STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ELMBROOK EDUCATION ASSOCIATION, Complainant, vs. ELMBROOK SCHOOLS JOINT COMMON SCHOOL DISTRICT NO. 21, A Wisconsin Municipal Corporation, and ELMBROOK BOARD OF SCHOOL DIRECTORS, Respondents.	Case IV No. 13036 MP-65 Decision No. 9163-B

Appearances:

Zubrensky, Padden, Graf & Bratt, by Mr. Richard Perry, Attorney; and Mr. Milton Pelisek, Executive Secretary of Elmbrook Education Association, appearing on behalf of the Complainant.

Davis, Kuelthau, Vergeront & Stover, by Mr. John P. Savage, Attorney; and Mr. Dale A. Hight, Assistant Superintendent of Schools, appearing on behalf of the Respondents; Attorney Russ R. Mueller on the brief.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and the Commission having appointed Robert B. Moberly, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07 (5) of the Wisconsin Employment Peace Act; and hearing on said complaint having been held at Brookfield, Wisconsin on September 16, 1969, before the Examiner; and the Examiner having considered the evidence, arguments and briefs of counsel and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant Elmbrook Education Association, hereinafter referred to as the Association, is a labor organization having its principal offices at 17330 West Horizon Drive, New Berlin, Wisconsin.

2. That Respondent Elmbrook Schools Joint Common School District No. 21, hereinafter referred to as the School District, is a

Wisconsin municipal corporation organized and created under the laws of the State of Wisconsin, with its offices at 16945 West North Avenue, Brookfield, Wisconsin; that Respondent Elmbrook Board of School Directors, hereinafter referred to as School Board, has been given the authority and the responsibility under the laws of the State of Wisconsin for the management, control and supervision of the affairs of the District.

3. That the Association is the certified bargaining representative concerning questions of wages, hours and conditions of employment for all regular full time and all regular part time certified teaching personnel employed by the Elmbrook Schools Joint Common School District No. 21, including guidance counselors, librarians, department heads, teaching vice principals, and teaching nurses, but excluding per diem substitute teachers, office and clerical employes, all supervisors and all other employes of the Municipal Employer; that as of April 15, 1969 there were approximately 556 teachers employed by the Municipal Employer in the bargaining unit described above.

4. That at various times, commencing on January 10, 1969, the Municipal Employer and the Association met for the purpose of engaging in conferences and negotiations concerning the wages, hours and conditions of employment of employes in the above collective bargaining unit; that said negotiations continued through May 5, 1969, when a tentative agreement was reached on the terms of a collective agreement; and that the parties subsequently entered into a collective bargaining agreement effective for the 1969-70 school year, commencing on July 1, 1969 and continuing through June 30, 1970.

5. That during the course of said negotiations the clerk of the Municipal Employer, acting as its officer and agent, sent the following letter to all teachers in the District on or about March 13, 1969:

March 13, 1969

To Elmbrook Teachers,

In compliance with Wisconsin Statutes, your 1969-70 teaching contract will be available for execution in your building administrator's office after March 14, 1969.

This new contract represents and contains a substantial annual wage increase, improved insurance coverage, and other fringe benefits. These increases reflect the Board's

latest offer which has not as yet been agreed to by the Elmbrook Education Association's Negotiating Committee.

The School Board will continue its good-faith efforts to negotiate a full agreement with the Elmbrook Education Association. If these negotiations result in further improvements, you will receive those benefits for the ensuing school year.

Consistent with Wisconsin Statutes, contracts for returning teachers for the 1969-70 school term must be signed and in possession of your building administrator on or before April 15, 1969.

Yours truly,

(Signed) J. Stewart Smith

J. Stewart Smith, Clerk, for the
Elmbrook Board of Education,
Joint Common School Dist. #21

JSS:e

On or about April 15, 1969, said clerk, again acting as officer and agent of the Board, sent the following letter to all teachers in the District:

April 15, 1969

To Our Teaching Staff,

As you are aware, Wisconsin Statutes provide that returning teachers should have their new contracts signed by April 15, 1969.

Because of a newspaper article, some teachers believe there is an injunction against the School Board which changes such deadline. This is not a fact. So that no one is penalized as the result of any confusion on this matter, the Board this year will extend the deadline twenty-four (24) hours. Contracts will continue to be tendered exactly as per our letter of March 13, 1969.

Contracts not signed and returned by the close of the school day on April 16, 1969, will be deemed unaccepted and a vacancy declared in the staff for that position which may thereafter be filled by a new staff member.

Those teachers who have signed an E.E.A. petition purporting to say they intend to return upon certain conditions in accordance with some contract to be negotiated in the future will be making an ineffective offer to contract. Such an offer is deemed ineffective because it is conditioned and based upon speculation. As E.E.A. counsel may advise you, the Board is according to Statute:

a) not obligated to sign a master contract,
b) has not agreed to sign a master contract,
c) may adopt a resolution or ordinance instead of signing a master contract, and/or

d) is not required to be bound to any agreement it negotiates unless it agrees to be bound.

While the E.E.A. has declared several impasses have been reached, it is the intention of the Board to continue to negotiate in good faith in an attempt to reach total agreement. As stated in our letter of March 13, 1969, any further improvements or benefits realized through continued negotiations will accrue to teachers under contract.

Yours truly,

(Signed) J. Stewart Smith

J. Stewart Smith, Clerk, for the
Elmbrook Board of Education
Joint Common School District #21

6. That the individual contracts of the employes were available for signing in the office of their building administrator on March 15, 1969; but that the employes were required to sign the contracts in said office and were not permitted to take the individual contracts out of the office before signing them.

7. That the individual contracts referred to in the above letters provided as follows, including the figures of Mr. Ronald W. Johnstone inserted for illustrative purposes only.

ELMBROOK SCHOOLS.....
Joint Common School District No. 21 TEACHER CONTRACT

IT IS HEREBY AGREED by and between the BOARD of EDUCATION for JOINT COMMON SCHOOL DISTRICT #21, Waukesha County, Wisconsin, hereinafter designated "School Board," and Ronald W. Johnstone a legally qualified teacher, as follows:

1. That said teacher shall teach in the schools of such district, as assigned, during the 1969-70 school year, for a term of nine and one-half months consisting of one-hundred ninety days, commencing on or about August 27, 1969, for the annual basic salary of $ 10,000 *.

2. That all laws of the State of Wisconsin relating to the contractual status between the School Board and a legally qualified teacher are hereby made a part of this contract.

3. That said teacher agrees: (a) to perform the usual functions of a teacher relative to the instruction of pupils and the care and management of the school; (b) to participate in and assist with general school activities and to promote sound educational thinking and practices in the community; (c) to keep abreast of local and state school policies and new educational developments through attendance at teacher institutes and meetings, and by participation in curriculum projects approved by the Superintendent of such District, and (d) to otherwise perform the teaching and extra curricular duties assigned by the Superintendent of such District as governed by the policies and regulations of the said School Board.

4. That said teacher shall upon request: (a) present satisfactory evidence of good health as attested to by a qualified and approved physician on school forms provided for that purpose; (b) file with the Superintendent of such District satisfactory evidence of teacher's certification.

5. That in consideration of the foregoing services properly rendered on the part of the teacher, the School Board agrees to pay said teacher the above specified salary in twenty-four equal installments, beginning on the 15th day of September, and continuing thereafter on the 15th and last day of each successive month, provided. however, that the salary of said teacher for the month of June may be withheld until such time as the teacher's duties for the school year have been satisfactorily completed.

6. * Plus $200 provided M + 15 is obtained and substantiated by 9/15/69.

7. Said teacher represents to the School Board that he is not now under contract of employment with another school district for the school year 1969-70.

The said teacher must execute and deliver the original copy of this contract to the Supt. of Schools on or before April 15, 1969.

IN WITNESS WHEREOF, we have hereunto subscribed our names this 14th day of March, 1969.

BOARD OF EDUCATION, JOINT COMMON SCHOOL DISTRICT No. 21, Waukesha County, Wisconsin:

(Signed) Philip G. Randall Director

(Signed) D. S. Thorson Treasurer

(Signed) J. S. Smith Clerk

16945 W. North Ave., Brookfield, Wis. 53005
(Phone 782-7294)

Teacher:

(Signed) Ronald W. Johnstone

4485 N. Teutonia Ave.

Milw. (city) Wis. (state) 53209 (zip)

10-12-34 (birthdate) 445-4955 (phone)

8. Approximately 164 teachers went to the building administrator's office in accordance with the above letters and signed individual contracts prior to April 16, 1969.

9. On April 14, 1969, the Association served the Municipal Employer with a document entitled "Declaration of Intent" which contained the signatures of approximately 358 teachers employed by the Municipal Employer; and that said document provided as follows:

DECLARATION OF INTENT

The following Declaration is our collective response to the Elmbrook board of education. It is further our collective understanding that all persons named herein who presently are employed and were notified to be rehired shall be offered reemployment or none will return.

****

I intend to accept employment to teach in the Elmbrook Joint Common School District #21 during the 1969-1970 School Year under the terms of the Agreement negotiated by the Elmbrook Education Association, the exclusive representative of all of the teachers. I do not intend to be coerced into undermining collective negotiations by going into the office to sign an individual contract.

10. That 1969 was the first year in which teachers employed by the Municipal Employer refused to sign individual contracts and instead offered to sign a declaration of intent.

11. Between April 16 and May 7, 1969 approximately 53 teachers went to the office of the Municipal Employer and signed individual contracts.

12. That on May 7, 1969, the Association conducted a meeting for the purposes of considering whether to accept the tentative agreement reached on May 5; that at said meeting it was determined that teachers should sign individual contracts while certain "odds and ends" of the master contract were worked out; that on May 8 and 9, 1969, approximately 373 teachers signed individual contracts.

13. That the Municipal Employer required teachers to sign individual contracts for the 1969-70 school term as a condition to hiring them for summer school teaching jobs in the School District.

14. That the Municipal Employer employed 66 teachers for its summer school classes in 1969; that of the 66 teachers, four were not teachers from the District or under contract to the District, while 62 were under individual contracts with the District; that of the 62 summer school teachers under individual contracts with the District, 21 teachers signed the contracts prior to April 16, 1969, and 41 signed the contracts after April 16; and that of the 41 teachers who signed their contracts after April 16, the great majority signed on May 8 and 9, 1969.

15. That on numerous occasions during the course of the negotiations teachers were told by agents and officers of the School District that they would not be employed during the 1969 summer school sessions if they did not sign their individual teaching contracts for the 1969-70 school year.

16. That teacher Gust A. Minessale was not hired by the School District for summer school employment in 1969 for the reason that he did not sign the individual contract proffered by the School Board for the subsequent school year in sufficient time.

17. That the collective agreement entered into by the Municipal Employer and the Association contains at page 5 the following material provision:

6.3 Summer School Pay Policy

. . .

> Teachers under contract to the District, pursuant to Section 118.22, Wisconsin Statutes, for the ensuing year will be preferred on the basis of experience, academic preparation and position requirement.

that said agreement also contained a negotiated form of the teacher contract for the 1969-70 school year, and said form differed in two respects from the teacher contract in use prior to the agreement. Set forth in Appendix C on page 20 of the agreement, the negotiated form of teacher contract contains the following sentence in paragraph 6 as a substitute for the blank space in the former contract which was used to set forth increases in salaries to which the individual became entitled subsequent to the signing of the contract:

> This contract may be subject to and/or supplemented by a collective bargaining agreement covering certificated teaching personnel and/or Board resolutions or policy statements not inconsistent therewith.

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

CONCLUSIONS OF LAW

1. That Respondent Elmbrook Schools Joint Common School District No. 21, by its officers and agents, by submitting to its teachers individual contracts containing negotiable items without providing therein that the negotiable items would be superseded by any agreement negotiated collectively; by requiring employes to sign individual contracts in its offices and not permitting employes

to withdraw said individual contracts for private examination off the premises of the Municipal Employer; and by accompanying the proffering of individual contracts with threats of penalty and threats to deny other benefits (summer school employment) if employes refused to sign their individual contracts for the subsequent school year, interfered with, restrained and coerced its employes in the exercise of their rights under Section 111.70 (2), Wisconsin Statutes, and accordingly has committed prohibited practices within the meaning of Section 111.70 (3) (a) 1 of the Wisconsin Statutes.

2. That Respondent Elmbrook Schools Joint Common School District No. 21, by its officers and agents by refusing to hire teacher Gust A. Minessale for the 1969 summer school session because he did not sign in sufficient time his individual teaching contract for the 1969-70 school year, interfered with, restrained and coerced its employes in the exercise of their rights under Section 111.70 (2), Wisconsin Statutes, and accordingly has committed prohibited practices within the meaning of Section 111.70 (3) (a) 1 of the Wisconsin Statutes.

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

ORDER

IT IS ORDERED that the Respondent School District, its officers and agents, shall immediately

1. Cease and desist from
   (a) Proffering to its teachers individual contracts which contain wages or other negotiable items unless said contracts additionally provide in effect that the negotiable items contained therein will be superseded by any subsequent agreement negotiated between the Municipal Employer and the collective bargaining representative, Elmbrook Education Association.
   (b) Requiring employes to sign individual contracts in offices under its ownership or control, or prohibiting employes from removing said individual contracts off the premises of the Municipal Employer prior to signing them.

(c) Accompanying the proffering of individual contracts for the subsequent school year with threats of penalty or threats to deny summer school employment if teachers refuse or otherwise fail to sign their individual contracts.

(d) Denying summer school employment to teachers because they refuse or otherwise fail to sign their individual contracts for the subsequent school year.

(e) In any other manner interfering with, restraining or coercing its employes in the exercise of their right of self-organization and their right to be affiliated with and represented by the Elmbrook Education Association in conferences and negotiations with the School District, officers and agents on questions of wages, hours and conditions of employment.

2. Take the following affirmative action designed to effectuate the policies of Section 111.70, Wisconsin Statutes:

(a) Notify all of its teachers by posting in conspicuous places, where notices to teachers are usually posted, throughout all of the school buildings operated by the Respondent School District, where all teachers may observe them, copies of the Notice attached hereto and marked "APPENDIX A." Copies of such Notice shall be prepared by the Respondent School District and shall be signed by the President of the School Board and by the Superintendent of Schools of such School District, and shall be posted immediately upon the receipt of the copy of this Order, and shall remain posted for sixty (60) days after its initial posting. Reasonable steps shall be taken by the Superintendent of Schools to insure that said Notices are not altered, defaced or covered by other materials.

(b) Make whole Gust A. Minessale, and other teachers similarly situated, for any loss of pay and other benefits which they may have suffered by reason of

the unlawful interference, restraint and coercion, by payment to them a sum of money equal to that which they normally would have earned as salary, together with other benefits, during the 1969 summer school session less any net earnings which may have been received elsewhere during such period.

(c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of the receipt of this Order, of the steps that have been taken to comply therewith.

Dated at Milwaukee, Wisconsin, this 10th day of March, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert B. Moberly
Robert B. Moberly, Examiner

"APPENDIX A"

NOTICE TO ALL TEACHERS

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

WE WILL NOT submit individual contracts to teachers which contain wages or other negotiable items unless such contracts also provide that the negotiable items contained therein will be superseded by any subsequent collective agreement negotiated between the School District, officers or agents and the Elmbrook Education Association.

WE WILL NOT require teachers to sign their individual contracts on premises owned by us or under our control, nor will we prohibit employes from removing their individual contracts off such premises prior to signing them.

WE WILL NOT threaten, nor will we carry out, penalties or denials of summer school employment to teachers because they refuse or otherwise fail to sign their individual teacher contracts for the subsequent school year.

WE WILL NOT in any other manner interfere with, restrain or coerce our teachers in the exercise of their right of self-organization and their right to affiliate with the Elmbrook Education Association and to be represented by it in conferences and negotiations with the School District, officers and agents on questions of wages, hours and conditions of employment.

WE WILL immediately make whole Gust A. Minessale, and other teachers similarly situated, for any loss of pay and other benefits suffered by reason of our unlawful interference, restraint and coercion, by paying them the sum of money they normally would have earned in salary and other benefits during the 1969 summer school session, less any other earnings which may have been received during this period.

ELMBROOK SCHOOLS JOINT COMMON
SCHOOL DISTRICT NO. 21

_____

President, Elmbrook Board
of School Directors

_____

Superintendent of Schools

Dated _____

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ELMBROOK EDUCATION ASSOCIATION, Complainant, vs. ELMBROOK SCHOOLS JOINT COMMON SCHOOL DISTRICT NO. 21, A Wisconsin Municipal Corporation, and ELMBROOK BOARD OF SCHOOL DIRECTORS, Respondents.	Case IV No. 13036 MP-65 Decision No. 9163-B

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint of prohibited practices was filed with the Commission on July 18, 1969 by the Elmbrook Education Association. The answer was filed August 12, 1969, and the matter was heard September 16, 1969. Final arguments in the form of reply briefs were received January 5, 1970.

The complaint alleged that during the course of the negotiations between the Municipal Employer and the Association for a collective agreement to be effective July 1, 1969 to June 30, 1970, the Municipal Employer by letter informed all members of the Association and teachers employed by the School District that they must, by April 15, 1969, go to the offices of their principals and supervisors and sign individual contracts with the School District. The complaint alleged that this conduct was a coercive command of the Municipal Employer in that it clearly and necessarily implied the threat of possible loss of employment for any teacher who does not go to his principal's or supervisor's office to sign an individual contract by April 15, 1969. The complaint also alleged that the Municipal Employer by another letter dated April 15, 1969, informed all members of the Association and all teachers employed by the School District that unless they returned signed individual contracts to their supervisors by the close of the school day on April 16, 1969, their position would be declared vacant. The complaint

also alleged that on or about April 21, 1969, a principal, acting as a supervisor and agent of the Municipal Employer, informed numerous teachers employed by the Municipal Employer that unless they executed and returned individual contracts with the Board they would suffer loss of employment during the summer school session of 1969, a benefit allegedly otherwise regularly enjoyed by such teachers employed by the Board. Finally, the complaint alleged that the Municipal Employer through its supervisors, agents and administrators, did in fact deprive members of the Association of summer school employment because they exercised rights guaranteed them by Section 111.70, Wisconsin Statutes. It is alleged that by the above conduct the Municipal Employer has interfered with, intimidated and coerced members of the Association and all teachers employed by said Municipal Employer in the exercise of rights guaranteed by Section 111.70, Wisconsin Statutes.

A settlement of certain other matters alleged in the complaint was achieved during the course of the hearing and the Union withdrew portions of the complaint relating to the alleged illegal vacating of a position and to an alleged illegal transfer of the Executive Secretary of the Association.

In its answer the Municipal Employer denied any violation of Section 111.70 and also asserted several affirmative defenses, including the defense that a number of teachers did not accept or reject a teaching contract by April 15, 1969, as allegedly required by Section 118.22 (2), Wisconsin Statutes, and the defense that the complaint has been moot by virtue of the execution of a negotiated agreement between the Association and the Board on June 3, 1969.

FACTS

Commencing on January 10, 1969, the Municipal Employer and the Elmbrook Education Association met in negotiations at various times over the wages, hours and conditions of employment of approximately 556 teachers employed by the Municipal Employer. On about March 13, 1969, and again on April 15, 1969, while negotiations were still taking place, the Clerk of the Municipal Employer, acting as its officer and agent, sent letters to all teachers in the District on behalf of the School Board. The texts of the letters are set forth in Finding of Fact No. 5, supra. Among other things, the March 13 letter noted that individual teaching contracts would be available in the Building Administrator's office after March 14, 1969, and that consistent with Wisconsin Statutes, contracts for returning teachers for the

1969-70 school term must be in the possession of the Building Administrator on or before April 15, 1969. It also stated that the new contract contained a wage increase, improved insurance coverage and other fringe benefits and that these increases reflected the Municipal Employer's latest offer which had not been agreed to by the Association. The letter stated that the Municipal Employer would continue to attempt to negotiate an agreement with the Association, and that teachers would receive any further improvements resulting from negotiations. In its letter of April 15, 1969, the School Board extended the deadline for returning contracts from April 15 to April 16 "so that no one is penalized" as a result of possible confusion. It further stated that any contracts not signed by the close of the school day on April 16 "will be deemed unaccepted and a vacancy declared in the staff for that position which may thereafter be filled by a new staff member."

A copy of the individual contract is contained in Finding No. 7, supra. Said contract, among other things, provides a specific amount of annual basic salary but does not state that this salary item will be superseded by a collective bargaining agreement, if any, entered into between the Municipal Employer and the collective bargaining representative. In addition, employes were not permitted to take the individual contracts out of the Administrator's office before signing them, but rather were required to sign the contracts in said office. The contract was for the school term commencing August 27, 1969.

The parties reached a tentative agreement on the terms of a collective bargaining agreement on March 5, 1969, and a collective bargaining agreement was entered into effective for the 1969-70 school year, commencing on July 1, 1969, and continuing through June 30, 1970.

Additionally, on numerous occasions during the course of the negotiations individual teachers were told by agents of the Municipal Employer that they would not be employed during the 1969 summer school session if they did not sign their individual teaching contracts for the 1969-70 school year.

Further facts are set forth in the Findings of Fact.

PERTINENT STATUTORY PROVISIONS

CHAPTER 111

EMPLOYMENT RELATIONS

. . .

SUBCHAPTER IV.

RIGHT OF PUBLIC EMPLOYES TO ORGANIZE OR JOIN LABOR ORGANIZATIONS; BARGAINING IN MUNICIPAL EMPLOYMENT.

111.70 Municipal employment. . . .

. . .

(2) RIGHTS OF MUNICIPAL EMPLOYES. Municipal employes shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employes shall have the right to refrain from any and all such activities.

(3) PROHIBITED PRACTICES. (a) Municipal employers, their officers and agents are prohibited from:

1. Interfering with, restraining or coercing any municipal employe in the exercise of the rights provided in sub. (2).

. . .

CHAPTER 118

GENERAL SCHOOL OPERATIONS

. . .

118.21 Teacher contracts. (1) The school board shall contract in writing with qualified teachers. The contract, with a copy of the teacher's authority to teach attached, shall be filed with the school district clerk. Such contract, in addition to fixing the teacher's wage, may provide for compensating the teacher for necessary travel expense in going to and from the schoolhouse at a rate not to exceed 6 cents per mile. A teaching contract with any person not legally authorized to teach the named subject or at the named school shall be void. All teaching contracts shall terminate if, and when, the authority to teach terminates.

. . .

118.22 Renewal of teacher contracts.

. . .

(2) On or before April 1 of the school year during which a teacher holds a contract, the school board by which the teacher is employed or a school district employe at the direction of the school board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such contract is given on or

before April 1, the teaching contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew his contract for the ensuing school year on or before April 1, shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the school board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the school board.

POSITION OF THE EDUCATION ASSOCIATION

The Association argues that the individual contracts proffered by the Municipal Employer under threat of loss of employment were coercive and interfered with the rights of the employes, in violation of Sec. 111.70, Wis. Stats. It objects to the statement to each teacher that he must come to the administration office individually to sign his contract or his job would be "vacated." The Association also objects to the Respondent's alleged deprivation and threats of deprivation of summer school employment to teachers solely because they refused to sign the individual contracts.

The Association further argues that Sections 118.21 and .22, and Section 111.70, Wis. Stats., are interrelated and must be construed together, but that the Municipal Employer is rigidly reading the earlier general teacher statutes in such a way as to be destructive of the rights granted in the latter enactment relating to labor relations in municipal employment. In attempting to harmonize the provision, it argues that the "letters of intent" submitted by the teachers fulfilled the legislative objectives of Sections 118.21 and .22 since such letters gave timely notice to the district as to which teachers would be returning to teach in the fall. It is therefore unnecessary, argues the Association, for the Municipal Employer to unilaterally insert negotiable items in the teacher contract. It also contends that the teacher statutes envision individual contracts for initial employment, but not for renewals.

The Association further disputes the Municipal Employer's contention that the issues are moot. It argues that the teachers have suffered monetary loss (summer employment) which must be remedied, and, additionally, it is important that the parties know their legal rights and obligations for future negotiations.

POSITION OF THE MUNICIPAL EMPLOYER

The Municipal Employer initially argues that the Complaint is moot because the parties entered into a labor agreement on May 5, 1969 which included by incorporation a negotiated "teacher contract," thereby evidencing the parties' intent that the teacher contract is part of the modus operandi and the required use of which is a condition of employment. The Municipal Employer also states that the negotiated teacher contract calls for the return of the contracts by April 15, and that paragraph 6.3 of the labor agreement requires a signed teacher contract as a precondition for employment in the summer session.

With regard to the prohibited practice charge, the Municipal Employer does not deny its insistence that the teachers sign the individual teacher contracts not later than April 15. However, its defense is that the questioned conduct was sanctioned and required by statutory law regulating school operations, namely Sections 118.21 (1) and 118.22 (2), Wis. Stats. It agrees that the teacher statutes and the municipal employment relations statute can all be given effect by construing them together, but argues that its conduct did not interfere with, restrain or coerce employes in the exercise of their statutory rights.

The Municipal Employer further states that its policy of requiring signed individual contracts as a condition for summer school employment is also required by the same school regulatory statutes, and that such conduct is therefore not a violation of Sec. 111.70. In addition to this statutory defense, the Municipal Employer also contends that the evidence in the record does not substantiate the Association allegation, and that no teacher was denied employment for the 1969 summer session because of the requirement of a signed teacher contract.

DISCUSSION

Both parties recognize the many existing decisions by the Commission, beginning with City of New Berlin, Dec. No. 7293, 3/66, that a refusal to bargain in good faith is not a prohibited practice under Sec. 111.70, Wis. Stats.

However, the Complainant alleges that the conduct involved here constitutes interference, restraint and coercion in a violation of Sec. 111.70 (3) (a) (1). The defense, on the other hand, is that the conduct in question is sanctioned and required by statutory law

regulating school operations, namely Sec. 118.21 (1) (formerly Sec. 40.40 (1)) and Sec. 118.22 (2) (formerly Sec. 40.41 (2)).

The relationship between the above statutory provisions has been made clear by the Wisconsin Supreme Court in Muskego-Norway Consolidated Schools, et al. v. W.E.R.B., 35 Wis. 2d 540, 556, 151 N.W.2d 617 (1967):

> "The provisions of sec. 111.70, Stats., apply to the authority of school districts to the same extent as the authority of other municipal governing bodies. Sec. 111.70 was enacted after secs. 40.40 and 40.41 and is presumed to have been enacted with a full knowledge of pre-existing statutes. Construction of statutes should be done in a way which harmonizes the whole system of law of which they are a part, and any conflict should be reconciled if possible."

This approach was reiterated in Joint School District No. 8, City of Madison, et al, v. W.E.R.B., et al, 37 Wis. 2d 483, 155 N.W.2d 78 (1967), where the Supreme Court rejected a strict interpretation of Sec. 111.70 so as to favor ch. 40.

Sec. 118.21 (1) and Sec. 118.22 (2) authorize school boards to enter into individual contracts with teachers. Under Sec. 111.70 (2) teachers have the right of self-organization and the right to affiliate with and be represented by a labor organization in conferences and negotiations with their municipal employes on questions of wages, hours and conditions of employment, and municipal employers are expressly prohibited from interfering with, restraining or coercing municipal employes in the exercise of these rights. Sec. 111.70 (3) (a) (1). These statutes are not necessarily in conflict. As suggested by the Wisconsin Supreme Court in Muskego-Norway, "they can all be given effect by construing them together." Accordingly, it is held that individual contracts may be proffered by school boards to teachers, but such contracts may not be submitted to teachers in such a form or in such a manner as would interfere with, restrain or coerce teachers in the exercise of their rights granted by Sec. 111.70. In the same way in which the adoption of Sec. 111.70 restricted the reasons a teacher can be refused employment, Muskego-Norway v. W.E.R.B., supra, Sec. 111.70 also restricts the form and the manner in which individual contracts may be proffered to teachers.

The Municipal Employer attaches some importance to the fact that since the Muskego-Norway case was first pending in the Supreme Court the state legislature has twice amended Sections 118.21 and 118.22. Laws 1967, c. 92, section 8; Laws 1969, c. 55, section 78.

However, an examination of these amendments reveals that both amendments involved only minor changes, including certain housekeeping changes and renumbering. There is nothing in the two amendments which would substantially change the relationship between the statutes as set forth by the Supreme Court in the above cases.

The Examiner is in agreement with the contention that the mere submission of individual contracts to teachers who are represented by a labor organization in negotiations on wages and other conditions of employment is not per se an interference with the right of self-organization or the right of employes to be collectively represented. The statutes authorize individual contracts so that school districts may have timely notice as to which teachers are contractually bound to return to teach in the fall, thereby permitting the districts to accomplish the necessary recruiting for staff replacements and expansion. The teacher is also a beneficiary of the statutes since he has ample notice of either his continued employment or the need to look elsewhere for future employment. It is possible for individual contracts to be used for these purposes without interfering with the employe rights guaranteed by Sec. 111.70.

Additionally, it has long been recognized in the private sector that a collective bargaining agreement, absent specific language to the contrary, is not a contract of employment or guarantee of employment, and "care has been taken to reserve a field for the individual contract." J. I. Case Co. v. N.L.R.B., 321 U.S. 332, 64 S. Ct. 576 (1944). Moreover, should the Municipal Employer and the collective bargaining representative be unable to reach agreement on a collective bargaining agreement and none is entered into, the individual contract would remain in effect.

Nonetheless, individual contracts should be examined closely where there is an existing collective bargaining representative to ensure that the statutory rights of employes are not interfered with. Labor relations experience has shown that the use of individual contracts by employers can be an effective means or method of eroding the right of employes to act in concert and to be represented collectively. E.g., National Licorice Co. v. N.L.R.B., 309 U.S. 350, 60 S. Ct. 569 (1939) See generally, Hoexiger, The Individual Employment Contract Under The Wagner Act I, II, 10 Fordham L.Rev. 14,389 (1941). For example, it is a patent interference with the right to be represented collectively where the purpose or effect of individual

contracts is to defeat or delay negotiations with a collective bargaining representative, to forestall negotiations or to limit or condition the terms of a collective agreement, or to intimidate individuals in the exercise of their collective rights.

Additionally, as the United States Supreme Court has stated:

> "the individual contract cannot be effective as a waiver of any benefit to which the employee otherwise would be entitled under the trade agreement. The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group. Its benefits and advantages are open to every employee of the represented unit, whatever the type of terms of his pre-existing contract of employment." J.I. Case Co. v. N.L.R.B., supra at p. 504.

In the instant case the Examiner must determine whether, under all the circumstances, the manner of offering and the form of the contracts involved here unlawfully interfered with, restrained or coerced the teachers in their right of self-organization or their right to be represented collectively in negotiations on wages and other conditions of employment. There are four circumstances present here which must be considered in determining the legality of the Employer conduct:

1. The individual contract set forth a stated annual salary, admittedly a negotiable item, but made no reference to the fact that the teacher was represented collectively by a labor organization and that his individual contract would be superseded, subject to or supplemented by any collective agreement entered into between the Municipal Employer and the Association.

2. The Municipal Employer required that the individual contracts be signed in the office of the school administrator (principal), and did not permit the employe to remove the individual contract until it was signed.

3. The Municipal Employer threatened possible penalties and declarations of vacancies of the positions of those persons who did not sign individual contracts by April 16, 1969.

4. The Municipal Employer advised teachers that they would not be hired for summer school teaching positions in 1969 unless they signed individual teaching contracts for the 1969-70 school term commencing August 27, 1969.

The Examiner finds that the above conduct did interfere with, restrain and coerce the teachers in their rights of self-organization and affiliation and their right to be represented collectively in negotiations with their Municipal Employer on wages and other conditions of employment. The contract proffered to teachers contained wages, clearly a negotiable item, but made no reference to the fact that said wage figure would be superseded by any collective bargaining agreement reached between the Municipal Employer and the employes' collective bargaining representative. Thus the School Board required teachers, under threat that their jobs would be vacated and that they would be ineligible for summer school, to agree to individual terms of employment in advance of and with no mention in the contract of a possible collective bargaining agreement agreed to by the teachers' exclusive collective bargaining representative. Board of Sch. Directors of Milwaukee v. W.E.R.C., 42 Wis. 2d 637, 168 N.W.2d 92 (1969). The requirement that the employes sign an individual contract containing negotiable items which does not mention the collective bargaining representative or that said items will be superseded by any collective bargaining agreement impedes and has a debilitating effect on the right of teachers to organize and be represented in collective negotiations. The Employer informed the individual teachers in its letter of March 13, 1969 that if negotiations with the Association resulted in further improvements, the teachers would receive those benefits, but said letter does not have the binding effect of a contract, and the fact remains that the illegal document the employe was required to sign made no reference to the collective bargaining representative or the possibility of a collective bargaining agreement which would supersede the terms of the individual agreement. An employe should not be required to understand the intricacies of labor law to know that any agreement reached collectively would supersede the terms contained in his individual contract. This fact should be stated not in a mere letter but in the contract itself, as it was in the contract discussed in the recent decision by the Michigan Employment Relations Commission, relied upon by the Municipal Employer, upholding the validity of an individual contract. In that case the contract itself provided that it was "subject to amendment or revision to correspond with any contract that might be negotiated with the Bullock Creek Teachers' Club." Bullock Creek School District of Midland County, No. 311 Government Employee Relations Report, page F-1, 8/25/69.

The Examiner also finds offensive to the Act the additional requirement that teachers come into the office controlled by the Municipal Employer and sign their contracts on the Employer's premises before being permitted to remove them. The statute does not impose a requirement that individual contracts must be signed under such conditions. The lack of an opportunity to examine these contracts and perhaps discuss them with the collective representative or others in the privacy of premises preferred by the individual teacher, rather than on premises controlled by the Municipal Employer, is coercive and is a further infringement upon the right of self-organization and the right to be represented collectively.

Since the nature of the individual contracts, as well as the manner of proffering, constituted prohibited interference with employe rights, the Employer threats to vacate the positions of the employes and the threats to not hire persons in its summer session if they did not sign the illegal individual contracts by April 16 are also violative because such threats compounded the illegal pressure and coercion previously placed upon employes. The illegality of the threats followed as a natural consequence of the illegality of the contract offering itself. In addition, however, said threats also constitute violations because the threats are neither sanctioned by the statute nor necessary to fulfill its purpose, and such threats, like similar threats in the private sector, have the effect of undermining the bargaining representative and interfering with employe rights in organization and collective negotiations.

The above conclusion does not prohibit the Municipal Employer from stating that it may replace individual teachers who have not signed and returned their individual contracts by the statutory deadline of April 15, so long as such statement is unaccompanied by other conduct or statements which are coercive in nature. However, the threats here went further. In its letter of April 15, 1969, the Municipal Employer stated that he was extending his deadline 24 hours so that no one would be "penalized." In the following paragraph it declares that those contracts not signed and

returned in this time period would be deemed unaccepted and a vacancy declared in the staff which may thereafter be filled by a new staff member. The declaration of a vacancy in this context clearly takes the form of a threatened penalty and not a mere statement of the employment relationship which will exist if the contracts are not submitted. Furthermore, the threatened declaration of "vacancies", when considered as a part of the total conduct of the Employer in the submission of the individual contracts, assisted in creating an overall atmosphere of intimidation of employes who did not desire to sign individual contracts.

With regard to threats to deny summer school employment, it was not shown that the School District has a legitimate operating need to require individual contracts for the subsequent school year as a condition to summer employment. The contract did not even pertain to the summer school session. Even though the practice had been followed in the District in years past, the procedure is not required by statute. Even if some legitimate need could be shown to justify the practice previously, the protection from interference with employe rights granted by Section 111.70 outweighs whatever administrative convenience or other interest there is in requiring individual contracts for the following year as a condition to summer school employment.

The existence of threats further distinguishes this case from the Michigan case of Bullock Creek School District of Midland County, supra. That case took special care to point out that the individual contracts involved there were unaccompanied by threats. The Michigan Commission said:

> "We find no coercion or threats in the case at hand regarding the issuance of contracts . . . The letter mentioned notification of intent to leave as well as appreciation of the return by the date specified. There was no veiled threat or coercive language in the letter requiring the return of the contracts."

In summary, the Examiner finds that even where there is a collective bargaining representative, a simple submission by a school board to teachers of individual contracts containing wages or other negotiable items does not itself constitute a prohibited interference with employe rights, provided that the individual contracts state that the negotiable items therein will be superseded by any agreement negotiated collectively. However, the Municipal Employer here went further and committed the following acts which, both in

their totality and independently, constituted interference with, restraint upon and coercion of employes in their organizational rights and their right to be represented collectively in negotiations over wages and other conditions of employment: (1) It submitted individual contracts containing negotiable items without stating therein that the negotiable items would be superseded by any agreement negotiated collectively; (2) it required employes to sign individual contracts in its offices and did not permit the withdrawal of said individual contracts for private examination off the premises of the Municipal Employer; and (3) it accompanied the proffering of individual contracts with threats of penalty and threats to deny benefits (summer school employment) if employes refused to sign their individual contracts for the subsequent school year.

It is not contended that any teacher was in fact denied reemployment for the 1969-1970 school term for failure to sign his individual contract by April 16, 1969. The remedial order therefore shall make no mention of reinstatement or other remedy which might have been necessary if the opposite were true.

Complainant contends that certain employes were actually denied summer school employment because they did not return their individual contracts by the April 16 deadline date. Complainant has carried its burden of proof with regard to teacher Gust A. Minessale, who the Examiner finds was not hired for summer school employment for the reason that he did not sign his individual contract in sufficient time. It was testified that principals recommend who will teach summer school in their particular schools and Minessale's principal testified that the understanding between Minessale and him was that "everything else being equal," Minessale would be given the first chance to take a summer school job teaching math which he had held the previous three summers, and also since the inception of the summer school math program at his school. Instead, when Minessale refused to sign his individual contract the job was given to a teacher who had never taught summer school before. It appears from the testimony that the only thing that made Minessale not "equal" was the fact that Minessale refused to sign the illegal individual contract. The refusal to hire Minessale (and possibly others, since it was stipulated that other persons could similarly testify) for summer school employment for this reason further undermined and interfered with the employes in the exercise of their

collective concerted activity, and the violation must be remedied with a back pay award for the time lost, offset by any earnings during the period in question.

The Municipal Employer argues that the issues are made moot by the parties' agreement on certain items in the contract negotiations for the year 1969-1970. It is true that the negotiated teacher contract in Appendix C of the labor agreement contains a reference not included in the contracts in question here with regard to supplementation of the individual contract by a collective bargaining agreement. However, said contract covers the 1969-1970 school year and not the 1970-1971 school year, and so the problem could recur again. There also has been a monetary loss for summer school employment which must be remedied. Additionally, the negotiated contract contains no threats if the contract is not delivered to the Municipal Employer on or before April 15, and there is no requirement therein that the contract be signed in the office of the principal.

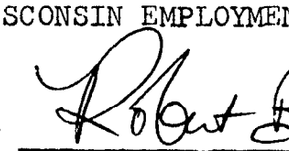
Furthermore, this question is of first impression and of public importance since the propriety of individual contracts in the context of collective bargaining is of concern to school districts throughout the State, and the problem is of a recurring nature. In City of Madison v. W.E.R.B., supra at page 496, the Supreme Court stated:

> "We point out, as did the circuit judge that this case involves the 1966-1967 school calendar, which is now history, but the question is of first impression and of such public interest and importance and is asserted under conditions which will immediately recur if a dismissal is granted that the issue should be decided and is not subject to the rule of mootness. Wisconsin Employment Relations Board v. Allis Chalmers (1948), 252 Wis. 436, 31 N.W. 2d 772, 32 N.W. 2d 190."

Applying the above standards, the Examiner concludes that the dispute is not moot and should be determined on the merits.

Dated at Milwaukee, Wisconsin, this 10th day of March, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Robert B. Moberly, Examiner