

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NORTHWEST UNITED EDUCATORS,  
Complainant,  
vs.  
SCHOOL DISTRICT OF TURTLE LAKE,  
Respondent.  
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Case 30  
No. 38810 MP-1980  
Decision No. 24687-A

Appearances:

Mr. Michael J. Burke, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, appearing on behalf of the Complainant.  
Mulcahy & Wherry, S.C., by Mr. Joel L. Aberg, 21 South Barstow Street, P. O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

Northwest United Educators having, on May 18, 1987, filed a complaint with the Wisconsin Employment Relations Commission alleging that Turtle Lake School District had committed prohibited practices by violating Sec. 111.70(3)(a)5 Stats. when the Turtle Lake School District nonrenewed an employee; and the Commission having, on July 17, 1987, appointed Edmond J. Bielarczyk, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order; and a hearing in the matter having been held on August 11, 1987 in Turtle Lake, Wisconsin, and a stenographic transcript of the proceedings having been prepared and received by the Examiner on September 4, 1987; and the Examiner having received post-hearing arguments and reply briefs by November 9, 1987; and the Examiner having considered the evidence and arguments, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Northwest United Educators, hereinafter referred to as the Complainant, is a labor organization which maintains its offices at 16 West John Street, Rice Lake, Wisconsin.

2. That the Turtle Lake School District, hereinafter referred to as the Respondent, is a municipal employer which maintains its offices at Route 1, Turtle Lake, Wisconsin.

3. That the Complainant and the Respondent at all material times hereto were signatories to a collective bargaining agreement which contained the following pertinent provisions:

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VI. TEACHER CONTRACT STIPULATIONS

- A. The teaching contract shall be a legally worded document that would be recognized as officially binding for both parties in a court of law.
- B. Length of day for the students will be determined by the Board of Education.
- C. Any teacher resigning after July 1 from his/her individual teaching contract shall be subject to costs of 1-1/2% of his/her salary in liquidated damages. The

resignation notice shall be mailed, return receipt requested. The resignation, which must be accepted by the Board, shall be effective two weeks after receipt of the notice. The amount may be deducted from said teacher's last paycheck as the option of the Board. This provision shall not be applicable in cases of death or spouse transfer.

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### VIII. LAYOFF

- A. When the Board in its discretion determines that it is necessary to decrease the number of teachers for any reason other than the teaching performance of a particular teacher or teachers, the Board may lay off, in whole or in part, the necessary number of teachers according to the following procedure:
  1. The Board determines the assignment area (certification) in which the layoff shall occur.
  2. The teacher with the least seniority teaching in the assignment area at the time of the layoff shall be laid off except:
    - a. If the Board can demonstrate that by the layoff of a teacher, a vacancy in a dual teaching assignment (one which requires dual certification) will occur for which no qualified replacement can be found within two weeks of receipt of the notice of layoff, the teacher with the dual teaching assignment and dual certification shall be exempt from layoff.
    - b. If the Board can demonstrate that by the layoff of a teacher a vacancy in a co-curricular assignment will occur for which no qualified replacement can be found within two weeks of the date of receipt of the notice of layoff, the teacher with that co-curricular assignment shall be exempt from layoff.
  3. Teachers who have transferred voluntarily or involuntarily within the District shall have their total seniority in the District utilized for purposes of computing seniority with the teaching assignment area.
  4. The laid-off teacher shall have bumping rights, based on seniority, into other teaching areas for which he/she is certified. Bumping rights shall be exercised within two (2) weeks of receipt of the layoff notice.
  5. Seniority shall commence with the teacher's first day of student contact in the District. In the event seniority is equal, a coin flip shall determine the teacher to be laid off.
  6. When a teaching position is made available and there is a qualified teacher who is laid off, that teacher shall be recalled. Any teacher who has not been contractually employed by the District for more than three school years shall not be entitled to be recalled, but the Board shall favor all former laid-off teachers over new applicants, qualifications being relatively equal.
  7. If there are two or more laid-off teachers with recall rights who are qualified for an available position, the teacher having the greatest seniority shall be recalled.
  8. No teacher may be prevented from securing other employment during the period laid off under this Section.

9. A teacher on layoff status shall accrue no benefits (including seniority) while on such status but if recalled while on layoff shall retain benefits accrued at the time of being laid off.
10. Any teacher on layoff offered reinstatement must within 15 days of such offer agree in writing to accept such reinstatement. Failure to either accept reinstatement or return to employment shall be deemed a waiver of any right to employment.
11. If a layoff occurs during the term of a collective bargaining agreement which has an effect on wages, hours, or conditions of employment, the Board agrees to reopen negotiations to bargain the impact on the employees remaining after the layoff.
  - a. If a teacher is notified of a layoff prior to June 1st for layoff to occur during a subsequent contract year, there shall be no severance payment nor insurance benefits paid to the teacher being laid off.
  - b. If a teacher who has received an individual contract by June 1st for employment in the subsequent school year receives a notice of layoff, and:
    - (1) If the notice of layoff occurs on or after June 1 but before July 15, the teacher receiving the notice shall receive severance pay in the amount of 10 percent of their unpaid individual contracted salary.
    - (2) If the notice of layoff occurs on or after July 15 but before August 15, the teacher receiving the notice shall receive severance pay in the amount of 20 percent of their unpaid individual contracted salary.
    - (3) If the notice of layoff occurs on or after August 15, the teacher receiving the notice shall receive severance pay in the amount of 30 percent of their unpaid individual contracted salary.
  - c. An employee notified of layoff and laid off after June 1 shall continue to receive health insurance benefits provided by the District for the duration of the contract year during which they were laid off or until such time that the laid off employee receives insurance benefits by another employer.
  - d. Should the employee be recalled during the school year in which they were laid off, the severance pay they received will be considered as a salary advance. The monthly wages for an employee so recalled shall be proportionately adjusted to reflect this advance.

#### IX. DISCIPLINE PROCEDURE

- A. No teacher shall be discharged, suspended, reduced in rank or compensation without cause.
- B. After three years of teaching in the School District of Turtle Lake, no teacher shall be non-renewed without cause. Any teacher employed full time during 1985-86 is subject to the two year clause in the 1984-85 agreement.

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4. That the collective bargaining agreement referred to in Finding of Fact 3 does not contain a grievance procedure which culminates in final and binding arbitration.

5. That on March 5, 1986 the Respondent hired Amy Wroblewski as a teacher; that at the time of her hiring Wroblewski was not certified by the Wisconsin Department of Public Instruction (DPI) to teach either Speech or Drama; that at the time of her hiring Wroblewski was verbally informed by the Respondent's Administrator Douglas Hendrickson that the Respondent desired a teacher who was certified to teach by DPI in Speech or Drama and that unless Wroblewski earned credits towards being certified in said areas she would not be issued a teaching contract for the 1987-88 school year; that Wroblewski, due to prior commitments, was not expected to commence taking courses in said areas of certification during the summer of 1986; that Hendrickson informed Wroblewski that he saw no reason why Wroblewski could not commence taking courses to earn credits towards being certified in Speech and/or Drama during the 1986-87 school year; and, that on March 5, 1986 Wroblewski signed a teacher contract which contained the following pertinent provision:

This contract is issued with the provision that prior to the issuance of a 1987-88 contract Ann Wroblewski will earn credits towards being certified in either drama or speech and shall have a license to teach at least one of the above subjects in addition to her regular English classes. Your attention is called to 118.21(1) Wis. Statutes which requires a teacher to be licensed in the subjects taught by the teacher.

6. That the Respondent sought and received from DPI an Emergency License in Drama for Wroblewski for the 1986-1987 school year; that during the 1986-1987 school year Wroblewski taught courses in both Speech and Drama; that on January 12, 1987 the District was informed by DPI that an Emergency License for Wroblewski in Drama would be contingent upon another request for emergency certification and require that Wroblewski complete six (6) semester credits in an approved program in Drama; that thereafter Hendrickson recommended to Respondent's School Board that Wroblewski be nonrenewed; and that on February 11, 1987 the following letter was sent from the Respondent to Wroblewski:

Dear Ms. Wroblewski:

Pursuant to Section 118.22 of the Wisconsin Statutes you are hereby put on notice that the administration has recommended that your employment contract not be renewed. The Board has agreed to consider that recommendation.

Please be advised that you have the right to have a conference with the Board to discuss the Administration's recommendation. You must request such a conference within five (5) days of receipt of this notice. The conference, if requested, will be held in closed session unless you request that it be open to the public.

The Board is considering your nonrenewal for the following reasons:

1. The Board is considering exercising the probationary clause of the Master Agreement.
2. Lack of certification in speech and/or drama.
3. Performance at times not up to expectations.

Should you request a hearing in this matter, you have the right to be represented by counsel of your choice. You further have the right to call witnesses and submit evidence

relevant to the subject. You have the right to cross-examine witnesses and rebut any testimony which might be unfavorable to you.

By Direction of the  
Board of Education

Douglas Hendrickson /s/  
Douglas Hendrickson  
District Administrator

7. That on March 26, 1987 the Complainant filed a grievance with the Respondent alleging that the Respondent did not have sufficient grounds to nonrenew Wroblewski and that the Respondent's actions represented an arbitrary and capricious exercise of management rights in violation of said collective bargaining agreement; and that on May 18, 1987 the Complainant filed the instant complaint with the Commission alleging that Respondent's actions violated said collective bargaining agreement and that Respondent had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5 Stats.

8. That the Complainant contends the Respondent's actions in nonrenewing Wroblewski's contract violated the layoff clause in said collective bargaining agreement because the Respondent's actions were based upon a lack of certification in Speech and/or Drama and not on performance grounds; that the Complainant contends that as the Respondent's actions contained no reference to teaching performance the Respondent erroneously used nonrenewal procedures and should have used layoff procedures; and that the Complainant contends that there is no valid reason why the Respondent treated the instant matter as a layoff rather than a nonrenewal.

9. That the District contends Wroblewski's certification deficiency was cause to nonrenew her; and, that the Respondent contends that in March, 1987, the Respondent could not legally make any contractual arrangement with Wroblewski to teach Speech or Drama, that Wroblewski was aware of her certification deficiency and had not made any effort to correct the deficiency, that there was no guarantee Wroblewski would obtain the necessary coursework in order to be certified to teach Speech or Drama and the Respondent needed to begin recruitment of a qualified teacher, that Wroblewski had no right to claim a layoff under said collective bargaining agreement and that Wroblewski is not entitled to any remedy under the layoff provision of said collective bargaining agreement.

10. That Wroblewski at the time of her hiring, was aware that she would not be issued a teaching contract for the 1987-88 school year unless she took courses to earn credits towards being certified in Speech and Drama and that Wroblewski on March 6, 1986 signed a contract which specifically required her to do so; that Wroblewski did not take any courses to earn credits in Speech and/or Drama during the summer of 1986 and that this was agreed to by the District; that Wroblewski did not take any courses to earn credits in Speech and/or Drama during the 1986-1987 school year; that Wroblewski did not inform the Respondent she would not be taking courses in Speech or Drama during the 1986-1987 school year; that there is no evidence as to why Wroblewski did not take courses in Speech or Drama during the 1986-1987 school year; that Wroblewski believed that if she took courses in Speech and/or Drama during the summer of 1987 she would be renewed; that the Respondent is required to renew or nonrenew teachers by March 15 for the following school year; that on February 11, 1987 the Respondent informed Wroblewski the Respondent did not intend to renew Wroblewski's teaching contract; that on March 9, 1987 Wroblewski attended Respondent's School Board meeting where at said meeting the Respondent's School Board voted to nonrenew Wroblewski's teacher contract; that there is no evidence that Respondent's actions was an attempt to decrease the number of teachers employed by the Respondent; and, that Wroblewski did not take any courses to earn credits in Speech and/or Drama during the summer of 1987.

11. That Respondent's actions in nonrenewing Wroblewski's teacher contract for the 1987-1988 school year did not violate said collective bargaining agreement.

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

### CONCLUSIONS OF LAW

1. That the collective bargaining agreement between Northwest United Educators and Turtle Lake School District does not provide for the final and binding arbitration of grievances.

2. That Turtle Lake School District did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a) Stats., when it nonrenewed the teacher contract of Amy Wroblewski.

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

#### ORDER 1/

That the instant complaint be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 14th day of December, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Edmond J. Bielarczyk Jr.  
Edmond J. Bielarczyk Jr., Examiner

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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.

TURTLE LAKE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

BACKGROUND

The Complainant filed the instant complaint on May 18, 1987. Therein the Complainant alleged that the collective bargaining agreement between the Complainant and Respondent did not provide for final and binding arbitration of grievances. Where a collective bargaining agreement does not provide for final and binding arbitration of grievances the Commission will exercise its jurisdiction under Sec. 111.70(3)(a)5 Stats., and determine the grievance on its merits. 2/ The Respondent did not dispute and the record demonstrates that the collective bargaining agreement is silent concerning the final and binding arbitration of grievances. Both parties presented testimony, evidence and arguments concerning whether the Respondent breached the collective bargaining agreement when the Respondent nonrenewed the teacher contract of Amy Wroblewski.

POSITION OF THE COMPLAINANT

The Complainant asserts that the Respondent's decision to nonrenew Wroblewski's contract was a violation of the layoff clause. The Complainant's theory is that since the decision to nonrenew was based on a lack of certification in Speech and/or Drama and not on performance grounds, the Respondent's action was a violation of the collective bargaining agreement. The Complainant acknowledges that Wroblewski was a probationary employee. However, the Complainant asserts that even though Wroblewski was a probationary employee she was covered by the procedures and protections of the layoff provision. Here the Complainant points to Hendrickson's testimony 3/ where at Hendrickson acknowledged that Wroblewski would of been laid off if it would have been necessary to lay off the least senior English teacher. The Complainant points to Article VIII, Layoff, and asserts that because the decision to nonrenew was based on certification the Respondent violated Wroblewski's recall rights and the agreement when it chose to nonrenew Wroblewski instead of placing Wroblewski on layoff.

In support of its position the Complainant points to Mack v. Joint School District No. 3, 92 Wis.2d 476 (1979) wherein the Wisconsin Supreme Court distinguished the concepts of layoff and nonrenewal. The Complainant also asserts that based upon the language contained in Wroblewski's teacher contract and the testimony of Wroblewski at the hearing, Wroblewski did not waive her layoff rights when she executed the 1986-87 teacher contract. Here the Complainant asserts that the issue of failing to comply with the conditional teacher contract was never discussed with Wroblewski. The Complainant also asserts that the teacher contract signed by Wroblewski does not specifically state that the failure of Wroblewski to earn credits will result in nonrenewal. The Complainant argues the teacher contract incorporates the terms of the collective bargaining agreement and thus requires the District to initiate the layoff procedure.

In its reply brief the Complainant asserts that as the Respondent does not make any reference to teaching performance the parties are in agreement that Wroblewski was nonrenewed because of a certification problem. The Complainant argues the Respondent thus used the wrong procedure and in support of its position points to a decision by Arbitrator Amedeo Greco in School District of Ladysmith-Hawkins. 4/ The Complainant contends the Greco decision and the Mack decision

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2/ Superior Board of Education, Dec. No. 11206-A, (10-72) Melrose-Mindoro Jt. School District No. 1, Dec. No. 11627 (2/73).

3/ Transcript pp. 29-30.

4/ Therein the arbitrator held that the School District of Ladysmith-Hawkins violated the agreement when it nonrenewed instead of laying off a teacher due to declining enrollment.

support its contention that the Respondent violated the collective bargaining agreement. Here the Respondent points out that the Respondent could have laid off the grievant anytime prior to June 1, 1987.

The Complainant also asserts in its reply brief that the cases cited by the Respondent are not on point and that the cases relied on by the Respondent were issued prior to the Supreme Court's Mack decision.

#### RESPONDENT'S POSITION

The Respondent contends Wroblewski's certification deficiency was "cause" for the Respondent to nonrenew Wroblewski's teaching contract for the 1987-88 school year. The Respondent asserts that Section 118.22(2), Stats. 5/ requires the Respondent to issue a notice of refusal to renew a contract to a teacher for the ensuing school year by March 15. Further that Section 118.21(1), Stats., 6/ provides that a contract with any teacher not authorized to teach a subject is void. Thus the Respondent asserts that if a Wisconsin School Board is put on notice prior to March 15 that a teacher will not be certified to teach the subject they are currently teaching for the ensuing school year, the School Board must consider nonrenewal of that teacher. Here, the Respondent points out Wroblewski was not certified to teach Speech or Drama. When Wroblewski was hired her teacher contract specifically required her to earn credits towards certification in Drama and Speech or she would not be issued a teacher contract for the 1987-88 school year. The Respondent points out that Wroblewski had not taken one course nor was she enrolled in any courses to earn credits towards certification in Speech or Drama. The Respondent argues that as Wroblewski was not certified in Speech or Drama and as there was no guarantee that she would become certified by the fall of 1987, the Respondent's School Board determined that nonrenewal during the probationary period was the best course of action to take.

In support of its position the Respondent points to Grams v. Melrose-Mindoro Joint School District No. 1, 78 Wis.2d 569 (1977). 7/ and to Lisbon-Pewaukee Joint School District No. 2, Dec. No. 13404-B (WERC, 9/76). 8/ Here the

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- 5/ Section 118.22 Renewal of Teacher Contracts. (2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such notice is given on or before March 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew his contract for the ensuing year on or before March 15, shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.
  - 6/ Section 118.21 Teacher Contracts. (1) the school board shall contract in writing with qualified teachers. The contract, with a copy of the teacher's authority to teach attached, shall be filed with the school district clerk. Such contract, in addition to fixing the teacher's wage, may provide for compensating the teacher for necessary travel expense. A teaching contract with any person not legally authorized to teach the named subject or at the named school shall be void. All teaching contracts shall terminate if, and when, the authority to teach terminates.
  - 7/ Therein, the Wisconsin Supreme Court held that Grams' teacher contract was void because Gram was not certified to teach the subjects she had contracted for and that it was Gram's responsibility to keep her credentials in order.
  - 8/ Therein, the Commission held that lack of certification is "just cause" for discharging a teacher.

Respondent points out that Wroblewski was aware of her certification deficiency at the time she entered into her teacher contract and that she took no affirmative steps whatsoever to correct her deficiencies. The Respondent concludes that it had no reasonable alternative but to nonrenew Wroblewski.

In its reply brief the Respondent asserts that Wroblewski was properly nonrenewed pursuant to law and that Wroblewski had no right to claim a layoff under the collective bargaining agreement. The Respondent argues that the Complainant erroneously argues that nonrenewal can only be based upon performance. The Respondent stresses that layoff is not the issue in the instant matter as the Complainant has failed to demonstrate that there had been a determination made by the Respondent's School Board to reduce the number of teachers it needed for the succeeding school year. The Respondent asserts there was no reduction in force, simply a replacement of a noncertified teacher.

The Respondent points to the Mack decision cited by the Complainant and argues that Wroblewski's separation is not of a temporary nature due to a decrease in the Respondent's needs for teachers. The Respondent contends by definition a nonrenewal is not a layoff, temporary or otherwise. The Respondent concludes that Wroblewski knew of her certification deficiency, choose to take no action to correct it, and left Respondent with no choice but to nonrenew her teacher contract.

### DISCUSSION

The record demonstrates that Wroblewski signed a teacher contract on March 5, 1986 that specifically required her to earn credits towards certification in Speech or Drama and to have a license to teach these subjects. This contract also informed her that if she failed to do the above she would not be issued a contract for the 1987-88 school year. The record also demonstrates that at no time during her employment did Wroblewski earn any credits towards being certified in Speech or Drama. The record further demonstrates that Wroblewski was aware as of January 12, 1987 that she needed to earn six (6) credits in Drama in order to receive an emergency license from DPI to teach Drama.

The Examiner notes here that at no time during the hearing or in any of the arguments presented by the Complainant has the Complainant argued that the teacher contract signed by Wroblewski was not binding upon her and thus a violation of Article VI, Section A. Thus, the Examiner concludes the teacher contract signed by Wroblewski is binding on both her and the Respondent. Here, the Examiner finds the argument raised by the Complainant that Wroblewski was not informed she would be nonrenewed if she failed to take courses to earn credits in Drama and Speech to be unpersuasive. Clearly, the teacher contract signed by Wroblewski informed Wroblewski she would not be issued a 1987-88 teacher contract if she failed to earn credits or could not be certified in Speech or Drama. Thus, Wroblewski was specifically placed on notice and in writing that continued employment was predicated on the basis that she earn credits in Speech or Drama. The Examiner therefore concludes that in the instant matter the terms used in the teacher contract ". . . prior to issuance of a 1987-88 contract" clearly informed Wroblewski she would be "nonrenewed" if she failed to earn credits in Speech or Drama or if she was unable to be certified in Speech or Drama.

The Complainant has asserted herein that Respondent's actions violated the collective bargaining agreement's layoff provision. While the Complainant is correct that the teacher contract signed by Wroblewski cannot waive any of Wroblewski's rights under the collective bargaining agreement, the Examiner finds the Complainant's arguments unpersuasive for the following reasons. Article VIII, Section A of the collective bargaining agreement specifically states that when the Respondent determines to reduce the number of teachers it employs, the Respondent must follow the provisions of the layoff article. However, as pointed out by the Respondent, there is no evidence the Respondent determined to reduce the number of teachers it employs. Secondly, the Complainant argues that lack of certification is not performance grounds and therefore Wroblewski should have been laid off. Article VIII, Section A, specifically, as pointed out by the Complainant, excludes teacher performance as a reason for layoff. However, herein Wroblewski failed to comply with the terms of her teacher contract. The record demonstrates she has not taken any courses in Speech or Drama and there is no evidence which would demonstrate she could receive a license to teach Speech or Drama. Therefore she cannot perform the tasks she was specifically informed she would have to be able to perform in order to be issued a contract for the 1987-88 school year. Because

of the teacher contract signed by Wroblewski, certification is, in the instant matter, a performance factor.

The undersigned notes here that the Complainant's argument that in March of 1987 the Respondent could have issued Wroblewski a contract and then laid her off if she was not able to get certification in Speech or Drama at the commencement of the 1987-88 school year also to be without merit. The record demonstrates that when Wroblewski was hired, Superintendent Hendrickson agreed that Wroblewski need not take any courses during the summer of 1986. However, Hendrickson also informed Wroblewski that he saw no reason why Wroblewski could not enroll in courses during the 1986-87 school year. Wroblewski did not refute this nor did the Complainant present any evidence as to why Wroblewski did not take any courses during the 1986-87 school year except for Wroblewski's claim that she thought she had until the end of the summer of 1987 to take courses. Wroblewski also stated she did not take any courses during the summer of 1987 because she had already been nonrenewed. The record also demonstrates that the Respondent makes teacher contract renewal decisions during March of the year preceding the school year the teacher is contracted to teach. Thus, the record demonstrates that at the time the Respondent normally makes its renewal decisions, Wroblewski had not taken any courses in Speech or Drama. Therefore, Wroblewski had not met the specific specifications of her teacher contract. As Wroblewski had not met the specific specifications of her teacher contract, she failed to perform in accord with that contract.

As pointed out by the Complainant in its reference to the Mack decision, layoff and nonrenewal are two different distinct concepts. Herein, the collective bargaining agreement defines a layoff as an act which involves the reduction of the number of teachers employed by the Respondent but bars the Respondent from using the layoff mechanism if the decision to reduce the number of teachers is based upon performance. As noted above, the Respondent did not make a decision to reduce the number of teachers it employs but determined to terminate the employment of a teacher who had failed to abide by the terms of her individual teacher contract. At the time the Respondent made its decision to nonrenew Wroblewski, the record demonstrates she could not obtain an emergency certification in Drama. Had Wroblewski taken courses during the summer of 1987 to earn credits in Speech or Drama, the Complainant could have argued she had met the specifications of her teacher contract because a specific date was not identified in the teacher contract as to when she had to commence taking such courses. However, Wroblewski offered no explanation as to why she had not taken courses during the 1986-87 school year, offered no explanation as to why she thought she had until the end of the 1987 summer to take such courses, and she did not refute Hendrickson's testimony that he saw no reasons why Wroblewski could not take any courses to earn credits during the 1986-87 school year. Thus, the Examiner finds Wroblewski failed to comply with the specifications of her teacher contract. Such a failure is a performance matter because Wroblewski failed to take action in order to comply with the terms of her teacher contract. The same result would occur if a teacher lost their certification to teach. Without certification a teacher cannot perform their future duties. Inability to perform future duties is thus a performance matter.

The Examiner also finds that the Ladysmith-Hawkins arbitration cited by the Complainant is dissimilar to the instant matter. Therein occurred a situation of declining student enrollment which resulted in a determination to reduce the number of teachers employed by the school district. Herein, there is no evidence of declining student enrollment nor is there any evidence that the Respondent had determined to reduce the number of teachers employed by the Respondent.

Having found no evidence that the Respondent has violated the collective bargaining agreement's layoff provision or any other provision of the collective bargaining agreement, the Examiner concludes no violation of Sec. 111.70(3)(a)5 has occurred and ordered the petition filed in the instant matter be dismissed.

Dated at Madison, Wisconsin this 14th day of December, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Edmond J. Bielarczyk  
Edmond J. Bielarczyk, Jr., Examiner