STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ARROWHEAD DISTRICT COUNCIL RICHMOND SCHOOL TEACHERS,	:	
Complainant,	:	Case V No. 18648 MP-415
vs.	:	Decision No. 14691-A
BOARD OF EDUCATION, RICHMOND ELEMENTARY SCHOOL JOINT SCHOOL DISTRICT NO. 2, TOWNS OF LISBON AND PEWAUKEE,	:	
Respondents.	:	

Appearances.

Mr. Gregory A. Wilson, Staff Council, appearing on behalf of the Complainant.

Mr. George Shiroda, Business Representative, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Arrowhead District Council, Richmond School Teachers, having filed a complaint on December 24, 1974, with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that the Board of Education Richmond Elementary School, Joint School District No. 2, Towns of Lisbon and Pewaukee, has committed a prohibited practice within the meaning of Section 111.70(3)(a)1, 2 and 5 of the Municipal Employment Relations Act (MERA); and the Commission having appointed Sherwood Malamud, Examiner, to make and issue Findings of Fact, Conclusions of Law and Order; and hearing on said complaint having been held at Waukesha, Wisconsin on February 5, 1975; and Complainant having filed its brief and Respondent having declined to file a brief; and the Examiner having considered the evidence and arguments contained in Complainant's brief and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Richmond Teachers, hereinafter the Complainant, is the recognized collective bargaining representative of all full-time and part-time certified teachers employed by the above captioned Municipal Employer.

2. That Joint School District No. 2, Lisbon-Pewaukee is a public school district organized under the laws of the State of Wisconsin; that the Board of Education, Richmond Elementary School Joint School District No. 2, is charged by statute with the management, control and supervision of said district; that Respondent is engaged in the provision of public education in its district, and that at all times material herein, William J. Liebenthal, Anthony F. Curro, Ervin Hewitt, I.K.C. Schuette and John E. Chapel comprised the entire membership of Respondent Board.

3. That Complainant and Respondent were parties to a collective bargaining agreement effective from July 1, 1973 through June 30, 1975

which contains a four step grievance procedure wherein the fourth and final step is final and binding arbitration, and that said agreement contains the following additional provisions material hereto:

> "This AGREEMENT is entered into between the Board of Education of the Richmond Elementary School, Joint District No. 2, of the Towns of Lisbon and Pewaukee, Waukesha County, Wisconsin, hereinafter called the 'BOARD' and the Richmond School Teachers, hereinafter called the 'TEACHERS'.
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> . . .
>
> ARTICLE V
> TEACHERS RIGHTS
>
> 5.01 The BOARD agrees that the individual teacher shall have full freedom of association, self-organization, and the designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint or coercion by the BOARD, or its agents, in the designation of such representatives or in self-organization for the purpose of collective bargaining or other mutual aid or protection."

Furthermore, under the School calendar Appendix A of the agreement, a teacher was required to be present for work at Respondent's school no later than June 13, 1975, and that summer vacation for Respondent's teaching faculty commenced thereafter.

4. That on May 15, 1974, Dennis B. Kloth, who is a teacher in a school district other than Respondent, in his capacity as Grievance Committee Chairman of the Arrowhead District Council, mailed the following letter to Hewitt, Respondent's clerk, which letter in material part stated as follows:

> "Again, it has become glaringly apparent that the Richmond School Board and it's agents have little intention of honoring the Master Contract between the Richmond teachers and the Board. It has become increasingly evident that the Board by virtue of eitner incompetence or conspiracy has conducted a campaign of harassment against two of it's teachers who have been heavily involved in union activities. Such harassment has included discriminatory denial of benefits, defamation by innuendo by the board president, removal of personal property from a teacher's room, attempts to hold a kangaroo disciplinary court on teacher performance, arbitrarily forcing grievances into unnecessary and costly binding arbitration, and many more items too numerous to mention here.
>
> Because all such behavior described above is a violation of statute and because the Arrowhead District Council, Flyway United Educators, and the Wisconsin Education Association Council cannot countenance such harassment, we are evaluating all the above incidents in light of WERC rules regarding unfair labor practices. We are informing you in advance of the possibility of this action so that you may have the opportunity to take corrective action designed to eliminate the problems enumerated above. The Arrowhead District Council stands ready to settle these issues across the table, where they should be settled, but if the Board is unwilling, the ADC will utilize all avenues of recourse."

5. That on June 18, 1974, during the summer vacation of Respondent's teaching faculty, Board members Liebenthal, Curro, Hewitt, Schuette

and Chapel directed the following letter to the eleven teachers who comprise the teaching staff of Respondent. That said letter together with the letter recited in Finding of Fact No. 4 were enclosed with each teacher's paycheck which was mailed to each teacher's home; that said letter was not mailed to the Arrowhead District Council's Grievance Committee Chairman, Kloth; and that said letter in material part provided as follows:

"Dear Teacher:

We are writing this letter to you to express our concern over what we feel has been less than a desireable [sic] relationship between the Staff and the Board. It appears that throughout the state the advent of 'hard' negotiations and the thought among some people on both sides of the table that militancy and aggression will secure their wants has led to this breakdown in relationship.

We feel that some of your representatives may not necessarily be expressing your thoughts. We hope they are not always doing so. As an example we would ask you to review the letter attached. The natural human reaction to being called incompetent or dishonest as the Arrowhead District Council representative has done in the letter would be to lash back in some way. You will note that we have been courteous in all of our communications and have recognized the bargaining process and the Board-Association relationship at its appropriate level of sophistication. The other communications are on file in the office and you are welcome to review them if you wish.

So far as threats such as are used in the second paragraph and on numerous previous occasions we want to assure you that our responsibility to both yourselves and our constituents makes it imperative that we neither retaliate in any way nor allow ourselves to be intimidated.

In short what we are saying is 'lets try to approach our relationship in a mature manner which can only benefit both of our groups and more importantly establish the kind of climate which is most conducive to the best education for our Richmond School youngsters.'

Hoping you will suggest this to your leaders and representatives, we remain,"

6. That Complainant has not filed a grievance over Respondent's mailing of the June 18, 1974 letter to Respondent's teaching faculty.

7. That by June 18, 1974, Complainant and Respondent were scheduled to participate in mediation with a member of the Commission's staff; and that there is no evidence that Respondent made any promise of benefit or threat of reprisal to any teacher in response to Kloth's May 15, 1974 letter.

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

CONCLUSIONS OF LAW

1. That Arrowhead District Council, Richmond School Teachers, is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act (MERA); and, that the Board of Education Richmond Elementary School Joint School District No. 2, Towns of Lisbon

and Pewaukee is a Municipal Employer within the meaning of Section 111.70(1)(a) of MERA.

2. That Respondent, by sending the letter dated June 18, 1974, which is recited in Finding of Fact No. 5, to all teaching personnel of Respondent has not interfered with, restrained or coerced its employes in the exercise of their rights under Section 111.70(2) of MERA, and therefore Respondent has not violated nor is it violating Section 111.70(3)(a)1 of MERA.

3. That Respondent, by sending the letter dated June 18, 1974, which is recited in Finding of Fact No. 5, to all teaching personnel of Respondent has not dominated or interfered with the administration of Complainant, and therefore Respondent has not violated Section 111.70(3)(a)2 of MERA.

4. That, by its failure to file a grievance concerning Respondent's alleged violation of Article V of the agreement, Complainant has not exhausted the contractually established grievance procedure which provides for final and binding arbitration of disputes, consequently, the Examiner has not exercised the jurisdiction of the Commission to determine whether or not Respondent has violated Article V of the agreement; and therefore, Respondent has not violated Section 111.70(3)(a)5 of MERA.

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

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 9th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant alleges that by distributing the letter dated June 18, 1974 1/ to all teaching personnel, Respondent attempted to interfere with employes in the exercise of their rights and in violation of Section 111.70(3)(a)1 of MERA, and that by distributing said letter Respondent attempted to interfere with the administration of Complainant labor organization in violation of Section 111.70(3)(a)2 of MERA, and finally, by that very same act of distributing the June 18 letter Respondent violated Article V of the agreement and thereby, Respondent violated Section 111.70(3)(a)5 of MERA. Respondent denies that by distributing its June 18 letter, it intended or attempted to interfere with employes in the exercise of their rights, or that it attempted to interfere with the administration of Complainant labor organization. Furthermore, the Employer denies that it violated Article V of the agreement.

The Examiner will discuss each of the three charges separately.

Interference

Complainant, in its brief, quotes this paragraph from Respondent's June 18, 1974 letter and then Complainant continues amd makes the following argument in support of its interference charge against Respondent:

> "We feel that some of your representatives may not always be expressing your thoughts. We hope they are not always doing so.
>
> The memorandum 2/ goes on to imply that the Council is acting in an immature and unprofessional manner and that only the Board (and the individual teachers) are concerned with 'education' within the Richmond schools.
>
> The clear message of the memorandum is that the Board and the teachers really have the same interests. The only problems in the district are those caused by union leaders (who are obviously not representing the true feelings of the teachers). It if were not for the advent of 'hard negotiations,' 'militancy' and the like, there would be no difficulties in the Richmond School. Without the union, the Board and the teachers could return to establishing the 'kind of climate which is most conducive to the best education for our Richmond youngsters.'

1/ The letter recited in Finding of Fact No. 5, hereinafter shall be referred to as the June 18 letter.

2/ Complainant employs the term memorandum in referring to Respondent's June 18, 1974 letter.

Having posited this idyllic world, the Board goes on to urge the teachers to 'suggest' this to leaders and representatives. Ideally, teachers would go to their representatives and tell them that they were dissatisfied with the way these representatives were carrying out their responsibilities. Naturally, the effect would be the end of 'hard' negotiations."

Complainant argues that by distributing the June 18 letter to Respondent's faculty, whether or not it was Respondent's intent to do so, it interfered with employes in the exercise of their statutory rights. To prevail, Complainant must demonstrate by a clear and satisfactory preponderance of the evidence 3/ that Respondent's actions are likely to interfere with employe rights. Although a finding of intent is not necessary 4/ to sustain its charge of interference, Complainant must demonstrate that the act complained of contains a threat of reprisal or a promise of benefit. 5/ An analysis of the evidence of record will determine if such threat or promise were made in this case.

Respondent attached Complainant's May 15, 1974 letter to its letter of June 18, and in its letter, Respondent expressed certain opinions. Complainant claims that Respondent called Complainant's leadership immature, unprofessional, and militant, and that the Respondent accused said leadership of engaging in hard negotiations.

However, the record reflects that Respondent also stated in its letter that:

> "So far as threats such as are used in the second paragraph 6/ and on numerous previous occasions, we want to assure you that our responsibility to both yourselves and our constituents makes it imperative that we neither retaliate in any way nor allow ourselves to be intimidated."

It is clear from the above that Respondent in its June 18 letter expressed an opinion, and distributed that opinion to teaching faculty. However, the letter does not contain any threat of reprisal in response to the Union leadership's alleged adoption of hard negotiation tactics. Furthermore, Respondent's reference in its letter to "improved climate

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3/ Section 111.07(3) as made applicable to Municipal Employment by Section 111.70(4)(a).

4/ Muskego-Norway C.S.J.S.D. No. 9 (8420) 2/68.

for Richmond School youngsters" 7/ does not promise employes more wages or better working conditions in exchange for the faculty's decision to change its Union leadership or to drop Union representation entirely. The proposal that the faculty change Union leadership or drop the Union in exchange for increased monetary benefits would constitute interference. Clearly, the statement of opinion which suggests an improved climate between the Employer and the Union is not a promise of benefit which would constitute interference under the Act. Therefore the Examiner found that standing alone, the letter is not likely to interfere with employe rights.

Complainant also argued that when the circumstances surrounding the distribution of the letter are taken into consideration the illegal effect of Respondent's act becomes clear.

The circumstances alleged by Complainant which demonstrate said letter's illegal effect concern the timing of the mailing of the June 18 letter just prior to the parties' entry into mediation with a member of the Commission's staff. The thrust of Complainant's argument is that Respondent's timing in sending the letter just prior to the commencement of mediation belies Respondent's intent. By June 18, the date of the letter, summer vacation had commenced and teachers were commencing their vacations. Contrary to Complainant's assertion, the timing of the letter occurred at a time when teachers were least likely to be together and change their Union leadership or insist on a change in Complainant's bargaining stance. In fact, Complainant failed to show that even one employe contacted Complainant concerning its bargaining stance or the May 15, 1974 letter. Accordingly, the circumstances surrounding the timing of Respondent's mailing of the June 18 letter do not support a conclusion that the letter carried threats or promises justifying a finding of interference.

Complainant argues further that if Respondent believed Complainant was not representing the teachers, it should have filed a representation petition requesting the Commission to conduct an election. Complainant here assumes that a Municipal Employer loses its right to free speech as soon as a labor organization is recognized or certified to represent unit employes. Complainant cites Ramseier v. Janesville Jt. School District (8791-A, 3/69) in support of its assumption. In Janesville Schools, the Commission stated that:

> "The legislature in enacting Section 111.70 restricted certain privileges formerly exercised by agents or municipal employers in their relationship with municipal employes whether such privileges were in the form of action or statements. Statements made by public officials lose their privilege if they are violative of the provisions of the municipal employer - employe labor relations statute."

The Janesville School case concerned comments made by a Board President in a radio interview concerning the progress of negotiations between teachers and the Board. During this interview, the Board President stated that salary increases requested by the teachers' union would "tie down or burden the education system with unacceptable costs."

7/ The fourth paragraph of Respondent's June 18 letter reads as follows:

> "In short what we are saying is 'lets try to approach our relationship in a mature manner which can only benefit both of our groups and more importantly establish the kind of climate which is most conducive to the best education for our Richmond School youngsters.'"

The Board President stated in effect that the teacher representatives were making a mistake by exerting their collective power "to push and push." The Union in Janesville contended that:

> "the only reasonable inference that can be drawn from such remarks is that the labor organization . . . is acting irresponsibly and improperly."

The Union in that case viewed the Board President's remarks as coercive and threatening in that if the Janesville teachers ". . . continued to support the J.E.A. (Janesville Education Association), their chosen bargaining representative, and these economic requests, it could or would result in the loss of 125 teacher jobs." In Janesville, the Commission found that the Board President's comments "in the context and at the time they were made, were not violative of the statute."

Complainant distinguishes Janesville from the case herein on the grounds that, here, "Respondent has attacked the very representative capacity of the union." Complainant further distinguishes Janesville from the case herein on the grounds that the Janesville Board President addressed his remarks to a wide audience rather than solely to the teaching faculty, as is the case here. Complainant further asserts that the focus of the Janesville radio broadcast was the progress of negotiations; the focus of the Richmond June 18 letter is the representative capacity of the Arrowhead District Council.

The Examiner finds the Janesville School case applicable to this case on all fours. In Janesville Schools the Commission found that the broadcast was directed at the individual teachers, inasmuch as, one teacher heard the broadcast. As a result, one basis for Complainant's distinguishing the two cases fails. Secondly, in Janesville Schools, the Union protested an Employer's critical remarks concerning the Union's demands, and in that regard the Commission stated that:

> "While we do not encourage such remarks, if we were to eliminate remarks crticial of employe and of employer representatives from the bargaining process as prohibited practices, the process might collapse, perhaps from shock alone."

Thus, the Examiner concludes that because Respondent's letter contained statements critical of Complainant without any reference to illegal threats of reprisal or promises of benefit, the Respondent by sending said letter did not interfere with employe rights by distributing said letter.

Domination

Complainant alleged that Respondent's letter interfered with Complainant's administration of its own organization. In its brief, Complainant identified the act of domination as Respondent's distribution of its June 18 letter. Complainant termed the letter as unsolicited meddling in its affairs.

In the above analysis, the Examiner concluded that Respondent's letter was limited to critical remarks concerning Complainant's leadership. Complainant may have viewed Respondent's expression of hope in the closing sentence of the June 18 letter,

> "Hoping you will suggest this to your leaders and representative, we remain,"

as meddling. However, the statutory proscription against Employer domination contemplates an Employer's active involvement in creating or supporting a labor organization which is representing its employes. The closing sentence in this letter certainly does not rise to the level of domination or interference with the internal administration of Complainant's organization contemplated by MERA. Therefore, the Examiner concluded that Respondent did not violate Section 111.70(3)(a)2 by distributing the June 18 letter.

Violation of Contract

Complainant alleged that by distributing the June 18 letter, Respondent violated Article V of the agreement. The agreement also contains a grievance procedure which culminates in final and binding arbitration of disputes. Complainant did not file a grievance concerning Respondent's alleged violation of Article V of the agreement. If the Examiner were to exercise the jurisdiction of the Commission, he would do so in order to effectuate Section 111.70(3)(a)5 of MERA which makes it a prohibited practice for an Employer to fail to comply with the provisions of a collective bargaining agreement. Because Complainant failed to file a grievance in the matter, the Examiner has declined to exercise the jurisdiction of the Commission. 8/

Closing

In its brief, Complainant argues that by sending its June 18 letter to all employes without sending said letter to Complainant's Grievance Representative, Respondent interposed itself between Complainant and its membership. However, at no time did Complainant allege that Respondent violated Section 111.70(3)(a)4 of MERA. Therefore, the Examiner finds it inappropriate to make any findings regarding a charge of refusal to bargain because that issue was not pleaded by Complainant nor was it litigated before the Examiner.

Based upon the above analysis, the Examiner has dismissed the complaint in its entirety.

Dated at Madison, Wisconsin this 9th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner

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