

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 NORTHWEST UNITED EDUCATORS : Case 15
 : No. 43797
 and : MA-6075
 :
 PRAIRIE FARM SCHOOL DISTRICT :
 :

Appearances:

Mr. Michael J. Burke, Executive Director, Northwest United Educators,
 appearing on behalf of the Union.
 Mulcahy & Wherry, S.C., Attorneys, by Ms. Kathryn J. Prenn, appearing on

behalf

ARBITRATION AWARD

The Employer and the Association above are parties to a 1989-91 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the non-renewal grievance of teacher Curtis Hoeft.

The undersigned was appointed and held a hearing in Prairie Farm, Wisconsin on May 8, 1990, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on August 6, 1990.

STIPULATED ISSUES:

1. Did the District refuse to renew Curtis Hoeft's teaching contract for just cause?
2. If so, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS:

. . . .

ARTICLE VI

RENEWAL OF CONTRACTS

AND DISCHARGE

A. The Board will give written notice of termination or non-renewal of teacher contracts for the ensuing year on or before March 15. The teacher must accept or reject the contract in writing no later than April 15.

B. Teachers who are being considered for non-renewal will be notified in writing on or before February 28.

C. Contracts cannot be terminated without mutual consent during the period for which they are written.

D. No teacher shall be suspended, discharged, or reduced in rank without cause and after a three-year probationary period no teacher shall be non-renewed without cause. Teachers hired prior to the 1986-87 year shall be subject to a two-year probationary period.

All information forming a basis for discharge, non-renewal, suspension, or reduction in pay shall be made available to the teacher.

FACTS:

The facts are not substantially in dispute. Grievant Curtis Hoeft was hired as a teacher in 1975, and continued to teach for the District until he was non-renewed in the Spring of 1990. The stated reason for his non-renewal was lack of certification in one of the subjects he taught.

Hoeft has taught a mixed workload consisting essentially of social studies, psychology and driver's education, except for the years prior to 1978, when psychology was introduced as a subject in the District by the grievant.

In recent years the driver's education part of the grievant's work has taken place during the summer or otherwise outside the school day, and was not part of the grievant's regular teaching contract. Most of the grievant's classroom sessions were social studies, and of some 13 semester courses taught in each year, psychology occupied only one period for one semester. There were, however, always students who wished to take the course, and the numbers of 9-15 such students per year must be viewed in the context of a high school which has a total of only 108 students in all. Psychology was one of a number of electives which these students were free to take as part of their overall requirement.

The grievant held, in 1988-89, two certifications: One, in broad-field social studies, was a lifetime certificate, but the other, in psychology and driver's education, expired by its terms in the summer of 1989. In January, 1989 the high school principal, Gary Swanstrom, issued notes to each teacher who had a certification which was expiring in that year. The note concededly received by the grievant stated:

We just received the teacher license computer print-out from the Certification Department at the DPI.

According to this print-out, your certification expires as of June 30, 1989 and you will need to send a renewal application. The areas of certification are listed below:

- 1) Driver education
- 2) Psychology

It is undisputed that the grievant did nothing in response to this notice. In September, 1989, Swanstrom requested a copy of the grievant's updated certification, and discovered at that time that the grievant had not taken action to renew the certification, or to take the necessary courses which were a prerequisite for such renewal. Swanstrom's testimony is undisputed that the grievant needed six credits within the five years of the existing license to be eligible to renew that license, but that these six credits could be accumulated in a variety of ways, (discussed below.) On September 19, Swanstrom discussed the matter with the grievant and concededly told Hoeft he would have to get his license renewed. On October 16, then-District Administrator Larry Lienau wrote to the grievant as follows:

This letter is to advise you that in the executive session scheduled during the October 16, 1989 Board of Education meeting, I will be bringing to the Board's attention the fact that you have allowed your license to teach psychology to lapse.

You should be advised that Section 118.21 Wis. Stat., provides that, ". . . a teaching contract with any person not legally authorized to teach the named subject . . . shall be void. All teaching contracts shall terminate if, and when, the authority to teach terminates." For the past several years, your teaching position has included at least one section of psychology. Article VIII of the collective bargaining agreement provides that the Board has retained the right to create and combine positions. Furthermore, arbitrators have consistently refused to impose on school boards any duty to create multiple part-time positions or to retitle courses so as to arguably enable a teacher to get around certification deficiencies. Finally, you should be aware that the District is under no duty or obligation to seek a provisional license for you to teach psychology so as to enable you to be certified to teach the position for which you were hired.

I point this out to you because your similar action in allowing your driver education license to expire has caused me to believe that you are not aware of the potential consequences of your actions. While your action in letting your driver education license lapse without any consultation with or notice to the District can, at best, be characterized as unprofessional, your action in letting your psychology license expire may have placed your continued employment with the District in jeopardy.

I will be reviewing this matter in detail with the Board on Monday evening, and I have also requested advice from the District's legal counsel regarding options available to the District. There will not be any final decisions made at Monday night's Board meeting, however, as the purpose of the discussion will

be to explore options available to the Board.

If you wish to discuss this matter further with me prior to the Board meeting, please feel free to do so.

The Board then discussed what to do about the grievant's lack of certification, and noted that driver's education was not part of the grievant's regular teaching contract. There is evidence that some board members were irritated with the grievant because of his failure to renew the driver's education certification. The board determined, however, to obtain for the grievant a provisional license in psychology in order to permit that year's psychology course to be offered. [13 students had already signed up]. The board decided to handle the driver's education course by hiring a teacher from a neighboring district to do the work part-time. On October 25, Lienau wrote to Hoeft to confirm the board's actions, stating as follows:

This letter is to advise you that I will assist you in seeking a provisional license so as to enable you to be certified to teach psychology during the 1989-90 school year.

You are further advised that there is no duty for the District to seek a provisional license for you. Grams v. Melrose-Mindoro Jt. School District No. 1, 78 Wis.2d 569 (1977). Therefore, this letter will serve as written notice to you that unless you are fully certified to teach all of the courses assigned to you at the time the Board must take action on the renewal of contracts for the 1990-91 school year, I will recommend that your teaching contract not be renewed for the 1990-91 school year.

Again, if you wish to discuss any questions or concerns regarding this matter with me, please do not hesitate to do so.

The grievant admitted that his sole action prior to receiving word of his impending non-renewal on or about February 19, 1990 was to obtain, sometime during the previous fall, a copy of a course catalog from U.W.-Stout. The grievant signed up for one three-credit course in abnormal psychology on/or about February 19, and subsequently registered for another three-credit course to be conducted after the date of the hearing herein. The second of the courses was scheduled to be finished by July, 1990.

The grievant testified that he had paid little attention to the initial request for renewal of his certification because he did not think a certification was necessary for him to teach one section of psychology. The grievant admitted, however, that he had taken no action to check on the accuracy of this belief. With respect to his inaction following Lienau's October letters, the grievant testified that because his wife worked at night and he had children, he was not free to take courses in the fall; that the semester system made courses unavailable until February; and that he believed that he was in good time to finish the requirements prior to the start of the ensuing school year. Swanstrom testified that at least one area college, U.W.-River Falls, was in 1989-90 operating on a quarter system, with a new quarter beginning about Thanksgiving. Two board members testified; Roger Klefstad stated that he would have supported non-renewal unless the grievant had completed all six required credits by the non-renewal date, but Herbert Seeger testified that he would not have voted to non-renew the grievant if the grievant had obtained any credits prior to that date.

Swanstrom testified that for purposes of renewing the license, the grievant was eligible to apply credits received at the graduate or undergraduate level in a wide variety of subjects, and that it was not necessary that the subject matter be in psychology. Swanstrom also testified that a number of teachers have obtained continuing education credits, applicable toward a license renewal, by taking evening and weekend workshops, and that the District paid for teachers to attend an Eau Claire teachers' convention in the Fall of 1989, which generated eligibility for some such credits. The grievant testified that he attended the convention, but did not sign up for the credits because to do so meant standing in excessively long lines.

THE DISTRICT'S POSITION

The District contends that the grievant was given every opportunity to obtain the necessary course credits for renewing his psychology license, and that the grievant demonstrated complete inaction until the non-renewal recommendation was already on its way to him. The District argues that if the grievant did not know from the initial January, 1989 letter that he had to renew his psychology license, he certainly knew it by September, and was unmistakably told by October that his job was in jeopardy. Despite this, the District contends, he took no action whatsoever until after the time period

allowed by the District had run out. The District contends that it is irrelevant that the psychology course only consumes 1/13th of the grievant's teaching load, because DPI requirements mandate that a teacher be certified for all courses taught. The District argues that its actions in October demonstrated that the grievant's 14 years of teaching for the District were being given due weight, because it could have considered the grievant's teaching contract void forthwith, and instead elected to obtain for him a provisional license. The District distinguishes this case from the Merrill arbitration award contended to be similar by the Association, on several grounds. In particular, the District argues that in Merrill there was disparate treatment of the grievant as opposed to another teacher, that the type of certification issued temporarily to the grievant in Merrill was no longer automatically renewable by the time of this case, and that the teacher involved in Merrill needed only two credits to complete the licensing requirement, while here the full six credits required remained to be fulfilled. The District contends that the evidence shows that the grievant could have taken courses at an earlier date at River Falls, that he lived in close physical proximity to the Stout campus, and that his conduct in general demonstrates complete indifference to the District's proper requirement of him. The District requests that the grievance be denied.

THE ASSOCIATION'S POSITION:

The Association contends that the initial notice that the grievant's license was expiring did not indicate that non-renewal was a possible outcome of failure to obtain the credits, and that the grievant's assumption that he could teach one class of psychology without a specific certification was a reasonable assumption because he had taught psychology from 1978-84 without a specific psychology certification. The Association contends that Swanstrom supported this view in part by his testimony indicating that the grievant had some basis to conclude that he could teach psychology without a specific certification. The Association acknowledges that in September, 1989, Swanstrom informed Hoeft that he did have to have the certification, but notes that Swanstrom did not tell Hoeft that he had to be fully certified by February 28, 1990 or face non-renewal. The Association contends that the subsequent unilaterally imposed timeline of February 19, 1990 left the grievant with less than four months to accumulate credits, and that this was unreasonable. The Association cites testimony that the grievant was the primary child care provider for his two children at night while his wife worked, and contends it is not clear in the record whether it was even possible to obtain six credits during that four-month time frame. The Association argues that a number of other factors also support a finding that just cause for non-renewal is lacking here. The Association points to the grievant's 14 years' service for the District and the fact that there was nothing in the record to indicate that the grievant's performance was anything but satisfactory. The Association argues that the psychology requirement was only a small part of the grievant's teaching, and that this could be scheduled in the first or second semester at the District's option. The Association argues that there is every reason to believe that prior to the start of school in the Fall of 1990 the grievant would complete the course requirements, and that the District concededly knew that it was possible to issue a conditional contract which would have depended for its execution on the grievant actually completing those requirements. The Association argues that while the District might have been inconvenienced if the grievant did not complete the requirements, that possibility must be measured against the harm to the grievant resulting from non-renewal of a long-service teacher. The Association concedes that some level of discipline might conceivably have been applied to the grievant, but contends that non-renewal was out of proportion to the significance of the problem the grievant had caused. The Association requests that the grievant be awarded reinstatement and a make-whole remedy, or a modified remedy such as that applied by Arbitrator Yaeger in the Merrill case.

DISCUSSION:

It may be regrettable that a long-service teacher could be non-renewed for grounds as seemingly minor as the failure to provide evidence of certification in a secondary part of his position, particularly when there is no evidence presented that he was an unsatisfactory teacher or that the courses required of him were in fact related to psychology. But I cannot find on the facts of this case that the District has acted outside the bounds of the just cause provision. In particular, this matter is distinguishable from the Merrill case cited by the Association, on several grounds.

To begin with, the Merrill case involved a teacher who had been given conflicting information by DPI itself as to what was required of him in certification. Secondly, the shortfall in courses was much smaller than for the grievant here. And third, as the District notes, there was disparate treatment found in the Merrill case, while there was no evidence here that the grievant was disadvantaged compared to any other teacher.

On the surface there is some attractiveness to the Association's contention that a conditional contract should have been issued. But I do not accept the Association's assertion that the grievant should be excused compliance with the District's requirements simply because his family situation

was awkward in the Fall of 1989. And I do not read Swanstrom's testimony or the other evidence in the record as implying that there were grounds for any doubt in the grievant's mind as to what the District expected of him.

The key fact which emerges from the testimony here is that the grievant was given several escalating levels of warning as to the need to renew his psychology certificate, and did virtually nothing about it until the District had already prepared the Notice of Non-Renewal. There is, as the grievant himself admitted in testimony, no satisfactory explanation for this near-total inactivity. Had the grievant taken some kind of action, either by obtaining some of the credits, or by investigating with assiduity how such credits might be obtained and what the dates of available courses were, or even engaged in a dialogue with the District Administrator in an effort to satisfy his family needs and the District's concerns by mutual accommodation, I might find the District's non-renewal action to be hasty. But here, none of these things happened, and the grievant's own conduct was such that the District could reasonably fear that some new reason for inaction would appear if the grievant were given any further time. That concern must therefore be balanced against the reasonableness of the District's position that if in fact the grievant did not complete the requirements by July, the District would then have to hire a teacher at the last minute and from a diminished pool of applicants. I find the District's argument that such circumstances would reduce the likelihood of finding a high quality applicant to be reasonable. And as the District notes, the grievant had already received the benefit of some restraint on the District's part when it elected to obtain for him a provisional license in the fall of 1989. Under the well-accepted principle that the reasonableness of management's actions must be assessed in the light of the facts available to management at the time, it could reasonably appear to the District that the grievant was contemptuously ignoring a repeated warning, as to a matter on which the State set firm requirements for teacher qualifications. Thus I cannot find in the circumstances of this case that the District was outside the bounds of just cause when it determined that non-renewal was appropriate.

For the foregoing reasons and based on the record as a whole, it is my decision and

AWARD

1. That the District had just cause to refuse to renew Curtis Hoef't's teaching contract for 1990-91.
2. That the grievance is denied.

Dated at Madison, Wisconsin this 24th day of September, 1990.

By _____
Christopher Honeyman, Arbitrator