

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

FENNIMORE EDUCATION ASSOCIATION,
JANEAN WYSE,

Complainants,

vs.

FENNIMORE COMMUNITY SCHOOL DISTRICT,

Respondent.

Case 17

No. 50972 MP-2891

Decision No. 28331-B

Appearances:

Ms. Mary E. Pitassi, Associate Counsel, and Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of Fennimore Education Association and Janean Wyse.

Ms. Eileen A. Brownlee, Kramer, McNamee & Brownlee, Attorneys at Law, 1038 Lincoln Avenue, P.O. Box 87, Fennimore, Wisconsin 53809, appearing on behalf of Fennimore Community School District.

AMENDED FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER 1/

Dennis P. McGilligan, Hearing Examiner: I issued my decision in this matter on March 9, 1995, finding that Respondent Fennimore Community School District ("Respondent"), nonrenewed Janean Wyse in violation of Sections 111.70(3)(a)1 and 5, Stats. because it failed to consider Janean Wyse's prior teaching experience with the District from 1974-77 as part of her "total history of service" pursuant to paragraph 8 of the parties' collective bargaining agreement when deciding to nonrenew her for the 1994-95 school year.

Respondent was thus required in the Order to rescind the nonrenewal of the grievant (Janean Wyse) and to reevaluate the relevant Physical Education employees to determine which employee in the physical education program should be nonrenewed. Respondent was also ordered

1/ Footnote found on page 2.

"In the event that the District determines that the grievant should have been renewed for the 1994-95 school year, the District should reinstate the grievant and make her whole for all lost wages and benefits as a result of the District's nonrenewal action less . . ."

By letter dated March 13, 1995, Complainants' attorney wrote:

We note that the Order, paragraph 2(a), does not provide for interest on lost wages. Inasmuch as the Examiner adopted the approach taken by the Commission in Northland Pines School District, which specifically included interest (Slip op. at p. 18), we

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.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

would appreciate a clarification of your order if you intended to include interest on lost wages. Authority for the Examiner to modify

an order within 20 days of the issuance of a decision is found in Wis. Adm. Code ss ERB 12.08.

By letter dated March 22, 1995, Respondent's attorney informed the Examiner that the Fennimore Community School District had complied with the Examiner's Order and requested "I am aware that Mr. Pieroni has asked for a clarification on the issue of interest and I would appreciate a clarification on the issue of rescission of the nonrenewal."

In a separate letter dated March 22, 1995, Respondent's attorney also requested that the Examiner reconsider his decision that the District violated the agreement by its nonrenewal action based on grounds of newly discovered evidence; in particular, information provided the Examiner following his decision "from two former members of the negotiating team for the Fennimore Education Association related to the above-captioned matter."

Lest there be any confusion over whether interest must be paid, in the event of reinstatement and renewal of Janean Wyse's teaching contract for the 1994-95 school year, I am hereby modifying the Order to expressly provide for the payment of interest pursuant to ERB. 12.08 which enables a Hearing Examiner "on his own motion . . ." to modify any decision and order within twenty days of its issuance.

As a result, paragraph 2,a, of the Order is hereby amended to read:

a. Rescind the nonrenewal of the grievant, Janean Wyse. Reevaluate the relevant Physical Education employes, including the grievant, in compliance with paragraph 8 of the collective bargaining agreement, and in light of their "total history of service" to the District, including their entire length of service to the District both uninterrupted or interrupted, in order to determine which employe in the physical education program should be nonrenewed. In the event that the District determines that the grievant should have been renewed for the 1994-95 school year, the District should reinstate the grievant and make her whole for all lost wages by paying to her a sum of money, at the applicable interest rate of twelve (12) percent per year ^{2/} and all benefits as a result of

2/ See Wilmot Union High School District, Dec. No. 18820-B (WERC, 12/83), citing Anderson v. LIRC, 111 Wis. 2d. 245, 258-59 (1983); Madison Teachers Inc. v. WERC, 115 Wis. 2d. 623 (Ct.App. IV, 10/83).

the District's nonrenewal action less unemployment compensation,
other wages or compensation that she has earned

since the effective date of the nonrenewal that she would not have earned but for her nonrenewal and less any amount she would have received for coaching gymnastics since she was offered this position and declined to accept it.

Because no petition for review has been filed, and based on all of the above and the entire record, the Examiner concludes that no further action is necessary on the matters raised by Respondent.

Dated at Madison, Wisconsin this 29th day of March, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Examiner