

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
:   
WONEWOC-CENTER EDUCATION ASSOCIATION, :   
:   
Complainant, : Case 21   
: No. 45904 MP-2500   
vs. : Decision No. 26960-A   
:   
WONEWOC-UNION CENTER SCHOOL DISTRICT, :   
:   
Respondent. :   
:   
-----

Appearances:

Mr. Gerald Roethel, Executive Director, Coulee Region United Educators, 2020 Caroline Street, LaCrosse, Wisconsin 54601, appearing on behalf of the Complainant.  
Curran, Hollenbeck & Orton, S.C., Attorneys at Law, by Mr. Fred Hollenbeck, 111 Oak Street, P.O. Box 140, Mauston, Wisconsin 53948, appearing on behalf of the Respondent.

FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

Wonewoc-Center Education Association filed a complaint with the Wisconsin Employment Relations Commission on June 21, 1991, alleging that Wonewoc-Union Center School District had committed prohibited practices within the meaning of Secs. 111.70(3)(a)3 and 5, Stats., when it laid off David Theis for the 1991-92 school year. The Commission appointed Raleigh Jones to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Stats. A hearing was held in Wonewoc, Wisconsin on October 16, 1991, at which time the parties were given full opportunity to present their evidence and arguments. The Association withdrew the Sec. 111.70(3)(a)3 claim at the hearing. Afterwards, both parties filed briefs and reply briefs whereupon the record was closed January 22, 1992. The Examiner has considered the evidence and arguments of the parties, and now makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Wonewoc-Center Education Association, hereinafter referred to as the Association, is a labor organization with its offices located at Coulee Region United Educators, 2020 Caroline Street, LaCrosse, Wisconsin 54601.
2. Wonewoc-Union Center School District, hereinafter referred to as the District, is a municipal employer with its offices located at 101 School Road, Wonewoc, Wisconsin 53968. The School Board is an agent of the District.
3. The Association and the District have been parties to a series of collective bargaining agreements, including one in effect from July 1, 1990 through June 30, 1992. That agreement contains, among its provisions, the following:

ARTICLE I RECOGNITION

That the Board of Education recognizes the Association through its Welfare Committee as the

exclusive bargaining representative for all regular teaching personnel under contract, excluding substitute per diem teachers, office, maintenance, and clerical employees, the superintendent and principal.

The purpose of this article is to recognize the right of the Association to represent teachers in negotiations with the Board as provided in Section 111.70 of the Wisconsin Statutes.

. . .

#### ARTICLE VI. BOARD FUNCTIONS

The Board hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and constitution of the State of Wisconsin, of the United States, including, but without limiting the generality of the foregoing, the right to:

1. The executive management and administrative control of the school system and its property; and facilities and the work-related activities of its employees.

. . .

3. The determination of the financial policies of the District. . .

. . .

9. The direction, supervision, evaluation, arrangement, assignment and allocation of all the working forces in the system, including the hiring of all employees, determination of their qualifications and the conditions for their continued employment, the right to discipline or discharge, and transfer employees.

10. The creation, combination or modification of any position deemed advisable by the Board.

11. The determination of the size of the working force and the determination of policies affecting the selection of employees.

. . .

13. The scheduling and assignment of all work and activities and workloads.

. . .

The foregoing enumerations of the functions of the

Board shall not be considered to exclude other functions of the Board not specifically set forth; the Board retaining all functions and rights to act not specifically nullified by this Agreement.

. . .

#### ARTICLE XII STAFF REDUCTION

Section 1. In the event the Board determines to reduce the number of employee positions (full layoff) or the number of hours in any position (partial layoff) for the forthcoming school year, the provisions set forth in this Article shall apply. All layoffs must be directly related to, and limited to, the minimum reductions needed for accompanying the Board's stated purpose(s) for the layoffs. Layoffs shall be made only for the reason(s) asserted by the Board, and not to circumvent the other job security or discipline provisions of this Agreement.

Section 2. Notices and Timelines -- The Board shall provide notice to the teachers it has selected for layoff under this procedure by March 15 for the forthcoming school year.

Section 3. Selection for Reduction -- In the implementation or staff reductions under this Article, individual teachers shall be selected for full or partial layoff in accordance with the following steps:

Step 1. Normal attrition resulting from employees retiring or resigning will be relied upon to the extent it is administratively feasible in implementing necessary layoffs.

Step 2. Temporary or part-time personnel will be laid off before full-time personnel where administratively feasible.

Step 3. The remaining teacher(s) to be laid off will be determined by seniority in the area(s) of certification commencing with the least senior. Seniority, here, being based on the number of years in a bargaining unit position in the Wonewoc-Center School District.

Step 4. Any employee who is selected for a reduction in hours (partial) shall have full recall rights.

Section 4. Recall - under this Section, all employees on layoff will be contracted and recalled for a position in reverse order of their layoff.

. . .

. . .No new or substitute appointments may be made by the District while there are employees who have been laid off or reduced in hours who are available and certified to fill the vacancies.

The 1990-92 agreement also contains a grievance procedure which culminates with a decision by the School Board. The agreement contains no provision for the arbitration of unresolved grievances.

4. Since 1976, David Theis was employed by the District as its only industrial arts/driver's education teacher. He has a Bachelor's degree in industrial arts with a minor in driver's education. He is certified by the Department of Public Instruction in industrial arts and driver's education.

5. In March, 1990, Theis was issued a 4/7th teaching contract for the 1990-91 school year. This reduction from full-time to 4/7th status was based on low projected student enrollment in industrial arts. He grieved this reduction from full-time to 4/7th status. This grievance was resolved when the School Board decided to reinstate him to full-time for the 1990-91 school year. During the 1990-91 school year, Theis had a full-time teaching load and taught

one section of Power Mechanics, one section of Industrial Technology, one section of Industrial Arts for grades 7 and 8, one section of Industrial Arts 3 and three sections of Driver's Education.

6. In the fall of 1990, Dr. Kent Nelson, the new District Administrator, informed the School Board that state aid for the upcoming school year was going to be reduced. The School Board decided to deal with this projected revenue shortfall and an existing budget deficit by implementing cuts in spending. After this decision was made, Nelson began looking for ways to reduce the District's 1991-92 expenditures by about \$100,000.

7. In January, 1991, students in the District registered for classes for the upcoming 1991-92 school year. Registration helps the administrators schedule classes and ascertain staff (teaching) needs, supplies and room assignments. The student registration for classes was lowest in the elective areas of agriculture, business and industrial arts.

8. Based on the low projected enrollment in the areas of agriculture, business and industrial arts, Nelson recommended that the School Board eliminate the District's agriculture program and the industrial arts program and reduce the number of classes offered in business. He also recommended that the agriculture teacher position be eliminated and that both the business and industrial arts/driver's education teacher positions be reduced from full-time to 4/7th time.

9. Nelson's aforementioned recommendations were discussed at a public meeting in early 1991. Theis spoke at this meeting in favor of retaining the industrial arts program. Additionally, strong sentiment was expressed by citizens at this meeting to keep the agriculture program in the District in spite of its low student enrollment. The School Board subsequently decided to eliminate the District's industrial arts program and to cut the agriculture and business programs in half. The decision to cut the agriculture program in half, rather than totally eliminating it as Nelson proposed, caused Nelson to look elsewhere for other positions to cut to save money.

10. Nelson ultimately concluded that the existing three sections of driver's education could be provided by the local Cooperative Educational Service Agency, hereinafter CESA, rather than by a District teacher, at a cost savings to the District.

11. On March 11, 1991, Nelson recommended to the School Board that the District contract with the local CESA to provide driver's education services to District students rather than having a District teacher provide same. Nelson also recommended that the District implement the cuts previously decided upon (i.e., cutting the agriculture and business programs in half and eliminating the industrial arts program) with layoffs in the affected areas. Specifically, Nelson recommended the reduction of the business education position from full-time to 4/7th, the reduction of the agriculture position from full-time to 4/7th, and the elimination of the full-time industrial arts/driver's education position. The School Board accepted all these recommendations.

12. On March 12, 1991, Nelson sent Theis the following letter informing him of his layoff for the 1991-92 school year:

Mr. David Theis  
Rt. 2, Box 185  
Hillsboro, WI 54634

Dear Mr. Theis:

This is to notify you that at their regular meeting date of Monday, March 11, 1991, the Wonewoc-Center Board of Education voted unanimously to discontinue the industrial arts position and the driver's education program for the 1991-92 school year as it is currently being run.

The stated purposes of the layoff were the financial conditions of the school district and the number of students.

Sincerely,

Kent Nelson /s/  
Kent Nelson, Administrator

13. Theis grieved his layoff for the 1991-92 school year. This grievance was processed through the steps of the grievance procedure noted in Finding of Fact 3 and was eventually denied by the School Board. With this decision the parties completed all the steps of the contractual grievance procedure. Since the grievance procedure does not end in final and binding arbitration, this matter is properly before the Examiner as an alleged violation of the collective bargaining agreement and, thereby, Sec. 111.70(3)(a)5, Stats.

14. The District contracted with the local CESA and Don Zimmerman, a representative thereof, to provide driver's education services to District students for 1991. Prior to this action, District teachers had always performed this responsibility. This subcontracting of driver's education to the local CESA and Don Zimmerman did not violate the parties' collective bargaining agreement.

15. The District made the following pertinent assignments to teachers for the 1991-92 school year: two sections of Gifted/Talented were assigned to Vriesacker; one section of Directed Studies was assigned to Sulik; one section of Peer/Tutor was assigned to Sulik; one section of At Risk was assigned to Sulik; one section of Computer Applications was assigned to Decker; one section of Directed Studies was assigned to Benish; and one section of Alcohol and Other Drug Abuse (AODA) was assigned to Vitcenda. Some of these assignments were made before Theis received his layoff notice and some were made afterwards. None of these assignments require certification in a certain subject area. Instead, these assignments could be performed by any licensed teacher, including Theis. The District's failure to give Theis any of the aforementioned assignments in order to supplement his work load did not violate the parties' collective bargaining agreement.

16. The District's layoff of David Theis for the 1991-92 school year did not violate the parties' collective bargaining agreement.

#### CONCLUSION OF LAW

The District did not violate the collective bargaining agreement mentioned in Finding of Fact 3 by subcontracting driver's education to the local CESA, laying off David Theis for the 1991-92 school year or failing to give him additional assignments to supplement his workload. Therefore, the District did not violate Sec. 111.70(3)(a)5, Stats.

ORDER 1/

The complaint is dismissed.

Dated at Madison, Wisconsin this 20th day of March, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/  
Raleigh Jones, Examiner

---

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 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

(Footnote 1/ continued on page 8)

---

1/ Continued

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.

WONEWOC-UNION CENTER SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

BACKGROUND

In its complaint initiating these proceedings, the Association alleged that the District committed prohibited practices in violation of Secs. 111.70(3)(a)3 and 5, Stats. when it laid off David Theis for the 1991-92 school year. At the hearing, the Association withdrew their (3)(a)3 claim but left their (3)(a)5 claim intact. The District denies it committed a prohibited practice by its conduct herein.

POSITIONS OF THE PARTIES

Association

The Association's position is that the District's actions herein violated Theis' contractual rights. First, it challenges the reasons given by the Board for Theis' layoff, namely "the financial conditions of the District and the number of students". With regard to the former reason (i.e., "financial conditions") the Association asserts that the District is in fine shape financially. In support thereof, it notes that the District's tax levy is one of the lowest of its comparable group and that its fund balance had almost half a million dollars. In its view, the District's finances are no different from any of its comparables. Additionally, the Association believes the District overreacted to the Governor's proposed cost controls. It therefore argues that the District's finances should not be used as an excuse for Theis' layoff. With regard to the latter reason for the layoff (i.e., "the number of students") the Association notes that there are other classes being offered in the District which have a small number of students and it questions why Theis' industrial arts classes, which also had small student numbers, couldn't also be offered. The Association believes the District should have reconsidered the programs cuts which it implemented. Since it did not, the Association contends that the stated reasons for the layoff are invalid. According to the Association, the District wanted to see Theis be economically disadvantaged and removed from employment, and that is why he was laid off.

Next, the Association argues there are up to eight classes available which could have been reassigned to Theis so that he could maintain full-time employment, to wit: two classes of Directed Studies, two classes of Gifted/Talented, one class of Peer/Tutor, one class of At Risk, one class of Computer Applications and one class of AODA. Since Theis was not given any of these assignments, the Association submits that the District failed to recall him to available work.

Finally, the Association asserts that the District should not have subcontracted driver's education. In support thereof, it notes that this work is still available, that the student numbers are identical from one year to the next, and that this subject has been taught by a bargaining unit member since there was a bargaining unit. It also notes that driver's education has never been subcontracted before which it views as establishing a practice against subcontracting same. Additionally, it contends that the combination of the recognition clause and the layoff clause provide a contractual prohibition against subcontracting the work in question. In order to remedy this alleged improper layoff, the Association requests that Theis be reinstated to a full-time position and made whole.

District



The District's position is that it did not violate the contract by its actions herein. First, it argues it has reserved unto itself the right to layoff staff, citing the management rights and layoff clauses. In the District's view, if a valid reason exists for a layoff, then the District's action is within its decision making power and should not be second-guessed. The District asserts that a valid reason did exist for Theis' layoff, namely the Board's elimination of the industrial arts program due to low projected enrollment and the elimination of the District's driver's education program in a cost-cutting move. Since Theis was the only industrial arts/driver's education teacher, the District contends his layoff was justified and reasonable under the circumstances.

Next, it submits that while Theis would like to supplement his work load by assuming other non-teaching auxiliary assignments such as At Risk, Directed Studies, Gifted and Talented, AODA or the Computer Applications assignments, the District contends it did not violate the contract by not giving him any of these assignments. In its view, the contractual recall provision is inapplicable here because that clause was intended to apply to teachers who are laid off from teaching duties when other teaching duties arise for positions they are certified to teach. The District asserts that to apply recall rights for non-teaching auxiliary assignments, specifically those involved here, stretches the term beyond its intended meaning. According to the District, the only position Theis was eligible to be recalled to is a shop or driver's education teaching position, and it notes that none of the assignments in question is a shop or driver's education assignment. It therefore argues that Theis did not have a contractual right to be recalled to any of the aforementioned assignments or any other position in the District.

Finally, the District contends that nothing in the contract either expressly or implicitly prohibits it from contracting with the local CESA to remove driver's education from the District's curriculum and have that service provided by the CESA. In its view, this is not subcontracting. However, even if it is viewed as subcontracting, the District argues it has retained the right to do so by the management rights clause. It therefore requests that the complaint be dismissed.

#### DISCUSSION

It is undisputed that the parties' labor agreement does not provide for grievance arbitration and that the Association has exhausted the procedural requirements of the contractual grievance procedure. As a result, the Examiner will exercise the Commission's jurisdiction under Sec. 111.70(3)(a)5, Stats., to determine if the District's conduct here violated the parties' collective bargaining agreement. 2/

The Association contends that the following actions by the District violated the parties' labor agreement: 1) subcontracting driver's education; 2) Theis' layoff; and 3) failing to give Theis additional assignments to supplement his workload. Each of these contentions is addressed below.

Attention is focused first on the driver's education matter. As a cost-cutting measure, the School Board decided to have the local CESA provide driver's education to District students rather than continue using a District teacher to do it as had previously been the case. After this decision was made, the District contracted with the local CESA and a representative thereof to provide this service to District students. While the District disputes whether this contracting arrangement constitutes "subcontracting", it is

---

2/ See, Winter Joint School District No. 1, Decision No. 17867-C (WERC, 5/81).

assumed for purposes of this decision that it is.

The parties' labor agreement is silent on the question of subcontracting. Thus, the parties have not included any language in their present agreement covering the matter. That being the case, no contract provision expressly prohibits the District from subcontracting. Conversely though, no contract provision explicitly gives the District the right to do so. Faced with questions concerning matters which are not addressed in the contract, most arbitrators hold that those rights not specifically negotiated away from management by the union remain within the control of the employer. 3/ In accordance with this accepted view, the undersigned holds that the District has retained the right, pursuant to the management rights clause (Article VI), to subcontract driver's education provided that in doing so it did not violate any part of the agreement. 4/

The Association contends that the recognition clause and the layoff clause limit the District's right to subcontract. On its face, the recognition clause states that the District formally recognizes the Association as the exclusive bargaining representative for all District teaching personnel. Standing alone, the layoff clause sets forth a process for reducing staff "in the event the Board determines to reduce the number of employe positions (full layoff)." No particular term in either of these clauses is in issue nor does the Association assert that there has been a misapplication of any term therein by the District. Instead, the Association simply contends that when read together, these clauses limit the District's right to subcontract. The undersigned disagrees. This Examiner does not read either of these clauses standing alone or together to support an actual or implied promise by the District to freeze bargaining unit work, to leave existing bargaining unit work intact in the future or impinge on the District's right to subcontract.

There is no provision in the agreement that purports to define the work that belongs to the bargaining unit and there is no limitation on the District's right to assign work. Arbitrators have often held that where the contract does not define what work belongs to bargaining unit employes, the employer's action in subcontracting work must be reasonable and done in good faith. 5/ Here, there is nothing in this record to indicate that the District acted unreasonably or in bad faith when it contracted out driver's education to the local CESA.

The Association contends that the District should nevertheless be precluded from subcontracting driver's education because a "practice" allegedly exists that the District will not subcontract same. In support thereof, the Association cites the fact that the District has never subcontracted driver's education prior to doing so here. However, just because the District has never subcontracted driver's education before does not mean that a "practice" against it exists. As noted above, the District's subcontracting was a legitimate management function. The District's failure to exercise that right until now does not mean it has somehow surrendered that right or is precluded from now exercising same. That being so, it is held that the District's subcontracting of driver's education to the local CESA did not violate the parties' labor agreement.

---

3/ Zack and Bloch, Labor Agreement in Negotiation and Arbitration, BNA Books, 1983, p. 56.

4/ No Sec. 111.70(3)(a)4 refusal to bargain violation was alleged with respect to this subcontracting. As a result, that issue is not before the Examiner and has not been addressed herein.

5/ Elkouri and Elkouri, How Arbitration Works, BNA Books, 4th Ed., p. 539.

Having so found, attention is now turned to the layoff issue. As a starting point, it is noted that the Board has the right to reduce the size of their teaching workforce. The contractual basis for same is found in both the management rights clause (Article VI) where it provides in No. 11 that the Board has reserved unto itself "the determination of the size of the working force. . ." and the layoff clause (Article XII) where it provides in Section 1 that "In the event the Board determines to reduce the number of positions. . ." (emphasis added). Here, the Board decided to make such a reduction in staff after it eliminated its industrial arts program and contracted out driver's education to the local CESA.

Article XII, Section 1 provides in pertinent part that after the decision to reduce staff is made, "layoffs shall be made only for the reasons asserted by the Board. . ." In this case, the reasons provided to the employe selected for layoff were "the financial conditions of the school district and the number of students." Inasmuch as the Association contends these reasons were not valid, it follows that this must be the next focus of inquiry.

With regard to the first stated reason (i.e., "the financial conditions of the school district") the record indicates that the Board decided to respond to a projected revenue shortfall due to reduced state aid and an existing budget deficit by implementing certain cuts in programs and corresponding staff reductions, one of which is involved here. In the opinion of the Examiner, this was the Board's call to make. Given this finding, all of the Association's arguments concerning the District's finances may be factually correct (i.e., that the District's tax levy is one of the lowest of its comparable group, that its fund balance had almost half a million dollars and that the District's finances are no different from any of its comparables) but nevertheless miss the mark herein. This is because the Board has reserved to itself the right to determine "the financial policies of the District." (Article VI, No. 3).

With regard to the second stated reason (i.e., "the number of students") the record indicates that student registration for classes for the upcoming 1991-92 school year was lowest in the elective areas of agriculture, business and industrial arts. Based on these registration figures, the Board decided to cut the number of classes offered in agriculture and business and totally eliminate industrial arts. In the context of this case, the Association questions the wisdom of this policy decision (to eliminate industrial arts) and notes that there are other classes offered in the District which, like industrial arts, had a small number of students. Once again though, the Examiner believes the Association's policy arguments miss the mark for the simple reason that decisions concerning class offerings are reserved to the Board under Article VI, Nos. 1, 9 and 10.

Having found that the reasons given for the instant layoff were in fact those asserted by the Board as required by Article XII, Section 1, the focus turns to the question of whether this layoff was intended to "circumvent the other job security or discipline provisions of the agreement." While the Association asserts that it was, the Examiner finds there is nothing in the record to support the Association's bald assertion that Theis' layoff for the 1991-92 school year was a disciplinary matter. That being so, it is concluded that Theis' layoff was not a disguised disciplinary action but rather was the inevitable consequence of the Board's decision to eliminate the District's industrial arts program and to contract out driver's education to the local CESA.

Given the foregoing, it is held that the District complied with its contractual obligation under Article XII, Section 1 to make layoffs "only for the reasons asserted by the Board, and not to circumvent the other job security

or discipline provisions of this agreement."

The remaining question related to the layoff is whether Theis was laid off in accordance with the procedure set forth in Article XII, Sec. 3. The Examiner finds that he was. Steps one and two of the layoff procedure are inapplicable here because there were no retiring, resigning, temporary or part-time personnel in the affected areas (i.e., industrial arts and driver's education). By default then, step three of that process applies here. That step provides that the employe to be laid off "will be determined by seniority in the area(s) of certification commencing with the least senior." In this case, it is clear that this employe would have to be Theis because he was the only teacher in the areas selected for elimination and contracting out (i.e., industrial arts and driver's education, respectively). That being so, it logically follows that Theis was

the employe to be laid off under the layoff procedure set forth in Article XII, Sec. 3, step three. Consequently, it is held that Theis' layoff did not violate the parties' labor agreement.

Attention is now turned to the Association's contention that the District failed to give Theis certain available work to supplement his workload. The crux of this argument is that work exist in the District which Theis could have performed and, if so assigned, would have augmented his workload and/or kept him at full-time status. Specifically, the Association believes the following work is available for reassignment to Theis in one form or another:

- two sections of Gifted/Talented
- two sections of Directed Studies
- one section of Peer/Tutor
- one section of At Risk
- one section of Computer Applications
- one section of Alcohol and Other Drug Abuse (AODA)

None of these assignments require certification in a certain subject area. Thus, certification in any subject area will suffice. This of course means that all of the foregoing assignments could be performed by any licensed teacher in the District.

If it wanted to, the District certainly could have made work for Theis by giving him some of the foregoing assignments. However, it chose not to do so. Instead, it gave these assignments to teachers other than Theis. The question here is whether the District is contractually obligated to take some of these assignments away from other teachers and give them to Theis to augment his workload. The Examiner finds that the labor agreement does not impose any such obligation on the District. The basis for this finding is that the District has retained the right, under the management rights clause, to schedule and assign "all work and activities and workloads." (Article VI, No. 13). The assignments in issue here clearly fall into this category. That being the case, the District has no contractual obligation to reassign any of the foregoing assignments to Theis.

The Association also relies on the recall provision (Article XII, Section 4) for the proposition that Theis should have been "recalled" from layoff status to handle some or all of the foregoing assignments. That clause provides in pertinent part: "No new or substitute appointments may be made by the District while there are employees who have been laid off or reduced in hours who are available and certified to fill the vacancies." In the Association's view, some or all of the aforementioned assignments were "new or substitute assignments" which were made when Theis was "available and certified" and therefore should have gone to Theis.

The Association's argument is premised on the word "certified" referring to anyone who is a "certified" teacher. The Examiner believes that the Association's application of the term "certified" to anyone who is a "certified" teacher is overly broad and contrary to the normal usage of that term. The normal usage of that term refers to the certification by the Department of Public Instruction (DPI) to teach in a certain subject area of academic curriculum. Had the parties intended the word "certified" to simply refer to anyone who is certified to teach, as opposed to being certified in a particular subject area, they could have easily so stated in the recall language. They did not. Consequently, it is held that the term "certified" in the recall language refers to being certified by DPI in a particular subject area. Applying this interpretation to the recall language means that Theis has first claim to any classes or assignments that open up in the areas he is certified to teach (i.e., industrial arts and driver's education). Here, though, none of the aforementioned assignments is in industrial arts or

driver's education, so the recall provision is inapplicable.

Finally, it cannot be overlooked that the interpretation urged by the Association would lead to an unreasonable result if it were carried to its logical extreme. Were the Examiner to take five of the aforementioned assignments away from other teachers as proposed by the Association and give them to Theis so that he had a full load, this would obviously result in the partial reduction of those teachers.

Based on the foregoing then, it is held that the District's failure to give Theis any of the aforementioned assignments in order to supplement his workload did not violate the parties' labor agreement.

Dated at Madison, Wisconsin this 20th day of March, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/  
Raleigh Jones, Examiner