

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

CARSTON C. KOELLER, BERNARD ALBERG,
JEROME STUEBER, GERALD C. LIEPERT,
THERESE TIERNEY, ALLAN WALLDREN,
DANIEL H. ALLERT, JAMES C. McCONNELL,
CYNTHIA K. BARTEL, LUELLA LEONHARD,
VERA B. LUNDBY, MARY H. WELCH,
JUNE ZELINSKI, ROBERT C. GRASSER,
LORRAINE J. WILLIAMS, ADELINE SOPA,
ROBERT L. BERG, KENNETH H. DANIELS,
ROBERT L. ULLSPERGER, HARVEY H. RADKE,
CLETUS D. BEYER, STEPHEN E. HANSEN,
RASMUS KALNES, and ROCCO A. VITO,

Complainants,

v.

MUSKEGO-NORWAY CONSOLIDATED SCHOOLS
JOINT SCHOOL DISTRICT NO. 9, Town of
Muskego, Waukesha County, and Town
of Norway, Racine County; ROBERT J.
KREUSER, JACK G. REFLING, PAUL USSEL
and CHARLES LADD,

Respondents.

Case I
No. 9696 MP-13
Decision No. 7247

Appearances:

Konnak & Constantine, Attorneys at Law, by Mr. Harold A. Konnak
and Mr. Charles M. Constantine, for the Complainants.

Mr. Jack A. Radtke, Attorney at Law and Quarles, Herriott &
Clemons, Attorneys at Law, by Mr. John G. Kamps and Mr.
Peter J. Lettenberger, for the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Board on June 8, 9, 10 and 15, 1964, at the Waukesha County Courthouse, Waukesha, Wisconsin, Chairman Morris Slavney and Commissioners Arvid Anderson and Zel S. Rice II being present; and the Board having considered the testimony, arguments, and briefs of Counsel, and being fully advised in the premises, does hereby make and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Complainants Carston C. Koeller, Bernard Alberg, Jerome Stueber, Gerald C. Liepert, Cynthia K. Bartel, Robert L. Berg, Kenneth H. Daniels, and Rasmus Kalnes are individuals residing in Muskego, Wisconsin; that Complainants Therese Tierney and Allan Walldren are individuals residing in Greendale, Wisconsin; that

Complainants Daniel H. Allert and James C. McConnell are individuals residing in Waukesha, Wisconsin; that Complainant Luella Leonhard is an individual residing in West Allis, Wisconsin; that Complainants Vera B. Lundby and Mary H. Welch are individuals residing in Mukwonago, Wisconsin; that the Complainants June Zelinski, Adeline Sopa, Robert L. Ullsperger and Stephen E. Hansen are individuals residing in Big Bend, Wisconsin; that the Complainant Robert C. Grasser is an individual residing in Lake Mills, Wisconsin; that the Complainant Lorraine J. Williams is an individual residing in Oak Creek, Wisconsin; that the Complainant Harvey H. Radke is an individual residing in West Bend, Wisconsin; that Cletus D. Beyer is an individual residing in Milwaukee, Wisconsin; and that the Complainant Rocco A. Vito is an individual residing in New Berlin, Wisconsin.

2. That the Respondent, Muskego-Norway Consolidated Schools, Joint School District No. 9 of the Town of Muskego, Waukesha County, Wisconsin and the Town of Norway, Racine County, Wisconsin, hereinafter referred to as the School District, has its offices in P. O. Box 48, Janesville Road, Muskego, Wisconsin; and that the Respondents Robert J. Kreuser, Jack C. Refling, Paul J. Ussel and Charles A. Ladd, are supervisory personnel in the employ of said School District; that Kreuser, Refling and Ussel reside in Muskego, Wisconsin; and that Ladd resides in Hales Corners, Wisconsin.

3. That the School District was created in July, 1960, pursuant to an act of the Wisconsin Legislature; that the affairs of the School District are governed by a Board of Education, hereinafter referred to as the School Board, consisting of seven members; that the School District maintains and operates a high school at Muskego, Wisconsin, and nine graded schools scattered throughout the Townships of Muskego and Norway in Waukesha and Racine Counties; that in the maintenance and operation of said educational facilities, the School District employed, among others, 149 non-supervisory certificated teachers, including the Complainants named above, and a number of supervisory certificated personnel, including Respondents Kreuser, Refling, Ussel and Ladd, who respectively occupy the positions of Superintendent, High School Principal, High School Vice-Principal, and Coordinator of Instruction.

4. That the Muskego-Norway Education Association, hereinafter referred to as MNEA, is an organization composed of practically 100% of all teaching and administrative personnel in the employ of the School District; that the MNEA has among its purposes the representation of teachers employed by the School District in conferences

and negotiations with the School Board of said School District, concerning salaries and other conditions of their employment; that the MNEA is affiliated with the Wisconsin Education Association, hereinafter referred to as the WEA, which, among other things, renders assistance to local affiliates, such as the MNEA, in regard to the representation of teachers in conferences and negotiations with their respective employers concerning salaries and other conditions of employment.

5. That during the 1960-1961 school year, at the suggestion of the then Superintendent of the School District, Dr. Rossmiller, Complainant James C. McConnell, who at the time was president of the MNEA, and Complainant Jerome Steuber, at that time Chairman of the MNEA Welfare Committee, prepared, on behalf of the MNEA membership, proposals with respect to teacher salaries and working conditions and presented said proposals to the School Board in the spring of 1961; and thereafter the School Board, without discussion or consultation with any representative of the MNEA, disclosed to McConnell the salaries and other conditions of employment, adopted by the School Board, affecting teachers in the employ of the School District for the 1961-1962 school year.

6. That during the 1961-1962 school year the MNEA Welfare Committee delayed the preparation of its proposals for the 1962-1963 school year until after January, 1962, shortly after Kreuser had accepted employment with the School District as Superintendent of Schools; that in the latter part of January, 1962 the MNEA Welfare Committee, under the leadership of Complainant Bernard Alberg, met with Kreuser and the latter suggested that the MNEA Welfare Committee formulate its proposals and submit them to him for presentation to the School Board, indicating that he desired the opportunity to "prove" to the teachers in the employ of the School Board that "he was for them;" that the MNEA Welfare Committee adopted Kreuser's suggestion and formulated proposals covering teacher salaries, health insurance and other matters affecting the conditions of their employment; that said proposals were not reduced to writing but were related orally to Kreuser; that at no time during the 1961-1962 school year did any member of the MNEA Welfare Committee appear before the School Board with regard to its proposals for the 1962-1963 school year; that Kreuser appeared before the School Board on February 5, 1962, and, rather than recommending any of the proposals previously presented to him by the MNEA Welfare Committee, he recommended that the School Board prepare its own proposal to the teachers and not

place itself in a position to receive proposals from the teachers and then find it necessary to bargain with the teachers; that during the 1961-1962 school year the School Board made no response to the MNEA proposals and that the individual teacher contracts for the 1962-1963 school year were formulated by the School Board without any conferences or negotiations with any representative of the MNEA.

7. That at the commencement of the 1962-1963 school year Complainant Allen Walldren, the then Chairman of the MNEA Welfare Committee, prior to commencing any action with regard to the formulation of MNEA proposals with respect to teacher salaries and conditions of their employment for the following school year, requested Kreuser to furnish the MNEA Welfare Committee with information as to teacher salaries in the neighboring school districts, as well as the salaries being received by all teachers in the employ of the School District; that, while Kreuser furnished information with respect to salaries in other school districts, he refused to supply Walldren with the salaries of the individual teachers or the various salary levels of teachers employed by the School District; that subsequently the MNEA Welfare Committee reduced its proposals to writing and declined Kreuser's invitation to permit him to present same to the School Board; that the MNEA Welfare Committee, on February 4, 1963 presented its proposals to the School Board and orally answered questions posed by School Board members; that the MNEA proposals concerned requests (1) to raise the basic salary of teachers who possessed Bachelor degrees to \$5,000 per year, (2) that the School District assume the full cost of health insurance for all faculty members, and (3) that the School District liberalize its policy with respect to teaching credits earned during evening hours; that during the meeting on February 4, 1963 the School Board advised the MNEA Welfare Committee that the School Board would contact said Committee at a later date in regard to its proposals; that, however, the School Board did not so contact the MNEA Welfare Committee and it never did advise said Committee as to any consideration or action the School Board was taking with regard to the MNEA proposals, despite the fact that on two occasions Walldren requested Kreuser to arrange further meetings between the MNEA Welfare Committee and the School Board regarding the MNEA proposals; that subsequent to February 4, 1963 and prior to April 1, 1963, Superintendent Kreuser called a special meeting of all teachers in the employ of the School District and there announced the terms of teachers' contracts to be offered for the 1963-1964 school year; and that in said contracts the School Board had adopted the MNEA's first proposal, in part, and its third proposal.

8. That in May, 1963 the MNEA reorganized and enlarged its Welfare Committee, for the purpose of more effectively representing its membership in seeking to improve their salaries and conditions of employment; that at that time Complainant Carston C. Koeller, who previously taught three years in the Air Force and one year at Belleville, Wisconsin, and who commenced his employment as a high school teacher with the School District in September, 1962, and continued in such employment until the end of the school year in June, 1964, and who had been hired to teach, and did teach, five general mathematics classes to students of lower mathematical achievement, as compared to students who succeeded to algebra and the higher forms of mathematics, and who had been a member of the MNEA Welfare Committee during his first year of employment, was elected Chairman of said committee and continued in that position thereafter at all times material herein; that under Koeller's chairmanship the MNEA Welfare Committee intensified its activity in preparation of MNEA proposals to the School Board for the 1964-1965 school year; that prior to the close of the school year in June, 1963, Koeller and other members of the MNEA Welfare Committee met with Kreuser and arranged an agenda for meetings between said committee and Kreuser for the purpose of laying the groundwork for meeting with the School Board during the coming school year.

9. That in the spring of 1963, the then principal of the high school, Donald Helstad, in rating teachers on their performance for that school year, considered Koeller among nine teachers whose performance was below average; that in Helstad's opinion, Koeller's record in this regard was primarily due to the fact that he was a first year teacher and that he was assigned five classes consisting of "slow learners;" that, however, Helstad advised Kreuser that Koeller had shown as much progress as any other high school teacher at the time, and unqualifiedly recommended to Kreuser that Koeller be rehired for the 1963-1964 teaching year; and that thereupon Koeller was rehired for the latter year.

10. That in September, 1963, Koeller, as Chairman of the MNEA Welfare Committee, requested Kreuser to furnish the Welfare Committee with data indicating certain salaries and working conditions of the teachers employed in the School District; that Kreuser advised Koeller that his office would compile such information when his office staff had time to do so; that in October, 1963, and for the reason that Kreuser had not as yet furnished said information, the MNEA Welfare Committee, under Koeller's guidance, sent a questionnaire to each

member of the MNEA, teachers and administrators alike, for the purpose of obtaining information upon which to predicate its proposals for the 1964-1965 school year; that said questionnaire sought information with respect to (1) each of the teacher's teaching experience in and out of the School District, (2) his or her position on the salary schedule, (3) whether he received head of family allowances, (4) whether it was necessary for him or his wife to have other employment, (5) the number of credits earned by him toward bachelor or masters degrees, (6) information with reference to military service and rank, (7) suggestions as to areas where improvements were necessary to improve their teaching, and (8) what subjects or grades were taught by each teacher; and also that early in the fall of 1963 at a membership meeting the MNEA determined that an official representative of said organization attend regular meetings of the School Board; that the MNEA president designated Koeller to relay such information to Kreuser; that upon doing so Kreuser accused Koeller of a lack of cooperation by the MNEA and its Welfare Committee in not working through him as the Superintendent in their relationship with the School Board, and that, however, an MNEA representative did attend School Board meetings, except those held in executive session.

11. That on October 2, 1963 Koeller wrote six parents of his students requesting their permission to use whatever physical means he thought necessary to enforce discipline of their children; that on October 7, 1963 Principal Refling informed Koeller that he was not to unilaterally determine a course of discipline which was contrary to established procedures; that at no time thereafter did Koeller seek permission to use, or did he use, any physical force to maintain discipline; that on October 7, 1963 Koeller, as a disciplinary measure, while in charge of a study hall, placed a female student in a large, unlighted closet adjacent to the study hall; that on October 14, 1963, as a member of a committee of teachers established to create procedures for study hall activities of students and their discipline, Koeller suggested that the enforcement of discipline could be implemented by a "tweak or pull an ear, rap on head, pull hunk of hair or sit in front closet with door shut;" that, however, such suggestion was not incorporated in the procedures adopted by the committee; and that, although Koeller had many more disciplinary referrals of students to Assistant Principal Ussel, who was in charge of discipline, than any other teacher, Koeller at no time used any physical means whatsoever in attempts to enforce discipline among his students.

12. That in the fall of 1963 it was the practice of the high school to excuse students from their seventh period class, which was

also the last class period of the day, to either participate or attend football games; that on October 22, 1963 Koeller protested such practice in a letter to Principal Refling, where he stated in part as follows:

"If I receive another 'please excuse' list I will not please to excuse. If students choose to leave, their absence will be regarded as unexcused and no credit will be given for make-up work. Furthermore, I shall interpret it as a refusal on your part to administer clear district policy and will immediately appeal to Mr. Kreuser and if no positive reaction is achieved there, then directly to Mr. Guhr.";

that a few days later Koeller wrote to Mr. Guhr, a member of the School Board making the same protest; and that in reply Guhr advised Koeller to follow the established grievance procedure, which in this instance would have required Koeller to take the matter up with Kreuser.

13. That on October 28, 1963, following a conference attended by Principal Refling, Vice-Principal Ussel and Koeller, Refling delivered a memorandum to Koeller, which, in substance, advised as follows:

- a. That Koeller must allow students to participate in scheduled games with excuses,
- b. That Koeller was not to set students in closet as a disciplinary measure,
- c. That Koeller should discuss possible solutions to discipline matters with Ussel without taking unilateral action, and
- d. That failure to comply with the above noted procedure would be considered insubordination;

and that thereafter Koeller complied with the above noted instructions and advice.

14. That for some time past, and at all times material herein, the School District policy with respect to teacher conventions included the expectation that when its schools were closed for such conventions the teachers would attend same; that, in conformity with said policy, in October, 1962 the School District advised that teachers who did not attend the WEA convention that fall would have deductions made from their salaries; that on November 1, 1963 Kreuser, in a memorandum to his administrative staff advised as follows:

"That as a matter of professional ethics no teacher that is not a member of the groups holding convention at this time can really expect time off with pay during these days.";

that on the same date, following the receipt of the above memorandum, Refling prepared and caused the following statement to be included in his weekly bulletin to the high school teachers:

"Thursday: W.E.A. Convention

"Friday: W.E.A. Convention (We are making plans for everyone to attend next week's teachers convention. This brings up a matter of professional ethics that might be called to your attention at this time. That anyone not a member of either of the convening groups can hardly expect time off with pay....";

that on November 6, 1963, the day before the scheduled conventions, Complainant Daniel Allert orally requested Principal Refling's permission to leave the high school building for the purpose of paying his WEA dues to the MNEA Treasurer; that in the course of said conversation Allert remarked to Refling, "It appears I have the choice of paying the seven bucks or losing two days pay," to which Refling replied, "That's about the size of it."; and that the School District closed its schools on November 6 and 7, 1963, the days on which the teacher conventions were held.

15. That on December 3, 1963, following a visit to Koeller's classroom, Coordinator of Instruction Ladd transmitted a memorandum to Complainant Koeller, wherein Ladd submitted suggestions for the improvement of his teaching techniques, such as (a) more student "involvement," (b) "less teacher talk," (c) the elicitation of "clear, confident responses" from students, (d) personal supervision of assignments, (e) various approaches to various students, and (f) permitting students to make their own evaluations; and that said letter also indicated that arrangements had been made for Koeller to visit the class of the Supervisor of Math, Racine School District, Racine, Wisconsin, John LaBlanc, which he did on or about December 16, 1963, and thereafter Ladd noticed some improvement in Koeller's teaching techniques.

16. That during the month of December, 1963 the MNEA Welfare Committee, under the leadership and personal effort of Koeller, intensified its preparation for negotiations with the School Board; that on November 26, 1963 Koeller met with Kreuser and advised the latter, in general terms, as to the tentative MNEA proposals which would affect the finances of the School District; that on the latter occasion Kreuser indicated that the School District could not afford to meet most of the tentative proposals; that thereafter in that regard Complainant Koeller directed the following letter to the Department of Public Instruction, Madison:

"To whom it may concern:

Apparently we are running into a school dilemma here at Muskego. We have been at our legal taxing limit for years and are now in a fearsome bind financially in spite of the fact that we qualify for and are getting full state aids. Our Superintendent and Business Manager keep telling us that it is impossible for us to get on excess state aids. And yet we are crowding more and more children into classrooms and hiring more and more non degree teachers and less and less teachers with Masters degrees. Some elementary classes have 39 children in them with one teacher. We hired 9 more non degree teachers this year. Thus one out of three of our 100 elementary teachers is a non degree teacher. Our Superintendent has bluntly told us that next year we anticipate 200-300 more students for which we have no more available space so we will crowd them into existing classrooms and cannot afford to hire any extra teachers without going into illegal deficit financing. It would seem to me that such a course must ultimately cause us to lose even those state aids which we are getting now. This brings me to the crux of this letter; some questions etc. Is it really impossible for Muskego to get on excess state aids? If so, go into detail as to why. If not so, go into detail as to how a community goes about getting on them as we are in dire need. Finally, I would appreciate your sending me a copy of our state school aid statutes and formulas with commentaries which make them intelligible to a layman.

Respectfully yours

Carston C. Koeller";

and that in reply the Department of Public Instruction referred Koeller to Kreuser for said information.

17. That prior to the 1963 Christmas recess the MNEA Welfare Committee sent questionnaires to various local teacher associations in the area, who were affiliated with the WEA, wherein said associations were requested to designate the nature and amount of extra pay received by teachers in their various school districts for non-teaching duties, such as chaperoning dances, bus trips, monitoring students at athletic events, selling of tickets, etc., and that in addition said local affiliates were requested to furnish the MNEA Welfare Committee with the annual reports, budgets, personnel policies and pay schedules of their various school districts; and that also prior to the Christmas recess, on or about December 17, 1963, the MNEA Welfare Committee sent out an additional questionnaire to approximately 25 of its teacher members, requesting their views on 17 items which were being considered for inclusion in the 1964-1965 MNEA Welfare Committee proposals to the School Board; that one of the items covered therein solicited responses as to whether the MNEA Welfare Committee should

propose the limiting of students to 25 in basic learning classes; and that shortly prior to said Christmas recess the MNEA Welfare Committee received replies from 17 of the teachers who had received such questionnaire and 5 of the 17 favored said limitation.

18. That prior to January 15, 1964 the MNEA Welfare Committee, with Koeller doing most of the work involved, tabulated and analyzed the results of its surveys and formulated its teacher contract proposals for the 1964-1965 school year; that prior to January 15, 1964, after such proposals had received the approval of the MNEA Executive Committee, Koeller transmitted a copy of such proposals to Kreuser; that on January 15, 1964 said proposals were submitted to an MNEA membership meeting, attended by 92 of 144 MNEA members, of the approximate 160 teachers and administrators employed by the School District and said proposals were unanimously adopted by those present; that in the evening of January 15, 1964, in an hour and one-half session the MNEA Welfare Committee, with Koeller as the chief spokesman, presented the MNEA proposals to the Personnel Committee of the School Board which had been established by the School Board at the suggestion of Kreuser, for the purpose of meeting with the MNEA Welfare Committee; that said proposals dealt with matters of teacher salaries, insurance, personal and sabbatical leaves, class size and load, job security, teacher qualifications, and other matters supporting said proposals including various tables and graphs; that during the course of said meeting, upon being questioned by a member of the Personnel Committee as to whether the proposals represented the views of the teachers in the employ of the School District, Koeller advised that 92 members on that date had previously approved the proposals; and that prior to the close of the meeting, the Personnel Committee indicated that it desired more time to study said proposals.

19. That Koeller, who was also the faculty advisor to the National Honor Society of the high school, prior to January 28, 1964 in establishing a public meeting of that society for the latter date, while he did not submit a written request to Vice-Principal Ussel to clear said date for said meeting, as was required by School Board policy, did receive oral clearance from Ussel to schedule said meeting for the date requested; that said meeting conflicted with a Parent-Teacher Association meeting scheduled for the same date; that on February 5, 1964 Kreuser sent Koeller a memorandum with respect to the scheduling of the National Honor Society meeting and characterized the latter's failure to obtain the approval of the principal as a "unilateral act" and as "exhibiting questionable judgment and ethics"; and that shortly after receipt of said memorandum Koeller

arranged for a conference with Kreuser and at such time advised the latter that, in his judgment, the memorandum was not warranted, except as it applied to the requirement that permission to use the building for such a meeting should have been in writing, since he received an oral clearance from the Vice-Principal for the meeting date.

20. That on February 5, 1964 Koeller referred a student to Vice-Principal Ussel, with a note indicating that Koeller had suspended the student from his class as a disciplinary matter, for a three-day period; that thereafter on said date, Principal Refling, upon learning of same, advised Koeller that under Wisconsin Statutes not every teacher has the right to suspend pupils, but that such right rests in a single designated administrator or teacher; that, following his conference with Refling, Koeller caused an item in the MNEA bulletin to be published under his name, wherein he took issue with Refling's interpretation of the matter; that said bulletin was as follows:

"The MNEA newsletter is proposed to serve as an instrument of communication between the teachers of the district. It should be the repository of all news and announcements but also should be a forum for the professional viewpoint. To this end it is hoped that all teachers will contribute their views on issues involving the profession.

On Discipline

Article XIII, 1 of the District Personnel Policies reads:

All teachers are accorded the authority for maintaining order and discipline at all times when in or on school premises.

Wisconsin State Statutes read: 40.30 (17)

The teacher designated by the Board of the administrator in any school may suspend any pupil not to exceed three days for noncompliance with such rules or those of the teacher designated by the board or administrator made with its consent; the board may expel any pupil whenever it finds him guilty of persistent refusal or neglect to obey the rules and is satisfied that the interests of the school demand his expulsion.

Article XIII, 2 of the District Personnel Policies reads:

No teacher may permanently suspend a student from his class.

Some reflections on the foregoing excerpts:

1. The classroom teachers have the primary disciplinary responsibilities.

The task of maintaining good discipline falls first and foremost upon them. In contrast it would appear that the job of the administration is to support the teacher in his role.

2. The classroom teachers have every reason to expect that students need only be told what to do. No force or threat of force should ever be necessary.
3. Teachers have the right to suspend students from their classes; most certainly to recommend their suspension.

Let us analyze in the above light an administrative memorandum of October 28, 1963.

'You will discuss with (the principal) discipline problems and possible solutions of students sent to the office. The ultimate responsibility of the course of action belongs to the administration. We cannot accept your recommendation to suspend students in all disciplinary cases many of which we feel are minor.'

Obviously suspension is not the answer for every disciplinary case nor does any teacher regard or utilize it as such. It is high time, however, that we reflect on the soft treatment accorded most offenders and the pernicious effect this has on both the educational attitudes and achievements of the better students and upon general school control. Hopefully with the passage of HR 4955 we may soon have federal vocational funds to do more for these potential drop-outs than merely to tolerate their continuing disturbances in normal classroom situations."

21. That, within a few days after the distribution of the above newsletter, Koeller was admonished by Kreuser, in a conference called by the latter, and in the presence of Refling, where Koeller was advised by Kreuser that he was "on thin ice" in utilizing the MNEA newsletter for the venting of his "personal" grievance without discussing the matter with his superiors first, as was contemplated in the established grievance procedure according to Kreuser.

22. That on a date between January 15 and February 7, 1964 the MNEA Welfare Committee met with the Personnel Committee of the School Board at which time the Personnel Committee suggested that the teachers be re-polled with respect to certain matters contained in the MNEA proposals which had been previously submitted to the Personnel Committee on January 15, 1964; that, pursuant to the latter request, the MNEA Welfare Committee prepared and circulated to all teachers in the School District a detailed questionnaire

regarding their individual extra duties, the time required for such, and the compensation the teachers believed fair for such duties, as well as other items regarding "head of family" pay; that approximately two-thirds of the teachers employed by the School District answered and returned such questionnaires, and thereafter the MNEA Welfare Committee tabulated and summarized the results in a twenty-two page document; and, after considering the requests of its members, that the MNEA Welfare Committee redrafted its proposals which consisted of some nineteen mimeographed pages containing considerable detail supporting the various requests.

23. That on February 18, 1964 at a meeting with the students, who were members of the National Honor Society, Koeller read to the students the memorandum he had received from Kreuser, referred to in para. 19, supra, and at that time advised that he was resigning as the faculty advisor to said group; and that on the following day, Koeller, in writing, advised Principal Refling of his resignation as the advisor to the National Honor Society and of the disbanding of said group, and in the same note charged Kreuser with exhibiting vindictiveness toward him.

24. That on February 19, 1964 the MNEA membership approved the proposals as revised by the MNEA Welfare Committee and thereafter copies of the amended proposals were submitted to Kreuser by the MNEA Welfare Committee with a request that he forward a copy thereof to each member of the School Board for their individual consideration prior to the scheduled meeting of the School Board and the MNEA Welfare Committee; that Koeller performed the major part of the work, on behalf of the MNEA Welfare Committee, in formulating the procedure to obtain the information and data reviewed by said committee and in the drafting of the original and amended proposals; and that in preparing the proposals for the 1964-1965 school year, the MNEA Welfare Committee met on at least 26 separate meetings, and reports were made to general MNEA membership at their monthly meetings.

25. That in the evening of March 2, 1964 the MNEA Welfare Committee met with the School Board for the purpose of conferring and negotiating with the latter on the MNEA proposals for teacher contracts for the school year 1964-1965; that the members of the School Board had not been apprised of the revised MNEA proposals since Kreuser neglected to deliver copies thereof to said members prior to the meeting; that thereupon the MNEA Welfare Committee furnished copies of their amended proposals to the members of the School Board; and that at said meeting, while the School Board did not question the status of the MNEA as the representative of the majority of

non-supervisory teachers in the employ of the School District, members of the School Board made only a few minor inquiries with respect to the MNEA proposals; that said joint meeting consumed approximately 30 minutes without any negotiations, and thereupon the MNEA Welfare Committee was excused on the announcement that the School Board was going into an executive session; that at no time thereafter did any member or representative of the School Board or the School District, either formally or informally, advise any member of the MNEA Welfare Committee as to the action of the School Board on the MNEA proposals; and that on March 11, 1964 at a meeting of all teachers, previously scheduled by Kreuser, the latter announced the determination of the School Board as to the salary schedules and other conditions of employment for the school year 1964-1965.

26. That at the School Board meeting of March 2, 1964, following the appearance of the MNEA Welfare Committee, Kreuser recommended to the members of the School Board, in executive session, that Koeller's teaching contract for the year 1964-1965 not be renewed and that in support of such request Kreuser recited a number of reasons therefor; that the School Board took no formal action at said meeting with regard to such recommendation; that between March 2 and March 9, 1964 Kreuser conferred with Principal Refling, Vice-Principal Ussel and Coordinator of Instruction Ladd and jointly prepared a written document entitled "A Summary of Pertinent Details in the Matter of Continuing the Contract of Carston C. Koeller," hereinafter referred to as the Summary, wherein Kreuser listed the grounds upon which he was recommending that Koeller's teaching contract not be renewed for the coming school year; and that the Summary was prefaced by the following two paragraphs:

"The questions regarding Mr. Koeller and his future with this district center around the nature of his conduct and performance as a teacher and member of the district staff. It is the considered opinion of the high school principal, the coordinator of instruction, and the superintendent of schools, that his conduct has revealed an unwillingness to take direction or counsel in an ordinary manner from his immediate superior, the high school principal. He has repeatedly failed to follow prescribed procedures in the matter of personal grievances and he has exhibited a questionable competence in the handling of students and

the Superintendent of Schools, based on his performance during the 1962-63 school year. (In his year end report, Mr. Helstad evaluated Mr. Koeller among those as the least satisfactory of the high school teaching staff.) The following is a chronological noting of actions on the part of Mr. Koeller and other subsequent events bearing out the basis for the evaluation of his conduct as outlined in the first paragraph above."

27. That following said introductory paragraphs the Summary itemized specifically the grounds for the recommendation, which included the activities of Koeller as found heretofore with respect to the following:

- (a) requesting permission from parents to use physical means to discipline their children,
- (b) urging discipline by a "tweak of pull an ear, pull hunk of hair, or sit in front closet with door shut",
- (c) objecting to policy of permitting students to be excused from 7th period for athletic events,
- (d) objecting to taking up grievances directly with School Board member Guhr,
- (e) Coordinator Ladd's evaluation of Koeller as a teacher,
- (f) writing to the State Department of Public Instruction,
- (g) circulating a petition to fellow teachers in regard to their attitude on size of classrooms,
- (h) scheduling the National Honor Society meeting in conflict with the PTA meeting, as well as the events resulting therefrom,
- (i) attempting to impose a three-day suspension on a student,
- (j) publishing the item in the MNEA newsletter of February 5, 1964, wherein he questioned school policy with respect to discipline,
- (k) announcing to the students his resignation as advisor to the National Honor Society and reading Kreuser's memorandum with regard to the matter to said students,
- (l) charging the Superintendent with vindictiveness with respect to the conflict of meetings;

and that said Summary concluded with the following two paragraphs:

"He has had repeated visits from the superintendent, coordinator of instruction, and the high school principal, who have all advised him of the uninspiring manner in which he has conducted his classes and suggested ways to improve. In support of this, the coordinator of instruction made the arrangements for Mr. Koeller to have a visiting day, at school expense, as previously referred to.

"The memo to him from the high school principal, of October 28, pointed out the poor judgment he had exhibited in handling discipline situations involving, as in one instance, the putting of a high school girl in a dark closet adjoining a study hall. His lack of competence in relating to students is further evidenced by the number of discipline referrals which he has made to the principal's office, numbering as of February 19, 43, compared to a total number of referrals from all the other total 49 teachers on the faculty, of 150. Further, it is common to see students placed in corridor outside Mr. Koeller's room, for discipline purposes."

28. That at the executive session on March 9, 1964, after reviewing the above noted Summary with Kreuser, the School Board, upon the recommendation of Kreuser, formally determined not to proffer Koeller a teacher's contract for the school year 1964-1965; that on March 12, 1964, upon the instruction of Principal Refling, Koeller appeared at Refling's office, and there in the presence of Refling, Kreuser requested Koeller to voluntarily execute a resignation from the teaching staff, effective upon the close of the school year; that Koeller refused, contending he knew of no reason to do so; that thereupon, Kreuser stated that if Koeller chose to resign, Kreuser would recommend him for employment as a teacher elsewhere because of his excellent credentials; that, since Koeller persisted in his refusal to sign the resignation, Kreuser handed Koeller a prepared letter of termination, over the signature of Kreuser, indicating that Koeller would not be issued a contract for the school year 1964-1965, and that such action was "deemed advisable in view of actions and conduct on your part which have previously been discussed with you"; that at that time Koeller requested Kreuser to furnish the reasons relied on by the School Board in the matter; that in response Kreuser read from a sheet of paper a number of alleged reasons, which included reference to Koeller's letter to the State Department of Public Instruction and his resignation as advisor to the National Honor Society; that Koeller requested that Kreuser furnish him a copy of such alleged reasons but the latter

refused to do so, advising Koeller that, if the matter were appealed to the School Board he would have them be given a copy of same; and that at the same time Kreuser warned Koeller that such an appeal would be fruitless and thereby would be committing "professional suicide" since Koeller required Kreuser's recommendation with respect to his teaching qualifications in order to obtain a life time teaching certificate, which had not as yet been obtained by Koeller.

29. That the primary motivation of Kreuser's recommendation to the School Board not to renew Koeller's teaching contract for the 1964-1965 school year was not based on any shortcomings Koeller may have had as a teacher, nor upon his differences with certain policies with the School Board, but rather upon Koeller's activity and efforts on behalf of the MNEA Welfare Committee as the collective bargaining representative of the majority of the professional teaching personnel in the employ of the School District; that the discriminatory refusal of the School Board to renew Koeller's teaching contract and the recommendations with respect thereto made by Superintendent Kreuser and other supervisory employees of the School District, interfered, restrained and coerced not only Koeller, but also the remaining teachers in the employ of the School District in the exercise of their right to engage in lawful concerted activities.

Upon the basis of the above and foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. That the Muskego-Norway Consolidated Schools Joint School District No. 9, Town of Muskego, Waukesha County and Town of Norway, Racine County, by its agents Robert J. Kreuser and Jack G. Refling, by threatening its teachers with the forfeiture of two days pay, if they failed to attend teachers' conventions and failed to retain membership in the sponsoring organization, interfered with, coerced, and restrained teachers in its employ in the exercise of their right to freely affiliate with, or decline to affiliate with, any employee organization, and, thereby, has committed, and is committing, prohibited practices within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

2. That Muskego-Norway Consolidated Schools Joint School District No. 9, Town of Muskego, Waukesha County, and Town of Norway, Racine County, by its School Board, by refusing and failing to renew Carston C. Koeller's teaching contract for the year 1964-1965

upon the recommendation of Kreuser, Refling, Ussel and Ladd, discriminated against him in regard to the conditions of his employment, for the purpose of discouraging membership in and activities on behalf of the Muskego-Norway Education Association and, thereby, has committed, and is committing, prohibited practices, within the meaning of Section 111.70(3)(a)1 and 2 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Board makes the following

ORDER

IT IS ORDERED that the Respondent, Muskego-Norway Consolidated Schools Joint School District No. 9, Town of Muskego, Waukesha County, and Town of Norway, Racine County, its School Board, Robert J. Kreuser, Superintendent of Schools, and other administrators, shall immediately

1. Cease and desist from

- (a) Threatening teachers with forfeiture of any pay or other benefits, in the event they do not attend teachers conventions nor retain membership in the organization sponsoring any such conventions or in any other employe organization, or otherwise threatening to change any other term or condition of employment for the purpose of encouraging membership in any such organizations, or otherwise interfering with, restraining, or coercing its teachers in the exercise of their rights guaranteed by Section 111.70 of the Wisconsin Statutes.
- (b) Refusing and failing to renew the teachers contract of Carston C. Koeller, or in any other manner discriminating against him, or any of its teachers, in regard to the terms and conditions of their employment, for the purpose of discouraging membership in and activities on behalf of the Muskego-Norway Education Association, or any other employe organization.

2. Take the following affirmative action, which the Board finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:

- (a) Immediately offer to Carston C. Koeller a teaching

to his former position, without prejudice to any rights and privileges he previously enjoyed.

- (b) Make whole Carston C. Koeller for any loss of pay and other benefits, which he may have suffered by reason of the discrimination against him, by payment to him, a sum of money equal to that which he normally would have earned as salary, together with other benefits due him during the 1964-1965 school year, less any net earnings which Carston C. Koeller may have received elsewhere during such period.
- (c) Notify all of its teachers by posting in conspicuous places, where notices to teachers are usually posted, throughout all of the school buildings operated by the Muskego-Norway Consolidated Schools Joint School District No. 9, Town of Muskego, Waukesha County, and Town of Norway, Racine County, where all teachers may observe them, copies of the Notice attached hereto and marked "APPENDIX A". Copies of such Notice shall be prepared by the Muskego-Norway Consolidated Schools Joint School District No. 9, Town of Muskego, Waukesha County, and Town of Norway, Racine County, and shall be signed by the President of the School Board and by the Superintendent of Schools of such School District, and shall be posted immediately upon the receipt of the copy of this Order, and shall remain posted until October 1, 1965. Reasonable steps shall be taken by the Superintendent of Schools to insure that said Notices are not altered, defaced or covered by other materials.
- (d) Notify the Wisconsin Employment Relations Board, in writing, within ten (10) days from the date of the receipt of this Order, of the steps that have been taken to comply therewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of August, 1965.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

Zel S. Rice II
Zel S. Rice II, Commissioner

"APPENDIX A"

NOTICE TO ALL TEACHERS

Pursuant to an Order of the Wisconsin Employment Relations Board, and in order to effectuate the policies of Section 111.70 of the Wisconsin Statutes, we hereby notify our teachers that:

we will not threaten any teacher with the forfeiture of pay, in the event he does not attend teachers conventions and retain membership in the sponsoring teachers organization or, any other employe organization, or otherwise threaten to change any other term or condition of employment for the purpose of encouraging membership in any such organizations, or in any other manner interfere with, coerce, or restrain any of our teachers in the exercise of their rights of self-organization, to affiliate with or be represented by any employe organization of their choice, for the purposes of conferences and negotiations with this School District on questions of salaries, hours and conditions of employment, or to refrain from any and all such activities.

WE WILL NOT refuse and fail to renew the teaching contract of Carston C. Koeller, or any other teacher, or in any other manner discriminate against him or any other teacher, in regard to the terms and conditions of employment, for the purpose of discouraging membership in and activities on behalf of the Muskego-Norway Education Association, or any other employe organization, or to otherwise interfere with, restrain, or coerce any of our teachers in the exercise of their rights under Section 111.70 of the Wisconsin Statutes.

WE WILL immediately offer Carston C. Koeller a teachers contract and, if such contract is accepted by him within ten (10) days after receipt of such offer, reinstate him to his former position, without prejudice to any rights and privileges which he previously enjoyed, and we will make Carston C. Koeller whole for any loss of pay, and other benefits which he may have suffered by reason of the discrimination against him by paying him the sum of money he normally would have earned as salary, together with other benefits due him during the 1964-1965 school year, less any other earnings which he may have received during said period.

MUSKEGO-NORWAY CONSOLIDATED SCHOOLS
JOINT SCHOOL DISTRICT NO. 9, Town of
Muskego, Waukesha County, and Town of
Norway, Racine County

For the School Board

President

Superintendent of Schools

Dated this day of August, 1965.

THIS NOTICE MUST REMAIN POSTED UNTIL OCTOBER 1, 1965, AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

CARSTON C. KOELLER, BERNARD ALBERG,
JEROME STUEBER, GERALD C. LIEPERT,
THERESE TIERNEY, ALLAN WALLDREN,
DANIEL H. ALLERT, JAMES C. McCONNELL,
CYNTHIA K. BARTEL, LUELLA LEONHARD,
VERA B. LUNDBY, MARY H. WELCH,
JUNE ZELINSKI, ROBERT C. GRASSER,
LORRAINE J. WILLIAMS, ADELINE SOPA,
ROBERT L. BERG, KENNETH H. DANIELS,
ROBERT L. ULLSPERGER, HARVEY H. RADKE,
CLETUS D. BEYER, STEPHEN E. HANSEN,
RASMUS KALNES, and ROCCO A. VITO,

Complainants,

v.

MUSKEGO-NORWAY CONSOLIDATED SCHOOLS
JOINT SCHOOL DISTRICT NO. 9, Town of
Muskego, Waukesha County, and Town
of Norway, Racine County; ROBERT J.
KREUSER, JACK G. REFLING, PAUL USSEL
and CHARLES LADD,

Respondents.

Case I
No. 9696 MP-13
Decision No. 7247

MEMORANDUM ACCOMPANYING FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER

In the Complaint, Carston C. Koeller, and a number of his fellow teachers, alleged the School District threatened teachers with the loss of two days pay in the event they weren't members of an organization sponsoring a teachers convention, and, in addition, alleged that the District refused to renew Koeller's teachers contract, because of his activities on behalf of the Muskego-Norway Education Association, a teachers organization, and to discourage other teachers from engaging in such activities, contrary to Section 111.70, Wisconsin Statutes. In its Answer, the School District denied both such allegations.

The policy of the School District regarding membership in organizations sponsoring teachers conventions unlawfully discriminates against any teacher, who does not desire to support such organizations. Teachers did not have a choice to either report for work, or join a teachers organization and attend its convention. The District could have given teachers such a choice, since under the law, days on which teachers conventions are held are considered school days even though

school is not taught and teachers therefore are subject to the control and direction of the District.^{1/} The School District, by its administrators, insisted upon convention attendance by all its teachers in the event it closed the schools for that purpose. As an adjunct to that policy, the superintendent felt it appropriate to encourage membership in the sponsoring organizations. Refling, the high school principal, upon Kreuser's direction, threatened to cause any teacher, who did not retain such membership, with the loss of two days pay. Neither administrator, in any way, suggested that a teacher might decline to attend the teachers' conventions and, therefore, be relieved of any obligation to join such organizations, if he so chose. We have determined the School District's policy in this regard to be unlawful since it violated the teachers' right to refrain from joining any employe organization.^{2/}

The Board is aware, and the Respondent has called it to the Board's attention, that the Complainants have the burden of proof in this proceeding to establish that the Respondents have violated Section 111.70 and that such violation must be established by a clear and satisfactory preponderance of the evidence. Under Section 111.70, a municipal employer may discharge an employe for any reason it chooses or for no reason at all, as long as said discharge, or any act affecting the terms or conditions of employment has not been motivated by, or resulted from, the concerted activities of the employes. Where there is no testimony or evidence directly establishing an unlawful activity on behalf of the municipal employer, the Board may draw inferences of unlawful purposes upon established facts, if such facts logically support such inferences.

Although the MNEA had not been certified as the exclusive representative of the teachers in an election conducted by the Wisconsin Employment Relations Board, and although it was not formally recognized by the School Board as such representative, the School Board and its administrators, at all times material herein, were aware that almost 100% of its teaching staff were members of the MNEA, and that the MNEA Welfare Committee had prepared proposals for teacher contracts as the representative of such membership and the School Board and its agents dealt with the MNEA Welfare Committee in that capacity.

^{1/} Section 40.45, Wisconsin Statutes.

^{2/} Waunakee State Graded School Joint District No. 1, Dec. No. 6706, 4/64.

Under the leadership of Carston Koeller, the MNEA Welfare Committee turned from a passive and ineffectual arm of the MNEA into a force which could not be readily detoured from its intended course to better the salaries and conditions of employment of the teachers in the School District. Superintendent Kreuser was well aware of the strength of the MNEA membership and that a majority of that membership supported the efforts of Koeller in guiding the MNEA Welfare Committee in the formation of its proposals for the 1964-1965 school year. As the 1963-1964 school year progressed, the MNEA Welfare Committee intensified its activity in the preparation of its proposals, Kreuser came to realize that Koeller had a fixed purpose to prepare and present a strong case in support of teacher proposals to the School Board.

The record indicates that Kreuser had an antipathy toward any concerted activity which entertained efforts or actions to institute changes in working conditions. Kreuser's activity in his relationship with the MNEA Committee indicated an intent to weaken and frustrate its purpose. Such an attitude is revealed by Kreuser's actions in the following instances:

(1) In the spring of 1962, when purportedly presenting MNEA proposals to the School Board, he in effect abandoned his promised purpose and advised the School Board how best to avoid bargaining with the MNEA;

(2) In the fall of 1962, he refused to furnish certain data to the MNEA Welfare Committee with respect to teacher salaries;

(3) In the fall of 1963, his apparent displeasure upon being advised by Koeller that the MNEA determined that one of its representatives attend School Board meetings;

(4) During the 1963-1964 school year, objecting to (a) Koeller's activity on behalf of the MNEA Welfare Committee in writing to the State Department of Public Instruction, (b) Koeller's circulation of a petition among the teachers requesting their sentiments with reference to classroom size, and (c) Koeller's questioning the disciplinary policy of the School Board in the MNEA letter of February 5, 1964; and

(5) Finally, his failure and neglect to deliver copies of the MNEA revised proposals to members of the School Board for its March 2, 1964 scheduled meeting with the MNEA Welfare Committee.

The School Board had shown comparable antipathy to engage in conferences and negotiations with any representative of the MNEA. At the School Board meeting with the MNEA Welfare Committee early in 1963, although it indicated that it would communicate with the MNEA Welfare Committee regarding its proposals, the School Board

failed to do so, but rather, disclosed the terms for teacher contracts directly to the teachers. In 1964, the School Board arranged for its Personnel Committee to meet with the MNEA Welfare Committee prior to any meetings with the entire School Board. Yet, despite two meetings between the two committees, the School Board again ignored the MNEA Welfare Committee and unilaterally announced the terms of the 1964-1965 year to the teachers.

The reasons claimed to have been relied upon by the School Board, and subsequently presented during the course of the hearing, as the basis for its action in denying Koeller a teaching contract for the 1964-1965 school year, in themselves support the inference that its action in regard thereto was discriminatory within the meaning of Section 111.70 of the Wisconsin Statutes. While the "reasons" included various shortcomings of Koeller as a teacher and his disagreement with certain policies established by the School Board, they significantly included as objectionable, Koeller's letter to the State Department of Public Instruction, the circulation to fellow teachers of the petition with reference to classroom size, and also the MNEA bulletin of February 5, 1964, in which Koeller took issue with the disciplinary policies of the School District. Said activity is permissible and protected under Section 111.70 of the Wisconsin Statutes.

The timing of the events surrounding the notification to Koeller that his contract for the year 1964-1965 was not being renewed strongly supports the inference that such action was discriminatory, and therefore illegal, under Section 111.70 of the Wisconsin Statutes. On March 2, after Koeller had orally presented arguments in support of the MNEA proposals for the 1964-1965 school year, the School Board went into executive session and at such time Kreuser orally recommended that Koeller's contract not be renewed. Nothing in the record indicates that the School Board considered such matter prior to said meeting. Kreuser first testified that the matter of continuing Koeller's contract came up on March 9. In later testimony Kreuser acknowledged that on March 2 he had "mentioned this in passing." Vogel's testimony is startling in its contrast. Vogel testified that on March 3 Kreuser advised him that at the Board meeting on the night before, at which Vogel was not present, Kreuser had recommended non-renewal of Koeller's contract, and Vogel further testified that this was the occasion of the reading of the "list of reasons." Kreuser attempted to conceal the date upon which he first made his recommendation, since he realized that it came immediately after Koeller had presented the teacher's demands to the School Board.

It is also significant that Kreuser made the recommendation not to renew Koeller's contract on March 2 without having, for the School Board's consideration, the detailed reasons therefor. Said reasons were subsequently prepared by Kreuser after consultation with Refling, Ussel and Ladd, and were formally acted on by the School Board on March 9, 1964. On March 11, 1964, the School Board disregarded and ignored the MNEA Welfare Committee by announcing the terms of the 1964-1965 contracts at a meeting unilaterally scheduled by Kreuser without previous notification of the terms to the MNEA Welfare Committee and on the following day, announced to Koeller that his contract would not be renewed. The sequence of such events could have no other effect than to flash a warning to deter those other teachers who would become active on behalf of the MNEA in assuming the role as the collective bargaining representative of its members.

Also persuasive to this Board in reaching its conclusion, was the manner in which Superintendent Kreuser, on March 12, 1964, advised Koeller that his contract would not be renewed for the ensuing year. Refling requested Koeller to come to his office, where Kreuser was waiting to see him. Upon arrival, Kreuser presented him with a letter of resignation prepared for his signature. Kreuser told him if he signed it, he would give him a recommendation for future employment. Koeller indicated that there was no reason for him to resign and that he did not desire to do so. Kreuser then presented Koeller with written notification that the School Board had determined not to renew his contract. When Koeller requested the reasons therefor, Kreuser read certain reasons to him, apparently from the "Summary" prepared for the School Board. Koeller then requested a copy of such reasons, but Kreuser refused, saying that he would get one in the event he appealed the action to the School Board. Koeller testified that the conversation ended with Koeller stating he would appeal and Kreuser advising him that he would be committing professional suicide, since Kreuser would never recommend him for a lifetime teaching certificate. Both Kreuser and Refling testified that Kreuser did not offer Koeller a recommendation in the event he would resign, while Koeller testified to the contrary. Kreuser's version of the incident acknowledged that he gave Koeller an option of resigning and that he told Koeller that he should have no difficulty in securing another position because of his good academic credentials. Kreuser, however, did admit that he could have used the term "professional suicide" and did admit having discussed the implications of the Superintendent's refusal to recommend Koeller for a lifetime certificate. We therefore credit Koeller's testimony as to the incident.

While the Board acknowledges that it is not unusual for employees to be given the opportunity of resigning rather than being discharged, we believe the manner in which such alternative was presented to Koeller reveals the primary motivation for the refusal to renew Koeller's contract. It seems incredible to us that the Superintendent could be sincere in the gravity of complaints made against Koeller and at the same time offer to recommend him to another position. We believe this to be a gross act of intimidation.

While we do not wish to leave the impression that we endorse or approve Koeller's views and acts with respect to the policies of the School Board, we feel obliged to comment on the remaining charges of the Respondents with regard thereto. It is to be noted that Kreuser prefaced his "reasons" for recommending that Koeller's teaching contract not be renewed by referring to an evaluation made by former principal Helstad in the spring of 1963 with regard to Koeller's teaching record in the 1962-1963 school year. Kreuser so worded the matter as to leave the impression that Helstad was dissatisfied with Koeller as a teacher. The evidence is contrary to such an implication. Kreuser, in his summary, omitted the fact that Helstad had indicated to him that Koeller had shown as much promise as a teacher as any member of the high school staff at that time and further that Helstad had recommended the continuation of Koeller's employment without any qualification. While Helstad stated that he had evaluated Koeller as being below par, such a rating by him did not necessarily indicate that Koeller was a "poor" teacher. We are satisfied that Helstad's evaluation of Koeller was due to the fact that he was a first year teacher and due to his teaching assignments, which had been declined by the more experienced teachers on the high school staff.

Kreuser charged Koeller with an "unwillingness to take direction or counsel in an ordinary manner", from the high school principal. After Koeller was admonished for actions with respect to writing to parents requesting permission to use physical force to enforce discipline and causing a female student to sit in a closet, to refrain from honoring excuse slips for athletic events and with regard to suspending pupils from classes, he deferred to the advice and instruction of the principal and thereafter did not engage in any similar activity.

Kreuser also contended that Koeller repeatedly failed to follow prescribed procedures with respect to grievances. The grievance procedure set forth in the School Board manual required that grievances should first be taken up with the Principal and then referred to the

Superintendent and further, if necessary, referred to the School Board. The charge in this regard arose as a result of Koeller's writing a letter to School Board member Guhr in October, 1963 with reference to the policy of excusing students from the 7th period class to attend athletic events. It is interesting to note that during the conference wherein Koeller was chastised by Refling for his objection to established policies, the matter of Koeller's writing to Guhr was not considered as being objectionable at that time.

Kreuser appears to have laid the blame for the conflict in scheduling the National Honor Society and Parent-Teachers meetings entirely upon Koeller, when the fact was that, although Koeller did not strictly follow the established procedure in submitting clearance for the date in writing, he did receive oral authorization therefor from Ussel. Had Ussel at the time thought that strict procedure was necessary he could have requested Koeller to submit his request in writing.

Koeller was also charged with questionable competence in the handling of students. Refling, the Principal, Ussel, the Vice-Principal, and Ladd, the Coordinator of Instruction, claimed to have observed Koeller's performance on numerous occasions and found it unsatisfactory. All were of the opinion that Koeller did not have the ability to properly motivate his students to learn and behave themselves, and that his teaching assignment was not a significant factor in any difficulties he might have encountered in this regard. John LaBlanc, an authority on teaching general mathematics, testified that general mathematics classes, which are composed of students who score low on standard mathematics achievement tests, are very difficult to teach. In his view, such classes should not constitute more than one half a teacher's teaching schedule. He testified further that in the City of Racine school system, teachers are assigned a maximum of two such classes, by reason of the difficulty and heavy demands upon the teacher necessary to adequately teach such classes. In LaBlanc's opinion, to assign five such classes to a teacher of Koeller's experience was "grossly unfair". The administrators' insistence that teaching general mathematics poses no special problems for the teacher detracts from the confidence that can be placed in their evaluation of Koeller.

More than that, their testimony concerning the number of occasions they visited Koeller's classroom discredits their evaluation of Koeller's competence. Ladd testified he visited Koeller's class two or three times during the fall of 1963 and once in January, 1964. Refling testified he visited Koeller's class briefly early in the

same school year and, again, for full class periods, once in November, 1963 and then again, for a similar period, in January, 1964. Ussel, who early in his testimony could not explain why he would have any reason to enter Koeller's classroom to observe his teaching, testified to having done so six times. He testified the longest such occasion was in January, 1964, for a period of 45 minutes, that he made two fifteen minute visits, one each in December and November, 1963, and that the other three visits were for shorter periods of time. Koeller denies such extensive visitation. He testified that Ladd's only visit to his class was for a full period in late November, 1963, after which he suggested that the class be divided up more, and that students be required to speak louder, and that Ladd complimented Koeller regarding the fine relationship he had with his students. He testified that Refling made only one visit, and that in November, for a similar length of time, and that after such visit Refling suggested that he be sure to have students respond to his questions and speak loud, but was otherwise complimentary. He testified that Ussel was never in his classroom more than a few seconds on various occasions, those being upon Koeller's request, when he came to remove a student from class for disciplinary reasons. We credit Koeller's testimony regarding the frequency of the administrators' visits to his classroom.

The administrators' opinions concerning Koeller's competence demonstrates an effort to minimize the difficulties of Koeller's teaching situation and were made upon scant observation of his performance in the classroom. While it is true that Koeller had a significantly greater share of disciplinary referrals than did other teachers, a large number of such referrals were made from the study hall and a number of students referred for discipline were not in Koeller's regular classes. We acknowledge that Koeller had a problem with respect to the discipline of students and we feel that his views with regard to the School District's policies with regard to discipline were not conducive toward reducing the disciplinary referrals. However, in light of the entire record, we do not find that Koeller's competence as a teacher or disciplinarian motivated the determination not to extend his teaching contract.

We have therefore concluded that the Respondent School District refused Koeller a contract in order to discourage membership and collective bargaining activities on behalf of the Welfare Committee of the MNEA.

Such actions violated Section 111.70 of the Wisconsin Statutes which was enacted to protect the collective bargaining activities of public employes including school teachers.

While on their face the findings of the Board that the Respondents both encouraged and discouraged membership in teachers' organizations appear inconsistent, this is not the case. The acts of encouragement were directed to membership in the Wisconsin Education Association while the acts of discouragement involved membership and activity in the Muskego-Norway Education Association, the organization directly representing teachers in their attempt to bargain collectively with the School Board. We are satisfied that, while the Respondents would prefer to have the teachers in the employ of the School District become members of the Wisconsin Education Association, they would at the same time deprive the teachers of their right to have a local affiliate thereof, the Muskego Norway Education Association, bargain collectively with the School Board over salaries and other conditions of employment of its teacher members.

Dated at Madison, Wisconsin, this 19th day of August, 1965.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

Zel S. Rice II
Zel S. Rice II, Commissioner