STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SLINGER EDUCATION ASSOCIATION and JEAN KRAUSMAN, Complainants, vs. SLINGER COMMUNITY SCHOOL DISTRICT and BOARD OF EDUCATION OF SLINGER COMMUNITY SCHOOL DISTRICT, Respondent.	Case II No. 15873 MP-151 Decision No. 11167-B

Appearances:
Lawton & Cates, Attorneys at Law, by Mr. Bruce F. Ehlke, for the Complainant.
Nehmer, Hathaway & Zauner, Attorneys at Law, by Mr. Charles H. Hathaway, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Slinger Education Association and Jean Krausman having, on July 19, 1972, filed a complaint with the Wisconsin Employment Relations Commission wherein they alleged that Slinger Community School District and Board of Education of Slinger Community School District had committed prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and the Commission having appointed Marvin L. Schurke, a member of its staff, to act as Examiner and to issue Findings of Fact, Conclusions of Law and Order in the matter, pursuant to Section 111.07(5), Wisconsin Statutes; and Slinger Community School District and Board of Education of Slinger Community School District having, on August 16, 1972, filed an Answer, Affirmative Defense and Counterclaim to said complaint; and the Commission having docketed said counterclaim as a separate matter 1/, and having consolidated the matters for hearing before the same Examiner 2/; and consolidated hearing having been held at West Bend, Wisconsin on August 29, 1972, September 13, 1972, September 20, 1972 and September 21, 1972, before the Examiner; and the Examiner having considered the evidence and arguments, and being satisfied that the matters are unrelated and properly the subjects for separate decisions, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Slinger Education Association, hereinafter referred to as Complainant Association, is a labor organization having its principal offices at c/o Thomas Henning, 1916 Woodlawn Avenue, West Bend, Wisconsin.

1/ Case IV, No. 15969, MP-161

2/ Decision No. 11167-A

2. That Jean Krausman, hereinafter referred to as Complainant Krausman, is an individual residing at 409 South Jefferson Street, Verona, Wisconsin; and that at all times pertinent hereto Complainant Krausman was a teacher in the Slinger Community School system.

3. That Slinger Community School District and Board of Education of the Slinger Community School District, hereinafter referred to as the Respondent, is a municipal employer with offices at Slinger, Wisconsin; that Roy Gundrum is President of said Board of Education; that Stanley Sprehn is employed by the Respondent as its Superintendent of Schools; and that Patricia Hoffman is employed by the Respondent as Principal of Slinger Middle School.

4. That the Respondent has recognized Complainant Association as the exclusive collective bargaining representative of all teachers except specialists (those for whom a special license is required) employed by the Respondent; and that the Respondent and Complainant Association were parties to a collective bargaining agreement for the period July 1, 1971 through June 30, 1972 which contained the following provisions pertinent hereto:

"ARTICLE III
GRIEVANCE PROCEDURE

A. Definitions

1. A 'Grievance' is a claim based upon an event or condition which affects the wages, hours and conditions of employment of a teacher or group of teachers and/or the interpretation, meaning or application of any of the provisions of this Agreement.

2. An 'Aggrieved Person' is the person or persons making the claim.

3. A 'Party in Interest' is the aggrieved person and any person who might be required to take action or against whom action might be taken in order to resolve the claim.

4. The term 'days' when used in this article, shall, except where otherwise indicated, mean working school days; thus, weekend or vacation days are excluded.

B. Purpose

1. The purpose of this procedure is to secure, at the lowest possible administrative level, equitable solutions to the problems which may, from time to time, arise affecting the welfare of working conditions of teachers.

C. General Procedures

1. Since it is important that Grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

. . .

D. Initiation and Processing

1. Level One. The Aggrieved Person will first discuss his Grievance with his principal or immediate supervisor, either directly or through the Association's designated Building Representative, with the objective of resolving the matter informally.

2. Level Two.

(a) If the Aggrieved Person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within ten (10) school days after presentation of the Grievance, he may file the Grievance in writing with the Chairman of the Association's Grievance Committee (hereinafter referred to as the 'Grievance Committee') within five (5) school days after the decision at Level One or fifteen (15) school days after the Grievance was presented, whichever is sooner.

(b) The aggrieved person must submit a clear and concise statement of the alleged grievance including the date upon which the alleged grievance occurred, the circumstance under which the alleged grievance occurred, the issue involved or the specific section (s) of this agreement alleged to have been violated, and the relief sought.

(c) The Grievance Committee will hear the complaint of the aggrieved person and decide by ballot whether or not the grievance is meritorious. If the Grievance Committee decides by a simple majority of those present and voting that the grievance is meritorious, the grievance will be referred to the superintendent of schools within five (5) school days.

(d) If the Grievance Committee decides by a simple majority of those present and voting that the grievance is not meritorious, action will be dropped.

(e) Within ten (10) school days after receipt of the written Grievance by the Superintendent, the Superintendent will meet with the Aggrieved Person and Association representatives in an effort to resolve it.

(f) If the Aggrieved Person does not file a grievance in writing with the Chairman of the Grievance Committee and/or the written Grievance is not forwarded to the Superintendent within twenty (20) school days after the teacher knew or should have known of the act or condition on which the Grievance is based, than the Grievance will be considered as waived.

3. Level Three.

If the Aggrieved Person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after it was brought to the Superintendent's attention, the Grievance Committee may submit the grievance to a panel of three members of the Board and three members of the Association for the purpose of resolving the grievance by means of good faith bargaining.

E. Rights of Teachers to Representation.

1. No reprisals of any kind will be taken by the Board or by any member of the administration against any party in interest, any Building Representative, any member of the Grievance Committee or any other participant in the Grievance procedure by reason of such participation.

2. Any party in interest may be represented by Himself, or, at his option, by a representative selected by the Association. When a teacher is not represented by the Association, the Association's Grievance Committee must be present to state its views at all stages of the Grievance procedure above Level I.

Miscellaneous

1. Decisions rendered at Level Two and Three of the Grievance procedure will be in writing setting forth the decision and the reasons therefore and will be transmitted promptly to all parties in interest and to the Chairman of the Grievance Committee.

2. All documents, communications and records dealing with the processing of a Grievance will be filed separately from the personnel files of the participants.

3. Forms for filing Grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents will be jointly prepared by the Superintendent and the Association.

4. When it is necessary at Level Two or Three for a representative or representatives, designated by the Association to attend a meeting or a hearing called by the Superintendent or the Board's Committee during the school day, the Superintendent's office shall so notify the principal of such Association representatives, and they shall be released without loss of pay for such time as their attendance is required at such meeting or hearing.

. . .

ARTICLE VI
INDIVIDUAL RIGHTS

A. Initial Employment Period

1. The first two years a teacher is contracted to teach in the Slinger Community School District is a probationary period, during which time his work and attitudes will be supervised and evaluated by the school administration and periodic reports will be made by the administration to the Board of Education and to the teacher.

2. Any problems or deficiencies that may arise will be brought to the attention of the teacher so that corrective measures may be taken. Problems of a serious nature will be recorded and reported to the Board of Education by the administration along with any solutions which may be suggested or applied. All possible assistance will be given by supervisory personnel upon request. Teachers are encouraged to request such assistance as they feel they may need it. If after the first or second contract year,

the work or attitude of the probationary teacher does not meet the expected standards of the Board of Education and the School Administration, a contract will not be tended for the ensuing year or the probationary period may be extended for one year without an increase in salary.

B. Continued Employment.

After two (2) years of successful teaching in this system, a teacher may consider his work satisfactory and is expected not only to maintain this level, but to grow in his professional ability and attitude. If at any time after this period, a teacher's work and attitude deteriorate below the expected standards of the Board of Education and the School Administration, a teacher will be given due notice of his deficiencies as they arise, to allow for measures of correction. If at the end of the school year, these deficiencies have not been corrected to the satisfaction of the Board of Education and the Administration, the teacher will be placed on probation for one (1) contract year without an increase in salary. In acute and uncompromising situations, a teacher may be released.

C. Contract renewal.

1. Wisconsin Statutes 118.22 shall be followed in Contract renewal.

D. Teacher Complaints.

1. Any complaints regarding a teacher made to the administration by any parent, student or other person shall be in writing and shall be promptly called to the teacher's attention, subject to the grievance procedure under Article II.

. . ."

5. That, following an interview and a review of credentials conducted during the Spring of 1971, the Respondent offered Complainant Krausman employment as the art teacher at the Slinger Middle School; that Krausman accepted said offer of employment and entered into an employment contract with the Respondent for the 1971 - 1972 school year; that Krausman commenced her employment in the Slinger Community School District in the month of August, 1971; and that, at the outset of her employment, Krausman was provided with copies of a Teacher's Handbook, a Student Handbook, and lesson plans and other materials prepared by the previous occupant of said teaching position.

6. That Complainant Krausman was assigned to teach in the same classroom in the Slinger Middle School building which had previously been assigned to art education; that said classroom was equipped with double sinks and water faucetts, tables having attached benches, a teacher's desk, bulletin boards, storage facilities, and an adjacent supply room; and that the door between said classroom and the hallway of said building was equipped with a window and was so constructed as to have an open space between the bottom of the door and the floor.

7. That Complainant Krausman was assigned to teach the art sections of a 7th and 8th grade allied arts program, wherein students in said grade levels were assigned to and rotated among four subject

areas for sessions of nine weeks each; that Krausman was assigned to teach art in a 9th grade program wherein art was an elective subject for the students; and that Krausman was also assigned to conduct two study halls in the same classroom where art classes were conducted.

8. That Hoffman visited Complainant Krausman's classroom on several occasions during the first week of the 1971 - 1972 school year; that, during the course of such visits, Hoffman observed the existence of problems such as student disrespect for Complainant Krausman and lack of disciplinary control on the part of Krausman; that Hoffman scheduled and held a meeting with Krausman on September 9, 1971; and that, during the course of said meeting, problems existing in Krausman's classroom were discussed.

9. That, following the meeting of September 9, 1971, Hoffman observed the conditions prevailing in Complainant Krausman's classroom and concluded that insufficient improvement had occurred; that Hoffman scheduled and held a meeting with Krausman on September 13, 1971; that, during the course of said meeting, Hoffman introduced Krausman to Rolofson, a school social worker in the employ of the Respondent; and that Hoffman thereupon initiated a series of weekly meetings between Krausman and Rolofson for the purpose of assisting and informing Krausman as to methods for modifying student behavior and development of classroom control.

10. That, in all, Hoffman visited Complainant Krausman's classroom when Krausman and students were present and observed the conditions prevailing in said classroom at such times on at least twelve occasions during the period commencing with the opening of the 1971 - 1972 school year and concluding with the end of the first semester in January, 1972; that Hoffman visited Complainant Krausman's classroom at other times during the same period, whereupon she observed the state of cleanliness of said classroom and displays of student art work prepared and displayed under the direction of Complainant Krausman; and that Hoffman passed in the halls adjacent to Complainant Krausman's classroom at other times during the same period, whereupon she observed art materials being thrown under the door of said classroom and discovered art materials in the hall which properly belong within said classroom.

11. That, in all, Hoffman scheduled and conducted at least nine meetings with Complainant Krausman during the period commencing with the opening of the 1971 - 1972 school year and concluding with the end of the first semester in January, 1972; that, during the course of said meetings, the conditions prevailing in Complainant Krausman's classroom were discussed; that, during the course of said meetings, problems and deficiencies, including students sitting on desks, students not involved in productive work, poor management of art materials, students throwing clay, students throwing materials into the halls, cleanup of the art classroom, student disrespect for Complainant Krausman, student disobedience of Complainant Krausman, students talking with one another, and damage to plumbing in the art classroom, were called to the attention of Complainant Krausman; that Hoffman made suggestions on methods to alleviate said problems and deficiencies; and that Hoffman recorded said meetings and the subjects of discussion therein in her log, and preserved same.

12. That, upon concluding that the situation prevailing in Complainant Krausman's classroom had not improved to the level expected, Hoffman scheduled and held a meeting with Rolofson and Krausman on December 8, 1971; that, during the course of said meeting,

Hoffman directed that the number of meetings between Rolofson and Krausman be increased to two per week; that Complainant Krausman initially objected to such increased meetings and expressed doubt of the necessity for such meetings, but thereafter consented to such meetings; and that, thereafter, Complainant Krausman failed or refused to participate with Rolofson in the method proposed by Rolofson for analysis of student discipline problems and development of responses thereto.

13. That, on January 4, 1972, Hoffman prepared and delivered to Krausman a letter, as follows:

"Mrs. Krausman:

In accordance with the provisions of the Slinger Master Contract, a teacher is to be given due notice of his deficiencies as they arise to allow for measures of correction.

At the present time areas which need improvement are classroom student management and study hall conditions more conducive to fostering good study habits.

I will be happy to meet with you to discuss these problems further if you so desire.

/s/ Patricia S. Hoffman
Patricia S. Hoffman
Middle School Principal"

14. That Superintendent Sprehn and other members of the school administration made monthly reports on personnel problems to the Board of Education, in executive session.

15. That, shortly prior to February 28, 1972, Hoffman made her recommendation to Superintendent Sprehn and to the Board of Education that the teaching contract of Complainant Krausman not be renewed for the 1972 -1973 school year; that such recommendation was based on the results of Hoffman's supervision and evaluation of Krausman's work and attitudes; and that, on the basis of such recommendation, the Respondent notified Complainant Krausman, by letter dated February 28, 1972, that it was considering nonrenewal of Complainant Krausman's teaching contract.

16. That Complainant Krausman requested a private conference pursuant to Section 118.22, Wisconsin Statutes; that a private conference was held on March 8, 1972; that, during the course of said private conference, Counsel for the Respondent made reference to certain documents in his possession; that, at the conclusion of said private conference, Complainant Krausman was offered a public hearing; that Complainant Krausman did not request a public hearing; and that, on March 13, 1972 the Respondent notified Complainant Krausman that the Board of Education had met on the same date and had voted not to renew Complainant Krausman's teaching contract with the Respondent.

17. That no written complaints were lodged with Sprehn or Hoffman concerning Complainant Krausman at any time during the period of Complainant Krausman's employment up to and including March 13, 1972; and that the recommendation of nonrenewal was based on the observations and evaluations made by the school administration.

18. That, on March 17, 1972, Complainant Krausman filed a grievance under the collective bargaining agreement, wherein she alleged that the nonrenewal of her teaching contract violated said collective bargaining agreement, for the reason that the Respondent failed to provide the supervision, evaluation and notice to which a probationary teacher is entitled by said agreement.

19. That, following the filing of the grievance specified in Paragraph 18, hereof, and in response to a request made by Complainant Association, Sprehn waived the processing of said grievance through Level 1 of the grievance procedure specified in the collective bargaining agreement.

20. That, thereafter, a meeting concerning the grievance of Complainant Krausman was held at Level 2 of the grievance procedure; that Sprehn and Hoffman attended said meeting on behalf of the Respondent; that, during the course of said meeting, Hoffman made reference to written materials in her possession; that representatives of Complainant Association made a request to see the written materials concerning Complainant Krausman; and that Sprehn and Hoffman refused to permit representatives of Complainant Association to view any such documents.

21. That, on April 7, 1972, Complainant Association appealed the grievance of Complainant Krausman to Level 3 of the grievance procedure and named a committee to meet with a committee of the Board of Education to attempt to resolve said grievance; that no response was received thereto, and on May 9, 1972 Complainant Association proposed May 17, 1972 as the date for the conduct of a meeting at Level 3 of the grievance procedure; and that, in the same letter, Complainant Association made a request to substitute a representative of the Wisconsin Education Association for one of the Association committee members previously designated.

22. That a Level 3 grievance meeting concerning the grievance of Complainant Krausman was scheduled for May 17, 1972, to commence one half hour preceeding the regular Board of Education meeting scheduled for that date; that, at the outset of said grievance meeting Complainant Association renewed its request that Merlin Helstad, a representative of the Wisconsin Education Association, be permitted to attend and represent Complainant Krausman and Complainant Association; that the Board of Education declined and refused to meet with Helstad present; that the meeting was conducted without Helstad being present; that, during the course of said meeting, members of the committee of the Board of Education made reference to documents concerning Complainant Krausman; that a request for said documents was made by the representatives of Complainant Association; that access to said documents was refused by the members of the committee of the Board of Education; and that said meeting did not result in any settlement of the issues existing between the parties with respect to said grievance.

23. That the documents in the possession of Counsel for the Respondent during the private conference held on March 8, 1972 were some or all of the same documents in the possession of Hoffman during the grievance meeting at Level 2 and were some or all of the same documents in the possession of members of the committee of the Board of Education during the grievance meeting at Level 3 of the grievance procedure; that said documents contained excerpts from Hoffman's log relating to meetings and discussions between Hoffman and Krausman; that said documents included statements concerning incidents in which Krausman was involved, which had been solicited from and written by other members of the staff of the Respondent;

and that said documents were reasonably and directly related to the issues joined in the grievance procedure on the grievance of Complainant Krausman.

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

CONCLUSIONS OF LAW

1. That the grievance filed by Complainant Krausman on March 17, 1972 concerning the nonrenewal of her teaching contract was timely filed within the meaning of the applicable collective bargaining agreement.

2. That the Respondent, acting through its agent, Sprehn, waived proceedings through Level 1 of the grievance procedure contained in the applicable collective bargaining agreement with respect to the grievance of Complainant Krausman; and that the Complainants have exhausted their contractual remedies and have properly invoked the jurisdiction of the Wisconsin Employment Relations Commission pursuant to Section 111.70(3)(a)(5) of the Municipal Employment Relations Act.

3. That the Respondent, Slinger Community School District and Board of Education of Slinger Community School District, by its refusal to permit Complainant Slinger Education Association access to materials in the possession of said Respondent which were reasonably related to and necessary to the performance of the function of Slinger Education Association as the exclusive collective bargaining representative of Complainant Krausman, and by refusing to admit Merlin Helstad to the Level 3 grievance meeting on the grievance of Complainant Krausman after having been advised that Helstad had been selected to represent Krausman in said meeting, have violated the obligation to bargain in good faith imposed by the collective bargaining agreement subsisting between said Respondent and Slinger Education Association, and by such violation of a collective bargaining agreement have committed prohibited practices within the meaning of Section 111.70(3)(a)(5) of the Municipal Employment Relations Act.

4. That the Respondent, Slinger Community School District and Board of Education of Slinger Community School District has met the obligations of supervision, evaluation, notice and assistance which were imposed upon it in the case of Complainant Krausman by the collective bargaining agreement subsisting between said Respondent and Slinger Education Association; that the nonrenewal of the teaching contract of Complainant Krausman did not violate said collective bargaining agreement; and that, in that regard, the Respondents have not committed, and are not committing, prohibited practices within the meaning of the Municipal Employment Relations Act.

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

ORDER

1. That the Respondent, Slinger Community School District and Board of Education of Slinger Community School District, cease and desist from violating the collective bargaining agreement subsisting between said Respondent and Slinger Education Association, with respect to the duty imposed upon said Respondent by said agreement to bargain in good faith concerning the resolution of grievances filed and processed under said agreement.

2. That the complaint initiating the instant matter be, in all other respects, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 9th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

SLINGER COMMUNITY SCHOOL DISTRICT, II, Decision No. 11167-B

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pleadings and Procedure

The Slinger Education Association and Jean Krausman filed a complaint with the Commission on July 19, 1972, initiating the above captioned matter. The complaint was signed and verified by the attorney for the Complainants. On July 24, 1972 the Commission issued its order appointing an Examiner, and on the same date the Examiner issued a Notice of Hearing setting the matter to be heard on August 24, 1972 and setting August 16, 1972 as the date for the filing of an answer. On July 26, 1972 Notice was issued postponing the hearing in the matter to August 29, 1972. On August 16, 1972 the Respondent filed its "Answer and Affirmative Defense", containing a counterclaim, and Notice of Motion and Motion Ad Limine To Restrict The Scope of Hearing.

Hearing in the matter was opened at West Bend, Wisconsin, on August 29, 1972, and preliminary motions were entertained at that time. The Respondent argued that the complaint was inadequate because of lack of verification of the original complaint by Jean Krausman as the real party in interest. The Examiner denied said motion on the basis that the Slinger Education Association, acting through its attorney, is a real party in interest in a proceeding to enforce the collective bargaining agreement between the Respondent and the Slinger Education Association, and said ruling is re-affirmed here. Argument was heard on the Respondent's Motion to Restrict the Scope of Hearing, and the Examiner overruled that motion and permitted both parties to adduce evidence on all issues joined in the pleadings. Ruling on procedural questions concerning the adequacy of the grievance before the Examiner and its preliminary processing was reserved to the final decision in the matter, and is discussed, infra. The Complainants asserted that the counterclaim contained in the Respondent's Answer was inadequately pleaded. It was determined that the allegations of the counterclaim have no relation to the allegations of the original complaint, and the Examiner ruled that evidence on the counterclaim would be taken separately at the conclusion of evidence on the original complaint. Evidence was taken but the hearing was not concluded, on August 29, 1972. On September 6, 1972 the Commission issued its Order Consolidating Matters for Hearing And Setting Hearing Date, wherein the aforementioned counterclaim, then having been docketed as Case IV, No. 15969, MP-161, was consolidated with the above-captioned matter for the purposes of hearing. The same Order set September 13, 1972 as the date for resumption of the hearing and date for the Slinger Education Association to file an answer in Case IV. The hearing was resumed on September 13, 1972, was continued on September 20, 1972 and was concluded on September 21, 1972. Counsel for both parties made closing argument on September 21, 1972, and no briefs were filed. The transcript of the four days of testimony and argument, amounting to 414 pages, became available on May 1, 1973.

A separate decision is issued today on the counterclaim of the Slinger Community School District and Board of Education of Slinger Community School District against the Slinger Education Association.

Timeliness of the Grievance and Scope of Review

As indicated in the findings of fact, Mrs. Krausman was given preliminary notice of consideration of nonrenewal in a letter from

the Board of Education dated February 28, 1972. A private conference was requested and was held on March 8, 1972. Mrs. Krausman was notified by letter from the Board of Education dated March 13, 1972 that the Board had voted not to renew her teaching contract. The only grievance filed by Mrs. Krausman under the collective bargaining agreement was framed in a letter from Mrs. Krausman to the Board of Education dated March 17, 1972, as follows:

> "Gentlemen:
>
> Having been informed of your decision not to renew my contract for next year and having not received one on March 15, the legal deadline, I wish to file this grievance pursuant to Article III of the Slinger Community School Board and Slinger Education Association Master Contract.
>
> I feel that I have not been treated properly according to the terms of the Master Contract, and such improper treatment has resulted in your decision not to renew my contract. Article VI, Section A of the Master Contract states in part, "The first two years a teacher is contracted to teach in the Slinger Community School District is a probationary period, during which time his work and attitudes will be supervised and evaluated by the school administration and periodic reports will be made by the administration to the Board of Education and to the teacher.
>
> "Any problems or deficiencies that may arise will be brought to the attention of the teacher so that corrective measures may be taken."
>
> Assuming that the proper and just manner of supervising and evaluating a teacher's work and attitudes is through direct observation in the classroom, I believe that I have not been supervised or evaluated properly or fairly. No administrator or supervisor has ever been in my classroom for the purpose of supervision or evaluation.
>
> It is true that I received a letter from Mrs. Hoffman in January alluding to certain deficiencies, but one such letter could hardly be construed as "periodic reports."
>
> Therefore believing I have not been granted my rights under the terms of the Master Contract, I ask that my contract be renewed for 1972-73 and that I be given a constructive report of the weaknesses and strengths of my work and attitudes."

The Respondent contends that the initiation of the grievance subsequent to the nonrenewal was untimely. The argument is that when the nonrenewal became a fact, Mrs. Krausman then decided that throughout the school year there were several grievances which had not been of sufficient gravity to bring them to the attention of administration as they occurred. The Complainant, responding to this argument, contends that the violations of the notice, evaluation and observations provisions of the agreement only became significant at the point when they were relied upon as a basis for nonrenewal, and that the grievance was filed and processed on a timely basis following the nonrenewal. The Examiner finds some merit in the arguments of both parties on this issue. The record indicates numerous meetings held between Mrs. Krausman and her immediate supervisor. The discussions carried on during those meetings include numerous items of direct and indirect criticism of Mrs. Krausman's work, based on the observations made by the supervisor. The failure of the Association or Mrs. Krausman to grieve any of these criticisms, including such clear

statements as are contained in the letter delivered to Mrs. Krausman on January 4, 1972, and to thereby bring the truth or falsity of the principal's observations into issue on a timely basis, presents a substantial problem in the instant proceeding. There has been testimony from both parties concerning what went on during the first semester of the 1971 - 1972 school year, and the Complainant has demonstrated some lack of recall and some lack of records on the part of the school administration. However, since none of the events of that period were brought into dispute until the March 17 letter and the grievance procedure which followed, the Examiner is disinclined to hold faulty recall of events in that period against the school administration in determining fact issues concerning that period of time. Had the issues been joined earlier by means of timely grievances on any or all of the observations, conversation or criticisms, both parties would likely have enjoyed more complete awareness of the facts and recordkeeping. The failure to file grievances at earlier points has weakened the Complainant's case, but the Examiner is not persuaded that it has destroyed the Complainant's case. The nonrenewal of Mrs. Krausman was and is, in itself, both a single event and a culmination of events. The Respondent's defense is directed to the same meetings, criticisms and notices which it alleges should have been the subject of individual grievances. The Complainants rely on the use of the prior events in reaching the nonrenewal decision as one of the bases for its complaint, and they are entitled to do so.

The Respondent also raised objection to the processing of the grievance. The evidence indicates that a discussion was had between the Superintendent of Schools and a representative of the Association, wherein the Association requested and was granted waiver of Step 1 of the grievance procedure. Principal Hoffman, the first line supervisor to whom the grievance would have been directed in Step 1, did not participate in or consent to the waiver. The Respondent now argues that the Association failed to follow the grievance procedure through Step 1 and should be barred in this proceeding. The Complainants rely on the waiver of Step 1 by the Superintendent of Schools, and their reliance in this regard is well placed. The Examiner concludes that the Respondent is bound by the waiver of Step 1 granted by Superintendent Sprehn, and is now estopped from raising a procedural defect in that regard.

ALLEGATIONS OF REFUSAL TO BARGAIN IN GOOD FAITH

Following introductory paragraphs, a recitation of language from the collective bargaining agreement, and a recitation of facts concerning the nonrenewal of Mrs. Krausman and the filing of her grievance, the Complainants allege that the Krausman grievance was processed through the final step of the grievance procedure set forth in the Agreement, without a mutually satisfactory resolution being reached. The complaint then goes on to allege that, during the processing of the Krausman grievance, the Respondent acted in a manner which was inconsistent with its contractually-imposed obligation to engage in "good faith bargaining" with the Association.

The evidence indicates that Hoffman prepared excerpts from her records and obtained statements from other employes of the District concerning Krausman's work and deficiencies. During the processing of the grievance, the Association's requests for access to those documents were denied by the Respondent. The Association contends that access to such documents was reasonably related and necessary to the performance of its representative function, particularly in view of its companion claim that the Respondent never informed Krausman or the Association of the specifics of the charges against Krausman. The Respondent contends that the materials in question were prepared

by Hoffman at the direction of its counsel, and was therefore protected as attorney work-product. The Respondent further defends its actions in this regard on the basis of its claim that the Association never investigated the facts on its own and should not, in fairness, be allowed to have access to the fruits of an investigation performed by the Employer. The Examiner finds the Respondent's arguments to be completely lacking in merit. No authority is advanced for the proposition that excerpts from the records of an agent of the Employer can be shielded from disclosure to the Association as work-product of counsel. There is no question that the Slinger Education Association is the recognized collective bargaining representative in the unit in which Krausman was employed. By denying the Association access to records relied upon by the Board, which were reasonably related to and necessary to its representation of Krausman, the Board failed to fulfill its contractual bargaining obligation concerning the Krausman grievance.

By a letter dated April 7, 1972, the Slinger Education Association designated three of its members as its committee to meet with the Board on the Krausman grievance at Level 3 of the grievance procedure. In a letter dated May 9, 1972, the Slinger Education Association made a suggestion concerning the date for a meeting at Level 3, and made the following statement:

> "A representative of Wisconsin Education Association has requested to be present. We would like him to be one of the three association members meeting if that is acceptable to you."

The Board declined to meet with the representative of the Wisconsin Education Association present, and the Complainants now contend that the exclusion of the W.E.A. representative from the Level 3 meeting was a refusal to bargain in good faith. The apparent defense advanced by the Respondent is confusion as to whether the W.E.A. representative was to be a substitute member of the committe or an additional member of the committee, and confusion concerning the substitution of the W.E.A. representative for a "member of the Association". The Examiner finds the evidence inconclusive on this issue. The Association's letter of May 9, as set forth above, was framed as a request for permission to substitute rather than as a statement of intention or claim of right to substitute. Thomas Henning, the acting Chairman of the Association's Professional Rights and Responsibilities Committee and one of the attendees at the May 17 meeting testified that a state of confusion existed on this question. While the Respondent may have been overly technical in restricting the committee to members of "the Association" (defined in the Preamble to the Master Contract as the Slinger Education Association), and remiss in its reading of correspondence when it became confused about the size of the committee to be sent to the table by the Association at Level 3 of the grievance procedure, the evidence does not indicate that the Respondent acted in bad faith.

The collective bargaining agreement defines a "Party in Interest" to a grievance, and there can be no question that Mrs. Krausman was a party in interest with regard to the grievance concerning her non-renewal. Paragraph E. 2. of Article III assures a party in interest the right to select his or her representative, and the evidence indicates that Mrs. Krausman selected Wisconsin Education Association Representative Helstad to represent her interests at Level 3 of the grievance procedure. A dispute has arisen as to whether the grievant or representative must be counted among the three member committees. To give effect to both provisions and to harmonize any conflict between them, they are interpreted here as permitting a party in interest or his chosen representative to appear at the Level

3 meeting and represent his interests, but not necessarily to be a member of the committees charged with attempting to resolve the grievance by means of good faith bargaining. It follows that the exclusion of Helstad from the Level 3 meeting was in error.

The Complainants go on to contend that the contractual duty to bargain was violated by procrastination in the scheduling of a grievance meeting, and by the scheduling of such a short period as to indicate that the Board came into the session with a pre-determined view on the grievance. The evidence does indicate a one month delay in the scheduling of a grievance meeting, and does indicate that the meeting was eventually set for a one half hour period immediately preceeding a scheduled Board meeting. However, under all of the circumstances, the Examiner is not persuaded that a violation has been shown here. The Association itself suggested the May 17 date, recognizing that the date was the same date as the regularly scheduled meeting of the Board. The Association and Mrs. Krausman waited until after the nonrenewal was an accomplished fact before they filed a grievance, and one of the practical effects of the filing of a grievance on March 17, 1972 is that all of the processing of the grievance involved an up-hill struggle on the part of the Association and the grievant in the face of an accomplished fact. By the time the grievance reached Level 3 of the grievance procedure, the Board had already faced the subject matter of the grievance in the statutory private conference concerning non-renewal, and had made a determination. The Board could hardly be expected to disregard all of what had gone on beforehand when it sat down with the Association concerning the Krausman grievance at Level 3 of the grievance procedure.

The Examiner concludes that technical violations of the agreement have occurred, and such a conclusion raises a question of remedy. The ordinary remedy for a violation of Sections 111.70(3)(a)(4) or 111.70(3)(b)(3) of the Municipal Employment Relations Act is limited to an order that the violator cease and desist from refusing to bargain and that the violator bargain, upon request, with the other party. Such an order, like the duty to bargain as defined in Section 111.70(1)(d), does not place the violator under an obligation to agree with the position of the other party or to make concessions on the underlying issues. In this case, the Complainants ask the Examiner to order reinstatement of Krausman as a remedy for a refusal to bargain. Reinstatement of Krausman is also the concession sought by the Complainants in bargaining on the grievance, and the Examiner is therefore asked to order the Respondent to make a concession to the Complainants on the underlying issues. Such a remedy is clearly inappropriate.

A cease and desist order has been entered. A bargaining order has not been issued, since such an order would be inconsistent with the position taken by both parties as to the merits of the case. These parties did not make provision in their collective bargaining agreement for the final and binding arbitration of disputes concerning the interpretation or application of their agreement. However, the right of parties to a collective bargaining agreement to have a neutral determination of contract disputes existing between them is assured by Section 111.70(3)(a)(5) and 111.70(3)(b)(4) of the Municipal Employment Relations Act. The jurisdiction of the Wisconsin Employment Relations Commission has been invoked in this case to make such a determination. The Complainants have presented evidence on the merits of the Krausman grievance, and the Respondent has put in its defense on the merits of the grievance. It would be completely inappropriate to return to the parties to the bargaining table at Level 3 of the grievance procedure at this time, since the case is properly before the Commission and its Examiner for a full determination on the merits of the grievance.

ALLEGATIONS ON THE MERITS OF THE NONRENEWAL

The Concept of Probation

The draftsmen of the Slinger Master Contract for 1971-1972 have not given the Examiner the benefit of a detailed definition of their term "probation", but they have not used the term in a manner which would indicate a meaning different from that generally applied in labor - management relations. The basic concept of a two year probationary period is introduced in the first clause of Section VI, A, 1 of the agreement. Some of the mechanics of the probation concept are developed in Section VI, A, 2 of the agreement, but one must look to Section VI, B of the agreement to obtain the complete picture of the obligations imposed by the probation concept and the rights conferred by the fulfillment of those obligations.

The language in Section VI, B: "After two (2) years of successful teaching in this system, a teacher may consider his work satisfactory" is more than a boiler-plate introduction to the "continued employment" status. The Examiner interprets this language as a caution that a teacher who has not completed the probationary period has no right to consider his work satisfactory. The teacher on "continued employment" status would appear to have a right to pursue whatever practices and philosophy he might choose, until given due notive of deterioration below expected standards of the Employer. The teacher on "continued employment" status has employment security, with assurances of having one contract year following a report of deficiencies in which to return to the good graces of the Employer, unless the Employer was willing and able to demonstrate an acute and uncompromising situation warranting immediate termination of employment. By contrast, the probationary teacher is obligated to meet the expected standards of the Employer at all times or risk termination of his employment. The probationary teacher has no guarantee of an additional period of probation or of a showing by the Employer of an acute and uncompromising situation. The inescapable conclusion is that the probationary teacher under this agreement, like probationary employes elsewhere, has no employment security. Mrs. Krausman was in her first year of employment in the Slinger system, and was on probation throughout the period relevant to this case.

The Nature of the Case and Positions of the Parties

In the absence of employment security provisions covering the employment of Mrs. Krausman, the case before the Examiner is distinguished from the common "discharge arbitration" pattern. The prayer for relief stated in the complaint initiating the instant proceeding alleges only violation of the collective bargaining agreement and thereby violation of Section 111.70 (3)(a)(5) of the Municipal Employment Relations Act. Counsel for the Complainants was very specific in argument during the hearing, wherein he stated:

> "We're not making any claims in the area on constitutional rights in this case. We're not making claim in the area of statutory rights. Our claim lies in the area of our rights under the collective bargaining agreement..." 1/

The collective bargaining agreement does contain provisions which assure the probationary teacher treatment in a specified manner. It is on the basis of those provisions that the key allegations of the complaint are advanced. For the purpose of analysis of the evidence, the language of Article VI has been subdivided as follows:

1/ Transcript page 62.

"during which time [i.e., the probationary period] his [the teacher's] work and attitudes will be supervised and evaluated by the school administration".

"periodic reports will be made by the administration to the Board of Education and to the teacher".

"Any problems or deficiencies that may arise will be brought to the attention of the teacher".

"problems of a serious nature will be recorded and reported to the Board of Education by the administration along with any solutions which may be suggested or applied".

"All possible assistance will be given by supervisory personnel upon request".

"Any complaints regarding a teacher made to the administration by any parent, student or other person shall be in writing and shall be promptly called to the teacher's attention".

The Complainants take the position that the Principal was indirect in her criticism of Krausman, to the point where communications broke down and the school administration did not give Krausman the notice to which she was entitled under the collective bargaining agreement. The Respondent takes the position that the Principal met all of the requirements of the collective bargaining agreement and that any failure of communications was due to faulty perception on the part of Krausman.

Superivision and Evaluation

At the very outset of the hearing a dispute appeared concerning the definition of terms such as "supervision", "evaluation" and "observation". Upon review of the entire record, it is apparent that a difference of opinion exists not only among these parties but also among various schools of thought in the field of education. Only the terms "supervised" and "evaluated" appear in applicable agreement, but it is apparent from the testimony that those terms are used somewhat interchangably with "observation" in describing the process by which a school administration comes to form an opinion concerning a teacher. The "observation" terminology appears to have crept into this case as early as the March 17, 1972 grievance letter, where Krausman states some assumptions about the proper and just manner of supervising and evaluating a teacher's work and attitudes.

The Association would define supervision and evaluation in the context of formal classroom observations where, upon advance notice, an administrative official would spend a portion of or all of a class period in the classroom while the class is in session. Mrs. Krausman had only limited previous teaching experience as a practice teacher, a substitute teacher in the Madison, Wisconsin school system and as a regular teacher in the same system for a portion of a school year. Whether from her academic courses or her experience in Madison, she came to Slinger with the expectation that formal observations would be made in her classroom.

Principal Hoffman testified that formal classroom observations are regarded as unproductive and artificial in some circles, and that such formal observations are not used frequently in the Slinger school

system. Hoffman testified that she based her evaluations of Krausman on her own observations, made during numerous brief visits to the art classroom on an informal basis. Hoffman also testified to observing physical conditions, such as the cleanliness of the classroom, the discovery of art materials in the halls, and displays of student art work in the art classroom and elsewhere in the building, all of which were regarded as input to the evaluation of Mrs. Krausman. The Respondent adopts the position of its agent as to the adequacy and value of informal observation.

None of the evidence contradicts Hoffman's testimony concerning the limited practice of formal observation in the Slinger school system, nor is there any evidence to show that the language of the collective bargaining agreement should be interpreted in the light of some formal observation practice which may have existed previously or at the time the language of the agreement was negotiated. Mrs. Krausman acknowledged during her testimony that formal classroom visits by the Principal create an artificial situation, but she also testified to having expected some formal visits. Her testimony is inconsistent on the question of whether she was informed that some of Hoffman's visits were for supervisory purposes. The assumptions made by Krausman concerning the proper manner of supervision and evaluation are without support in the agreement, practice or statements by employer representatives, and cannot be given predominant weight in the interpretation of the agreement. Broadly stated, the functions of supervision relate to employer awareness of the conduct of the employe. The record abundantly indicates awareness on the part of Hoffman of the conditions prevailing in Krausman's classroom, concern for the improvement of those conditions, and action directed at achievement of that improvement. Following a period of 6 months, an evaluation was made by Hoffman that the situation had not improved sufficiently and bore potential for greater difficulties in the following year should a contract be tendered to Mrs. Krausman. The Examiner finds no violation of the obligation placed upon the Respondent to have the teacher's work and attitudes supervised and evaluated by the school administration during her probationary period.

The Requirement for Periodic Reports

The parties disagree on what constitutes a periodic report, as well as on the question of whether periodic reports of the results of supervision and evaluation were given to Mrs. Krausman and to the Board of Education. It is clear that Mrs. Hoffman gave Mrs. Krausman only one written report during the period commencing with Mrs. Krausman's employment and concluding with the notice indicating consideration for nonrenewal. The Complainants allege that the lack of periodic written reports is in violation of the agreement, while the Respondent contends that there is no requirement for periodic reports to be made in writing. The language of the agreement does not state a requirement that reports be made in writing to qualify as "periodic reports" under paragraph A. 1. of Article VI. The inquiry must therefore be directed to the question of whether periodic reports were made to Mrs. Krausman and to the Board of Education by other means.

The evidence reveals that numerous meetings were held between Mrs. Hoffman and Mrs. Krausman outside of the classroom setting, and that the conditions prevailing in Mrs. Krausman's classroom were discussed at such meetings. The evidence also reveals that at the outset of the school year the supervisor was using a gentle hand in an attempt to obtain improvement in the situation without posing a threat to Mrs. Krausman's employment. The Complainants would have the Examiner find that this same gentle approach was continued

throughout the period leading up to the nonrenewal, to such an extent that the discussions were ineffective to constitute periodic reports of supervision and evaluation; but the evidence does not indicate that to be the case. On the contrary, the record indicates that the supervisor's gentle assistance at the outset of the school year was replaced with a more firm approach as the year progressed. Early in the year Krausman indicated recognition of the existence of a problem. Later in the school year, as the criticism continued and mounted, Krausman declined to admit the existence of a problem and resisted the increase of consultations with the school social worker. Mrs. Hoffman eventually reached the point of mandating that she was more interested in control than in content in Mrs. Krausman's classes. Whether required by the agreement or not, the written report delivered to Krausman on January 4, 1972 does constitute a report of the results of the supervision and evaluation of Krausman. The problem of faulty perception is a thread running throughout this entire case, and is given more thorough discussion, infra. Whether they were perceived as such or not, the evidence indicates that Mrs. Krausman was given periodic reports of the results of supervision and evaluation.

The Respondents were unable to produce any memoranda concerning any periodic report made by the school administration to the Board of Education. However, there has been testimony that members of the school administration met with the Board of Education in executive session on a monthly basis to discuss personnel problems, and that periodic reports were made concerning Mrs. Krausman during such sessions. The testimony in this regard stands unrefuted, and the Examiner finds no contractual basis for the imposition of a requirement that the Respondent produce documentary evidence to demonstrate its compliance with this provision of the agreement.

Notice of Any Problems or Deficiencies

The first sentence of Section A. 2. of Article VI advances the proposition that opportunity for corrective measures is contemplated by the parties. The "notice" language of that sentence would appear to be somewhat redundant to the "periodic reports" language of the preceding sentence, but the language is interpreted as stating a requirement for specificity (as compared to more general reports resulting from supervision and evaluation). The evidence nevertheless reveals that Mrs. Krausman was confronted with the specifics of most of the myriad problems and deficiencies which were observed in her work situation.

As early as the first week of school, Mrs. Hoffman noted Mrs. Krausman's difficulty with classroom management, and a meeting was held with Mrs. Krausman to bring her attention to the existence of the problem. As the year went on discussions were held between Hoffman and Krausman concerning the problem of students sitting on tables, the problem of students not being involved in productive work, the problem of poor management of art materials, the problem of students throwing clay, the problem of art materials being thrown into the hall, the problem of cleanup of the art room at the end of class, the problem of student disobedience of Krausman's order to remain after school, the problem of damage to the plumbing in the art room, the problem of art projects considered inappropriate by the administration, and the problem of students talking to one another during art classes. It is apparent from her testimony that Mrs. Krausman continued to regard the existence of problems as being a problem with the students involved, and not a failing on her own part. Accordingly, Mrs. Krausman did not take the discussions of problems existing in her classroom as notice of problems or deficiencies or as criticism of her performance.

Review of the lengthy testimony recorded during four days of hearing in this matter and detailed discussion of each and every one of the incidents and issues raised in the record would require a very extensive memorandum, but would not resolve the primary issue framed before the Examiner. Mrs. Krausman is a lady of unquestioned good academic qualifications who appears to have permitted herself to be lulled by her academic success into a feeling of security in her teaching situation at Slinger. Mrs. Krausman's assignment may have contributed greatly to her difficulties. There is no scintilla of evidence which would indicate a lack of dedication to art and to art education, but Mrs. Krausman was confronted with students taking art as a required subject and it is likely that the dedication of the 7th and 8th graders did not match that of their teacher. Mrs. Krausman failed to make adjustments of philosophy and practice which would fit her particular situation at Slinger. Problems of control existed in Mrs. Krausman's classroom throughout the period relevant to this case, and there is recognition by the Complainants that the school administration, acting primarily through Mrs. Hoffman, attempted to bring these problems to Mrs. Krausman's attention and to assist her in overcoming these problems. Finally, there is abundant evidence indicating that Mrs. Krausman's perception of her classroom situation and her employment situation was faulty. In closing argument, Counsel for the Complainants stated:

> "...it appears to me, that Mrs. Hoffman probably was trying to communicate to Mrs. Krausman that she believed there were problems in Mrs. Krausman's class. Mrs. Krausman did not understand Mrs. Hoffman's communications to be criticisms, though, and a report that serious deficiencies existed. Both Mrs. Hoffman and Mrs. Krausman have testified that the conversations that occurred took place in the context of discussion of individual student problems, the emphasis being on the problem that the student has or a problem the student is posing--his behavioral problems. What can we do?
>
> Mrs. Hoffman gave us a list of hypothetical names--Johnny Jones or some such name. Well, the problem with this approach, while it may--it probably was motivated by a desire to communicate that some problem was perceived to exist in Mrs. Krausman's conduct. The problem with the approach was it was kind of clouded. It was a kind of indirect approach. Furthermore, Mrs. Hoffman never came up to her direct and said, "Look, Mrs. Krausman, this is where you've got a problem..." and it would seem to me, given the testimony we've had about these incidents that it supposedly occurred in all of these conversations that Mrs. Krausman and Mrs. Hoffman should have realized by at least November or early December that Mrs. Krausman did not understand her suggestions to be criticisms and a notice to Mrs. Krausman that serious deficiencies existed. And, given that fact, Mrs. Hoffman had a duty, I believe, under this collective bargaining agreement where all assistance possible is to be rendered. Mrs. Hoffman had a duty to tell Mrs. Krausman directly; not by inuendo, not by suggestion, to tell her that problems exist--lady, they exist in your classroom and you have to do something about it or else. Mrs. Hoffman didn't do that and it may well be that she was motivated by kindness and did not want to hurt Mrs. Krausman's feelings or wanted to do it gently, to poke her kind of in the direction

that Mrs. Hoffman thought she should go. But it should have been apparent that Mrs. Krausman did not perceive these discussions she was having with Mrs. Hoffman as discussions of serious deficiencies, deficiencies that warranted termination of her employment. Mrs. Krausman did not perceive Mrs. Hoffman's comments to be notice that such was the case.

Mrs. Hoffman had, I believe an obligation to communicate with Mrs. Krausman on this matter and if it hurt Mrs. Krausman's feelings, then I think at some point in that semester--some point prior to the non-renewal and the letter of January 4, 1972, Mrs. Krausman should have been told directly that she wasn't doing the job if that was, in fact, what the Administration perceived to be the case."

Counsel for the Respondent replied in closing argument, stating:

"...I think the Administration has the right to assume that Mrs. Krausman, with her credentials and her qualifications was a learned lady when she came to this institution. She shouldn't have to be spoon fed. She should be presumed to have a reasonable amount of intelligence by the very reason of her qualifications and her credentials."

and

"I think one may talk--one may try to inform but one cannot force another to listen or cannot force another to comprehend and I think it's reasonable that the one talking or attempting to inform can assume that the one they are talking to listens and understands and comprehends unless they are otherwise advised."

Whereupon, Counsel for the Complainants stated in rebuttal:

"...the duties that existed were the duties that were Mrs. Hoffman's. It was her duty to communicate to render all possible assistance to notify Mrs. Krausman of any problems of a serious nature, to hit Mrs. Krausman over the head with a club if necessary to tell her that her job was at stake and not to wait until January 4th to tell her that serious deficiencies were perceived to exist."

Reduced to its simplest terms, the issue here is: "Who bears the burden if the Employer makes a reasonable effort to communicate notice of problems and deficiencies to an employe and the employe fails to perceive those communications as notice of problems and deficiencies?" Generally speaking, professional employes are permitted some greater self determination of philosophy and practice than is permitted to nonprofessional employes. Mrs. Krausman was permitted some flexibility, but she was clearly in no position to hold to her own philosophy or practice in violation of the mandates of the school administration. Mrs. Krausman was given the manuals provided to all teachers at the start of the school year, and when problems and deficiencies arose the school administration clearly attempted to communicate notice of those problems and deficiencies. Those communications should reasonably have been perceived as intended. The Examiner rejects the proposition that a school administration should have to hit a teacher over the head with either a club

or criticism in order to meet the requirement of notice contained in this collective bargaining agreement. No violation of the notice requirement is found, as the Examiner is satisfied that Mrs. Krausman should reasonably have realized long before the letter of January 4, 1972 that the continued difficulties of classroom control indicated a problem with the teacher charged with the maintenance of that control and not merely with the students in the classroom.

Counsel for the Complainants made extensive argument concerning the spirit of the agreement and the lack of an opportunity for Mrs. Krausman to effect corrective measures. The evidence indicates that Mrs. Krausman's failure to effect corrective measures resulted from her own lack of perception and from her failure to carry through on numerous suggestions which were made to her by Mrs. Hoffman. There is no evidence of any violation of the so-called spirit of the agreement on the part of the school administration or of any effort to prevent Mrs. Krausman from improving her situation. On the contrary, Mrs. Hoffman clearly recognized that her own judgment and recommendation to hire Mrs. Krausman would be placed in question, and a decision to recommend Mrs. Krausman was only made in the last days preceding the statutory deadline.

Procedures for Problems of a Serious Nature

There is no question that the problems existing in Mrs. Krausman's classroom situation came to be regarded by the school administration as problems of a serious nature. In issue is whether the administration followed the contract procedures in the handling of those problems.

Here, as elsewhere, the Complainants have based much of their argument on the lack of written communications and documentation. The language of the agreement specifies that problems of a serious nature are to be "recorded", which can well be interpreted as a requirement for written memoranda. The nature of the writings, their draftsmen and their use remains undefined. Mrs. Hoffman did record the problems of a serious nature and the meetings concerning those problems in her log, and, indeed, the refusal of the Respondent to open that file to the Association is the subject of a finding of prohibited practices in this proceeding. The Examiner does not find a basis in the evidence or in the agreement to impose any particular set of requirements concerning the recording of problems of a serious nature, and such matters are properly the subject for collective bargaining between the Association and the Respondent.

The requirement for reports of serious problems to the Board of Education appears to be redundant to the requirement, stated earlier in the same sub-Article of the agreement, for periodic reports to the Board. The evidence concerning the reports made by the school administration to the Board of Education has been discussed, supra, and the same considerations would apply at this point in the discussion.

There is an allegation by the Complainants that suggestions were never offered or applied, but the evidence indicates the opposite to be the case. Mrs. Krausman acknowledged Mrs. Hoffman's numerous suggestions on various problems, and testified further to having

year went on and the situation failed to improve as desired, Mrs. Hoffman ordered the number of sessions doubled. Mrs. Krausman initially doubted the necessity for increasing the number of sessions with the social worker, and admittedly failed to participate with Mr. Rolofson in the re-creation of problem situations and the discussion of potential solutions. Mrs. Krausman was given the course outline of her predecessor, complete lesson plans prepared by her predecessor, and examples of student work prepared in previous years. Against this background, the Complainants have alleged that the Respondent deprived Mrs. Krausman of assistance to which she was entitled under the agreement. The Respondent called and qualified an expert witness in the field of art education and obtained his testimony that the assistance given to Mrs. Krausman was adequate and beyond that ordinarily given teachers.

The requirement for the provision of assistance is conditioned upon request, and there is little or no evidence that Mrs. Krausman ever requested assistance. She referred numerous students to Mrs. Hoffman for discipline, and the frequency of her requests for intervention in the handling of discipline problems eventually became a factor in the conclusion that she was unable to independently maintain control in the classroom, but her calls for assistance were each the subject of a response. Recognizing a larger problem to exist, the school administration forced assistance upon Mrs. Krausman, and the record indicates that it was not well received. The administration met and exceeded the requirements of the agreement in this regard.

Complaints Made to the Administration

Both Principal Hoffman and Superintendent Sprehn testified that they do not recall receiving complaints from persons outside of the school system staff. Some student complaints were communicated to Mrs. Krausman, while others were not. Some staff complaints were called to the attention of Mrs. Krausman but were not given to her in written form, and were not always associated with the name of the complaining staff member when communicated. The Complainants contend that this mix of procedures violated the collective bargaining agreement.

The emphasis under the words "shall be in writing" in Section D of Article VI leaves no doubt that the parties intended that complaints concerning a teacher not be left to the vagaries of oral communication and memory. It would appear that the Administration would not be entitled to rely on a complaint where the complaining party declined to put his complaint in writing. Superintendent Sprehn testified as to his practice of becoming involved in a complaint concerning a teacher only when the matter was very serious, and further testified that no such complaints were received concerning Mrs. Krausman. Mrs. Hoffman testified that no formal complaints were received, and this is interpreted as meaning that no written complaints were received from any parent, student or other person. The evidence indicates that certain Board members received some complaints, but the Board and the Administration are separate entities throughout this collective bargaining agreement and the language of Section D does not extend to cover such situations. There has been no showing that the administration relied upon unwritten or unreported complaints in making the recommendation to nonrenew Mrs. Krausman.

Statements of members of the staff which were solicited by Mrs. Hoffman at the time of Mrs. Krausman's nonrenewal have been the subject of much testimony and argument, but they would not appear to come within the type of contemporaneous complaint contemplated by the language of Section D. The broken plumbing incident occurred some time before, had been investigated at the time, and had been

considered a closed subject. The statements solicited by Mrs. Hoffman concerning the broken plumbing incident were not framed as statements of complaint against Mrs. Krausman but rather as statements of facts as observed by the writers of the statements.

CONCLUSION

Based on the foregoing, and the record as a whole, the Examiner concludes that the Respondent did not violate the collective bargaining agreement in its treatment of Mrs. Krausman prior to her nonrenewal or by her nonrenewal, but that the Respondent did violate the collective bargaining agreement in certain limited respects in the processing of Mrs. Krausman's grievance.

Dated at Madison, Wisconsin, this 9th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner