STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION, Complainant, vs. RACINE UNIFIED SCHOOL DISTRICT NO. 1, OF RACINE COUNTY, WISCONSIN, Respondent.	Case XXXIII No. 20115 MP-573 Decision No. 14308-D
RACINE UNIFIED SCHOOL DISTRICT NO. 1, OF RACINE COUNTY, WISCONSIN, Complainant, vs. JAMES ENNIS, SUSAN GRIEGO, ALAN PIRK AND JAY NEWELL, Respondents.	Case XXXIV No. 20238 MP-588 Decision No. 14389-D
RACINE UNIFIED SCHOOL DISTRICT NO. 1, OF RACINE COUNTY, WISCONSIN, Complainant, vs. RACINE EDUCATION ASSOCIATION, Respondent.	Case XXXV No. 20239 MP-589 Decision No. 14390-D

Appearances:
Perry & First, Attorneys at Law, by Mr. Richard Perry, Esq., and Mr. Arthur Heitzer, Esq., and Mr. James Ennis, Executive Director, on behalf of the Racine Education Association, Susan Griego, Alan Pirk, Jay Newell, and James Ennis.
Melli, Shiels, Walker and Pease, S.C., Attorneys at Law, by Mr. Jack D. Walker, Esq., on behalf of Racine Unified School District No. 1, of Racine County, Wisconsin.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Racine Education Association having filed a prohibited practices complaint with the Wisconsin Employment Relations Commission, herein commission, alleging that Racine Unified School District No. 1, of Racine County, Wisconsin, has committed certain prohibited practices; and Racine Unified School District No. 1, of Racine County, Wisconsin having thereafter filed separate complaints against the Racine Education Association, James Ennis, Susan Griego, Alan Pirk and Jay

Newell; and the commission having appointed Amedeo Greco, a member of the commission's staff to make and issue Findings of Fact, Conclusions of Law and Order as provided for in Section 111.70(5) of the Wisconsin Statutes; and hearing on said complaints having been held in Racine, Wisconsin on April 27 and 28, 1976, and June 16 and 17, 1976; and the parties thereafter having filed briefs and reply briefs; and the commission on June 8, 1977 having issued an Order directing the Hearing Examiner's decisions to be the final decisions of the commission; and the Examiner having considered the evidence and arguments of counsel, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Racine Education Association, herein Association, is a labor organization and at all times material herein was the exclusive bargaining representative of certain teachers employed by Racine Unified School District No. 1, of Racine County, Wisconsin; that the Association maintains its principal office in Racine, Wisconsin; that James Ennis has served as the Association's Executive Director; that Susan Griego, Alan Pirk and Jay Newell have respectively served as President, Vice President, and Secretary of the Association's J. I. Case High School sub-council; that a sub-council consists of certain representatives selected to represent Association members at each school; that the Association's representative assembly is a composite of all building representatives in the District; and that at all times material herein, Ennis, Griego, Pirk, and Newell, as well as the Association's sub-council and representative assembly, have acted on the Association's behalf and have served as its agents.

2. That Racine Unified School District No. 1, of Racine County, Wisconsin, hereinafter the District, constitutes a municipal employer within the meaning of the Municipal Employment Relations Act, hereinafter MERA; that the District's principal office is in Racine, Wisconsin; and that the District is engaged in the providing of public education in the Racine, Wisconsin, area.

3. That the Association and the District have been privy to a series of collective bargaining agreements; that the parties entered into collective bargaining negotiations for a successor contract in 1974; that the parties were able to agree on certain provisions of a collective bargaining agreement; and that said provisions were in effect at all times material herein.

4. That Article II of said agreement, entitled "Professional Negotiations", provides in part:

> "6.a. The Board and the Association subscribe to the principle that differences affecting hours, wages and conditions of employment of teachers shall be resolved by the terms of this agreement in keeping with the high standards of the profession and without interruption of the school program.
>
> b. Accordingly, the Association agrees that there should be no strikes, work-stoppages, or other concerted refusal to perform work by the teachers covered by this agreement.
>
> c. Upon notification by the Board of any unauthorized work stoppage, the Association shall make public that it does not authorize such violation and will direct its members to cease and desist. Having given such public

notice, the Association shall be freed from all liability for any breach of this article."

5. That Article VI of said agreement, entitled "Board Rights", provides:

> "1. The Association recognizes that the Board has responsibility and authority to manage and direct, in behalf of the public, all the operations and activities of the school district to the full extent authorized by law; therefore, it is understood the Board retains, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and Constitution of the State of Wisconsin, and/or the United States, including, but without limiting the generality of the foregoing: the management and control of school properties, school organization, facilities, and instructional programs.
>
> 2. The exercise of these powers, rights, authority, duties and responsibilities by the Board and the adoption of such rules, regulations and policies as it may deem necessary shall be limited only by the specific and express terms of this Agreement."

6. That Article VII of said agreement provides for a grievance-arbitration provision; that said provision permits teachers and the Association to file grievances; that said provision does not give the District the right to file grievances; and that the District has never filed grievances in the past.

7. That Article VIII of said agreement, entitled "Staff Utilization and Working Conditions", in part provides:

> "6.b. Therefore, to insure that educational objectives of the district are met, teachers shall, unless excused by the person calling the meeting, attend the following meetings outside their regularly scheduled day:
>
> (1) Monthly building staff meetings called by the administrative staff.
>
> (2) Monthly subject area meetings called by a department head, unit leader, team leader, area coordinator, or principal.
>
> (3) Special meetings called by a department head, unit leader, team leader, area coordinator, or principal.
>
> (4) Unscheduled meetings called from time to time [sic] deal with specific issues."

8. That Article XVII, entitled "Curriculum and Instruction", provides:

> "1. The Board and the Association recognize the important role the teachers play in the development of curriculum and instruction if a quality education program is to be attained.
>
> 2. The Board and the Association will insure the continuing participation of teachers in an advisory capacity on committees which are formed for making recommendations to the Board concerning, but not limited to, the following:

a. Text and supplementary materials
b. Courses or curricula for teaching
c. Student-teacher ratios
d. Pupil progress reporting and student records

3. When a teacher representative of the Association is mutually scheduled to meet during the school day on any Unified School District committee discussing items of curriculum and instruction, a substitute teacher shall be provided and the teacher shall suffer no loss in pay."

and that said provision has been in all prior contracts dating back to 1969.

9. That the District for a number of years has maintained a Senior High School Curriculum Committee, hereinafter the SHSCC; that the SHSCC is composed of about 16 parents, 5 administrators, and 9 teachers; that the SHSCC by-laws state that the teacher representatives must be selected by the faculty from each school; that teacher participation on the SHSCC is entirely voluntary; that the SHSCC serves as a sounding board for both educators and the public on curriculum matters, it is an information center for innovative educational ideas, and it discusses and recommends curriculum changes to the Superintendent of Schools, who, in turn, reports such matters to the Board of Education; that some SHSCC proposals may relate to wages, hours, or conditions of employment of Association members; that in such cases, the District supposedly bargains over said matters with the Association, after they have been presented to the Superintendent and the Board; that the SHSCC itself does not perform any collective bargaining functions; that non-Association members in the past have served on the SHSCC; that representatives on the SHSCC are expected to do what is best for the children and they are not expected to represent the views of any self-interest group; that there are also junior high school and elementary curricula committees; and that said committees operate in the same fashion as SHSCC.

10. That in approximately November 1975, a vacancy arose with regard to the J. I. Case High School representative to the SHSCC; that the principal of J. I. Case, James Coles, thereafter announced plans for the selection of another J. I. Case representative to the SHSCC; that in making plans for the election, Coles announced that the entire J. I. Case faculty would vote in the election, including non-Association members; that representatives from the Association's sub-council at J. I. Case, which represented all Association members at J. I. Case, met with Coles, and there stated that the sub-council would like to be involved in the election procedure; that Coles refused this request; that Newell, Pirk, and Griego on behalf of the Association subsequently reiterated this demand to Coles on or about January 6, 1976, and there stated that the SHSCC representative had to be a member of the Association; that the sub-council on or about January 7, 1976, conducted its own election for a J. I. Case representative to the SHSCC; that said election was limited to Association members; that teacher Paul Noelke was elected by the sub-council as the J. I. Case representative; that Coles subsequently informed the sub-council that the results of the election were not official since it violated the SHSCC by-laws; that Coles also stated that Noelke would not be excused from school to attend SHSCC meetings; that Coles subsequently announced that the SHSCC election which he had planned and which was open to all teachers, including non-Association members, would not be held; that Sam Castagna, the Assistant Superintendent, denied the Association's January 19, 1976 request to have Noelke attend SHSCC meetings; and that as of the instant hearing, Noelke has not been permitted to serve on the SHSCC.

11. That the J. I. Case sub-council on January 16, 1976 met with representatives from other senior high school sub-councils and members of the SHSCC; that it was there agreed that all Association representatives on the SHSCC would walk off the SHSCC if Noelke were not seated; that the other senior high school sub-councils subsequently agreed to the walk off; that it appears that the Association members of the SHSCC subsequently refused to participate in SHSCC meetings; that some Association members on junior and elementary school curricula committees also initially boycotted their committees in order to support Noelke, pursuant to the request of the Association; that said action was taken in accord with an October 2, 1975, resolution of the Association which stated that only Association members should select representatives to District-wide committees; that Nelson by letter dated March 12, 1976, advised Ennis that:

> "As part of the Superintendent's Report at last Monday's Board meeting, I reported that I was preparing to ask you to terminate yet several additional concerted refusals by teachers to perform work.
>
> At the time, I said that I thought that a pattern was developing. Based on the additional work done in tying together these events, I now believe that a pattern of concerted refusals to perform work exists. I believe that the Racine Education Association (REA) knows about it, and in fact, the REA, its officers, its executive director, and its agents are actively encouraging and directing these concerted refusals to perform work.
>
> Once again, pursuant to Article II, Section 6, of the collective bargaining agreement, I wish to give the REA notice of work stoppages.
>
> Upon receipt of this notice, I ask that the REA immediately carry out its duty of making public that it does not authorize these partial strikes and that it direct all of its members to cease and desist from engaging in them.
>
> I refer to the following concerted refusals to perform work:
>
> 1.a. Teachers serving on the Senior High School Curriculum Committee are refusing to attend meetings on that committee because of the refusal of the committee to seat Mr. Paul Noelke from J. I. Case High School.
>
> b. I understand that the teachers walked out of the Curriculum Committee meeting when Mr. Noelke was not seated, and that they did so acting upon the direction of the REA subcouncils in the high schools at which they work.
>
> 2. Teachers who serve on the Junior High School Curriculum Committee are boycotting meetings of that committee to protest and express their disagreement over the refusal of the Senior High School Curriculum Committee to seat Mr. Paul Noelke. It is my further understanding that they are taking this action in response to directions of the REA's Junior High School Caucus and REA subcouncils in the individual junior high schools.
>
> 3. Teachers are also boycotting and refusing to attend meetings of the Elementary School Curriculum Committee

and Advisory Councils thereto, and that this action has been initiated by the REA and its Elementary Caucus.

4. The REA has instructed teachers not to cooperate with Title VII Workshops because the Title VII Director refused to sign a 'memorandum of understanding' that the REA proposed.

5. A majority of Junior High School English teachers are refusing to provide the Instructional Division with copies of student compositions which are a result of the Composition Lessons portion of the curriculum."

and that the Association thereafter never urged its members to participate in SHSCC and other related activities, and it never publicly disavowed the refusal of certain Association members to participate in SHSCC and other related activities.

12. That prior to 1976, the District had always maintained that non-Association members were entitled to vote in SHSCC elections; that the District, in Ennis' words, has "violently disagreed" with the Association's claim that only Association members can vote in SHSCC elections; that in schools which consisted of only non-Association members, only Association members in the past voted in SHSCC elections; that where non-Association members were present, such teachers voted in SHSCC elections; that in the past, non-Association members have never been precluded from voting in SHSCC elections.

13. That the District in 1975 planned on conducting Title VII Workshops; that said workshops centered on desegregation and discipline problems therein; that attendance at the workshops was entirely voluntary; that in September, 1975, Juanita Bronaugh, Director of Title VII programs in the District, sent a letter to Association representatives to secure teacher liaison from each elementary school to assist in Title VII programs; that in October 1975, the Association sent Bronaugh a memo of understanding regarding the Title VII programs; that the Association demanded that Bronaugh sign the memo; that Bronaugh refused to do so; that the Association thereafter recommended to its members that they boycott the Title VII Workshops; that the Association urged the boycott because of concerns regarding payment for attendance and the status of negotiations on this issue; that following that recommendation, approximately 35 out of 50 teachers who initially signed up for a Saturday workshop scheduled in Middleton, Wisconsin, withdrew their applications; that said workshop was thereafter cancelled; that Nelson by letter dated March 12, 1976, supra, advised Ennis that the boycott violated the contractual no-strike ban; and that Ennis thereafter never disavowed the boycott and never directed Association members to participate in the workshop.

14. That the District has a mixed practice regarding the turning in of lesson plans to the principal's office; that lesson plans are used to check the progress of teachers, help substitute teachers conduct classes, improve teaching methods, and assess teaching materials; that some principals require such plans to be turned in periodically, while others do not; and that the principal at each school decides what the policy should be at his or her school.

15. That John Brosseau, the principal at Jerstad-Agerholm Elementary School, requires that lesson plans be turned in at his school; that this requirement is communicated to teachers at the outset of the school year; and that teachers at Jerstad-Agerholm in the past had always turned in their lesson plans.

16. That in January 1976, George Alfsen, a teacher at Jerstad-Agerholm Elementary School, informed Brosseau that he would not turn in his lesson plans, pursuant to an Association resolution to that effect; that earlier, the Association's representative assembly on December 4, 1975, adopted a resolution which provided:

> "The Representative Assembly recognized the need for lesson plans, but, because teachers are professional, teachers will not be required to turn in lesson plans."

that following Alfsen's refusal to turn in his lesson plan, Borsseau issued two memos to the faculty wherein he reiterated that lesson plans had to be turned in; that on March 9, 1976, Borsseau sent a letter to Alfsen stating that the lesson plans had to be turned in; and that Alfsen submitted his lesson plans one week later.

17. That teachers at Janes Elementary School were also required to turn in their lesson plans to the office; that teachers at Janes in the past always turned in their lesson plans; that pursuant to the Association resolution noted above, several teachers at Janes refused to turn in their lesson plans; that on December 15, 1975, the principal at Janes, John Blickle, informed the teachers that they had to submit their lesson plans, that some teachers nonetheless refused to submit their lesson plans; that Blickle thereafter met with the teachers, at which point they stated that they would continue to adhere to their position in accordance with the Association's position; that said teachers did not turn in their lesson plans until March 1976, some three months after they were initially asked to turn in their lesson plans; and that the District never notified the Association that the refusal to turn in lesson plans constituted a violation of the contractual no-strike prohibition.

18. That on or about January 27, 1976, the District's Superintendent of Schools, Richard Nelson, sent a letter to teachers in a number of schools, including Knapp Elementary School, which stated "You are requested to fill out" an enclosed questionnaire; that said questionnaire was to be completed by the teachers to whose classrooms students were assigned; that said questionnaire had been used by the District for the last several years; that teachers in the past had always returned said questionnaires; that some teachers at Knapp Elementary School contacted Ennis about the questionnaire; that Ennis advised that the teachers were not compelled to fill them out; that the Knapp principal, J. R. Ferguson, on February 6, 1975, announced over the public address system that teachers "who had not yet turned in the questionnaires to please do so before leaving from school on that day"; that some teachers still refused to turn in the questionnaires on the ground that Ennis had told them that teachers were not required to turn them in; that Ferguson subsequently met with Association building representatives and there stated that the questionnaires should be turned in; that the Association representatives requested that Ferguson reduce his directive to writing; that Ferguson agreed to do so; that Ferguson in fact never made such a communication; that, instead, Ferguson then contacted Nelson about the matter; that Nelson on February 18, 1976, advised the Association that the Association had caused teachers to engage in a concerted refusal to perform work by not turning in the questionnaires and that said refusal violated the contractual no-strike ban; that such letter stated, inter alia:

> "I have received the enclosed report from Mr. James Ferguson, Principal of Knapp Elementary School. It describes the circumstances that have resulted in the majority of teachers at Knapp School refusing to carry

out my directive of January 27, 1976, that requires them to complete the Title I Needs assessment questionnaires they received.

The purpose of this letter is to assert the School District's rights under Article II, Section 6., of the collective bargaining agreement, which says:

. . .

Under the circumstances, it is our belief that you have caused teachers to engage in a concerted refusal to perform work by inducing them to refuse to comply with the Superintendent's directive of January 27, 1976, requiring them to complete the Title I Needs Assessment questionnaires, and with subsequent directives of Mr. James Ferguson, Principal.

You are given notice of this unauthorized work stoppage so that the Racine Education Association may comply with its obligation to make public that it does not authorize such a concerted refusal to perform work and to direct members to cease and desist."

that in sending that letter, Nelson acted without any prior express authorization from the District's Board of Education; that the Board subsequently ratified Nelson's actions; that Nelson had the authority to send such a letter; that Ennis and Marie Thayer, the Association's President, immediately thereafter investigated the situation; that the Association called a press conference and there announced that no strike was in progress; that Ennis never publicly disavowed the refusal to return the questionnaires; that Ennis thereafter met with Nelson and there agreed that the questionnaires would be handed in; that that was subsequently done; and that by letter dated March 1, 1976, Nelson advised Ennis, inter alia:

"Thank you for causing the cessation of the Knapp Elementary School teachers' concerted refusal to perform work with respect to their concerted refusal to complete the Title I Needs Assessment questionnaires.

I wish to acknowledge receipt of the questionnaires that were attached to your memorandum of Feburary 23, 1976.

Please inform me of any facts that would form the basis of any claim the Association might make that it is freed of liability for breach of Art. II of the collective bargaining agreement with respect to its obligation to make public that it did not authorize the violation and its obligation to direct its members to cease and desist."

19. That in September 1975 Joe Pappenfuss, a secondary ready language arts coordinator, informed certain English teachers that they should select their best student compositions and turn them in later on in the year; that said compositions were to be used in compiling a manual for future guidance; that Pappenfuss by memo dated February 9, 1976, reiterated that the compositions should be turned in; that said memorandum provided:

"This is a reminder that near the end of this school year I will be collecting from all English teachers copies of student compositions resulting from the

Composition Lessons. The purpose of collecting these compositions is to find models to include with the revised Lessons next year.

Keep these guidelines in mind:

1. For each Composition Lesson keep the best composition submitted by your students.

2. On each composition you keep, include the following information: (a) the number of the Lesson, (b) the exact assignment you gave, (c) the student's name, (d) your name, and (e) the name of your school."

that some teachers became concerned over this issue in that some felt that the compositions might be used to evaluate them, others believed that the compositions might be used as a basis for a book, and still others thought that they had not been given sufficient time to complete the project; that because of said concerns, some English teachers met with Ennis; that Ennis there stated that teachers should turn in the compositions only if the compositions were related to student needs, but that the compositions did not have to be turned in if they were to be used in either writing a paper or in evaluating teachers; that Ennis there recommended that a petition be drawn up which stated:

> "We respectfully decline to provide student compositions as per your memo of February 9, 1976 because of the inherent potential for evaluation of teachers."

that said petition was subsequently circulated among junior high school teachers and signed by numerous teachers, including apparently non-Association members; that Nelson by letter dated March 12, 1976, supra, advised Ennis that the refusal to return the compositions constituted an unauthorized work stoppage; that on May 10, 1976, Pappenfuss sent a final directive wherein he again requested that the compositions be turned in; that said memorandum stated:

> "On February 9, 1976, I reminded you that I would be collecting from all junior high English teachers student compositions resulting from the Composition Lessons to find models to include with the revised Composition Lessons for next year.
>
> Please follow these guidelines:
>
> 1. For each Composition Lesson you have taught this year, choose the best composition submitted by your students.
>
> 2. On each composition you send to me, include the following information: (a) the number of the Lesson, (b) the exact assignment you gave, (c) the student's name and grade, (d) your name, and (e) the name of your school.
>
> Please turn in to me the student compositions that you select by Friday, June 4, 1976. Please call me if you have any questions."

that by letter dated June 9, 1976, Nelson reiterated that the refusal to turn in the compositions constituted an unauthorized work stoppage; that said letter provided:

"Pursuant to Article II, Section 6, of the collective bargaining agreement, I wish to notify you of an existence of a concerted refusal to perform work that is being carried on by many junior high school English teachers.

On February 9, 1976, Mr. Joe Pappenfuss, Reading/Language Arts Coordinator Secondary, told English teachers that he was requiring them to submit the best English compositions that their students had done so they could be used as models in the revision of Composition Lessons for grades 7, 8, and 9.

On March 5, 1976, Mr. Pappenfuss received a petition signed by the majority of English teachers saying that they were intending not to turn in the required English themes. On May 10, 1976, Mr. Pappenfuss established June 4, 1976, as the date by which junior high school English teachers were to submit their students' compositions, in accordance with his directives.

Pursuant to Article II, Section 6, I request that you carry out your obligation of making public that the REA does not authorize such concerted refusal and that the REA direct its members to cease and desist."

that the Association never publicly stated that teachers were required to turn in the compositions; that only about 5 of 41 teachers thereafter returned compositions with all of the requisite information; that the remaining teachers returned compositions which did not have assignment numbers and/or the names of students and teachers; that the failure to have the correct information caused considerable extra work for the District in its attempt to arrange the compositions in correct order; and that the District in many cases has been precluded from giving credit for teacher and student accomplishments.

20. That the District in the past has conducted surveys among its teachers; that such surveys have always been turned in; that Pappenfuss during the 1975-1976 school year prepared a survey which tested the reading component of the Title VII program; that Pappenfuss asked teachers to return the survey; that the Association's junior high caucus on January 12, 1976, adopted a motion which provided:

"That members of the Junior High Caucus instruct the teachers they represent not to participate in administration-sponsored surveys in the area of wages, hours, and working conditions . . . that each representative inform their building principal that he/she . . . will instruct the teachers he/she represents not to respond to administration-sponsored surveys in the area of wages, hours, and working conditions."

that the Jerstad-Agerholm sub-council thereafter decided that teachers should do what they "feel confortable doing" on this issue; that the teachers at certain schools thereafter generally filled out the survey; that Ennis on February 23, 1976 issued a memorandum to teachers regarding testing and surveys which in part provided:

"Of course you must work and then grieve when given a direct and clear written order. But, when there is the potential that the order is wrong, you do have a concomitant responsibility to children and parents." (Emphasis in original).

that the response from two schools, Jerstad-Agerholm and Gifford, was so low that the returned data was unusable; that by letter dated June 9, 1976, Nelson advised Ennis that:

> "Pursuant to Article II, Section 6, of the collective bargaining agreement, I wish to give you notice of a concerted refusal by the majority of teachers at Gifford and Jerstad-Agerholm Junior High Schools to participate in a survey to determine the effectiveness of the Title VII reading program.
>
> On May 7, 1976, Mr. Joe Pappenfuss, Reading/Language Arts Coordinator Secondary, delegated to reading resource teachers the responsibility of completing a survey to the professional observation of teachers about the effectiveness of the Title VII reading program. Results were due back to Mr. Pappenfuss on May 28, 1976.
>
> I understand that in response to directions from Mr. Dean Pettit at Jerstad-Agerholm and Mrs. Dean Pettit at Gifford, most teachers at those schools refused to complete the survey.
>
> Pursuant to Article II, Section 6, of the collective bargaining agreement, I request that you carry out your obligation of making public that the REA does not authorize such concerted refusal and that the REA direct its members at the two junior high schools to cease and desist."

and that there is no evidence that the Association thereafter either publicly disavowed the conduct herein, or that it directed its members to return the survey.

21. That the Association has breached the contractual no-strike prohibition.

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

CONCLUSIONS OF LAW

1. That the District has not violated Section 111.70(3)(a)1, nor any other section, of MERA by insisting that non-Association members vote in SHSCC elections, by refusing to seat Noelke as a delegate to the SHSCC, and by taking the other actions that it did during the SHSCC controversy.

2. That the Association has not violated Section 111.70(3)(b)1 of MERA by: (1) conducting its own election for the SHSCC; (2) filing the instant complaint; and (3) encouraging employes not to perform assigned tasks.

3. That the Association has not violated Section 111.70(3)(b)4 of MERA by encouraging employes to boycott the Title VII Workshops and by encouraging teachers not to turn in their lesson plans.

4. That the Association has violated Section 111.70(3)(b)4 of MERA by failing to publicly disavow and by failing to direct teachers to cease and desist from: (1) returning certain questionnaires at Knapp Elementary School; (2) refusing to return English compositions; (3) refusing to complete surveys; and (4) refusing to participate in SHSCC and junior and elementary cirricula committees.

5. That James Ennis, Susan Griego, Alan Pirk and Jay Newell have not individually committed any prohibited practices.

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

ORDER

IT IS ORDERED that the complaint allegations pertaining to the District's alleged unlawful conduct be, and the same hereby are, dismissed in their entirety.

IT IS FURTHER ORDERED that those complaint allegations pertaining to: (1) the Association's SHSCC election; (2) the filing of the complaint herein, (3) the Association's alleged coercion of employes to stop performing assigned tasks; (4) the boycott of the Title VII Workshop; and (5) the refusal to turn in lesson plans, be and the same hereby are, dismissed in their entirety.

IT IS FURTHER ORDERED that the complaint allegations against James Ennis, Susan Griego, Alan Pirk, and Jay Newell be, and the same hereby are, dismissed in their entirety.

IT IS FURTHER ORDERED that the Racine Education Association, its officers, agents, and members, shall immediately:

A. Cease and desist from:

(a) Encouraging employes to engage in any unauthorized work stoppages.

(b) Refusing to direct its members to perform any assigned tasks and refusing to publicly disavow any unauthorized work stoppages.

(c) In any like or related matter violate the contractual no-strike prohibition.

B. Take the following affirmative action which the Examiner finds will effectuate the policies of MERA:

(a) Immediately direct all employes that they must complete and return questionnaires, return compositions, complete and return surveys, and participate in SHSCC and junior and elementary curricula committees.

(b) Publicly disavow all past work stoppages involving the refusal to return questionnaires, refusal to return completed compositions, refusal to return surveys, and the refusal to participate in SHSCC and junior and elementary curricula committees.

(c) Post in its offices, meeting halls and all places where notices to its members are customarily posted copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by the Racine Education Association and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Racine Education Association to insure that said notices are not altered, defaced or covered by other material.

(d) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 14th day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

APPENDIX A

NOTICE TO ALL MEMBERS

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 members that:

1. WE WILL immediately direct all employes that they must complete and return questionnaires, return compositions, complete and return surveys, and participate in the SHSCC and junior and elementary curricula committees.

2. WE WILL immediately publicly disavow all past work stoppages involving the refusal to return questionnaires, refusal to return completed compositions, refusal to return surveys, and the refusal to participate in the SHSCC and junior and elementary curricula committees.

3. WE WILL NOT encourage employes to engage in any unauthorized work stoppages.

4. WE WILL NOT refuse to direct our members to perform any assigned tasks and we will not refuse to publicly disavow any unauthorized work stoppages.

5. WE WILL NOT in any like or related matter violate the contractual no-strike prohibition.

Dated this ____ day of _____, 1977.

By_____
Racine Education Association

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

RACINE UNIFIED SCHOOL DISTRICT NO. 1, et al., Cases XXXIII, XXXIV, XXXV, Decision Nos. 14308-D, 14389-D, 14390-D

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In Case No. XXXIII, the Association primarily asserts that only Association members can vote in SHSCC elections and serve on the SHSCC. 1/ It argues, therefore, that the District acted unlawfully in refusing to honor the results of the January 7, 1976, election which the Association conducted among its members and that the District acted unlawfully in attempting to conduct an SHSCC election which would be open to both Association and non-Association members.

The pertinent contract language on this issue, Article XVII, entitled "Curriculum and Instruction", provides:

> "1. The Board and the Association recognize the important role the teachers play in the development of curriculum and instruction if a quality education program is to be attained.
>
> 2. The Board and the Association will insure the continuing participation of teachers in an advisory capacity on committees which are formed for making recommendations to the Board concerning, but not limited to, the following:
>
> a. Text and supplementary materials
> b. Courses or curricula for teaching
> c. Student-teacher ratios
> d. Pupil progress reporting and student records
>
> 3. When a teacher representative of the Association is mutually scheduled to meet during the school day on any Unified School District committee discussing items of curriculum and instruction, a substitute teacher shall be provided and the teacher shall suffer no loss in pay."

On its face, this proviso lends some support to the Association's position. Thus, the proviso states that "the Board and the Association will insure the continuing participation of teachers in an advisory capacity on committees . . . concerning . . . courses of curricula for teaching. . . ." Going on, Article XVII also states that teacher representatives of the Association shall suffer no loss in pay when they discuss "items of curriculum and instruction". This latter clause in particular seems to acknowledge that the Association can have teacher representation on District committees.

On the other hand, the fact remains that there is no express language in this article which specifically states that only Association members can participate in such committees. Absent such a prohibition, it is entirely possible to read Article XVII as providing for Association representatives on committees, while at the same time failing to deal with the question of whether non-Association members can likewise participate in such committees. In other words, it must be concluded that the contract is silent on this latter issue.

1/ At the hearing, the Association stated that whereas non-Association members could run in the SHSCC elections, such individuals would have to pay Association dues if elected to the SHSCC.

That being so, it is therefore appropriate to consider extrinsic aids in order to ascertain the true intent of the parties. Here, the primary such aid is the past practice of the parties.

On this point, and as noted in paragraph 12 of the Findings of Fact, the record shows that where the Association represented 100 per cent of the teachers in a school, only Association members voted in SHSCC elections. That, of course, is to be expected. However, in those schools where the Association did not represent all the teachers, both Association and non-Association members voted in SHSCC elections, according to the credited testimony of the District's witnesses. The only contrary evidence on this point was the hearsay testimony of James Ennis, who asserted that he had been told that non-Association members in the past had been precluded from voting in SHSCC elections. Since such testimony was hearsay in nature and challenged by other witnesses who had direct knowledge of the facts in issue, Ennis' testimony must be disregarded. Furthermore, the record shows that the Association must have been aware of this practice, as Association representatives have repeatedly been told that non-Association members were entitled to vote in SHSCC elections. Moreover, according to Ennis, the District in the past has "violently disagreed" with the Association's claim that only Association members could participate in SHSCC elections, thereby establishing that the Association should have known of the practice in this area.

Accordingly, based on these considerations, the record shows that a past practice has developed under which non-Association members have voted in SHSCC elections. As that past practice gives meaning to Article XVII, it therefore follows that the Association has no contractual right to insist that non-Association members are precluded from voting in SHSCC elections and in serving on the SHSCC.

Left, then, is the Association's claim that it has the statutory right under MERA to insist that only Association members can represent other teachers on the SHSCC. In support of this view, the Association asserts that the SHSCC engages in matters affecting collective bargaining and that since the Association is the exclusive collective bargaining representative of all the teachers, only the Association can represent teachers in such matters. On this point, it is undisputed that the SHSCC at times does deal with matters affecting the hours, wages, and working conditions of the teachers herein. Nonetheless, the SHSCC itself does not engage in collective bargaining. Furthermore, it is undisputed that the District is required to bargain with the Association before it can implement SHSCC proposals dealing with wages, hours or conditions of employment. In this connection, the Association contends that bargaining after the SHSCC has acted is oftentimes meaningless because the District at that point is locked into a given position. Assuming arguendo that that is true, the Association of course can file a refusal to bargain charge at that point. Accordingly, for purposes of this proceeding, it is immaterial whether the District in fact bargains over proposals after the SHSCC has acted, as the facts herein center on what rights, if any, the Association has during SHSCC deliberations. Since, as noted above, the SHSCC itself does not engage in any collective bargaining during its deliberations, it follows that the Association has no statutory right to insist upon Association representation at such meetings.

In so finding, the Examiner is aware that teacher representatives to the SHSCC are to consider the views of other teachers. Since the teachers herein are professional employes, it is not surprising that teachers should contact their other colleagues regarding SHSCC matters. In the end, however, the teacher representatives must exercise their own independent judgment as to what they think is best. Thus, this

factor does not establish, as contended by the Association, that SHSCC teacher representatives necessarily serve in a representative capacity, one in which they are expected to represent the views of other teachers. To the contrary, the record here establishes that the primary purpose of the SHSCC is to aid the children and that teacher representatives are likewise expected to do what is best for the children, as opposed to the wishes of those who have a certain self-interest. 2/ Thus, the SHSCC teacher representatives do not officially represent the views of all the teachers in the bargaining unit. Accordingly, the Association has no statutory right to insist that only Association members can represent teachers on the SHSCC.

In light of the above-noted considerations, which show that the Association has no such contractual or statutory right, it follows that there is no requirement to the effect that only Association members can vote in SHSCC elections and serve on the SHSCC. Accordingly, in refusing to accede to the Association's demands on this issue, and in attempting to open up the SHSCC election to both Association and non-Association members, the District has not acted unlawfully. The complaint in Case No. XXXIII is therefore dismissed in its entirety.

Turning to the complaints filed by the District in Case No. XXXV, the District in essence maintains that the Association has violated the contractual no-strike prohibition by engaging in certain conduct.

In its defense, the Association has made a number of claims which, in its view, warrant dismissal of the complaint allegations.

For example, the Association contends that "the Commission should refrain from entertaining or sustaining prohibited practices where the charging party has contractual remedies which it has failed to exercise". In support thereof, the Association contends that the District either should have disciplined the affected teachers or filed a grievance over the instant matter. As noted above, however, there is no provision in the contractual grievance procedure which accords the District an opportunity to file a grievance, and in fact the District has never filed a grievance in the past. It is therefore immaterial that the Association is willing to have this matter grieved, as the Association cannot sua sponte alter the contractual grievance machinery. Accordingly, there is no basis for holding that the District was required to file a grievance in this matter. As to the Association's other contention, that the District should have disciplined the affected teachers, it must be remembered that the District has secured a contractual no-strike ban from the Association and that, as a result, the District has a right to enforce that ban against the Association. Since disciplining individual employes would not serve as an effective remedy against the Association, the District is not required to discipline said employes in order to preserve its contractual rights.

The Association also claims that the concerted activities herein do not constitute a strike and that the actions herein "fell far short of the definition of a strike." The contractual no-strike ban, however, is extremely broad as it prohibits "strikes, work stoppages, or other concerted refusal to perform work . . ." (Emphasis added). This underlined phrase makes it most clear that the contractual

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2/ Thus, Kenneth Bahnson, Chairperson of the SHSCC, testified that he always advised SHSCC representatives that they were to serve the children and that they were not to represent different high schools or different groups.

prohibition covers not only strikes, but also "other concerted refusal to perform work . . ." Accordingly, the activity herein may be prohibited if it constitutes a "concerted refusal to perform work", even though it does not constitute a full scale strike.

Additionally, the Association alleges that teachers could justifiably refuse to perform some of the tasks herein on the ground that the District engaged in "illegal conduct which violates the fundamental rights of the Association . . ." As a result, the Association contends that the teachers herein were not required to "comply now and grieve later."

As to this point, it is a cardinal rule in labor relations that, with the exception of safety matters, employes generally must perform assigned tasks and that they must later grieve over the issue in dispute. Here, the Association asserts that the teachers are relieved from this responsibility because the matters herein involve "fundamental rights of the Association . . ." However, the Association has failed to cite any case authority for the claim that the issues herein do involve "fundamental rights". Moreover, the fact remains that the teachers herein had an adequate remedy to rectify such alleged wrongful conduct via the contractual grievance procedure. For, as noted by Arbitrator Harry Shulman:

> "Some men apparently think that, when a violation of contract seems clear, the employee may refuse to obey and thus resort to self-help rather than the grievance procedure. That is an erroneous point of view. In the first place, what appears to one party to be a clear violation may not seem so at all to the other party. Neither party can be the final judge as to whether the contract has been violated. The determination of that issue rests in collective negotiation through the grievance procedure. But, in the second place, and more important, the grievance procedure is prescribed in the contract precisely because the parties anticipated that there would be claims of violations which would require adjustment. That procedure is prescribed for all grievances, not merely for doubtful ones. Nothing in the contract even suggests the idea that only doubtful violations need be processed through the grievance procedure and that clear violations can be resisted through individual self-help. The only difference between a 'clear' violation and a 'doubtful' one is that the former makes a clear grievance and the latter a doubtful one. But both must be handled in the regular prescribed manner." 3/

Going on, Shulman observed that:

> "When a controversy arises, production cannot wait for exhaustion of the grievance procedure. While that procedure is being pursued, production must go on. And someone must have the authority to direct the manner in which it is to go on until the controversy is settled. That authority is vested in supervision. It must be vested there because the responsibility for production is also vested there; and responsibility must be accompanied by authority. It is fairly vested there because the grievance procedure is capable of adequately recompensing employees for abuse of authority by supervision."

3/ Ford Motor Co., 3 LA 779, (1944).

Along this same line, the commission has affirmed an Examiner's decision 4/ which held that the Municipal Employment Relations Act

> "does not protect such conduct as the Complainant's under any circumstances. The remedies that the Act contemplates for prohibited practices by municipal employes, are in the Act's own provisions, and not in self-help responses."

Applying the foregoing principles herein, it must therefore be concluded that the Association was not justified in resorting to self-help, as the Association had an adequate remedy through the contractual grievance procedure.

As an additional defense, and one which is at odds with the one just noted, the Association in essence contends that the "Association policy was consistently to advise teachers to work whenever clearly ordered to do so, and to grieve matters still in dispute." In support thereof, the Association points to a February 23, 1976 memorandum wherein Ennis advises teachers:

> "Of course you must work and then grieve when given a direct and clear written order, but, when there is the potential that the order is wrong, you do have a concomitant responsibility to children and parents." (Emphasis in original).

Related to this issue is the Association's claim that the teachers herein were often "requested" to do certain things, but that they were not "ordered" to do so, thereby leaving it up to the individual teachers as to whether they would comply with the request in issue.

This issue of how work directives are to be framed is a difficult one. On the one hand, employes may have a bona fide doubt as to whether they must comply with a request. On the other hand, it is unreasonable to expect an employer to always issue military-like commands when tasks are to be done. In the end, it would appear that common sense must take over by viewing all the facts and by inquiring as to whether the affected employes had a reasonable basis for believing that they could refuse to do as asked.

Accordingly, it is not necessary for an employer to preface all work directives with such commands as "you must do this or you will be disciplined". To the contrary, it would appear that many employes would not want to be spoken to in such a manner. As a result, the District here was not required to issue such edicts. Moreover, the District certainly was not required to issue written orders, despite Ennis' observation that teachers only had to obey such written orders. As to Ennis' February 23, 1976 memorandum, it is true that the first sentence states that employes must work now and grieve later. However, the very next sentence undercuts that statement by adding that teachers have a "concomitant responsibility" to others when the order is wrong. The necessary implication of such a statement is that "wrong" orders do not have to be obeyed. Indeed, since teachers thereafter continued to refuse to perform certain assigned tasks, it is fairly clear that most teachers paid more attention to the second sentence of the above extract, and that they did so in accord with the Association's encouragement. As a result, Ennis' supposed "work now grieve later" memorandum must be discounted.

4/ DeForest Area Schools, VI, Dec. No. 11492-A (10/73); Affirmed Dec. No. 11492-C (12/73).

In its defense, the Association also asserts that "the previous holding that 'partial strikes' in the private sector may be declared illegal has now been overruled by the United States Supreme Court". In support thereof, the Association relies upon Lodge 76, International Assn. of Machinists v. WERC (Kearney and Trecker), 92 LRRM 2881 (1976). There, the United States Supreme Court declared invalid a provision of the Wisconsin Employment Peace Act which provided that a union was prohibited from engaging "in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike". Kearney and Trecker, supra, involved a question of statutory construction and it centered on whether a state could prohibit the conduct in issue. Accordingly, since Kearney and Trecker, supra, involved the question of whether the State of Wisconsin could prohibit the conduct in issue, and inasmuch as the case herein turns on whether the contractual no-strike ban has been violated, it follows that Kearney and Trecker, supra, is inapposite to the present proceeding.

Additionally, the Association contends that it once called a press conference regarding an alleged breach of contract, but that the media did not show up to report the conference. As a result, Ennis testified that "we just gave up" when the District subsequently demanded that the Association disavow certain conduct. On this point, the Examiner finds that it is inherently implausible to believe that the Association made a bona fide attempt to publicly disavow the conduct in issue, as it is highly improbable that no members of the media would attend and/or report on the alleged conference. Moreover, even assuming arguendo that a news conference was held once and that it was not reported, the fact remains that the Association willingly chose the forum in which it made its announcement and that the Association is therefore responsible for its success or failure. Accordingly, if the news conference was not covered by the media, the Association was nonetheless contractually required to seek out other means of communication, so that it could publicly disavow the conduct herein. If the Association therefore failed to make such an effective public disavowal, the Association thereby breached its contractual requirement that it do so.

Turning now to the various complaint allegations, the District maintains that the Association boycotted a Title VII Workshop and that such a boycott violated the contractual no-strike clause. On this point, and as set out in paragraph 13 of the Findings of Fact, it is undisputed that the Association did urge its members to boycott a Title VII Workshop and that it did so because of concerns regarding payment for attendance at the workshop.

In resolving this issue, it must first be noted that the contract does not expressly provide that teachers must attend such workshops. Indeed, it is noteworthy that Article VII of the contract, entitled "Staff Utilization and Working Conditions", enumerates various activities in which teachers must participate. Absent from that enumeration is any requirement that teachers must attend workshops. The only possible basis for reaching a contrary conclusion is the presence of a clause therein to the effect that teachers "Must attend meetings called from time to time [sic] deal with specific issues." While this proviso speaks of "meetings", there is no requirement therein to the effect that teachers must also attend conferences or workshops.

Additionally, it is clear that attendance at the workshop in issue was entirely voluntary, as no teachers were ever ordered by the District to attend the workshop. This factor therefore distinguishes this case from Kenosha Unified School District No. 1; et al.,

XXI, Decision No. 10752-B (10/72). In Kenosha, supra, the commission found that teachers as a matter of practice were required to attend open house programs, even though there was no requirement to that effect in the contract. However, since the work there was involuntary in nature, the facts in Kenosha, supra, are distinguishable from the facts herein, as the facts herein show that attendance at the workshop was voluntary.

In such circumstances, the facts herein are more analogous to those in State of Wisconsin, III, Decision No. 8892 (3/69). There, employes boycotted a correctional conference in the midst of contract negotiations. In finding that the boycott was lawful, the commission found that attendance at the conference was entirely voluntary and that, as a result, the refusal to engage in such voluntary duties did not constitute a strike. Thus, in his concurring opinion, Chairman Slavney noted that:

> "In order for employes to engage in a strike, there must be a concerted refusal to perform assigned duties and responsibilities required to be performed, rather than duties and responsibilities which the employes may voluntarily choose or not choose to perform."

Applying that principle here, it follows that the teachers herein did not engage in strike related activity or other concerted refusal to perform work when they refused to attend the workshop in issue, as the teachers were not required to attend the workshop. Accordingly, and because the Association was not required to disavow the boycott, this complaint allegation is dismissed.

Along this same line, the District contends that the Association engaged in a work stoppage when it encouraged teachers not to turn in their lesson plans.

As set forth above, the District has a mixed practice regarding the turning in of lesson plans, with some principals insisting that such plans be turned in, and other principals having no such requirement. Thus, lesson plans were required to be turned in at the Jerstad-Agerholm and Janes Elementary Schools. Further, it is undisputed that at least some teachers refused to turn in their lesson plans at those two schools, pursuant to an Association policy which stated that such plans did not have to be turned in.

In considering this issue, it is clear that some principals have required the submission of lesson plans and that such a requirement has been communicated to the teachers involved. In such circumstances, and pursuant to the Commission's holding in Kenosha, supra, teachers were required to comply with such a directive, even though the contract itself does not spell out this requirement. Nonetheless, the District here never formally notified the Association that the failure to turn in lesson plans constituted an unauthorized work stoppage, as it was required to do under Article II, the contractual no-strike ban, which provides:

> "Upon notification by the Board of any unauthorized work stoppage, the Association shall make public that it does not authorize such violation and will direct its members to cease and desist. Having given such public notice, the Association shall be freed from all liability for any breach of this Article."

Since this proviso clearly provides that the Association is not required to act until it first receives notice from the District, it follows

that the District is thereby estopped from claiming that the refusal to turn in lesson plans violated the no-strike prohibition, where, as here, it has failed to give such notice. This complaint allegation is therefore dismissed.

The District also maintains that the Association breached the contract when teachers at Knapp Elementary School initially refused to complete and return a Title I Needs Assessment questionnaire. The facts relating to this incident are set forth in paragraph 18 of the Findings of Fact. In essence, the record shows that Superintendent Nelson on January 27, 1976 requested teachers to fill out the questionnaire, that Knapp principal Ferguson reiterated this request on February 6, 1976, that Ferguson thereafter advised Association representatives that he wanted the questionnaires returned, that Nelson on February 18, 1976 advised the Association that the refusal to complete the questionnaire violated the contract, that Ennis thereafter investigated the matter, and that shortly thereafter the questionnaires were completed and turned in.

In its defense, the Association alleges that teachers were never ordered to turn in the questionnaire and that, instead, they were merely requested to do so, thereby leaving it up to their own discretion as to whether they would return the questionnaire.

In support thereof, the Association points out that Nelson on January 27, 1976 stated "You are requested to fill out" the questionnaire and that Ferguson on February 6, 1976 publicly announced that teachers should "please" return the questionnaire that day. That, says the Association, establishes that the teachers were never expressly ordered to turn in the questionnaire.

As noted above, it is necessary to consider all the facts in determining whether the teachers had the discretion to refuse to turn in the questionnaires. Applying that principle here, it is most noteworthy that no teachers ever asked whether they could refuse to turn in the questionnaire. Instead, the record shows that the affected teachers refused to do so only on the ground that Ennis had told them that the teachers could properly refuse to turn in the questionnaires. Moreover, since Nelson and Ferguson repeatedly asked for the questionnaires, it would appear that the teachers should have known that the District wanted the questionnaires turned in. In such circumstances, it follows that the teachers were refusing to perform assigned tasks and that such a refusal was violative of the contractual no-strike ban.

Accordingly, the District correctly acted when Nelson advised the Association by letter dated February 18, 1976 that the refusal to turn in the questionnaire violated the no-strike clause.

On this point, the Association argues that only the Board, and not Nelson, is authorized under the contract to give notification that the no-strike ban has been violated. In this connection, it is true that Section C of Article II, entitled "Professional Negotiations", speaks of "upon notification of the Board of any unauthorized work stoppage . . ." (Emphasis added). However, Section 1 of Article II expressly provides that:

> "Despite reference herein to the Board and the Association as such, each reserves the right to act hereunder by the committee, or designated representative or representatives."

Since Nelson is the designated representative of the Board, this language therefore recognizes that Nelson can act on behalf of the

Board. Accordingly, and because the Board subsequently ratified Nelson's actions, there is no merit to the Association's claim that Nelson lacked the authority to notify the Association of an alleged breach of contract.

As to the Association's compliance with Nelson's directive, the teachers subsequently turned in the questionnaires, after Ennis had investigated the matter. To that extent, the Association may have directed its members to cease and desist. However, the Association was also contractually required to publicly state that "it does not authorize such violation . . ." Here, the Association claims that it held a news conference, at which point it stated that no strike was in progress. However, since as noted above, there had been a concerted refusal to perform work, i.e., the refusal to return the questionnaires, the Association was contractually required to publicly disavow such conduct. By admittedly failing to do so, it thereby violated the contract. The Association must therefore take the remedial action noted above.

Turning to another complaint allegation, the District also asserts that the Association violated the contractual no-strike ban when it urged its members to boycott SHSCC activities.

Since attendance and participation on the SHSCC was entirely voluntary, and for the reasons noted above, the boycott herein ordinarily would be lawful under the Commission's decision in the State of Wisconsin, supra. However, the contract expressly provides in Article XVII, entitled "Curriculum and Instruction", that:

> "The Board and the Association will insure the continuing participation of teachers in an advisory capacity on committees which are formed for making recommendations to the Board, but not limited to, the following:
>
> . . .
>
> (b) Courses of curricula for teaching.
>
> . . ."

By virtue of this language, it is clear that the Association has agreed that it will insure teacher representation on curricula committees, even though such attendance is otherwise voluntary. Accordingly, this proviso constitutes a waiver of the otherwise right to refuse to participate in such activity. The Association-sponsored boycott of SHSCC activities therefore violated this contractual pledge.

It was therefore incumbent upon the District to notify the Association that its boycott of the SHSCC, as well as the junior and elementary curricula committees, constituted an unauthorized work stoppage. The District fulfilled its responsibilities when Nelson informed Ennis by letter dated March 12, 1976, supra, that the refusal to serve on curricula committees constituted an unauthorized work stoppage. Despite such notification, there is no evidence that the Association either publicly disavowed that conduct or that it ever directed its members to perform the work in issue. By failing to take such action, the Association thereby violated the contractual no-strike prohibition. To rectify that conduct, the Association shall take the action noted above.

Also in issue is the refusal of teachers to turn in certain compositions, as noted in paragraph 19 of the Findings of Fact.

Here, again, the Association in essence argues that the teachers were merely requested to perform this activity and that they were never expressly ordered to do so. While the District did "request" teachers to perform this work, the record also reveals that no teacher ever questioned whether the directive had to be complied with. In such circumstances, there is little, if any, basis for concluding that the teachers had a bona fide belief that they had the option of refusing to do the work in issue. Moreover, even if they did, such a belief should have been resolved when Nelson informed Ennis by letter dated March 12, 1976 that the teachers were improperly refusing to turn in student compositions. Nelson reiterated this same point in a subsequent June 9, 1976 letter to Ennis, wherein he asked that such compositions be turned in. While the teachers did return the compositions, many of the returned compositions were incomplete in that they did not have the teacher's name, student's name, and/or the number of the assignment. The teachers refused to supply this information, despite the fact that they were expressly told to do so earlier. Because of this incomplete information, the District has had to spend considerable time in trying to piece together the returned data.

In such circumstances, it is clear that the teachers have refused to perform assigned tasks. Furthermore, while the Association may have told its members to return the questionnaires, there is no evidence that the Association ever told its members that the teachers should include the teacher's name, student's name, and/or lesson number on the compositions in issue. Moreover, even if the Association did, it is uncontroverted that the Association never publicly disavowed either the initial refusal to turn in the compositions, or the subsequent return of the compositions in an incomplete fashion. Since, as noted above, the Association was required to give such public notice, 5/ its failure to do so was violative of the contract. The Association is therefore required to take the remedial action noted above.

The District also contends that the Association breached the contract when some of its members refused to return a certain survey. On this point, it is clear that such surveys have been utilized in the past and that teachers have always turned them in. Here, however, the Association's junior high school caucus on January 12, 1976 decided that teachers did not have to fill out such surveys. Thereafter, the sub-council at Jerstad-Agerholm decided that teachers should do what they "feel comfortable doing" on this matter. Subsequently, the response from two schools, Jerstad-Agerholm and Gifford, was so low that the returned data was unusable. In response, Nelson by letter dated June 9, 1976, notified Ennis that the refusal to return the survey violated the contractual no-strike ban. Despite said notice, Ennis never publicly disavowed the refusal to return the survey and there is no evidence that he ever directed the Association members to return the survey. As the teachers were required to return

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5/ The Association contends that it never formally took a position on this matter and that some non-Association members refused to turn in the compositions. This fact is immaterial, however, as the Association is required to publicly disavow any work stoppage, irrespective of whether the Association has sponsored such a stoppage.

the survey as part of their duties, if follows that their refusal to do so was violative of the contractual no-strike ban. Accordingly, by failing to publicly disavow said conduct and by refusing to direct its members to return the survey, the Association thereby violated the contractual no-strike prohibition. To rectify that conduct, the Association shall take the remedial action noted above.

In addition to alleging the foregoing breaches of contract, the District also claims that the Association: (1) unlawfully coerced employes and the District by its actions in the SHSCC controversy; (2) unlawfully filed its complaint herein; and (3) unlawfully coerced the teachers herein to strike. These complaint allegations are dismissed since: (1) there is no evidence that the Association's actions in the SHSCC controversy coerced either teachers or the District; (2) the Association did not file its complaint for the purpose of harassing the District, and the filing of that complaint has not tended to interfere with the District's rights; and (3) there is no evidence that the Association coerced its members into striking or into refusing to perform some of their assigned tasks.

In Case No. XXXIV, the District contends that Ennis, Griego, Pirk, and Newell individually committed prohibited practices and that they should be found guilty of committing said practices. On this point, it is true that all four named individuals have participated in conduct which breached the contract. Thus, Ennis at times has encouraged certain work stoppages, he has refused to publicly disavow some work stoppages, and he has refused to direct Association members to perform assigned tasks. For their part, Griego, Pirk, and Newell were all active in behalf of the J. I. Case sub-council when that body refused to participate in SHSCC activities. However, the fact remains that all four named individuals have served as agents of the Association when they engaged in such conduct. Accordingly, and because it does not appear that any of the four acted in their own individual behalf, it is enough to hold the Association liable for their conduct. As a result, the complaint allegations against the four individuals are hereby dismissed.

Dated at Madison, Wisconsin this 14th day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner