

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WEST BEND TEACHERS UNION, LOCAL
1691, AFL-CIO,

Complainant,

vs.

BOARD OF EDUCATION OF WEST BEND
JOINT SCHOOL DISTRICT NO. 1,

Respondent.

Case II
No. 11320 WP-42
Decision No. 7938-A

Appearances:

Goldberg, Previant & Welmen, Attorneys at Law, by Mr. Kenneth R. Loebel, for the Complainant.
Mr. Herbert P. Wiedemann, Attorney at Law, for the Respondent.
Hart, Kraege, Jackman & Wightman, Attorneys at Law, by Mr. F. Halsey Kraege, for the Intervenor, Wisconsin Education Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on April 20, May 2, May 3, and July 11, 1967, at the Washington County Courthouse, West Bend, Wisconsin, Chairman Morris Slavney and Commissioner Zel S. Rice II being present; and the Commission having considered the testimony, arguments and briefs of counsel, and being fully advised in the premises, hereby makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That West Bend Teachers Union, Local 1691, AFL-CIO, hereinafter referred to as the Complainant, an affiliate of the Wisconsin Federation of Teachers, AFL-CIO, is a labor organization having its offices at Route 3, Box 143, West Bend, Wisconsin.
2. That the Board of Education of West Bend Joint School District No. 1, hereinafter referred to as the Respondent, has its principal offices at 710 West Main Street, West Bend, Wisconsin; that Paul M. Loofthore, at all times material herein, was employed by the Respondent as Superintendent of Schools, and as such was an agent of the Respondent.

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and that the Respondent maintains and operates a high school, junior high school and grade schools in said community, and in that regard employs, among others, certificated teaching personnel.

3. That at least since September 1964, and at all times material herein, the West Bend Education Association, hereinafter referred to as the WBEA, an affiliate of the Wisconsin Education Association, has represented, for the purposes of collective bargaining, a majority of the teachers in the employ of the Respondent; and that in said regard, in September 1964, the Respondent voluntarily recognized the WBEA as the exclusive representative of the teachers in its employ, for the purposes of conferences and negotiations in salaries and other conditions of employment.

4. That at all times material herein James Kannal, Patrick F. Bork and Allan F. Carrier were employed by the Respondent as teachers; that Kannal commenced his employment in September 1957; that Bork and Carrier commenced their employment in September 1965; that in 1965 Kannal joined the Wisconsin Federation of Teachers, hereinafter referred to as the WFT, as a member-at-large, that in the Summer of 1966 Kannal was appointed by the WFT as its representative for teachers in the employ of the Respondent; and that in August 1966, the WFT chartered the Complainant, at which time eleven teachers in the employ of the Respondent, including Kannal, Bork and Carrier, became charter members, with Kannal being elected as President.

5. That commencing in January 1966, Kannal, as a member and officer of the Complainant, engaged in concerted activity within the knowledge of representatives of the Respondent, and in that regard (a) Kannal was critical of the proposals of the WBEA and the Respondent in their negotiations with respect to terms and conditions of employment for teachers for the school year 1966-67; (b) at two pre-school meetings held in the Fall of 1966, Kannal made announcements concerning organizational efforts of the Complainant and urged teachers to attend the WFT convention, which was to be held on dates not provided for in the Respondent's school calendar; (c) Kannal and nine other teachers, including Bork and Carrier, attended the WFT convention held in Milwaukee on October 6 and 7, 1966, without being excused by the Respondent from their teaching duties on said dates; (d) Kannal, as well as other teachers, some of whom were members of the Complainant and some of whom were members of the WBEA, supported a "no"-vote in two referenda conducted among electors in the Respondent School District in December 1966 and May 1967, seeking authorization

for financing for a new high school building; and (e) Kannal, Bork and Carrier, on February 2, 1967, at meetings scheduled to discuss, with representatives of the Respondent, their alleged deficiencies as teachers, requested, but were denied, the opportunity to be represented by more than one representative of their choosing.

6. That since the Spring of 1964, Kannal's conduct with respect to certain responsibilities as a teacher, specifically relating to the imposition of student discipline and lack of cooperation with Respondent's policies, not connected with concerted activity, did not meet with the approval of the Respondent; that as a result, and not as a result of his membership and concerted activity on behalf of the Complainant or the WFT, or any other labor organization (a) Kannal received a probationary teaching contract for the school year 1965-66; (b) Kannal was the recipient, on December 5, 1966, of a letter from Respondent's Superintendent, wherein Kannal was advised that his performance as a teacher failed to measure up to the standards required by the Respondent; (c) Kannal was the recipient of a letter from the Superintendent of the Respondent on February 2, 1967, wherein Kannal was advised that his conduct was deficient, as it related to the imposition of discipline in an unwarranted and extreme manner, and in his refusal to accept and follow the policies and decisions of the Respondent; and (d) Kannal received a probationary teaching contract for the school year 1967-68.

7. That immediately following an announcement made by Kannal in the Fall of 1966, more specifically on September 2, 1966, urging teachers to attend the WFT convention on October 6 and 7, 1966, the Superintendent of the Respondent warned Kannal of possible repercussions if teachers attended said convention.

8. That on December 5, 1966, the Superintendent of the Respondent sent letters to Bork and Carrier, which were identical to the letter sent to Kannal on the same date; that said letters were sent to Bork and Carrier as the result of their performance as teachers, and not as a result of their membership or concerted activities on behalf of the Complainant, the WFT or any other labor organization, more specifically, with respect to Bork, because the latter had interjected personal opinions into his classroom; contrary to the Respondent's policy, and specifically with respect to Carrier, because the Respondent was concerned over the grades issued by Carrier and with matters concerning student control.

9. That representatives of the Respondent, on February 2, 1967, in denying Kannal, Bork and Carrier the opportunity to be represented

by more than one representative of their choosing for the purpose of discussing their alleged deficiencies, did so for the reason that the procedure established for such matters, as reflected in the conditions of employment negotiated by the WBEA and the Respondent, limited such representation to one representative.

On the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That the Respondent, Board of Education of West Bend Joint School District No. 1, by its agent, Superintendent Paul M. Loofbore,

- a. By warning Kannal on September 9, 1966, of possible repercussions if teachers attended the annual convention of the Wisconsin Federation of Teachers, scheduled for October 6 and 7, 1966;
- b. By sending letters on December 5, 1966, to James Kannal, Patrick Bork and Allan Carrier, wherein they were advised that their performance as teachers failed to measure up to the standards required by the Respondent;
- c. In declining to meet with more than one representative selected by James Kannal, Patrick Bork and Allan Carrier to represent them in a meeting scheduled for February 2, 1966, for the purpose of discussing their alleged deficiencies as teachers; and
- d. By sending a letter to James Kannal on February 2, 1967, wherein Kannal was advised that his conduct was deficient as related to the imposition of discipline in an unwarranted and extreme manner, and in his refusal to follow the policies and decisions of the Respondent,

did not interfere with, restrain, coerce or discriminate against said teachers, or any teachers in its employ, in the exercise of their right to freely affiliate with, or to engage in activity on behalf of, West Bend Teachers Union, Local 1691, AFL-CIO, an affiliate of the Wisconsin Federation of Teachers, and therefore, in said regard, the Respondent, Board of Education of West Bend Joint School District No. 1, did not commit, and is not committing, any prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes.

2. That the Respondent, Board of Education of West Bend Joint School District No. 1, by proffering James Kannal a teaching contract

for the year 1967-68 on a probationary basis, did not commit, and is not committing any prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes.

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

ORDER

IT IS ORDERED that the complaint filed in the instant proceeding be, and the same hereby is, dismissed.

Given under our hands and seal
at the City of Madison, Wisconsin,
this 1st day of April, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

William R. Wilberg
William R. Wilberg, Commissioner

I concur in part and dissent in part

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

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MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

THE PLEADINGS

In its complaint initiating the instant proceeding, the Complainant alleged that the Respondent had committed prohibited practices within the meaning of Section 111.70(3)(a)1 and 2, Wisconsin Statutes, by engaging in a course of conduct for the purpose of interfering, restraining and coercing James Kannal, Patrick Bork, and Allan Carrier, teachers in its employ, because of their concerted activity in and on behalf of the Complainant, and for the purpose of discouraging their membership therein. More specifically, the complaint alleged that (1) on September 2, 1966, Superintendent Loofboro threatened Kannal's "job security" after the latter had announced to other teachers that the Wisconsin Federation of Teachers, AFL-CIO, the parent organization of the Complainant was holding its state-wide convention on October 6 and 7, 1966; (2) that on December 5, 1966, Loofboro sent letters to Kannal, Bork and Carrier which "threatened the future job security of each of the three teachers"; (3) that Loofboro, on February 2, 1967, declined to meet with said teachers and representatives of their own choice in a meeting scheduled to discuss the matters contained in the December 5 letters sent by Loofboro; and (4) that on February 2, 1967, the Respondent sent a letter to Kannal threatening him with the termination of his employment. During the first day of hearing herein, April 20, 1967, Complainant was permitted to amend its complaint to further allege that the Respondent, on March 24, 1967, proffered a teaching contract to Kannal for the school year 1967-68, placing him on probationary status, the Complainant contending that such action was motivated by Kannal's

concerted and protected activities.

In its answer the Respondent denied the commission of any prohibited practices, and specifically (1) denied that Loofboro threatened Kannal's job security on September 2, 1966, contended (2) that the December 5 letters to Kannal, Bork and Carrier were letters identical to letters sent to four additional teachers, wherein all seven teachers, in conformance with a "fair dismissal policy", which became effective February 28, 1966, were apprised of their deficiencies in their performance as teachers; (3) that on February 2, 1967, Loofboro was willing to meet individually with Kannal, Bork and Carrier, and one representative designated by each of them, as provided in an existing grievance procedure; (4) that the February 2, 1967, letter to Kannal was sent to advise him "that his conduct as a teacher was seriously deficient in certain respects and that further deficiencies in these respects would subject Mr. Kannal to the possibility of immediate dismissal and that Mr. Kannal's entire record would be reviewed by the Respondent in March and taken into account in the determination of whether or not his contract would be renewed." In answer to the amendment to the complaint made at the hearing, the Respondent orally admitted placing Kannal on probation for the school year 1967-1968, but denied that such action constituted a prohibited practice. The hearing, which took four days, was closed on July 11, 1967. Final briefs were received October 18, 1967.

JAMES KANNAL

Employment History

Kannal has been employed in the West Bend school system since September 1957, as a sixth grade teacher for the first three years. He then transferred to the High School and taught there until the Fall of 1965. Since then he has taught at Silverbrook Junior High School, more recently as a social studies teacher. Teaching contracts for the school years prior to the school year 1965-1966 were renewed without incident. His teaching contract for the year 1965-1966 contained a probationary attachment, as did his teaching contract for the school year 1967-1968. His contract for the school year 1966-1967 was the standard teaching contract.

Concerted Activity and Knowledge Thereof By the Respondent

Kannal joined the Wisconsin Federation of Teachers, hereinafter referred to as the WFT, in December 1963, as a member-at-large since

said organization had not chartered a local for West Bend teachers at that time. In September 1964, the Respondent voluntarily recognized the West Bend Education Association, hereinafter referred to as the WBEA, as the representative of the majority of the teachers in its employ for the purposes of conferences and negotiations on salaries and other conditions of employment. Such recognition continued at all times material herein. During the Summer of 1965 Kannal was appointed by the WPT as its representative for the West Bend School District. Other than his membership in the WPT and his designation as its representative, the record discloses no other activity on behalf of such organization or knowledge thereof by any representative of the Respondent until early 1966 when Kannal, along with other teachers, who had become members of the WPT, attended meetings of the School Board, where members of the School Board were considering proposals presented by the WBEA with respect to salaries and conditions of employment for the school year 1966-1967. In that regard, between January 27, 1966, and June 6, 1966, Kannal had prepared and distributed seven letters over his signature as the West Bend representative of the WPT, commenting on the various matters that were being negotiated between the WBEA and the Respondent. In general, in these letters Kannal was critical of the Respondent's approach to school policies, educational programs, teacher-pupil ratio, salaries, insurance, fair dismissal policy for teachers, severance pay, grievance procedure, sick leave application and class loads. Kannal therein was also critical of the position taken by WBEA representatives with regard to certain of these issues. Copies of Kannal's letters were distributed to all teachers, as well as administrative personnel of the Respondent.

Kannal, as well as other members of the WPT, appeared at the February 22, 1966, School Board meeting, at which matters in negotiation with the WBEA were being considered, and during the course of said meeting Robert Ziegler, the Chairman of the School Board, addressed remarks to Kannal concerning the news letters being distributed by him and certain remarks with respect thereto. Kannal testified that Ziegler said "some of the people are getting the idea that we are not accomplishing anything here, and if you or your organization keep this up, you are headed for trouble." Ziegler testified that the bargaining sessions with WBEA in 1966 were held in public and that Kannal attended such bargaining sessions, that in Kannal's presence Ziegler displayed a copy of one of the news letters distributed by Kannal, and stated that if the matters contained therein were a

sample of Kannal's leadership, neither Kannal nor his organization deserved to represent teachers. Ziegler also testified that he advised Kannal that his action harrassed bargaining between the School Board and the WBEA. Ziegler denied making the statement that Kannal was headed for trouble.

On May 4, 1966, the Respondent received a letter from the WPT wherein the latter organization announced that it was holding its annual teacher convention in Milwaukee on October 6 and 7, 1966. In August 1966, the WPT chartered the Complainant, Local 1691, among West Bend teachers. Eleven teachers became charter members, including Kannal, Patrick Bork and Allan Carrier. Kannal was elected as the president of the Local. Prior to the opening of the school year in the Fall of 1966, the Respondent conducted a pre-school meeting for teachers on August 30, where Superintendent Loofboro permitted representatives of both the WBEA and Local 1691 a period for making announcements. Kannal, on behalf of the Local, approached the microphone and commenced making remarks with regard to the difficulties encountered in organizing a teachers' union among West Bend teachers. At this point Loofboro interrupted Kannal, admonishing him not to make a speech. Thereupon Kannal merely announced that Local 1691 had been organized and chartered by the WPT. There is no evidence that at this meeting the representative of the WBEA was afforded any favored treatment by the Superintendent in this regard. At another pre-school meeting held on September 2, the organizations were again permitted to make announcements. On this occasion Kannal orally extended an invitation to teachers to attend the WPT convention to be held at Milwaukee on October 6 and 7. The WBEA representative made a similar announcement with respect to its convention to be held in November, 1966.^{1/}

After Kannal had made his remarks, Superintendent Loofboro made an announcement from the rostrum to the effect that the content of Kannal's statement was illegal in that it was in violation of the teaching

^{1/} It should be noted herein that the school calendar for the year 1966-1967, which had been arrived at in negotiations with the WBEA, provided for the closing of schools on November 3 and 4, 1966, because of teacher conventions. The WEA, with which the WBEA was affiliated, had scheduled its convention for the latter dates. Said dates fell on the days historically set aside by school boards in Wisconsin for teacher conventions. Prior to 1966 the WPT traditionally held its convention on such days. However, in setting up its 1966 convention, the WPT determined to change its historical practice and to hold its convention approximately one month earlier.

contract, and that the "union" could not ask teachers to attend the convention. The Superintendent advised Kannal that he would hear from the School Board, their counsel, the Wisconsin Employment Relations Commission and others with regard to the matter. Kannal also testified that during a break at the session, while the teachers were enjoying refreshments, the Superintendent remarked "because of what you said up there, heads are going to roll." Loofboro testified that he could not recall the conversation with Kannal with any clarity. He categorically denied making the statement that "heads would roll". Loofboro claims he may have been asked "whether heads would roll if something wasn't done." Their conversation ended with both Loofboro and Kannal indicating respect for each other.

On September 26, 1966, in a letter addressed to School Board Chairman Ziegler, with a copy being sent to others, including Superintendent Loofboro, Kannal advised that ten named teachers, including himself as well as Bork and Carrier, would attend the WPT convention in Milwaukee on October 6 and 7.^{2/} In said letter Kannal also indicated a desire that the teachers who would attend said convention desired "to fulfill their contractual obligations and perform any duties that are commensurate with our status as professional educators" during the days on which the WEA was holding its convention on November 3 and 4, 1966, the days provided for the closing of schools because of teacher conventions in the West Bend school calendar. Kannal in said letter requested a directive from the Respondent specifying the professional duties which those who would absent themselves from school in attending the WPT convention were expected to perform during the days on which schools were closed for the WEA convention. There is no evidence to indicate that the Respondent replied to the written request of Kannal. However, prior to the dates of the WPT convention, Superintendent Loofboro indicated a willingness to permit delegate attendance of members of Local 1691 to said convention, on the basis of one delegate for ten per cent of membership, in accordance with past School Board practices in permitting attendance by teachers at educational meetings where the dates thereof coincided with teaching days. This offer of the Superintendent was rejected by Local 1691, nevertheless, the ten teachers who were members of Local 1691, without permission, did attend the WPT

^{2/} The letter actually contained the names of eleven individuals, one of whom was not a teacher in the West Bend school system.

convention. As a result said teachers were not paid for the days on which they absented themselves from their teaching duties.^{3/}

Some time prior to December 1966, the School Board determined that additional educational facilities would be required by it, and toward that end retained an architect to develop a plan for the new structure. In order to finance the actual cost of the building, a referendum was placed before the electors of the School Board where they would, on December 6, 1966, vote, seeking authorization for such financing in a referendum. The School Board and the administrative officers favored the new facility. Certain teachers, including Kannal and other members of Local 1691, as well as some members of the WBEA, were opposed to the new facility, contending that it was geared to a concept to which they were opposed, namely, preparing high school students for a higher education, whereas a majority of the students graduating from the Respondent school system did not seek higher education. In that regard, Local 1691 became affiliated with the Washington County Central Labor Council in September 1966. Kannal, as well as Bork and Carrier and other members of the Local, attended said Council meetings, at which they acted in the capacity of advisors to a Committee For Effective Schools formed by the Labor Council. On November 25, 1966, the Committee For Effective Schools prepared a bulletin with respect to the referendum and distributed same to a meeting of the electors of the school district on November 28, 1966. The bulletin, while favoring and recognizing the need and urgency of building a new school, was critical of its plant facilities and the manner in which the facilities were planned. The bulletin was also critical of the failure of the School Board and the administration to consult with industry and labor in the community, and further recommended that a study committee consisting of labor, industry and other pertinent community groups, be created to review the plans and recommend changes to the School Board. The Committee For Effective Schools placed an ad in the local newspaper on December 1, 1966, urging a "no" vote on the school referendum. On December 2, 1966,

^{3/} In a decision involving a complaint of prohibited practices filed by the WPT alleging that the Respondent committed a prohibited practice in failing to alter its calendar to permit teachers to attend the WPT convention and refusing to pay teachers who attended same, the Commission concluded that such action by the Respondent did not constitute a prohibited practice within the meaning of Section 111.70. Decision No. 7907-B, 8/67 (Aff. Dahe Co. Cir. Ct., 11/67)

while classes were in session at Silverbrook Junior High School, the Superintendent made an announcement over the intercom system, which announcement was heard by students and faculty alike, wherein Superintendent Loofboro discussed the school referendum to be held on December 6, urging a "yes" vote and indicated that a brochure was to be distributed by the teachers with respect to the planned building and the referendum. Kannal, as well as other teachers, distributed said brochure. In his announcement, Superintendent Loofboro indicated that a vast majority of teachers favored the new school building. After the announcement and while classes were in session, Kannal told his students that he was not among the vast majority of teachers who favored the new school. The electors of the School Board on December 6, 1966, voted against the bond issue.

The WBEA and representatives of the Respondent in February 1966, after negotiations, arrived at an agreement covering the salaries and employment conditions of teachers in the employ of the Respondent. Said agreement contained, among others, a provision providing for a "Fair Dismissal Policy", which set forth the following material provisions:

- "a. An evaluation of all professional personnel in each building is routinely made by the principal at least once during each quarter of the academic calendar year. These evaluation documents and procedures generally will be discussed with the teacher in a conference following the evaluation.
- b. Any teacher judged to have serious deficiencies shall be notified of them by his principal at the time of the evaluation conference.
- c. If such deficiencies or behavior are judged to warrant dismissal, the principal shall notify the superintendent, who will in turn notify the teacher in writing that such action is being considered. This will be done prior to the end of the first semester of the school year.
- d. A conference to ascertain whether alleged deficiencies have continued are serious enough to warrant dismissal will be held by the superintendent with the teacher and the principal in attendance. This meeting will be held prior to the March meeting of the Board of Education."

In the Fall of 1966, after conferences with Principal Riley, Superintendent Loofboro, in accordance with the procedure set forth in the Fair Dismissal Policy, sent letters to seven teachers, including Kannal, Bork and Carrier, wherein he called to their attention the fact "that as of this date there is considerable evidence that your performance fails to measure up in some important respects."

The letters also indicated further conferences and advised that the letter was being sent in accordance with the Fair Dismissal Policy.

On December 9, 1966, Kannal directed a letter to the Superintendent acknowledging the receipt of the December 5 letter, denying that his performance in any way failed to measure up to the standards expected of him, and indicating a willingness to meet with regard to same. Kannal also indicated that he was a member of Local 1691, and that he was "taking this as a grievance in accordance with Wisconsin Statutes 111.70(4)(d), which incorporates 111.05. I will need prior notice of the meeting so that I can have my representative present." Identical letters were also sent to the Superintendent by Carrier and Bork.

Arrangements were subsequently made to conduct conferences with Kannal, Carrier and Bork on February 2, 1967. On February 1 Kannal conferred with Principal Riley as to who was to represent teachers at the grievance meeting which was scheduled for February 2.

On January 27, 1967, Kannal, Bork and Carrier received a letter from Riley informing them that meetings were scheduled for February 1, 1967. Subsequently, the meetings were postponed until February 2, and meeting time set at 10:00 A. M., 10:30 A. M. and 11:00 A. M. for Bork, Carrier and Kannal respectively. On January 30, 1967, Kannal sent a note to Riley advising that Kannal and Teacher James Smith planned to attend all three meetings and therefore arrangements should be made to obtain substitute teachers. Riley reported this information to Loofboro, who informed Riley to advise Kannal that the three teachers were entitled to one representative at the conference. Upon being so advised, Kannal responded in reference to the Respondent, "they will not make the rules."

Kannal, Bork, Smith and Geraldine Marchant, Wisconsin Federation of Teachers Executive Director, appeared in the Superintendent's office at 10:00 A. M. for the purpose of grieving the letter which was sent to Bork. The Respondent was represented by counsel, who indicated that the grievance procedure established through negotiations with the WBEA, limited representation of teachers in the first step of the grievance to one representative and that, therefore, the teachers were permitted to either be represented individually, by themselves, or by one representative.^{4/} Thereupon, Kannal, Bork, Smith, Marchant

^{4/} The Respondent and the WBEA on February 19, 1966, adopted a four-step grievance procedure. The first step provided "a teacher shall discuss his grievance promptly with his principal, either by himself or together with a representative of the Association or together with anyone else of the teacher's own choosing."

and Carrier, who had appeared by then, caucused separately. After the caucus the teachers and their representatives entered the meeting room and requested that they proceed under the Fair Dismissal Policy, and that, therefore, pursuant to Section 111.70, Wisconsin Statutes, they were not limited to a single representative. Respondent's counsel advised that the meeting would be treated as a grievance meeting, and thereupon the teachers left the room and no conference was held with regard to matters contained in the letters sent to Kannal, Carrier or Bork.

Subsequently, a second referendum was conducted on the new building on May 23, 1967. Kannal engaged in certain activity with regard thereto after the complaint had been filed and during the period in which hearings were held in the instant matter. On May 16, 1967, at the request of the School Board, the School Board met with the Washington County Central Labor Council, at which the School Board attempted to seek a favorable endorsement from the Council with respect to the school referendum. At said meeting Kannal opposed such endorsement on behalf of the Committee For Effective Schools. After said meeting the Council determined again to oppose the referendum.

Prior to the referendum on May 23, 1967, Kannal, on behalf of Local 1691, made arrangements with the local radio station to read the following announcement on ten specific occasions on both May 22 and 23, 1967:

"The Washington County Central Labor Council with the endorsement of its affiliate, the West Bend Teachers Union, Local #1691 would like to call to the attention of the electors of the West Bend School District pertinent facts that have been seemingly overlooked by the West Bend School Board since the Dec. 6th referendum. To wit:

"Although authorized to hire an architectural firm to submit preliminary plans, it would seem the School Board went too far when it arbitrarily authorized the architect to draw up final plans without consulting the electorate.

"Since the defeat of the referendum it would appear that the School Board has distorted the picture by exaggerating and inflating the critical need for a new high school. We believe there is ample time for the School Board to re-study its objectives and build a high school that is financially acceptable to the public.

"Little, in (if) any, significant alterations have been made in the original plans which are up again for the electorate's approval. Therefore, you -- the elector must decide whether or not you want to get the School

Board off the hook by casting a sympathy vote, or, by voting NO, you can demand a thorough re-study."

After the initial reading of the aforesaid announcement, the radio station refused to continue same, contending that the second paragraph appeared to be libelous. Kannal thereupon submitted three changes to the second paragraph, the last one being acceptable to the radio station, and which was as follows:

"Although authorized to hire an architectural firm to submit plans, we feel the School Board would have shown better discretion if they had come back to the voters first prior to authorizing the final plans although they were not required to do so."

The correct announcement then continued to be made by the radio station on May 22 and 23. All announcements included the fact that they were authorized and paid for by "Wisconsin Federation of Teachers, Local 1691, AFL-CIO, James Kannal, President, Route 3, West Bend, Wisconsin". On May 23, 1967, the electors of the School Board again rejected the referendum.

On May 23, 1967, the Respondent, in a letter to Kannal over the signature of Superintendent Loofboro, stated as follows:

"Reference is made to the letter sent to you dated February 2, 1967, in which you were notified that any further violation on your part of the policies and decisions of the Board of Education and Administration during the balance of this academic year would subject you to the possibility of immediate dismissal.

"On Monday, May 22, 1967, we were advised that you placed with Radio Station WBKV certain advertising which wrongfully asserted that the Board of Education was guilty of arbitrary action, without authority from the electorate, in its engagement of an architect for the preparation of plans and specifications for a new high school. This accusation against you will be investigated and, when that investigation is complete, you will be notified as to the decision of the Board concerning your future employment."

Subsequently, and on June 6, 1967, in a letter over the signature of Superintendent Loofboro, the Respondent advised Kannal, in part, as follows:

"While the board believes that the charges are most serious, it has decided not to proceed with an investigation. The incident involved the recent referendum which already has caused too much dissension in West Bend. The board believes the community is best served by bringing that dissension to an end.

"Nothing in the board's decision has any bearing on any other matters pertaining to your employment. I have been instructed to remind you that the warning set forth in my letter to you February 2, 1967, and the probationary clause contained in your 1967-68 contract, are still in full force and effect."

Kannal's Alleged Deficiencies As a Teacher

The Respondent denied that the actions taken by the School Board with respect to Kannal constitute prohibited practices within the meaning of Section 111.70. The Respondent introduced evidence with respect to Kannal's alleged deficiencies as a teacher, which the Respondent contends motivated it in its relationship with Kannal. In that regard, evidence was adduced with respect to certain episodes occurring as early as the Summer of 1964. The evidence involved Kannal's relationship with pupils, programs and policies of the School Board.

Pick Athletic Award

In the Spring of 1964 Kannal, while teaching in the High School, was involved in the selection of a student athlete who was to receive an award. The matters considered and the recipient of the award were to remain confidential until announced. Kannal prematurely released such information to the public. Prior to the close of that school term, Kannal inquired of A. E. Weiner, the High School Principal, whether he would continue to coach tennis and whether he was desired as a teacher in the High School. In response to such inquiry, Weiner, on July 15, 1964, directed a letter to Kannal, which contained in material part the following:

"After giving some thought to the matter, we met in my office at a later date -- I believe the week we closed school and arrived at the following understanding:

"Whether or not you coach tennis can only be decided by you. There are certain rules and regulations that are required and if you would comply with these there would be no question on my part about your coaching tennis. However, I am sure we agreed there would be no recurrence of the problems that besieged us at awards time this year.

"In reference to teaching there seems to be only one recommendation that is important: cooperation with administration in determining the changes necessary, and following the philosophy that we are dedicated to the responsibility of providing the best educational opportunity possible to all the students of West Bend High School. This, however, includes the dedication of the teacher to meet daily assignments completely and timely with due consideration to fellow teachers and students. It also requires the fullest cooperation with the custodial and secretarial staff.

"Loyalty and honesty to the administration and the school, as well as to ones self and community, are prerequisites for a professional educator in the West Bend School system.

"If these are acceptable, there is no question about your tenure in West Bend.

"I would be derelict in my duties as principal if I did not point out to you these responsibilities, as well as to inform you that your temporary status for teaching in the high school expires at the end of the 1964-65 school year unless you enroll in certain courses prescribed by the State Department of Public Instruction, relative to your teaching permit."

On July 17, 1964, Kannal responded to Weiner's letter, stating his position with regard to the matters contained in Weiner's letter. Kannal also indicated therein that he had come to the conclusion "that there must be an ulterior motive behind your action at this time." Kannal closed his letter with the following paragraph:

"I am beginning to wonder if there is a concerted effort to harass me out of the system. If so, would you please have who ever is instigating this to list all statements and charges against me in writing and have it forwarded to me? I would appreciate a public hearing where I can meet my accuser or accusers and defend myself against any charges leveled against me."

Corbett Incident

Early in 1965, while Kannal was still at the High School, the mother of pupil James Corbett had complained to Superintendent Loofboro that Kannal had manhandled student Corbett during a noon hour. The Superintendent referred the matter to Principal Weiner, who spoke to Kannal. Kannal testified that on said occasion, having found Corbett outside of the lunch area, he escorted Corbett to the proper area and turned him over to the teacher in charge of the hot lunch program. Kannal denied grabbing Corbett and throwing him against a wall, with which he was charged.

1965-1966 Teacher Contract

On March 22, 1965, Kannal was proffered and accepted a probationary teaching contract for the school year 1965-1966. Attached to the proffered contract was a letter addressed to Kannal from Superintendent Loofboro as follows:

"The Board of Education held an executive session Saturday morning, March 27, at which time it reviewed the contract offers it was about to authorize for the 1965-66 academic year. I was instructed to inform you that renewal of your contract was seriously questioned. You are, of course, well aware that there have been some areas of friction and difficulty and that some of our Board members have had experiences which bring them directly into making

judgments in this case. It is recognized that you are an earnest and very sincere teacher, and that your general classroom performance results in acceptable learning standards being met by the pupils. The responsibilities of a teacher, however, extend into many other areas in which success is also required if an enduring long-term relationship is to be maintained. It is not my purpose in this letter to enumerate in detail the specifics to which I refer. I shall be available to go over these with you and/or Mr. Weiner, and believe that we should do this at an early date, since it is a matter of the maximum mutual concern.

"We must come to a very clear understanding and be assured that problems in these areas will not be repeated. The 1965-1966 year is therefore a probationary one and consideration for employment beyond the 1965-66 school year is conditional upon the performance record."

Petrie Incident

On March 1, 1966, at which time Kannal was teaching at Silverbrook Junior High, some eight pupils from a dramatic class were practicing a Sherlock Holmes play in a commons area adjacent to Kannal's classroom. Kannal heard laughter and, looking out of the window of his room door, observed the students laughing. Student Steve Petrie appeared to Kannal to be entertaining the students by holding a large pipe in his mouth. Kannal left his class and questioned the students' activities and directed an inquiry to Petrie as to his identification. According to Kannal, Petrie sarcastically replied that he was "Sherlock Holmes", and that thereupon, he instructed Petrie to leave the area, that he took Petrie out of his chair, and that when Petrie didn't move, Kannal pushed him because of Petrie's alleged impudent attitude. Kannal further testified that he took Petrie into Kannal's classroom and at that time the pipe fell and broke, that he then had Petrie sit on the floor in the back of the room and tossed him the remains of his pipe, that he then sent a student to bring Principal Riley to the class, and that Riley arrived and escorted Petrie to his office. Kannal claims not to have known Petrie, who was the President of the Student Council.

Teacher Ann Mackie, who teaches ninth grade English and who was in charge of the group of students who were practicing the play in the commons, testified that she, from her door, observed Kannal when he grabbed Petrie under the arms, clasped his hands in front of Petrie's chest, picked Petrie off of his chair and dropped Petrie, who almost lost his balance, and that when Kannal was questioning Petrie, he was pounding Petrie's chest with his finger and backing Petrie and pushing him on the shoulders, causing Petrie to be pushed into the

corridor wall and lockers. Mackie further testified that she went to Kannal's room and observed Petrie sitting on the floor, and overheard Kannal ordering Petrie to remain seated. According to Mackie, she then addressed Kannal, who told her "I can handle this," and Mackie thereupon returned to her room. Principal Riley's testimony with respect to the incident was to the effect that he visited Kannal's room upon being summoned by a student and he observed Petrie sitting on the floor with a pipe in his mouth during a class session conducted by Kannal. Riley escorted Petrie to his office where Petrie advised that they were practicing a play and that upon being questioned by Kannal, Kannal backed him against the wall, took him into his (Kannal's) room and told him to sit on the floor with the pipe in his mouth. Petrie advised Riley that he was not hurt. After class that day, Riley spoke to Kannal concerning the incident. On March 4 Mackie reported her observations of the incident to Riley, who subsequently reported the matter to Superintendent Loofboro.

A meeting was held in the Superintendent's office on March 17, 1966 concerning the Petrie incident. A fellow teacher, Jack Reiss, accompanied Kannal as his representative. Superintendent Loofboro opened the conversation with a statement to the effect that he desired to get at the facts and that in response to a statement by Kannal, he indicated that Kannal was not on trial, but that he had received a call from a member of the School Board concerning the incident. The meeting was concluded by the Superintendent stating that he thought he had all the facts and that he considered the matter closed.

1966-1967 Teaching Contract

On March 25, 1966, Kannal was proffered a teaching contract for the year 1966-67 without any conditions attached. Prior to April 15, 1966, Kannal returned the signed contract.

Window Incident

According to Principal Riley, in October 1966, four of Kannal's students visited Riley's office and complained with respect to Kannal's opening windows, resulting in their being cold. Shortly thereafter, Riley spoke to Kannal who indicated that he desired fresh air in his room, that he liked it cool and that it was better for students to adjust to the heat than for him to adjust thereto. Later, Riley reported to Superintendent Loofboro that Kannal was supposed to have threatened the students with reprisals for reporting the matter. Kannal denied threatening reprisals, but admitted that he had told

the students that if they had any complaints with regard thereto that they should make their complaints known to him rather than to the Superintendent or the School Board. The Superintendent had received some information from a School Board member with regard to the window incident to the effect that the students involved had been threatened in an attempt to discuss the problem. As a result, Riley met with Kannal and discussed the matter.

Social Studies Curriculum

In January 1966 it was determined to make a change in the Social Studies curriculum at Silverbrook Junior High School, to be implemented in September 1966. Early in January, Social Studies teachers, among whom Kannal was included, were requested to attend the initial meeting in the matter, and subsequently meetings were held until the latter part of August. The meetings were held for the purpose of understanding the new approach to the curriculum, to organize materials and to arrange for the ordering of materials to be received by the opening of the school year in September 1966. There were eight departmental meetings, two two-hour seminars and a five-day workshop conducted by the Superintendent's Office, the latter being conducted during August. It appears that attendance was voluntary. Kannal appeared at meetings held on January 12 and February 9, 1966, and the five-day workshop in August 1966. On April 18, 1966, Kannal sent the following letter to Superintendent Loofboro:

"Looking forward to the 1966-67 school year, we both realize that it will necessitate curriculum changes throughout our extended district. I understand that the Silverbrook social studies program, of which I am a part, will also be involved. This is the situation. Thus far, no one has been able to satisfactorily 'spell out' what's to be done in the new approach to the social studies curriculum. Nor, has anyone delineated the manner in which the program is to be carried out."

"Before going any further, please let me point out that I am not in any way challenging or questioning the administrative decision to go ahead with this conceptual plan. I am simply asking for clarification of purpose not only for myself, but also on behalf of other social studies colleagues who feel the same as I."

"As educators, we both favor creativity and new approaches in education, but we cannot in good conscience force teachers to assume responsibilities in areas where they have only marginal competence. What would be the concomitant effect upon students who are subjected to this type approach? If we recognize that various proficiencies do exist we will then vary the modes and methods of instruction to fit the capabilities of the teacher. We do not want an educational

lock-step. Manipulate the environment, not the teacher.

"In our association over the years, I recall an expression you have referred to from time to time. I feel it's pertinent now. 'Situations do arise in which one is damned (sic) if you do and damned if you don't.' Knowing you as I think I do I feel you will understand our position and accept these suggestions in the spirit with which they are intended."

Superintendent Loofboro did not reply to the letter.

Prior to the end of the year the Social Studies teachers at Silverbrook, six in number, were requested to submit a list of the materials that they desired, in order for the administration to properly prepare the school budget. All the Social Studies teachers submitted such lists within the time specified, except Kannal. Kannal submitted his request on June 10, 1966, after the School Board had made a preliminary review of the school budget. In June 11, 1966, Eugene Lynch, Director of Instruction, who was in charge of the implementation of the Social Studies curriculum, directed a letter to Kannal wherein he called attention to the fact that instructional material was not ordered by Kannal. In response to Lynch's letter, Kannal referred Lynch to the "unanswered letter" which he had sent to Superintendent Loofboro on April 18, and repeated the content of his letter to Loofboro. On June 29, 1966, Lynch replied to Kannal as follows:

"This letter is in response to your registered letter dated July 20, 1966, in which you sent me a repeat of a letter sent by you to Mr. Loofboro dated April 18, 1966.

"In your letter to Mr. Loofboro you indicated you did not understand the social studies curriculum as proposed for the 1966-67 school year and were seeking clarification of the program.

"Starting with a meeting, involving a member of the State Department of Public Instruction, on January 6th, a series of inservice activities were held during the year to provide you and other staff members with as much background material and direction as possible in order to facilitate implementation of the curriculum change. In addition to the January 6th meeting, eight departmental level meetings, two two-hour seminars conducted by staff members of U.W.M., and a five-day workshop conducted by this office, were held.

"We are somewhat bewildered by the fact that since you are seeking clarification and direction that you were in attendance at only two of the departmental meetings, at none of the seminars, and did not participate in the social studies workshop conducted at the end of the school year.

"Implementation of the social studies curriculum, as recommended by our State Department of Public Instruction and approved by our Board of Education, will logically vary from teacher to teacher dependent upon their creativity and ability. Let there be no mistake, however, the content of the new curriculum for each grade level is very specifically spelled out. To review for you, the content at the ninth grade level includes a study of the following: Africa, Latin America, The Slavic World, The Middle East, India, China, Japan, and Island Civilization.

"In my letter to you dated July 11, 1966, I requested that you supply either this office or Mr. Riley with a list of materials that you would need to implement your phase of the new program this fall. To date we have received no request from you. Since time is of essence and since it is imperative that we have the instructional materials on hand at the opening of school, this office will order supplies we deem appropriate and try to have them here prior to the opening of school.

"The process of informing staff members of what is expected of them in terms of implementing new programs will continue to be handled through the type of in-service activities as described above. It is not the intent of this office to attempt such an undertaking through correspondence with each individual staff member. In our judgement the information given out during our inservice program thus far, plus the opportunity you all have to participate in the social studies workshop conducted by this office during the week of August 22-26, should be adequate to assure us of a very successful program during the 1966-67 school year.

"I hope you will be with us during the workshop starting on August 22nd."

Kannal testified that he understood that teacher Bork had turned in the budget request for the entire Social Studies Department, and that, therefore, he had not prepared a list of materials until specifically requested to do so.

Dennis Seil Incident

In October 1966, School Board Chairman Zeigler informed Superintendent Loofboro that it had been reported to him that Kannal had been involved in apparent severe treatment of Student Dennis Seil, and Zeigler suggested that Loofboro familiarize himself with the matter. Prior to December 5, 1966, Loofboro requested Principal Riley to look into the matter. In December 1966, School Board member Gonring reported the Seil incident to Principal Riley. Upon hearing of the incident, Riley called student Seil to his office, who advised Riley that while Seil was whispering and talking in his class, Kannal ordered him to stop, and that Kannal accused him of making faces. Seil further advised Riley that Kannal took Seil by the shoulders and

placed his thumbs against Seil's neck. Seil reported to Riley that he was frightened. On December 21, 1966, Riley conferred with Kannal with respect to the matter. Kannal indicated that in attempting to obtain Seil's attention, Kannal placed his hands on Seil's head and tilted it up in order to get Seil's undivided attention, and that Kannal required Seil to answer him with a "yes, Sir" or "no, Sir" in an acceptable tone.

Grading of Students - First Semester, 1966-67

Prior to the grading of students in the first semester 1966, Superintendent Loofboro was advised by Director of Instruction Lynch that Kannal was preparing a number of warning letters to be sent out to parents regarding student grades. The practice has been to send such letters to the parents of students who are doing poorly. At the end of the semester 43 ninth grade students received failures in the four required academic areas, Social Studies, English, Mathematics and Science, by their 12 teachers. Kannal had failed 24 of the students. At the request of Principal Riley, Kannal met with Riley on February 23, 1967, regarding the matter. Riley informed Kannal that he thought that Kannal had given an excessive number of failures. When Kannal inquired as to whether Riley desired him to change the grades, Riley informed him that he should give the grade that was best in his judgement. Riley had not spoken to Kannal with regard to the warning letters or grades prior to the February 23 meeting. Kannal contends that in the prior school year, his pupils were average or above students, while in the school year 1966-67 he had a heterogeneous group. It should be noted that in second semester grades the failures were reduced by six.

The December 5, 1966 Letter

On December 5, 1966, Kannal, as well as Bork and Carrier, and four other teachers not involved in the instant proceeding, were sent identical letters as follows:

"You were selected to become a member of our staff on the basis of our conviction that you are qualified by training and personality to perform effectively in the area of your assignment as one of our team. It is a part of my responsibility, however, to call your attention to the fact that as of this date there is considerable evidence that your performance fails to measure up in some important respects. It is not the purpose of this letter to outline the specifics of this situation. These will be conveyed to you through conferences with your principal and personal conferences with me, and possibly others, at some future date. The purpose of this letter, however,

is to notify you in such a manner that notice and receipt of notice will be a matter of record in conformity with Section 8.c. of our Fair Dismissal Policy.

"It is our hope and our intention to give you every possible assistance in attempting to bring your performance into conformity with our requirements."

Superintendent Loofboro testified that said letters were sent pursuant to the Fair Dismissal Policy, which had been negotiated by the School Board and the WBEA, to teachers where there had been an indication that there might be difficulties with said teachers which might lead to later dismissal. The final decision for the sending of such a letter is the responsibility of the Superintendent, who prior to sending same, conferred with members of the administrative staff and the individual principals involved. With respect to Kannal, Bork and Carrier, Superintendent Loofboro testified that after he had consulted with Principal Riley, he concluded that their overall performance was in serious question so as to warrant a conference between the teachers and himself. Principal Riley testified that prior to December 2, 1966, he had had conversations with Kannal with respect to student control, specifically to the Seil incident. Riley also testified that prior to December 5, 1966, he had conversations with the Superintendent regarding Kannal's alleged deficiencies in the matter of discipline, specifically referring to the Petrie incident and the alleged reprisals to students arising from the window incident. Riley was not required to make any recommendation to the Superintendent regarding the retention or termination of any teacher. In November 1966, Riley evaluated Kannal as "good-minus." The specifics of such evaluation were as follows:

AREA OF EVALUATION	STRONG POINTS	SUGGESTIONS FOR IMPROVEMENT
I. Teaching ability	Lectures are well prepared. Student attention is demanded & given.	More interaction between students & instructor should be striven for.
II. Classroom Management	Discipline is strict - "Goofing off" not tolerated.	Discipline based on respect & reason & understanding.
III. Public Relations	Controversial - Rumors are many. Apparently hostile to administration	An affirmative & positive approach with admin. criticism that is constructive.

IV. Personal Qualities	Well groomed, neat. My opinion: he is always on defensive making communication difficult	Development of feeling of security & confidence
V. Pupil-teacher Relationship	Students know what they are expected to do & what to expect if they don't.	
VI. Knowledge of Subject Matter	He changed from Western to Eastern culture this year reluctantly.	

Kannal testified that during the Fall of 1966 neither Riley nor any other member of the administration on any occasion discussed Kannal's alleged shortcomings with him. While subsequently a meeting was scheduled for Kannal as well as Carrier and Bork to discuss their alleged deficiencies, no such meeting was held as a result of the insistence of Kannal to have more than one representative present at the meetings scheduled for February 2, which were discussed previously herein.

The February 2, 1967 Letter

On February 2, 1967, after the scheduled meeting to discuss the alleged deficiencies of Kannal, Bork and Carrier resulted in no conference, as indicated previously in this memorandum, Superintendent Loofboro directed a letter to Kannal, wherein he reviewed the events which took place with respect to said meeting, indicating a regret that the conference was adjourned without a discussion of the particulars involved and also indicating that a full discussion would have been of benefit to both Kannal and the administration. The letter closed with the following paragraph:

"Absent the opportunity for discussion we wish to clarify our conclusions to date. Prior to sending you the letter of December 5, 1966, your principal, Mr. Riley, had numerous discussions with you over a considerable period of time in which the areas of your conduct which were unsatisfactory were discussed. To summarize, over a long period of time your conduct has been seriously deficient in the following respects:

- (1) Your imposition of discipline in an unwarranted and extreme manner;
- (2) Your refusal to accept and follow the policies and decisions of the Board of Education and administration."

1967-1968 Teaching Contract

On or about March 23, 1967, Kannal was proffered a teaching contract for the school year 1967-68. The contract offered to Kannal

contained the following inclusion, placing Kannal on probation:

"IT IS FURTHER AGREED that it is of the essence of this contract, and recognized by the parties as such, that the Teacher's employment hereunder is probationary and that the continuation of the Teacher's services and salary for the full term of this contract is conditional upon the Teacher's performance of his duties in a manner satisfactory in all respects generally and specifically with regard to (i) the imposition of discipline upon students in a proper manner and (ii) the acceptance and implementation of the policies and decisions of the School Board and its administrators."

On April 10, 1967, Kannal returned the signed contract and enclosed a letter which stated as follows:

"This is to inform you that I have signed the 1967-1968 contract under protest. These conditions are not factual and have been arbitrarily imposed as a result of my activities in the Teachers' Union.

"The Board and Administration did not fulfill its responsibilities as stipulated in the December 5, 1966 letter stating there would be conferences with me "...to outline the specifics of the situation...", "...at some future date...." The aforementioned conferences never occurred."

The May 23, 1967 Letter

During the course of the hearing in this proceeding, a second referendum was conducted among the electors of the West Bend School District regarding the construction of a new high school building. Reference was previously made herein to the announcement authorized by Kannal, which was made on a local radio station on May 22 and May 23, 1967. It should be noted that the content of the announcement was changed after the first reading on May 22. On May 23, 1967, Superintendent Loofboro sent the following letter to Kannal:

"Reference is made to the letter sent to you dated February 2, 1967, in which you were notified that any further violation on your part of the policies and decisions of the Board of Education and Administration during the balance of this academic year would subject you to the possibility of immediate dismissal.

"On Monday, May 22, 1967, we were advised that you placed with Radio State WBKV certain advertising which wrongfully asserted that the Board of Education was guilty of arbitrary action, without authority from the electorate, in its engagement of an architect for the preparation of plans and specifications for a new high school. This accusation against you will be investigated and, when that investigation is complete, you will be notified as to the decision of the Board concerning your future employment."

Following further consideration of the matter, on June 6 Superintendent Loofboro sent the following letter to Kannal:

"Reference is made to my letter to you of May 23, 1967, concerning investigation of charges, that you had placed advertising with radio station WKV which wrongfully accused the Board of Education of acting without authority from the electors.

"While the board believes that the charges are most serious, it has decided not to proceed with an investigation. The incident involved the recent referendum which already has caused too much dissension in West Bend. The board believes the community is best served by bringing that dissension to an end.

"Nothing in the board's decision has any bearing on any other matters pertaining to your employment. I have been instructed to remind you that the warning set forth in my letter to you February 2, 1967, and the probationary clause contained in your 1967-68 contract, are still in full force and effect."

PATRICK BORK

Employment History

Patrick Bork in his first teaching assignment accepted employment with the West Bend School Board commencing in the Fall term, 1965, and is still employed. He teaches ninth grade Social Studies.

Concerted Activities

Bork joined Local 1691 as a charter member in July 1966. He held no office in that organization, although in the Fall of 1966 he was a candidate for the position of Vice President of the WFT. Such candidacy was announced in the local West Bend paper. He attended the WFT convention in October 1966. He also attended two meetings of the Washington Trades and Labor Council at the time it was considering the new school referenda. Bork attended School Board meetings, but never met with the School Board as an officer or representative of Local 1691. The record discloses that the first knowledge by the Respondent of Bork's activities on behalf of Local 1691 was indicated on the receipt of the September 26, 1966, letter from Kannal to the Respondent advising that ten named teachers, including Bork, planned to attend the WFT convention in Milwaukee on October 6 and 7, 1966.

Evaluation of Bork as a Teacher

During the school year 1966-67 Principal Riley, in evaluating

Bork's performance in the Fall of 1966, determined that Bork was doing an adequate job in classroom technique and in the presentation of material. He was rated fair to good. In the second quarter evaluation, Riley considered Bork somewhat less than average. Such evaluations were not available to Bork, but he could have examined same had he so desired. In the latter part of November 1966, Riley sent a note of commendation to Bork for chaperoning a ninth grade social on a Friday evening.

Events Leading To The 12/5/66 Letter To Bork

Bork was personally opposed to the new high school building which was the subject of the referendum previously discussed in this Memorandum. The referendum was discussed on occasions in his Social Studies class. In that regard Bork read to his students various newspaper articles and placed other printed items with reference thereto on bulletin boards. Certain students asked Bork's opinion in regard to the referendum, and he indicated to them that he would not have voted for the referendum because students of their type could not spend large amounts of time on individual study because they were not mature enough. Bork indicated that he opposed the new school because he felt that it was aimed at college-type students, and that this type of program was not needed at West Bend. As a result of Bork's stating his opinion in this regard in his classes on more than one occasion, one of the students reported the matter to his mother, who was a School Board member. Such member reported the matter to Superintendent Loofboro, who related such complaint to Principal Riley, and Riley was requested to look into the matter. The complaint was to the effect that Bork may have been injecting his personal opinion into the classroom. Prior to December, 1966, Principal Riley conferred with Bork and apprised Bork of the complaint of the School Board member. Riley informed Bork that personal opinion should not be interjected, that Bork should give the pros and cons of such and similar issues to the class, and that the teacher should be impartial. Bork testified that he told the students to make their own judgment, but he did not deny that he stated his own opinion.

Prior to December 5, 1966, Superintendent Loofboro asked Riley's opinion with respect to sending a deficiency letter to Bork. Riley had an affirmative opinion in that regard, being under the impression that a conference with Bork could iron out Bork's "difficulties" and to determine the seriousness thereof. On December 5, 1966, Superintendent Loofboro sent Bork a letter identical to that which was

sent to Kannal on the same date.. On December 12, 1966, Bork sent a letter to the Superintendent which was identical to the letter of the same date sent by Kannal to the Superintendent in response to the December 5 letter.

Grievance Meeting Of February 2, 1967

Bork's "grievance" meeting was scheduled for 10:00 A. M. on February 2. He was relieved by a substitute teacher and appeared with Kannal, Smith and Marchant in the offices of the Superintendent. The circumstances surrounding the conversation held at the meeting have been previously related in the portion of this Memorandum having reference to Kannal. However, prior to the termination of the conversation, counsel for the School Board inquired of Bork as to whether Bork would like to meet with his representative and the representatives of the Respondent. Bork replied that his representative was not present, and no further discussions were had that date.

On February 2, 1967, following the abortive "grievance" meeting, Superintendent Loofboro sent a letter to Bork, which contained reference to the fact that there was not an opportunity to discuss the contents of the December 5 letter, and which ended with the following paragraph:

"Absent the opportunity for discussion we wish to clarify our conclusions to date. Prior to sending you the letter of December 5, 1966, your Principal, Mr. Riley, explained to you the areas of your conduct which were in question. Our observations since that time have indicated no further problems in these areas. Accordingly, based upon the present state of the record, your performance is not considered to warrant dismissal. It is our sincere hope and expectation that your future conduct will be such to make you a worthy and valuable member of our teaching staff."

Bork's teaching contract for 1967-1968 was renewed without any condition attached thereto.

ALLAN CARRIER

Employment History

Allan Carrier commenced teaching in the West Bend School System in August 1965 as an intern teacher. He continued in that status until February 1966, when he was offered a contract until the end of the school year. In March 1966 he was offered a contract without any conditions attached for the 1966-67 school year. At all times material herein Carrier taught at Silverbrook Junior High.

Concerted Activities

Carrier became a member of Local 1691 prior to the WFT convention in October 1966, which he attended. He has never been an officer in either Local 1691 or the WFT. Respondent's knowledge with respect to Carrier's membership in Local 1691 was disclosed in the letter sent by Kannal in September 1966 with reference to identifying those teachers who planned, and who did attend, the WFT convention in October 1966.

Evaluation of Carrier as a Teacher

In October 1966 Principal Riley had spoken to Carrier with respect to student control indicating that there was room for improvement in that regard, and also with regard to the individual instruction of students. In November 1966 Riley evaluated Carrier as a "fair" teacher. Prior to December 5, 1966, Carrier had received criticism from Principal Riley because of the many "D's" given by Carrier to math students, after Principal Riley had been contacted by the father of a pupil, who was also the husband of a School Board member. Apparently Carrier did not send any warning letters to the parents with respect to the poor work of their children. At said meeting Carrier indicated that he felt that he could have sent out the warning letters. In this meeting Riley had spoken to Carrier with respect to the matter of student control as well as the possibility of handling the class as a group rather than working with the pupils individually. On or about September 1, 1966, Principal Riley spoke to Superintendent Loofboro with regard to "grading problems" of Carrier. In July 1966 Principal Riley wrote to Carrier's draft board requesting deferment from the draft. In April 1967 Principal Riley also requested a further deferment for Carrier. Carrier also received a commendation for chaperoning a dance in the Fall of 1966.

The December 5, 1966 Letter

On December 5, 1966, Superintendent Loofboro sent Carrier a letter identical to one which had been sent to Bork and Kannal, and on December 9 Carrier acknowledged receipt thereof in a letter identical to the one sent by Kannal and Bork to the Superintendent on the same date.

February 2, 1967 Grievance Meeting

Carrier arrived at the Superintendent's office on February 2, 1967, approximately two minutes prior to 10:30 A. M., at which time

he was scheduled. Apparently he was not involved in the discussion which took place at approximately 10:00 A. M. in regard to representation of the teachers. When he arrived, Carrier was asked by counsel for the Respondent whether he desired to meet with a single representative. Carrier responded that his representative was not there and he would not meet, since the Respondent was setting up the conditions for the meeting. No meeting was held between Carrier and any representative of the School Board with regard to the December 5 letter. On February 2, 1967, Superintendent Loofboro sent a letter to Carrier, which was identical to the letter sent by the Superintendent on that date to Bork. Carrier's teaching contract for 1967-68 was renewed without any conditions.

DISCUSSION

In this proceeding the Complainant has the burden of establishing a clear and satisfactory preponderance of the evidence that the Respondent violated Section 111.70. Under Section 111.70, a municipal employer may commit acts affecting terms or conditions of employment for any reason it chooses or for no reason at all, so long as such change in working conditions has not been motivated by or resulted from the concerted activities of its employees. Where there is no testimony or evidence directly establishing an unlawful activity on the part of the municipal employer, the Commission may draw inferences or conclusions upon such facts, if such facts support such inferences.^{5/}

The Complainant contends that the matters complained of were motivated by the Respondent's efforts to "get rid of" Kannal, and threatened other teachers who were members of Local 1691 because of their position on certain policies which were contrary to that of the Respondent, and that such action interfered, restrained and coerced the teachers in their right to affiliate with Local 1691, and did discriminate against them for such activity.

The only direct evidence produced by the Complainant with regard to the alleged unlawful motivations by representatives of the Respondent were statements alleged to have been made by School Board Chairman Ziegler to Kannal at a School Board meeting on February 22, 1966,^{6/} the alleged remark made by Superintendent Loofboro on September 2, 1966,

^{5/} Muskego-Norway Consolidated Schools, Dec. No. 7247, 8/65.

^{6/} Not alleged as a prohibited practice, apparently since it occurred more than one year prior to the filing of the complaint. [111.07(14)].

after Kannal had made his announcement urging attendance at the WFT convention to be held in Milwaukee in October 1966, and the refusal of the Respondent to permit Kannal, as well as Bork and Carrier, to be represented by more than one representative at the "grievance meeting" scheduled for February 2, 1967.

Assuming that we accept Kannal's version of the remarks made by Ziegler to the effect that "you are headed for trouble", we are satisfied that said remarks, in the context in which they were stated, cannot be deemed to constitute unlawful motivation. If the remarks were to be given the import contended by the Complainant, it is not likely that the Respondent would have proffered a teaching contract to Kannal for the year 1966-67, with no probationary attachment, especially since, at the time he was so admonished, he was in the midst of completing a teaching contract in which he had previously been placed on probation.

Complainant argues the statement made on September 2, 1966, by Superintendent Loofboro to Kannal, after Kannal had made his announcement concerning the WFT convention, that "heads are going to roll" constituted an unlawful threat. The Respondent maintains that it was not established by the Complainant that the statement was made as claimed by Kannal, but rather, according to the testimony of Superintendent Loofboro, that a teacher made an inquiry "if heads would roll" if teachers attended the WFT convention. Furthermore, the Respondent alleges that even had the statement been made, it would not constitute a threat, since the conversation ended with both Loofboro and Kannal indicating that they had respect for each other.

Assuming that Superintendent Loofboro had stated to Kannal that "heads would roll" after Kannal made his statement with regard to the WFT convention, we do not deem such a warning to constitute unlawful interference, restraint or coercion, since Kannal, in fact, would violate and was encouraging the teachers to violate their teacher contracts in absenting themselves for a teacher convention that was not scheduled in the school calendar. As indicated previously herein, the Commission, in August 1967, issued a decision involving a complaint which alleged that the Respondent committed a prohibited practice in failing to alter its calendar to permit teachers to attend the WFT convention, and refusing to pay the teachers who so attended. In its decision, the Commission concluded that such action by the Respondent did not constitute a prohibited practice. Therefore, any warning which might have been given by Superintendent Loofboro with

regard to such attendance, likewise does not constitute a prohibited practice. While the activity may have been concerted, it was not protected.

The Complainant argues that the Respondent also committed a prohibited practice by refusing to permit Kannal, Bork and Carrier to be represented by more than one representative in the meetings scheduled for February 2, 1966, to discuss their alleged deficiencies. It contends that Section 111.70(4)(d) incorporates Section 111.05 which reads:

"Representatives and elections. (1) Representatives chosen for the purposes of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all of the employees in such unit for the purposes of collective bargaining, provided that any individual employee or any minority group of employees in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and the employer shall confer with them in relation thereto."

Complainant contends that the statute uses the word "representatives" instead of "representative" and thus allows individual grievants more than one representative. The Respondent argues that it can lawfully insist that grievances be processed only in accordance with the negotiated grievance procedure, and in that regard contends that the Commission's decision in the Milwaukee Board of School Directors (Dec. No. 6995-A) supports its reasoning in that regard.

The Complainant's argument stretches the statutory language to an unreasonable conclusion. Conceivably, if the Complainant were correct, said representation could be limitless. It is apparent to the Commission that the plural of the term "representative" appears in the statute for the reason that those entitled to such representation are "any individual employee or any minority group of employees". The section contemplates that individual employees or any minority group of them may select different representation for the presentation of their grievances. We conclude that action of the Respondent in limiting each of the teachers to one representative did not constitute unlawful interference, restraint, coercion or discrimination. Such representation was established through negotiations between the Respondent and the WBEA, the majority representative of the teachers in the employ of the Respondent. It is significant that the grievance procedure limits representation in

the first step of the grievance procedure to a single representative, be he the representative of the majority organization, or any other organization or individual. The Respondent's action in this regard is not deemed to constitute a prohibited practice.

The Complainant also contends that the December 5, 1966, letters sent by Superintendent Loofboro to Kannal, Bork and Carrier, were unlawful since they threatened the future job security of such teachers. In support thereof the Complainant argues that the statements contained in the letters with respect to deficiencies, were an attempt to disguise the primary motivation for the letters, which was to discourage their concerted activities. The Complainant argues that Superintendent Loofboro admitted there was no merit to the charges underlying the December 5 letters. With respect to Kannal, the Complainant contends that if Kannal's performance had failed to measure up to what was to be expected, the Respondent would have taken action to improve Kannal's alleged failure, or at least communicate with him in that regard prior to December 5. It argues that the Respondent took approximately two months to schedule a meeting wherein it was to discuss the alleged shortcomings with Kannal for the first time. The Complainant emphasizes that argument with respect to Kannal's discipline problem. In the latter regard, the Complainant contends that during the 1966-67 school year Kannal was involved in only two alleged disciplinary matters, that of the windows and that concerning Dennis Sell, and that such incidents lost their significance in light of the fact that Principal Riley caused a good evaluation to be made of Kannal. Complainant contends that the record supports the conclusion that Superintendent Loofboro determined, prior to December 5, 1966, to remove Kannal from the system, and in that respect attempted to build a case in order to justify his action, which, according to the Complainant, was motivated by Kannal's militancy in standing up to the administration and taking a position on behalf of Local 1691 contrary to the School Board, specifically with respect to the issue of the new school referendum and Kannal's activity in opposing same.

The Respondent, in support of its argument that the issuance of the December 5, 1966, letters to Kannal, Carrier and Bork did not constitute a prohibited practice, contended that the letters were sent pursuant to the Fair Dismissal Policy in effect at the time. It argues that Kannal, Bork and Carrier were three of seven teachers who received similar letters. It argues that Kannal was sent a letter because of deficiencies noted over a period of time, and

involved Kannal's action and reaction to the events discussed previously herein, which included the Pick Athletic Award activity in 1964, his 1965-66 probationary contract, disciplinary activity involving students Petrie, Corbett and Seil, the lack of cooperation in the new Social Studies curriculum in 1966, the alleged threats of reprisal arising from the open-window incident, and the issuance of a substantial number of failures to his pupils. The Respondent contends that the letter sent to Bork concerned the matter of his discussing contemporary issues in the classroom, more specifically, his opinion with respect to the high school referendum, and that the letter to Bork was not motivated by his membership or activities on behalf of Local 1691. With respect to Carrier, the Respondent contends that the latter's deficiencies in handling groups of students and student control, as well as his grading problem and his failure to send out warning letters to parents, motivated the letter to him, and not any of his concerted activities.

We are not persuaded by the Complainant's argument that the failure of the Respondent to communicate with Kannal with respect to his alleged deficiencies prior to December 5, 1966, creates any inference favorable to the Complainant's case. In the first place, all the teachers whose alleged deficiencies were of some concern to the School Board were sent letters on the same date. The Fair Dismissal Policy, under which procedure the letters were sent, only requires that a meeting be held prior to the March School Board meeting, at which time it considers the renewal of teaching contracts for the coming school year. Moreover, the letter was not the first time during the year that Kannal's problems were considered and discussed with Kannal. Principal Riley, prior to the letter, spoke to Kannal concerning the window incident and the alleged reprisals for reporting same by students. In addition, Kannal's problems with regard to the new Social Studies curriculum was also a matter of discussion and correspondence with representatives of the Respondent during the Spring and Summer of 1966. Kannal was aware of the fact that members of the administration were not exactly pleased with his attitude and lack of cooperativeness toward that program. In addition, the administrative personnel of the Respondent were aware that Kannal had issued an inordinate number of warning letters, indicating that an unusually large number of students were not doing satisfactory work.

We are satisfied that during the course of the hearing, the Respondent established sufficient basis, not connected with Kannal's

concerted activity, for the December 5 letter to Kannal. Kannal had been originally placed on probation for the 1965-1966 school year for reasons which were not alleged by the Complainant to constitute any unlawful interference, restraint, coercion or discrimination. As a matter of fact, the record discloses that prior to this action by the Respondent, Kannal was only a member-at-large of the WFT, and there was no evidence indicating any concerted activity on behalf of that organization, or of any other organization, during the period preceding his being placed on probation. He was placed in such status because of his attitude toward the administration and its policies, not connected with any concerted activity. While Kannal was considered to be a good teacher, a fact admitted by the Respondent, the deficiencies noted in the December 5 letter were not directly related to his teaching ability, but rather to other matters. The record supports a finding that Kannal is a harsh disciplinarian, and on occasions used force to impose discipline, even though, as in the Petrie incident, there was some question as to whether any type of discipline was warranted. In addition, we are satisfied that the record supports the conclusion that Kannal was not only opposed to the new Social Studies program planned for implementation in September 1966, but he also manifested such opposition by his failure and refusal to follow and cooperate with the procedures established by the Respondent for such implementation.

It is not unusual for the administrators of the Respondent to maintain an active interest with respect to the teachers in its employ, especially a teacher who has been previously placed on probation and who has been involved with discipline problems. The December 5 letters were sent pursuant to the Fair Dismissal Policy, which was in effect for the first time. The letters did not indicate any decision to terminate any of the teachers to whom the letters were sent, but merely to indicate that there were some areas which might become serious, and that the letters were to apprise the teachers involved to set a basis for conferences with the principals and the Superintendent.

In addition, problems which arose from March 15, 1966, the date of the proffer of the teaching contract for school year 1966-67, and December 5, 1966, the date on which the letter was sent, were not the only matters taken into consideration by Superintendent Loofboro in determining that Kannal should be a recipient of one of the December 5 letters. His past difficulties, including those which resulted in being placed on probation for the year 1965-66 were also

involved in the Superintendent's decision to discuss Kannal's shortcomings. We are satisfied that Kannal's concerted activity, reflected in his attitude toward bargaining efforts in the Spring of 1966, his remarks made at the pre-school conference regarding Local 1691, the WFT and its convention, and his participation and efforts to secure a "no" vote on the high school referendum, did not motivate the December 5 letter received by him. While Kannal, as a member and officer of Local 1691, did apparently actively participate in opposing the school referendum, other teachers, who were not members of Local 1691 also voiced their opposition to the referendum, and there is no evidence that the Respondent took, or intended to take, any action against those teachers with regard to their participation in the matter.

The Complainant contends that Bork and Carrier were recipients of the December 5 letters because of their concerted activity in behalf of Local 1691, and their association with Kannal. The concerted activities of Bork and Carrier were minimal. They were members of Local 1691, and they attended the WFT convention in October 1966, as did other teachers not involved herein. Bork was a candidate for a WFT office in 1966. Also, Bork and Carrier, in the fall of 1966, attended meetings of the Committee for Effective Schools, formed by the Washington County Central Labor Council, with respect to the school referendum. Bork, prior to the November 1966 school referendum, conveyed his personal opinion with regard thereto to his students. Prior to December 5, Principal Riley, after a complaint had been made with regard to such, conferred with Bork in the matter. The administration is of the opinion that the expression of personal opinion with regard thereto should not have been made to the students. There was no evidence to indicate that Bork's stated opinion in this regard was in any way connected with his concerted activity.

Allan Carrier became affiliated with Local 1691 in the Summer of 1966. He attended the WFT convention and has not held office in either the Local or WFT. Prior to December 5, Principal Riley met with Carrier on three separate occasions concerning Carrier's performance as a teacher, who was considered by Riley to be "fair" in teaching skills. Principal Riley met with Carrier on at least two occasions prior to December 5 with respect to improving student control and individual instruction, and also with respect to a complaint that Carrier appeared to have grading problems. We are satisfied that the December 5 letters sent to Bork and Carrier were not motivated by

their concerted activity, but rather because of their performance as teachers, and, therefore, the issuance of such letters does not constitute unlawful interference, restraint, coercion or discrimination as contemplated in Section 111.70.

In support of its allegation that the February 2, 1967 letter sent to Kannal constituted a prohibited practice, the Complainant argues that Superintendent Loofboro singled out Kannal for such treatment, and that such action resulted from Kannal's opposition to Respondent's policies and the fact that Kannal was the President of Local 1691. The Respondent denies such "special treatment." It contends that Bork and Carrier were not sent similar letters since it had become satisfied, between December 5, 1966, and the date of the letter, that they had observed no further problems with Bork and Carrier. It contends it was not so satisfied with Kannal, in that, following the December 5 letter, Superintendent Loofboro for the first time became aware of the details of the Seil incident. Further, that Kannal's grading problems did not end prior to December 5, since his final grades for the first semester included 24 failures, which, according to the Respondent, demonstrated a determination by Kannal "to show that there was something wrong with the new Social Studies curriculum, no matter how many students he had to fail to make his case." Finally, in this respect, the Respondent argues that by Kannal's actions on and immediately prior to February 2, 1967, he demonstrated a continuing unwillingness to accept and follow policies and decisions of the Respondent, which was demonstrated in a statement made on February 2 by Kannal to the effect that the Respondent "will not set the rules".

We are satisfied that the February 2, 1967 letter sent to Kannal was not unlawfully motivated or resulted in a prohibited practice, and we credit the reasons contended by the Respondent for such letter. Had the letter been motivated by Kannal's refusal to proceed in the grievance meeting of February 2 in accordance with the negotiated grievance procedure, it would appear to us that similar letters would have been sent to Bork and Carrier, since they, too, desired to have more than one representative present at their meeting.

The Complainant contends that the Respondent further acted unlawfully by proffering Kannal a probationary teaching contract for the 1967-68 school year. The Respondent argues that such action was based upon the deficiencies noted in the February 2, 1967 letter to Kannal. In that regard it contends that the Respondent could have

refused to proffer any contract to Kannal or could have offered a conditional contract or a standard contract. It contends that by offering the conditional contract it chose a middle ground of moderation indicating a decision to correct Kannal's performance as a teacher, rather than to rid itself of Kannal.

There is nothing in the record to establish any further concerted activity by Kannal between February 2, 1967 and March 23, 1967, the date on which Kannal was proffered a probationary contract for the year 1967-68, and, therefore, we are satisfied that the probationary contract was based on Kannal's record, which prompted the letters sent by Superintendent Loofboro to Kannal on December 5, 1966 and February 2, 1967, and, therefore, the record does not establish that the probationary contract constitutes any prohibited practice within the meaning of Section 111.70.

In support of its contention that Kannal's protected concerted activity motivated the alleged prohibited practices, the Complainant introduced into the record the letters sent to Kannal by Superintendent Loofboro on May 23 and June 6, 1967, concerning Kannal's activity with respect to radio announcements on May 22 and 23, 1967, urging a "no"-vote in the school building referendum. The Respondent contends that such letters were prompted by its belief that the first radio announcement contained a questionably libelous statement.

Municipal employees, in their concerted activity, have the right to disagree with the policies of their municipal employer which affect the public interest and to communicate their views through the normal means of communication, including radio advertisements, and such right is protected by Section 111.70, Wisconsin Statutes. However, we are not satisfied that the content of the letters involved, in light of the entire record, establishes any unlawful motivation which can be attributed to the Respondent with respect to the prohibited practices alleged to have been committed involving Kannal.

Commissioner Rice would find that the Respondent, through its Superintendent committed a prohibited practice by threatening Kannal after the latter had made his announcement on September 2, 1966, inviting teachers to attend the WFT convention, while at the same time permitting the WBEA representative to make a similar announcement with respect to the WEA convention without any threat being made for such announcement. Superintendent Loofboro's statements

on this occasion resulted from the fact that Kannal's invitation would cause teachers to violate their individual teaching contracts by absenting themselves from their teaching duties on normal teaching days. The days on which the WEA was to hold its convention were not normal teaching days. Had the WFT convention been held on the days on which the WEA was holding its convention, and the remarks then been made by Superintendent Loofboro, we would have found these remarks to constitute a prohibited practice; however, such is not the fact in this proceeding.

For the reasons stated we are dismissing the complaint in its entirety.

Dated at Madison, Wisconsin this 1st day of April, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

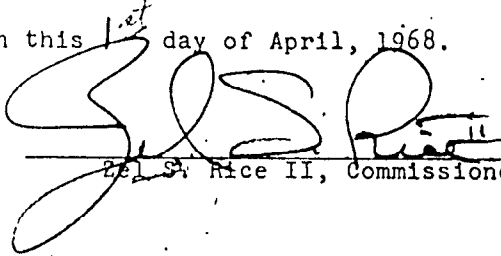
William R. Wilberg
William R. Wilberg, Commissioner

MEMORANDUM OF DISSENT

I would concur with the decision of the majority except that I would find that the Board of Education of West Bend Joint School District No. 1, by its agent, Superintendent Paul M. Loofboro, committed a prohibited practice on September 2, 1966, by unlawful interference with the rights of Kannal after he had made his statement to the pre-school conference meeting inviting the teachers to attend the convention of the WFT on October 6 and 7, 1966. The representative of the WBEA had been permitted at that same meeting to invite the teachers to the convention of the WEA, which was going to take place in November 1966, on the days that had been negotiated by the WBEA and the School Board as convention days. The majority did not find Loofboro's conduct to constitute interference, and cited as rationale the decision in West Bend Board of Education,^{7/} which found that it was not a prohibited practice to deny the teachers the right to attend the WFT convention. I dissented in West Bend Board of Education for reasons which were set forth in City of Kenosha Board of Education^{8/}, and would have found that the West Bend Board of Education had committed a prohibited practice by refusing to permit its teachers to attend the convention of the WFT. Accordingly, I would find that the Respondent interfered with Kannal's rights by threatening him after he had made the announcement inviting the teachers to attend the convention of the WFT.

Under any circumstances I would find that the Respondent interfered with Kannal's protected rights by threatening him after he had invited the teachers to attend the WFT convention. This was particularly true where the majority representative was given an opportunity to extend an invitation to the teachers to attend its convention.

Dated at Madison, Wisconsin this ^{1st} day of April, 1968.


Del S. Rice II, Commissioner

^{7/} Decision No. 7907-B, 8/67.

^{8/} Decision No. 8120, 8/67.