

BEFORE THE
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GREEN BAY EDUCATION ASSOCIATION
and JENNEL WHITMORE,

Complainants,

vs

GREEN BAY AREA PUBLIC SCHOOLS
and DONALD BUNKER,

Respondents.

Case 90

No. 35740 MP-1775

Dec. No. 23039-B

Appearances:

Kelly, Haus & Katz, Attorneys at Law, by Mr. Robert Kelly, 121 East Wilson Street, Madison, WI 53703-3422, appearing on behalf of the Complainants.

Mr. Thomas Kwiatkowski, Staff Attorney, Green Bay Area Public Schools, P.O. Box 1387, Green Bay, WI 54305, appearing on behalf of the Respondents.

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Green Bay Education Association and Jennel Whitmore having, on October 8, 1985, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Green Bay Area Public Schools and Donald Bunker had committed prohibited practices within the meaning of Sec. 111.70(3)(a)(1) and (3) of the Municipal Employment Relations Act; and the Commission having appointed Raleigh Jones, a member of its staff, to act as Examiner as provided in Sec. 111.70(4)(a) and Sec. 111.07 of the Wisconsin Statutes; and a hearing having been scheduled for January 17, 1985, at Green Bay, Wisconsin; and prior to going on the record, the parties having reached a settlement regarding the above-noted complaint and requested the Examiner to issue the following:

STIPULATED FINDINGS OF FACT

1. The Complainant, Green Bay Education Association (hereinafter referred to as the Association), whose post office address is 1960 August Street, Green Bay, Wisconsin 54302, is a labor organization as defined in Section 111.70(1) Wis. Stats. and at all times pertinent hereto was the exclusive collective bargaining representative for ". . . all regular full-time, regular part-time certificated personnel. . .", employed by the Green Bay Area Public Schools (hereinafter referred to as the District).

2. The Complainant, Jennel Whitmore, is a certified teacher who has been employed by the District since at least the beginning of the 1983-84 school year.

3. The Respondent District is a school district organized under the Wisconsin Statutes to provide educational services to the residents of the District and is a municipal employer as defined in Section 111.70(1)(a), Wis. Stats., with its principal offices located at 200 South Broadway, Green Bay, Wisconsin 54303.

4. The Respondent, Donald Bunker, is employed by the District as the Principal of Elmore Elementary School, one of the schools operated by the District.

5. The District and the Association have, as a result of their participation in the collective bargaining process, entered into a continuous series of written collective bargaining agreements dealing with the wages, hours and conditions of employment of the employees comprising the bargaining unit represented by the Association. The latest of such written collective bargaining agreements (hereinafter the current Collective Bargaining Agreement) and the one

relevant hereto has for its term the period beginning on July 1, 1984 and ending on June 30, 1986. Said current Collective Bargaining Agreement contains as Article V thereof a clause establishing a grievance procedure ending in neutral binding third party arbitration. Said grievance procedure is contractually available to the Association for dispute resolution purposes.

6. Jennel Whitmore has been employed by the District most Wednesdays since the beginning of the 1984-85 school year to replace Nancy Kraft Jetzke, a teacher of the visually impaired at Elmore Elementary School, during which time the latter teacher was engaged in providing individualized instruction/assistance to visually impaired students learning to use the public transportation system.

7. The District paid Jennel Whitmore for performing such work during the 1984-85 school year and the current school year at the substitute teachers' rate of pay, which is currently \$59.95 per day, rather than the \$89.74 which is the beginning BA teacher daily rate as required by the current Collective Bargaining Agreement.

8. The Complainant Association and Jennel Whitmore believed such wage payment to be violative of Article XXV and XXVII of the Teachers contract.

9. Hence, on September 16, 1985, Complainants submitted a written grievance (Grievance 238) to the contractual grievance procedure at Level 1 there, providing as follows:

Jennel Whitmore is employed by the School District on a regular part-time basis all day, every Wednesday for the 1985-86 school year to replace a teacher of the visually impaired while that teacher is providing individualized instruction/assistance to visually impaired students learning to use the public transportation system. The District is violating the grievant's rights under Article XXIV in paying her substitute teacher pay of \$59.95 rather than \$89.74, the beginning BA teacher daily rate, and denying her other benefits of employment, since the grievant is a regular part-time teacher and not an on-call per diem substitute.

10. That on September 18, 1985, Principal Bunker discussed the grievance with Jennel Whitmore and explained his view that she was a substitute teacher, and made further statements to the effect that requests for substitute teachers were within his authority and he would not request her in the future so there would be no confusion as to the substitute nature of the assignment.

11. That Principal Bunker directed his secretary, Barbara Lewandowski, to not ask for a specific individual for the Wednesday assignment in the future, and that Barbara Lewandowski instead made the request for the Wednesday substitute as Jennel Whitmore or Marsha Nast instead of just Jennel Whitmore, as she had done previously.

12. That as a result of Principal Bunker's actions Jennel Whitmore was not called for the Wednesday assignment for the equivalent of eight (8) full days.

That based on the foregoing Stipulated Findings of Fact, the parties stipulated to the following

CONCLUSIONS OF LAW

1. That by such conduct the Respondents had the effect of interfering with employees in the exercise of rights guaranteed such employees by Section 111.70(2) Wis. Stats., including the right to engage in lawful, concerted activities for the purpose of collective bargaining and other mutual aid or protection, all in violation of Section 111.70(3)(a)(1), Stats.

2. That by such conduct the Respondents had the effect of discouraging membership in the Association by discrimination in regard to tenure and other conditions of employment and thereby committed a prohibited practice, all in violation of Section 111.70(3)(a)(3), Stats.

That based on the foregoing stipulated Findings of Fact and Conclusions of Law, the parties stipulated to the following

ORDER 1/

IT IS ORDERED that the Respondent, Green Bay Area Public Schools and Donald Bunker, its officers and agents shall immediately:

1. Cease and desist from actions that have the effect of:
 - (a) Interfering with, restraining or coercing employees, including Jennel Whitmore, in the exercise of rights guaranteed them under the Municipal Employment Relations Act.
 - (b) Discouraging membership in the Association by discrimination in regard to hiring, tenure or other terms or conditions of employment.
2. Take the following affirmative action to effectuate the policies of the Act:
 - (a) the District shall pay Jennel Whitmore at the per diem substitute rate of pay of \$59.95 subject to a decision on the merits of the grievance by Arbitrator Kerkman for those Wednesdays which she would have otherwise been available to teach in Nancy Jetzke's absence had she been called during the period between September 19, 1985 and the date of this Order.
 - (b) The District shall continue to call Jennel Whitmore, as it has in the past, to teach Nancy Jetzke's class on the Wednesdays in the 1985-86 school year during which Nancy Jetzke is absent. Jennel Whitmore will be paid at the per diem substitute rate of pay of \$59.95, subject to a decision on the merits of the grievance by Arbitrator Kerkman.
 - (c) Notify District employees by posting in the teachers' lounge in each of the school buildings operated by the District on the bulletin board where notices to District employees are usually posted, a copy of the Notice attached hereto and marked as Appendix A. Such copy shall be signed by a responsible officer of the District and shall be posted within seven (7) days of the date hereof and shall remain posted for

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- 1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

a period of thirty (30) days thereafter. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by other materials.

Dated at Madison, Wisconsin this 7th day of February, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Raleigh Jones, Examiner

APPENDIX A
NOTICE TO ALL EMPLOYEES

Pursuant to the consent decree entered into between Jennel Whitmore, the Green Bay Education Association, and the Green Bay Area Public School District in proceedings before the Wisconsin Employment Relations Commission, and in order to effectuate the purposes of the Municipal Employment Relations Act, we hereby notify our employees that:

WE WILL NOT terminate or suspend the employment of an employee because of his or her filing of a grievance; and

WE WILL make Jennel Whitmore whole for losses suffered because of such termination and/or suspension.

Dated this _____ day of _____, 1986.

GREEN BAY AREA PUBLIC SCHOOLS

By _____

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREON AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.