

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LANCASTER EDUCATION
ASSOCIATION and BUD FRASER,

Complainants,

vs.

LANCASTER COMMUNITY SCHOOL
DISTRICT,

Respondent.

Case II
No. 25479 MP-1061
Decision No. 17520-B

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Examiner Michael F. Rothstein having, on July 9, 1981, issued his Findings of Fact, Conclusions of Law and Order in the above entitled proceeding wherein he dismissed the complaint filed herein resulting from his conclusion that the District had not violated the collective bargaining agreement existing between the Lancaster Education Association and the Lancaster Community School District with respect to the reduction of Bud Fraser's teaching contract from that of a full-time teacher to that of a part-time teacher; and the Lancaster Education Association having on July 24, 1981, timely filed a petition for Commission review of said decision; and the parties having filed briefs in the matter, the last of which was received on September 28, 1981, and the Commission having reviewed the record, the petition for review, and the briefs filed in support of and in opposition thereto, and being satisfied that the Examiner's decision be affirmed.

NOW, THEREFORE, it is

ORDERED

That the Examiner's Findings of Fact, Conclusions of Law and Order in the instant matter be, and the same hereby are, affirmed. 1/

Given under our hands and seal at the City of
Madison, Wisconsin this 12th day of May, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

(Continuation of Footnote 1)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER

The Pleadings

In the complaint initiating this proceeding the Lancaster Education Association and Bud Fraser, a vocal music teacher in the District, alleged that the District committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act (MERA), by violating the collective bargaining agreement existing between the Association and the District by having improperly reduced Fraser's full-time teaching contract to a one-half time contract with the elementary and junior high schools for the 1979-1980 school year, contrary to the just cause and layoff provisions in the collective bargaining agreement. The complaint also alleged that the reduction was impermissibly motivated and that the District attempted to assign Complainant Fraser an unreasonable workload. 2/ The District denied that it violated the collective bargaining agreement or Section 111.70(3)(a)5.

The Examiner's Decision:

The Examiner determined that the reduction of Fraser's contract from full-time to part-time was not a form of discipline, but "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." Moreover, the just cause provision, Article X, specifically excluded layoffs from the application of that provision. The Examiner, then, viewed the reduction as a layoff under Article XII of the agreement.

The Examiner concluded that Article XII requires certain conditions precedent before a layoff. Those conditions included, among others, a reduction in student enrollment, or financial and budgetary considerations. The Examiner concluded that both of those conditions existed prior to the layoff. A decline was shown in student enrollment in the District, and there were also shown to be certain budgetary considerations relating to the music department in that the two vocal music teachers, including Fraser, were being paid on a full-time basis with less than full-time duties. The Examiner further found that Fraser was the appropriate employee to be laid off because layoffs must occur on a departmental basis and Fraser had the least seniority in that department. Though it was only a partial layoff, the Examiner held that it "does not alter this analysis. Nothing in the contract suggests that the parties intended to differentiate between a partial layoff and a complete layoff."

The Examiner, concluding that no contractual or statutory violations occurred, dismissed the complaint.

The Petition for Review:

The Complainants assert that the Examiner erred when he found that: (1) the full-time teaching load for special teachers is 31.8 hours per week, (2) Fraser taught 27.9 hours per week in the 1978-1979 school year, (3) Fraser taught 14.4 hours per week under the 1979-1980 half-time contract, and (4) the District had determined prior to Fraser's partial layoff that two full-time music teachers were not needed. The Complainant also argues that the Examiner erred in concluding that the District did not violate the collective bargaining agreement and that no prohibited practice was committed. 3/ In that regard the Complainants

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- 2/ During the course of the hearing the Complainants did not pursue the latter two allegations. The Examiner, therefore, made no determination on those issues.
- 3/ The Complainants in their petition and supporting brief do not take issue with the Examiner's conclusion that Article X, the just cause provision, does not apply herein and therefore did not appeal that determination. Nonetheless, the Commission has reviewed that point and supports the Examiner's conclusion that the just cause provision specifically excludes layoffs such as occurred herein.

contend that the conditions precedent were not met and that Fraser had fewer responsibilities under the half-time contract simply because fewer were assigned. The District opposes the Association's petition for review, arguing that the record fully supports the Examiner's findings of fact and conclusions of law.

Discussion:

The Association alleges that the Examiner committed numerous errors in both his findings and conclusions. The Commission finds otherwise. The Examiner's decision was, in fact, well supported by the record.

The Association initially argues that, contrary to the Examiner's findings, a full teaching load for special teachers was not 31.8 hours per week, Fraser did not teach 27.9 hours the school year prior to his one-half time contract, and Fraser was not required to teach 14.4 hours per week under the one-half time contract. However, those facts, as presented through the District's witnesses, were unrefuted. And the Complainants have not pointed to any evidence to the contrary.

The Association also claims that the District gave Fraser a one-half time contract and that his teaching responsibilities were then reduced to comply with that directive. Thus, the District did not make the determination of the music teaching needs prior to the reduction. But the record clearly supports the opposite conclusion. Prior to the reduction, Fraser, as well as the more senior vocal music teacher, had less than full-time workloads. As a result the District attempted to boost Fraser's workload the year prior to the reduction. Fraser's teaching duties were still not at a full-time level. The District was then forced to reduce Fraser's contract to one-half time. With such a reduction some of Fraser's duties would necessarily be reassigned to the other music teacher after the reduction occurred.

Finally, the Complainants argues that the Examiner erred in concluding that the requisite conditions precedent for the partial layoff were met and that, consequently, no bargaining agreement or statutory violations occurred. Article XII allows the District to lay off employees:

When a reduction in staff is necessary because of a decrease student 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.

The District was paying for two full-time music teachers prior to the reduction. The District determined that the needs for the 1979-1980 school year were for slightly more than one full-time vocal music teacher. There was also a student enrollment decline. Fraser's contract was then reduced. As the Examiner correctly found:

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.

However, the Complainant's contend in their reply brief that the rationale presented by the District did not demonstrate that it was necessary to partially lay off Fraser, as is required under Article XII. The Complainants suggest that at most such facts show only that it was advantageous for the District to do so. Under Article IV, the Management's Right Clause, the District is allowed "judgment and discretion" in carrying out its responsibilities. The "judgment" in the instant case was to reduce Fraser's contract because there was no need for two full-time vocal music teachers. The Commission finds that, given the circumstances that existed prior to the reduction in Fraser's contract, such a "judgment" fully complied with the conditions necessary for Fraser's partial

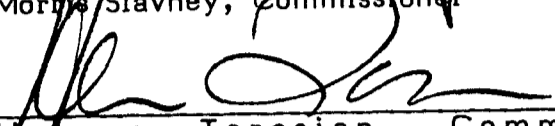
layoff. That layoff did not, therefore, violate the collective bargaining agreement, and therefore was not violative of Sec. 111.70(3)(a)5 of MERA.

Dated at Madison, Wisconsin this 12th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner