

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 17520-A

IV. MANAGEMENT RIGHTS

The School Board, on its own behalf, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by applicable law, rules, and regulations to establish the framework of school policies and projects including, but without limitation because of enumeration, and rights:

. . .

- (2) To employ and reemploy all personnel and subject to the provisions of law or state Department of Public Instruction regulations, determine their qualifications, their dismissal or demotion, their promotion, and their work assignment. (emphasis added)

. . .

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and Wisconsin Statutes, Sec. 111.70, and then only to the extent such specific and express terms hereof are in conformance with the Constitution and Laws of the State of Wisconsin, and the Constitution and Laws of the United States.

. . .

VII. WORK LOAD

The teachers' assignment at all levels shall be listed on the teacher's individual contract for the school year. Such assignments will be adhered to unless an emergency arises. Such emergency shall be determined by the School Board.

The teaching work load is dependent on the teaching assignment in each of the district schools. The School Board, through the administration, will attempt to maintain a class size under 25 in our primary department and under 30 at the intermediate level of our elementary school. Class size may vary from these numbers in special areas of instruction. (emphasis added)

At the Junior High School level, the School Board and the Administration will attempt to maintain a class size of under 30 students. Class sizes and number of periods may vary for special classes in art, physical education, music, health and safety, industrial arts and home economics. (emphasis added)

. . .

X. JUST CAUSE

No teacher shall be discharged, non-renewed, reduced in rank or compensation without just cause.

a. Limitation of Just Cause:

Just cause shall not become effective until individual teachers have taught successfully for two full years in the Lancaster Community School District. This provision shall take effect with the new teachers hired for the 1974-75 school year and thereafter.

1. The teacher will be informed of this limitation by the district administrator when hired.

b. Just cause shall not apply to the layoff procedure outlined in this agreement.
(emphasis added)

. . .

XII. LAYOFFS

When a reduction in staff is necessary because of a decrease in student enrollment, a decline in course registration, educational program changes, or financial and budgetary consideration, the Board may layoff teachers as necessary. Staff reduction shall be considered on a departmental basis only. For purpose of employment, such departments are identified as follows:

Elementary:	Kindergarten	Kindergarten
	Primary	1-3
	Intermediate	4-6
	Library	K-6
Junior High:	Social Studies, English, Mathematics, 7-9 Science, Foreign Language, Art, Library, Home Economics, Industrial Arts.	
Senior High:	Social Studies, English, Mathematics, 10-12 Science, Foreign Language, Business Education, Drivers Education, Home Economics, Industrial Arts, Library, Agriculture, Guidance, Art.	
Miscellaneous:	Speech Therapy, Psychologist, K-12 Federal Program, Art, <u>Vocal Music</u> , Physical Education, <u>Instrumental Music</u> , Reading Teachers, Special Education. (emphasis added)	

Teachers may be transferred to another department where there is a vacancy provided they are certified and approved by the Board of Education.

Teachers who are laid-off will be rehired for a position available for which they are certified and approved by the Board of Education. If a teacher is rehired, he will not lose credit for previous years of service in the District.

To the extent possible and feasible, normal attrition will be used to effect a reduction of personnel. Should this avenue not be possible, part-time personnel will be laid-off before full-time personnel. Should this avenue also be impossible to follow, then the teacher with the least experience (in total years teaching in Lancaster Community School District) will be laid-off. (emphasis added)

Should there be two or more teachers with equal experience the teachers to be laid-off will be selected by the Board, taking into account, both on an individual basis and in comparison with other teachers, factors such as academic training and certification, ability and performance as a teacher in the District as previously and currently evaluated by appropriate supervisory personnel, and assignment to extra-curricular and other special activities.

5. Complainant Fraser was first employed by Respondent District in August of 1970 as a full time teacher and continued in that status for the next eight years until approximately August of 1979. During the 1978-79 school year Complainant Fraser held the position of full-time Junior High School vocal music teacher. On or about February 22, 1979 Complainant Fraser was offered a one-half time vocal music teaching contract for the 1979-80 school year, which offer Complainant Fraser accepted. Complainant Fraser subsequently grieved the reduction from a full-time teacher to a part-time teacher and processed said grievance under the collective bargaining agreement through the final step of the grievance procedure. However, the grievance remained unresolved under the parties' contract.

6. The following statistics reflect the number of students by school year enrolled as of the third Friday in September at Respondent District's schools: (1973-74) 1616 students; (1974-75) 1,582 students; (1975-76) 1,485 students; (1976-77) 1,453 students; (1977-78) 1,423 students; (1978-79) 1,419 students; (1979-80) 1,358 students. During this same time period (1973-74 through 1979-80), Respondent District reduced the number of teachers by 8 in the elementary school and 2 (including reduction of Fraser's contract to one-half time) in the Junior High School; there was no reduction in teaching faculty at the High School level.

7. During the same time period (1973-74 through 1979-80) the District employed Mrs. Adelle Stimart as elementary music teacher. During the 1973-74 school year, Respondent District offered 50 music classes at its elementary school; Stimart taught 38 of these classes and Complainant Fraser taught 12 of these classes. During the 1977-78 school year, Respondent District offered 42 music classes at the elementary level; Stimart taught 30 of these classes and Complainant Fraser taught 12 of these classes. During the 1978-79 school year, Respondent District offered 42 music classes at the elementary level; Stimart again taught 30 of these classes and Fraser taught 12 of these classes. During the 1979-80 school year, Respondent District again offered 42 classes in music at the elementary level; Stimart taught 38 of these classes and Fraser taught 4 of these classes.

8. The full-time teaching load at the Junior High School level for special area teachers is 31.8 hours per week (including preparation time, noon duty and study halls). Vocal Music is a special area of instruction. During the 1977-78 school year, Complainant Fraser taught 25.7 hours per week, or 6.1 hours less than the full-time load of a full-time teacher; however, Complainant Fraser was paid on a full-time basis during the 1977-78 school year.

9. During the 1978-79 school year Complainant Fraser taught 27.9 hours per week, or 3.9 hours less than a full work load; Fraser was paid on a full-time basis for the 1978-79 school year.

10. During the school years 1977-78 and 1978-79 Stimart, the other full-time vocal music teacher, carried less than a full-time load at the elementary level.

11. At the time that Complainant Fraser's contract was reduced to a one-half time teaching contract, Stimart had taught in the Lancaster School District for 14 years and Complainant Fraser had taught in the District for 10 years.

12. During the 1979-80 school year, Complainant Fraser was required to teach 14.4 hours per week; during this same time period the full-time Junior High School teaching load was 31.8 hours per week for special area teachers.

13. Prior to reducing Complainant Fraser's teaching contract from full-time to one-half time, Respondent District, by its administrative personnel and its agent Board of Education, determined that for the 1979-80 school year the District's requirement for vocal music was slightly more than one full-time teacher; the District, pursuant to its determination that it did not need the services of two full-time vocal music teachers, offered Complainant Fraser a one-half time teaching contract.

14. The reduction of Complainant Fraser's contract from full-time in 1978-79 to half-time in 1979-80 was not a disciplinary action, but rather resulted from the Respondent District's determination that it no longer needed two full-time vocal music teachers. Although this action on the part of Respondent District resulted in the lack of available full-time work for Complainant Fraser, said action on the part of Respondent District did not violate the collective bargaining agreement then in effect between the parties.

Based on the foregoing Findings of Fact the Examiner makes the following

CONCLUSION OF LAW

1. The District did not violate the collective bargaining agreement between the above-named parties by offering Complainant Fraser a one-half time teaching contract for the 1979-80 school year, and therefore the Respondent District did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5 Wis. Stats.

Based upon the foregoing Findings of Fact and Conclusion of Law the Examiner makes the following

ORDER

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

Dated at Madison, Wisconsin this 9th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Michael F. Rothstein
Michael F. Rothstein, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Lancaster Education Association and Bud Fraser individually as complainants filed the instant complaint alleging that the Lancaster Community School District violated the parties' collective bargaining agreement when the District offered Fraser a one-half time teaching contract for the 1979-80 school year; prior to that time Complainant Fraser had been employed by the District as a full-time teacher. Complainants argue that the reduction of Fraser's teaching contract violated the parties collective bargaining agreement and thus derivatively violates Section 111.70(3)(a)5 of MERA. 1/

POSITION OF COMPLAINANT ASSOCIATION:

Complainant Association contends the reduction of Complainant Fraser's teaching contract from full-time to one-half time violates the just cause standard contained in Article X of the parties collective bargaining agreement. The Association contends that the obvious result of a teaching contract reduction is a loss of compensation and a reduction in rank (i.e. from full-time to part-time).

Complainants further argue that, even if a reduction from full-time to part-time does not fall within the just cause provisions of Article X of the parties' contract, certainly under Article XII (the provision involving lay-off) Complainant Fraser would be protected from a reduction in his contract since the District has failed to establish that it had a legitimate basis to reduce Fraser's teaching contract. While it may be conceded that there has been a decline in the student enrollment in Respondent District's schools over the last several years, Complainant Association contends that in order for Fraser's contract to be reduced, it is incumbent upon the Respondent District to demonstrate that there is a direct relationship between the reduction in student enrollment and the need to reduce Fraser's teaching load. Complainant Association contends that Respondent has failed to establish any reason for reducing Fraser's teaching contract. The Association argues that in order for there to be a lay-off (even a "partial lay-off"), the District must first establish that the reduction of a particular teacher's contract is necessitated by a decrease in student enrollment in that teacher's area of instruction, a decline in course registration in the specific area of lay-off, educational program changes, or financial and budgetary considerations. Since the reduction of Fraser's teaching contract is not based on any one of the aforementioned factors as it relates to vocal music instruction, Complainant Association argues that the reduction of Fraser's teaching contract was an arbitrary undertaking which was simply designed to accomplish a general reduction in teaching staff. Complainants contend that the reason for the lay-off language in the contract is to prevent general reductions in teaching staff which are not tied to explicit enumerated reasons. Therefore, argues the Association, Complainant Fraser should be restored to a full-time position, or alternatively to a larger per-

1/ The original complaint alleged that the reduction in Fraser's contract violated Article XII (the lay-off clause) and Article X (Just Cause); in addition, the complaint alleged that the lay-off was impermissibly motivated in order to induce Fraser to quit his employment with the Respondent District, and in addition, that the District had attempted to assign more work to Fraser than could reasonably be accomplished by a teacher working one-half time. At the hearing, however, Complainant chose not to introduce any evidence with respect to these two latter allegations and limited the issue to the question of whether the District could legitimately reduce Fraser's contract under the master agreement's lay-off and/or just cause provisions. Accordingly, the Examiner makes no determination with respect to the additional allegations contained in the complaint but which were not litigated at the hearing.

centage of full-time employment, coupled with compensation for any loss of earnings occasioned by the unlawful acts of Respondent District.

POSITION OF RESPONDENT DISTRICT:

The District contends that the reduction of Fraser's contract from full-time to one-half time is clearly permitted under the lay-off provisions of the parties collective bargaining agreement (Article XII). The District further argues that Article X (Just Cause) does not apply to the situation in which a teacher's contract is reduced for administrative reasons. The District points out that just cause should apply to disciplinary actions and not to administratively motivated reductions in staff required by economic or policy reasons.

The District further argues that under Article XII (lay-offs) of the parties' contract, the District can reduce a teacher's contract from full-time to part-time if the District establishes that there has simply been a reduction in student enrollment or that there are budgetary considerations for the lay-off or that there are educational policy reasons for the lay-off. The District then argues that the evidence demonstrates that there was, in fact, a surplus of vocal music teachers within the District; and that, in order to effectuate a monetary savings the District was justified in reducing Fraser's contract to one-half time. In addition, Respondent District argues that reduction in student enrollment justifies the reduction of Fraser's contract from full-time to part-time.

Finally, the District contends that the Complainant Association has put forth no evidence to show that the reduction of Complainant Fraser's contract from a full-time to a part-time teaching contract was done for other than legitimate purposes. The District contends that administrative actions are presumed to be for legitimate purposes; and that the responsibility for showing that there has been a violation of the collective bargaining agreement rests upon the party challenging the administrative actions. Since the Complainant Association chose to introduce no evidence at the hearing, Respondent District contends that the Association has failed in its burden of proof to establish a violation of the parties' agreement.

The Respondent District further argues that Article IV (management rights) which permits the District to establish the work assignments of the professional faculty, supports the District's actions in reducing Fraser's contract to that of a part-time teaching contract; and thus, the District operated in accordance with the parties' contract. Accordingly, the District maintains that the complaint should be dismissed.

DISCUSSION:

It is clear from the record that the decision to reduce Complainant Fraser's contract to that of a part-time teacher was not based on dissatisfaction with his performance as a music teacher. Therefore, it cannot be argued that the reduction of his contract was a form of discipline. The District's decision to reduce the number of music teachers from two to one-and-one-half was based entirely on an evaluation by the District that there was not enough work in the area of vocal music to support two full-time teachers.

"Just cause" generally relates to disciplinary actions taken on the part of an employer. Since the reduction of Fraser's contract was not for disciplinary reasons, the reduction to part-time teaching duties must be viewed as a lay-off. Under the terms of the parties' contract, just cause does not apply to the lay-off provisions of the collective bargaining agreement. Thus, Article XII, which involves the process to be utilized for staff reductions, is the operative provision in the parties' agreement. Article X, which involves just cause, does not apply to the instant dispute.

Under Article XII, lay-offs can only occur when certain conditions precedent exist. This is true whether the lay-off is a total severance from employment or a partial lay-off as experienced by Complainant Fraser. The conditions precedent to laying-off a faculty member includes a reduction in student enrollment, a decline in course registration, educational program changes, or financial and budgetary con-

siderations. In the instant matter, the Board of Education determined that its two vocal music teachers were underutilized; neither Mrs. Stimart nor Mr. Fraser were carrying a full work load as determined by the applicable standards of the collective bargaining agreement. Therefore, in reviewing the future teaching needs in the music department, the Board determined that the continued utilization of two full-time teachers in that particular area had become unnecessary. Whether the Board wished to tie this decision to a decrease in the student enrollment for the entire school, or to the financial and budgetary savings which it would realize by reducing its vocal music department, the fact remains that the requisite conditions precedent did exist prior to the lay-off. That is, there was an overall decrease in student enrollment, and there were financial and budgetary considerations which resulted in the Board making a decision to offer Fraser a part-time contract rather than a full-time contract. Furthermore, the budgetary considerations related directly to the area of instruction in which the partial lay-off was to occur, i.e., vocal music. If the economic consideration related to the need to cut costs in the art department and the District then targeted Fraser for a lay-off, it is possible that the Complainants' arguments would prevail. That is not the case presented here. The economic and budgetary considerations which prompted the Board to reduce Fraser's contract were directly related to the underutilization of staff in the vocal music department. Therefore, even under the Association's interpretation of the collective bargaining agreement, the Board complied with the lay-off provisions of the agreement.

Once the conditions precedent were established, the next issue that the Respondent District had to face was how to choose the appropriate teacher for a reduction (lay-off) under the parties' agreement. Since the lay-off provisions of Article XII provide for staff reductions based on departments, and since vocal music is a separate department under the contract, the issue was narrowed to a consideration as to which of the vocal music teachers' contracts was to be reduced. Stimart was more senior than Fraser; therefore the Board was forced by the terms of the collective bargaining agreement to reduce the teaching contract of Fraser. Had there been a vocal music teacher with less seniority than Fraser, it follows that that teacher should have been given a reduced contract to accomplish the lay-off contemplated by the District. Fraser, however, was the most junior vocal music teacher.

Since the financial savings to be realized by the Board existed by decreasing the number of teachers in the vocal music department, that was the only department in which the collective bargaining agreement required the Board to effect a lay-off. No violation of the contract occurred when the Board reduced the hours of the most junior teacher in the vocal music department. The fact that the Board chose to lay-off Fraser by reducing his contract to one-half as opposed to terminating his employment entirely does not alter this analysis. Nothing in the contract suggests that the parties intended to differentiate between a partial lay-off and a complete lay-off. Thus, the only language which relates to the method for determining who is to be laid-off is Article XII of the parties' collective bargaining agreement. Since there was no violation of this provision of the contract, it must be concluded that the District's actions in reducing Complainant Fraser to a part-time teacher does not violate the collective bargaining agreement, and therefore there has been no violation