STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

| | |
|---|---|
| AFSCME LOCAL 2490 and AFSCME LOCAL 2494, Complainants, vs. WAUKESHA COUNTY, Respondent. | Case XXXIX No. 20501 MP-619 Decision No. 14662-A |

Appearances:
Lawton and Cates, Attorneys at Law, by Mr. Bruce F. Ehlke, and Mr. Robert W. Lyons, business representative, appearing on behalf of Complainants.
Michael, Best and Friedrich, Attorneys at Law, by Mr. Marshall R. Berkoff, and Mr. Allan Walsch, personnel administrator, appearing on behalf of respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainants filed a complaint with the commission on May 18, 1976 alleging that respondent had committed prohibited practices within the meaning of Sec. 111.70, Stats. By order dated May 24, 1976, the commission authorized the undersigned examiner, Marshall L. Gratz, to conduct hearing on said complaint and to make and issue findings of fact, conclusions of law and order in the matter.

The examiner conducted hearing in the matter at Waukesha, Wisconsin on September 19 and 20, October 12 and 14, and December 14, 1976. Following distribution of the hearing transcript, the parties submitted briefs and reply briefs, the last of which was received by the examiner on July 15, 1977.

The examiner has considered the evidence and the arguments of counsel, and, being fully advised in the premises, makes and issues the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Complainant AFSCME Local 2490 is a labor organization with a mailing address of c/o Hope Vermaas, president, 1522-C Big Bend Road, Waukesha, Wisconsin 53186. At all times material hereto, Local 2490 has been the exclusive collective bargaining representative for a bargaining unit of municipal employes consisting of all employes of the Waukesha County Institutions, excluding certain specified managerial, confidential and professional employes. At various times material herein, the following municipal employes employed by Respondent have held the following positions in Local 2490:*

* The individuals identified by position and/or relationship are referred to only by name hereinafter. The reader may wish to keep this page at hand for reference for that reason.

Hope Vermaas (president)
Darlene Moore (secretary)
Sharon Miller (steward)
Ann Shibowski (steward)

2. Complainant AFSCME Local 2494 is a labor organization with a mailing address of c/o Marge Evert, president, 309 Morris Street, (#1), Pewaukee, Wisconsin 53072. At all times material hereto, Local 2494 has been the exclusive collective bargaining representative for a bargaining unit of municipal employes consisting of all employes of the Waukesha County Courthouse, Waukesha County Health Department and Waukesha County Department of Social Services, excluding elected officials and certain specified managerial, confidential, craft and professional employes. At various times material herein, the following municipal employes employed by Respondent have held the following positions in Local 2494:*

Mildred Phillips (steward--July, 1974-June, 1975; president July, 1975 on)
Dennis Lyons (steward)
Dolores Bentz

3. Complainants, sometimes referred to herein as local(s) or the union, are both affiliated with Wisconsin Council of County and Municipal Employees (WCCME), Council 40, AFSCME, AFL-CIO. The WCCME business representative of complainants is, and has been, at all material times, Robert W. Lyons whose address is W177 N9114 St. Francis Drive, Menomonee Falls, Wisconsin 53051.

4. Respondent is a municipal employer and a municipal corporation organized and operated under the laws of the State of Wisconsin. Respondent maintains its principal offices at the Courthouse, 515 West Moreland Boulevard, Waukesha, Wisconsin 53186.

5. Respondent operates, inter alia, the Waukesha County Institutions of which Northview Home and Hospital is a part. Listed below are individuals employed by respondent at Northview at various times material hereto; in the first column are supervisors whose acts referred to herein were within the scope of their authority as agents of respondent, and in the second column are municipal employes immediately supervised by each of those supervisors:*

| NORTHVIEW SUPERVISORS | NORTHVIEW EMPLOYES IMMEDIATELY SUPERVISED |
|---|---|
| Lawrence Malinoski (assistant administrator) | ---- |
| Mary Shepard (assistant director of nursing) | ---- |
| Mr. Drew (housekeeping supervisor) | Daniel Johnson (building maintenance helper I) |

* The individuals identified by position and/or relationship are referred to only by name hereinafter. The reader may wish to keep this page at hand for reference for that reason.

| | |
|---|---|
| Mrs. Fredericks | Karen Barrow<br>Joyce Schmidt<br>(nurses' aides) |
| Marguerite Prischalla<br>(supervising nurse) | Karen Williams<br>(aide) |
| ---- | Hope Vermaas |

Listed below are individuals employed by respondent in its Department of Social Services at various times material hereto; in the first column are supervisors whose acts referred to herein were within the scope of their authority as agents of respondent, and in the second column are municipal employes immediately supervised by each of those supervisors:*

| SOCIAL SERVICES SUPERVISORS | SOCIAL SERVICES EMPLOYES IMMEDIATELY SUPERVISED |
|---|---|
| Peter Safir<br>(deputy director of social services and division supervisor) | ---- |
| Kenneth Kuehn<br>(division supervisor) | ---- |
| Mary Jo Kern<br>(GA unit supervisor) | Edith Meinhardt<br>(case aide II) |
| Mary Reidy<br>(unit supervisor) | Linda Reed<br>(social worker) |
| Dorothy Wellhausen<br>(clerical supervisor) | Jacqueline Barkelew (nee Zeller)<br>(clerk typist I) |
| Victoria Winkler<br>(acting basic services unit supervisor) | Mildred Phillips<br>(social worker II) |
| Lucy Kissinger Wellhausen (above) | Vera Kin<br>(clerk II [phone console receptionist]) |
| Joyce Grimm<br>(AFDC unit supervisor) | Janet Morris<br>(social worker) |
| Winnifred Hammermeister<br>(AFDC unit supervisor) | Van Mehlos<br>(case aide I, AFDC unit) |

6. Three AFSCME locals, including complainants, were parties to a 1974-75 collective bargaining agreement containing the following provisions:

---

* The individuals identified by position and/or relationship are referred to only by name hereinafter. The reader may wish to keep this page at hand for reference for that reason.

## ARTICLE III
## UNION ACTIVITIES

3.01 Except as provided hereafter, no employee shall conduct any Union or other private business on County time.

3.02 The County shall allow Grievance Committee members and the aggrieved party sufficient time for the proper processing of grievances.

3.03 Union representatives having business with the officers or individual members of the Union may confer with such Union officers or members during working hours. Such privilege shall not be abused.

. . .

3.06 Grievance Committee - The Union will give to the County in writing the names of the grievance representatives. Employees representing the Union in the processing of a grievance shall be eligible to receive County compensation for time served as a grievance representative up to and including step (3) of the grievance procedure if occurring during the employee's scheduled hours of work.

. . .

## ARTICLE V
## GRIEVANCE PROCEDURE

5.01 A grievance is a claim or dispute by an employee of the County concerning the interpretation or application of this Agreement. Any other complaint or misunderstanding may be processed through Step (3) of the grievance procedure. To be processed, a grievance shall be presented in writing to the department head with a copy to the Personnel Department under Step (2) below within thirty (30) days after the time the employee affected knows or should know the facts causing the grievance. Grievances shall be processed as follows:

Step (1) The Employee and/or his Union representative shall attempt to settle the issue with the immediate supervisor.

Step (2) If the issue is not settled, then the employee, his representative, and the immediate supervisor shall attempt to settle the issue with the department head. Such issues shall be in writing stating fully the details of the grievance and shall be submitted within five (5) working days of Step (1). The department head shall hear the grievance within five (5) working days and shall render his decision in writing within five (5) working days.

Step (3) If a satisfactory settlement is not reached as outlined in Step (2), the grievance may be submitted to the Personnel Committee who shall hear the grievance within five (5) working days after its receipt and shall render its decision

within five (5) working days. If the grievance is not presented to the Personnel Committee within five (5) working days of the department head's response in Step (2), it shall be considered settled.

Step (4) If a satisfactory settlement is not reached as outlined in Step (3), the grievance may not be submitted to arbitration within ten (10) work days; one (1) arbitrator to be chosen by the County, one (1) by the Union, and a third to be chosen by the first two, and he shall be the Chairman of the Board. (If the two cannot agree on the selection of the third member, the parties shall request a panel of names from the Wisconsin Employment Relations Commission and shall alternately strike a name from such panel until the name of one person remains who shall serve as Board Chairman.) The Board of Arbitration shall after hearing by a majority vote, make a decision on the grievance, which shall be final and binding on both parties. Only questions concerning the application or interpretation of this contract are subject to arbitration.

. . .

ARTICLE VI
EMPLOYEE DEFINITIONS

6.01 Probationary Employee - All newly-hired employees entering into regular part-time and regular full-time employment shall be considered probationary employees serving a probationary period of employment of six (6) calendar months. If a probationary employee is dismissed during the probationary period, he shall not have recourse through the grievance procedure."

Said locals and respondent are also parties to a 1976-77 collective bargaining agreement which contains provisions identical to those above except for article and section numbering.

7. During the course of the negotiations leading to that 1976-77 agreement, the locals proposed amending "step (1)" to read as follows:

> "A representative of the Union and the employee shall meet with the immediate supervisor in an attempt to settle the issue. The immediate supervisor shall respond in writing to the employee and the Union representative within three (3) working days following such meeting."

The locals also proposed adding a new section 5.04 to read:

> "An employee shall have the right to Union representation at all steps of the grievance procedure."

In the ensuing negotiations, respondent's bargaining representative assured the locals that the employes they represent already had the contractual right to be represented by the union at all steps of the grievance procedure. Respondent's representatives expressed concern that employes ought not expect immediate grievance meetings upon request or immediate grievance dispositions at the conclusion of such meetings and said representatives asserted that grievance

procedure initiation and the attendant union representation was appropriate only after final decisions were made by management in areas such as merit evaluation procedures. The locals' representative stated that the locals did not intend their proposals to mean that employes would be entitled to leave work, grievance in hand, and demand an immediate grievance meeting and answer. Ultimately, the locals' representative agreed to drop the two proposals noted above, stating that he did so based on his understanding that employes already enjoyed the right to be represented by the locals at all steps of the grievance procedure and in meetings with supervisors that the employe reasonably fears could result in discipline (including reprimand) or discharge.

8. Respondent has a merit evaluation process for at least some of its social services employes by which it is annually determined whether employes otherwise eligible for merit pay increases shall receive same. In that process, the immediate supervisor prepares and presents the annual evaluation to the employe, offering an opportunity for discussion thereof at the employe's option. During such discussions, if any, the immediate supervisor may modify the evaluation and the employe may express in writing on the evaluation form itself any comments or disagreements the employe has with the supervisor's evaluation. The evaluation, whether modified and/or commented upon or not, is then signed by employe and supervisor and forwarded to the division administrator for review. The evaluation becomes final and effective for merit pay purposes only once it is approved by the division administrator.

9. On June 2, 1975, Meinhardt received a handwritten merit evaluation from Kern which contained an overall rating below the minimum needed to support a recommendation for a merit pay increase for which Meinhardt was otherwise eligible. Along with that evaluation, Kern sent a note offering an opportunity to discuss the evaluation if Meinhardt wished to do so. On June 3, Meinhardt requested an appointment with Kern for that purpose and did not express a desire that such appointment be for a meeting at the first step of the grievance procedure. Kern set the requested appointment for the following day, June 4. At the appointed time on June 4, Meinhardt arrived at the meeting accompanied by Phillips, her union steward. Kern expressly opposed Phillips' presence, stating that the meeting was not a part of the grievance procedure and that, in any event, there was no reason for a grievance at that point in the merit evaluation process. Meinhardt and Phillips contended that the meeting should constitute a first-step grievance meeting because the evaluation, as written, constituted a denial of merit pay to Meinhardt and because the evaluation contained several statements Meinhardt did not agree with such that Meinhardt had grounds for initiating a grievance to resolve those matters. Despite Kern's statements above, the meeting proceeded for some 45 minutes during which Meinhardt and especially Phillips asked questions about the manner in which Kern reached conclusions stated in the evaluation and the manner in which Kern observed Meinhardt relative to her observation of other employes. Eventually, Kern expressed a need to converse with Safir before proceeding further with the discussion. It was agreed that the meeting would be adjourned for that purpose until June 9, at 1:30 p.m.

10. When Kern reported the June 4 developments to Safir, Safir called Meinhardt to his office after work on June 6. Safir and Meinhardt met alone for an hour discussing Meinhardt's work relationship with Kern. Meinhardt acknowledged that she and Kern were experiencing difficulties in communicating. Safir suggested that Meinhardt and Kern meet in Safir's presence to discuss their relationship and to improve their communications and that such a meeting might result

in resolving Meinhardt's concerns about her evaluation. Safir also stated that he would not conduct such a meeting to iron out an employe-supervisor personality clash if a union representative were present. Meinhardt expressed reservations about participating in such a meeting without a union representative, but it was agreed that she would consider doing so and inform Safir of her decision at the beginning of the following work week. Complainants have not proven by a clear and satisfactory preponderance of the evidence that Meinhardt requested union representation for her June 6 meeting with Safir either before or during said meeting.

11. On the morning of June 9, Safir called Meinhardt by telephone, informed her that it remained his position that he would not conduct a meeting to resolve an employe-supervisor personality clash with a union representative present and asked her to come to his office for a meeting. Meinhardt agreed to do so as soon as she finished with a client interview. Shortly thereafter, Meinhardt, Kern and Safir met in the latter's office. Safir encouraged Kern and Meinhardt to air their differences, which they did. Thereafter, Safir encouraged them to discuss their views about the evaluation. They did so and reached agreement on terms of a modified evaluation with an overall rating high enough to support the expressed recommendation of a merit pay increase for Meinhardt as set forth therein. At no time before or during the June 9 meeting did Meinhardt request that a union representative be permitted to attend that meeting with her.

12. The adjourned meeting of Kern, Meinhardt and Phillips scheduled for the afternoon of June 9, 1975 did not take place, and Meinhardt did not thereafter take any steps to process a grievance concerning her evaluation or merit pay.

13. In late February, 1975, Reed asked Kuehn (in Reidy's absence) to authorize paid funeral leave for her anticipated one day absence to attend the funeral of her grandfather-in-law. Kuehn replied that in his view the agreement funeral leave provisions did not apply to funerals of employes' grandfathers-in-laws, but Reed stated that she and the union believed otherwise. Kuehn stated that he "hoped" Reed would take the day as vacation or unpaid time, and he signed a payroll authorization slip to that effect. Reed acknowledged that she understood Kuehn's thoughts on the matter, but said she intended to consult further with her union about it. Later, based on union advice that the funeral leave provisions applied to grandfather-in-law funerals, Reed submitted a claim to payroll for funeral leave on the day in question and was paid accordingly.

14. On June 12, 1975, Kuehn learned that Reed had claimed and had been paid for funeral leave in connection with the late February, 1975 funeral of her grandfather-in-law. At Kuehn's direction, Reidy told Reed to go to Kuehn's office for the purpose of deciding whether to take the day in question as either a charge against vacation or a charge against earnings, i.e., an unpaid leave day. Reed and Reidy reported immediately to Kuehn's office for a meeting with him that took half an hour. During the meeting, Kuehn angrily told Reed that he thought Reed had breached what he considered to have been an agreement concerning the day and that, thereafter, Kuehn could no longer trust Reed. Kuehn asked Reed whether she wished to take the day as a charge against vacation or as unpaid leave. Reed then requested that a union steward be called to the meeting. Kuehn refused to do so, asserting that the meeting involved neither discipline nor the processing of a grievance, so that union representation was not appropriate. Reed indicated that she needed more time to decide between the options offered, and, at Reidy's suggestion,

Kuehn allowed Reed until the next day (June 13) to call him with her decision. Following the meeting, Reed was emotionally upset. Reed consulted with Bentz about what had occurred at the meeting and about the union's interpretation of the funeral leave provisions.

15. On June 13, 1975, when Kuehn approached Reed at the latter's workplace, Reed reached for the phone. Kuehn asked what she was doing and when Reed replied that she was calling her union steward to be present during the discussion that was about to ensue, Kuehn informed Reed that he was only there to learn her decision whether to take the day as vacation or unpaid leave, that union representation was not appropriate, that Reed should therefore not place the call to her steward, and that, if she did, she would be subject to discipline for insubordination. Reed hung up her phone and informed Kuehn that she would take the time off as unpaid leave.

16. Sometime in July, 1975, one day's pay was deducted from Reed's earnings as regards the day in question. Reed processed a grievance pursuant to the steps of the contractual grievance procedure, challenging said deduction as a violation of the funeral leave provisions of the agreement. That grievance was ultimately resolved in respondent's favor by reason of the result in a grievance arbitration.

17. When Reed requested union representation during said contacts with supervisors on June 12 and 13, 1975, she did not have reasonable cause to believe that subsequent supervisory decisions to discharge or discipline her could result from or be based upon matters being investigated during those supervisory contacts.

18. On June 13, 1975, Barkelew was presented by Wellhausen with a written reprimand and warning concerning tardiness and related matters. On June 17, 1975, without announcing a desire for a meeting at the first step of the grievance procedure or otherwise giving Wellhausen reason to know of such desire, Barkelew initiated a discussion with Wellhausen in the latter's office concerning the factual accuracy of certain portions of the June 13 written statement, and she requested that her union steward be called away from work to be present during the discussion. Wellhausen denied that request. The discussion proceeded with Barkelew identifying aspects of the statement she believed factually inaccurate and expressing concern that the document was being placed in her personnel file. Wellhausen responded by taking the document from Barkelew's personnel file, placing it on the desk and saying "really Jackie, it isn't that important that it be in the file". Following that discussion, Wellhausen removed the document from Barkelew's personnel file without formal notice of that fact to Barkelew, amended it to reflect the factual corrections stressed by Barkelew, and retained it in her own supervisor's file of documents concerning employes.

19. On August 30, 1975, Drew decided to terminate Johnson, a probationary employe, and pulled Johnson's time card to that end. Johnson, who returned to work on August 31, 1975 after an absence, called Drew on that day in search of his time card and was informed that he was terminated effective at the end of that work day and that he would be informed why by letter thereafter. Johnson then informed Vermaas of the termination and asked her to help him arrange a meeting about it with Malinoski. Thereafter, both Vermaas and Johnson sought to arrange such a meeting and, after at least one postponement, an appointment with Malinoski was made for September 10. Before that meeting, Johnson received a letter from respondent stating reasons for his termination, each of which reasons had been the subject of at least one warning from supervision prior to his termination. On September 10, Johnson entered Northview,

and, accompanied by Vermaas who was on vacation at the time, asked to see Malinoski. Malinoski met them at the reception area, denied Johnson's request that Vermaas be permitted to attend the meeting with him, denied Johnson's request that union steward Ann Shibowski be permitted to attend the meeting with him, stated that if Johnson insisted on being accompanied by a union official there would be no meeting, and (consistent with an earlier indication of such willingness to Vermaas) allowed Johnson to be accompanied by a witness of his choice other than a union official. An employe, Mary Escobedo, agreed to serve as a witness; she accompanied Johnson to the meeting with Malinoski. During the 15 to 20 minute meeting, Malinoski attempted to explain the reasons stated in the September 2 letter for Johnson's termination, and Johnson attempted to discredit both those reasons and Drew, the supervisor who instituted the termination. Johnson has not been returned to Respondent's employ since his August 31, 1975 termination.

20. Between August 31 and September 10, 1975, Malinoski took steps to have calls to Northview for Vermaas from Johnson transferred to himself. Upon receipt of one such call, Malinoski informed Johnson that, inter alia, neither Vermaas nor the union could be of help to him; and Malinoski refused Johnson's request for Vermaas' home phone number, consistent with respondent's policy of nonrelease of employe home numbers.

21. Phillips served as the union steward in the Department of Social Services from July, 1974 until the end of June, 1975 at which time she became local president. In the last week of February, 1975, Kuehn orally directed Phillips to keep a written record of the amounts of work time she spent on union business. On February 28, 1975, Winkler wrote Phillips to the same effect, directing her to log the amounts of work time she spent on union business, to submit such logs to Winkler bi-weekly, and to leave word with Winkler "on (her) way to and returning from union business". A day or so later, Phillips returned Winkler's memo with a handwritten reply, "I will be happy to oblige." Thereafter, Phillips regularly left written notice on Winkler's desk of her whereabouts when she left her desk on union business; but, after recording the time she spent on union business "a few times", Phillips, on the advice of union representative Robert Lyons, ceased keeping such a record and did not submit such a record to Winkler or any other supervisor.

22. On April 23, 1975, Phillips replied to Kuehn's late February oral directive by requesting that Kuehn put same in writing. Shortly thereafter, Kuehn asked Winkler to respond to Phillips' request directly. Winkler next raised the subject with Phillips on July 21, 1975 by orally directing that Phillips bring her written records of time spent on union business to a conference. Phillips initially orally replied that she had never been directed to keep such a record, but Winkler reminded her in writing of Winkler's February 28 memorandum. Phillips replied in writing on July 22, 1975 explaining that she had not kept such records because of advice of her union business representative, because she had received no response to her April 23 memorandum to Kuehn, and because she had always informed Winkler in writing when she was away from her desk on union business. Prior to July 22, Phillips had not informed any supervisor that she was not keeping the record called for in Winkler's February 28 memorandum and in Kuehn's oral directive of about the same date. Winkler replied in writing on August 4, 1975 that Phillips' explanations for her noncompliance with Winkler's February 28 directive were insufficient, that Phillips was to keep a log of time spent on union business both at and away from her desk and to submit same to Winkler bi-weekly, that Phillips was to continue reporting her whereabouts to Winkler when she left her desk on union business, and that, if Phillips failed to comply

with those directives in the future, Winkler would consider referring the matter to Kuehn for disciplinary action. Thereafter, Phillips never kept a record of her time spent on union business and was not disciplined for failing to do so.

23. During 1975, Phillips was the only union official directed to keep a record of work time spent on union business. Kuehn and Winkler decided to require Phillips to keep and submit such record, in order to determine whether work time spent by Phillips on her union business responsibilities as steward, or some other factor(s), was (were) causing the difficulties they were having in bringing about a reduction in Phillips' paperwork backlog. Kuehn and Winkler sought such information to determine whether additional reductions in case assignments to Phillips beyond those tried previously were likely to reduce that backlog. Hence, by their directives in those regards to Phillips and by Winkler's August 4 warning against noncompliance therewith, Kuehn and Winkler were pursuing legitimate business objectives in a reasonable manner.

24. In August, 1975, in the absence of Kissinger, Wellhausen initiated a discussion in her office with Kin about changes in the telephone call handling procedures Kin was to follow. Near the outset of the discussion, Kin requested that a union steward be called to be present during the discussion. Wellhausen ignored that request and continued to detail the changes Kin was to make in her work procedures.

25. In October, 1975, Wellhausen initiated another discussion in her office with Kin about call handling procedures. Wellhausen criticized Kin's job performance stating, "I have so many complaints against you that I don't know what I'm going to do", and instructed her on the procedures that she was to follow. On two occasions during the discussion, Kin requested and Wellhausen refused to permit a union steward's presence at the meeting. Kin then explained that she had performed the work in the manner being criticized because Safir had instructed her to do so. Wellhausen directed her to disregard Safir's former instructions and to perform the work as Wellhausen was currently directing.

26. While Kin may have had reasonable cause to believe, during her October meeting with Wellhausen, that subsequent supervisory decisions to discharge or discipline her could be forthcoming with respect to the manner in which she had been performing her work, complainants have not proven by a clear and satisfactory preponderance of the evidence that Kin had reasonable cause to believe that any such subsequent supervisory decision could result from or be based upon matters being investigated by Wellhausen during her contacts with Kin in August and/or October, 1975.

27. Respondent, at least at its Northview Home and Hospital, has a procedure in cases of job related injuries by which the injured employe, if possible, fills out an accident report and insurance claim reports of the accident immediately after it occurs. Supervision is then responsible to see that the report is completely filled out by the employe and that a notation is made of any equipment malfunction or work practice deviation or deficiency that should be eliminated to avoid similar injuries in the future.

28. On September 23, 1975, Barrow and Schmidt were at work lifting a patient when Barrow suffered a back injury. Barrow orally reported the injury to a nurse, continued working for an hour, and rested throughout her half-hour supper break. When her increasing

back discomfort did not abate, she went home after informing a nurse that she was doing so. Once home, Barrow realized that she had not filled out an accident report of the incident. Knowing that the filing of such a report is necessary and believing that it must be done immediately, Barrow called Schmidt at work and asked Schmidt to file a report of the accident. Schmidt did so before leaving work that night.

29. On September 24, 1975, Malinoski called Schmidt at her home and asked why she, rather than Barrow, had filed the report of Barrow's injury when Barrow had been in the building an hour and one-half after it occurred. Malinoski also informed Schmidt that, under the circumstances, Barrow should have filed the report. He suggested that Schmidt contact Barrow and have her fill out the report form personally. Schmidt agreed to do so. Malinoski thereafter told Fredricks to alert her unit staff to have Barrow report to Fredricks when she arrived to fill out the injury report.

30. Schmidt called Barrow on September 24, 1975 and told her that Malinoski had critized her (Schmidt) for filing the report and that Malinoski wanted Barrow to come to the respondent's premises to complete the form that evening. Barrow came to respondent's premises that evening and was referred to Mrs. Fredericks for purposes of filling out the form. Based on her prior experiences with Mrs. Fredericks, Barrow reasonably believed that Fredericks would question her about the incident and her reporting of it. Because of that belief and because she was in pain and under medication, Barrow asked union steward Sharon Miller to accompany her to meet with Fredericks. When Miller and Barrow met with Fredericks, Barrow requested that Miller be allowed to be present as a union representative. Fredericks refused to permit that, however, and directed Miller to return to her work area. Thereafter, Fredericks had Barrow fill out the necessary accident report forms and questioned Barrow about the lifting techniques she and Schmidt had used when the injury occurred. At no time before, during, or after that interview was Barrow told by any supervisor that discipline might result therefrom or that it would not; no discipline in fact resulted therefrom.

31. Because she learned from Schmidt that Malinoski considered her to have improperly left work without filing an accident report and to have improperly had a fellow employe file same, and because she reasonably believed, based on prior experiences with Fredericks, that Fredericks would ask questions about the circumstances of her injury and the reporting thereof, Barrow had reasonable cause to believe that subsequent supervisory decisions to discharge or discipline her could result from or be based upon matters investigated by Fredericks during her contact with Barrow on September 24, 1975.

32. On February 8, 1976, Prischalla called Williams to meet with her in her office without prior notice. Prischalla outlined complaints she had received from Northview residents, LPNs and attendants concerning shortcomings in Williams' job performance and sought Williams' views about the substance of the complaints. Williams denied all of the complaints and denied that there was any need for her job performance to be improved. No union representative was requested by Williams at the February 8 meeting, and none was present. Following that meeting, Williams told union secretary Darlene Moore that Prischalla's criticisms constituted unjustified harassment about which Williams intended to grieve unless Moore could arrange an informal meeting with Prischalla to resolve the matter. Moore asked Prischalla when she could meet with Williams and Moore. Prischalla set the meeting for late February 1976 at which time Williams and Moore met with Prischalla and Shepard

in a meeting regarded by all present as outside the agreement grievance procedure. At that meeting, Williams and Moore attempted to discover the identity of employes who complained to Prischalla about Williams and to discuss and refute, point by point, the criticisms of Williams' work that Prischalla had expressed on February 8. Shepard frustrated Williams' and Moore's purposes in that regard by asking the purpose of the meeting, stating that reiteration of Prischalla's criticisms seemed unnecessary since they had previously been outlined on February 8, stating that the union had no proper role at the meeting, and stating, in response to Moore's references to contractual rights to union representation, that she did not understand the need for the union and that she was "antiunion anyways". Shepard's comments in those regards did not constitute an implied threat of reprisal or promise of benefit. After fifteen minutes, Moore and Williams left the meeting in disgust.

33. In April, 1976, Williams filed a grievance when she was denied a merit increase. That grievance was resolved at step three of the contractual grievance procedure. Williams was represented by the union at all steps at which that grievance was processed, and her views about the nature of her job performance were aired before representatives of the respondent during said processing. As a part of the settlement of that grievance, Williams received the previously denied merit increase.

34. In early April, 1976, respondent decided to reassign one social worker from the aid for dependent children (AFDC) unit to the general assistance (GA) unit. While such a reassignment involves no decrease in compensation, the GA work is considered less desirable than AFDC work by several social workers in respondent's employ. Respondent's established procedure for selecting employes for unit-to-unit reassignments is that the supplying unit selects and recommends an employe for the reassignment, a meeting is arranged between that employe and the receiving unit supervisor to permit the latter to determine the employe's suitability and acceptability for assignment in the receiving unit, and finally the receiving unit supervisor decides whether or not to accept the recommended employe into the receiving unit. Pursuant to that procedure, Safir directed Kuehn to select and recommend an AFDC social worker for consideration by the GA unit supervisor. On April 6, 1976, Kuehn called Morris to his office and, in the presence of Grimm, informed Morris that he had decided to recommend her (and no one else) for reassignment to the GA unit. Morris expressed displeasure at the idea of being assigned to GA work, contending that AFDC employes who had recently been assigned to GA work should be reassigned instead of an 8.5 year AFDC employe like herself. Kuehn stated that Morris had no choice about whether to be recommended.

35. On April 6, 1976, at Morris' request, Grimm scheduled a first step grievance meeting for 9:30 a.m. on Monday, April 12 to discuss the proposed reassignment of Morris to the GA unit. Grimm indicated that besides Morris and her union steward (Phillips), Kuehn would also be attending the meeting.

36. On the morning of April 8, 1976, without knowledge that the April 12 meeting had been scheduled, Safir called Morris to a meeting in his office with Kern, the GA unit supervisor. Upon her arrival and discovery of Kern with Safir, Morris stated that she did not want to stay and participate in the meeting unless Phillips was brought in too. Safir stated that the purposes of the meeting were to explain why respondent found it necessary to reassign an AFDC social worker to GA and to allow Kern to determine Morris' suitability for receipt into the GA unit. Safir added that the union had no legitimate role at the meeting but stated that a meeting about the matter would be scheduled at 1:30 p.m. that afternoon among the three of them and Phillips. When Morris again stated

her desire to leave unless union representation was provided, Safir sternly insisted that she stay and participate in the meeting as constituted. Morris did so, answering numerous questions for Kern and responding to their praise of the quality of her answers by lamenting that had she answered less admirably she might not be as likely to be reassigned where she did not want to work and where some other less senior AFDC employe should, instead, be reassigned. At the conclusion of the meeting, Safir stated that there was no further need for the 1:30 meeting with Phillips and that no such meeting would be held.

37. At 1:00 p.m. on April 8, 1976, Morris was in Phillips' work area informing Phillips of the meeting earlier that day and of her desire not to be reassigned to GA work. Safir entered, asked Phillips to come to his office so he could "pick her brain", and told Morris, when she asked, that she should not come along. At that meeting, Phillips contended that respondent's method of selecting Morris for reassignment consideration had not been fair. Following further conversation, at Phillips suggestion, Safir agreed that volunteers from among the 13 AFDC social workers should be sought as possible recommendees before GA proceeded to decide on Morris' acceptability. No meeting of Phillips, Morris, Kern and Safir occurred at 1:30 p.m. or any other time on April 8.

38. A search for AFDC volunteers was initiated by Kuehn at Safir's direction. As part of that effort, Kuehn scheduled a meeting of the entire AFDC staff at 9:30 a.m. on April 12, the time Grimm had set for Morris' first step grievance meeting. The staff meeting was conducted as scheduled, but no volunteers came forward. Kuehn called Morris to a meeting in his office the next day (April 13). Kuehn had Reidy, also an AFDC unit supervisor, present because Grimm was ill. When Kuehn indicated that no one had volunteered and that he was therefore going ahead with his prior decision to renew his recommendation of Morris for reassignment to GA, Morris asked twice that a union representative be summoned. Both requests were denied by Kuehn. When grievant asked in the alternative to be allowed to leave the meeting, Kuehn did not respond, but rather continued discussing, with Reidy's assistance, the nature of GA work and the reasons why Morris would find it enjoyable. At the conclusion of the meeting, Morris stated that she intended to consult with Phillips on the matter further.

39. As of April 14, 1977, Grimm had not contacted Morris concerning a rescheduling of the preempted April 12 first step grievance meeting. On April 14, Morris wrote Grimm a memo requesting that she schedule same "to discuss my transfer into the G.A. unit" and that Morris' union representative be included at the meeting. Grimm honored that request, scheduling such a meeting on the same day, including Kuehn as a participant. At that meeting, Kuehn asked the purpose of the meeting, and when Phillips and Morris responded that it was a first step grievance procedure meeting concerning the move of Morris to GA, Kuehn took the position that respondent had not yet officially decided to reassign Morris so that the meeting was premature and that since the authority to reverse such decision rested elsewhere, the meeting could serve no useful purpose. It ended at that point.

40. The following day, Kern notified Morris in writing that she was accepted for reassignment to the GA unit effective April 26, 1976. Thereafter, Morris' grievance was reduced to writing and processed through steps 2 and 3 of the agreement grievance procedure, with union representation provided at each step. Morris ultimately chose not to pursue the grievance further in view of respondent's county board personnel committee's step three disposition calling for a review of the possibility of reassigning Morris out of the GA unit after one year.

41. During a third step grievance meeting concerning a three-day suspension of an employe, a representative of Respondent

asserted that the suspended employe had the worst record of absenteeism and tardiness of all employes at Northview. Thereafter, on February 18, 1976, union president Vermaas sent Malinoski a written request that she be permitted to review the "work records" of ten employes back in time to January of 1974. That written request contained no reason or case reference in support of it. Malinoski initially denied the request, but, after Vermaas orally informed him that it was in connection with the pending arbitration of the three day suspension grievance and threatened to subpoena the records, Malinoski produced the personnel files of the ten employes referred to in Vermaas' request and permitted Vermaas to inspect and make notes concerning the payroll records of each of the employes. Vermaas made notes concerning only seven or eight of the ten because she had included two or three names in the ten about whom she had no interest in order to partially divert respondent's attention from the absenteeism and tardiness records of the other seven or eight.

42. On April 27, 1976, Vermaas sent Malinoski a written request to review the work records of another ten employes. That request contained a subject reference of "arbitration". At that time, the parties' only pending arbitration was that concerning the three-day suspension noted above. Malinoski denied Vermaas' April 27 request, stating that Vermaas had previously adduced all the information she needed and that she appeared to be on a "witch hunt". Malinoski suggested, in response to Vermaas' expressed dissatisfaction with his denial, that she put her specific reasons for the request in writing and forward that and all future requests for such records directly to respondent's personnel department where such records are kept. Vermaas did not communicate further with respondent about the matter, but union business representative Robert Lyons later requested and was permitted to review all of the records that Vermaas had requested on April 27, 1976.

43. On May 16, 1976, Mehlos, a probationary employe, received a written memorandum from Hammermeister stating that if his work performance did not improve in several specified respects, he would be terminated on August 1, 1976, the expiration of his probationary period. On the morning of July 9, 1976, Mehlos was called to meet with Hammermeister concerning her evaluation of his performance and concerning his employment status. Mehlos asked union vice president Dennis Lyons to accompany him to the meeting. Lyons had conferred with Mehlos about his workload and supervisor and was familiar with the work he was performing and with his work situation generally. Mehlos and Lyons were ushered into Safir's office by Hammermeister. Mehlos asked that Lyons be permitted to remain as a witness, but Safir denied that request, offering Mehlos the opportunity to have other than a union official attend as a witness but taking the position that the meeting was administrative and for the purpose of reviewing an employe evaluation with the affected employe, and thus not a proper meeting for union participation. Once Lyons was excluded, Hammermeister and Safir presented Mehlos with Hammermeister's detailed and predominantly negative performance evaluation wherein Hammermeister recommended Mehlos' immediate termination. The three discussed Hammermeister's findings concerning Mehlos but the only question asked of Mehlos was whether he chose to resign effective after three weeks more of work or chose instead to be terminated immediately. Mehlos asked for time to think it over, and the meeting was adjourned until that afternoon.

44. Mehlos conferred with Lyons and returned with Lyons to the scheduled afternoon meeting on July 9, 1977. At that meeting, Lyons attempted to suggest alternatives such as an extended

probationary period, but Safir and Hammermeister confined the discussion to Mehlos' decision of resign or be fired. Mehlos chose the latter, the four briefly discussed the mechanics of the termination; and the meeting ended. Later that day, Mehlos was presented with written confirmation of his immediate termination.

45. Respondent's decision to terminate Mehlos had been made prior to his July 9 morning meeting with Safir and Hammermeister. The sole purposes of that meeting were to explain to Mehlos the reasons for that decision and to offer him an opportunity to resign rather than be terminated. Mehlos did not have reasonable cause to believe that subsequent employer decisions to discipline or discharge him would be made as a result of or on the basis of matters investigated by Safir or Hammermeister during their contacts with him on the morning and afternoon of July 9, 1976.

Based on the foregoing findings of fact, the examiner makes and issues the following

## CONCLUSIONS OF LAW

1. Respondent did not interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in Sec. 111.70(2), Stats., and therefore did not commit prohibited practices within the meaning of Sec. 111.70(3)(a)1, Stats.:

A. by the acts of Safir and Kern noted in findings 9-11, above;

B. by Kuehn's ignoring of Reed's request for union representation during that meeting on June 12, 1975 and/or by Kuehn's June 13, 1975 denial of Reed's request for union representation and threat of discipline for insubordination if Reed disobeyed his direction to cease calling her union representative;

C. by Wellhausen's June 17, 1975 denial of Barkelew's request for union representation during their discussion of Wellhausen's written reprimand of June 13, 1975;

D. by Malinoski's denials of Johnson's requests for telephone access to Vermaas at Northview and for Vermaas' home telephone number, sometime between August 31 and September 10, 1975;

E. by Kuehn's and Winkler's late-February and Winkler's July, 1975 directives that Phillips keep and submit to respondent records of the amounts of work time she spent on union business;

F. by Winkler's August 4, 1975 directive and warning that discipline might result from Phillips' noncompliance therewith, since such noncompliance would have constituted failure to follow a lawful directive of respondent;

G. by Wellhausen's ignoring of Kin's request for union representation at their meeting in August of 1975 and or by Wellhausen's denial of Kin's request for union representation at their meeting in October of 1975;

H. by the absence of union representation of Williams at her February 8, 1976 meeting with Prischalla, since Williams did not request such representation for that meeting;

I. by the conduct of Shepard noted in finding 32, above, during her meeting with Prischalla, Williams and Moore in late February 1976;

J. by Safir's April 8 and/or Kuehn's April 13, 1976 denials of Morris' requests on those dates either to be provided with union representation or to be permitted to leave her meetings with them on those dates;

K. by Malinoski's refusal to grant Vermaas' April 27, 1976 request for access to employe work records since Malinoski's insistence upon a written statement of Vermaas' reasons more specific than the bare reference to "arbitration" in her April 27, 1976 request and upon direction of such requests to respondent's personnel department was reasonable;

L. by Malinoski's conduct noted in findings 43 and 44, above, except as noted in conclusion 2, below.

2. By offering Johnson the opportunity to have a witness present during his meeting with Malinoski on September 10, 1975 but conditioning that opportunity on the witness being other than a union officer or agent, Malinoski and respondent interfered with, restrained and/or coerced the remaining municipal employes in the bargaining units in the exercise of their Sec. 111.70(2) rights to engage in lawful concerted activities for the purpose of mutual aid and protection and to assist labor organizations. Respondent thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a)1, Stats.

3. By denying Barrow's request to have a union steward present with her during an interview with Fredericks on October 24, 1975, Fredericks and respondent interfered with, restrained and/or coerced Barrow, a municipal employe, in the exercise of her Sec. 111.70(2) right to engage in lawful concerted activities for mutual aid and protection. Respondent thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a)1, Stats.

4. By offering Mehlos the opportunity to have a witness present during his meeting with Hammermeister and Safir on the morning of July 9, 1976 but conditioning that opportunity on the witness being other than a union officer or agent, Safir and respondent interfered with, restrained and/or coerced the remaining municipal employes in the bargaining units in the exercise of their Sec. 111.70(2) rights to engage in lawful concerted activities for the purpose of mutual aid and protection and to assist labor organizations. Respondent thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a)1, Stats.

5. Neither Complainants' agreement to the contract language noted in finding 6, above, nor the bargaining history noted in finding 7, above, nor both taken together, relieves respondent of legal responsibility for the violations of MERA rights noted in conclusions 2 through 4, above.

6. Except as noted above, respondent did not violate either Sec. 111.70(3)(a)1 or 2 by harrassing or interfering with the ability of union stewards and officers to perform the duties of their offices, and/or by denying employes represented by complainants union representation in meetings and conferences with supervisors.

Based on the foregoing findings of fact and conclusions of law, the examiner makes and issues the following

## ORDER

I. IT IS HEREBY ORDERED that respondent Waukesha County, its officers and agents shall immediately:

A. Cease and desist from:

1. compelling any employe in the bargaining units represented by complainants to participate without representation by complainant in a contact with supervision where the employe has requested such representation based upon the employe's reasonable cause to believe that a subsequent supervisory decision to discharge or discipline (including verbally reprimand) the employe could result from or be based upon matters being investigated during said contact.

2. conditioning permission of any employe in the bargaining units represented by complainants to be accompanied by a witness in a meeting with supervision on the requirement that the witness be other than an officer or steward of complainants,

B. Take the following affirmative action that the examiner finds will effectuate the policies of the Municipal Employment Peace Act:

1. Notify all of its employes in bargaining units represented by complainants, by posting in conspicuous places on its premises where notices to such employes are usually posted, copies of the notice attached hereto and marked Appendix "A". (Such copies shall bear the signature of the chairman of its board of supervisors and shall remain posted for thirty (30) days after initial posting.) Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by other materials.

2. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days of the date of service of this order as to what steps it has taken to comply herewith.

II. IT IS FURTHER ORDERED that, except as noted above, the complaint filed in the above matter shall be, and hereby is, dismissed.

Dated at Madison, Wisconsin this 5th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYES IN BARGAINING UNITS REPRESENTED BY AFSCME LOCALS 2490 AND 2494

Pursuant to an order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of Section 111.70 of the Wisconsin Statutes, we hereby notify you that:

Waukesha County will not condition permission of any employe in the above bargaining units to be accompanied by a witness in a meeting with supervision on the requirement that the witness be other than an officer or steward of AFSCME Local 2490 or 2494.

Waukesha County will not compel any employe in the above bargaining units to participate without representation by AFSCME Local 2490 or 2494 in a contact with supervision where the employe has requested such representation based upon the employe's reasonable cause to believe that a subsequent supervisory decision to discharge or discipline (including verbally reprimand) the employe could result from or be based upon matters being investigated during said contact.

WAUKESHA COUNTY

By _____
Chairman, Waukesha County Board of Supervisors

Dated this day of , 197 .

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 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Violations of Sec. 111.70(3)(a)1 and (3)(a)2, Stats., are alleged in the complaint, based on alleged denials by respondent to employes of union representation in meetings and conferences concerning their wages, hours and conditions of employment and on alleged harassment and interference with the ability of union stewards and officers to perform the duties of their offices. 1/ Respondent answered, denying any violation and requesting dismissal of the complaint and an award of "costs for the defense of this action, including attorney's fees, transcript costs and disbursements" to respondent.

The parties' written arguments focus upon several specific incidents and on the general principles of law applicable to such situations. Their arguments concerning general legal principles are reviewed immediately below, with their positions concerning specific incidents noted, where elucidative, in the discussions of each, below.

POSITION OF COMPLAINANTS:

MERA provides a right for municipal employes to have representation by their exclusive bargaining representative in all conferences with their municipal employer concerning their wages, hours and conditions of employment. The commission expressly so stated in Whitehall 2/ and Crandon 3/ and applied that principle along with that of the federal Weingarten 4/ case in City of Milwaukee 5/, requiring representation at an interview not required by law but which the employe reasonably believed could result in discipline.

To limit representation rights to the facts of those cases and to participation in formal grievance procedures contravenes the public policy underlying MERA. That policy, as reflected in Secs. 111.70(6), (2), (1)(d) and (1)(i) encourages "voluntary settlement" (i.e., settlement before formal, adversary grievance proceedings become necessary) to resolve "labor disputes" (which include "any controversy concerning wages, hours or working conditions") by means of "collective bargaining" (which involves meeting and conferring in good faith with the exclusive representative with the intention to reach an agreement). The earlier representation rights attach, the more effectively the MERA goal of labor peace through voluntary settlements will be achieved; for, early representation can provide municipal employers with all of the facts before they make decisions they will thereafter feel they must defend rather than compromise

---

1/ The union expressly chose not to offer any evidence about a further allegation concerning advising employes against union membership and harrassing employes who become union members.

2/ Whitehall School District, Dec. No. 10268-A (8/71) (examiner Schurke), aff'd by WERC, Dec. No. 10268-B (9/71).

3/ Crandon Joint School District No. 1, Dec. No. 10271-A (8/71) (examiner Schurke), aff'd by WERC, Dec. No. 10271-C (10/71).

4/ NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975).

5/ City of Milwaukee (Police Department), Dec. No. 13558-B (1/76) (examiner Schurke), aff'd by WERC, Dec. No. 13558-C (5/76).

and before the divisive and necessarily adversary processing of the matter in a formal grievance procedure. Hence, MERA representation rights must be broadly interpreted.

Such MERA representation rights should also extend to consulting with the representative before entering any meeting or conference at which a right to representation exists and to any meeting or conference at which some other "witness" is permitted.

Complainants did not waive any of their rights by contract or bargaining history. A waiver of a statutory right must be clear and intentional. Agreement that dismissed probationary employes have no right to file a formal grievance under the contract grievance procedure does not waive probationers' statutory rights to pre-discharge representation in efforts to avoid discharge. Moreover, Complainants' withdrawal of a proposed contract provision for union representation at all steps of the grievance procedure in no way waives employes' statutory rights to representation at those and other meetings and conferences.

The foregoing principles apply in the various factual settings herein, calling for declarations of the violations alleged, cease and desist orders, and reinstatement and back pay for the two dismissed probationary employes parallel to the Crandon and Whitehall remedies.

POSITION OF RESPONDENT:

Municipal employes do not have a right under MERA to union representation at all meetings concerning their wages, hours and working conditions. The Whitehall and Crandon decisions quoted statutory language of the then Sec. 111.70 providing municipal employes with the ". . . right . . . to be represented by labor organizations of their own choice in conferences . . . with their municipal employers on questions of wages, hours and conditions of employment . . ." which language was later stricken from the statute in favor of language parallel to Sec. 7 of the National Labor Relations Act. In any event, the holdings therein applied only to conferences mandated by statute, unlike any of the conferences at issue herein. The City of Milwaukee case carried over the valid principle established in Weingarten that an employe has a right to union representation in an investigatory interview which the employe reasonably believes might result in disciplinary action, where the employe requests same.

Weingarten and cases following it protect an employer's right to deny a request for representation at such an interview and to proceed with its investigation with or without the unrepresented employe's participation at the employe's choice; a statement of the commission's position on that matter is not required to dispose of the instant dispute, but it would nonetheless be desirable for other reasons.

The complainants' effort to expand the rights recognized in the cases noted above to the day-to-day, on-going, direct relationships between supervisor and employe is without legal basis, contrary to existing federal precedent, and tantamount to co-management.

Moreover, during the parties' collective bargaining, complainants specifically waived any right of representation claimed herein in view of the union negotiator's indication that the union was dropping its demand on the subject based on his understandings that the union did have the right to representation at all steps of the grievance procedure and that the employes had the right to representation at an investigatory interview which may lead to discipline or discharge.

The law, when properly interpreted and applied to the facts supported by the record, results in no violation of Secs. 111.70(3)(a)1 or 2 whatever, and calls for dismissal of the complaint in its entirety.

DISCUSSION:

Because the parties have analyzed the Sec. 111.70(3)(a)1 allegations arising in the variety of employe-supervisor contact situations of record herein from differing basic legal assertions, it is necessary to review some of the applicable statutory and caselaw developments to find the proper framework for analyzing the individual situations.

In Whitehall and Crandon, the commission held that Sec. 111.70(2) provided municipal employes (therein teachers) the right to union representation at private nonrenewal conferences with their municipal employer which Sec. 118.22(3) entitled them to demand for purposes of being heard as to whether the nonrenewal of their individual teaching contract then being considered should be implemented. In amending the examiner's accompanying memorandums in those decisions, the commission made clear that it was not the statutory nature of the nonrenewal conferences that entitled the employes to such representation, but rather the fact that Section 111.70(2), as it then read, expressly and clearly mandated that municipal employes have the right ". . . to be represented by labor organizations of their own choice in conferences . . . with their municipal employer on questions of wages, hours and conditions of employment. . .". 6/ Shortly thereafter, MERA was enacted, inter alia, deleting the above-quoted provision, drafting Sec. 111.70(2) along the lines of Sec. 7 of the NLRA, and replacing the prior inclusion by reference to Sec. 111.05(1) with Sec. 111.70(4)(d). After the enactment of MERA, the right to union representation in nonrenewal conferences was held to be provided in the amended Sec. 111.70(2) 7/; so was the right to union representation that had been requested by an employe as regards compelled attendance at a primarily supervisory police department board of inquiry hearing investigating charges against the employe which the employe had reason to believe could have resulted in a subsequent supervisory decision to discipline or discharge him. 8/

From these developments, it is clear that a right to representation exists in a least some circumstances under MERA and that in at least some circumstances an independent employe right to the contact with supervision is not required to prove an unlawful denial of representation therein.

The pertinent statutory and case-law developments do not, however, require the conclusion urged by complainants that municipal employes enjoy an absolute right under MERA to be represented in every conference they have with their municipal employer or its representatives on questions of wages, hours and conditions of employment.

While nothing in the legislative history of MERA would indicate that a curtailment or narrowing of the existing employe protections was intended by the legislature, it nonetheless appears that the legislature substituted the majority representative's right to require the municipal employer to bargain collectively about certain

---

6/ Dec. No. 10268-B at 4-5; Dec. No. 10271-C at 5.

7/ Waterloo Jt. School Dist. No. 1, Dec. No. 10946-A,B (9/73); see also, Joint School District No. 10, City of Appleton, Dec. Nos. 10996-A (4/73) and B (7/73) (dictum).

8/ City of Milwaukee, above, note 5.

subjects including questions arising under a collective bargaining agreement as the means of providing certain protections of employe representation previously provided as express rights of individual employes. Specifically, the legislature modified Sec. 111.70(2), (1969) Stats., by deleting the express right of employes "to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment" and providing instead, as in the private sector model, the rights, inter alia, to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid or protection." Though the legislature did not indicate an intent to overturn Whitehall and Crandon when it amended the prior statute, and while it can be presumed to have been aware of those existing cases interpreting the prior statute, the amendment does not reflect an implicit legislative approval of extension of the results in Whitehall and Crandon to the full breadth of the dicta therein that was based on the words of the prior statute.

In interpreting Sec. 111.70(2) in its current form, it may be noted that Sec. 7 of the national act after which it was patterned has been interpreted to provide rights to union representation that are not so broad as those claimed herein by complainants. While an employe under that act has been held to have the right to consult the union representative prior to a contact with supervision at which the right to union representation is protected 9/ and to have the right to the presence of a union representative during a compelled appearance at an interview the employe reasonably believes could result in discipline or discharge, the private sector interstate commerce employer may lawfully force the employe to choose between foregoing those rights and foregoing the interview (and any benefit it might be to the employe.). 10/ Moreover, under the national act, the right to union representation would not apply:

> ". . . to such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed correction of work techniques [because in] such cases there cannot normally be any reasonably basis for an employe to fear that any adverse impact may result from the interview, and thus . . . no reasonable basis for him to seek the assistance of his representative." 11/

Moreover, some municipal employer actions that, in the broadest and most literal senses of the terms, "interfere with" or "restrain"

---

9/ Climax Molybdenum Co., 227 NLRB No. 14, 94 LRRM 1177 (1977).

10/ See, Weingarten, above, note 4, 88 LRRM at 2691-2.

11/ Weingarten, above, note 4, 88 LRRM at 2691 citing with approval Quality Manufacturing, 195 NLRB 197, 79 LRRM 1269, 1271 (1972); but see, note 20, below.

municipal employes' exercise of Sec. 111.70(2) rights have been held not to violate Sec. 111.70(2)(a)1. 12/

Rather, the traditional mode of analyzing whether a violation of those quoted terms as used in the applicable statute has occurred has involved a balancing of the interests at stake of the affected municipal employes and of the municipal employer to determine whether, under the circumstances, application of the protections of the interference and restraint prohibitions would serve the underlying purposes of the act. 13/ The examiner concludes that such an analysis, on a case by case basis, is necessary to determine whether, in any given set of circumstances beyond those presented in Whitehall, Crandon and City of Milwaukee, the underlying purposes of MERA are served by protecting a right to union representation. Such a case-by-case analysis will facilitate consideration of issues such as whether an express request is a condition precedent to the exercise of a

---

12/ See, e.g., Kenosha Board of Education, Dec. No. 6986-C (2/66) (reasonable municipal employer limitations on labor organization's use of municipal employer's physical facilities for organizational purposes held not a violation of Sec. 111.70[3][a]1); City of Oshkosh Dec. Nos. 8381-A (7/68) and -B (8/68) (dictum) (discipline of a union representative for zealous conduct as an advocate would not violate Sec. 111.70[3][a]1 if the representative's conduct were "unreasonable under the circumstances"); Janesville Board of Educatio Dec. No. 8791-A (3/69) (remark of agent of municipal employer made in radio interview that criticized tactics and bargaining demands of exclusive bargaining representative held not to violate Sec. 111.70[3][a]1 because no threat or promise made); Joint School District No. 10, City of Appleton, Dec. No. 10996-A (4/73), and -B (7/73) (school board refusal to postpone unilaterally scheduled Sec. 118.22[ private nonrenewal conference to permit union representative to atten held no violation of sec. 111.70[3][a]1 where requested postponement date was March 15, date on which board was required to notify teacher of nonrenewal decision); Western Wisconsin Technical Institute, Dec. No. 12355-B (8/74) (municipal employer may voice its opposition to having its employes represented in campaign propaganda so long as such does not contain threats or promises).

13/ See, e.g., Republic Aviation Corp. v. NLRB, 324 U.S. 793, 16 LRRM 620 (1945) ("These cases bring here for review the action of the National Labor Relations Board in working out an adjustment [under then Sec. 8(1) of the NLRA] between the undisputed right of self-organization assured to employees under the Wagner Act and the equally undisputed right of employers to maintain discipline in their establishments. Like so many others, these rights are not unlimited in the sense that they can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee. Opportunity to organize and proper discipline are both essential elements in a balanced society." Id., 16 LRRM at 622.) It should also be noted that such a balancing of interests analysis was undertaken by the U.S. Supreme Court in Weingarten, 88 LRRM at 2693, and, at least to some extent, in Whitehall (Dec. No. 10268-A at 10-12) and Crandon (Dec. No. 10271-A at 10-13).

right to representation 14/, whether offering the employe the choice of no representation or no meeting avoids a violation 15/, whether full representation is always required if a right to representation exists 16/, whether the imposition of an adverse impact on employe wages, hours or working conditions is a necessary element to prove an unlawful denial of representation, and other related issues. The MERA sections cited by complainants as indicative of MERA's underlying purposes are pertinent thereto, but so is the fourth sentence of Sec. 111.70(1)(d). 17/

Even after it has been determined that given circumstances warrant recognition of a right to representation, it must also be determined whether such right has been waived. For, the commission has held, in County of Milwaukee 18/, that the majority representative can waive certain rights of municipal employes to union representation that would otherwise be protected by Secs. 111.70(2) and (3)(a)1. However, subsequent waiver case-law developments 19/ have rendered the particular contract language and bargaining history in County of Milwaukee of little or not value as a guide to the circumstances that will suffice to waive MERA rights.

The examiner now turns to the fact situations surrounding various employes represented by complainants. The situations are presented in the order in which findings of fact related to them were made, and roughly in time sequence.

Edith Meinhardt (findings 8-12; conclusion 1.A.)

---

14/ See, City of Milwaukee, Dec. No. 14394-A (9/77), petition for WERC review pending, (proof of request necessary).

15/ See, note 10, above, and accompanying text.

16/ See, City of Milwaukee, above, note 14 (dicta) (Extent of right to representation can vary with circumstances).

17/ That sentence provides as follows:

> "In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitutions of this state and of the United States and by this subchapter."

18/ Dec. No. 8707 (10/68), aff'd Dane County Circuit Court, No. 126-321 (6/70). See also, discussion of WERC rationale in id. in Whitehall and Crandon at pages noted in note 6, above. Compare, County of Milwaukee, above, with, Milwaukee Board of School Directors, Dec. No. 6995-A (3/66), aff'd Dane County Circuit Court, No. 120-017 (11/67) (majority representative and municipal employer may not agree to waive individual employe's right to present grievances to municipal employer through representative of a minority union).

19/ See, e.g., City of Brookfield, Dec. Nos. 11406-A (7/73), -B (9/73), aff'd Waukesha County Circuit Court, Case No. 31923 (6/74) (clear and unmistakable evidence of intent to waive required); State of Wisconsin, Dec. No. 13017-D at 5, 6 (5/77) (dictum) (withdrawal of bargaining proposal by union would not, alone, have been sufficient to waive union's MERA right to bargain regarding subject matter of proposal).

Complainants contend that respondent violated Meinhardt's right to union representation by abruptly terminating her June 4 first-step grievance meeting with Kern that Meinhardt appeared for with a union representative, and by expressly prohibiting union representation at her meetings with Safir on June 6 and with Safir and Kern on June 9, contrary to Meinhardt's requests therefor.

The examiner has found, however, that Meinhardt had led Kern reasonably to believe that Meinhardt was requesting the June 4 meeting pursuant to Kern's note inviting an intermediate discussion of the evaluation as part of the respondent's process of developing the final evaluation, and not a first-step grievance meeting. Thus, Kern was surprised when Phillips accompanied Meinhardt to that meeting, and Kern expressed the opinion that Phillips did not belong there. Despite her misgivings about Phillips' presence, Kern spent forty-five minutes with them before the meeting was adjourned, and it was adjourned with their agreement. Hence, the notion that the grievance meeting was abruptly ended, e.g., because Meinhardt chose to be represented by a union steward, is not supported by the record.

The June 6 meeting was one called by Safir to attempt to change and improve the relationship and communication between an employe and her immediate supervisor. The effect thereof on Meinhardt's wages, hours and conditions of employment is oblique, at best. The June 9 meeting combined the above purpose with that of the immediate supervisor's review of an initial merit evaluation with the employe in order that it be clearly understood, modified where appropriate following employe inputs, and formally commented upon or disagreed with if the employe chooses to do so. While the evaluation review meeting may directly affect the employe's wages, the value to the employe of union representation in such a contact (sharpening any employe disagreements with the evaluation, calling attention to other facts that should be considered before the evaluation is finalized, joining the employe in attempts to persuade the supervisor to modify the evaluation favorably toward the employe) does not outweigh the interference such representation would cause to the process of employe evaluation and motivation (and therefore employer efficiency of operations). Therefore, the overall purposes of MERA do not call for protecting a right to union representation in such meetings by Secs. 111.70(2) and (3)(a)1.

In any event, the evidence does not establish that Meinhardt requested union representation at either the June 6 or 9 meeting. Such a request or some other means of putting the municipal employer on notice that a claim of statutory right is being made would seem to be an appropriate condition precedent to attachment of a right to union representation in an employe-supervisor contact. 20/ By such means, the municipal employer is made aware that the employe involved desires the representation and that legal consequences may flow from its denial. It is not enough to show that, as here, Safir made known his position in advance that union representation would not be permitted at either of the meetings.

For the foregoing reasons, no Sec. 111.70(3)(a)1 violation has been found in the facts involving Edith Meinhardt.

Linda Reed (findings 13-17; conclusion 1.B.)

---

20/ City of Milwaukee, above, note 14.

Reed testified that when Reidy called her to meet with Kuehn on June 12, 1975, Reidy stated that the purpose of the meeting was to determine whether Reed preferred being docked a day's pay or a vacation day in connection with Kuehn's retroactive disapproval of a paid day taken by Reed some months before as funeral leave. When Kuehn expanded the scope of the meeting to express his belief and disappointment that Reed had breached what he believed was an oral understanding with him that the day would not be taken as funeral leave, Reed requested that a union representative be called to the meeting. So far as the record indicates, Reed had not been asked any other questions or for any explanation of her past conduct. The only fact being "investigated" was whether Reed wanted the retroactively disapproved day treated as a deduction from her pay or from her vacation account. Moreover, as soon as Reed requested union representation, Kuehn assured her that the meeting had nothing to do with discipline.

At that point, Reed surely had reasonable cause to believe that she might be (or was being) summarily verbally reprimanded during that meeting for what Kuehn characterized as a breach of trust. But neither Kuehn's anger nor his words, which amounted to a reprimand, were such as would give Reed reason to believe that Kuehn would thereafter decide to again reprimand or otherwise discipline or discharge her as a result of or based upon any matters being investigated or inquired into by Kuehn at that time. Kuehn had already decided to cause Reed to deduct the day from current earnings or current vacation account, and that was not so much a disciplinary measure as an administrative adjustment to conform with the respondent's interpretation of the funeral leave provisions.

It is the potential for affecting supervisors' decisions about whether and how to discipline before those decisions are made that has led to recognition of rights to union representation in compelled investigatory supervisor-employe contacts such as the board of inquiry hearing of charges in City of Milwaukee and the theft investigation in Weingarten. 21/

In the face of such an investigation, the employe has strong interests at stake that are well served by union representation in ways that are often consistent with the investigative purpose. The union representative can bring out facts and policies worthy of consideration, may give assistance to employes who may lack the ability to express themselves and who, especially when their livelihood is at stake, may need the more experienced kind of counsel that their union steward might provide or constitute. Moreover, a good faith discussion of the problem when the decision has not been made offers at least a modest prospect that a mutually satisfactory resolution thereof can be reached short of discipline. For all of those

---

21/ Although the NLRB recently has held that the Weingarten rationale extends beyond investigative interviews to apply to an interview held for the purpose of imposing a previously decided-upon disciplinary measure, Certified Grocers of California, Ltd., 227 NLRB No. 52, 94 LRRM 1279 (1977) (Fanning and Penello), for the reasons noted (in the following two text paragraphs), the examiner believes the better rule and the interpretation more consistent with the holding in Weingarten is that described above and set forth by the dissent in Certified Grocers, 94 LRRM at 1283.

reasons, pre-decision investigatory contacts that the employe reasonably believes could result in discipline or discharge have been held to be circumstances in which a measure of protection of a right to representation would serve underlying legislative purposes by providing a lawful and concerted means of achieving mutual aid and protection from a pattern of unjust discipline or discharge. 22/

In comparison, where a meeting is called for the purpose of imposing an already-decided-upon verbal reprimand, the employe interests at stake, the value of union representation to the employe, and the potential compatibility of union representation with the purpose of the meeting are of a significantly lesser magnitude. For the employe facing imposition of a decided-upon verbal reprimand, the union representative can cushion the emotional impact thereof; sharpen the employe's response, if any, thereto; attempt to dissuade the supervisor from imposing the decided-upon reprimand in the first place by initiating a discussion of its merits and pointing to facts or sources of information that the supervisor may not have considered; and discourage abuse of employes by being available as a witness concerning later disputes that may develop as to the nature of the verbal reprimand imposed. In the examiner's view, however, those employe interests do not outweigh those of municipal employers in maintaining employe discipline and operational efficiency through imposition of decided-upon verbal reprimands unimpeded by the costs, delays, and potential diminution of disciplinary effect of the verbal reprimand of the employe that a statutory requirement 23/ of union representation upon request at such a contact would entail.

Therefore, Kuehn's ignoring of Reed's request for union representation on June 12, 1975 has been held not to have been a violation of Sec. 111.70(3)(a)1.

Kuehn agreed to give Reed overnight to decide between the options he had given her: being docked a day's pay or a vacation day. The next day, as Kuehn approached Reed's work area, Reed lifted her phone to call a union steward to the discussion. When Kuehn asked whom she was calling and Reed told him, Kuehn told her that she had no right to do so, directed her not to, and warned that if she did not obey that direction she would be subject to discipline for insubordination. If Reed had a right protected by MERA to be represented by a union official during that discussion with Kuehn, Kuehn's threat of discipline for exercise thereof would violate Sec. 111.70(3)(a)1. If Reed did not have a MERA right to be so represented, Kuehn's warning would be lawful exercise of management rights.

The examiner finds that Reed had no MERA protected right to representation in that discussion. The worst she could reasonably have anticipated was that Kuehn would renew the verbal reprimand of the day before, which was, as noted above, not a supervisor-management contact entailing a right to representation. Moreover, when Reed expressed her intent to call in a union representative, Kuehn told her he was there only to learn her preferred disposition of the day. A discussion for that purpose does not warrant a MERA protected right to union representation. Kuehn was not seeking,

---

22/ See generally, Weingarten, above, note 4.

23/ Such a right to representation in such circumstances can, of course, be provided by agreement, but the issue of whether respondent has agreed to same herein is not before the examiner and is not determined herein.

and could not reasonably have been perceived as seeking, a waiver of Reed's rights to later grieve his disapproval of funeral leave for the day. He was simply seeking information for the administrative purposes of vacation accounting and payroll. Unless management agrees by contract to involve union representatives in such discussions, management is free to engage in contacts with employes for such purposes without the presence of a union representative.

Therefore, no Sec. 111.70(3)(a)1 violation has been found to arise out of the facts involving Linda Reed.

Jacqueline Barkelew (finding 18, conclusion 1.C.)

Complainants contend that respondent violated Sec. 111.70(3)(a)1 by denying Barkelew's request for union representation during the June 17, 1975 discussion she initiated with Wellhausen for the purpose of either effecting removal from her personnel file of, or correcting factual inaccuracies in, a written reprimand previously issued her by Wellhausen. The examiner has found that Barkelew, in bringing about that discussion, did not give Wellhausen reason to know that Barkelew intended that it constitute a first-step meeting in the grievance procedure. Respondent argues that Barkelew would have been entitled to representation had she requested a first-step meeting, but that, since she did not, the April 17 meeting took place outside the contract grievance procedure and therefore in circumstances in which Barkelew enjoys no parallel right to representation. Complainants rejoin that MERA must be interpreted to provide a right to representation in the instant circumstances even if outside of the formal grievance procedure.

Clearly, the right claimed violated is separate from that of the majority representative to require the municipal employer to bargain collectively with it with respect to questions arising under a collective bargaining agreement. The agreement grievance procedure herein provides a legally sufficient means of exercise of the latter right, and the respondent-imposed announcement requirement for grievance initiation is not so onerous as to alter that conclusion. The contractual validity of such a requirement is a matter left by the parties for resolution under the grievance procedure itself.

In support of their contention that a right to representation attaches herein outside of the grievance procedure, complainants contend that the MERA goal of voluntary resolution of labor disputes would be more effectively promoted by requiring union representation at the April 17 meeting than it would if Barkelew's rights to representation in discussions with respondent about the written reprimand were limited to meetings held pursuant to the contract grievance procedure. The examiner rejects that contention for the following reasons. Complainants' characterization of grievance procedures as necessarily more adversary, formal, and hostility-engendering than the "informal" meeting they envision is not applicable to grievance procedures in all labor-management relationships. Moreover, if Barkelew's request for union representation had been granted, the participants at that meeting (Barkelew, her steward, and her immediate supervisor) would have been the same individuals authorized by the agreement grievance procedure to participate in a first step meeting. Barkelew's concerns do not appear significantly less likely to have been resolved by those individuals in the latter environment than in the former. Therefore, the additional protected right to representation claimed by complainants is held not to exist as regards the

instant circumstances and the allegation of a [illegible] 111.70(3)(a)1 violation for denial thereof has been dismissed.

Dan Johnson (findings 19 and 20; conclusions 1.D. 1.L. and 2)

Dan Johnson was terminated during his probationary period. He sought, both directly and through Vermaas, to arrange a meeting with Malinoski to discuss the termination in hope that Malinoski could be persuaded to reinstate him. Malinoski ultimately agreed to meet with Johnson about the termination on September 10 and further agreed that Johnson could be accompanied by a witness, but he conditioned both agreements upon the absence from the meeting of any union official. Johnson complied with Malinoski's conditions, the meeting took place, and Malinoski declined to reinstate Johnson.

By conditioning his willingness to meet with Johnson about the termination on the nonpresence of a union official, Malinoski effectively denied requests both that Johnson be permitted representation by complainant at the meeting and that Johnson be at least permitted a union official's presence as a witness at the hearing.

For reasons discussed under "Van Mehlos", below, the latter denial violates the MERA rights of all other unit employes, but does not warrant a remedy of reinstatement and/or back pay for Johnson.

The examiner rejects, however, complainants' claim that the denial of the requested representation violated a MERA right of Johnson's to representation at such a meeting. Even if the balance of the circumstances of the instant meeting were deemed sufficient to warrant the conclusion that a right to representation could attach, respondent avoided interference, restraint and/or coercion of Johnson in his exercise of such right when Malinoski expressed an intent not to conduct the September 10 meeting if Johnson insisted on being represented by complainants in connection with it.

For, Johnson had no right to the meeting, unlike the nonrenewed teachers in Whitehall and Crandon. No contractual, constitutional or statutory right outside of MERA has been alleged to exist, and no MERA right to the meeting exists either. 24/ While employer compulsion

---

24/ In so concluding, the examiner has considered Sec. 111.70(4)(d)1, Stats., which reads as follows:

> "Selection of representatives . . . A representative chosen for the purposes of collective bargaining by a majority of the municipal employes voting in a collective bargaining unit shall be the exclusive representative of all employes in the unit for the purpose of collective bargaining. Any individual employe, or any minority group of employes in any collective bargaining unit, shall have the right to present grievances to the municipal employer in person or through representatives of their own choosing, and the municipal employer shall confer with said employe in relation thereto, if the majority representative has been afforded the opportunity to be present at the conferences. Any adjustment resulting from these conferences shall not be inconsistent with the conditions of employment established by the majority representative and the municipal employer."

The second sentence thereof is a limitation on the exclusivity of the majority representative's relationship with the municipal employer, not a creation of an independent right in the individual to have a grievance meeting with the municipal employer wherein the individual is represented by the majority representative. School Board, School District No. 6, City of Greenfield, Dec. No. 14936-B (11/77). Had the legislature intended such a right to be protected from employer interference, it would have either included it with those expressed in Sec. 111.70(2) or it would have made the rights protected by Subsec. (3)(a)1 as broad as those protected by Subsec. (3)(b)1 rather than limiting them to the rights set forth in Subsec. (2).

of an employe's appearance to answer charges before a board including supervisors in City of Milwaukee warranted extension of the right to representation to at least some meetings which the employe has no right to demand, nowhere in that case did the municipal employer offer the employe the opportunity not to appear before the board of inquiry. However, where, as here, the municipal employer does not compel the contact with supervision in question, but rather permits the employe to choose between foregoing the advantages of a meeting to which the employe is not otherwise entitled and enduring the disadvantages of meeting without union representation, the MERA right to representation is not violated. 25/ That conclusion best balances the interests of municipal employes in just treatment and of municipal employers in efficient and orderly operations. 26/

Denial of Telephone Access to Union Representative

The examiner has also concluded that Malinsoki did not interfere with, restrain or coerce Johnson in the exercise of a Sec. 111.70(2) right either when he denied Johnson telephone access to Vermaas at Northview or when he denied Johnson's request for revelation of Vermaas' home phone number. Since Johnson had no contractual or statutory right to challenge his termination by processing a grievance or to otherwise require respondent to confer about it with him in person or through his chosen representative, respondent was under no statutory obligation to facilitate or permit Johnson's contacting Vermaas in that regard. Moreover, it is noted that, in fact, Johnson found means (unidentified in the record) of reaching Vermaas by phone away from her work place. Under those circumstances and in the absence of any case-law cited by complainant in support of its position, it is concluded that no Subsec. (3)(a)1 violation was committed in these regards.

Mildred Phillips (findings 21-22; conclusions 1.E. and F.)

The complainants stress that Phillips was the only union officia required to keep a record of work time spent on union activities and that imposition of that requirement violated Sec. 111.70(3)(a)1. The record supports the respondent's contention, however, that it had a legitimate business reason for "singling out" Phillips as it did.

The examiner has found that Kuehn's and Winkler's directive in late February that Phillips keep records of work time spent on union activities were part of their overall effort to reduce the adult services paperwork backlog and not imposed to harass Phillips or to discourage her continued participation in union business.

It is undisputed that Phillips, like at least one other adult services social worker, was experiencing a paperwork backlog in 1974 and 1975. Kuehn testified that, taking into account certain additional duties performed by Phillips in Winkler's absence in October and November, 1974, Phillips still had an unacceptable paperw backlog in February of 1975. Phillips' backlog had not been reduced successfully through oral discussions thereof with her, and a written agreement on objectives for reduction was resorted to by Winkler earlier in February. Winkler and Kuehn wanted and needed to know how much work time Phillips was spending on union business so that they could adjust case assignments accordingly and so that they

---

25/ See, Weingarten, above, note 4, 88 LRRM at 2691-2.

26/ Id., 88 LRRM at 2691-3.

could know whether there was (were) some other factor(s) (e.g. Phillips' work habits, or etc.) affecting Phillips' ability to reduce her backlog successfully that they might take other steps to alter. Moreover, the directives for record keeping were limited to the information Winkler and Kuehn needed to acheive the above purposes. Phillips was not directed to specify the individuals or the subject matter dealt with during the union business. She was to record and submit only the total length of time thereof. Finally, there is no evidence that other union officials' supervisors were experiencing similar difficulties in their work areas with stubborn paperwork backlogs or in adjusting the workload between union officials and other employes performing similar duties. Therefore, respondent's imposition of the unique record-keeping requirement on Phillips' appears to have been a reasonable response to a legitimate business problem.

Whether respondent's business purpose in imposing the requirement was explained to Phillips is unclear. Nevertheless, under the circumstances of the continuing efforts to determine the cause of and to relieve the unit of Phillips' paperwork backlog, Phillips could reasonably have concluded that this measure was a part of those efforts. It is noted that she asked no questions about the reason for the requirement when it was initially imposed. Instead, she replied after a day and a half that she would be "happy to oblige." Under all of the circumstances, the initial imposition of the requirement in late February, 1975 does not appear likely to interfere with, restrain or coerce Phillips or others in the exercise of protected rights.

The record also reveals that Phillips' paperwork backlog was a matter of continuing concern to supervision after February, 1975. For example, Winkler wrote Phillips on March 19, 1975 expressing dissatisfaction with Phillips' paperwork backlog reduction results and noting that from her (Winkler's) perspective, work time spent on union business did not appear to be the cause since Phillips had notified Winkler only once since February 28 that she was away from her desk on union business.

In view of that reference and the continuing attention of supervision to her efforts at paperwork backlog reduction, Phillips had reason to understand Winkler's July 21 and 22 requests for submission of the records as an effort to gain information that might help supervision to adjust caseload in response to the demands on Phillips' time presented by her role as union steward. In view of the February 28 memorandum and Phillips' memorandum of April 23, Phillips also had reason to believe that Winkler's July 21 and 22 requests were to investigate whether Phillips had complied with the directive contained in the February 28 memorandum. Winkler's August 4 warning that future noncompliance with supervisory directions to keep a record of work time spent on union business was reasonable in view of Phillips' previous noncompliance with the February 28 order. Since the requirement of the record keeping has been found herein to have been a lawful pursuit of legitimate business objectives, the warning that discipline might follow recurrence of noncompliance with said requirement is also lawful. For those reasons, the July 21 and 22 requests for records and the August 4 warning also did not constitute violations of Sec. 111.70(3)(a)1.

Vera Kin (Findings 24-26; conclusion 1.G)

Kin was called to Wellhausen's office in August and October, 1975. On both occasions, the topic of discussion was the manner in which telephone calls to and from the department were to be handled as compared with the manner in which Kin was performing those functions. As Kin described the August meeting, Wellhausen cited ". . . things

I have been doing wrong . . . in the line of work . . . that I had been handling some situations differently than she would have liked . . .". 27/ Kin described the second meeting as ". . .about how I should handle the area of my work." 28/ There is no evidence suggesting that Wellhausen was investigating the manner in which Kin had been performing her work. Wellhausen was apparently already aware of whatever facts she considered relevant in that regard. Thus, so far as the record indicates, no questions were asked, Wellhausen expressly disclaims (in her testimony) that she had any investigatory purposes in the August meeting, and there is no evidence that Kin was asked for a statement of her position or views on the matters being stated by Wellhausen. Instead, it appears that Wellhausen called Kin in to cite changes in procedures, to remind her of certain existing procedures, and, especially in the August meeting, to criticize the manner in which Kin had been performing her work.

Complainants' characterization of the meetings as verbal reprimands is surely reasonable as regards the October meeting, and perhaps the August meeting as well. But even if both were verbal reprimands, such would not, without more, entitle Kin to union representation upon request at such meetings for reasons detailed under "Linda Reed", above. The same conclusion would, of course, also apply to a meeting at which work direction or redirection is given without criticism or correction of prior performance.

There remains the question, however, of whether Kin had reasonable cause to believe that subsequent supervisory decisions to discipline (by additional verbal warnings or otherwise) or discharge her could result from or be based upon matters being investigated by Wellhausen during her contacts with Kin in August and October, 1975. Only Wellhausen's October statement that "I have so many complaints against you that I don't know what I'm going to do", coming in the context of criticism of Kin's job performance, might have provided such reasonable cause. The examiner finds, however, that in the absence of any evidence that it appeared likely to Kin that she would be questioned by Wellhausen and in the context of an apparent effort to provide instructions on how the job was to be handled in the future, complainants have not proven that Kin had such reasonable cause under the circumstances of the October meeting, or of the August meeting where no such ambiguous statement was made.

Therefore, no Sec. 111.70(3)(a)1 violation has been found with respect to Vera Kin's experiences of record.

Karen Barrow (findings 27-31; conclusion 4)

The day after she left work with a job-related injury, Barrow was called by fellow employe Schmidt and informed that assistant administrator Malinoski had concluded that Schmidt's filing of reports of the injury were inappropriate, that Barrow should have done so, and that Malinoski had suggested that Schmidt have Barrow come

---

27/ Tr., 72.

28/ Tr., 74.

to Northview and do so. Barrow complied that very evening though under medication and in pain. Upon arrival, she was told to report to Mrs. Fredericks for purposes of completing the necessary forms. 29/ Barrow believed, based on prior experiences with Mrs. Fredericks, that meeting with Fredericks would involve questioning in addition to report preparation. 30/

Under those circumstances, Barrow had reasonable cause to believe that supervision could base subsequent decisions to discipline or discharge her on account of improper reporting procedures or perhaps improper lifting procedures based upon or as a result of questions she reasonably anticipated that Fredericks might ask her during the interview in those regards. While no supervisor told Barrow that discipline could result from the interview and while Fredericks' conduct of the interview was apparently consistent with the limited purpose of eliciting information for report completeness and to avoid similar injuries to employes in the future, Malinoski created the circumstances leading to the reasonable cause to believe noted above by relying on Schmidt to convey the initial information to Barrow. Because Barrow's fears were reasonable given her knowledge, the circumstances fall within the holding of City of Milwaukee, 31/ and are, in any event, circumstances in which Barrow had a right to representation, upon request, that was denied by respondent. The fact that Barrow was not ultimately disciplined or discharged on the basis of information gathered by Fredericks during the meeting does not cure the interference with Barrow's right to representation. That denial of the requested representation violated Sec. 111.70(3)(a)1.

Karen Williams/Darlene Moore (findings 32-33; conclusions 1.H. and I.)

Complainants in their brief contend that "Mrs. Williams had numerous interviews with her 'anti-union' supervisors at which no union representative was allowed" and that Ms. Shepard's "self confessed 'anti-union' attitudes" were responsible for nonresolution of Williams' concerns about Prischalla's criticisms of her job performance during the late February meeting. The only two meetings between supervision and Williams focused upon in the statement of facts in complainants' brief (and the only two revealed in the record) were on February 8 and in late February. It is undisputed that Williams did not request union representation at the meeting called by Prischalla on February 8. Under such circumstances, any right Williams may have had to such representation was forgone for reasons discussed above under "Edith Meinhardt", above. It is also undisputed that Williams was represented throughout the late February meeting by union secretary Darlene Moore.

Resolving in complainants' favor the conflict between Prischalla's and Moore's testimony over whether Shepard referred to herself as

---

29/ There is some doubt whether Schmidt transmitted that direction or whether Barrow learned of it from personnel on her unit when she arrived. (see Tr., 255) In any event, Malinoski testified that prior to Barrow's coming in, he directed Fredericks "to have Karen Barrow report to her to get the incident report filled out." (Tr., 255, 496)

30/ Barrow's characterization of Fredericks' nature in this regard is uncontradicted in the record.

31/ Above, note 5.

"anti-union" during the late February meeting, the examiner nonetheless finds that Shepard's conduct on that occasion, did not constitute a violation of Sec. 111.70(3)(a)1. Municipal employers and their agents have the right to express to employes their opinions and attitudes about labor organizations—in general or in particular--and the value thereof so long as such statements do not, in the circumstances, constitute an express or implied threat of reprisal for engaging in MERA protected activities or promise of benefit for refraining from doing so. 32/ The record does not establish that Shepard's comments can reasonably be characterized as either an implied threat or promise about the consequences Williams could expect from having or not having union representation at meetings such as the one on February 24, 1976. Hence, no Sec. 111.70(3)(a)1 violation has been found to have been committed by reason of Shepard's conduct noted in finding 32.

Janet Morris (findings 34-40; conclusion 1.J.)

Morris was informed in early April that she was being recommended by her AFDC unit supervision for reassignment 33/ to a unit (GA) which she and other employes considered less desirable than AFDC unit work. At her request, a first step grievance meeting was scheduled by Grimm, 34/ but later preempted by a staff meeting called by Kuehn. Meanwhile, Safir personally proceeded with respondent's customary procedure for selection of an employe for a unit-to-unit reassignment by calling Morris, the employe recommended by the supplying unit, to be interviewed by the supervisor of the receiving unit in order that that supervisor could determine whether Morris would be an acceptable reassignee. Morris twice requested that Safir either permit her to leave or provide her with union representation, and Safir denied each such request, the latter in a stern manner. The meeting proceeded, Kern questioned Morris about her background, attitudes, and responses to hypothetical cases, and both Kern and Safir praised Morris' answers, qualifications, and acceptability

---

32/ Western Wisconsin Technical Institute and Janesville Board of Education, above, note 11, and Ashwaubenon Jt. School District, Dec. No. 14774-A (10/77).

33/ In reaching the findings of fact pertinent to Morris, the examiner has generally resolved conflicts in favor of Morris' testimony as against that of Safir and Kuehn. Nevertheless, Kuehn's recollection of telling Morris that she was being recommended for consideration (Tr., 436) is credited over Morris' testimony that Kuehn told her she was in fact being reassigned. (Tr., 85-86, 102) That is a distinction easily missed by Morris, especially during a meeting at which she was surprised by what she considered to be bad news. Kuehn's indication that Morris had "no choice" about what he told her on that date is equally applicable to a recommendation of her name for consideration as it is to a determination that she would be reassigned.

34/ Respondent bases its contention, that no first-step grievance meeting was either requested on April 7 or scheduled by Grimm for April 12, on Morris' testimony that she told Grimm on April 7 only that she "intended to file a union grievance" about the "proposed move" (Tr. 86) but never directly requested a first-step meeting until sometime later. But Morris clarified any ambiguity concerning the request and the scheduled meeting by testifying that Grimm told her on April 7 that she was scheduling the meeting "as a first step of a union grievance". (Tr. 92) While such testimony is weakened somewhat by the leading nature of complainant counsel's preceding question (Tr. 91-92), the testimony is uncontroverted, and Grimm was not called to contradict it.

for GA work. It is therefore fair to say that Morris moved closer to being subjected to the reassignment she considered undesirable as a result of her answering the questions put to her by Kern at the April 8 meeting.

After an initial effort to find a volunteer among AFDC employes for transfer to the GA unit failed, Kuehn called Morris to a meeting on April 13 to tell her so and to inform her that she remained AFDC's recommendee for the reassignment. He also had Reidy present in hopes that Reidy could reduce Morris' resistance to the concept of the reassignment by describing Reidy's experiences in that work and relating them to aspects of AFDC work that Morris likely found satisfying. Again, Morris twice requested and was denied union representation at that meeting.

Complainants contend that since an adverse impact upon Morris' wages hours and conditions of employment (i.e., possible imposition of a reassignment to a less desirable work area) was at stake in her discussions with management on April 8 and 13, she had a right protected by MERA to have a union representative present during same just as the teachers in Whitehall and Crandon had a right to such representation when the possible adverse impact on their wages, etc., of a possible nonrenewal of their individual teaching contracts was at stake in their discussions with their school boards during private nonrenewal conferences. But, the April 8 and 13 meetings in question herein are materially distinguishable from the nonrenewal conferences in Whitehall and Crandon.

For, the effect on wages, hours and conditions of employment of a possible lateral reassignment to another work unit is far less drastic than the effect thereon of a possible nonrenewal. As was noted in Whitehall and Crandon, "[t]he nonrenewal procedures of Section 118.22 involve the tenure of the teacher as an employe. Tenure is the most significant aspect of an employment relationship and any change in the tenure of an employe has a direct and intimate affect [sic] upon salaries, hours and working conditions." 35/ Moreover, the factors that the teachers cited as making the Sec. 118.22 private conferences ". . . a forum in which effective representation provided by the labor organization may be particularly helpful to the teacher who is being considered for nonrenewal" 36/ do not exist in Morris' situations herein. The legislative purposes of the Sec. 118.22(3) were identified in Whitehall and Crandon as "to attempt to work out a settlement of the problems giving rise to the consideration of nonrenewal" and to promote an "examination of all facts and circumstances affecting a case prior to the time at which the school board must make its decision." 37/ The commission reasoned that if such conference was to be effective in achieving those purposes

> "the teacher must also be able to effectively present his or her side of the issues raised. The representatives of the labor organization are likely to have more experience and ability in such matters than the individual employe and, by having such representation, the employe is able to have his or her position presented in a more effective manner than would be possible if the employe were his or her own spokes[person]. Finally, since some or all of the charges made against the teacher may arise

---

35/ Dec. No. 10268-A at 7; Dec. No. 10271-A at 7.

36/ Dec. No. 10268-A at 10; Dec. No. 10271-A at 11.

37/ Dec. No. 10268-A at 11; Dec. No. 10271-A at 11.

out of or in connection with matters of wages, hours or conditions of employment negotiated by the labor organization for all employes in the bargaining unit, the labor organization in its own right and as a party to the collective bargaining agreement has an interest in any violation of that agreement either by an individual teacher or the school board." 38/

By contrast, the purpose of the April 8 meeting herein was for the GA supervisor to evaluate Morris' suitability for GA unit work. Relevant were Morris' attitudes, experiences and responses to hypothetical problems posed. The purpose of the April 13 meeting herein was to inform Morris that she was still the employe recommended for reassignment by AFDC supervision and to attempt to reduce her anxieties about such a reassignment. The meetings herein were not for the purpose of determining whether it was fair or reasonable or consistent with the collective bargaining agreement for Morris to be reassigned to GA. Thus, representatives of complainant are not likely to have more experience and ability conducive to fulfilling the purposes of those meetings than Morris herself has, and union representation would not be likely to make Morris' presentation more effective in fulfilling the purposes of those meetings.

For the foregoing reasons, and because municipal employes' interests in having union representation at such meetings do not outweigh respondent's interests in efficiency of operations through reassignment of employes, municipal employes do not have an extra-contractual, MERA-protected right to union representation at meetings of the sort Morris was involved in on April 8 and 13.

Preemption of April 12 First-Step Meeting

Kuehn's scheduling of an April 12 staff meeting in conflict with the first step grievance meeting previously scheduled by Grimm at Morris' request does not appear to have been either an intended conflict or objected to by Morris or her local. Moreover, since the staff meeting involved was called in an effort to resolve the concerns about which Morris was grieving (by seeking volunteers for the transfer that Morris sought to avoid), the resultant conflict does not seem likely to interfere with, restrain and/or coerce any municipal employe in the exercise of MERA protected rights.

April 14, 1976 Meeting

Complainants, in their reply brief, seem to contend that Kuehn's conduct at the April 14 grievance meeting (finding 38) violated Sec. 111.70(3)(a)1. At that meeting, Kuehn did not take the position that Morris could not have union representation in first-step meetings. Rather, he said that Morris and her representative were presenting a matter that was not ripe for processing in a first-step meeting in the grievance procedure. If he was correct, then there was no contractual or statutory obligation that respondent participate in such meeting. If he was wrong, then (consistent with respondent's overall position) Morris would have the right, with union representation, to process such a claim through steps of the grievance procedure including the first. The question of whether Kuehn was correct or wrong in that regard is, itself, a matter of contract interpretation reserved by the parties for determination in the grievance procedure and not a matter necessary for the examiner to determine herein.

---

38/ Dec. No. 10268-A at 11-12; Dec. No. 10271-A at 11-12.

For all of the foregoing reasons, the examiner has dismissed the complaint as regards allegations of Sec. 111.70(3)(a)1 violations concerning Janet Morris.

Hope Vermaas (findings 41-42; conclusion 1.K.)

Complainants contend that local president Vermaas' requests for the payroll records of only 20 of the 320 employes in the Northview unit--in order to determine the validity of management's charge at a third step grievance meeting concerning a three day suspension that the grievant had the worst attendance and tardiness record at Northview--were reasonable, and that delays in granting the February 18, 1976 request for the first ten and the denial of the April 27, 1976 request for the second ten therefore violated Sec. 111.70(3)(a)1.

After submitting the February 18 request, Vermaas waited twenty days before being permitted to review the requested records. During that period, Malinoski initially denied the request, which contained no specification of the reason or case reference for the requested records review. When Vermaas responded to Malinoski's initial denial by informing him that the request was related to the pending arbitration concerning the three-day suspension, Malinoski, after consulting with respondent's personnel department, reconsidered his denial and agreed to the request. Some additional time for movement of records from the geographically separate personnel department to Northview also intervened, and Vermaas finally reviewed the documents on March 10. Therefore, at least part of the delay involved is attributable to Vermaas' initial nonidentification of the reason for the request. Moreover, Vermaas' request did not assert that time was of the essence, and nothing in the record would indicate that the delay was in any way prejudicial to complainants' case in the pending arbitration. Under those circumstances, the twenty-day delay involved herein does not constitute conduct likely to interfere with, restrain or coerce Vermaas or other municipal employes in the exercise of their MERA rights.

Neither does Malinoski's response to the second request. Assuming arguendo that Vermaas' local had a right to review the records as she requested on April 27, Malinoski's referral of such requests to the personnel department where the documents involved are kept appears to be a reasonable response to what appeared to be a potentially long series of requests of ten sets of records each by Vermaas. Malinoski's further insistence on more specific reasons in writing for the request than Vermaas had theretofore provided in support of her April 27 request was also reasonable since Vermaas simply cited "arbitration" as a subject reference, which, while it may well have identified the matter as relating to the grievance over the three-day suspension, did not give any indication why the previous review of ten records for the same cited reason was not sufficient or why Vermaas found it necessary to review the records in groups of ten if she intended to look at more than that on still other occasions in the future.

Van Mehlos (findings 43-45; conclusion 1.L. and 5)

The Morning Meeting on July 9

Safir and Hammermeister decided to terminate Mehlos before they called him to the July 9 morning meeting. They called that meeting for the purposes of telling Mehlos that he would be terminated, the reasons why (by reviewing Wellhausen's final evaluation of him), and that he had the options of resignation after three more weeks of work or immediate discharge.

While Mehlos may have anticipated some or all of those developments when he was called to the meeting, he nonetheless did not have reasonable cause to believe that some management decision to discharge or discipline him might later be predicated on matters investigated or positions stated by him during the morning meeting. Moreover, the record contains no evidence that Mehlos was asked to state a position or to answer any questions (other than to select between the offered options) during the meeting.

While Mehlos may have desired that the scope of the meeting expand to a discussion of the merits of management's decision to terminate his employment, he had no right (in law or contract) to a meeting on such matters; management, in calling the meeting, effectively established its purposes as those noted above.

In a meeting held for the limited purposes noted above, a municipal employe's interests in representation are outweighed by the interests of municipal employers in conducting such meetings without granting requests for union representation. Since the termination decision had already been made, the likelihood of modifying it at a meeting called only to explain the basis for it is less than if the decision had not yet been made. Moreover, the particular skills of the union representative are unlikely to contribute greatly to the effective communication of management reasons for the termination decision, but are more likely to be counter-productive to that end. The union representative's efforts would likely be to shift the emphasis to the merits of the reasons presented and to the validity of the conclusion that termination should be implemented. Such are not the purposes for which the morning meeting was being held, however. Finally, a union representative does not appear critically needed to assist an employe in exercising the options presented to Mehlos on the morning of April 9, especially since Malinoski granted Mehlos' request to consider those matters through the lunch period, allowing further discussions with Lyons prior to reconvening in the afternoon. For the foregoing reasons, Respondent would not have interfered with, restrained or coerced Mehlos in the exercise of his Sec. 111.70(2) rights had it denied a request for union representation at the morning meeting.

As it was, Mehlos requested only the presence of Lyons, a union official, as a witness rather than as a representative spokesperson. Had Respondent refused to permit Mehlos a witness, no independent violation of Sec. 111.70(3)(a)1 would have arisen on the instant facts. Respondent, however, did permit Mehlos the presence of a witness, conditioning that privilege on the witness being other than a union official. By doing so, Respondent technically interfered with the Sec. 111.70(2) right of the remaining unit employes to seek union office by disqualifying employes who successfully exercise that right from serving their fellow employes as witnesses in certain meetings involving probationary employes.

Respondent defends its action in that regard by claiming that it acted in pursuit of a legitimate business purpose of avoiding creation of a binding past practice of allowing dismissed probationary employes access to the contractual grievance procedure. But such purpose could have been achieved in a manner less restrictive and chilling of Sec. 111.70(2) rights by conditioning Lyons' participation as the witness on Lyons agreeing that the incident would not be cited as precedent for access to the contractual grievance procedure in subsequent cases. Therefore, respondent's defense is not sufficient to avoid the conclusion that it violated Sec. 111.70(3)(a)1, Stats.

A violation of Sec. 111.70(3)(a)1 has therefore been found and a remedy appropriate to the violation fashioned. The reinstatement and back pay for Mehlos requested by complainants has not been ordered, however, because the harm done by the violation found is a chilling of other employes' exercise of MERA rights rather than a potentially adverse impact on Mehlos' continuity of employment.

The Afternoon Meeting on July 9

Safir scheduled and conducted the afternoon meeting for the purpose of receiving Mehlos' decision about whether he would opt for resignation after three weeks more work rather than immediate discharge. Lyons came to that meeting with Mehlos and this time was permitted to remain. Safir's unwillingness to broaden the scope of the matters to be addressed during that meeting to include the merits of offering Mehlos other options than the two management had placed before him that morning did not contravene any right of either complainants or Mehlos to discussions with respondent on such subject matters, for reasons noted in the discussion of Dan Johnson's September 10 meeting, above. Hence, Safir committed no violation of Sec. 111.70(3)(a)1 by refusing to discuss the other matters that Mehlos and Lyons proposed or by any other of his conduct in connection with the afternoon meeting with them on April 9.

Defense of Waiver by Contract Language and Bargaining History

Respondent cites language in Secs. 3.01, 3.02, 3.03 and 3.06 of the parties' 1974-75 agreement (finding 6) and parallel sections of and the history of the bargaining of the 1976-77 agreement and contends that complainants waived any statutory right respondent might otherwise be found to have violated herein.

However, the cited provisions refer to the extent to which union business may be conducted on "County time", not to the extent to which employes have or do not have the rights at stake herein to union representation (Barrow) or to be free from exclusion as possible witnesses to supervisor-employe contacts solely because of union office (Vermaas and Shibowski in the Johnson situation and Dennis Lyons in the Mehlos situation). Those provisions therefore do not constitute clear and unmistakable absolute waivers of the rights found herein to have been violated. Moreover, none of the agents of respondent who committed violations either offered the opportunity for exercise of the requested union participation on other than "County time" or cited the time of the requested participation as the reason for the denial thereof. Thus, even if those provisions were deemed to create a defense during "County time", they would not be so herein because respondent offered neither a reasonable alternate time for the exercise of the rights involved nor a reason for the employes involved to have suggested an alternate time. In any event, such a defense would not have been applicable to the violation involving Johnson since Vermaas was off duty (on vacation) at the time of the September 10 violations. For those reasons, any defense predicated upon the contractual provisions cited above has been rejected.

Moreover, none of the violations of employe rights found herein to have been committed can be said to have been waived during the bargaining leading up to the 1976-77 agreement. A waiver of statutory rights by bargaining history must also be clear and unmistakable. The complainants' advancement and then withdrawal of proposals--to expressly guarantee union representation at all steps of the grievance procedure, to require (rather than offer the alternative of) the presence of a representative at the first step, and to put a time limit on first step supervisory responses--do not affect the outcome herein. Nor are any of the comments attributed to the union bargaining representative sufficient to limit or extinguish otherwise existing statutory rights of which violations have been

found herein. For, those comments were in the context of proposals concerning the rights of employes to union representation within the contractual grievance procedure, not outside of it where the instant violations have been found to occur.

Dated at Madison, Wisconsin this 5th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, examiner