

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

FRANK REITH and the STANLEY-BOYD
EDUCATION ASSOCIATION,

Complainants,

vs.

STANLEY-BOYD AREA SCHOOLS and the
BOARD OF EDUCATION OF STANLEY-BOYD
AREA SCHOOLS,

Respondents.

Case IV
No. 19653 MP-330
Decision No. 12504-B

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, appearing
on behalf of the Complainants.
Gay & Nafzger, Attorneys at Law, by Mr. Ernest C. Gay, appearing on
behalf of the Respondents.

SUPPLEMENTAL FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter wherein the Complainants alleged, in two counts, that the Respondents have committed certain prohibited practices within the meaning of Section 111.70(3)(a) of the Municipal Employment Relations Act (MERA) and the Commission having appointed George R. Fleischli, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and the Respondents having filed a motion to dismiss said complaint; and, after a hearing wherein the evidence and arguments were limited to the question of the proper disposition of said motion, the Examiner having granted said motion as to the first count of said complaint but having denied said motion as to the second count of said complaint; 1/ and further hearing having been held on the second count of said complaint at Chippewa Falls, Wisconsin on April 14 and 15, and May 8 and 9, 1975, and the Examiner, having considered the evidence and arguments and being fully advised in the premises, makes and files the following Supplemental Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

15. That the Respondent Board is comprised of 15 members; that the decision to non-renew Reith originated in the Respondent Board's Teacher Committee which is also the committee of the Board that has the responsibility to meet and negotiate with the Complainant Association's bargaining committee; that the Respondent Board's Teacher Committee consists of six members of the Respondent Board, including its President; that at the beginning of the negotiations that occurred in the Spring of 1972 which preceded the 1972-1973 collective bargaining agreement, Marlyn Mohr acted as the Chairman of the Teacher Committee; that on July 1, 1972, Roy Samplawski, who prior to that time had been a member of the Teacher

1/ Stanley-Boyd Area Schools (12504-A) 11/74.

Committee, became Chairman of the Teacher Committee and Mohr became President of the Board; that Samplawski, Mohr and the other members of the Teacher Committee met with the Complainant Association's bargaining committee on numerous occasions between January, 1972 and September 28, 1972 for the purpose of negotiating the terms of the 1972-1973 collective bargaining agreement; that the Complainant Association made a great number of proposals at the outset of negotiations, greater than in prior years of negotiations.

16. That Reith, who had been a member of Complainant Association's bargaining committee during the 1971 negotiations, acted as spokesman of its bargaining committee during the 1972 negotiations; that during the course of the negotiations the discussion often became heated particularly the discussion between Reith and Roy Samplawski; that several things happened during these negotiations that had not occurred in the negotiations in the prior years, to wit: the negotiations went through the summer months and into the term of the following school year, the Complainant Association petitioned for fact finding (later withdrawn), a mediator met with the parties for two marathon (overnight) bargaining sessions, and the Complainant's membership authorized its bargaining committee to call for a strike.

17. That during the period after the Complainant Association's membership acted on November 7, 1972 to authorize its negotiating committee to call a strike and before agreement was reached on September 28, 1972, there was considerable discussion in the communities served by the Respondent District, including the City of Stanley, Wisconsin, about the possibility that a teachers strike might occur; that sometime during this period of time, Lenore Streit, a resident of Stanley who was well acquainted with Roy Samplawski, had a conversation with Roy Samplawski about the possibility that a teachers strike might occur; that during said conversation Roy Samplawski said words to the effect: "I hope they do go out on strike because there are a few people I'd like to get rid of."

18. That during this same period of time, a conversation took place between Reith and Roy Samplawski at the bargaining table regarding Reith's failure to obtain a renewal of his teacher's certificate which expired on June 30, 1970; that although Reith's version of how the subject arose differs from Samplawski's version, it is clear that Samplawski was aware that Reith had failed to obtain a renewal of his teacher's certificate and that Reith was apparently of the opinion that it was Superintendent Miller's responsibility to help him obtain the certificate; that sometime in November, 1972, after the collective bargaining agreement had been reached, Miller, Mohr and Samplawski, who were in Madison for another purpose, went to the appropriate office of the Department of Public Instruction in Madison to determine whether or not Reith had obtained a renewal of his teacher certificate and were advised that he had not; that sometime in December, 1972, Miller specifically notified Reith that his teaching certificate had expired and that it was his responsibility to obtain a renewal certificate; that thereafter in December or January, 1973 Reith contacted Miller and obtained the proper form for renewing his certificate and completed same; that thereafter at Reith's request, Miller, who was going to Madison for another purpose, hand-carried Reith's application along with Reith's check for \$5.00 to the Department of Public Instruction in Madison; that on or about January 9, 1973, Reith signed an individual teaching contract for the 1972-1973 school year in accordance with the District's practice of issuing replacement contracts with the correct salary figures after negotiations are completed to replace the temporary contracts which are issued pending completion of negotiations; that Mohr, who was then President of the Respondent Board, refused to sign said contract because Reith had not yet obtained a teaching certificate; that on or about March 2, 1973, Reith hand-delivered a copy of a teaching certificate to Miller which he had received from the Department of Public Instruction which

stated that it was "issued" on July 1, 1972; that on or about March 14, 1973, Mohr and the Board's Secretary signed Reith's individual teaching contract for the 1972-1973 school year.

19. That sometime in the late Summer of 1972, or early Fall, of 1972, after the school year had begun, Reith had a conversation with Donald Halterman, Jr., a Board member and personal acquaintance; that during the course of this conversation, which took place after school hours at Halterman's place of business, Halterman advised Reith that he should get off negotiations and out of teaching and go into business for himself; that Reith replied that it was a job he had to do because he had taken the responsibility of doing it and that he wasn't going to quit after "all he had been through" and Halterman responded to the effect that "You've got to get off negotiations because they are out to get you"; that sometime in November, 1972 Reith had a second conversation with Halterman at Halterman's place of business wherein Halterman asked Reith what he had done to incur the animosity of Robert Schultze, a member of the Teacher Committee; that after discussing that matter and other unrelated matters, Halterman again advised Reith that it would be to his benefit to "get off negotiations" because "they are out to get you"; that although he abstained from voting on the question of Reith's non-renewal on February 13, 1973, Halterman voted to sustain the decision to non-renew Reith on May 31, 1973 after listening to the evidence presented at the hearing which occurred on that date; that Halterman, who demonstrated only a vague familiarity with the reasons for non-renewing Reith or the evidence supporting those reasons at the hearing herein, relied on the reasons and evidence presented at the hearing on May 31, 1973 in voting to sustain the decision to non-renew Reith.

20. That on or about August 24, 1972, Reith had a conversation regarding the lack of progress in negotiations with Miller in the high school library during an informal gathering of the teaching staff and administration; that during the course of this discussion, Miller told Reith that he should "get off negotiations" because he "wasn't making any friends" and that the "teachers didn't appreciate what he was doing anyway."

21. That sometime during late 1972, probably in December, 1972, Reith had a conversation with Mohr concerning a grievance Reith had filed; that during this conversation Reith expressed the Association's concern about the Respondent Board's decision to allow Miller's wife to practice teach in the absence of a supervisory teacher; that during this conversation Mohr stated that Reith was an "uncooperative teacher" and had a "chip on his shoulder" either said or implied that it was going to be knocked off.

22. That in prior years, the Respondent Board's Teacher Committee had a practice of meeting with supervising principals shortly before the last Board meeting scheduled before the statutory deadline set by Section 118.22 of the Wisconsin Statutes for notification of intent to consider teachers for non-renewal; that the Teacher Committee met with Miller and Granros and the elementary supervisor for such purpose on February 12, 1973; that Granros, who was Reith's immediate supervisor and had written three favorable evaluations of Reith's classroom performance in algebra in November, 1968, January, 1972 and December, 1972, did not, at that time, recommend that Reith be considered for non-renewal; that even so at a regular Board meeting on February 13, 1973 Roy Samplawski, on behalf of the Board's Teacher Committee, recommended in executive session that the Board consider Reith for non-renewal; that during that same meeting Samplawski moved in open session that Reith be "sent a letter of non-renewal for the 1973-1974 school year" which motion carried; that Granros did not, at this meeting, recommend that Reith be considered for non-renewal.

23. That thereafter on or about March 18, 1973, after Reith had been afforded a private conference with the Board and was notified that the Board had voted to non-renew his contract, Kent Magnuson, another algebra teacher who was then Vice-President and President-elect of the Complainant Association, had a conversation with Granros in the high school; that during this conversation, Magnuson expressed surprise that the Respondent Board had decided not to renew Reith's contract and advised Granros that he had heard that Granros had given Reith favorable evaluations in the past; that Granros admitted that all of his evaluations of Reith had been favorable; that Magnuson then asked Granros how the Board would be able to justify the non-renewal of Reith in view of those favorable evaluations and Granros indicated that he did not know how they would be able to justify it; that after some further conversation about Reith's non-renewal and near the end of the conversation, Granros stated that he felt that the decision to non-renew Reith had nothing to do with Reith's teaching ability.

24. That after discussing the matter with his wife, Magnuson concluded that he should talk to Granros again; that on the following day Magnuson had a second conversation with Granros wherein Magnuson asked Granros what he or Granros could do to help Reith since they both felt that the non-renewal was not justified; that Granros looked shocked and advised Magnuson that what he had said on the preceding day should not be repeated since it was said in the "strictest confidence"; that thereafter Magnuson did not advise anyone other than his wife of what Granros had said until he told Reith about the conversations sometime in the Summer of 1973 after the hearing on Reith's non-renewal which was held on May 31, 1973.

25. That sometime during November, 1973, probably on November 8 or 9, 1973, Granros called Magnuson, who was then President of Complainant Association, from one of his classes and advised him that another teacher, Erwin Roth, had accused Miller's daughter of cheating on a theme and suggested to Magnuson that he talk to Roth so that the "same thing" that happened to Reith didn't happen to Roth; that near the end of this same conversation, Granros mentioned to Magnuson that Miller had said earlier that morning that he, Magnuson, was the most expendable teacher on the faculty, and would be the first to go; that Magnuson asked Granros how Miller would justify such action and Granros advised him that Miller had said that the District needed a shop instructor and that Magnuson didn't meet those qualifications; that Magnuson asked Granros "Why me?" to which Granros replied "because he's not happy with some of the actions you have taken as President of the teacher's association."; that either that evening or the next evening Magnuson attended a parent-teacher conference wherein Magnuson had another conversation with Granros that during this conversation Granros remarked "I never know what's going to happen around here. Prior to Frank's non-renewal Mr. Miller had told me that everything was running smoothly".

26. That sometime during the 1973-1974 school year when Magnuson was President of the Complainant Association, Magnuson and Neuenfeldt were in Miller's office for the purpose of discussing a grievance relating to insurance benefits; that during this conversation the discussion became heated and Miller became upset and stated words to the effect that "any teacher that has less than three, four years' experience on our staff can just be dismissed on a whim"; that at that time the collective bargaining agreement provided that the Respondent Board had to have just cause to non-renew non-probationary teachers who had more than three years' experience in the District; that the agreement which was in effect at the time Reith was non-renewed had no just cause provision.

27. That the Respondent Board, in voting to non-renew Reith, was acting on the recommendation of Miller, Mohr and Samplawski; that although the reasons given by them for making that recommendation had some basis in fact, Miller, Mohr and Samplawski were motivated in whole or in part to make such a recommendation because of Reith's activities on behalf of the Complainant Association; that in addition, one of the reasons given for the non-renewal of Reith involved statements made on his part in connection with a grievance that he filed.

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

CONCLUSION OF LAW

That the Respondent District, by the actions of the Respondent Board of refusing to renew Frank Reith's teaching contract for the 1973-1974 school year upon the recommendation of its agents, Miller, Mohr and Samplawski, discriminated against Frank Reith in regard to the conditions of his employment for the purpose of discouraging his membership in or activities on behalf of the Stanley-Boyd Education Association and interfered with, restrained, and coerced him in the exercise of his rights set out in Section 111.70(2) of the MERA and thereby committed and is committing prohibited practices within the meaning of Section 111.70(3)(a)3 and Section 111.70 (3)(a)1 of the MERA.

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

ORDER

IT IS ORDERED that the Respondent, Stanley-Boyd Area Schools, Joint School District No. 4, its officers and agents shall immediately:

1. Cease and desist from refusing to renew the teaching contract of Frank Reith or in any other manner discriminating against him in regard to the terms and conditions of his employment for the purpose of discouraging his membership in or activities on behalf of the Stanley-Boyd Education Association or in any other way interfering with his rights under Section 111.70(2) of the MERA.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the MERA:
 - a. Immediately offer Frank Reith an individual teaching contract for the same or substantially the same teaching position that he held at the time of his non-renewal and, if Frank Reith accepts said position within ten (10) days after the receipt of said offer, allow him to teach in said position at a salary and benefit level which gives him full credit for his prior years of teaching experience as well as for the period of time since his non-renewal.
 - b. Make Frank Reith whole for any loss of pay which he may have suffered by reason of the wrongful termination of his employment by payment to him of a sum of money equal to that which he would have earned if he had not been wrongfully terminated less any money that he earned or received that he otherwise would not have earned or received if he had not been wrongfully terminated.
 - c. Notify all teachers by posting in conspicuous places where notices to teachers are usually posted throughout all of the school buildings operated by the Stanley-Boyd Area

Schools, Joint School District No. 4, copies of the notice attached hereto and marked "Appendix A". Copies of said notice shall be signed by the President of the School Board and the Superintendent of the District and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter during the regular school term. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by any other material.

- d. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order what steps it has taken to comply therewith.

Dated at Madison, Wisconsin this 12th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

APPENDIX A

NOTICE TO ALL TEACHERS

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our teachers that:

1. WE WILL NOT refuse to renew the teaching contract of Frank Reith or in any other manner discriminate against him in regard to the terms and conditions of his employment for the purpose of discouraging his membership in or his activities on behalf of the Stanley-Boyd Education Association, or in any other manner interfere with restrain or coerce Frank Reith in the exercise of his rights under Section 111.70(2) of the Wisconsin Statutes.
2. WE WILL immediately offer Frank Reith a teacher's contract and, if such contract is accepted by him within ten (10) days of receipt of such offer, reinstate him to his former position or a substantially equivalent position without prejudice to any rights and privileges which he previously enjoyed and WE WILL make Frank Reith whole for any loss of pay or other benefits which he may have suffered by reason of the discrimination against him by paying him a sum of money equal to that which he normally would have earned if he had not been wrongfully terminated less any money that he earned or received that he otherwise would not have earned or received if he had not been wrongfully terminated.

STANLEY-BOYD AREA SCHOOLS, JOINT SCHOOL
DISTRICT NO. 4

By _____
President

Superintendent

Dated this _____ day of _____, 1976.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF, AND MUST NOT BE ALTERED DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING SUPPLEMENTAL
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Pleadings

In the complaint that was originally filed herein, the Complainants alleged that the Respondents had violated a number of provisions of the collective bargaining agreement in connection with the non-renewal of Reith's individual teaching contract. In addition the Complainants alleged that:

"10. The stated reasons given by said Board as the basis for its nonrenewal were not in fact the actual reasons for same. More specifically, the reasons for same, none of which were communicated to Reith, were based, totally or in part, upon his activities and actions as a member of the SBEA, its President at various times material hereto, or as its Chief Negotiator. As such, the Board has violated certain and basic fundamental rights secured to Reith through said Agreement."

As count number one of said complaint, the Complainants alleged that the Respondents had committed prohibited practices in violation of Section 111.70(3)(a)5 of the MERA. As count two of said complaint the Complainants alleged that the same conduct, including that set out in paragraph ten above, constituted a violation of Section 111.70(3)(a)1 of the MERA.

The Respondents moved that the complaint be dismissed in its entirety because the Complainants had failed to exhaust their contractual remedies set forth in the collective bargaining agreement. By agreement between counsel, the original hearing which was held was limited to the issues raised by the Respondents' motion. On November 7, 1974, the Examiner issued Findings of Fact, Conclusions of Law and Order dismissing count one of the complaint. 2/ Because the complaint alleged conduct in paragraph ten which, if proven, would constitute a violation of Section 111.70(3)(a)1 of the MERA even in the absence of a collective bargaining agreement and because the complaint was filed within one year of the conduct in question, 3/ the Examiner declined to dismiss count two of the complaint.

Thereafter, the Complainants asked that further hearing be scheduled on count two of the complaint. Further hearing was held on April 14 and 15 and May 8 and 9, 1975. At the outset of the first day of hearing, the Complainants moved to amend count two of the complaint to allege that the Respondents had violated Section 111.70(3)(a)3 of the MERA by the same conduct which constituted a violation of Section 111.70(3)(a)1 of the MERA. The Respondents objected to the motion and asked that it be denied because (1) it was not specific, (2) it was untimely, and (3) it constituted surprise.

The Examiner allowed the amendment over the Respondents' objection and reaffirms his decision in that regard. The amendment does not affect any material allegation of fact contained in the complaint. As indicated in the memo which accompanied the Examiner's Order of Dismissal of count one, the allegation contained in paragraph ten of the complaint, if proven, would establish that the non-renewal was discriminatory which is a form

2/ Stanley-Boyd Area Schools, Jt. District No. 4 (12504-A) 11/74.

3/ The initial meeting to consider recommending the non-renewal of Reith took place on February 13, 1973 and the complaint herein was filed on February 11, 1974.

of interference, coercion and intimidation prohibited by Section 111.70(3)(a)3 as well as Section 111.70(3)(a)1 of the MERA. 4/ The Respondents' claims of lack of specificity and surprise, if meritorious, could have been appropriately handled by a timely motion under ERB 12.03(3) of the Wisconsin Administrative Code that the Complainant make the complaint more definite and certain.

The original complaint made it clear that the Complainants contended that the non-renewal was discriminatorily motivated. The Respondents are not in a position to complain that their rights are prejudiced by allowing an amendment to the complaint which, in effect, allows a finding that they violated two provisions of the statute rather than one by engaging in the same conduct alleged. Under ERB 10.01 and ERB 12.02(5)(a) of the Wisconsin Administrative Code a complaint can be amended at any time in the absence of a showing of prejudice. The motion to amend was made before any evidence was taken on the merits of the complaint, and the Respondents have failed to show any prejudice resulted therefrom.

Effect of Order of Dismissal

During the course of the four days of hearing, the Complainants introduced considerable evidence with regard to the facts and circumstances surrounding the decision to non-renew Reith and the reasons that were given for the non-renewal. There were few objections to this evidence. The Complainants now contend that the Respondents thereby waived any objection they might have to the Examiner considering the allegations contained in count one of the complaint. The Respondents did not address this argument in their brief, and the Complainants, in their reply brief, contend that such omission constitutes an additional reason for finding that the Respondents have waived any objection the Respondents might have to the Examiner considering the allegations contained in count one of the complaint.

Inasmuch as the Examiner has previously dismissed count one of the complaint on the Respondents' motion, it would seem that this argument is totally without merit. The evidence adduced at the hearing with regard to the facts and circumstances surrounding the decision to non-renew Reith and reasons therefor is generally relevant to the Complainants' allegation that the reasons given were pretextual and will be considered for that purpose. It is unnecessary and inappropriate for the Examiner to address the question raised in the Complainants' brief of whether the Complainants are precluded from appealing the Examiner's Order of Dismissal of count one by reason of their failure to do so within 20 days after its entry. That is a question which will have to be answered by the Commission in the event that the Complainants attempt to appeal that order to the Commission.

Credibility Findings

Although some of the most damaging testimony was uncontradicted, there were numerous conflicts in the testimony of some of the witnesses. Some of these conflicts are between specific statements attributed to the Respondents' witnesses at specific times and places and general denials of ever having made such a statement at any time or place. In general, all of these conflicts have been resolved in the Findings of Fact on the basis of considerations such as the demeanor of the witnesses, the inherent probability of the testimony given and conflicts between the testimony given and other clearly established evidence. However, general denials of having made the most damaging admissions or statements by interested witnesses are inherently less credible when they are accompanied by a

4/ Id. at p. 14.

failure to deny that the balance of the conversation had taken place or to offer a different version.

Evidence With Regard to Motivation

There is no question concerning the Respondents' knowledge of Reith's activities on behalf of the Complainant Association. He was a visible and out-spoken advocate on behalf of the Association. It is also clear that his activities on behalf of the Association were a source of animus to certain agents of the Respondent District, particularly Roy Samplawski, Mohr and Miller. 5/

The testimony of Magnuson with regard to statements made by Granros was un rebutted and is therefore taken as accurate in its entirety. Granros admitted to Magnuson that the non-renewal of Reith had no relation to his performance in the classroom but related to his other activities. Although some of those activities as indicated below, were not protected, most of them were. In addition, several of the reasons given for Reith's non-renewal related to claims that he was not doing a good job in the classroom. Granros, as Reith's immediate supervisor, was in the best position to judge Reith's classroom performance and he did not support the non-renewal. Furthermore, Granros made several damaging admissions with regard to Miller's motivation in seeking the non-renewal of Reith and a subsequent threat made by Miller to non-renew Reith's successor as president of the Complainant Association for pretextual reasons because of his activities on behalf of the Complainant Association. Finally, Granros recognized that his candor in his initial conversation with Magnuson was a source of concern when he cautioned Magnuson that he should not repeat what he had said.

Miller did not deny having told Magnuson that "any teacher that has less than three, four years' experience on our staff can just be dismissed on a whim". Although Miller's statement apparently did refer to the terms of the agreement, this statement, made in the middle of a heated discussion on an unrelated grievance, constituted a veiled threat to Magnuson. More importantly, it corroborates Granros' damaging admission about Miller's willingness to use the power to non-renew to discourage protected activity.

Without attempting to resolve the conflict between the testimony of the Complainants' witnesses who would have the Examiner believe that the conflict between Reith and Roy Samplawski was due to Reith's superior skills as a negotiator and Samplawski's tendency to make unwarranted personal remarks, and the Respondents' witnesses who would have the Examiner believe that the conflict was the result of the fact that they were both tough negotiators, the record is undisputed that there was considerable ill-feeling between the two individuals. The record also establishes that Roy Samplawski told Lenore Streit that he hoped the teachers did strike because there were a few teachers that he would like to get rid of. 6/

Because of the animosity that existed between Roy Samplawski and Reith at that time, and because of Roy Samplawski's subsequent actions, the Examiner is satisfied that Roy Samplawski was referring to Reith when he made this comment to Streit. Thereafter Roy Samplawski, Miller and Mohr

5/ See, e.g., Findings of Fact numbered 17, 18, 19, 20 and 21.

6/ The finding that this statement was made is based on the testimony of Investigator Grosse. The testimony of Streit that she did not recall what she said to Grosse is discredited because of her demeanor, her evasiveness and her persistent refusal to deny that she had made the statement attributed to her by Grosse. Roy Samplawski's general denial that he ever made such a statement is not credited.

demonstrated an inordinate amount of interest in Reith's failure to keep his certification current. This was a problem that would normally be handled by a letter from the administrator. Because of the technical nature of Reith's deficiency, i.e., his lack of certification being based on a mere failure to apply, and because of the strong evidence of discriminatory motivation and the timing of the decision to recommend non-renewal, the Examiner is satisfied on the record as a whole that Reith's lack of certification was a pretext seized upon by Samplawski, Miller and Mohr to help justify the non-renewal. Miller's admission at the hearing that he probably shouldn't have helped Reith obtain his non-renewal certificate supports this inference.

There is no doubt that Reith's failure to obtain a non-renewal certificate was a legitimate cause for criticism. However, the record establishes that Reith believed that it was Miller's obligation to help him obtain a renewal certificate. The Respondents' persistent reliance on Reith's failure to obtain a timely renewal certificate even after he had in fact obtained a renewal certificate supports the Complainants' theory that this reason was pretextual.

Other Reasons Given

The Respondents claim that there was a persistent low enrollment in Reith's elective class of Physics and that this constitutes evidence that he was doing a poor job of teaching. The evidence does indicate that there was a persistent low enrollment in Reith's Physics class. However, the evidence also discloses that the only action the Respondents had ever taken to advise Reith that they were dissatisfied with his teaching performance was to attach a warning letter to his teaching contract in June of 1971 which contained criticism of some of his teaching practices (particularly his grading) but did not mention the enrollment in his Physics class. His grading changed thereafter and there is no indication of any subsequent criticism of his teaching of algebra or the elective class of physics. Granros never evaluated Reith in his Physics class. He did, pursuant to the direction of the Board, evaluate him in January and December of 1972 and gave him favorable evaluations.

The Respondents' claim that Reith had "broken down administrative policy" is apparently based on the fact that in early February, 1972, he supplied a student with the names of at least two Board members, Roy Samplawski and Harold Johnson, who was then President, and suggested that she call them and ask them to serve as chaperones for a dance. This action on Reith's part was officious and was apparently related to a demand in bargaining that teachers be paid for such work. His use of a student for the purpose of harassing the Board members involved was clearly unprotected. However, the Respondents took no action against Reith at that time. The use of this incident as part of its reason for non-renewal a year later is suspicious in view of the fact that no disciplinary action was taken at that time and no consideration was given to non-renewal at that time.

The Respondents did take some action in the form of filing a "grievance" against Reith when he failed to appear as a chaperone at a basketball game in December of 1972. Reith testified that he was never advised that he was to be present on the date in question and the evidence of record will not support a contrary conclusion.

Reith grieved such action stating that his grievance was filed because of "prejudicial treatment by administration and a coverup for lack of effective administrative functioning". In addition to alleging that he had not been notified about the chaperoning duty, Reith said in his grievance:

"This action by the administration shows:

1. Lack of performance of administrative functions; i.e., the administration does not keep ALL of its teachers informed.

2. Prejudicial treatment of this teacher by the administration since other teachers who have missed chaperoning in the past have not had letters placed in their files. This a facet of a continuing program of harassment of this teacher by the District Administrator because of his personal feelings toward this teacher.
3. Building principals in other area schools notify the teacher before chaperoning duty by a notice in the individual teacher's mailbox."

These statements were the basis of the Respondents' claim that Reith "accuses the administration of non-ethical practices". While the right to utilize the grievance procedure does not give an employee license to make unwarranted attacks on the integrity of his supervisors Reith's comments would not seem to be in excess of the limits of propriety under the circumstances. Assuming that Granros had, in the past, posted notices regarding chaperone duties and had failed to do so or otherwise notify the grievant on this occasion, (and the evidence will not support a contrary finding) it is arguable that Granros may have been seeking to "cover up" his own neglect in this instance. In view of the findings herein regarding Miller's motivation for seeking Reith's non-renewal, his attack on Miller's motives would not seem to be unwarranted.

Finally, the Respondents' claim that miscellaneous complaints had been received regarding Reith's performance referred to an inordinately large number of complaints (mostly verbal) which were allegedly received during his teaching tenure. Although the agreement requires that any complaints about a teacher by a parent or a guardian of a student must be promptly called to the teacher's attention, the only warning ever given Reith was a letter which was attached to his individual teaching contract in June of 1971. Subsequent to that, Granros had given Reith favorable evaluations in January and December of 1972.

Conclusion

Based on all of the evidence of record, the Examiner is led to the conclusion that, although there was some factual basis for most of the reasons given for Reith's non-renewal, the decision to non-renew Reith was the result, at least in part, of discriminatory motivation. Any deficiencies in Reith's teaching performance which had not been corrected and his misconduct in February 1972 were largely ignored by the Respondents until after the negotiations which preceded the 1972-1973 agreement had been concluded. Reith's protected activities during those negotiations precipitated considerable animus towards Reith on the part of the Respondents' agents. At that point in time, the Respondents' agents seized upon the stale complaints which they had against Reith and his neglect to obtain a timely renewal of his teaching certificate as a basis for non-renewing him.

Although a number of the individual Board members who voted to support the non-renewal action, including Halterman, may not have been so motivated, 7/ they were acting on the recommendations of Miller, Mohr and Roy Samplawski and the evidence presented to them. Under these circumstances, where the decision to come forward with such recommendation

7/ Although the evidence suggests that one Board member, Merle Samplawski, might have been motivated by a desire to retaliate against Reith because of a dispute between himself and Reith over a theme that Reith had required Merle Samplawski's daughter to rewrite, such motivation, if it existed, did not violate Reith's rights under Section 111.70(3)(a)1 and Section 111.70(3)(a)3 of the MERA.

and evidence was motivated at least in part by a desire to retaliate against Reith because of his protected activities on behalf of the Complainant Association, it is appropriate to conclude that the resultant decision to non-renew was improperly motivated. The Commission has previously held that where the decision to recommend non-renewal is the result of such motivation the resultant non-renewal constitutes a violation of the teacher's rights under the MERA. 8/

Based on the above and foregoing and the record as a whole, the undersigned concludes that the Respondents have violated Sections 111.70 (3)(a)1 and Section 111.70(3)(a)3 of the MERA and has entered an appropriate remedial order.

Dated at Madison, Wisconsin this 12th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

8/ Muskego-Norway Consolidated Schools (7247) 8/65; aff'd 35 Wis 2d 540 (1967).