STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SIREN SUPPORT STAFF ASSOCIATION, Complainant,

vs.

SCHOOL DISTRICT OF SIREN, Respondent.

Case 34
No. 66065
MP-4276

Decision No. 31824-A

Appearances:

Attorney Nancy Kaczmarek, Wisconsin Education Association Council, 33 Nob Hill Drive, Madison, Wisconsin 53708, appearing on behalf of the Siren Support Staff Association.

Attorney Andrea M. Voelker, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, Eau Claire, Wisconsin 54702, appearing on behalf of the School District of Siren.

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

On July 13, 2006, the Siren Support Staff Association filed a complaint of prohibited practices alleging that the School District of Siren had violated Secs.111.70(3)(a)4 and 5, Stats., by offering full-time school year employment to a partially laid-off employee, Carol Mossey, on the condition that she put in writing that she was willing to forego benefits from the District. Informal attempts to resolve the matter failed and the Commission, on September 26, 2006, appointed a member of its staff, Steve Morrison, to act as the Examiner to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.70(4)(a), and Sec. 111.07, Stats.

Respondent's answer was filed on October 12, 2006 and, pursuant to notice, a hearing on the matter was held in Siren, Wisconsin, on November 29, 2006. A transcript of that hearing was provided to the Commission on December 29, 2006. Briefing was completed on March 24, 2007 marking the close of the record.

The Examiner has considered the record evidence and arguments submitted by the parties. On the basis of the record, the Examiner makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Siren Support Staff Association, herein referred to as the Association, is a labor organization and is the exclusive bargaining representative for the District's full-time and regular part-time non-certified employees. At all times mentioned herein, Carol Mossey was a member of the Association.

2. The School District of Siren, hereinafter referred to as the District, is a municipal employer which operates a public school system in Siren, Wisconsin. Its principal offices are located at 24022 Fourth Avenue North, P.O. Box 29, Siren, Wisconsin 54872. At all times mentioned herein, Scott Johnson was the District's Administrator and Jennifer Vogler was the District's Elementary School Principal.

3. The Association and the District have been, at all times material herein, parties to a collective bargaining agreement, hereinafter "agreement", which governs the wages, hours, and working conditions of the employees in the Association referenced in Finding 1. The agreement contains the following pertinent provisions:

ARTICLE VIII - REDUCTION IN FORCE

> When the Board determines a lay-off shall occur, in whole or in part**,** employees will be laid off within a department (custodial, secretarial, aides & study hall monitors, and food service) by inverse district seniority (within the bargaining department). This order of lay-off shall be followed to every extent possible while filling the remaining positions within the department with employees who are qualified to perform the available work. Affected employees will receive at least a 25 day advance notice prior to being laid off.
>
> Employees who are laid off shall also have recall rights to vacant positions outside of the department they were laid off from if they are qualified to do the necessary work. In such cases, if the out of department laid off employee has more seniority (and is qualified for the position) than a laid off person within the department, the out of department employee will be recalled for the vacancy.
>
> Laid off employees who are recalled to a position, which provides for less working hours than the employees had prior to his/her lay-off, may reject such recall without giving up their future recall rights.

ARTICLE X - INSURANCE AND RETIREMENT

A. All eligible employees will become members of the Wisconsin Municipal Employees Retirement System. The Board will pay the employees (sic) portion to the System at the present rate.

B. ***Health Insurance***

1. The School District will pay health benefit coverage for a jointly approved hospital medical plan in the amount of full payment per month for single coverage and up to a dollar amount equal to ninety-five percent (95%) of the premium per month for family coverage for the 2004-05 and 2005-06 school years. Employees taking full family health insurance shall have the portion of the premiums (not paid by the District) deducted equally from their payroll checks.

   For employees who work between twenty (20) and thirty-five (35) hours per week and were hired after October 28, 1992, the District shall pay 88% of the premium for family and single plans.

2. This coverage will be for the full twelve months (sic) period commencing July 1 and ending June 30 for all covered employees who complete their yearly obligation. If an employee's employment is terminated for reasons other than illness prior to the end of this yearly obligation, the coverage shall cease on the last day of the month (in) which said termination occurs.

3. . . .

C. . . .

D. . . .

E. The Board shall provide, without cost to the employee, a long-term disability insurance plan with a sixty (60) day waiting period.

F. The District agrees to provide dental insurance with coverage equal to or better than that provided by the WEA Insurance Group plan with benefits in effect for the 1998-99 year. The District shall contribute full dollar premium toward payment of the family premium, and full dollar premium toward payment of the single premium.

The Collective Bargaining Agreement does not provide for the final and binding arbitration of claims alleging a violation of the Agreement.

4. Carol Mossey is currently employed half-time (18.75 hours) by the District as a teacher's aide. She was originally hired by the District as a full-time (37.5 hours) aide in August, 2000. Prior to her original hire she had been employed as an aide, substitute teacher and study hall monitor in two other school districts, and she has a Special ED Certificate. At all material times she has been married with three children, age 20 (currently in college), 17 and 12.

5. On March 11, 2005, Mossey was notified by District Administrator Scott Johnson that, because of budget cuts, she, along with five other employees, was the subject of a partial lay-off. (Joint Exhibit 2). The lay-off was to take effect on July 1, 2005 and provided that her hours of work were to be reduced from 37.5 hours per week to 19 hours. Subsequently her hours were reduced further to 18.75. The notice also informed her that her new hours would result in the elimination of her health and dental benefits and that the decision to cut her hours resulted from financial reasons unrelated to her job performance.

6. Of the six employees laid off, Mossey was the most senior. During a conversation with Johnson shortly after receiving her lay-off notice, Johnson advised her that, due to her seniority position, she had a good possibility of recall in the event someone resigned. Johnson told her she was "next on the list" and she left that conversation with "good hopes."

7. Shortly before July 25, 2005, two aides resigned their positions leaving vacancies. Both were 18.75 hour per week positions. Mossey did not receive formal notification of these resignations from the District but was aware of them. Consequently, on July 25, 2005, she attended the Board meeting with the thought that the vacancies would be discussed at that meeting and that she would be recalled to one of the part-time positions, thus bringing her back to full-time status. However, the positions were not on the agenda. She stayed through the meeting and after the meeting ended Johnson approached her and asked to speak with her privately. They went to the rear of the library where no one else was located and Johnson told her that if she really wanted the second part-time job with the District she would have to waive her right to benefits under the contract and that she would have to get the Association to agree with the waiver and that she would have to "put it in writing". Mossey asked Johnson what would happen if she could not get the Association to agree to the waiver and Johnson told her that she would "have to put it on paper" herself.

8. Following that meeting Mossey went out into the hallway and was approached by Elementary School Principal Jennifer Vogler. Vogler asked Mossey if Johnson had talked to her and Mossey assumed that Vogler was referring to the same subject covered by Johnson. Mossey was confused and upset by the Johnson/Vogler conversations and sought the counsel of a friend, a part-time music teacher at the District, for advice. Her friend advised her not to sign anything agreeing to waive benefits.

9. A short time thereafter, on August 3, 2005, Mossey saw a job vacancy advertisement (Joint Exhibit 3) in the local paper. It read in pertinent part:

> **JOB VACANCIES**
> **School District of Siren**
>
> . . .
>
> **INSTRUCTIONAL AIDE**
> The Instrucional aide may be assigned to one or more classrooms as needed to assist classroom teachers with various tasks to help educate children. This may include working with early childhood students (ages 3-4)with disabilities. Aides are also responsible for various supervisory duties assigned throughout the day, which may include monitoring the playground, lunchroom & school bus loading/unloading. This is a part-time position without health benefits. Persons interested in this position can apply by sending a letter of application to Jennifer Vogler, Elementary Principal, at the address listed below.

Mossey was again confused and frustrated by this notice due to the fact that Johnson had told her that she was next in line to be recalled and by the fact that he had told her that if she wanted two part-time positions she would have to waive her benefits. She went to the school and talked to Johnson who told her that if she wanted the Instructional Aide position she would have to submit a letter and apply for it. Mossey then composed a letter of interest (Union Exhibit 1) for the Instructional Aide position and personally submitted it to Vogler along with a letter of recommendation (Union Exhibit 2) Vogler had given her when she was partially laid off.

10. While Mossey wanted the position of Instructional Aide because she needed the full-time income, she continued to feel uncomfortable about the issue surrounding a waiver of benefits. Consequently, she spoke with her union representative, Barry Delaney, as well as the teacher's union president, Darrel Imhoff, for advice on the matter, both of whom advised her not to waive her benefits.

11. The record is unclear regarding the specific date, but shortly after Mossey submitted her application to Johnson and before the beginning of school Vogler called her and asked her what her decision was on accepting the Instructional Aide position. Mossey told her that she (Mossey) did not "feel comfortable putting anything in writing" and asked if she could call her back later. Vogler told her that she (Vogler) needed to know soon because the half-time Instructional Aide position needed to be filled since it was getting close to the start of school. Vogler also suggested to Mossey that she might be able to "put it on paper" for one year. Mossey called Vogler back that afternoon and told her that she was not going to take the Instructional Aide position because she did not want to waive her benefits. In a subsequent conversation shortly before school started Mossey told Vogler that she (Mossey) thought her seniority "should count for something" and asked if she could at lease choose her shift. The night before school started Vogler called her and agreed to allow her to work mornings as opposed to part mornings and part afternoons. A new hire, Kristen Kosloski, was placed in the Instructional Aide afternoon position.

12. Mossey continued on part-time status for the entire 2005-2006 school year working from 8:30 a.m. to 12:15 p.m., while the new hire, Kosloski, worked the afternoon aide position from 12:00 p.m. to 3:00 p.m. In the current school year (2006-2007) Mossey continues to work the morning shift. The afternoon shift is now staffed by Sandra Oachs, also a new hire for the 2005-2006 school year.

13. Mossey was, and continues to be, qualified and available to work the afternoon Instructional Aide shift during the 2005-2006 school year and the current 2006-2007 school year.

14. The District's efforts, through its Administrator, Scott Johnson and its Elementary School Principal, Jennifer Vogler, to induce Mossey to enter into employment and waive her rights to contractual benefits constitutes an attempt to bargain individually with an employee.

15. The District's failure to recall Mossey to the Instructional Aide position for the school year 2005-2006 and the current school year 2006-2007 violated **Article VIII - Reduction in Force** (Finding of Fact 3 above) of the collective bargaining agreement then in force.

CONCLUSIONS OF LAW

1. The District's actions in attempting to induce Mossey to accept full time employment in exchange for a waiver of her contractual right to benefits constitutes individual bargaining by the District in violation of Sec. 111.70(3)(a)4, and, derivatively, Sec. 111.70(3)(a)1, Stats.

2. The District's actions in failing to recall Mossey to the Instructional Aide position in school years 2005-2006 and 2006-2007 in violation of **Article VIII** of the Collective Bargaining Agreement**,** constitutes a violation of Sec. 111.70(3)(a)5, and, derivatively, Sec. 111.70(3)(a)1, Stats.

3. The Collective Bargaining Agreement does not provide for the final and binding arbitration of claims alleging violations of the Agreement and it is therefore proper for the Commission to exercise its jurisdiction to resolve this claim brought under Sec. 111.70(3)(a)5.

ORDER

1. To remedy its violation of Secs. 111.70(3)(a)1, 4 and 5, Stats., the District shall immediately:

a. Cease and desist from:

(1) Bargaining individually with Mossey regarding matters of contract administration.

(2) Denying Mossey full time employment and reducing Mossey's compensation as an Aide by refusing to assign her to the position of Instructional Aide for the 2005-2006 and 2006-2007 (to date) school years.

b. Take the following affirmative action which the Examiner finds will effectuate the purposes of the Municipal Employment Relations Act:

(1) Notify Siren School District Support Staff personnel represented by the Siren Support Staff Association by conspicuously posting the attached APPENDIX "A" in places where notices to such employees are customarily posted, and take reasonable steps to assure that the notice remains posted and unobstructed for a period of thirty days.

(2) Reinstate Mossey in the position of Instructional Aide, in addition to her present position, thus bringing her to full time status, for the remainder of the 2006-2007 school year.

(3) Pay Mossey the difference between the amount she was paid for the 2005-2006 school year and the amount she would have been paid but for the District's refusal to recall her into the position of Instructional Aide for that school year, together with interest at the statutory rate of 12% per year..

(4) Pay Mossey the difference between the amount she is being paid for the 2006-2007 school year and the amount she would have been paid but for the District's refusal to recall her into the Instructional Aide position, together with interest at the statutory rate of 12% per year.

(5) Notify the Wisconsin Employment Relations Commission within twenty days of the date of this Order as to what steps the District has taken to comply with this Order.

Dated at Wausau, Wisconsin this 15th day of May, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steve Morrison /s/

Steve Morrison, Examiner

APPENDIX "A"

NOTICE TO EMPLOYEES OF THE SIREN SCHOOL DISTRICT REPRESENTED BY SIREN SCHOOL DISTRICT SUPPORT STAFF

As ordered by the Wisconsin Employment Relations Commission, the Siren School District notifies you as follows:

1. The Siren School District will not seek to collectively bargain with an individual represented by the Siren School District Support Staff in the absence of a representative of the Siren School District Support Staff.

2. The Siren School District will not violate the recall provisions of the Collective Bargaining Agreement with the Siren Support Staff Association.

SIREN SCHOOL DISTRICT

By _____

Name _____ Title _____

Date _____

THIS NOTICE IS TO REMAIN POSTED FOR 30 DAYS AND IS NOT TO BE COVERED OR OTHERWISE OBSTRUCTED OR DEFACED

SIREN SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint initiating these proceedings, the Association alleged that the District violated Secs.111.70(3)(a)4 and 5. Although the Complaint does not allege a derivative violation under Sec. 111.70(3)(a)1, the Association has argued this violation in the briefing process. The evidence supports this derivative violation and the Examiner has, therefore, found the violation to exist.

Complainant's Position

The parties have negotiated, executed, and are contractually bound by, a collective bargaining agreement which, at all times herein, was in full force and effect. **Article VIII - Reduction in Force** of this agreement requires the District to recall laid off (or partially laid off) employees in the event positions become available for which the laid off employee is available and qualified. The District violated this provision when, in the summer of 2005 prior to the 2005-2006 school year, it failed to recall Ms. Mossey, who had been partially laid off (and consequently had lost her benefits), to an available Instructional Aide position for which she was both qualified and available. Had she been recalled into this position she would have been brought back to full time status and her contractual benefits would have been restored.

In addition to the allegation that the failure to recall Mossey constituted a violation of the contractual provision relating to lay-off and recall, the District compounded the problem by entering into discussions with Mossey wherein, through its Administrator, Scott Johnson and its Elementary School Principal, Jennifer Vogler, it attempted to induce Mossey to return to her full time status by accepting the Instructional Aide position in exchange for a waiver of her contractual rights to full time benefits. After some discussion and consideration by Mossey, she declined to waive her right to full time benefits and the District hired a new Aide to fill the position. Mossey continued her employment as a part time (half time) employee without benefits.

At no time did the District make an offer to the Association to negotiate over Mossey's wages, hours and conditions of employment but, instead, directed its offer to Mossey alone thus constituting individual bargaining. It then aggravated this effort by contact from Vogler to Mossey suggesting that she (Mossey) could waive her benefits for only one year. The fact that the Association eventually learned of these actions does not constitute a defense. By the time the Association learned of the District's offer to Mossey the damage had been done. In any event, it is the District's responsibility to negotiate with the Association over these matters and the fact that it told Mossey that she would have to get the Association to sign off on the deal is

clear indication that the District chose to negotiate with the union through an employee rather than the other way around.

District's Position

The evidence shows that the informal conversation Johnson had with Mossey after the School Board meeting does not rise to the level of individual bargaining. A municipality violates its duty to bargain where it bypasses the collective bargaining representative and seeks to obtain a deal directly with employees. It must do more than merely relay information to employees since public employers have certain free speech rights and to demonstrate individual bargaining the evidence should show that statements were made to encourage an employee to bargain directly with the school district rather than through their representative. (Citing ST. CROIX COUNTY, DEC. NO. 28791-A (Crowley, 5/97); *aff'd by operation of law*, DEC. NO. 28791-B (WERC, 7/97); PRAIRIE DU CHIEN SCHOOL DISTRICT, DEC. NO. 30301-A (Jones, 4/03); THORP EDUCATION ASSOCIATION, DEC. NO. 29146-A (Crowley, 1988). Informational questions and responses do not constitute individual bargaining. (Citing BEAVER DAM UNIFIED SCHOOL DISTRICT. DEC. NO. 20283-A (Jones, 10/83 and MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NO. 15629-A (Davis, 5/78). The conversation here was nothing more than an informal exchange of questions and responses.

Because Johnson told Mossey that she would have to go to her Association to get a deal approved, there was clearly no attempt to undermine or disparage the Association. His comments never invited Mossey to abandon the Association to achieve better terms. In any event, no offer was ever made to Mossey and since the Association never contacted Johnson about it the issue is essentially moot. The fact that the position was posted in the normal course of things evidences support of Johnson's testimony. The District never varied its approach to this situation and did not wait for any "alleged" decision on the part of Mossey. Also, Vogler testified that the only time she heard about this potential "deal" was through Mossey herself and that Johnson never mentioned it to her. Thus, Mossey's version of the events is self-serving and not credible and since Johnson has no motive to shade the truth and because his testimony is contradicted by Mossey's, his testimony is more credible. Hence, there is no credible evidence that the District bargained individually in violation of Sec. 111.70(3)(a)4, Stats.

Since Mossey's testimony is self-serving, the Examiner must consider this in his credibility determination. She has a number of reasons to embellish the truth. Back pay and reinstatement present the possibility of financial reward and the prospect of full time employment was something she was "desperate" to get. She was confused and angry because she thought she should never have been laid off in the first place.

The fact that Mossey was not recalled into another position did not violate the contract because the position conflicted with Mossey's current schedule. Her hours overlapped and it was not possible to redesign the schedule to accommodate her, so another employee had to be hired to take the vacant position.

Complainant's Reply

There is no evidence to provide a reasonable basis to discredit Mossey. There is evidence to question Johnson's testimony. Vogler herself testified that Mossey had come to her to tell her how uncomfortable she was with Johnson's offer. Vogler also testified that she understood that Mossey would be given the Aide position if she would waive her rights to benefits and also confirmed that she and Johnson had discussed it. Because Vogler's testimony was adverse to the interests of the District and favorable to the interests of Mossey, it should be given considerable weight when considering credibility.

Johnson's discussion with Mossey was much more than an "informal exchange of information." He was not merely relaying information that he or the District had offered to the Association, he was offering her a "deal": full time employment in exchange for a waiver of benefits. The combined testimony of Vogler and Mossey unmistakably discredit Johnson's version of the events and shift the weight of credible evidence to Mossey.

District's Reply

There was only one pertinent conversation between Johnson and Mossey (although the Association attempts to multiply the number) and this was an informal one in which they discussed her layoff and the possibility of waiving benefits. This does not constitute individual bargaining. In addition, the District never made an offer to Mossey. It told her to go to the Association to get them to sign off on the waiver. This cannot be considered to be an "offer" and should not support the claim.

There are three reasons the Association has failed to prove the District has violated the recall provisions of the contract: first, both positions had the same number of hours per week as Mossey's current position and would not result in an increase of hours; second, the parties' agreement does not permit partial bumping or an employee holding multiple positions and she was, therefor, ineligible for recall, and; third, she was not able to perform the work of two positions given the overlapping hours.

DISCUSSION

Alleged violation of Secton 111.70(3)(a)4, Stats.

Individual bargaining is defined as negotiations which take place between the employee and the employer. *Roberts' Dictionary of Industrial Relations*, 3rd Ed., 1984 at 284. Under Sec. 111.70(1)(a), Stats., a municipal employer is obligated to bargain with the collective bargaining representative over the wages, hours and conditions of employment for employees in a collective bargaining unit represented by said representative. Under Sec. 111.70(3)(a)4, Stats., a municipal employer commits a prohibited practice where it bypasses the representative and seeks to obtain a contract directly with employees. When employees select a union to represent them, the employer is obligated to bargain in good faith only with the union. Not all communications by an employer with its employees are a prohibited practice. An employer can directly communicate to its employees truthful comments as to its bargaining proposals that had been submitted to the bargaining representative. An employer cannot deal with the union through employees rather than vice versa. NLRB v. GENERAL ELECTRIC CO., 418 F.2D 736, 72 LRRM 2530 (2D Cir., 1969). Under the law, direct dealing with individuals violates the duty to negotiate exclusively with the union, without and additional showing of subjective bad faith. NORTHCENTRAL TECHNICAL COLLEGE, DEC. NO. 31117-C (WERC, 2/06)

The Examiner finds the testimony of Mossey and Vogler to be completely credible. The evidence establishes that the District, through its Administrator, Scott Johnson, and its Elementary School Principal, Jennifer Vogler, attempted to deal directly with its employee, Mossey, in an effort to persuade her to accept full time employment in exchange for a waiver of her contractual right to collect health insurance and other associated benefits under **Article X - Insurance and Retirement**. On the evening of July 25, 2006, during a School Board meeting, Johnson ushered Mossey into a private location and offered to give her additional hours of work as an Instructional Aide if she could get the Association to sign off on the deal. At least one further discussion with Johnson took place on this issue prior to the beginning of the school year. If she were unable to get the association to sign off, Johnson told her she would have sign off on it herself. The District forcefully argues that this meeting(s) amounted to nothing more than an exchange of ideas and information. This argument is based solely upon the testimony of Johnson which is belied, in large part, by the testimony of Vogler, who testified that she had discussed the issue with Johnson. It is also belied by the credible testimony of Mossey. The Examiner rejects the District's argument. Vogler then furthered the attempt at making the deal on behalf of the District near the beginning of the school year by asking Mossey again what her decision was about taking the Instructional Aide position and suggesting that Mossey could waive her rights for only the one year. This chain of events was a blatant attempt by the District to circumvent the duty to bargain with the Association.

Accordingly, the Examiner finds a violation of Sec. 111.70(3)(a)4, Stats.

Alleged violation of Sec. 111.70(3)(a)5, Stats.

Sec. 111.70(3)(a)5, Stats. makes it a prohibited practice for a municipal employer "To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment. . ." Normally, the Commission will not assert its jurisdiction to decide a Sec. 111.70(3)(a)5, Stats. case where the parties have contractually agreed to a grievance procedure. Here, the parties agreement does not contain such a procedure and it is, therefore, appropriate for the Commission to exercise its discretion in this case.

The central contractual issue involves **Article VIII - Reduction in Force**. The Association posits that following Mossey's lay off she became eligible under the terms of that Article for recall to the available position of Instructional Aide because she was available and qualified for the position. The District says that Mossey was both unavailable and ineligible for recall for three distinct reasons: First, both positions had the same number of hours per week as Ms. Mossey's current position and, therefore, would not result in an increase of hours. The Examiner rejects this argument for two primary reason. In the first place, the argument does not make sense. If the contract had required, which it did not, that partial recall into a position which increased hours to pre-layoff levels was prohibited, then the District's argument would hold water. That is not the case here. The contract clearly anticipates partial recall. In the second place, the District was certainly willing to allow Mossey to recall into the available position of Instructional Aide if she would waive her rights to her contractual benefits under **Article X**. The District's second reason Mossey was not available and not qualified for the position is because the parties' agreement does not permit partial bumping or an employee to hold multiple positions, so unless she wanted to move from one position to another with no change in hours, she was ineligible for recall. The Examiner notes that the only record evidence which refers to a prohibition against holding multiple positions is found in the testimony of Administrator Johnson and is given in support of the District's refusal to recall Mosey into an available position. As previously stated, the District was perfectly willing to give her that position if she would consent to waive her benefits. Also, the language in **Article VIII - Reduction in Force** is not ambiguous in any way. It specifically allows for partial lay-off and, by clear and logical implication, allows for partial recall. The District's final reason, that the District could not place Mossey into the available position because the work times "overlapped", is rejected by the Examiner for two reasons. First, as noted above, the District offered to place her in that position in exchange for her waiver of benefits, evidencing a clear indication that the District could make the "overlap" problem go away under the right circumstances, and, second, the so-called "overlap" issue involved only fifteen minutes and the District could have easily accommodated that issue. Mossey was neither unqualified nor unavailable. For all of the above reasons, the Examiner finds that the District has violated the provisions of **Article VIII - Reduction in Force.**

Therefore, upon consideration of the record as a whole, a Sec. 111.70(3)(a)5, Stats. violation has been proven.

On the basis of the foregoing, the Examiner has concluded that a prohibited practice within the meaning of Sec. 111.70(3)(a)4, Stats. and Sec. 111.70(3)(a)5, Stats. has been proven in this case.

Dated at Wausau, Wisconsin this 15th day of May, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steve Morrison /s/
Steve Morrison, Examiner

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