

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN RAPIDS EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case XXI
	:	No. 27461 MP-1193
SCHOOL DISTRICT OF WISCONSIN	:	Decision No. 18453-A
RAPIDS,	:	
	:	
Respondent.	:	
	:	

Appearances:

David B. Nance, Attorney at Law, 618 Division Street, Madison, Wisconsin 53704, for Complainant.
Melli, Shiels, Walker & Pease, Attorneys at Law, Suite 600 Insurance Building, 119 Monona Avenue, Madison, Wisconsin 53701, by James K. Ruhly, for Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Wisconsin Rapids Education Association having filed a complaint with the Wisconsin Employment Relations Commission on February 4, 1981 alleging that the School District of Wisconsin Rapids had committed a prohibited practice within the meaning of the Municipal Employment Relations Act (MERA); and the Commission having appointed Douglas Knudson, a member of its staff, to act as Examiner and to make Findings of Fact, Conclusions of Law and Order pursuant to Section 111.07(5), Stats.; and hearing on said complaint having been held before the Examiner in Wisconsin Rapids, Wisconsin on April 29 and 30, 1981; and the parties having filed briefs by July 27, 1981; and the Examiner, having considered the evidence and the arguments of the parties, makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Wisconsin Rapids Education Association, herein Association, is a labor organization and is the exclusive collective bargaining representative of all contract teaching employes, guidance personnel, librarians, special teachers and teaching principals (50% or more of time teaching) in the Wisconsin Rapids School District, exclusive of supervisory, managerial and confidential employes; and, that the Association has its offices at Central Wisconsin UniServ Council, 2805 Emery Drive, P.O. Box 1606, Wausau, Wisconsin 54401.

2. That the School District of Wisconsin Rapids, herein District, is a municipal employer and has its offices at 510 Peach Street, Wisconsin Rapids, Wisconsin 54494.

3. That, since August of 1969, the District and the Association have been parties to a succession of collective bargaining agreements, herein contract, covering the employes in the aforesaid unit, including the contract relevant herein, which covered the time period of July 1, 1978 through June 30, 1980; and, that said contract contained, inter alia, the following provisions:

Section 202 - Management Rights.

Without limiting the generality of the foregoing Section 201, the Board's prerogatives shall include:

202.1 -- The management and operation of the school and the direction and arrangement of all the working forces in the system, including the right to hire, suspend, discharge or discipline for cause, or transfer employees.

. . .

Section 912 - Non Renewal of Teacher Contracts.

912.1 -- Any supervisory decision involving non-renewal of a teacher's contract shall be made only after at least two conferences, at least thirty (30) days apart, between the teacher and the supervisor. Any recommendation of consideration of non-renewal of a teacher's contract for cause shall be made by the superintendent to the Personnel Committee of the Board in closed session. Said recommendation shall be in writing and shall contain the reasons therefore. The superintendent shall give a copy of his recommendation to the affected teacher at or before the time that it is presented to the Committee. If consideration of non-renewal is deemed proper by the Personnel Committee of the Board, it shall issue to the teacher, on or before March 1, the required preliminary notice of consideration of non-renewal in writing, that the Board is considering non-renewal of the teacher's contract. The full Board shall not be notified of the consideration of non-renewal action or the reasons therefore if the teacher applies for a hearing before the Board within five (5) days as provided by statute. If the teacher does not desire a hearing before the Board, then the Board shall be notified of the reasons for consideration of non-renewal and it may issue a notice of non-renewal in the form set forth as Exhibit F. Otherwise the hearing shall be held prior to March 15, and the Board may, on or before March 15, take such action as it deems proper. The hearing shall be conducted in the following manner and according to the following procedure:

- (a) The teacher shall have ample time to prepare for the hearing; if the teacher receives notice of the recommendation of consideration of non-renewal from the superintendent at the same time as the Personnel Committee, then this shall be considered to be ample time;
- (b) The teacher shall have the right to have counsel;
- (c) The teacher shall be required to respond only to the stated charges;
- (d) No new charges shall be admissible;
- (e) The rules of evidence shall be those which are applicable to administrative proceedings in Wisconsin. Either party may make a transcript of the proceedings at their own expense. If both parties desire a transcript, they may share the cost of the same;
- (f) The hearing shall be conducted by a representative of the Board;
- (g) The teacher or his counsel shall have the right to cross examine witnesses;
- (h) The teacher shall have the right to call witnesses;
- (i) Conclusions must be adduced from evidence presented at the hearing.

Thereafter the teacher shall have all rights of hearing and appeal as provided by law.

. . .

Section 1003 - Arbitration.

1003.1 -- In the event the grievance is not settled in Step 4 and involves the interpretation or application of a specific provision of this Agreement, then either party may require the grievance to be submitted to arbitration by serving on the other party a written Notice of Request for Arbitration within ten (10) days of the meeting provided for in Section 1002.4 - Step 4.

1003.2 -- The following issues are specifically defined as being nonarbitrable:

- (a) Non-renewals of individual contracts;
- (b) The right of the Board to adopt policies and take action in accordance with those rights set forth in ARTICLE II, BOARD'S PREROGATIVES.

. . .

4. That Earl Juhl, herein Juhl, has been employed by the District since August of 1961 as an elementary art teacher and has been a municipal employee; that in the spring of 1964 the District placed Juhl on probation for the 1964-65 school year because of some difficulty in the handling of students; that during a conference on June 2, 1972 the District's Superintendent, C. Clausen, and the District's curriculum coordinator, C. Sund, 1/ criticized Juhl's performance as being sub-standard, warned Juhl about potential non-renewal, and, directed Juhl to submit a thoroughly revised teaching program by August 28, 1972; and, that Juhl did submit a revised teaching program to Clausen in August of 1971.

5. That, commencing with the 1972-73 school year the District employed John Davenport as an art teacher and as the Director of Art Education-Kindergarten through grade 12; that in the 1972-73 school year, Davenport began observing and evaluating Juhl's performance; and, that Davenport's written reports of his visits to Juhl's classroom during the 1972-73, 1973-74 and 1974-75 school years contained numerous criticisms and evaluated Juhl's performance as below average.

6. That on February 5, 1974, B. Schneider, a principal at one of the schools where Juhl then taught, had a conference with Juhl to discuss an incident; and, that during said conference Juhl accused Schneider of badgering him constantly, of picking on him, and, of not liking him.

7. That, during the 1975-76 school year, classroom observations of Juhl, which were followed by conferences, were performed by Principals Day, Hunger, Schneider and Belke; that Davenport participated in one observation with Belke; that in February of 1976 Schneider prepared a teacher evaluation report recommending the renewal of Juhl's contract; that in February of 1976 Belke prepared a teacher evaluation report with the recommendation that Juhl be placed on intensive supervision 2/ for the 1976-77 school year; and, that a report of a classroom visit on April 21, 1976 by Hunger contained numerous items referring to areas in which improvement could be made by Juhl, along with suggestions for improving his performance.

1/ Sund was the primary evaluator of Juhl from the beginning of the 1961-62 school year through the 1971-72 school year.

2/ The "intensive supervision" status was developed during the 1976-77 school year by a committee composed of both teachers and administrators, which committee developed the Teacher Evaluation Form and guidelines. Said status was designed to assist teachers experiencing difficulties to reach a satisfactory level of performance through monthly classroom visitations and conferences. The teacher was to be made aware of perceived deficiencies and when possible, was to be given suggestions for improving those deficiencies.

8. That, during the first part of the 1976-77 school year, Juhl's classroom was observed about eight times prior to December 1, 1976; that in February of 1977 Schneider completed a teacher evaluation report on Juhl in which she recommended both that Juhl's contract be renewed, and, that performance goals be set up for him; and, that shortly thereafter Juhl commenced a leave of absence for the remainder of the school year.

9. That in a teacher evaluation report prepared in February of 1978, Schneider recommended that Juhl be placed on intensive supervision; that Assistant Superintendent Wasson was responsible for setting up the intensive supervision program for Juhl; that in April 1978 a detailed intensive supervision schedule of monthly classroom observations and conferences involving Principals Hunger, Schneider and Schwendinger was established, with Davenport included in the conferences and acting as a resource person; that on May 8, 1978, Wasson, Hunger, Schneider, Schwendinger and Davenport met with Juhl and two Association representatives to discuss specific areas of concern relative to Juhl's performance, of which the major areas were implementation of the Conceptual Art curriculum, lesson plans, attitude toward teaching-enthusiasm, and, physical handling of children; that following said meeting, Davenport sent a memo to Juhl outlining certain expectations and suggestions for Juhl's consideration in developing classroom lesson plans; that said memo contained a copy of a teacher planning form which Juhl was to prepare on a weekly basis; and, that Juhl refused to prepare the teacher planning form on a weekly basis because other teachers prepared said form only on a monthly basis.

10. That, in a memo to Juhl in September, 1978, Hunger and Schwendinger outlined the intensive supervision program, specified the program was to systematically overcome the listed concerns with Juhl's performance over a two year period, expressed their expectation for significant improvement by Juhl in the 1978-79 and 1979-80 school years, and, stated that a decision would be made each February in regard to renewal, non-renewal or continued intensive supervision; that, in the course of the 1978-79 school year, Schneider was replaced by Davenport as an active member of the intensive team; and, that during the period of October through December 1978, Schwendinger, Hunger and Davenport met with Juhl on at least four occasions to discuss visitations they had made to Juhl's classroom, that written summaries of said meetings were given to Juhl, and, that at each meeting areas of both improvement and continued inadequacy were noted and suggestions were made to Juhl.

11. That in January 1979 Davenport's position became supervisory and he ceased to be a member of the bargaining unit; that on January 22, 1979 Schwendinger prepared a teacher evaluation report on Juhl wherein he recommended the renewal of Juhl's contract for the 1979-80 school year; that said report stated Juhl had made significant progress in the four areas of concern identified at the beginning of the 1978-79 school year, although he had not completely overcome the identified concerns, and therefore, the recommendation for renewal was conditioned on a continued improvement of Juhl's performance in the listed concerns so that he would reach a satisfactory level; that Schwendinger recommended a continued close monitoring of Juhl by the supervisory team; that Juhl did discuss said report with Schwendinger; and, that the supervisory team met with Juhl on January 25, 1979 to discuss their visits to Juhl's classroom during said month.

12. That, upon receiving reports in March, 1979, from Hunger and Schwendinger that they believed problems were recurring in Juhl's classroom, Davenport made two visits to Juhl's classroom in April, 1979, following which he met with Juhl to advise him of several concerns Davenport believed to exist in Juhl's teaching methods.

13. That Hunger, Schneider and Schwendinger were not employed by the District in the 1979-80 school year; that Sprise and Ellie were the principals of the schools in which Juhl taught during the 1979-80 school year; that Davenport continued to observe Juhl's classroom on a frequent basis during the 1979-80 school year; that in a conference with Juhl and two Association representatives, Olsen and Jorgensen, on October 1, 1979, Davenport expressed frustration over both Juhl's failure to admit to having teaching deficiencies and the lack of continuity in the individuals representing the Association; and, that in said conference,

Davenport also outlined numerous areas which he believed to represent deficiencies in Juhl's performance.

14. That Davenport observed Juhl's classroom on three occasions during October of 1979; and, that with the written summary of those visits, Davenport gave Juhl a document entitled "Technical Skills of Teaching", which Davenport felt related to Juhl's teaching problems.

15. That in December, 1979 Juhl's classes were observed on three occasions by Davenport and once each by Sprise and Ellie; that each of those individuals prepared written reports covering their respective visits, which they discussed with Juhl; and, that each of said reports specified several areas of concern over Juhl's performance.

16. That in a teacher evaluation report, which was presented to Juhl on February 4, 1980, Davenport recommended Juhl's non-renewal for the following reasons:

The inadequacies of teaching performance identified in the classroom visitation documentation 1979-80 have not been improved to a satisfactory level. These inadequacies are as follows:

1. Failure to execute constant and consistent improvements in noted classroom deficiencies.
2. Failure to accept and implement supervisory suggestions to improve repeatedly noted classroom deficiencies.
3. Failure to modify behaviors to remediate unsatisfactory classroom practices relating to clearly developing concepts in lesson presentations.
4. Failure to adequately recognize and accomodate, in methodology and content, differences in student's skill and concept development among various age levels.
5. Failure to develop effective lesson introductions which clarify the goals and objectives of the lesson for the students.
6. Failure to utilize effective and varied closure techniques to clarify the lesson's purpose and concepts for the learner.

After two years of intense assistance and help through visitations and conferencing, Mr. Juhl's classroom performance remains unsatisfactory. Therefore Mr. Juhl is being recommended for non-renewal.

17. That on February 13, 1980 Superintendent Lenk submitted to the Board's Personnel Committee, with a copy to Juhl, a written recommendation for Juhl's non-renewal; that on February 19, 1980 the Personnel Committee issued a preliminary notice of consideration of non-renewal to Juhl; that Juhl requested a private hearing before the Board, which hearing occurred on March 12 and 17, 1980; that on March 18, 1980 Lenk issued a notice of non-renewal to Juhl; that on April 18, 1980 Juhl filed a written grievance concerning his non-renewal; that said grievance was processed through the contractual grievance procedure and denied by the Board in June, 1980; that no demand for arbitration of Juhl's grievance was made; and, that the instant complaint was filed on February 4, 1981.

18. That Juhl received adequate warning that his performance was unsatisfactory and that non-renewal could occur.

19. That the District provided reasonable levels of constructive supervision to Juhl in attempting to assist him to reach a satisfactory level of performance.

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

CONCLUSIONS OF LAW

1. That the Association did not waive in the contract its statutory right to seek a review of non-renewal decisions by the District under Section 111.70(3)(a)5, Stats.

2. That the contractual cause standard does apply to non-renewal decisions by the District.

3. That District decisions, regarding the non-renewal of a teacher's contract, are not subject to the contractual grievance procedures, except for alleged violations in the contractual procedure for processing non-renewal recommendations.

4. That, since the contractual grievance procedure was not available to Complainant Association with respect to the allegations that by non-renewing Juhl without cause, Respondent District violated the collective bargaining agreement involved herein, and thereby violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act, the Examiner will assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of those allegations.

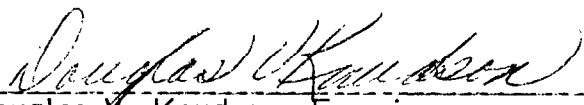
5. That, since Complainant Association failed to establish by a clear and satisfactory preponderance of the evidence that Respondent District lacked cause to non-renew Earl Juhl's contract, said action by Respondent District did not violate the collective bargaining agreement, and therefore, Respondent did not commit prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

IT IS ORDERED that the complaint filed herein be, and the same hereby is dismissed.

Dated at Madison, Wisconsin this 18th day of December, 1981.

By 
Douglas W. Knudson, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the District violated the terms of the contract by non-renewing Juhl without just cause, thereby violating Section 111.70(3)(a)5, Stats.

POSITION OF THE ASSOCIATION:

There is no claim of a violation of the procedural provisions of Section 912.2 of the contract. The contract precludes final and binding arbitration over the issue of cause for non-renewal decisions by the District. Therefore, it is appropriate for the Commission to exercise its jurisdiction over this matter.

Section 912.1 of the contract clearly establishes that non-renewals are governed by a "cause" standard. Arbitrators consistently have found no distinction between the terms cause and just cause. The cause standard is not limited to the recommendation of consideration of non-renewal. Rather, the actual non-renewal must meet the contractual standard of cause. The cause standard anticipates a review of the contested action by an independent third party. The exclusion of non-renewal decisions from the arbitration procedure did not also exclude such decisions from review by the Commission and/or courts.

The District did not have cause to non-renew Juhl for several reasons. First, Juhl was not expressly warned that his performance could result in non-renewal. Such an explicit warning is an important element of just cause. In the absence of any express warnings concerning possible non-renewal, and, based on his prior experience with the District, Juhl reasonably concluded that if his efforts failed to satisfy Davenport, then he again would be placed on intensive supervision. Juhl was not told either that the intensive supervision team felt he should remain on intensive supervision in 1979-80, or, that Davenport disagreed he had made significant progress in 1978-79. Ellie's use of the word average in her evaluation of Juhl indicated the existence of problems, but not severe deficiencies. Thus, Juhl was not fully appraised of the seriousness of his situation.

Secondly, Davenport provided inadequate supervision to Juhl because of his long-standing conviction that Juhl was a poor teacher who could not improve. Davenport failed to make practical, constructive and comprehensible suggestions for Juhl to use. Further, Davenport had decided, in early 1979, to non-renew Juhl, although he was not ready to do so at that time.

Finally, the record shows that in many respects Juhl was a successful teacher who worked well with other teachers. Moreover, Juhl did try to meet Davenport's concerns.

The Association requests a finding that the District violated the contract by non-renewing Juhl without cause, and, that an appropriate remedy be ordered.

POSITION OF THE DISTRICT:

There is no basis in the record to support the Association's allegation that cause should be interpreted to mean just cause. If the parties had intended such an interpretation, they could have said so in the contract.

Section 202.1 does not pertain to non-renewal. Rather, renewal is specifically dealt with in Section 912, which contains a different system of review than is established for discharge or discipline.

When the parties initially agreed to exclude non-renewal decisions from the arbitration procedure, violation of a master contract was not a prohibited practice. There is no evidence to show that a subsequent change in the statute was intended to provide a review procedure previously excluded by the parties.

The construction of Section 912.1 reveals that it was intended to provide a large measure of deference to the substantive decision of the District with third party review being limited only to procedural matters.

Regardless of the standard of review applied in this matter, the District's decision to non-renew Juhl must be upheld.

As early as June 1972, prior to Davenport's involvement, Juhl was aware that he was perceived as an unsatisfactory art teacher. Over the next several years, Juhl received a substantial amount of negative feedback from a number of observers/evaluators. In 1976 Juhl was placed on intensive supervision for one year. Two years later, a different evaluator placed Juhl on intensive supervision again under a two year program. At the end of the first year Juhl was told that continued improvement was necessary. Early in the second year Juhl was advised that he was slipping and that his failure to do better would not be tolerated. Throughout this time, Juhl received numerous written reports criticizing his performance. Juhl had no basis to expect to again be placed on intensive supervision, but rather, he knew or should have known that his continued employment was in jeopardy.

Many people spent numerous hours observing Juhl in the classroom and working with him. In fact, Juhl filed a grievance in the fall of 1979 contending that he was being observed too frequently. Davenport and the other observers/evaluators made many suggestions to Juhl in an effort to help him. Davenport arranged for Juhl to observe other teachers and for him to be observed by the other teachers. The record shows that the District fairly and reasonably determined that Juhl was not teaching consistently at a satisfactory level, despite persistent and constructive advice. The failure of those efforts can be attributed only to Juhl.

The District believes that it had cause to non-renew Juhl, and, that the complaint should be dismissed.

JURISDICTION:

The Commission has a long-standing policy of deferring disputes arising under a contract to the procedure set forth in the contract for the resolution of such disputes. This deferral policy does not prevent the Commission from exercising its jurisdiction under Section 111.70(3)(a)5, Stats., to determine whether a contract has been breached, once exhaustion of available contractual remedies has occurred. 3/ In the instant matter, Section 912.2 of the contract clearly and specifically exempts non-renewal decisions by the District from the grievance and binding arbitration procedures. In its post-hearing brief, the Association concurs with that conclusion. The District, while also agreeing with said conclusion, further believes such non-renewal decisions to be exempt from a review through a proceeding filed under Section 111.70(3)(a)5, Stats. There is no evidence in the record to establish that the parties ever discussed and/or agreed to such an exclusion. Section 111.70(3)(a)5, Stats. came into existence after the original agreement of the parties to exclude non-renewal decisions from the contractual grievance procedure. The Examiner concludes that the record fails to establish a clear and unmistakable waiver by the Association of its statutory right to enforce a contract. Therefore, the Examiner will assert the Commission's jurisdiction to determine the merits of the grievance concerning Juhl's non-renewal.

The Examiner rejects the District's argument that the cause standard does not apply to the District's decision on non-renewal, but instead applies only to the recommendation of consideration of non-renewal. Such an interpretation could result in a finding that, while the consideration for non-renewal was improper,

3/ Winter Joint School District No. 1 (17867-C) 5/81; Weyauwega Joint School District No. 2 (14373-B) 6/77.

the non-renewal would stand because the decision to non-renew could not be modified. Such a result is unreasonable under general standards of contract construction. Further, the Examiner is not persuaded that the District's argument accurately reflects the interpretation to be given the words "for cause" based on its placement in Section 912. Rather, the Examiner finds that such words apply to the act of non-renewal of a teacher's contract, including, but not limited to, the preliminary recommendations of consideration of non-renewal.

MERITS:

The Association's reasons, for asserting that Juhl's non-renewal lacked cause, can be grouped into two general areas: 1) the lack of proper warning of non-renewal; and, 2) the quality of supervision provided to him.

In a memorandum dated September 21, 1978, the intensive supervision process was explained to Juhl. Although said memorandum expressed the supervisory team's intent to overcome Juhl's problems over a two year period, it was also specified that a decision would be made each February in regards to renewal, non-renewal or continued intensive supervision. In January, 1979 Schwendinger recommended the renewal of Juhl's contract for the 1979-80 school year. Schwendinger's comments, contained therein, specified that Juhl had made significant progress, but had not completely overcome the identified concerns. Schwendinger further stated that he recommended renewal on the basis that Juhl's performance continued to improve to a satisfactory level and that his performance be closely monitored. Such comments should have left no doubt in Juhl's mind that, while he had made progress in protecting his employment, his continued employment was still of a precarious nature, as evidenced by the statement that his performance had to continue to improve to become satisfactory.

In Davenport's letter dated October 1, 1979 there were several comments which should have alerted Juhl to the fact that his continued employment was still in jeopardy. Said letter outlined areas of Juhl's behavior which were serious concerns and then noted a recurrence of old difficulties and an inconsistency in improvements. Other statements in the letter, such as, "The supervisors can no longer tolerate unsatisfactory teacher behavior as it relates to the curriculum and its implementation", and, "At this point, Mr. Juhl must understand the seriousness of his deficiencies", should have heightened Juhl's awareness of how unhappy the District was with his performance.

Subsequent visitation reports identified continued areas of concern. A November 28, 1979 report referred to "Juhl's unsatisfactory teaching behaviors".

Faced with such a background, Juhl should have been aware that his situation was serious and that his continued employment was in question. Juhl's testimony reveals that he did possess such an awareness, although he also asserted an expectation of being placed back on intensive supervision, rather than being non-renewed as a result of his performance. Intensive supervision was only one of the annual options included in Schwendinger's letter of September 21, 1978. The options also included non-renewal. As previously noted, the numerous references in Davenport's visitation reports in the fall of 1979 to Juhl's unsatisfactory performance should have caused Juhl to realize that non-renewal was a definite possibility. The Examiner, contrary to the Association, does not believe it was realistic of Juhl to expect to again be placed on intensive supervision for the third time in five years if his performance failed to become satisfactory. Although Juhl had been renewed without intensive supervision for the 1979-80 school year, such renewal clearly was premised on a continued improvement in his performance. In contrast, the evaluation report in February, 1977, which recommended Juhl's renewal following a year of intensive supervision, contained few additional comments and a brief recommendation for the establishment of performance goals. Clearly, Juhl should have seen that in February, 1979 his situation was receiving much more attention and was considered far more serious than it had been in February, 1977.

Accordingly, it is concluded that Juhl received sufficient warning that his performance was so unsatisfactory as to cause his continued employment to be in jeopardy.

Juhl's own testimony refutes the Association's contention that Davenport was unable or unwilling to provide Juhl with understandable examples to use in improving his performance. Juhl testified that he was able to understand some of Davenport's suggestions, although he sometimes was hard to follow, and further, that some of Davenport's ideas were very good.

Two Association representatives met with Davenport and Juhl in October and December, 1979 when the classroom visitation reports were reviewed. Said representatives testified that they had difficulty understanding Davenport's comments, and, that he refused to provide specific examples for Juhl to use. However, a review of the visitation reports reveals that the reports contained numerous specific suggestions and examples for Juhl to follow. Even many of Davenport's criticisms contained in those reports should have been instructive to Juhl. Thus, it is concluded that Davenport's supervision of Juhl was adequate.

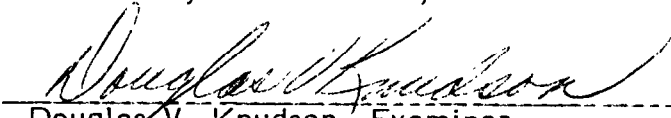
The Association's allegation, that all of Juhl's worst evaluations were made by Davenport, ignores the following facts: that in 1978 Juhl was recommended for intensive supervision by Schneider, not Davenport; that in 1976 it was Belke not Davenport, who recommended Juhl be placed on intensive supervision; and, that in June, 1972, prior to Davenport's employment with the District, Juhl's performance was severely criticized and he was warned that the need for repeated transfers could result in non-renewal. Further, the visitation reports of both Ellie and Sprise in December, 1979 contained criticisms of Juhl's performance. Thus, it is clear that Davenport was not the only individual to find Juhl's performance to be unsatisfactory.

Although Davenport may have long felt that Juhl was a poor teacher, the record does not support a finding that as a result of such a feeling, Davenport failed to provide adequate and objective supervision to Juhl. In addition to the preceding discussion relevant to this point, it should be noted that in the spring of 1978 Davenport arranged for Juhl and another elementary art teacher to take turns observing each other's classes for a day, and also, for Juhl to observe a different elementary art teacher's classes. Additionally, in the spring of 1979 Davenport arranged for an elementary art teacher to spend a half-day instructing Juhl in the use of the ceramics kiln. Moreover, in the fall of 1979 Davenport prepared a lesson plan and then taught a class based on said lesson plan with Juhl observing the class.

Undoubtedly Juhl did make efforts to improve his performance. However, he was not successful in accomplishing sufficient progress to warrant the renewal of his contract. Further, it is concluded that Juhl failed to acknowledge the extent of his teaching deficiencies, as evidenced by his testimony that he thought he was a good teacher and could survive the 1979-80 situation. Of a similar nature was Juhl's refusal to follow Davenport's suggestions in May of 1978 that Juhl prepare the teacher planning form on a weekly basis.

The Examiner finds that the District made persistent and extensive efforts to improve Juhl's performance. In spite of those efforts, Juhl was unable to consistently teach at a satisfactory level. Further, Juhl was, or should have been, aware of the definite possibility that his unsatisfactory performance could result in the non-renewal of his contract. Therefore, the District's non-renewal of Juhl's contract is found to have been for cause and did not violate the contract.

Dated at Madison, Wisconsin this 18th day of December, 1981.

By 
Douglas V. Knudson, Examiner