

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
BOSCOBEL EDUCATION ASSOCIATION  
and LUDLOW WALLACE,

Complainants,

vs.

BOSCOBEL AREA SCHOOL DISTRICT,

Respondent.  
-----

Case XV  
No. 28423 MP-1243  
Decision No. 18891-B

Appearances:

Mr. Gordon E. McQuillen, Attorney at Law, Wisconsin Education Association Council, 101 West Beltline Highway, P.O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Complainants.  
Kramer Law Office, 1038 Lincoln Avenue, Fennimore, Wisconsin 53809 by Mr. Thomas L. Jones III, appearing on behalf of Respondent.

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

Examiner Dennis P. McGilligan, having on July 19, 1982 issued his Findings of Fact, Conclusions of Law and Order in the aforesaid matter wherein he concluded that Respondent had committed by certain conduct a prohibited practice within the meaning of Secs. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act and also found that certain other conduct of Respondent did not constitute a prohibited practice within the meaning of Sec. 111.70(3)(a)1, 4 and 5 of the Municipal Employment Relations Act; and the Complainant having on August 6, 1982 filed a petition for review by the Commission of said decision pursuant to Sec. 111.07(5), Stats.; and the parties having filed briefs in the matter, the last of which was received on October 12, 1982; and the Commission having reviewed the record in the matter, including the Petition for Review and the briefs filed in support of and in opposition thereto, and being satisfied that the Examiner's decision should be affirmed.

NOW, THEREFORE, it is

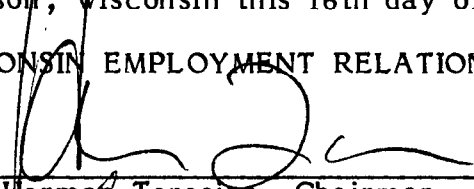
ORDERED 1/

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

Given under our hands and seal at the City of  
Madison, Wisconsin this 16th day of December, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by  
(Continued on Page Two)

following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

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

BACKGROUND

On February 9, 1981, Complainant Ludlow Wallace, who had been employed by the Boscobel Area School District for fifteen years, received a notice that Respondent was considering the non-renewal of his teaching contract. Said notice was issued pursuant to Sec. 118.22, Wis. Stats. and Sec. B(2), Article VI of the parties' collective bargaining agreement and informed Wallace of his statutory right to request a private conference to discuss the proposed non-renewal. Wallace requested the private conference. Prior to the private conference, Complainant, in three separate requests, attempted to obtain from Respondents the reasons for its proposed non-renewal. Two of the requests for information were stated in letters sent by Complainant to Respondent. A third attempt took place in a meeting in Superintendent Phillip Mentink's office with the Superintendent, Wallace and a representative of the Association present. At this meeting, Complainants were told that they would be given the reasons for the non-renewal at the private conference but that they could review Wallace's personnel file which contained three evaluation reports and that the District's reasons for non-renewal would not include reasons not addressed in those evaluations.

Wallace requested a private conference which took place on March 11, 1981, and during the course of the conference Wallace was advised that in addition to Paul Bierbrauer, UniServ Director, he could have one additional representative. Bierbrauer, on Wallace's behalf, objected, stating that Wallace wanted Bierbrauer and three others to be present. Bierbrauer further stated that the additional two representatives, who perform certain responsibilities within the Association, would not be actively participating in the hearing.

At the conference Wallace was given a list of reasons for his non-renewal. These reasons were discussed by those present with Wallace and his two representatives attempting to persuade Respondent's School Board to renew Wallace's contract. Respondent's Board concluded the conference by deciding to non-renew Wallace's teaching contract.

On March 18, 1981, Complainant filed a grievance over the non-renewal of his teaching contract. On April 28, 1981, Complainant requested that the grievance be heard by Respondent pursuant to level three of the grievance procedure. The grievance hearing took place on May 26, 1981. Prior to the grievance hearing, Complainant's attorney informed Respondent, in a letter to Superintendent Mentink, of the possibility that other representatives of the Association might attend the grievance hearing. Respondent's attorney responded by indicating that Wallace could have no more than two Association representatives present at the hearing in addition to his attorney unless Complainant Wallace could justify having more than two representatives.

Both at the non-renewal conference and during the processing of the grievance, Complainants objected to Respondent's limitation on the number of representatives who could be present, but agreed to allow the sessions to continue.

On June 2, 1981, Respondent denied the grievance; the parties had fully exhausted the grievance procedure which procedure does not provide for arbitration.

In its complaint initiating this proceeding, Complainant alleged Respondent committed prohibited practices by:

- a. Non-renewal of Wallace's teaching contract;
- b. Limitation on the number of representatives at the private conference and the grievance proceeding; and
- c. Refusal to supply Wallace with information he requested regarding the reasons for the non-renewal of his teaching contract.

## THE EXAMINER'S DECISION

The Examiner determined that the denial of requested information as to the reasons for the non-renewal of Wallace's teaching contract was a prohibited practice under Sec. 111.70(3)(a)1 and 4, Stats. Further, the Examiner found Respondent's limitation on the number of representatives accompanying Wallace at the private conference and grievance proceeding was not a prohibited practice within the meaning of Sec. 111.70(3)(a)1, 4 and 5, Stats. Finally, the Examiner concluded the non-renewal of Wallace's teaching contract did not violate any provision of the applicable collective bargaining agreement between the parties and therefore in that connection Respondent did not commit a prohibited practice in violation of Sec. 111.70(3)(a)5, Stats.

The Examiner found that the Commission's decision in Joint School District No. 10, City of Horicon, 2/ was applicable to the facts of the instant dispute where the Respondent failed, prior to the private conference, to provide information concerning the reasons for its decision to non-renew Wallace's teaching contract. The Examiner found that despite making his personnel file available to Wallace, Respondent nonetheless committed a prohibited practice because "The evaluation reports do not clearly indicate the reason for Wallace's non-renewal. To the contrary, said reports are often inconclusive and contradictory as they relate to the basis for Wallace's non-renewal."

However, the Examiner also found non-meritorious the Complainants' contention that Respondent's failure to provide the information (the list of reasons for non-renewal) was a violation of Articles XIV 3/ and XX 4/ of the collective bargaining agreement. In those respects, the Examiner in interpreting the collective bargaining agreement, held that Wallace was given his evaluation reports at the time of his evaluations, and he received a list of reasons for his non-renewal at the private conference. Also the Examiner found that "the agreement does not state when evaluations or criticisms used for non-renewal of a teacher should be given to the teacher." Further the Examiner in dismissing Complainants' contention that Article XX had been violated, stated "The Complainants argue that although this contract provision refers to grievances, it should be applied to requests for information in cases of an opposed non-renewal, as in the instant case. However, there is nothing in the contract, or in the record concerning past practice which would support the finding regarding same, and in the absence of persuasive evidence to the contrary, the Examiner rejects this claim of the Complainants."

As to limiting the number of representatives that Wallace could have, both at the private conference and his grievance proceeding, the Examiner concluded that the Respondent did not commit a prohibited practice under Sec. 111.70(3)(a)1, 4 or 5, Stats. The Examiner also held that Sec. 118.22, Stats., which is

- 
- 2/ In Joint School District No. 10, City of Horicon, 13765-B (1/78), the District refused to permit the representative of a labor organization to examine the personnel file of a teacher in order to acquire information for a possible grievance to be filed with respect to the teacher's non-renewal. The Commission held the District's "failure to furnish the information requested by (the main representative) not only interfered with (grievant's) right to be represented by the Association with respect to his non-renewal, but also such failure constituted a refusal to bargain with the Association in violation of Sec. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act since such information was necessary for the Association to properly represent (the grievant) throughout the contractual grievance procedure."
  - 3/ Article XIV entitled Teacher Evaluation provides, in part: "Evaluation or criticisms which may be used for dismissal or non-renewal of a teacher shall be in writing and a copy shall be given to the teacher."
  - 4/ Article XX entitled Professional Rights and Responsibilities Procedure (Grievances) states, in part: "The Board agrees to make available to the complainant and his representative all pertinent information not privileged under law, in its possession or control and which is relevant to the issues raised by the complaint."

incorporated into the parties' collective bargaining agreement by reference, "does not limit the right to non-renewal; it merely establishes certain procedural requirements that a school board is required to exercise when it non-renews a teacher . . . The record indicates that the Respondent followed these procedure requirements in the instant case; therefore, the District's actions are lawful unless Complainants can point to some other restrictions on Respondent's behavior." The Examiner found that the record and review of the case law support the conclusion that the statutory protections were procedural and that in the case at bar the Complainant had not been denied any of his procedural rights.

The Examiner rejected Complainants' contention that in limiting the number of representatives Wallace could have accompanying him at the private conference the conference lacked the requisite meaningfulness as required in Faust v. Ladysmith-Hawkins School System, 88 Wis. 2d 626, 277 N.W. 2d 303 (1979). The Examiner held "in the instant case, the Respondent allowed Wallace to be represented by two people at the private conference, his UniServ director and one other person of Wallace's own choosing. The Respondent also gave Wallace and his representatives every opportunity to participate in said conference by permitting them to present any material they desired on Wallace's behalf and by permitting them to ask questions concerning the proposed non-renewal. There is no persuasive evidence in the record that the private conference was a "sham" or little more than "window dressing." The Examiner concluded that the record supports the finding that the private conference was fair.

#### PETITION FOR REVIEW

Complainants' Petition for Review alleges that the Examiner misinterpreted the collective bargaining agreement of the parties, (more specifically, Section 118.22, Stats., which is incorporated into the agreement and Article XX), in finding that agreement limited the number of persons who could accompany Wallace to his private conference and grievance meeting regarding his non-renewal. Complainants contend that Respondent's refusal to provide Wallace with the reasons for the non-renewal of his teaching contract materially deprived him of his right to effective representation. Lack of effective representation, Complainants' argue, must negate the result, namely, the non-renewal of Wallace's teaching contract. Complainants posit that the Examiner erred when he concluded that Respondent did not violate any provision of a collective bargaining agreement in non-renewing Wallace's teaching contract. In support of this position, Complainants suggest that there was evidence in the record that Wallace's non-renewal was not in conformity with applicable law which was incorporated into the collective bargaining agreement. According to Complainants, this resulted in a violation of a collective bargaining agreement which constitutes a prohibited practice in violation of Sec. 111.70(3)(a)5, Stats.

Further, Complainants argue that Respondent relied on parental criticisms in non-renewing Wallace and that said criticisms had not heretofore been provided to Wallace as required by the parties' agreement. Based on the aforesaid conduct, the Complainants further allege that Wallace was denied a meaningful conference. It is argued that the Examiner ignored clear evidence that factors not dealt within the formal evaluations led to the decision to non-renew Wallace's teaching contract.

Finally, Complainants argue that although the Examiner's remedy recognized that advance notice of reasons must be given upon request in all future instances of non-renewal, it gives no relief to Wallace who felt the full impact of the prohibited practice committed by Respondent in its refusal to provide him with information pertaining to his non-renewal.

Respondent contends the Examiner's third Conclusion of Law was proper wherein he found that the limitation placed on the number of representatives at the private conference and at the grievance proceeding was not a prohibited practice under Sec. 111.70, Stats. Respondent also concurs with the Examiner's fourth Conclusion of Law where it was found that the non-renewal of Wallace's teaching contract was not a violation of the applicable collective bargaining agreement since the private conference was meaningful and because the decision to non-renewal was not made in bad faith. Finally, the Respondent posits that the Examiner's remedy was adequate and proper since as long as the procedure requirements of Sec. 118.22, Stats. were met, the decision to non-renewal was properly made.

## DISCUSSION

- I. The District did not violate Wallace's rights under the MERA by limiting the number of representatives Wallace could have at his private conference and grievance meeting.

- A. The Private Conference

The Association contends that the Examiner erred by failing to conclude that the District deprived Wallace of his MERA right to representation, and thereby committed independent violations of Sec. 111.70(3)(a)1 and/or (3)(a)4, Stats., by limiting to two the number of representatives Wallace was permitted to have at the private non-renewal conference. In that regard, we affirm the Examiner's conclusion that there was no such violation of MERA committed in these circumstances, but we do not join in the examiner's statement of rationale in that regard. Rather, we state our rationale in that regard as follows.

In our view, the nature of the right to representation afforded by MERA in any given management-employee interaction depends on the purposes for which the interaction is occurring. 5/ In the case of the private non-renewal conference, the purpose is to develop facts and arguments bearing on the Board's decision whether to go through with the contemplated non-renewal and from the employee's point of view to place the employee in the best possible light in that regard. The employee is entitled to representatives sufficient in number to reasonably provide the employee with effective representation in the circumstances. Two representatives may well suffice for that purpose, and in our opinion the two representatives Wallace had here did in fact suffice for that purpose as this case turned out.

To be sure, a preferable employer approach if it feels that a limit on the number of representatives present at such a conference is necessary would have been to impose a limit of two but to offer to reconsider that limit in response to any justifications the Union might offer for having a greater number.

Here, the District imposed its limit of two in a matter-of-fact fashion and without inviting justifications of a larger number by the Association. Yet when it did so, the Wallace representative responded only that one of the representatives was the president of the Association and the other two were members of the Association's Professional Rights and Responsibilities Committee; Wallace and his representatives offered no additional justification for the presence of those individuals as related to the effectiveness of representation of Wallace in the matter. Indeed Bierbrauer's response implied, if anything, that the representation of Wallace would be unaffected by the limitation on number of representatives when he stated that none of the three representatives besides Bierbrauer would "actively participate" in the conference. In any event, we are persuaded that by limiting Wallace to Bierbrauer and one other representative, in the absence of any showing by the Union why a larger number would provide a more effective representation, the District did not violate Wallace's MERA right to representation.

Complainants also contend that the Examiner misinterpreted the agreement when he concluded that Respondent did not violate same so as to commit a prohibited practice, within the meaning of Sec. 111.70(2)(a)5, Stats., by limiting the number of representatives Wallace could have accompanying him at the private conference.

Petitioners contend that since Sec. 118.22, Stats., is incorporated into the parties' collective bargaining agreement, the procedural safeguards contained therein are applicable and Wallace, therefore, was entitled to his choice and desired number of representatives. The Commission rejects said contention and agrees with the Examiner that Sec. 118.22 only establishes certain procedural protections such as a right to a preliminary notice of non-renewal and to a private conference which were afforded Wallace by the District in this case. Sec. 118.22 requires that a meaningful conference be provided and we conclude, for reasons discussed hereinafter, as did the Examiner, that a conference meeting the statutory requirements was provided.

---

5/ See City of Milwaukee, 14873-B (8/80).

However, we reject the Examiner's rationale that because there is nothing in the agreement that requires that a certain number of representatives attend the private conference, it follows that the Board has the unilateral right to limit the number of representatives. As noted elsewhere in this decision, the right to representation afforded by MERA in any given management-employee interaction depends on the purpose for which the interaction occurs. Hence, the mere absence of a specific agreement guarantee of a particular number of private conference representatives does not amount to a waiver of the rights that MERA generally provides as regards the interaction involved.

#### B. The Grievance Meeting

With respect to whether the District's limiting the number of representatives Wallace could have at the grievance meeting constituted a prohibited practice, the record indicates that had the Association given the Board justification for having more representatives at the meeting than the number requested by the Association, the Board might well have expanded the number of representatives who could accompany Wallace during the processing of the grievance; however, the Association failed to offer any justification for additional representatives to appear. There is insufficient evidence in the record to find that the limits placed on the number of representatives Wallace could have accompanying him in any way resulted in his being ineffectively represented. The record is clear that at the grievance proceedings the additional individuals were going to be observers or provide Wallace with moral support rather than actively participate in representing him. The record supports the Examiner's findings that the District's decision in this regard did not harm Wallace's position concerning his grievance or his non-renewal and that the District's conduct did not constitute a violation of Sec. 111.70(3)(a)1, Stats.

Further, we affirm the Examiner's conclusion that Respondent, by limiting the number of persons who could accompany Wallace to his grievance meeting concerning his non-renewal as discussed above, did not violate the parties' collective bargaining agreement. The language of the agreement itself refers to "representative" in the singular for the grievance hearing step involved. On that basis alone it could be concluded--as the Examiner did--that Wallace was contractually entitled to only one representative, such that the District's limitation was not violative of the agreement. We would also reach that conclusion if the contractual requirements were not construed to limit grievant to a singular representative. For, in such circumstances, the District would, in our view, be required to permit the grievant a number of representatives that is reasonable in relation to the purposes of the grievance hearing. 6/ The District's initial limitation to two Association representatives plus Wallace's attorney and such additional representatives as Wallace could justify was, in our view, reasonable in the circumstances.

Based on the foregoing, then, the Commission concurs with the Examiner that in the circumstances of this case, the Respondent, by limiting the number of representatives at the grievance hearing, did not violate the agreement or MERA.

#### II. The District did not violate Wallace's rights under the MERA by its non-renewal of his teaching contract.

##### A. The District did not violate Wallace's rights under MERA by the manner it provided Wallace with the information relating to his non-renewal and Wallace was not denied a meaningful conference.

Complainants contend that due to Respondent's refusal to provide information prior to the private conference relating to the reasons for Wallace's non-renewal, it logically must follow that Wallace was materially deprived of his right to effective representation.

---

6/ In reaching said conclusion we reject that part of the Examiner's rationale which states, "Nor is there anything in the rest of said contractual provision which restricts the Board's authority to limit the number of Association representatives appearing before it," suggesting that without a contractual right to a given number of representatives the Board has the unfettered right to limit the number of representatives.

In discussing the sufficiency of the access to his evaluation reports as meeting the duty Respondents had in providing Complainant for the reasons for the non-renewal, the Examiner found that based solely on these evaluations "it was difficult, if not impossible" for Complainants to gather persuasive evidence to answer Respondent's allegations of Wallace's teaching deficiencies." Although recognizing these deficiencies, the Examiner concluded that the circumstances surrounding the hearing were nonetheless fair and that Wallace was not denied effective representation.

Although the Commission concurs with the Examiner's Conclusion of Law that the District, by denying Wallace certain information prior to his private conference, interfered with his rights under MERA, the Commission does not agree with the Examiner's rationale that under the facts and circumstances herein, it was difficult, if not impossible, for Complainants to gather persuasive evidence to answer Respondent's allegation of Wallace's teaching deficiencies.

Initially, it should be pointed out that of the six reasons for Wallace's non-renewal, three of the reasons were criteria right from Wallace's most recent evaluation report, (which Wallace had access to at all times), in which he was rated as "needs to be improved." The remaining three reasons in one way or another related to his relationship or contact with students. It was in this area that Wallace was specifically informed by the superintendent in his previous evaluation report in May 1980, that "unless there is a dramatic improvement, I will be recommending non-renewal during the 1980-81 school year." Such warning was the result of the following evaluation.

You have to work harder on your relationship with students.  
They are not working for you. I am concerned because of what  
we consider good students are having difficulty in your class.  
Still too many teacher-student conflicts.

Even though Wallace's most recent evaluation report indicates progress in these areas, at the time of his notice of non-renewal he had reason to believe that his relationship with students generally would be one of the reasons for his contemplated non-renewal, especially since Wallace was told that the basis for his non-renewal was contained in his personnel file.

While the Board had an obligation to provide the reasons for non-renewal upon request, and while its refusal to do so in a direct and succinct form made it more difficult for Wallace to prepare himself for the hearing, the above-noted circumstances persuade the Commission that it was not impossible for Wallace to have prepared for the hearing. Furthermore, at no time did Wallace or the Association at the March 11 hearing indicate that they could not adequately respond to the reasons given, nor did they ask for a postponement to adequately prepare. Additionally, the record indicates that there was no attempt to call witnesses. Finally, Complainants discussed the reasons for the non-renewal and presented defenses for said reasons. Consequently, the Commission concludes that Wallace was not prejudiced by Respondent's conduct in this regard. While the Commission affirms the Examiner's conclusions that the District committed a prohibited practice by not providing the information sought by Wallace pertaining to his non-renewal, the Commission also finds that based upon the above discussion, Wallace did have a "meaningful" conference.

Complainants alleged that the Respondent violated Article XIV of the collective bargaining agreement when it failed to provide, prior to the private conference, the reasons for Wallace's non-renewal. The Petitioner argues that while it is true that the District provided Wallace with copies of his evaluations, it is equally true that the District knew "of alleged 'criticisms' from parents and others, relied on those, in part, when recommending Wallace's non-renewal, but never provided Wallace with the substance of those criticisms nor an opportunity to refute them." The Commission, however, notes that while the District has alleged that it did not provide Wallace with the actual complaints of named parents or students, the District did advise Wallace, in writing, that " . . . we have been receiving complaints from students and parents that you are not necessarily treating all students in the same manner. I must advise you that you should not accuse students of something unless you have the facts." Said written notice was placed in Wallace's personnel file. At no time did Wallace request the names of the parents or students or the exact contents of this criticism. Under said facts, the Commission agrees that the Examiner properly found that the Respondent did not violate the parties' labor agreement by giving Wallace a list of the reasons for his non-renewal at the private conference.



B. The District did not conduct the private conference in bad faith.

The Petitioner contends that the Examiner ignored uncontroverted evidence demonstrating that the private conference itself was conducted in bad faith. In this regard it is argued that at the very beginning the Board's arbitrary policy on limiting Wallace's number of representatives illustrates the lack of good faith on the part of the Board. Further, it is argued that the ordinary presumption of good faith was seriously undermined in a number of other respects, related to the conduct of the hearing, 7/ as cited and argued by the Petitioner in its brief. The Commission has reviewed the arguments and record evidence and is not persuaded by the reasons advanced by the Petitioner to the effect that the Board acted in bad faith in this matter.

C. The District did not breach the labor agreement by its non-renewal of Wallace's teaching contract.

Complainants argue that Respondent breached the parties' collective bargaining agreement when it non-renewed Wallace. A review of the record certainly reveals that the parties' contract does not contain any substantive standard which the Respondent was obligated to meet when it non-renewed Wallace. In this regard the Commission agrees with the Examiner's finding that " . . . said provision Art. 11 plainly states that Respondent's authority to non-renew, for example, is unfettered except as specifically and expressly limited by the agreement." Since Respondent was not obligated to meet any substantive contractual standard when it non-renewed Wallace, the Complainant's contention that Respondent breached the contract when it non-renewed Wallace has been rejected. Furthermore, the Examiner correctly held that Sec. 118.22, Stats., which was incorporated by the parties in their labor agreement, "merely establishes certain procedural requirements of a school board in exercising its right to non-renew a teacher," and that a teacher under Sec. 118.22, Stats., is entitled to a meaningful conference. The record supports the Examiner's finding that the Respondent followed the necessary procedural requirements in the instant case and that Wallace was provided a meaningful conference.

---

7/ Specifically the Union asserted the following:

(a) the members of the Board had heard reasons for the non-renewal which were never provided to Wallace;

(b) the Board allowed the Superintendent to direct some of the answers of the Principal, thereby impeding a free discussion of the non-renewal reasons;

(c) as noted, the Board refused to allow certain Association representatives to attend the private conference as potential witnesses in Wallace's behalf;

(d) the Board allowed the Superintendent to pursue a course as the District's advocate, even though the Board was meeting, in essence, to review the recommendations of the Superintendent;

(e) the Board allowed its Superintendent and Principal to remain in the closed session of the Board of Education after the end of the private conference, again where the Board's role at that time was essentially to act on the administrators' recommendation of non-renewal;

(f) as will be explored more thoroughly below, the Board heard evidence from Principal Larsen that there were certain parental complaints regarding Wallace's competency, but at no time attempted to find out what those complaints were or whether there was any validity to those complaints;

(g) the Association was unable, because of the lack of advanced reasons, to present the sort of defense to non-renewal that its representative, Paul Bierbrauer, testified ordinarily would have been presented.

D. The remedy ordered by the Examiner was appropriate under the circumstances.

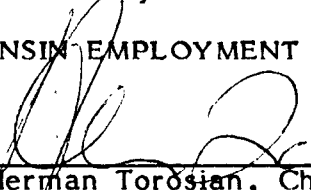
Complainants argue that the relief awarded by the Examiner was insufficient as it did nothing to remedy the harm done to Wallace. The Commission concludes, however, that the Examiner's remedy was sufficient in view of the lack of a substantive non-renewal standard in the agreement, and the fact that Wallace was not prejudiced by Respondent's conduct and inasmuch as the Commission has found that Wallace had a "meaningful" conference.

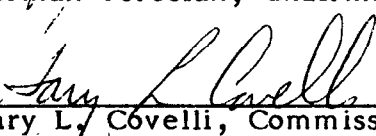
In sum, the Commission concludes that the Examiner properly interpreted and applied the agreement and properly remedied the procedural violation thereof that he found the District committed. Further, on the facts and circumstances in the case at bar, the record supports the Examiner's determination that Respondent did not commit a prohibited practice by its limitation on the number of representatives Wallace could have accompanying him at the private conference or grievance meeting or by its non-renewal of Wallace's teaching contract. Consequently the Examiner's Findings of Fact, Conclusions of Law and Order in the instant matter have been affirmed.


Dated at Madison, Wisconsin this 16th day of December, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner