

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RIVERDALE EDUCATION ASSOCIATION
and GORDON PALMER,

Complainants,

vs.

RIVERDALE COMMUNITY SCHOOL DISTRICT,

Respondent.

Case VIII
No. 26402 MP-1122
Decision No. 17922-A

Appearances:

Paul R. Bierbrauer, Executive Director, South West Teachers United,
Route 1, Barber Avenue, Livingston, Wisconsin 53554, for the
Complainants.

Kramer, Kussmal and Hawley, Attorneys at Law, 1038 Lincoln Avenue,
Fennimore, Wisconsin 53809, by Coleen A. Burns, for the
Respondent.

FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Riverdale Education Association and Gordon Palmer filed the instant complaint on June 17, 1980, with the Wisconsin Employment Relations Commission alleging that the Riverdale Community School District had committed certain prohibited practices under the Municipal Employment Relations Act. The Commission on July 1, 1980, appointed Douglas V. Knudson, a member of its staff, to make and issue Findings of Fact, Conclusion of Law and Order, pursuant to Section 111.70(5) of the Wisconsin Statutes. Hearing on said matter was held in Richland Center, Wisconsin on July 23, 1980. The parties filed briefs until September 8, 1980.

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

FINDINGS OF FACT

1. The Riverdale Education Association, herein Complainant Association, is a labor organization and is the exclusive collective bargaining representative of all full time certificated teaching staff of the District. Complainant Association has its offices at South West Teachers United, Route 1, Barber Avenue, Livingston, Wisconsin 53554.

2. The Riverdale Community School District, herein District, is a municipal employer under Section 111.70(1)(a) Stats. operating a school system and has its offices in Muscoda, Wisconsin 53573.

3. The District and Complainant Association were parties to a collective bargaining agreement, herein contract, covering the period from August 25, 1978 through August 20, 1980. The grievance procedure in said contract did not provide for final and binding arbitration of grievances. The contract contained, inter alia, the following provisions:

IV. BOARD RIGHTS

Management retains all rights of possession, care control and management that it has by law, and retains

the right to exercise these functions during the term of the collective bargaining agreement except to all precise extent such functions and rights are explicitly, clearly, and unequivocally restricted by the express terms of this Agreement. These rights include, but are not limited by enumeration to, the following rights.

1. To direct all operations of the school system.
- . . .
3. To hire, promote, transfer, schedule and assign employee in positions with the school system.
- . . .
5. To relieve employees from their duties because of lack of work or any other good and sufficient reason.
6. To maintain efficiency of school system operations.
- . . .
11. To determine the methods, means and personnel by which school system operations are to be conducted.
- . . .
13. To determine the educational policies of the school district.

VIII. TEACHER REPRIMANDS AND DISCIPLINE

A. No teacher shall be disciplined (including warnings, reprimands, suspensions, reductions in rank or professional advantage, discharges, nonrenewals, terminations or other actions that would adversely affect the teacher) without good and sufficient reason.

. . .

4. Gordon Palmer, herein Complainant Palmer, was a full time certificated teacher for the District and was a member of the bargaining unit represented by Complainant Association at all times relevant hereto. Complainant Palmer commenced his employment with the District in the 1971-72 school year as a high school teacher of foreign languages, specifically Spanish and German. During his first two years of employment, he went to the junior high school twice a week to teach a foreign language class in addition to teaching four foreign language classes daily at the high school. In his third year of employment, i.e. 1973-74, he taught only one day a week at the junior high school. In 1974-75 he refused a request from the District that he again teach foreign language at the junior high school, since he already had a full schedule of classes at the high school for that school year. However, he did offer to set up a junior high school program for the following school year, which offer the District did not accept. Foreign language classes were not taught again at the junior high school until the 1979-80 school year. During the 1975-76 school year, Complainant Palmer taught only high school foreign language classes. Beginning in the 1976-77 school year and continuing through the first semester of the 1979-80 school year, he taught one class of sociology at the high school each semester in addition to his foreign language classes.

5. At the start of the 1977-78 school year the District changed from a modular class schedule to a seven period class schedule at the high school. For the 1978-79 school year, the District assigned one high school teacher to the junior high school on a one-half time basis and another high school teacher to an elementary school on a one-fourth time basis.

6. During the 1978-79 school year, the District was notified by the State of Wisconsin Department of Public Instruction, hereinafter DPI, that Complainant Palmer was not certified to teach sociology. Upon being informed by the District of that situation, Complainant Palmer indicated that he would obtain the certification necessary to continue teaching sociology. During the summer of 1979 at the request of Complainant Palmer, the District submitted an application on his behalf to DPI for a one year license, so that he could teach sociology in the 1979-80 school year. DPI granted him a one year license for 1979-80 and advised him that he would need to complete five semester credits in sociology in order to obtain future licensure. As of the date of the hearing herein, he had not enrolled in any sociology courses, which would satisfy that requirement.

7. In early 1979, the District did not finalize its projected enrollment figures for the 1979-80 school year prior to the statutory deadline for the initiation of teacher nonrenewals. Since said deadline had passed before the District realized that the projected student enrollments in foreign language classes would fail to provide Complainant Palmer with a full teaching load, he was subsequently assigned to teach one-half time at the junior high school and one-half time at the high school. He spent afternoons at the junior high school teaching two eighth grade classes of Spanish and supervising a study hall. In the mornings at the high school he taught a Spanish Class, a sociology class and supervised a study hall. Since the sociology course was for only one semester, during the second semester of the 1979-80 school year he was assigned to supervise a second study hall at the high school. The junior high program was established on a temporary basis as an effort to better utilize Complainant Palmer's time than it otherwise would have been used in that school year.

8. On February 21, 1980, the District notified Complainant Palmer that it was considering the nonrenewal of his teaching contract for the 1980-81 school year for the following reason: "A substantial decline in enrollments in foreign language." Complainant Palmer then requested a private conference with the District's School Board. Such a private conference was held on March 12, 1980, and was attended by Complainant Palmer and a representative of Complainant Association. On March 14, 1980 the District notified Complainant Palmer that it had refused to renew a one-half portion of his contract for the 1980-81 school year because of a reduction in staff due to a lack of sufficient student enrollment in foreign language." Said action resulted in the issuance to Complainant Palmer of a one-half time teaching contract for the 1980-81 school year. On or about March 19, 1980 Complainant Palmer grieved the nonrenewal. On or about April 14, 1980 the District's School Board rejected the grievance, which action exhausted the contractual grievance procedure.

9. The sociology class, which Complainant Palmer had been teaching, was assigned to another teacher, who was fully certified by DPI to teach sociology, for the 1980-81 school year. Said assignment gave that teacher a normal full teaching schedule.

The study halls which Complainant Palmer had supervised during the 1979-80 school year, were assigned to other teachers for the 1980-81 school year. Such assignments did not cause those teachers to have teaching schedules in excess of a normal full teaching schedule.

The student enrollment at the District's high school is larger in 1980-81 than it was in 1979-80.

10. The following statistics reflect the numbers of students by school year 1/ who were enrolled in high school foreign language courses taught by Complainant Palmer: 1971/72 - 28; 1972/73 - 31, 1973/74 - 32; 1974/75 - 46. 1975/76 - 49; 1976/77 - 53; 1977/78 - 38. 1978/79 - 38; 2/ 1979/80 - 9 and, 1980/81 - 38 (an approximate number based on pre-school registrations).

11. The reduction of Complainant Palmer's contract from full time in 1979-80 to one-half time in 1980-81 was not a disciplinary action, but rather, resulted from the District's actions of terminating the foreign language program at the junior high school and of reassigning a sociology class and a study hall from Complainant Palmer to other teachers. Although said actions resulted in a lack of available full time work for Complainant Palmer, those actions did not violate the contract. The District was exercising its contractual right to relieve employes from their duties because of a lack of work, when it issued a part-time teaching contract to Palmer for the 1980-81 school year.

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 it and Complainant Association by nonrenewing one-half of Complainant Palmer's teaching contract for the 1980-81 school year, and therefore, did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a) 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 14th day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Douglas V. Knudson*
Douglas V. Knudson, Examiner

- 1/ During some school years, these enrollments decreased by two or three students in the second semester.
- 2/ The second semester total was 27 because one class with 11 students was only for the first semester.

was fully certified, did not have a full teaching load. Thus, it was reasonable to assign the sociology class to that teacher. Further, if Complainant Palmer had been assigned to a study hall, then another teacher would have been given a part-time contract, in addition to Palmer. Such an issuance of two part-time contracts would have been an inefficient use of staff. There simply was not sufficient work to continue all of the 1979-80 staff on a full time basis in 1980-81.

Article IV of the contract expressly reserves to the District the right to assign teaching duties. Therefore, a teacher can't be relieved from a duty unless the teacher was first assigned the duty. Since Complainant Palmer was never actually assigned to either a sociology class or a study hall for the 1980-81 school year, he was not relieved from any duties when the sociology class and study hall were assigned to other teachers for that school year.

The District contends that its decision to terminate the eighth grade Spanish program was within its right to establish curriculum and educational policies. Therefore, the effectiveness of said program is not relevant to a decision on whether such an action was within the District's contractual rights.

The District maintains that the insufficient student enrollment in foreign language classes for the 1980-81 school year constituted a lack of full time work and justified a part time contract for Complainant Palmer. Accordingly the complaint should be dismissed.

DISCUSSION:

There is no evidence in the record to support a finding that Complainant Palmer's contract reduction was a form of discipline. His job performance clearly is not at issue in this proceeding. The District's decision, that the eighth grade foreign language classes would not be continued in the 1980-81 school year, was not based on any significant dissatisfaction with either Complainant Palmer's performance or the program's results. Rather, the reduction of his contract to one-half time resulted from a lack of available full time work for him. Therefore, Article VIII of the contract is not relevant to this matter. Rather, Article IV is the contractual provision applicable herein.

Although the undersigned does not agree with the District's interpretation of the phrase "to relieve employees from their duties" contained in Article IV, he has concluded that Complainant Palmer was relieved of some of his 1979-80 duties because of a lack of work. There is no dispute over the fact that the enrollment in high school foreign language classes for 1980-81, even though it had increased from the enrollments in 1979-80, was insufficient to constitute a full teaching load for Complainant Palmer. The real dispute is over the reassignment of both a sociology class and a study hall to other teachers, and, the termination of the eighth grade Spanish program. Both of those actions clearly fall within the District's rights as set forth in Article IV, unless restricted elsewhere in the contract. 4/ There are no such restrictions. Accordingly it must be determined that the District's action, of reducing Complainant Palmer to a part time contract, did not violate the contract, and therefore, did not violate Sec. 111.70(3)(a)5 Stats.

Dated at Madison, Wisconsin this 14th day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Douglas V. Knudson, Examiner

4/ Said judgment is not dependent on a finding that the eighth grade Spanish program was established on a temporary basis. The District had the right to alter the school curriculum even if said program had not been established on a temporary basis.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On June 17, 1980 the instant complaint was filed alleging that the District's reduction to part time status of Complainant Palmer's teaching contract was violative of Article VIII, Section A of the labor contract, thereby also violating Section 111.70(3)(a)5 of MERA. 3/

POSITION OF COMPLAINANT ASSOCIATION:

Complainant Association contends that the reduction of Complainant Palmer's teaching contract from full time to part time is subject to the standard contained in Article VIII(A) of the contract, which provision takes precedence over the District's rights expressed in Article IV. Therefore, the District must show that it had a "good and sufficient reason" for reducing Complainant Palmer's contract, because that action resulted in a reduction in his rank and compensation. The District failed to satisfy said standard, since it did not establish a relationship between the alleged insufficient enrollment in foreign language and the resulting need to reduce Complainant Palmer's teaching contract. The District also failed to justify the reassignment of work from Complainant Palmer to other teachers in order to provide those teachers, rather than Complainant Palmer, with full time contracts. Further, the junior high school foreign language program met its goal of stimulating interest in high school foreign language classes as evidenced by the large increase in enrollment for the 1980-81 school year in comparison to the 1979-80 school year enrollment. The District had never informed Complainant Palmer that said program was temporary in nature. In fact, the District had purchased textbooks for the program, and, the junior high principal had complimented Complainant Palmer on the program's success. Moreover, a survey of seventh graders revealed a majority would prefer to study Spanish, rather than music, in the eighth grade in the 1980-81 school year.

Thus, the District was unable to show any legitimate basis for reducing Complainant Palmer's contract. Rather, its action was an arbitrary undertaking which was designed to accomplish a reduction in its teaching staff. Because the District failed to adhere to the contractual requirements in reducing Complainant Palmer's contract, he should be reinstated to a full time teaching contract with full back pay.

POSITION OF THE DISTRICT:

The District asserts that its right to schedule and assign teaching duties, as specified in Article IV of the contract, is not limited either by the rest of the contract, or, by the statutes. Article VIII does not apply to Complainant Palmer's situation, because the reduction in his contract was not a disciplinary action. Rather, Complainant Palmer was given a reduced contract as a result of a lack of work. Consequently, the standard of "good and sufficient reason" is not applicable. However, even if said standard had applied, it was met. Complainant Palmer was not certified to teach sociology and had made no attempts to become certified prior to the nonrenewal deadline in 1980. Another teacher, who

- 3/ In its post-hearing brief Complainant Association stated that it had decided not to introduce any evidence at the hearing with respect to the allegation in its complaint that Complainant Palmer's teaching contract was reduced because of his resignation from his coaching positions. Accordingly, the Examiner makes no determination with respect thereto.