

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS EDUCATION
ASSOCIATION,

Complainant,

vs.

MILWAUKEE BOARD OF SCHOOL
DIRECTORS,

Respondent.

Case XXIX
No. 13130 MP-74
Decision No. 9242-A

Appearances:

Hayes, Peck, Perry & Gerlach, Attorneys at Law, by Mr. Richard Perry, and Mr. James Colter, Executive Director, MTEA, appearing on behalf of the Complainant.

Mr. John F. Kitzke, Chief Negotiator, Milwaukee Board of School Directors, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION 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 Herman Torosian, 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 Milwaukee, Wisconsin, on October 28, 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, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Complainant, Milwaukee Teachers Education Association, hereinafter referred to as the Association, is a labor organization having its principal office at 3917 West Capitol Drive, Milwaukee, Wisconsin.

2. That Respondent, Milwaukee Board of School Directors, hereinafter referred to as the School Board, is a Wisconsin municipal body organized and created under the laws of the State of Wisconsin, with its offices at 5225 West Vliet Street, Milwaukee, Wisconsin; and that Respondent School Board, is by the laws of the State of Wisconsin, given the authority and responsibility for the management, control and supervision of the affairs of the district.

3. That John Schertzl, at all times material herein, has been an Agent and Supervisor of Respondent occupying the position of Principal at Wells Junior High School.

4. That the Association is the recognized, certified, sole and exclusive bargaining agent concerning questions of wages, hours and conditions of employment for approximately 5,000 teachers in the bargaining unit employed by the Respondent School Board.

5. That Joseph Barrington, at all times material herein, has been employed by the School Board and that Barrington is a member of the Association and held the position of Building Representative at Wells Junior High School for the 1968-1969 school year.

6. That Barrington began teaching in the Milwaukee schools in February 1968, on a substitute assignment; that his first assignment was to Pulaski High School; that his second assignment was in April 1968, at Steuben Junior High School; and that thereafter, in spring of 1968, Barrington was assigned to Wells Junior High School where he taught through the 1968-1969 school year; that in September of 1968, Barrington was elected MTEA Building Representative by his fellow teachers and that as a Building Representative, Barrington was charged with representing teachers and processing individual grievances; that Barrington as an MTEA representative automatically assumed the chairmanship of the MTEA Building Committee; and that said Committee was a panel which had the responsibility to coordinate faculty discussion concerning action to be taken on teacher complaints as well as develop faculty positions on educational and other problems facing the school.

7. That a flu epidemic of major portions his Milwaukee in late 1968; that in addition to student illness, teacher illness was also widespread resulting in the unavailability of substitute teachers; that regular teachers had to give up their practice periods to take extra classes in order to perform for the sick teachers; that at the end of the epidemic regular teachers continued to take some extra classes even though the amount of absences had decreased; that sometime in mid to late January, Barrington, as Building Representative, discussed the matter with John Schertzl, Principal of Wells Junior High School; that Schertzl pointed out that the lack of substitute teachers had always been a problem and that the present situation, immediately after the epidemic, was not unusual; that Barrington agreed with Schertzl that the situation was not any different than usual but that he suggested that there might be something the central office could do about the problem; subsequently the entire staff met on staff planning day, in late January, at which time the problem of substitute teachers was discussed; that in an attempt to resolve the problem the staff drafted a letter demanding that representatives from

central office meet with the faculty to discuss the substitute problem, and that if said meeting was not held by the following Monday the regular teachers would not continue to take the extra classes; that Barrington and Tom Haebig then met with Schertzl and presented the letter to him at that time; that Schertzl's response was that he was very upset because he and the other administrators had not been allowed in the meeting, and also because he felt the faculty had gone over his head as far as demanding that central office personnel meet with the faculty to discuss the problem; that Schertzl then telephoned central office and informed them of the situation and requested a meeting on the following Monday; that on the following Monday Alvin Westgaard, Assistant Superintendent, Albert Schultz, Assistant Superintendent--Personnel, Robert Baer, Administrative Specialist, and John Kitzke, Chief Negotiator, from central administration met with the faculty at which time the parties discussed the substitute problem and exchanged ideas; and that as a result of said meeting there was an increase of substitute teachers conducting classes.

8. That in mid February a second grievance was processed by Mr. Barrington involving Mrs. Hall, a gym teacher who threatened to quit if she were not relieved of her teaching load; that during the first semester Mrs. Hall, due to a shortage of gym teachers, was required to teach five classes of gym rather than the normal three gym classes; that prior to contacting Barrington and prior to the start of the second semester, Mrs. Hall contacted Robert Baer, Administrative Specialist, Division of Administrative Services, indicating to Baer that she was concerned about the fact that she was scheduled to teach five classes of gym the following semester; that Baer discussed with Schertzl the conversation he had with Mrs. Hall and made clear to Schertzl that it was his responsibility to make staffing decisions at the local school level; that during the course of the discussion, Schertzl did indicate that there was a substitute teacher in the building who could take one or two of the girls' Phy. Ed. classes; that subsequently Barrington spoke to Schertzl about Mrs. Hall's problem at which time Schertzl indicated that Mrs. Hall had been a problem and that it was difficult to accommodate her in that she would want five gym classes and that at another time she did not want five gym classes; that Schertzl indicated that it was his duty as an administrator to assign the staff wherever he felt they should be assigned, and not the responsibility of the MTEA; that thereafter James Colter, Executive Director of the MTEA, contacted central office about the problem; that within a couple of days thereafter the problem was remedied in that Mrs. Hall was given two academic classes in place of two gym classes.

9. That during the 1968-1969 school term Barrington was involved in a number of incidents involving students; that one such incident occurred when Barrington took his class into a study hall which was under the supervision of Mr. Tebbs; that Mr. Tebbs was having a discipline problem with a girl student, and that Barrington, assisting Tebbs, became involved; that subsequently the girl complained to Schertzl concerning the manner in which she was handled by Barrington; that on another occasion Barrington was involved in a student discipline problem when he confronted a hostile student in the hallway; that instead of trying to get the assistance of an administrative assistant which teachers are urged to do in cases where students show an attitude of hostility and where it is obvious that the student is going to take physical action, Barrington handled the situation on his own.

10. On or about April 15, 1969, Barrington was involved in an altercation with a girl student wherein he was bitten by the girl student; that Barrington was approached on the matter of filing a teacher assault form which would call for an immediate suspension but Barrington indicated that he was unwilling to file said form until he had visited his doctor; that the girl was therefore not immediately suspended but was dismissed from school that day and that it was not until the following day that said student was suspended; that on the day of the suspension the student's mother called Schertzl but inasmuch as he and Mr. Hobson, Administrative Assistant, were not present she was allowed to speak to Barrington; that the student's mother inquired as to why her child was not suspended immediately if she, in fact, assaulted Barrington as claimed; that Barrington indicated to the mother that there must have been a mix-up as far as administrators were concerned and that she should call back when they were present; and that the child's mother later called Schertzl and complained about Barrington's handling of the situation.

11. That Barrington on occasion has accompanied students to the office and requested the Assistant Principal to suspend said students; that Barrington also has on occasion sent a referral card to the office with the word "suspended" on it, which amounts to a demand on the administration of the school to suspend said student; and that a policy clarification was made by the administration to the staff concerning the matter of suspension wherein the staff was advised that suspension was not to be considered as a cure for all disciplinary problems.

12. That as Principal, Schertzl evaluated the performance of Barrington; that under Wisconsin Statutes, a teacher employed by the Milwaukee Board of School Directors, after six acceptable semesters of employment gains permanent tenure; that accordingly under the Board's rules a teacher during the first six semesters must be evaluated by the Principal once each semester; that after the three year period, the evaluation is written once in the fourth year, once in the fifth year and thereafter once every three years; that evaluations are written on evaluation cards which are designated 280, 281 or 282; that a 280 is for exceptionally good service; that a 281 is acceptable service but can contain a request from a principal that a teacher be transferred to another school, in which case it is known as a 281 with a check, and that a 282 is an unacceptable evaluation.

13. That Barrington received his first evaluation from Schertzl in spring of 1968, wherein he received a 281 evaluation; that in the fall semester of 1968, the same Principal, Schertzl, again evaluated Barrington and gave him a 281 card evaluation; that in May of 1969, Schertzl again gave Barrington a 281 card but added a check recommending his transfer; that Schertzl on said evaluation card commented as follows:

"Comment: There can be no adverse criticism of Mr. Barrington's work in the classroom. He continues to plan well and to provide good learning activities for his pupils. However, a teacher's contribution to the total instructional program is not limited to the classroom. Mr. Barrington has displayed an overzealous attitude which on occasion has led to questionable judgment in dealing with matters outside his classroom. He has taken an active leadership role in criticism of the administration, the school as well as of the Superintendent's staff policies. This has led to a polarization of this teaching staff which has caused considerable concern. He has made demands of immediate suspension of disciplinary problems which he referred, contrary to school policy. He has been critical of disciplinary measures and on at least one occasion voiced his dissatisfaction to a parent. He has taken what may be considered arbitrary action against pupils which resulted in active resentment. In view of previous pupil activism it has been recommended to Mr. Barrington that he consider reassignment."

14. That although the Respondent's criticism pertaining specifically to Barrington's student and disciplinary problems may very well constitute legitimate reasons for Respondent's recommendation that Barrington consider reassignment, said recommendation, however, was also motivated in part by Barrington's engaging in protected union activity as Building Representative in processing two grievances.

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

CONCLUSION OF LAW

That the evaluation, in part, of Joseph Barrington and the recommendation that Joseph Barrington consider reassignment was motivated in part by his conduct as a Building Representative of Milwaukee Teachers Education Association, and that Milwaukee Board of School Directors, by its agent, recommending that he consider reassignment discriminated against him because he engaged in protected activities and thereby has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)1 and 2 of the Wisconsin Statutes.

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

ORDER

IT IS ORDERED that the Respondent, Milwaukee Board of School Directors

1. Cease and desist from discouraging employees from engaging in protected activities as union officials, by evaluating any of its employees and by recommending reassignment in a discriminatory manner or by discriminating against them in any other manner pertaining to their tenure, term or condition of employment.

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

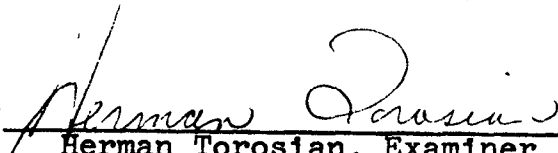
- a. Immediately offer to Joseph Barrington the opportunity to return to Wells Junior High School, in the position he occupied during the school year 1968-1969, or an equivalent position.
- b. Immediately furnish to Joseph Barrington, for the school year 1968-1969, by either a new evaluation or by amending the old evaluation, a fair and nondiscriminatory evaluation based upon a honest consideration of his performance as a teacher within the Milwaukee school system.
- c. Notify all of its teachers by posting in conspicuous places, where notices to teachers are usually posted throughout Wells Junior High School, 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 Superintendent of Schools of such District and by the Principal of Wells Junior High School 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.

- d. 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 Madison, Wisconsin, this 16th day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, 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 policy of Section 111.70 of the Wisconsin Statutes, we hereby notify our teachers that:

WE WILL NOT discourage teachers from engaging in protected activities as officials of a labor organization representing teachers, by evaluating any of its teachers or by recommending reassignment in a discriminatory manner or by discriminating against them in any other manner pertaining to their tenure, term or condition of employment.

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 Milwaukee Teachers 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.

Milwaukee Board of School Directors

Superintendent of Schools

Principal, Wells Junior High School

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

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No. 13130 MP-74
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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The complaint of prohibited practices was filed with the Commission on September 17, 1969, by Milwaukee Teachers Education Association. The Answer was filed on October 24, 1969, and the matter was heard on October 28, 1969. Briefs were submitted by the parties and exchanged simultaneously by the Examiner on February 20, 1970.

The Complainant alleged that the Respondent by its Agent, John Schertzl, Principal at Wells Junior High School, gave an unfair and discriminatory annual teachers' evaluation to Joseph Barrington, a teacher. It is further alleged by the Complainant that said evaluation was intended to injure and did injure the professional advancement and potential future of Joseph Barrington and was made in an effort to coerce him into leaving the school wherein he was employed. It is alleged that the Respondent took said action in retaliation against Barrington because of his activities as Building Representative on behalf of Milwaukee Teachers Education Association and that said conduct interfered with, restrained and coerced Barrington in the exercise of his rights guaranteed by Section 111.70, Wisconsin Statutes.

In its Answer the Municipal Employer denied any violation of Section 111.70 alleging that the Principal in evaluating Joseph Barrington was performing his duty of evaluating the conduct of each and every teacher within his school pursuant to the rules of the Board of School Directors and the Statutes of Wisconsin.

The facts material to the disposition of this proceeding are fully recited in the Findings of Fact and therefore need not be repeated in detail.

Respondent argues that the record is void of any evidence that would indicate that Schertzl, the Principal, had in any way interfered with Barrington's guaranteed rights as provided by Section 111.70 of the Wisconsin Statutes. The instant complaint, as contended by the Respondent, was filed solely on the basis that Barrington did not like the Principal's evaluation of his work within the school. Respondent contends that whether the evaluation is right or wrong or whether the judgment of the Principal is right or wrong is not the question before the Examiner, unless it can be shown that the reason for the evaluation was because of the employee's union activity and was an attempt to coerce the employee not to exercise the rights guaranteed by statute. There is nothing in the record, Respondent argues, that would support such a finding.

The Respondent is correct in its claim that the question of whether or not the evaluation was right or wrong is of no consequence unless said evaluation was motivated by Barrington's protected union activities.

The record indicates that the evaluation in question was the first "below average" evaluation received by Barrington. Barrington began teaching in the Milwaukee school system in February 1968, on a substitute assignment at Pulaski High School. Barrington also during the spring semester of 1968 was assigned to Steuben Junior High School and Wells Junior High School. For his work at Pulaski High School Barrington was evaluated as a teacher acceptable for an extended assignment. For Barrington's service at Steuben Junior High School his evaluation indicated that he had performed satisfactorily. Finally, for his work at Wells Junior High School during the spring of 1968, Barrington received a 281 evaluation from Schertzl, the Principal, with no criticisms attached. Thereafter Barrington was retained for the 1968-1969 school year.

In September 1968 Barrington was elected MTEA Building Representative by his fellow teachers, and as a Building Representative, was charged with representing teachers and processing individual grievances. Barrington as the MTEA Representative also automatically assumed the chairmanship of the MTEA Building Committee. The Committee was a panel which had the responsibility of coordinating faculty discussion concerning action to be taken on teacher complaints as well as developing faculty positions on issues facing the school.

On November 20, 1968, Barrington was again evaluated by Schertzl and again was given a 281 evaluation.

Subsequent to said evaluation, sometime late in 1968, a flu epidemic of major portions hit Milwaukee causing widespread teacher illness. Said epidemic also created a shortage of substitute teachers. Regular teachers were required to give up their practice periods to take extra classes in order to perform for the sick teachers. At the end of the epidemic the regular teachers continued to take some extra classes even though the amount of absences had decreased. Barrington, sometime in mid to late January, as Building Representative discussed the matter with Schertzl. Schertzl pointed out that the lack of substitute teachers had always been a problem at Wells Junior High School and that the present situation (immediately after the epidemic) was not unusual. Barrington agreed with Schertzl that the situation was no different than it was before the epidemic but that he further suggested that there might be something the central office could do to correct the problem. Subsequently, the entire staff met on staff planning day in late January at which time the substitute teachers problem was discussed. In an attempt to resolve the problem the staff drafted a letter demanding that representatives from central office meet with the faculty to discuss the substitute problem. The letter further stated that if said meeting was not held by the following Monday, the regular teachers would not continue to take the extra classes. Barrington and Tom Haebig then met with Schertzl and presented the letter to him at that time. Schertzl stated that he was upset because he and other administrators had not been allowed to attend the meeting and also that he felt the faculty had gone over his head in demanding that central office personnel meet with the faculty to discuss the problem. Schertzl proceeded to telephone central office informing them of the situation and requesting a meeting for the following Monday. On the following Monday Alvin Westgaard, Assistant Superintendent, Albert Schultz, Assistant Superintendent--Personnel, Robert Baer, Administrative Specialist, and John Kitzke, Chief Negotiator, from central administration, met with the faculty at which time the parties discussed the substitute teachers problem and exchanged ideas pertaining to said problem. As a result of said meeting there was an increase of substitute teachers conducting classes.

A few weeks after the flu epidemic grievance was resolved, a

For the second semester Mrs. Hall was assigned to five gym classes again. Mrs. Hall objected to the heavy teaching load. When no steps were taken to alleviate the problem Mrs. Hall approached Barrington and informed him that if she were forced to continue carrying five gym classes she intended to quit. Barrington spoke to Schertzl about the problem at which time Barrington was told that Mrs. Hall had always been a problem as far as the staff was concerned. During said meeting, Schertzl also indicated that it was the administrator's duty to assign the staff and not the responsibility of the MTEA. The problem not having been resolved, Barrington mailed said complaint to the central office and also contacted James Colter, Executive Director, MTEA, who in turn contacted central office concerning the complaint. Shortly thereafter the problem was resolved by substituting two academic classes in place of two gym classes for Mrs. Hall.

Schertzl testified at the hearing that up to the date of the hearing the above mentioned grievances were the only two written grievances filed since at least the 1967-1968 school year.

Subsequent to the above mentioned grievances, Barrington was involved in a number of incidents involving students. One such incident occurred when Barrington took his class into a study hall which was under the supervision of Mr. Tebbs. Barrington became involved in a discipline problem involving a girl student who was under the control and supervision of Mr. Tebbs. The girl student complained to Schertzl concerning the manner in which she was handled by Barrington.

On another occasion Barrington confronted a hostile student in the corridors. Instead of trying to get the assistance of an administrative assistant which teachers are urged to do in cases where students show an attitude of hostility and where it is obvious that the student is going to take physical action, Barrington handled the problem on his own. Finally, on or about April 15, 1969, Barrington was involved in an altercation with a girl student wherein he was assaulted and bitten by the girl. In regards to said incident Barrington was approached on the matter of filing a teacher's assault form which would have resulted in an immediate suspension of the student. Barrington, however, told Schertzl he was unwilling to file an assault form until he had visited his doctor. For said reason the girl was not immediately suspended but was instead dismissed from school for the day. On the following day said student was suspended. On the day of the suspension the student's mother called Schertzl but inasmuch as he and Mr. Hobson, Administrative Assistant, were not present she was allowed to speak to Barrington.

The student's mother inquired as to why her child was not suspended immediately if she in fact assaulted Barrington as claimed. Barrington indicated that there must have been a mix-up by the administrators and that she should call back when they were present. The child's mother later called Schertzl and complained about Barrington's handling of the situation.

On other occasions Barrington has accompanied students to the office and requested the Assistant Principal to suspend said students. Barrington has also sent referral cards to the office with the word "suspended" written on it which amounts to a demand on the administration of the school to suspend said student. At the time a policy clarification had been made to the staff by the administration wherein the staff was advised that suspension was not to be considered as a cure for all disciplinary problems.

On May 2, 1969, Barrington received his regular spring semester evaluation by Schertzl. It was a form 281 with a check and also contained the following comments:

"There can be no adverse criticism of Mr. Barrington's work in the classroom. He continues to plan well and to provide good learning activities for his pupils. However, a teacher's contribution to the total instructional program is not limited to the classroom. Mr. Barrington has displayed an overzealous attitude which on occasion has led to questionable judgment in dealing with matters outside his classroom. He has taken an active leadership role in criticism of the administration and of Central Office staff policies. This has led to a polarization of this teaching staff which has caused considerable concern to this administration. He has demanded immediate suspension of pupils whom he has referred for disciplinary action despite clarification of school policies regarding suspension. He has been critical of disciplinary measures and on at least one occasion, voiced his dissatisfaction to a parent. He has taken what may be considered arbitrary action against pupils which may result in active resentment. In view of past experiences in this school with pupil activism it has been recommended to Mr. Barrington that he consider reassignment."

There are three sentences in said evaluation which pertain specifically to Barrington's student problem. Schertzl's criticisms are as follows:

"He has demanded immediate suspension of pupils whom he has referred for disciplinary action despite clarification of school policies regarding suspension. He has been critical of disciplinary measures and on at least one occasion, voiced his dissatisfaction to a parent. He has taken what may be considered arbitrary action against pupils which may result in active resentment."

In regard to the above, the Examiner cannot conclude that said criticism was motivated by Barrington's union activities inasmuch as sufficient evidence was produced seemingly supporting Respondent's criticisms. Barrington's involvement with students as outlined above, resulting in complaints by both students and in one case by a parent, supports Respondent's claim that the criticisms were based solely on Barrington's deficiencies in the area of student discipline and control.

However, in the opinion of the Examiner, the Principal's recommendation that Barrington consider reassignment was also motivated in part by his union activities. In this regard the Examiner notes that not only did the Principal criticize Barrington for seemingly valid reasons but also criticized him as follows:

"However, a teacher's contribution to the total instructional program is not limited to the classroom. Mr. Barrington has displayed an overzealous attitude which on occasion has led to questionable judgment in dealing with matters outside his classroom. He has taken an active leadership role in criticism of the administration and of Central Office staff policies. This has led to a polarization of this teaching staff which has caused considerable concern to this administration."

Schertzl in explaining the above, claims that said comments were motivated by Barrington's conversations with other teachers in the coffee lounge and also by his handling of student problems. The Examiner, however, in considering said criticisms in light of the fact that the two grievances processed by Barrington were the only grievances in at least two years; that at the time of the grievance concerning the substitute teachers, Schertzl commented that he was upset and indicated that he should have been invited to the meeting wherein the problem was discussed and also that the MTEA should not have gone over his head by writing a letter explaining the problem and requesting a meeting to central office; that said grievance was of a serious nature, one which the teachers threatened to withhold their services as far as extra classes were concerned; that at the time of the second grievance which concerned the classload of Mrs. Hall, Schertzl commented that it was the administrators' duty to assign the staff and not the responsibility of the MTEA, leads the Examiner to conclude that Barrington's activity in engaging in protected union activity as a Building Representative motivated Schertzl, at least in part, to comment that "Barrington has displayed an overzealous attitude which on occasion has led to questionable judgment in dealing with matters outside of his classroom" and that he had taken "an active leadership role in the criticism of the administration and of Central Office staff policies" which led to the "polarization of this teaching staff which has caused considerable concern to this administration." The Examiner also finds it

significant that Schertzl's testimony was vague as to reasons for the above criticisms. Much of Schertzl's explanation related to Barrington's alleged deficiencies in student control even though said deficiencies were subject to specific criticisms in another part of the evaluation.

There is no question that Barrington in processing the grievances concerning the substitute teacher problem and Mrs. Hall's classload problem was engaged in protected union activity. Respondent claims in its brief that the Complainant was not processing its grievance concerning substitute teachers as required by the collective bargaining agreement and was in fact going over Schertzl's head. The record, however, does not substantiate Respondent's claim. It has been held by this Commission that regardless of how many valid reasons exist for action taken against an employee, if said action is partly motivated by protected union activities, then said action is unlawfully discriminatory and violates Section 111.70 of the Wisconsin Statutes.^{1/}

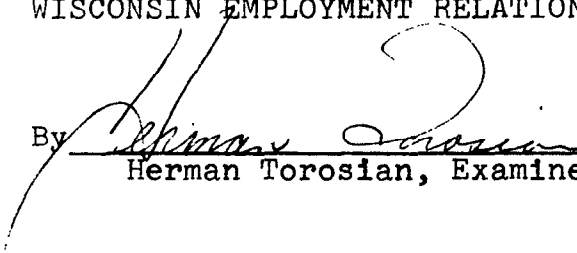
Although there may be some legitimate reasons for Schertzl's recommendation that Barrington consider reassignment since he has had problems with students as discussed above, it would appear from Schertzl's overall conduct that said recommendation was motivated, at least in part, by Barrington's active role in protected union activity.

In view of all of the foregoing the Examiner finds that the Respondent, by evaluating Barrington, in part, discriminatorily and by recommending that Barrington consider reassignment, has committed a prohibited practice within the meaning of Section 111.70, Wisconsin Statutes, because said recommendation was motivated, at least in part, by Barrington engaging in protected union activity. Accordingly, the Examiner will require the Respondent to reevaluate Barrington and make a fair and nondiscriminatory evaluation of said teacher and offer Barrington the opportunity to return to Wells Junior High School in the position he occupied during the school year 1968-1969, or an equivalent position.

Dated at Madison, Wisconsin, this 16th day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Examiner

^{1/} Muskego-Norway Consolidated Schools Joint School District No. 9 et al, 35 Wis (2d) 540 (1966); City of Oshkosh, Decision No. 8381-A.