Representative for the Union, accompanied Ms. Hansen to a meeting called by Larson, Smith and Travis to discuss Ms. Hansen's performance of her professional duties.

21. During November 1976, the administration received numerous student complaints regarding Ms. Hansen's disparate treatment of students and test grading, as well as regarding her supervision of students in the clinical setting. On December 7, 1976, Smith and Travis held a meeting with Hansen to discuss these complaints.

22. On January 3, 1977, a meeting was held to allow Practical Nursing students and Ms. Hansen the opportunity to discuss student concerns regarding Ms. Hansen's performance as an instructor and its effect on the students' learning environment. Present were Ms. Hansen, Ms. Cunningham and Ms. Davidson (as Ms. Hansen's union representatives), Ms. Travis, Ms. Smith, Doris Reamer, secretary of the Health Occupations Division, and eight students.

23. Between January 3, 1977 and February 2, 1977, Smith and Travis made a recommendation to the administration that Ms. Hansen be nonrenewed.

24. On February 2, 1977, Larson sent a letter to Ms. Hansen in which he stated that a recommendation would be made to the Board to offer her a contract for the 1977-1978 school year and which set certain conditions for her continued employment. The conditions were stated in the following manner:

1. Student-instructor relationships:

That all students be given equal consideration and that no complaints of favoritism or intimidation be reported and validated.

2. Role relationships with Program Head:

That you recognize and respect the role of the Program Head and that no incidents in which you bypass or exclude this person from activities inherent in the Program Head position be reported and validated.

3. Role relationships with other Practical Nursing Program instructors:

That you maintain respect for the rights and responsibilities of the advisor, team leader and instructor roles, and that no complaints of role infringement be reported and validated.

25. On February 11, 1977, a conference was held between Hansen, Travis, Smith, Larsen and Cunningham (as Ms. Hansen's union representative) to outline a plan of activities which would assist Ms. Hansen in meeting the conditions referred to in paragraph 24, *supra*. Travis suggested the following three activities to assist Ms. Hansen in reaching those goals:

1. That Margaret Hansen and the Associate Chairman, Nursing and Allied Nursing, meet weekly during the spring quarter 1977 to identify and discuss potential problem areas regarding student-instructor relationships and

learning environment, faculty team relationships and relationships with the program head.

2. The Associate Chairman, Nursing and Allied Nursing will accompany Margaret Hansen in the clinical laboratory setting at least monthly during the spring quarter to observe this phase of instructional management.
3. A plan for the remainder of the school year will be worked out and agreed upon at the end of the spring term.

26. On March 4, 1977, a conference was held to discuss the activities suggested in paragraph 25, supra, during the course of which Ms. Hansen agreed to participate in those activities on the understanding that the meetings were to be informal and nonevaluative in nature and that the purpose of these activities would not be made known to students. Ms. Hansen further requested that she be allowed to have union representation at these meetings. Ms. Travis objected on the grounds that as the meetings were to be nondisciplinary in nature, no valid purpose would be served thereby. Ms. Hansen attended some of these meetings accompanied by a union representative.

27. On May 10, 1977, during a portion of the clinical training, Ms. Hansen assigned a patient to Elaine Buchner, a student in the Practical Nursing Program, for the purpose of performing a clinical competency exam to determine her ability to perform certain nursing tasks.

28. On May 13, 1977, following a conference with Jane Travis, Elaine Buchner gave a signed statement regarding the events which transpired during the clinical competency exam referred to in paragraph 27, supra. The statement reads as follows:

Last Tuesday, May 10, on clinical, she (Margaret Hansen) made me feel so stupid. She said I don't do anything right, didn't give me any chance to do anything right. She did not wait to find out whether I would or could do things right. She talked as if I were in a branch of service, giving orders loud enough so all others in the room could hear. The others in the room felt sorry for me. Another student said she would rather have had a different patient and I to have hers because she felt Margaret Hansen was too hard on me. Mrs. Colleran, when I told her about my patient, said none of us should have had that critically ill a patient in this quarter and when she told Miss Hansen she did not agree with her.

My patient was a critically ill, unconscious man with IV's, oxygen and Foley catheter inserted. I was told to give him a bed bath which I was trying to do. Miss Hansen stood over me the whole time complaining about the way I was doing it. She made me feel dumb and stupid in front of other patients and students.

There are several other students, as well as myself, in my clinical who, before they go out on clinical, feel nauseated and sick to their stomachs the whole night before.

I have tried to be very pleasant and friendly to Miss Hansen. When we meet in the hallways here at school I speak to her, but she never speaks back. She just goes on her way until she meets some of her "pets"; then she greets them very cheerfully and talks to them.

In her teaching methods she shows us how to do things and expects us to remember them forever and never make a mistake. She does not help me when we are out on clinical. She expects that we know everything whether it was taught to us in class the first week of school or any time during the school sessions.

Beginning on the first day of clinical Margaret Hansen expects that we know where to find all supplies at the hospital (I had never been to the hospital before except to visit relatives or friends). She does not tell or show us where to find the supplies. We have to feel our way, asking hospital staff. The reason I go to hospital personnel is because I am afraid to ask Miss Hansen.

In post-conference, Margaret told me that I had not done anything right. She told me to make another video tape in the AT lab on bed bath and to have it in by Monday, May 16.

As a result of the May 10, 1977 incident, Ms. Buchner withdrew from the Practical Nursing Program.

29. Immediately thereafter, Ms. Travis recommended to Anita Smith that Ms. Hansen be nonrenewed. Thereafter, Travis and Smith had a conference with Mr. Larson in which they recommended that Ms. Hansen be terminated immediately and paid through the end of her contract which was to expire on June 30, 1977. The administration did not accept this recommendation and instead opted to reassign Ms. Hansen to the Nursing Assistant Program in order to reduce the amount of time spent in continuing contact with students. As a result of this transfer, Ms. Hansen would not be caused to suffer any reduction in the level of benefits afforded to her by reason of her employment with the District.

30. On May 26, 1977, the Union and the District executed an initial collective bargaining agreement effective for the period of July 1, 1976 through June 30, 1979. The agreements contained, inter alia, provisions relating to (1) involuntary transfers; (2) good and sufficient cause for discipline; and (3) final and binding arbitration of unresolved grievances.

31. On June 1, 1977, Ms. Hansen received a letter notifying her that she had been reassigned from the Practical Nursing Program to the Nursing Assistant Program.

32. On June 1, 1977, Ms. Hansen filed a grievance protesting her reassignment which in due course was submitted to final and binding arbitration.

33. On October 22, 1977, Arbitrator H. Herman Rauch issued an interim award in which he found that the District's action in reassigning Ms. Hansen from the Practical Nursing Program to the Nursing Assistant Program was a transfer which violated Article 19.03 of the collective bargaining agreement. This award also recommended that the parties engage in settlement discussions at an earlier step of the grievance procedure in order to resolve the dispute.

34. Following receipt of the interim award, the parties engaged in settlement discussions which proved unsuccessful in resolving the dispute. The parties then requested the issuance of an award in this matter.

35. On November 1, 1977, Florence Campbell wrote a letter to Richardson requesting termination of her contract with the District at the end of the fall term. This letter states in part that:

. . . The reason for this request is that I have just learned that Margaret Hansen will be returning to the Practical Nursing Program when the winter term begins November 28th.

36. On November 2, 1977, Mary Collieran, an instructor in the Practical Nursing Program, wrote a letter to Richardson requesting a transfer from the Practical Nursing Program ". . . if Margaret Hansen returns to it . . .".

37. On November 23, 1977, Arbitrator Rauch entered his final award regarding the Hansen grievance. His award ordered the District to return Ms. Hansen to her position within the Practical Nursing Program.

38. On November 28, 1977, Richardson wrote two letters to Ms. Hansen. The letters are reproduced in their entirety as follows:

November 28, 1977

Miss Margaret Hansen
2922 Lincoln Avenue
La Crosse, Wisconsin 54601

Dear Miss Hansen:

The arbitrator's award requiring Western Wisconsin Technical Institute to return you to the Practical Nursing program has been complied with. You are now an instructor in the Practical Nursing program in exactly the position you would have been in had no transfer to the Nursing Assistant program taken place.

The administration has, however, seen fit to suspend your duties in the Practical Nursing program pending a determination of the Board on the merits of terminating your employment.

Sincerely,

Charles G. Richardson
District Director

CGR:mb

cc Board members WWVTAE
Victor Larsen
Anita Smith
Jane Travis
Diane Cunningham
John Williamson, Jr.

November 28, 1977

Miss Margaret Hansen
Western Wisconsin Technical Institute
Sixth and Vine Streets
La Crosse, Wisconsin 54601

Dear Miss Hansen:

You are hereby suspended with pay upon receipt of this notice. Your discharge has been recommended to the Board of the Western Wisconsin Vocational, Technical and Adult Education District by the District Director, the Administrator of School Services, the Chairman of the Health Occupations Division, and the Associate Chairman of the Health Occupations Division of Western Wisconsin Technical Institute. A decision will be made by the Board based upon the recommendations of the aforementioned administrators if you do not request a hearing before the Board in accordance with Section 15.02 and Step 3 of Section 15.01 of the Collective Bargaining Agreement within five school days from the receipt of this notice. If you request a hearing, you will be suspended with pay pending the Board's determination.

This action on the part of the District has become necessary as a result of a course of conduct on your part which has led to extreme disruption in the Practical Nursing Program. The course of conduct complained of includes an inability on your part to interact constructively with other faculty members of the Practical Nursing Program in an instructional team situation; insubordination and a continuing refusal to cooperate with your Program Head; repeated incidence of unequal treatment of students; and erratic, inappropriate, and abrasive treatment of students and faculty.

You were warned of the unacceptable nature of your conduct in the areas in your August 1976 evaluation, and in a letter to you from Victor E. Larsen dated February 2, 1977.

Sincerely,

Charles G. Richardson
District Director

CGR:mb

cc Board members of WWVTAE
Victor Larsen
Anita Smith

39. On January 10, 1978, the District's Board of Directors held an evidentiary hearing to consider the administration's recommendation that Ms. Hansen be discharged. At this hearing, the administration was represented by Attorney Bosshard, the Board was represented by separate counsel and Ms. Hansen was represented by the Union. Following the conclusion of these proceedings, the Board of Directors took the matter under advisement.

40. On February 14, 1978, the Board of Directors voted to discharge Ms. Hansen.

41. Thereafter, pursuant to the terms of the collective bargaining agreement, Ms. Hansen filed a grievance regarding her discharge. In due course the matter was submitted to final and binding arbitration.

42. On August 25, 1978, Arbitrator Anthony V. Sinicropi issued his award in the matter of the Hansen discharge. His award stated in part:

There is nothing in the record to indicate that Ms. Hansen was disciplined for anything other than her inability to foster an effective working relationship with faculty and students. Absent the prior arbitration, the instant case would be far less complex. In this regard if the union feels that the Grievant is effectively being disciplined because of her union activity, the appropriate forum for the resolution of such a complaint is before the Wisconsin Employment Relations Commission. Based on the record before this Arbitrator, the evidence supports the Administration's position that good and sufficient cause existed for the discharge of Ms. Margaret Hansen.

43. The District's decision to discharge Ms. Hansen was not motivated, in whole or in part, by Union animus.

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

CONCLUSION OF LAW

The District's decision to discharge Ms. Hansen was not motivated, in whole or in part, by union animus.

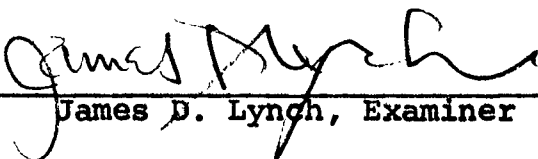
Based on the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER

The complaint filed herein shall be, and hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 20th day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
James D. Lynch, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER

FACTS:

The facts briefly recited are these. 1/ Margaret Hansen began full-time employment with Respondent District in 1970 as an instructor in the Practical Nursing Program. Beginning in 1973 and continuing until her removal from teaching duties in November, 1977, the District received numerous complaints from students and faculty regarding Ms. Hansen's performance of her professional duties. These complaints were serious both in their nature and their numbers.

The District notified Ms. Hansen of its concerns regarding her performance through both formal written evaluations and conferences in which it attempted to counsel Ms. Hansen in order that she might become a more effective instructor. Complaints from both students and faculty persisted.

Early in 1977, the District's Chairperson of its Health Occupation Division, as well as its Associate Chairperson of its Nursing and Allied Nursing Department, recommended to the administration that in view of the continuing complaints Ms. Hansen should be discharged. On February 2, 1977, the District's Administrator of School Services sent a letter to Ms. Hansen in which he advised her that she must meet certain stated conditions in her relationships with students, faculty and the program head in order for the Board to offer her a contract for the 1977-1978 school year. The District formulated a program to assist Ms. Hansen in meeting these conditions. One of the activities was a series of weekly meetings at which potential problem areas were to be discussed. The meetings were to be informal and nonevaluative in nature. Ms. Hansen attended some of these meetings accompanied by a Union representative.

Complaints persisted. They were particularly pronounced in the clinical phase of the students' training. Ms. Hansen was responsible for administering competency examinations in this clinical phase.

On May 10, 1977, a serious incident involving Ms. Hansen occurred during a portion of the clinical training. This incident was reported to the administration by the affected student, who, as a result thereof, then withdrew from the Practical Nursing Program.

On June 1, 1977, the administration reassigned Ms. Hansen from her position in the Practical Nursing Program, a 12-month course of study, into the Nursing Assistant Program, a 12-week course of study. Ms. Hansen suffered no reduction in her benefits as a result of this reassignment. The administration took this action in order to reduce the amount of time in which Ms. Hansen would have repeated contact with students in a clinical setting. This action was taken despite recommendations by the Chairperson of the Health Occupation Division and the Associate Chairperson of the Nursing and Allied Nursing Department that Ms. Hansen's conduct warranted discharge.

1/ For a complete recitation of all relevant facts regarding this matter, please see particular findings of fact.

Ms. Hansen was a member of the Union. The Union had been certified as the exclusive bargaining representative of faculty members in the District's employ by the Wisconsin Employment Relations Commission on May 14, 1976. On May 26, 1977, four days prior to Hansen's reassignment to the Nursing Assistant Program which took place on June 1, 1977, the Union and District entered into an initial collective bargaining agreement governing the wages, hours and conditions of employment of faculty members for the period of July 1, 1976 through June 30, 1979.

Ms. Hansen filed a grievance regarding her reassignment. Arbitrator Rauch ruled in an interim opinion that the District's action constituted a transfer which violated the terms of the agreement. Rauch also suggested that the parties engage in settlement discussions in an effort to resolve the dispute. Settlement discussions proved unsuccessful and the parties requested issuance of a final award. Prior to its issuance, two faculty members in the Practical Nursing Program requested to be relieved of their duties if Hansen was returned to the program. Arbitrator Rauch issued his final award in which he ruled that the transfer violated the agreement and ordered Ms. Hansen reinstated to the Practical Nursing Program. Upon receipt of the award, the District reinstated Ms. Hansen to the Practical Nursing Program, but immediately suspended her from duty with pay pending an evidentiary hearing before the District's Board of Directors to consider the administration's recommendation that Ms. Hansen should be discharged.

The hearing was held on January 16, 1978. The administration was represented by counsel, the Board was represented by separate counsel and Ms. Hansen was represented by the Union. On March 12, 1978, the Board voted to discharge Ms. Hansen alleging that good and sufficient cause for her discharge existed.

Ms. Hansen filed a grievance regarding her discharge. Arbitrator Sinicropi ruled that the discharge was for good and sufficient cause and therefore denied the grievance.

The complaint filed herein charges that the District discharged Ms. Hansen because she engaged in union activities. The Respondent's answer denies that union animus played any role in their decision to discharge Ms. Hansen.

POSITIONS OF THE PARTIES:

The Union contends that the District discharged Ms. Hansen from her employment because she insisted upon compliance with the Rauch arbitration award ordering her reinstatement to the Practical Nursing Program. The Union argues that as neither arbitrator ruled on the question of Union animus in their awards, this matter should not be subject to deferral.

The District contends that it discharged Ms. Hansen because of her inability to perform her professional duties in a manner consistent with the educational mission of the Practical Nursing Program. It argues that Ms. Hansen's conduct antedated the Union's arrival to the District and denies that Union animus played any role in its decision to discharge Ms. Hansen. Insofar as Arbitrators Rauch and Sinicropi did not find the District's actions to have been motivated by Union animus, the District urges the Commission to defer its jurisdiction.

DISCUSSION:

As Arbitrator Sinicropi observed in his award ". . . Absent the prior arbitration, the instant case would be far less complex . . .".

For it is the question of the relationship between the issuance of the Rauch arbitration award and the District's action in discharging Ms. Hansen which is the dominant focus of this inquiry.

However, prior to considering the merits of this matter, a preliminary issue raised by the pleadings - whether the Commission should defer this proceeding in light of the previous arbitration awards issued - must be resolved.

Arbitrator Rauch considered the question of whether the District's action in changing Ms. Hansen's teaching assignment from the Practical Nursing Program to the Nursing Assistant Program was a transfer within the meaning of Article 19.03 of the collective bargaining agreement. Rauch ruled that the transfer violated the collective bargaining agreement and ordered Ms. Hansen reinstated to her previous position. He did not, however, rule on whether the District's decision to transfer Ms. Hansen was motivated by Ms. Hansen's union activities.

Arbitrator Sinicropi considered the question of whether the District's action in discharging Ms. Hansen was for good and sufficient cause. In resolving that question, Sinicropi stated at page 25 of his award ". . . there is nothing in the record to indicate that Ms. Hansen was disciplined for anything other than her inability to foster an effective working relationship with faculty and students. . . In this regard, if the Union feels that the Grievant is being disciplined because of her union activity, the appropriate forum for the resolution of such a complaint is before the Wisconsin Employment Relations Commission."

Inasmuch as this proceeding concerns the question of whether the District discriminatorily discharged Ms. Hansen because of her Union activities, that issue would not be resolved by reference to either the Rauch or Sinicropi awards. Therefore, deferral would serve no useful purpose and the undersigned will proceed to consider the merits of this action.

It must be noted that Complainant has the burden of proving the alleged discriminatory nature of Hansen's discharge, as it must prove by a clear and satisfactory preponderance of the evidence that Respondent had knowledge of Hansen's union activities, that Respondent was hostile toward such activities, and that her termination was motivated at least in part by anti-union considerations. 2/

The record establishes that Respondent District, by means of its agents Smith, Travis, Larsen and Richardson, had knowledge of Hansen's union affiliation and her filing of a grievance regarding her transfer. Thus, the inquiry becomes whether the District was hostile regarding Ms. Hansen's union activities and whether the decision to discharge was motivated in whole or in part by anti-union considerations.

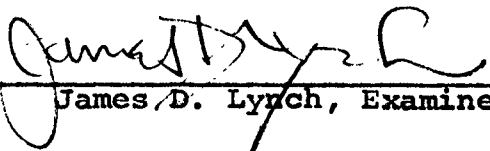
Upon a review of the record as a whole, the undersigned is unable to conclude that the District's decision to discharge Ms. Hansen was motivated by hostility toward her union activities. The record establishes that the District had been concerned about Ms. Hansen's performance of her professional duties for a period of years, even preceding the Union's advent to Western Wisconsin Vocational, Technical and Adult Education District. The record further establishes that the District's attempt to change Ms. Hansen's assignment to the Nursing Assistant

2/ City of Wisconsin Dells, No. 11646 (3/73).

Program was the last in a series of actions taken to alleviate Ms. Hansen's difficulties and was taken as an alternative to recommendations by Ms. Hansen's superior that she should be discharged. It was only when that alternative was denied to the District that it acted to recommend her discharge. While Complainant urges that the decision to discharge, following upon the heels of the Rauch arbitration, must have been motivated by hostility toward Complainant for filing a grievance, there exists no evidence to support that assertion. Rather, it is clear that Ms. Hansen's longstanding inability to perform her teaching duties when coupled with the District's lack of a meaningful alternative to discharge resulted in the recommendation to seek Ms. Hansen's termination. Upon the basis of the record, the undersigned finds that the decision to discharge was not motivated by hostility toward union activities. Accordingly, the complaint filed herein is hereby dismissed in its entirety.

Dated at Madison, Wisconsin this 20th day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
James D. Lynch, Examiner