

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TURTLE LAKE SCHOOL DISTRICT,	:	
	:	
Complainant,	:	Case XV
	:	No. 25832 MP-1079
vs.	:	Decision No. 17639-A
	:	
NORTHWEST UNITED EDUCATORS,	:	
	:	
Respondents.	:	

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NORTHWEST UNITED EDUCATORS,	:	
	:	
Complainant,	:	Case XIV
	:	No. 25711 MP-1070
vs.	:	Decision No. 17599-A
	:	
TURTLE LAKE SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

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Appearances:

Mr. Stephen Weld, Mulcahy & Wherry, S.C., Attorneys at Law, S.C., P.O. Box 1030, Eau Claire, Wisconsin, on behalf of the Turtle Lake School District.

Mr. Alan D. Manson, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin, on behalf of Northwest United Educators.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Northwest United Educators having, on January 31, 1980, filed a complaint with the Wisconsin Employment Relations Commission, alleging that the Turtle Lake School District has committed various prohibited practices within the meaning of the Municipal Employment Relations Act; and the Turtle Lake School District having, on March 3, 1980 filed a counterclaim which alleged that the Northwest United Educators had committed certain prohibited practices; and the Commission having appointed William C. Houlihan, a member of its staff, to act as Examiner, and to make and issue Findings of Fact, Conclusions of Law and Order, as provided for in Section 111.07(5), Wis. Stats.; and a hearing on the matter having been held before the Examiner in Turtle Lake, Wisconsin, on March 11, 1980; and a transcript of said hearing having been prepared; and the District having filed a brief on May 22, 1980, and the Complainant having submitted a brief on May 29, 1980; and on March 30, 1981 the Complainant having withdrawn its Complaint; and the Examiner being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Northwest United Educators, hereinafter the N.U.E., is an organization which exists, at least in part, for the purpose of engaging in collective bargaining over grievances, labor disputes, wages, hours, and conditions of employment with certain municipal employers, is the collective bargaining representative of certain employes of the Turtle Lake School District, and maintains an office at 16 West John Street, Rice Lake, Wisconsin 54868.
2. That the Turtle Lake School District, hereinafter the District, is a school district within the State of Wisconsin, which engages the services of employes, and which maintains an office at Turtle Lake, Wisconsin 54889.

3. That Richard Hendriks is an individual, employed by the District for a number of years as an art teacher; that in March of 1979 Hendriks was advised by the District that his teaching status was being reduced from full time to half time; that on May 31, 1979 the District offered Hendriks a full time individual teaching contract for the 1979-80 school year; that on June 1, 1979 Hendriks accepted and executed the individual contract.

4. That, at the time Hendriks accepted the individual contract he had made arrangements to relocate in Arkansas; that in August of 1979 Hendriks resigned from his teaching position.

5. That Alan Manson, Executive Director of the N.U.E. was aware of the fact that Hendriks was relocating at the time Hendriks executed an individual teaching contract.

6. That Alan Manson, offered to trade Hendrik's resignation in exchange for District concessions during collective bargaining sessions conducted on July 19 and 24, 1979; that at the time, Manson was aware that Hendriks was relocating to Arkansas.

7. That Manson neither directed nor advised Hendriks to execute the individual teaching contract; that in accepting, and subsequently resigning from his individual teaching contract, Hendriks was acting on his own behalf, and was not acting on behalf of, or under direction from, the N.U.E.

#### CONCLUSIONS OF LAW

1. That the Northwest United Eduators is a labor organization within the meaning of Section 111.70(1)(j), Wis. Stats.

2. That the Turtle Lake School District is a Municipal Employer within the meaning of Section 111.70(1)(a), Wis. Stats.

3. That Richard Hendriks, in executing and subsequently resigning from an individual teaching contract was not acting as an agent of the N.U.E.; that the N.U.E. has therefore not committed a prohibited practice within the meaning of Section 111.70(3)(b) or (c) Wis. Stats. as a result of Hendrik's actions in this regard.

#### ORDER

1. That the complaint and the counterclaim be, and hereby are, dismissed.

Dated at Madison, Wisconsin this 30th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan  
William C. Houlihan, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This case was initiated by a complaint of prohibited practices filed by the Northwest United Educators, hereinafter N.U.E., against the Turtle Lake School District, hereinafter the District. The Complaint essentially alleges that the District had laid off a teacher, Richard Hendriks, in retaliation for his exercise of protected concerted activity, and in violation of the collective bargaining agreement in existence between the parties. In its answer to the original complaint, the District denied that its actions violated either the contract or the law, raised a number of affirmative defenses, and made a counter claim against the Complainant, N.U.E.

A hearing was conducted, the parties were provided with transcripts of the hearing, and briefs were filed. On March 30, 1981 the Complainant formally withdrew its complaint. On April 15, 1981 Respondent Turtle Lake School District advised the Examiner that it continued to desire a decision on the merits of the counterclaim.

Background

Richard Hendriks was employed by the School District of Turtle Lake for a period of approximately fifteen years. Hendriks is an Art teacher who taught at the 6-12 grade levels, during the period immediately preceding the instant litigation. Aside from his teaching, Mr. Hendriks was quite openly active in the affairs of the N.U.E., participating in negotiations, filing and handling grievances, and engaging in various political endeavors.

During the early months of 1979 the School District made a determination that its teaching staff should be reduced. After considering a variety of factors it was decided, on or about February 14, 1979, to reduce staff by two and one-half positions. One fifth grade position, one Science Department position, and one-half Art Department position were targeted for elimination. The position occupied by Mr. Hendriks was targeted for reduction to half-time. The School Board notified Hendriks of his status and offered him a private meeting, which meeting never occurred because of a disagreement over its format.

In March, 1979, the Administration discovered that Art enrollment projections were unexpectedly high and that similar projections for Home Economics were down. Shortly thereafter, a Home Economics teacher, as well as two others, tendered resignations. Before this information was brought to the formal attention of the school board, Hendrik filed a grievance over his reduced status.

At a School Board meeting on May 22, 1979 Mr. Hendriks offered to resign in exchange for certain considerations. The grievance was not resolved, and ultimately Hendriks indicted that he would not drop his grievance even if offered a full time contract.

At a subsequent School Board meeting, on May 31, 1979, the District determined to offer Mr. Hendriks a full time contract. The offer was made, and accepted, and Mr. Hendriks executed an individual contract on June 1.

Hendriks' grievance was again discussed at a July 9 School Board meeting. At that meeting the Board denied the grievance. Mr. Alan Manson, Executive Director of N.U.E. was in attendance at the meeting and offered Mr. Hendriks resignation in exchange for certain employer concessions in the ongoing contract negotiations. The offer was not accepted.

Mr. Manson extended the same offer (Hendriks resignation) at a July 24 negotiation session, which offer was again rejected. In early August, Hendriks offered to resign, which offer was accepted by the Board.

The School district recruited a replacement for Hendriks, and incurred a cost in so doing.

The record indicates that Mr. Hendriks moved out of his house sometime during the month of May, 1979, and that he moved to the State of Arkansas. The record also shows that some time before June 1 Mr. Manson became aware that Hendriks had moved.

### Positions of the Parties

It is the position of the District that Hendriks' resignation violated a provision of the collective bargaining agreement. 1/ This violation is argued to constitute a violation of Section 111.70(3)(b)(4), Wis. Stats. The District goes on to argue that it was the Complainant that caused Hendriks to accept the full time contract after moving to Arkansas and then attempted to secure a bargaining advantage from the situation it created, thereby violating Section 111.70(3)(c), Wis. Stats.

The Union contends that the District created its own expenses in replacing Hendriks by illegally laying him off, and denies any role in encouraging him to accept and violate an individual contract.

### Discussion

The counterclaim in this proceeding is made against the Complainant, Northwest United Educators. There was no attempt to name, or join, Mr. Hendriks in his individual capacity. Hendriks was not served notice of the proceedings nor was he in attendance at the proceedings. The counterclaim alleges that Hendriks, in accepting the individual contract, was acting as an Agent of the Complainant. Accordingly, there is no basis for a finding that Hendriks is a party to the proceeding, or that any allegation of prohibited practice lies against him as an individual.

Counterclaims directed at the Complainant N.U.E. are premised upon the contention that Hendriks was acting as an agent of the N.U.E. The District, in its counterclaim, asserts that in accepting an individual teaching contract after he had moved his family to Arkansas, Mr. Hendriks was acting as an agent of the Complainant. In addition, the District maintains that the Complainant, in causing Hendriks to accept a full time teaching contract after he had moved to Arkansas, and in attempting to secure a bargaining advantage by offering to submit Hendrik's resignation in exchange for certain concessions by the District, violated Section 111.70(3)(c), Wis. Stats. Agency status is denied by N.U.E.

It is the burden of the District to establish, by a clear and satisfactory preponderance of the evidence, the facts upon which it relies in support of its claim of prohibited practices. The District offered no proof in support of its agency claim. The only record evidence on the agency issue is the uncontradicted testimony of Alan Manson, who, on cross examination, denied advising Hendriks to sign his individual contract. The fact that Manson knew that Hendriks was moving, and attempted to use this information to secure a bargaining concession does nothing to demonstrate an agency relationship between Hendriks and the N.U.E. 2/ Nothing in the record suggests that Hendriks was acting on behalf of, upon the advice of, or under direction from the N.U.E. in accepting and subsequently resigning from his individual teaching contract. The District has failed to meet the burden of proof in its agency contention.

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1/ The collective bargaining agreement contains the following provision:

The teaching contract shall be a legally worded document that would be recognized as officially binding for both parties in a court of law.

2/ City of La Crosse, 17076-A, 7/81.

In the absence of an agency relationship, both counterclaims must fall. Hendriks resignation from his individual contract may or may not violate the collective bargaining agreement. Assuming, arguendo, that such a breach occurred, the record offers no basis for inputing such a breach to the N.U.E. Similarly, the District's contention that the N.U.E. caused Hendriks to accept a full time contract after he had moved in order to gain a bargaining advantage must be dismissed for lack of proof that the N.U.E. had any influence over Hendriks decision to accept a contract.

Dated at Madison, Wisconsin this 30th day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan  
William C. Houlihan, Examiner