STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WATERLOO EDUCATION ASSOCIATION AND MARTHA KNOTT, Complainants, vs. WATERLOO JOINT SCHOOL DISTRICT NO. 1, BOARD OF EDUCATION OF WATERLOO JOINT SCHOOL DISTRICT NO. 1, LEROY BREITKREUTZ AND GEORGE HAFFEMAN, Respondents.	Case I No. 15498 MP-130 Decision No. 10946-A

Appearances:
Lawton & Cates, Attorneys at Law, by Bruce F. Ehlke, appearing on behalf of the Complainants.
Callahan and Arnold, Attorneys at Law, by E. Clarke Arnold, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission having appointed George R. Fleischli, a member of the Commission's staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Jefferson, Wisconsin, on June 8, 1972, August 21, 1972 and October 19, 1972 before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Orders.

FINDINGS OF FACT

1. That Waterloo Education Association, hereinafter referred to as the Complainant Association, is a labor organization within the meaning of Section 111.70(1)(j) of the Wisconsin Statutes having offices at Waterloo, Wisconsin and represents all classroom teachers employed by Waterloo Jt. School District #1, City of Waterloo, et al, a municipal employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes, for purposes of collective bargaining on questions of wages, hours and working conditions.

2. That Martha Knott, an individual hereinafter referred to as Complainant Knott or Knott, was a classroom teacher employed by Waterloo Jt. School District #1, City of Waterloo, et al, until the end of the 1971-72 school year, when her individual teaching contract expired and was not renewed.

3. That Waterloo Jt. School District #1, City of Waterloo, et al, and Board of Education, Waterloo Jt. School District #1, City of Waterloo,

et al, hereinafter referred to as the Respondent District and Respondent Board are, respectively, a public school district organized under the laws of the State of Wisconsin and a public body charged under the laws of Wisconsin with the management, supervision and control of said District and its affairs.

4. That LeRoy Breitkreutz, Superintendent of the Respondent District, hereinafter referred to as Respondent Brietkreutz or Breitkreutz, and George Haffeman, High School Principal for the Respondent District, hereinafter referred to as Respondent Haffeman or Haffeman were, at all times relevant herein, agents of the Respondent District acting within the scope of their authority.

5. That because the Respondent District had notified several teachers in the Spring of the 1970-71 school year that it was considering the non-renewal of their individual teaching contracts pursuant to the provisions of Section 118.22 of the Wisconsin Statutes, the Complainant Association asked that certain provisions be included in the 1971-72 collective bargaining agreement to be applied in the case of any teacher being considered for non-renewal in the following school year; that after considerable discussion and debate, the parties agreed to incorporate certain provisions into their collective bargaining agreement which are relevant herein and read as follows:

"TEACHER EVALUATION, NON-RENEWAL AND DISMISSAL PROCEDURES

1. Providing a position is available, no teacher holding a regular annual contract may be dismissed, removed, or discharged, except for inefficiency, immorality, willful and persistent violation of reasonable regulations of the governing body of the school system, or other good cause.

2. It is the duty of the principal or supervisor to counsel and evaluate all new teachers by December 15 and all teachers by the close of the first semester. Additional supervisory visits may be made as it deems necessary or by the request of the teacher.

3. Complaints regarding a teacher made to the administration by any parent, student, or other persons which are used in any manner in evaluating a teacher shall be investigated and called to the attention of the teacher. The teacher shall be given a chance to respond to and/or rebut such complaints, and shall have the right to be represented by the Waterloo Education Association at any meetings regarding such complaints.

4. A teacher shall be given a copy of any class visit or evaluation reports prepared by his evaluators at least one day, upon the request of the teacher, before any conference to discuss it. The evaluation report of the teacher's classroom work and responsibilities shall indicate when unsatisfactory work is being done and recommendation for non-renewal of the next year's contract is being considered. No such report shall be submitted to the school board, placed in the teacher's file, or otherwise acted upon without prior conference with the teacher. Said conference should be held within two school calendar weeks after the evaluation. The teacher shall affix his signature to show that he has seen the material.

SCHOOL BOARD'S NOTICE OF NON-RENEWAL

5. The school board shall notify the teacher of the consideration of non-renewal of his contract. The notice shall

outline the specific reasons for consideration of non-renewal.

6. The teacher may request in writing within five days following the notification by the Board of Education that a hearing be held at which witnesses and counsel may be present and testify. The Board of Education shall set the date for such a hearing not less than twenty nor more than thirty days after the teacher's request for a hearing.

RIGHT TO COUNSEL

7. The teacher shall be entitled to counsel at the hearing and may, at the teacher's volition seek further representation by the professional Rights and Responsibilities Committee of the Waterloo Education Association.

CLOSED HEARING

8. The hearing shall be closed to the public unless the teacher charged requests an open hearing. All closed hearings shall be held in accordance with the provisions of Section 14.90, Wisconsin Statutes.

9. Within ten days after the hearing, the Board of Education shall notify the teacher in writing of their findings and decision to continue or dismiss the teacher. No teacher may be employed or dismissed except by a majority vote of full membership of the Board of Education."

6. That Complainant Knott was hired by the Respondent District to teach home economics during the 1969-70 school year and she continued to teach home economics for the Respondent District during the 1970-71 and 1971-72 school years; that prior to April 2, 1971, Knott had not received any adverse evaluations from Respondent Haffeman or Respondent Breitkreutz or their predecessors with regard to the quality of her teaching performance or her performance of related duties, but that on April 2, 1971, Complainant Knott received the following supervisory report from Haffeman which was discussed with her on April 6, 1971:

"Observations: It was noted on April 2, 1971 that you were in the teachers lounge having a cigarette and cup of coffee during which time you were scheduled to supervise a study hall. This study hall, on this particular day was held in the Home Economics Room. The teachers handbook states that teachers should not be using the lounge during the time they have students under their supervision and during the time between 8:00 - 8:15. It is understandable that a teacher may have to leave the room on certain occasions for certain tasks. However, using the lounge under the above stated condition is not good practice. Damage to the Home Economics room and equipment could have resulted during your absence. It is hoped that this report and the subsequent conversation that followed can clear up any misunderstandings about the use of the lounge and your responsibilities to the class room or study hall."

7. That Knott admits to the accuracy of the supervisory report made by Haffeman on April 2, 1971 and it is uncontested that she did not engage in similar conduct thereafter.

8. That on April 26, 1971, Respondent Haffeman wrote another supervisory report with regard to Complainant Knott which was discussed with her on April 27, 1971 and reads as follows:

> "Observations: On a tour of the building with the school board, in which the board had their attention called to the needed structural changes of the Home Economics room in terms of lighting, acoustics, general arrangement of floor plan, painting, etc., it was also noted by board members and the high school principal that other conditions not appropriate to good learning or teaching were observed. The following were noted.
>
> 1. Dirty dishes in sink and on top of the counter.
> 2. Towels laying around.
> 3. Hot pads on the floor near the washer and dryer.
> 4. Pop bottles in back corner.
> 5. Half of an uneaten cup cake on counter top.
> 6. Egg cartons on top of refrigerator and on top of desk.
> 7. Pilot lights out on one stove.
> 8. Dirty oven
> 9. Sewing machines left out.
>
> Appraisal and Recommendations:
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> Part of teaching young people is the setting of a good example, without this, proper attitudes and habits cannot be developed. In our conversation in my office prior to this report you indicated that there was not enough time to clean-up. This type of work should not be done by you; it should be done by the students who use the facilities. Perhaps more careful planning is needed so that students can get their areas cleaned before the period is over with or some arrangements made by certain groups at some later time. This should be part of the students education. Cleanliness and food preparation go hand in hand and students should be made aware of this fact. I am quite certain that this problem can be resolved resulting in a more meaningful educational experience for the girls.
>
> This report may be signed in my office."

9. That Complainant Knott, along with several other teachers who had received adverse supervisory reports and representatives of the Complainant Association met with Respondent Breitkreutz for the purpose, inter alia of discussing what use would be made of the April 26, 1971 supervisory report; that Complainant Knott and the other teachers who had received adverse supervisory reports were advised by Respondent Breitkreutz that the reports would be kept in their personnel files and that if they did not hear any more with regard to the contents of said reports, they could assume that any deficiency mentioned in the reports had been eliminated.

10. That Complainant Knott did not receive any further criticism either orally or in writing regarding the things mentioned in Respondent Haffeman's supervisory report dated April 26, 1971 or any similar problems until January 12, 1972 on which date Complainant Knott received a letter of even date from Respondent Breitkreutz which read in pertinent part as follows:

> "On a number of occasions this year I found it necessary to visit your room primarily because reports from various sources reached me concerning the general conditions of

your department. The first report was received just several weeks after school started last fall. Onions had been placed in the refrigerator and had started to sprout. The same onions are still in the refrigerator on January 10, 1972, almost one half school year later, with sprouts growing from them eight or more inches in length and the eatable part of the onion decayed. Additional onions were placed with the spoiled ones during this period of time.

At the beginning of the school year it was found too, that there were soiled towels that were placed in the washer and dryer. Additional (new) towels were purchased for your use and one or more of these towels have been added to the soiled or dirty stock pile. If you recall, it was asked of you to set up a washing schedule with Mr. Schoenherr or his towel boys and have these towels washed regularly each week. This apparently has not been done as these towels have not been cleaned this year. The odor when opening the washer and dryer is not very pleasant.

The cabinets in the kitchens have finger marks around the handles. These same conditions have been checked weekly over this past semester and never has it been found that the finger marks were removed.

The kitchen counter tops are unclean. In one spot wax drippings or some foreign material spilled and has run over the edge and down the fronts of the drawers. This spill was first noticed a week or so before Christmas vacation. It still remains after a week or more of school in the new year.

The bulletin board by the door has not been changed and is far out of date. FHA members duties for example ends with the November 24 responsibilities. This is almost two months ago. The calendar is last years. A new calendar for 1972 has not been displayed in the room. If it has it is not very easily seen. The second bulletin board does not relate to home economics but lends itself more to a New Years Eve party. The time is now approaching the middle of January.

There are a number of other direct responsibilities of the home economic teacher that have been neglected. It would be hard to list them all in this letter and still try and make the letter reasonable in length. If you wish to review them with me, I will be glad to do so.

These neglected duties were purposely not called to your attention this year because it is known that home economic teachers should have these inherent qualities and to be able to carry out these responsibilities. The records of the school clearly indicate that you were reminded of these neglected duties last year. After another one half year of

school, short only of a few days, it is apparent that you again failed to carry out the responsibilities of your position.

A sufficient time has been given you to correct all or most all of the deficiencies in your department that I have made reference to. The school has tried to help you by bringing new lights into the department. By rearranging the room, making it more conducive to easier teaching and better working conditions. But there must be expertise applied too, on the part of the room teacher, to make the opperation (sic) successful.

From the findings of last year and this year in the way you have dischared (sic) your position responsibilities, it will not be possible for me when the time comes to recommend you to the School Board for a teaching position in 1972-1973 school year. If you have questions concerning this matter please feel free to see me at your convenience.

11. That thereafter and on January 17, 1972, Complainant Knott received a supervisory report dated January 11, 1972 from Respondent Haffeman which was discussed with her on January 18, 1972 and which read as follows:

"OBSERVATIONS:

Students entered the classroom and took seats at the tables. Attendance and the lunch count was taken. Students were then informed that they would be starting on a unit on stain removal next and samples would be given them. Mrs. Knott then started a unit on washing clothes, beginning with general information of machines. The machine in the room was used to show controls and explain agitator types. The dryer and its features were then shown. Following this, general information was presented on washing clothes including detergents, soaps, bluing agents, softening agents, and equipment needed for the entire operation. Students were asked questions during the presentation and they also asked questions. During the latter part of the period, a general review with questions being put out to students and comments by Mrs. Knott was conducted. During the last five minutes students were allowed to talk quietly.

APPRAISALS AND RECOMMENDATION:

The material covered was in a sequential manner.

Students had an opportunity to ask questions and participate in discussion.

The material covered was of a general nature. Perhaps more consumer type of information and technical information relative to the unit may have been beneficial. Perhaps a comparative type of approach relative to machine types and brands of cleaners and a comparative analysis of soap products might have been helpful.

A time for discussion of this report has been set for 3:30 in the Principal's office on Tuesday, January 18, 1972."

12. That on January 17, 1972, Complainant Knott also received a second supervisory report from Haffeman dated "August-January, 1972" which was discussed with him on January 18, 1972 and read as follows:

"OBSERVATIONS OF: Class Related Responsibilities TIME: Daily

This report has been written to call to your attention certain discrepencies (sic) that exist in terms of room management and general cleanliness. This was also called to your attention last spring in the written report to you dated April 26, 1971. The items of particular note to this date are as follows:

1. Towels, sheets, and cloths have been left in the washing machine and dryer. These have been there for a period of time. Some items were damp and had smelled rather stale and musty.
2. During Christmas vacation it was noted that the refrigerator had an oder (sic) to it when the door was opened. Upon further investigation a section of a quarter pound of butter was noted uncovered and onions in the vegetable tray were sprouted with some decomposed. It seems that the general cleanliness of the regrigerator (sic) is something that should have been taken care of before vacation period began.
3. The ovens were in need of cleaning with food baked on. Again this should have been cared for prior to vacation.
4. The teachers desk and cabinet behind the desk was quite cluttered.
5. Some dishes had been left out.

Again, January 10, 1972, on an inspection of several areas of the building with the superintendent, the following was noted:

1. Ovens had not yet been cleaned.
2. The tops of the burners were in need of cleaning.
3. Dishes had been left in the sink.
4. Empty bags had been left on top of the counter.
5. Some areas under the sinks were in need of cleaning.
6. A portion of one quarter of a pound of butter was left in an uncovered dish and a one pound package was left with the wrapper peeled back.
7. The desk top and counter was quite cluttered.
8. Measuring cups with water in them were found on the floor and on top of a sewing machine. Irons were on the floor and the ironing boards were left out.
9. Money in the amount of $52.55 was found in a metal container in the lower right hand desk drawer. On one occasion prior to this date, during a day of illness, it was necessary to look in these desk drawers for material for the substitute teacher, and money was noted in the desk drawer. This was called to your attention and it has also been mentioned at faculty meetings that money should not be left in desk drawers. This is also contrary to school board policy number 3550 which clearly spells this out. Monies should be turned into the office to be kept in the safe overnight or to be deposited by the office secretary. Until the recent change in board policy, the safe was not to contain any more than $10.00 and has now been increased to a maximum of $75.00. Management of money and getting it to the proper place is your responsibility.

As indicated in the April 26, 1971 report, part of teaching young people is the setting of an example; this is especially true in the home economics area. How else will students learn the correct methods and techniques. It was also indicated that part of the learning that takes place is directing students to perform clean up work etc.; however, the teacher, serving as the professional, must set the tone if this is to be accomplished.

During the summer months room improvements in terms of lighting, some painting, and relocation of furniture was done to improve the appearance of the room. An area has been established as a dressing area. Drappery material needed to be hung to provide privacy. To this date there is no evidence that this is being done. The initiative to enhance the room and to make it more conducive to the subject is again a responsibility of the teacher involved.

Relative to lesson plans, it is found that they appear to be rather hastely done and not very complete. It is rather dificult to tell what is being taught at times. Lesson planning and curriculum development is necessary if programs are going to benefit the student. Two preparation periods have been allowed during this semester to give additional time for planning and upgrading the program. It is questionable if this time has been used wisely. In this day of accountability, it is the teacher's responsibility to promote and upgrade their program and to continually evaluate it.

From the observations noted thus far and based upon the working agreement between the Waterloo Education Association and the School Board of Waterloo Joint School District No. 1, paragraph 4 under teacher evaluation, non-renewal and dismissal, it becomes my responsibility to inform you that a recommendation for non-renewal of the next year's contract is being considered.

This report may be discussed in the principal's office on Tuesday January 18, 1972 at 3:30."

13. That on January 18, 1972, Complainant Knott filed a grievance (grievance No. 1) alleging Respondent Breitkreutz's letter dated January 12, 1972 constituted a violation of paragraph 3 of the collective bargaining agreement set out above; that Complainant Knott along with several representatives of the Respondent Association discussed said grievance with Breitkreutz on January 28, 1972 and that during the course of the discussion of said grievance Breitkreutz showed Knott a copy of his letter of January 18, 1972 and asked her if she would be willing to sign it acknowledging that she had received same and that although there is a dispute as to whether Knott indicated that she would, she did not sign said letter during the course of the discussion.

14. That on January 31, 1972, Knott filed a second grievance (grievance No. 2) alleging that Respondent Breitkreutz had violated paragraph 4 of the collective bargaining agreement set out above by failing to hold a conference with her regarding the contents of his letter within two weeks; that on the same day Complainant Knott filed a third grievance (grievance No. 3) alleging that Respondent Haffeman had violated paragraphs 1 and 3 of the collective bargaining agreement set out above by failing to discuss the matter contained in his reports dated January 11, 1972 and August-January, 1972 in a timely and constructive manner; that on the same day Breitkreutz notified Complainant Knott by letter that he considered her failure to meet with him for the purpose of discussing the contents of his January

12, 1972 letter within two weeks after receipt of that letter and her alleged refusal to sign that letter constituted a violation of paragraph 4 of the collective bargaining agreement set out above, and indicating his intent to attach the letter to his letter of January 12, 1972 and file it for "reference purposes".

15. That sometime on or after January 31, 1972 and before February 7, 1972 Complainant Knott and representatives of the Complainant Association discussed grievances nos. 2 and 3 with Breitkreutz; that because the Complainants were dissatisfied with the results of that discussion, arrangements were made to present and discuss grievances nos. 1, 2 and 3 with the Respondent Board on February 7, 1972; that said grievances were presented to the Board on February 7, 1971, but that the Respondent Board postponed the discussion of said grievances until February 14, 1972 in order that it might prepare for the discussion; that on February 14, 1972 the Respondent Board discussed grievances nos. 1, 2 and 3 with Complainant Knott and representatives of the Complainant Association and admitted that there might have been some "technical violations" of the collective bargaining agreement but insisted that Complainant Knott was an unsatisfactory teacher; that during the course of the discussion, it was disclosed that certain members of the Respondent Board were aware of verbal complaints regarding the home economics program which had never been brought to Knott's attention; that the Respondent Board has not provided a formal written response denying grievances nos. 1, 2 and 3, but it has at all times refused to grant the relief requested.

16. That on February 29, 1972, Respondent Breitkreutz notified Complainant Knott by letter that the Respondent Board was considering the non-renewal of her teaching contract for the 1972-73 school year which letter read in pertinent part as follows:

> 'The Waterloo School Board at the February 28, 1972 monthly meeting reviewed your case by evaluating your past work as a home economics teacher. From the examined reports and the testimony provided during the two scheduled hearings requested by you there was positive evidence that you have unsatisfactorily discharged your classroom and teaching responsibilities. Also, there was evidence presented clearly indicating that you have violated school board policy.
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> Because of the above findings the Waterloo School Board voted to consider non-renewal of your teaching contract for the 1972-1973 school year. The final decision by the Board will be made at a later date. You may, if you wish, request another hearing. The Board will be glad to grant this request relative to Wisconsin Statute 118.22 and the Working Conditions Agreement with the Waterloo Education Association.
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> . . .
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> Enclosures: Reports of January 11, 1972; December 17, 1970; April 2, 1971; April 26, 1971; January 12, 1972; January 31, 1972, carry deficiencies relative to to examined reports cited in first paragraph of this letter."

17. That on March 2, 1972, Complainant Knott submitted a written request that she be provided with a "private conference" with the Board of Education in accordance with the provisions of Section 118.22 of the Wisconsin Statutes; that on Friday March 10, 1972, Respondent Breitkreutz advised Complainant Knott that her requested "hearing" with the Board had been set for Monday, March 13, at 8:45 P.M.; that on Monday, March 13, 1972, Knott appeared before the Respondent Board with her attorney and representatives of the Complainant Association, that immediately prior to the meeting Respondent Breitkreutz advised Complainant Knott that, in his opinion, the right to "Counsel" referred to in paragraph 7 of the collective bargaining agreement did not include representation by an attorney but even so Complainant Knott was allowed to appear with her attorney before the Board; that at the outset of the hearing, Raymond Anderson, President of the Respondent Board stated that the Board was reluctant to proceed since it was not represented by counsel; that Complainant Knott's attorney advised the Respondent Board that it was the Complainant's position that the Respondent Board had lost the lawful authority to non-renew Complainant Knott's teaching contract for the 1972-73 school year for a number of reasons which he enumerated; that no witnesses testified and no evidence was adduced by either side at said hearing which lasted less than 1/2 hour; that on Tuesday, March 14, 1972, Respondent Breitkreutz advised Knott by letter that the Respondent Board had voted not to renew her teaching contract for the 1972-73 school year which letter read in pertinent part as follows:

> "The School Board of the Waterloo Community Schools at its monthly meeting, March 13, 1972, reviewed the documented material covered at your hearings. After considering all the facts, the Board, in full attendance, voted unanimously not to offer you a teaching contract for the 1972 - 1973 school year.
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> Should you have any questions regarding this action, please feel free to come to the administrative office for a conference.

Based on the above and foregoing Findings of Fact, the Examiner enters the following

CONCLUSIONS OF LAW

1. That the provisions contained in paragraphs 1 through 9 of the collective bargaining agreement are not in conflict with or prohibited by the provisions of Section 118.22 of the Wisconsin Statutes and are valid and enforceable before the Wisconsin Employment Relations Commission pursuant to its powers to enforce the provisions of collective bargaining agreements voluntarily entered into between labor organizations and municipal employers pursuant to the provisions of the Municipal Employment Relations Act.

2. That the Respondent Board, by utilizing and acting on the supervisory report of its Agent, Respondent Haffeman, which was dated "August-January 1972" and was based primarily on evaluations of Martha Knott's performance which were made more than two weeks prior to the conference which was held thereon, has violated the provisions of paragraph 4 of the collective bargaining agreement and committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the

Wisconsin Statutes; that the Respondent Board, by utilizing and acting on the supervisory report of its Agent, Respondent Breitkreutz, which was contained in his letter dated January 12, 1972 and was based primarily on evaluations of Martha Knott's performance which were made more than two weeks prior to any conference which could have possibly been scheduled thereon, has violated the provisions of paragraph 4 of the collective bargaining agreement and committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes; that the Respondent Board, by utilizing and acting on the evaluations of its agent, Respondent Breitkreutz, which were based in part on complaints received from persons using the home economics room, which complaints were not brought to Martha Knott's attention as required by the provisions of paragraph 3 of the collective bargaining agreement, has violated the provisions of said paragraph and committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes; that the Respondent Board, by failing to properly notify Martha Knott that the reasons for the proposed non-renewal of her teaching contract included verbal complaints received by individual board members regarding the home economics program and comments contained in a North Central Association evaluation of the home economics program, and by failing to specify same violated the provisions of paragraphs 3 and 5 of the collective bargaining agreement and committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes; that the Respondent Board, by notifying Martha Knott on March 10, 1972, that the hearing on the proposed non-renewal of her individual teaching contract was scheduled for the evening of March 13, 1973, pursuant to her request of March 2, 1973, has violated the provisions of paragraph 6 of the collective bargaining agreement and committed a prohibited practice within the meaning of Section 111.70(3)(a)(5) of the Wisconsin Statutes; that the Respondent Board, by its failure to conduct a hearing as contemplated by paragraph 6 of the collective bargaining agreement before acting on the proposed non-renewal of Martha Knott's individual teaching contract, has violated the provisions of the collective bargaining agreement and committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Statutes.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner enters the following

ORDERS

That the Board of Education of Waterloo Joint School District No. 1, its officers and agents shall immediately take the following action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

1. Expunge from the employment record of Martha Knott the supervisory report of Respondent Haffeman dated "August-January 1972", the letter written by Respondent Breitkreutz dated January 12, 1972, and any and all written references to those documents or to actions taken by it on the basis of matters contained in those documents including Breitkreutz's letter indicating its decision not to renew Martha Knott's individual teaching contract for the 1972-73 school year.

2. Offer Martha Knott full and complete reinstatement to her former position as a home economics teacher for the 1973-74 school year at a salary equal to that which she would have been entitled had she taught during the 1972-73 school year; restore to Martha Knott all rights and benefits lost by her due to its failure to renew her

individual teaching contract for the 1972-73 school year; and make Martha Knott whole by paying her an amount of money equal to that which she would have earned if she had been offered a position teaching home economics during the 1971-72 school year less any amount of money she earned or received that she otherwise would not have earned or received if she had been offered a position teaching home economics for the 1972-73 school year.

Dated at Madison, Wisconsin, this 8th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

The Complainants contend that the Respondents have violated the collective bargaining agreement in a number of respects with regard to the evaluation procedure and the procedure followed in non-renewing the teaching contract of Martha Knott for the 1972-73 school year. In addition, the Complainants contend that the decision itself was not based on "good cause" within the meaning of paragraph 1 of the collective bargaining agreement. The Respondents contend that under Sec. 118.22 of the Wisconsin Statutes 1/ it has the power to refuse to renew the individual teaching contract of a teacher regardless of the provisions of the collective bargaining agreement. With regard to the alleged violations of the agreement, the Respondents contend

1/ "118.22 Renewal of teacher contracts. (1) In this section:

(a) 'Teacher' means any person who holds a teacher's certificate or license issued by the state superintendent or a classification status under the board of vocational, technical and adult education and whose legal employment requires such certificate, license or classification status, but does not include part-time teachers or teachers employed by any board of school directors in a city of the 1st class.

(b) 'Board' means a school board, vocational, technical and adult education district board, board of control of a cooperative educational service agency or county handicapped children's education board, but does not include any board of school directors in a city of the 1st class.

(2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employe at the direction of the board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such notice is given on or before March 15, the 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 March 15, 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 board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew his contract."

that any violations of the procedural requirements of the agreement were either inadvertent or necessitated by statutory requirements and that all such violations were of a "technical" nature and do not require reinstatement as a remedy. In addition, the Respondents argue that the "good cause" provisions of paragraph 1 were not intended to apply to cases involving the non-renewal of a teacher's individual contract pursuant to Sec. 118.22 of the Wisconsin Statutes but were only intended to apply to cases where a teacher is terminated during the term of an individual teaching contract already entered into pursuant to that statute. In the alternative, the Respondents contend that there was in fact "good cause" for the non-renewal of Knott even if the provisions of paragraph 1 are found to apply to her situation.

The Respondents' contention that none of the provisions in question are valid or enforceable to the extent that they limit the power of the Board under Sec. 118.22 raises a threshold issue that ought to be answered before any of the provisions are interpreted or applied.

Effect of Sec. 118.22

In their brief, which was filed on May 14, 1973, the Respondents relied on the decision of the Wisconsin Supreme Court in the case of Richards vs. Board of Education, Jt. School Dist. No. 1, City of Sheboygan 2/ to support their contention that the provisions of Sec. 118.22 empower the Respondent Board to non-renew Knott's teaching contract without regard to the provisions of the collective bargaining agreement. After the briefing period agreed to had expired, the Supreme Court issued a per curium order denying a motion for re-hearing in the Richards case which withdrew certain language contained in the Richards case as originally published and substituted certain other language therefor. 3/ The language withdrawn was the language which was relied upon by the Respondents in their brief. Consequently, the Examiner extended to both parties the opportunity to file written statements with regard to their position on the applicability of the Richards decision to the facts in this case.

In the Examiner's view, the Richards case, as modified, does not stand for the proposition that provisions contained in collective bargaining agreements negotiated pursuant to the Municipal Employment Relations Act which place limitations on the power of a school board to non-renew the teaching contract of a teacher are somehow not binding on the school board in question. In its Order denying a rehearing, the Supreme Court recognized that "a grievance procedure established by a collective bargaining agreement and relating to dismissals falls within the embrace of 'wages, hours and conditions of employment', and the conditions of such agreement are binding on the parties". 4/ The Supreme Court cited as authority for this proposition the case of Local 1226 v. Rhinelander, 5/ and reaffirmed the rule in that case which had been drawn into question by the language which appeared in the original Richards decision. Because the collective bargaining

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2/ 58 Wis. 2nd 444 (1973).

3/ **Richards v. Board of Education, Jt. School Dist. No. 1, City of Sheboygan**, 59 Wis. 2d ___ (1973).

4/ Ibid.

5/ 35 Wis. 2d 209 (1967).

agreement in the Richards case in the Court's view, only covered a "removal from employment", it was not necessary for the Court to reach the question of whether the failure to renew a co-curricular assignment could be made subject to the grievance procedure under the terms of a collective bargaining agreement.

The provisions of the collective bargaining agreement in this case which are relied upon by the Complainants are of two types, procedural and substantive. The procedural requirements of the collective bargaining agreement deal with the manner in which evaluations of a teacher's performance will be made and the procedures to be followed in the event of a proposed non-renewal. The substantive provision of the collective bargaining agreement is contained in paragraph 1 which provides that in order to "dismiss, remove or discharge" a teacher, the Board must have "good cause" as set out in that paragraph.

The procedural provisions were drafted in a way that recognizes the power of the Board to non-renew a teacher pursuant to Sec. 118.22 of the Wisconsin Statutes but at the same time provides certain protections with regard to the fairness of the evaluation and non-renewal process leading up to the exercise of that power. In essence these requirements set out an obligation on the part of the Respondents to provide a teacher with advance warning of alleged deficiencies thereby giving the teacher an opportunity to rebut or correct any alleged deficiencies and establishing the teacher's right to treat the conference guaranteed by Sec. 118.22(3) as a formal hearing at which the teacher may be represented by counsel and produce and confront evidence. With regard to these procedural requirements, it is difficult for the Examiner to see how such requirements could be considered in conflict with Sec. 118.22 of the Wisconsin Statutes, since the provisions are drafted in a way that is consistent with but in addition to the minimum requirements established therein.

The procedure under which evaluations are made to recommend the non-renewal of a teacher has an obvious impact on the status of the teacher in question and would appear to come within the phrase "wages, hours and conditions of employment" as that phrase is utilized in Sec. 111.70(1)(d) of the Wisconsin Statutes. 5A/ Similarly, the procedure followed in hearings to consider the appropriateness of the decision to terminate employment by non-renewal have understandably been the source of serious labor disputes in the teaching profession because of the impact such procedures have on job security in light of the practice of issuing annual contracts in that profession.

The substantive requirement of the contract which allegedly requires that the Board have "good cause" in order to non-renew a teacher is akin to the "just cause" provision found in the labor agreement in the Rhinelander case and likewise represents an effort to obtain job security in the face of the unrestricted power on a municipal employer's part to terminate employment for reasons other than those prohibited by law. To the extent that the parties may have intended that provision to apply to non-renewals, it would appear to be equally valid.

5A/ The Commission has not yet had occasion to rule on the question of whether provisions of the type herein issued are "mandatory" subjects of bargaining. However, unless these provisions are found to be contrary to law, they would appear to be enforceable as "permissive" subjects even if it is found that there was no duty to bargain on such subjects. In fact, the agreement herein appears to have been entered into before Sec. 111.70 was amended to impose a duty to bargain on Municipal Employers and all legal subjects were in effect, "permissive" subjects.

The Respondents attempt to distinguish between those provisions of a collective bargaining agreement which tend to restrict a municipal employer's power to terminate employment by discharge and those provisions which tend to limit a school board's right to terminate employment by refusing to offer an employe a new individual employment contract when his old contract has expired. Certainly, the former provisions would be valid under the Rhinelander case even though municipal employers have unlimited power to terminate employment for any reasons not prohibited by law in the absence of such provisions. Although the Examiner recognizes that part of the legislative purpose in establishing the requirement for annual teacher contracts is to give school boards the right to make an annual review of teaching performance, there would appear to be no reason why a school district could not negotiate provisions pursuant to the MERA (Municipal Employment Relations Act) providing procedural and substantive safeguards against the arbitrary exercise of that power so long as those provisions are not in conflict with the provisions contained in Sec. 118.22 of the Wisconsin Statutes. Certainly a contractual provision which in effect abolished individual teaching contracts or set up a procedure which was incompatible with the procedures set out in Sec. 118.22 would not be valid. However, it is hard for the Examiner to understand how provisions, which were designed merely to provide such safeguards while at the same time recognizing the Board's authority to make annual reviews and determinations regarding renewal in accordance with its powers under the statute, are somehow less valid than the provisions found enforceable in the Rhinelander case.

The Respondents point out that the power of a school board to refuse to issue an annual contract for reasons that it deems sufficient is a specifically enumerated power and argues a fortiore that the legislative intent must have been that that power be unaffected by the provisions of a collective bargaining agreement voluntarily entered into by the Board. While it is true that the Legislature has determined that teachers shall be employed individually on an annual basis, the Legislature likewise determined, in subsequent legislation, that school boards are under a duty to bargain with teachers collectively over "wages, hours and conditions of employment". If the Respondents are correct in their argument, how many other areas of legitimate employe concern would be totally excluded from the collective bargaining process and left to the legislative process merely because of a statutory enumeration of powers? The result would seem to be in conflict with the legislative intent reflected in the Municipal Employment Relations Act that municipal employes, like their private counterparts, should be given the right to bargain collectively. If that duty is read to wholly exclude subject areas where there is a statutory enumeration of a power rather than a general grant of power, absurd results would be obtained. 6/

Therefore, on the assumption that the provisions in question are valid, they should be given the effect that the parties intended them to have when they were agreed to. It is appropriate to consider the alleged procedural violations first.

6/ E.g. see Section 120.49(3)(c) which gives city school districts the power to "fix the compensation and prescribe the duties of all persons employed or appointed by the school board."

Alleged Procedural Violations

The Examiner is satisfied that the Respondents violated a number of the provisions of the collective bargaining agreement, in the evaluation process that lead up to the proposal to non-renew the teaching contract of Martha Knott and the procedure followed in making the final determination to non-renew her contract, and that most of those violations were avoidable, and were of a substantial rather than a "technical" nature.

In the Spring of the 1970-71 school year, the parties agreed to include certain procedural requirements in the collective bargaining agreement to be followed in evaluating a teacher's performance and in making the final decision to renew or non-renew a teacher's contract. Apparently, the only procedure that existed prior to that time, other than the statutory procedure set out in Sec. 118.22, was found in the provisions of Board policy. Although the record is not entirely clear on the full extent of prior Board policy in this area, it appears that annual, written teacher evaluations were normally prepared by the administration based on a classroom visit, and those evaluations were discussed with the teacher by the evaluator who would ask the teacher to sign the evaluation to acknowledge that the teacher had seen the evaluation and had an opportunity to discuss its contents.

The new contractual procedures required in paragraph 2 that the principal or supervisor render at least one evaluation based on a supervisory visit occurring before the end of the first semester (in the case of returning teachers), and it recognized that the principal or supervisor could make additional supervisory visits as deemed necessary. According to paragraph 4, evaluations are to be put in writing and discussed with the teacher within two calendar weeks, after the evaluation. That paragraph also requires that the teacher be given a copy of the report at least one day before the discussion.

It appears that only the supervisory report submitted by Haffeman on January 17, 1973 complied with the requirements of paragraph 4. That report was submitted in writing within two calendar weeks after the visit, and Knott was given a copy of the report one day before the date set for the discussion. So much of Haffeman's supervisory report dated "August-January 1972" which referred to alleged deficiencies which were observed more than two weeks before January 17, 1973, did not comply with the requirements of paragraph 4. Similarly, so much of Breitkreutz's supervisory report on Knott's performance contained in his letter of January 12, 1972, which refers to alleged deficiencies which were observed more than two weeks before January 12, 1973 did not comply with the requirements of paragraph 4.

The requirement that evaluations be put in writing and discussed with the teacher within two weeks is no mere "technicality" as alleged by the Respondents. 7/ This requirement is obviously designed to

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7/ If it were not for the staleness of its content, the mere failure of Breitkreutz to insure that a conference had been held before using his letter would have been more in the nature of a "technical" violation in view of the fact that Knott admits that she purposely avoided asking for a conference so as to entrap Breitkreutz in another violation. The Examiner does not view the procedural requirements of the contract as "hurdles to be crossed" by the Respondents or "technicalities" to be raised by the Complainants. To the extent that it could be shown that no prejudice resulted from a violation of the letter of the procedure, that fact should be reflected in the remedy. Here the prejudicial aspect of the violation is that Breitkreutz's letter contained stale and unanticipated allegations and the Respondent Board relied on those allegations to Knott's detriment.

insure that the teachers' version of the story is heard while the facts are still fresh and to give the teacher an opportunity to correct any actual deficiencies found. Here, Breitkreutz and Haffeman admitted that the alleged deficiencies were purposely not brought to Knott's attention because of their view of the responsibilities of a member of the teaching profession. 8/

It also appears that certain verbal complaints had been brought to the attention of Breitkreutz by persons using the home economics room in the evening hours; that none of these complaints were ever put in writing as required by School Board policy; 9/ and most of them were not called to Knott's attention as contemplated by paragraph 3. 10/ Those complaints were relied upon by Breitkreutz in his report of January 12, 1972.

8/ See Breitkreutz's letter of January 12, 1972 and transcript at pp. 190-191 and 265-266. Without contesting the validity of this opinion regarding the responsibilities of a member of the teaching profession, it is clear that the contract requires a procedure inconsistent with that view.

9/ "COMPLAINTS CONCERNING SCHOOL PERSONNEL

Normal procedure for registering complaints shall be through the administrative staff before going to the School Board. At the local school level complaints should be made first to the teacher, then to the principal, and finally to the Superintendent.

Complaints of a general district nature should be made to the Superintendent's office. If after discussing the complaint at the district level, the person, or persons, making the complaint still do not have satisfaction, he, or they, should then present the complaint to the School Board.

No person shall present orally or discuss at any meeting of the School Board complaints against individual employees of the Waterloo School District until after such charges or complaints shall have been presented to the School Board in writing and signed by the person making the charge or complaint. The School Board shall then have a reasonable opportunity to investigate the same and call for discussion.

No charges against an employee of the school will be investigated by the Board unless such charges be in writing and presented to the Board."

10/ E.g. there was some discussion about the complaint received regarding the shortage of towels during the night classes.

While the Examiner is unwilling to accept the Complainant's claim that the parties agreed to but failed to put in writing a requirement that under paragraph 3 complaints must be brought to the teachers' attention within one week of the occurrence or be forgotten, it is clear the purpose of the provision in question is subverted and its terms are violated where complaints are purposely not brought to the teachers' attention until several months after the fact and after the supervisory decision has already been made to recommend non-renewal of the teacher involved. 11/ First of all the "chance to respond and/or rebut such complaints" was effectively lost because of the passage of time and, more importantly, Knott was deprived of the valuable opportunity to attempt to correct the deficiencies noted before it was too late. The unrebutted evidence of record indicates that after Knott received the reports in question, she made an effort to correct the alleged deficiencies.

One can only speculate as to whether Knott would have sufficiently corrected those aspects of her performance which were upsetting to the administration and the Board if the provisions of paragraphs 2, 3 and 4 had been properly followed. However, there is no question that the failure to do so deprived her of the valuable opportunity to do so. The Respondents point out that Knott had been advised on April 26, 1971 that the Respondents were dissatisfied with the appearance of her room and rely on this report as constituting sufficient warning. The Respondents' reliance on that report is missplaced for two reasons. First of all, the unrebutted evidence of record is to the effect that Knott was advised that if she did not hear anything further, she could assume that the problems had been corrected. Secondly, Knott was justified in relying on the newly established evaluation and complaint procedures which she helped negotiate.

In addition to the above described violations, which effectively deprived Knott of the opportunity to attempt to correct the alleged deficiencies of her performance, the Respondents violated certain other provisions of the agreement dealing with her right to a hearing before the Board. The Respondents defend most of these violations as being the result of its effort to comply with the provisions of Sec. 118.22 of the Wisconsin Statutes. This argument is without merit because it is clear that the Respondents could have complied with the requirements of the contract without violating the provisions of that statute.

The Respondent Board did not notify Knott until February 29, 1972 that she was being considered for "non-renewal". Although Knott was not literally given an "outline of the specific reasons" the Examiner is satisfied that she was adequately apprised of those adverse comments which were contained in some of the attached evaluations. However, to the extent that the Respondent Board also considered certain other matters, (i.e., complaints which had been made directly to School Board members and comments contained in the North Central Association evaluation of the home economics program) which were not mentioned at all in the attached exhibits, it violated the provisions of paragraph 5. The impact of this violation is not mitigated by the fact that the existance of verbal complaints was mentioned during the meeting with the Board on February 14, 1972, since Knott was never advised of the specifics of the complaints.

11/ Altnough Breitkreutz stated in his letter of January 12, 1972 that "it will not be possible for me when the time comes to recommend you to the School Board for a teaching position in the 1972-1973 school year" the Examiner is unable to grasp any real distinction between this negative statement and a positive recommendation of non-renewal.

By its terms, Sec. 118.22 does not give a teacher a right to a formal hearing at which she may be represented by counsel and call witnesses to testify on her own behalf. The statute merely establishes a teacher's right to a "private conference" with the Board. The Commission has previously held that any teacher requesting a private conference with the School Board pursuant to the teacher's right under Sec. 118.22 may simultaneously exercise her right to be represented at such conference by a representative of her own choosing pursuant to the teacher's rights set out in Sec. 111.70(2) and Sec. 111.70(4)(d)1 of the Municipal Employment Relations Act. 12/ Paragraphs 5 through 9 of the collective bargaining agreement herein set out certain additional rights which were apparently intended to be exercised simultaneously with the rights guaranteed by Secs. 118.22, 111.70(2) and 111.70(4)(d)1 of the Wisconsin Statutes. For example, paragraph 6 provides that the teacher has a right to call witnesses and give testimony. In addition paragraph 6 provides that the hearing shall be held not less than twenty days nor more than thirty days after the request is made.

In this instance, the hearing was set for a date eleven days after the request. 13/ Notification of the time and place for the hearing was not given until March 10, which was the Friday before the School Board's Monday night meeting. The fact that Knott was able to retain Counsel in the intervening three days and appeared at the hearing with Counsel does not, of itself, constitute a waiver of her right to insist on that amount of time for preparation provided in paragraph 6. In fact one of the several arguments advanced by the Complainant's counsel at the hearing was that the violation of the time limits set out in paragraph 6 deprived the Complainants of an adequate time to prepare their case. Even accepting the Respondent's argument that Knott could have retained Counsel and begun to prepare her case as early as February 29, 1972 when she was first advised of the Board's proposal to non-renew her contract, she was deprived of the full amount of time to prepare her case which was guaranteed to her by paragraph 6 of the agreement.

It will not do to argue, as the Respondents do, that it had to schedule the hearing on short notice in order to make its final decision

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12/ Whitehall School District (10268-A, 10268-B) 10/71; Crandon Jt. School District No. 1 (10271-A, 10271-C) 10/71.

13/ The Respondents point out that Knott's request, which she drafted herself, only makes reference to a private conference under Sec. 118.22 even though the Board's letter makes reference to her rights under the "Working Conditions Agreement" and Sec. 118.22. However, the contractual right and statutory rights were, by agreement, intended to be exercised simultaneously and in the context of the Board's letter, Knott's request was sufficient to put the Board on notice that she intended to exercise her rights under the agreement as well. There must have been no misunderstanding on the Board's part since they did not ask for a clarification of her intention and advised her that her "hearing" was set for March 13, 1972.

on the question of non-renewal before March 15, 1972 as required by Sec. 118.22 of the Wisconsin Statutes. The Board was aware or should have been aware of its obligations under the agreement and could have given notice of its intent to non-renew more than twenty-five days prior to March 15, 1972, thereby leaving sufficient time for Knott to request a hearing as late as the fifth day after receipt of the notice and still have time to schedule a hearing not less than twenty days later.

While the violation of the time period set out in paragraph 6 is of a more "technical" nature than those discussed above, that violation was compounded by the failure of the Board to conduct a hearing as contemplated by the agreement. From the description, given by those who participated in the "hearing", it appears that the Board, which expressed its concern at the outset that Knott was represented by an attorney while it was not, became understandably upset when Knott's attorney advised them that they "could not act" on the proposed non-renewal because of certain alleged violations of the Constitution and the agreement. One Board member asked if it was necessary to listen to "all of this" and suggested that it should all be submitted in writing. No effort was made by the Board to determine if the Complainants would agree to adjourn the hearing until such time as the Board could secure the presence of its attorney or otherwise prepare itself to conduct the hearing.

While the Board's reaction to the presentation of Knott's attorney is understandable under the circumstances, it is not excusable under the requirements of the collective bargaining agreement. Paragraphs 6 and 7 contemplate a hearing on proper notice at which counsel may be present and witnesses called. What transpired, because of the Board's failure to give proper notice and arrange for the presence of counsel or otherwise make preparations to conduct a hearing amounted to little more than a "special appearance" by Knott for the purpose of objecting to any further proceeding on the proposal to non-renew. No evidence was adduced and no witnesses were called or cross-examined by either side and no arguments were put forth on behalf of the Board. Knott did not receive a hearing of the type contemplated by paragraphs 6 and 7 for reasons that are attributable to the Respondent's failure to follow the agreed-to procedure.

Alleged Lack of Good Cause

While it is true that the record discloses a number of deficiencies in Knott's performance of certain duties related to her teaching of home economics which were referred in the several written evaluations of her work and that evidence was not totally rebutted in the record made herein, the Examiner does not deem it necessary or appropriate to reach the question of whether those deficiencies were sufficient to constitute "good cause" within the meaning of paragraph 1. 14/

14/ Consequently, it is also unnecessary to decide the issue raised by the Respondents of whether paragraph 1 was intended to apply to non-renewals as well as dismissals. Although one might expect that such a distinction, if intended, would be clearly set out in the collective bargaining agreement, the language employed in this agreement is ambiguous. The use of the expression "non-renewal" in paragraph 5 and 6 would support the Respondent's position if it were not for the use of the word "dismiss" found in paragraph 9. No bargaining history was introduced to attempt to clarify the question.

The various procedural violations of the agreement were of such a prejudicial nature that the appropriate remedy would be reinstatement even if it were found that the Board would have had "good cause" absent those violations. The only possible way to attempt to remedy those violations at this point in time is to require that the Respondents reinstate Martha Knott and give her an opportunity, under the established evaluation procedure, to attempt to perform her teaching and related duties in a manner that is acceptable to the Respondents.

Dated at Madison, Wisconsin, this 8th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner