

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. Susan Johnson has been employed by the District as its only business education teacher since 1987. She has a Master's degree in business education and is certified by the Department of Public Instruction in business education. During the 1990-91 school year, Johnson had a full-time teaching load and taught one section of 7th grade Keyboarding, two sections of Typing I, one section of Typing II Word Processing, two sections of General Business (on alternating days) and one semester each of Accounting and Office Practice.

5. 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.

6. 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.

7. 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.

8. Nelson's aforementioned recommendations were discussed at a public meeting in early 1991. Johnson spoke at this meeting in favor of retaining the existing business education 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.

9. 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.

10. 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.

11. On March 12, 1991, Nelson sent Johnson the following letter informing her of her partial layoff for the 1991-92 school year:

Mrs. Susan Johnson
N894 County Highway "G"
Wonewoc, WI 53968

Dear Mrs. Johnson:

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 reduce the business position to a 4/7 position for the 1991-92 school year.

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

As per the master agreement, Article XII, Staff Reduction, Section 4, "Within fourteen (14) days after an employee receives a notice pursuant to this Section, he or she must advise the District in writing that he or she accepts the position offered by such notice and will be able to commence employment on the date specified therein."

Sincerely,

Kent Nelson /s/
Kent Nelson, Administrator

12. Johnson grieved her partial layoff/reduction to a 4/7th position 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.

13. 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 Johnson received her partial layoff/reduction 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 Johnson. The District's failure to give Johnson any of the aforementioned assignments in order to keep her at full-time status did not violate the parties' collective bargaining agreement.

14. The District's partial layoff/reduction of Susan Johnson to a 4/7th position 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 reducing Susan Johnson to a 4/7th position for the 1991-92 school year or failing to give her additional assignments to keep her at full-time status. 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 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)5, Stats. when it reduced Susan Johnson to a 4/7th position for the 1991-92 school year. 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 Johnson's contractual rights. First, it challenges the reasons given by the Board for Johnson's partial 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 Johnson's partial layoff. With regard to the latter reason for the partial 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 Johnson's business 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 partial layoff are invalid. According to the Association, the District wanted to see Johnson be economically disadvantaged and removed from employment, and that is why she was laid off.

The Association also argues there are up to eight classes available which could have been reassigned to Johnson so that she 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 Johnson was not given any of these assignments, the Association submits that the District failed to recall her to available work. In order to remedy these alleged contractual violations, the Association requests that Johnson 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 Johnson's reduction to a 4/7th position, namely the Board's decision to cut the business education program in half due to low projected enrollment. Since Johnson was the only business education teacher, the District contends her partial layoff/reduction to a 4/7th position was justified and reasonable under the circumstances.

Next, it submits that while Johnson would like to supplement her 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 her 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 Johnson was eligible to be recalled to is a business education teaching position, and it notes that none of the assignments in question is a business education assignment. It therefore argues that Johnson did not have a contractual right to be recalled to any of the aforementioned assignments or any other position in the District. 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) Johnson's reduction from full-time to a 4/7th position; and 2) failing to give Johnson additional assignments to keep her at full-time status. Each of these contentions is addressed below.

Attention is focused first on the partial layoff/reduction in hours 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 decided to cut the existing business education program in half.

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

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 partial layoff/reduction in hours 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 cut the business offerings in half) and notes that there are other classes offered in the District which, like business education, 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 Johnson's partial layoff/reduction in hours were in fact those asserted by the Board as required by Article XII, Section 1, the focus turns to the question of whether this partial layoff/reduction in hours 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 Johnson's partial layoff/reduction in hours for the 1991-92 school year was a disciplinary matter. That being so, it is concluded that Johnson's partial layoff/reduction in hours was not a disguised disciplinary action but rather was the inevitable consequence of the Board's decision to cut the business education offerings in half.

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 Johnson was reduced in accordance with the procedure set forth in Article XII, Sec. 3. The Examiner finds that she 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 area (i.e., business 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 Johnson because she was the only teacher in the affected area (i.e., business education). That being so, it logically follows that Johnson was the employe to be reduced under the procedure set forth in Article XII, Sec. 3, step three. Consequently, it is held that Johnson's reduction in hours did not violate the parties' labor agreement.

Attention is now turned to the Association's contention that the District failed to give Johnson certain available work to keep her at full-time status.

The crux of this argument is that work exist in the District which Johnson could have performed and, if so assigned, would have kept her at full-time status. Specifically, the Association believes the following work is available for reassignment to Johnson 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 Johnson by giving her some of the foregoing assignments. However, it chose not to do so. Instead, it gave these assignments to teachers other than Johnson. The question here is whether the District is contractually obligated to take some of these assignments away from other teachers and give them to Johnson to keep her at full-time status. 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 Johnson.

The Association also relies on the recall provision (Article XII, Section 4) for the proposition that Johnson should have been "recalled" from partial layoff status to handle some 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 of the aforementioned assignments were "new or substitute assignments" which were made when Johnson was "available and certified" and therefore should have gone to her.

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 Johnson has first claim to any classes or assignments that open up in the area she is certified to teach (i.e., business education). Here, though, none of the aforementioned assignments is in business 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 some of the aforementioned assignments away from other teachers as proposed by the Association and give them to Johnson so that she 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 Johnson any of the aforementioned assignments in order to keep her at full-time status 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