

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS' EDUCATION :
ASSOCIATION, : Case CIII
 : No. 24792 MP-993
 : Decision No. 17104-A
Complainant, :
 :
vs. :
 :
MILWAUKEE BOARD OF SCHOOL DIRECTORS :
(RILEY ELEMENTARY SCHOOL), :
 :
Respondent. :
 :

Appearances:

Perry, First, Reiher & Lerner, S.C., 222 East Mason Street,
Milwaukee, Wisconsin 53202, by Mr. Richard Perry and
Mr. James C. Reiher, on behalf of Complainant.
Mr. James B. Brennan, City of Milwaukee, City Attorney,
800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin
53202, by Mr. Jeffrey Basin, on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

AMEDEO GRECO, Hearing Examiner: Milwaukee Teachers' Education Association, herein the Association, filed the instant complaint on June 21, 1979, with the Wisconsin Employment Relations Commission, herein Commission, wherein it alleged that Milwaukee Board of School Directors, herein the Board, had committed certain prohibited practices under the Municipal Employment Relations Act, herein MERA. The Commission on June 29, 1979, thereafter appointed the undersigned to make and issue Findings of Fact, Conclusions of Law and Order, as provided for in Section 111.07(5) of the Wisconsin Statutes. Hearing on said matter was held in Milwaukee, Wisconsin on October 9, and 10, 1979, at which point the Association amended its complaint. The parties thereafter filed briefs.

Having considered the arguments and the evidence, the Examiner makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Association, a labor organization, is the certified exclusive collective bargaining representative of certain employees, including classroom teachers and school aides, employed by the Board. The Association has its offices at 5130 West Vliet Street, Milwaukee, Wisconsin, 53208.

2. The Board, which operates a school system in Milwaukee, Wisconsin, is a municipal employer under Section 111.70(1)(a) Stats., and has its principle office at 5225 West Vliet Street, Milwaukee,

Wisconsin, 53208. Dr. Grace Besch is the principal of Riley Elementary School and is a supervisor and agent of the Board.

3. Riley Elementary School has about 400 students, 26 teachers, and 7 para-professional aides. In 1973 the Board mandated that a reading program - called the continuum - be used in the schools in order to improve the reading level of children at Riley. There has been a consistent problem of low reading achievement levels at Riley.

4. Melvin Yanow is the reading coordinator of the Milwaukee public schools. Yanow's primary responsibility is to supervise and implement the Board's reading program. In the Fall of 1977, Therese Heimann, a reading supervisor in the Department of Elementary and Secondary Education, prepared a report to Yanow regarding a recent meeting she had at Riley which centered on the low reading scores of Riley students. That November 16, 1977, "inter-office memorandum" stated:

The meeting held Monday morning, November 14, 1977, was totally unproductive. Dr. Koepsel pointed out that the test scores of below average performance had a significant pattern that indicated there needed to be some examination of curriculum. Scores are as follows:

	Upper Primary	5th Grade
1975	37.1% below 23rd percentile	43.6% below 23rd percentile
1976	44.2% below 23rd percentile	31.3% below 23rd percentile
1977	55.4% below 23rd percentile	57.8% below 23rd percentile

There are, it should be noted, no children presently in the above average range.

TITLE VII

When Ms. Phillips discussed the fact that there were not enough children in the program, we were told that children were being taken out of class too much and that the teachers could teach their own reading. When we tried to detail how often, we arrived at two one-half hour periods of gym, and two one-half hour periods for music. At that point Dr. Besch mentioned that children were drawn out for drill team and other school programs. We were informed by a staff member that the teacher who had withdrawn her students from the Individualized Reading Instruction Center had done so only after her children were taken out for an entire week everyday for drill team practice, and the real problem was all of these other outside demands.

The students will be moved to the basement when the room there is complete. It was suggested that the work in the room where the program is now being held, be delayed until the other room was finished. If it is not, the program will need to be halted. The principal was not agreeable to this because she feared it might not be completed. However, she said she would discuss it with construction.

Basic Program

All suggestions on how the school might begin to work on improving reading were met with negative objections.

A suggested visit with Dr. Koepsel was vetoed for staff members.

A suggested building reading committee was impossible because of other committee's.

And no concern was raised over the fact that the school might lose Title VII Support Services.

It is our joint feeling that Title VII Services are needed, but that the developmental program needs to be investigated as the principal felt it was adequate even though she has said that little is being done on the intermediate level, and that she doubted if they grouped for reading. It, in fact, seemed to shock the principal when I explained the greater need for grouping at the upper levels.

Therefore, I think the appropriate action would be to investigate the developmental program as soon as possible. This should include:

- 1) A time sheet showing the hours of instruction in basic subjects.
- 2) A list of students and their reading levels by classroom.
- 3) Utilization of materials investigated.
- 4) Types of materials available reviewed.

The reason for this suggested course of action is the fact that the principal feels no need to take actions which might upgrade student performance due to the premise that they have a good program which provides poetry, art, stories and music which are fundamental to good reading, and that reading will develop naturally with children who have the ability.

5. In the Fall of 1978, several teachers at Riley became extremely concerned over very low morale at Riley and a pronounced lack of communication between the teaching staff and Besch. As a result, several teachers - including Larry West, Elsie Kramraj, Betty Sanders, and Lorraine Poklar - subsequently became members of the Association's building committee at Riley. The primary purpose of a building committee is to communicate teacher concerns in that building to the administration. Such committees are provided for in Part IV, Section X, of the collective bargaining agreement between the parties, which partly provides:

X. MTEA AND TEACHER REPRESENTATION

1. BUILDING REPRESENTATIVE AND SCHOOL REPRESENTATIVE COMMITTEE. The MTEA may, in each school, have a building representative and a school representative committee. The principal shall recognize such committee and shall meet with such committee, together with such other persons as he/she deems proper to

be at the meeting. Such meetings must be conducted once a month, where a meeting is requested by either the principal or the MTEA committee, for the purpose of discussing school matters. More frequent meetings will be held where the situation warrants. School social workers shall be represented by the MTEA building representative in the building to which they are assigned or by an MTEA staff member.

6. Clarice Cohen has been a full time reading resource teacher for the Board since 1974. In 1975, she started working at Riley on a split basis and since 1976 she has worked there full time. There, she provides reading resource materials to classroom teachers, tests the reading ability of students, and manages the reading continuum. From 1976 to 1978, Besch evaluated Cohen as follows:

April 1976 - Riley

Mrs. Cohen has her reading center and Wisconsin design material well organized. Clarice is conscientious [sic] about her responsibility and offer [sic] her service readily to the entire staff.

March 1977 - Riley

In her desire to be thorough, Clarice becomes quite concerned about some details beyond the immediate reading continuum. The direction of the reading program is one part of many other curriculum areas that mesh into the elementary school program, where Clarice is actively involved in the teacher - student planning.

April - 1978

Mrs. Cohen [sic] main responsibilities are the various parts of the reading continuum. She works enthusiastically with children and staff.

In early 1979, Cohen spoke to Irene Benz, a classroom teacher, regarding the latter's testing of students. Besch thereafter admonished Cohen not to question Benz and at that time ordered Cohen for the first time to provide her with a daily schedule of her activities. Cohen reported the matter to Robert Anderson, the Association's Assistant Executive Director. Anderson, in turn, spoke to Administrative Specialist Spencer Potter about Besch's directive. Potter thereafter spoke to Besch, after which time Potter told Cohen that she need not supply Besch with a daily schedule.

7. On February 13, 1979, Riley building committee met with Besch for the purpose of discussing such matters as outdoor play, music, communication, curriculum, morale problems, and the school's reading program. Present at the meeting were Besch, Anderson, and teachers Cohen, Kromraj, West, and Phylliss Henrickson. Although Cohen was not a member of the building committee, she sat in on the meeting because the committee discussed the school's reading program. After the teachers voiced their concerns, Besch replied that she would consider their comments. After the meeting ended, Besch met separately with Anderson and Cohen. There, Besch accused Cohen of butting into everything, said that Cohen was responsible for calling in the Association and that Cohen was responsible for all the problems at

the school. Besch also asked Cohen if she was a member of the building committee and stated that she didn't need another administrator.

8. A few days later, Besch accused Cohen of calling an upcoming meeting which was to deal with the Riley reading program and asked Cohen what right she had to call the meeting. In fact, Cohen had not called the meeting.

9. On February 22, 1979, Besch met with Cohen and several administrators and supervisors, for the purpose of discussing the consistently low reading scores of Riley students. Present at that meeting were Besch, Cohen, Yanow, and several people from the central administrative staff - James Bigaj, Sharon Durtka, Doris Cummins, and Dr. Evelyn Koepsel. A discussion was held on how to improve the Riley reading program. In addition, those present discussed the feasibility of securing a transfer of Cohen to another school. Cohen, however, stated that she was happy in her present position and that she did not want a transfer. Thereafter, Cummins on February 28, 1979, sent the following "inter-office memorandum" to Yanow and Bigaj:

On Thursday, February 22, 1979, Dr. Grace Besch met with Mr. Yanow, Dr. Bigaj, Sharon Durtka, Clarence Cohen, and Doris Cummins to review Riley's implementation of the continuum. At 2:30 p.m. we were joined by Dr. Evelyn Koepsel who presented an overview of Riley's standardized test score achievement in relationship to school potential.

Purpose of the Meeting

The meeting was requested by Doris Cummins because of continuing difficulties perceived in Riley's effort to implement the continuum. Last year a similar meeting was requested by Dr. Therese Heimann who was serving the school as reading instructional resource specialist at that time. Dr. Heimann suggested a number of constructive changes to improve the total developmental reading program, none of which were carried through by the Riley administration.

This fall the same problems and patterns of non-compliance with the Board mandate continued except that now the problems seemed to spill over into other areas of the curriculum related to allocation of instructional time versus extra-curricular activities. The Milwaukee Teacher's Education Association is actively involved in trying to resolve these all-school concerns, but representatives were not invited to this meeting since it was hoped that conflicts could be resolved "in-house".

Agenda

1. Discussion centered initially on a longitudinal study of Riley's skills growth charts from the period of January 1977

through January 1979. In each semester it was noted that a number of classes apparently do not participate in continuum testing at all, since no skill growth was listed. In other classes minimal testing occurs. Dr. Besch attributes the lack of participation to several factors:

--A difference in philosophy regarding reading instruction and the place of skills.

--A reluctance on the part of teachers to use the continuum tests even though they may be teaching the skills. This reluctance may be due to lack of time, or because they prefer to use their own teacher-made tests, etc.

--A personality conflict with the reading resource teacher to whom the principal attributed "all the school turmoil".

2. Dr. Bigaj and Mr. Yanow attempted to interpret the superintendent's management goals for reading to Dr. Besch as well as the role of the reading resource teacher and supervisory staff, and their own responsibility to carry out the board mandate. The role of the continuum aide was also discussed since Riley school has repeatedly usurped the time supposedly allocated to assist in the management of the program in favor of non-reading-related tasks. The discussion deteriorated into personal attacks against the reading resource teacher and could not be turned into constructive channels.
3. Dr. Koepsel's presentation demonstrated clearly the discrepancy between the pupils' capacity on the Otis-Lennon compared to actual achievement at upper primary and the same interpretation was made for fifth grade pupils. This discrepancy was evident both for the higher-achieving, as well as the lower-achieving pupils at Riley as well as average pupils. Item analysis revealed the lowest score in simple vocabulary such as Dolch words which are included in continuum skills. Primary pupils obviously require vocabulary instruction and might have scored higher if continuum skills were taught and tested. Dr. Koepsel requested, but was denied the opportunity to present this profile to the total teaching staff in the hopes of raising teacher expectations and impressing upon the faculty the areas of strength as well as weaknesses and their instructional implications.

4. Dr. Besch also vetoed the suggestion of the formation of a school reading committee that would include representatives from primary and intermediate as well as kindergarten staff, the reading resource teacher, an administrator and central office staff to review the reading program and to lend support to improve it. She did agree to meet with the supervisory staff.
5. Doris Cummins agreed to provide available word attack and study skills correlations to Riley teachers for any developmental readers they might be using. Sharon Durtka agreed to assist teachers in using the correlations to set up a test schedule that might reflect teaching effort. Mr. Yanow and Dr. Bigaj agreed to support budget requests for vocabulary materials or supplementary materials to enhance the reading effort. Clarice Cohen indicated she would continue to work with teachers and supervisory staff to the best of her abilities. The question of a transfer arose and was discussed as a possible solution to some of the difficulties, but Mrs. Cohen is happy with her position and is not currently interested in considering a request for transfer.

The writer does not feel that this meeting was profitable despite the best efforts of the participants due to the hostility and attitudes of the principal towards the reading teacher and the continuum. Without commitment by the administrator it seems unlikely that teacher attitudes will change or that Riley will attempt to comply with the board mandate.

10. On May 18, 1979, Besch called Cohen into her office and handed her the yearly evaluation she had prepared on Cohen's performance. Said evaluation stated:

"mps milwaukee public schools	<u>Clarice Cohen /s/</u> name
REPORT OF TEACHER EVALUATION	<u>Reading Resource</u> Subject or Grades
<u>May 18, 1979</u>	<u>Riley</u> School
____ Years of Milwaukee experience previous to this year.	Years of experience, including this year, under the supervision of the undersigned _____

Principals, directors, supervisors, or any other persons delegated by position or assignment to evaluate the teacher and his work are requested to study carefully the three forms to be used.

After having studied the three forms, select the one that expresses as nearly as possible a true appraisal of the teacher. This, then, is the evaluation. It is necessary that a written statement supporting this appraisal be submitted below.

This teacher belongs in that large class of good teachers. He has many desirable traits and through his many fine talents, he contributes much to the school program. A school's success is, in large measure, due to a faculty that possesses and exercises a well-rounded combination of special abilities. This teacher is a contributor to such a group.

Comment: "Mrs. Cohen performs her duties as a Reading Resource teacher, providing materials and carrying on testing and recording of scores".

Reviewed: _____
Teacher's Signature

Grace Besch /s/
Principal's Signature

The next page of the evaluation, called a 28IT card, stated:

"MILWAUKEE PUBLIC SCHOOLS

Clarice Cohen
Name

RECOMMENDATION FOR TEACHER TRANSFER
IN CONJUNCTION WITH A SATISFACTORY
EVALUATION

Reading Resource
Subject or Grades

Riley
School

May 18, 1979
Date

This teacher has performed his teaching duties in a satisfactory manner. For the reasons listed below, it is recommended that he be transferred to another assignment.

Mrs. Cohen needs a different school climate where her abilities can reach fulfillment."

Grace Besch /s/
Principal's Signature

Cohen signed a statement that she did not agree with Besch's evaluation. When Cohen asked why Besch had recommended a transfer, Besch replied "Well, you were involved in the building committee meeting and you had no business being there." Cohen thereafter grieved her transfer. That grievance was sustained by Assistant Superintendent Robert Long and School Administrative Specialist Edward Neudauer who ruled that Cohen could remain at Riley for the 1979-1980 school year. As a result, Cohen remained at Riley for that school year.

11. Larry West, who has been employed by the Board for about six years, is a physical education teacher at Riley, where he has taught for the last three years. In the 1977-1978 school year, Besch gave West a "281" teacher evaluation. Besch at that time told West that he had not received a superior rating (a "280" evaluation) only because she did not give such a rating to first year teachers. During the 1978-1979 school year, West became a member of the Riley building committee. West joined the building committee because he believed that his good relationship with Besch would enable him to help resolve some of the problems at Riley. As a member of that committee, West sat in on the February 13, 1979 meeting with Besch which discussed various school problems. On May 14, 1979, West received an evaluation by Besch which stated:

Mr. West continues to work very well with the Riley students. He also works in the lunch room and playground, where he is a positive force for better control and behavior.

Pursuant to his request for such a conference, West met with Besch on May 15, 1979, where they discussed West's evaluation. West there asked why he had received such an evaluation. Besch replied that although West's work was excellent, she had refused to give him an excellent evaluation in part because he was on the building committee, because he did not support her against Cohen, and because he was not on Besch's "team". Besch also told West that he had once improperly disciplined a child outside of Besch's presence. Besch added that she would never forget that West was on the building committee.

12. Tamara Childs, chairperson of the Riley school aides' bargaining unit for the 1978-1979 school year, was employed at Riley for over two years as a para-professional aide. There, she worked in the reading program under Cohen's supervision. In December, 1978, Childs and other aides helped prepare the annual Christmas party at Riley. After the party ended, the teachers and aides present agreed that they should bring the leftovers home. Childs herself was making this point when Besch walked in and looked around the room. Besch ordered the aides, along with social chairman Cohen, to the kitchen. Once there, Childs reiterated her belief that it was too much of a hardship to reuse the food for the next day at school and that the food should be brought home. Besch, in turn, accused Childs of taking over, said that Childs had brainwashed the other aides, and that Childs had caused a lot of trouble. Besch added that Childs had no right to her own opinion, that perhaps Childs would be more comfortable at another school which had a black principal, and that she might take away the aides' fifteen minute break which had been established by practice. During this conversation, Childs said that great improvements could be made at Riley and that aides were treated inferior to teachers at Riley. When Childs asked who was going to clean up the food on the next day, Besch did not immediately respond. Finally, Besch said that she did not care what anyone did. As a result, everyone took the food home with them that day.

Besch had given Childs satisfactory evaluations in 1977 and 1978. On May 29, 1979, Besch gave Childs an evaluation which in part provided:

Overall Evaluation: Superior Above Average Average Below Average Unsatisfactory

<u>Poise</u>	<u>Quality of Work</u>	<u>Dependability</u>
<u> </u> Outstanding	<u> </u> Outstanding	<u> </u> Outstanding
<u> X</u> Satisfactory	<u> X</u> Satisfactory	<u> X</u> Satisfactory
<u> </u> Poor	<u> </u> Title VII Poor	<u> </u> Minus Poor
<u>Attitude Toward Work</u>	<u>Cooperativeness</u>	
<u> X</u> Outstanding Drill Team	<u> </u> Outstanding	
<u> X</u> Satisfactory Title VII	<u> X</u> Satisfactory Title VII	
<u> X</u> Poor Hall duties & general school attitude	<u> X</u> Poor in general school rapport and assignment of related school duties.	

Narrative statement regarding the strength of the aides performance and suggestions for further improvement of work skills. This may include comments relative to the above items, appearance, performance within a specific duty assigned to the aide, etc. (Comments may be continued on the back of this form).

In her newly refurbished room this year Mrs. Childs carries on her Title VII program well in the capacity of an aide. Her former good discipline has deteriorated, and she has been told that her control in the halls at noon, still needs to be started on time and maintain good order. Tamara works well with the drill teams, however.

Instead of the expected cooperation in school events this year, Mrs. Childs found it compelling to advise the administration that, in her opinion, "aides were treated inferior to teachers" at Riley. At Christmas time, on our annual dinner-party day, she also expressed resistance to assist with party-related, but necessary culinary tasks always undertaken by aides, with released time, while teachers continued working with children.

Without any teaching experience in the classroom, and as a novice to the education world, Mrs. Childs told the administrator that "great improvement" could be initiated at Riley.

Pursuant to Childs's request, Childs met with Besch on June 1, 1979 to discuss the evaluation, in the presence of aide Arlene Grzelak and a secretary who was called in by Besch. When Childs asked why she had received such a negative evaluation, Besch replied that Childs' attitude had changed and that she and Cohen were the cause of all the trouble that had occurred in the school that year. Childs asked how Besch would evaluate her Title VII work when she had not observed her classroom work in the entire year. Besch said that

she was busy on more important things and that she had not gotten around to it. In their discussion, Besch called Childs a liar and told Childs to get a job elsewhere. Childs said that she felt comfortable at the school and that she liked it there. Besch replied that she was going to have all the control in the school. Childs answered that Besch did not have the control she thought she had, to which Besch replied "we'll see about that." Childs at that point left and went to the faculty lounge.

13. Childs arrived in the lounge at about 3:10 p.m. Present at that time were teachers West and Kromraj. Childs told those present about her recent conversation with Besch. In a few minutes, Besch entered the lounge and asked in an angry voice whether a building committee meeting was being held. Besch left after Kromraj informed her that no such meeting was taking place.

14. Kromraj has been a sixth grade teacher at Riley for nine years. In four of those years, she had taught split grades. In January 1979, she became a member of the Riley building committee. Kromraj joined the committee because she believed that her excellent relationship with Besch would enable her to help resolve some of the morale problems at Riley. Kromraj attended the February 13, 1979 building committee with Besch, which is noted in paragraph 7 above.

On June 1, 1979, Besch informed Kromraj that for the 1979-1980 school year she would be reassigned from her present 6th grade class to a split 5th and 6th grade class. Judith Rick, who had formerly taught that split grade, was in turn assigned to Kromraj's sixth grade class. Rick had taught split grades in two of her four years at Riley.

15. On June 5, 1979, Anderson, Cohen, and Besch met with school administrative specialist Neudauer and discussed Cohen's proposed transfer. Anderson there indicated that he was contemplating filing a prohibited practice complaint in the near future not only over the proposed transfer, but also on other matters.

16. On the next day, June 6, 1979, Besch stopped Kromraj in the hallway and interrogated her for approximately one hour and twenty minutes regarding Kromraj's knowledge of a prohibited practice complaint which was being filed against her. Also present at that time was teacher Wana Allard, who had been speaking to Kromraj before Besch arrived on the scene. Besch asked Kromraj whether she was one of those who was signing the unfair labor practice suit against her. Kromraj replied that she did not know anything about it. Besch replied that Kromraj should be very careful as to what she signed, asked Kromraj when she had started letting other people do her thinking, said that Kromraj "used to be a good teacher", and that Kromraj was "silly".

At the start of the 1979-1980 school year, Kromraj was reassigned to her regular sixth grade class.

17. Lorraine Poklar, a teacher at Riley, who has subsequently resigned, was a member of the Riley building committee for the 1978-1979 school year. As such, she attended the February 13, 1979 building committee meeting with Besch noted above.

On June 4, 1979, Besch approached Poklar and said that Poklar had been down in the faculty lounge on the previous Friday, June 1, 1979. Poklar replied that she had not been in the lounge.

On June 6, 1979, Besch, in the presence of teachers Judith Rick and Irene Berz, stopped Poklar as she was entering the school. Besch asked Poklar whether she was signing something regarding unfair labor practices and whether Poklar had something against her. Poklar replied, "I don't know what your talking about" and immediately left.

On June 7, 1979, Besch conducted a faculty meeting with the Riley teachers where a number of problems were discussed. There, Poklar, told Besch that she did not believe that primary children should have been called out of class to see a baseball game, as once had happened during the school year. Poklar also questioned Besch over the use of the latter's reference to the Riley "family".

After the meeting ended, Poklar went to her classroom which consisted of educable mentally retarded children, and began conducting class. In a few minutes, Besch entered the classroom and said "I'm surprised at you, a fellow Lutheran, why did you say those things for?" Besch also asked words to the effect, "Are you the one who's an instigator of some kind of plot against me; are you the one who's circulating that sheet? Are you having some secret meetings with the MTEA?" Besch and Poklar thereafter discussed school problems, leading Poklar to comment that "the conversation was not altogether hostile." Besch left the room after speaking to Poklar for about fifteen minutes. Throughout Besch's conversation Poklar, the students in the classroom became very disruptive. As a result, it took Poklar about fifteen or twenty minutes to quiet them down after Besch had left the classroom.

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

CONCLUSIONS OF LAW

1. The Board, through its agent Grace Besch, did not violate Section 111.70(3)(a)(1) of MERA by proposing to assign Elsie Kromraj to a split fifth/sixth grade position or by speaking to Kromraj on June 4, 1979.
2. The Board, through its agent Grace Besch, violated Section 111.70(3)(a)(1) of MERA by proposing to transfer Clarice Cohen to another school, as said transfer was in part based on anti-union considerations.
3. The Board, through its agent Grace Besch, violated Section 111.70(3)(a)(1) of MERA by: (1) giving a lower evaluation to Larry West than that which he deserved; (2) giving a partial negative evaluation to Tamara Childs; (3) interrogating Elsie Kramraj on June 6, 1979 regarding her activities on behalf of the Association; and (4) interrogating Lorraine Poklar on June 6 and June 7, 1979 regarding her activities on behalf of the Association.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

IT IS ORDERED that that part of the complaint which alleges that the Besch discriminatorily proposed to assign Elsie Kromraj to a split fifth and sixth grade is hereby dismissed, along with that part of the complaint which asserts that Besch interrogated Poklar on June 4, 1979.

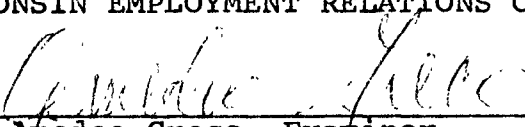
IT IS FURTHER ORDERED that the Board, its officers and agent, shall immediately

1. Cease and desist from:
 - a. Proposing to transfer Clarice Cohen to another school because of her union activities.
 - b. Giving lower evaluations to Larry West than that which he may have deserved because of his union activities.
 - c. Giving negative evaluations to Tamara Childs because of her union activities.
 - d. Interrogating Elsie Kromraj and Lorraine Poklar regarding their union activities.
 - e. Discriminating against any employes because of their activities on behalf of MTEA.
 - f. In like or related manner discriminating against employes because of their union related activities.
2. Take the following affirmative action which the Examiner believes will effectuate the policies of MERA:
 - a. Expunge from the personnel files of Clarice Cohen, Larry West, and Tamara Childs the evaluations they received from Besch for the 1978-1979 school year. Moreover, any reference checks that Besch may have given for those employes during that time are also to be expunged from said files.
 - b. Notify all employes at the Riley School by posting in conspicuous places in its offices copies of the notice attached herto and marked "Appendix A". That notice shall be posted during the time that school is in regular session and it shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Board to insure that said notices are not altered, defaced, or covered by other material.
 - c. Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 29th day of July, 1980

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

1. WE WILL NOT propose to transfer Clarice Cohen to another school in part because of Cohen's activities on behalf of the Milwaukee Teacher's Education Association, (MTEA).
2. WE WILL NOT give a lower evaluation to Larry West than that which he deserves because of his activities on behalf of the MTEA.
3. WE WILL NOT give a negative recommendation to Tamara Childs because of her activities on behalf of the MTEA.
4. WE WILL NOT interrogate Elsie Kromraj or Lorraine Poklar regarding their activities on behalf of the MTEA.
5. WE WILL NOT in any like or related manner discriminate against employes because of their activity on behalf of MTEA.
6. WE WILL expunge from the personnel files of Clarice Cohen, Larry West, and Tamara Childs the evaluations they received from Dr. Grace Besch for the 1978-1979 school year. We Will also expunge from those files any adverse reference checks that Besch may have given for those employes.

Milwaukee Board of School Directors

By _____

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS DURING THE TIME THAT SCHOOL IS IN SESSION, AND IT MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

The Association contends that Besch committed a number of prohibitive practices against numerous Riley personnel. Thus, it maintains that: (1) Besch resented Cohen's activities on behalf of the Association and that Besch retaliated against Cohen by recommending her removal to another school; (2) Besch similarly resented West's activities on behalf of the Association and that she retaliated against West by giving him a lower evaluation than he deserved; (3) Besch resented Childs' Association related activities and that she therefore gave Childs a lower evaluation than she deserved; (4) Besch interrogated Kromraj regarding her union activities and that Besch assigned Kromraj to a different classroom for the 1979-1980 school year because of Kromraj's activities on behalf of the Association; and (5) Besch interrogated Poklar regarding her union activities.

The Board denies these allegations, primarily on the grounds that Besch did not make certain statements attributed to her. In addition, the Board asserts that Besch was not motivated by anti-union considerations when she proposed to transfer Cohen and Kromraj or when she evaluated West and Childs. The Board also claims that MERA is not an appropriate tool for resolving the conflict between Besch and Cohen, as said conflict centers on educational policy, a matter which is outside of MERA's jurisdiction. Thus, the Board's brief notes that MERA "is not a Cuisanart", i.e., "an all purpose gadget to be used whenever an employer and an employe have a disagreement, or even an exchange of strong and hostile words".

This latter point is well taken, as MERA indeed does not cover conflicts which are limited educational policies. Moreover, there is no question that such a conflict developed between Besch and Cohen. For, Besch basically believed that it is first necessary to raise the self-esteem of children in order to give them feelings about their school - feelings which in turn would lead them to do well academically. It was for that reason that Besch stressed such matters as a pom-pom squad, drill team, chorus, etc. Cohen, on the other hand, believed that it was first necessary to stress direct reading instructions and that the non-academic areas noted above were of secondary importance.

The Board's brief acknowledges that Cohen's view was shared by two of her supervisors at the central office. Thus, as noted in Finding No. 4, reading supervisor Heinmann by memorandum dated November 16, 1977, agreed with Cohen's approach when she stated in part:

The reason for this suggested course of action is the fact that the principal feels no need to take actions which might upgrade student performance due to the premise that they have a good program which provides poetry, art, stories and music which are fundamental to good reading, and that reading will develop naturally with children who have the ability.

As noted in Finding No. 9, a similar view was taken by reading supervisor Doris Cummins in her February 28, 1979 memorandum, when

she stated in part:

The writer does not feel that this meeting was profitable despite the best efforts of the participants due to the hostility and attitudes of the principal towards the reading teacher and the continuum. Without commitment by the administrator it seems unlikely that teacher attitudes will change or that Riley will attempt to comply with the board mandate.

At the hearing, Yanow testified in substance that the positions taken by both Besch and Cohen were both reasonable, as it is still uncertain as to what enables children to read.

Accordingly, if Besch's conflict with Cohen in fact were limited to differences over educational policies, the Examiner, pursuant to the Board's request, would dismiss this part of the complaint. Indeed, the Association's brief itself acknowledges this point when it states "The merits of the respective educational positions are, of course, not at issue in these proceedings".

Here, however, the Association's complaint does not seek a resolution of this conflict but, instead, maintains that Besch sought to transfer Cohen to another school in part because of Cohen's activities on behalf of the Association. Since the Commission does have jurisdiction under MERA to resolve that issue, it is therefore necessary to examine the merits of that contention.

In resolving that issue, a few words should be noted at the outset.

The first is that it is the Association which has the burden of proving by a clear and satisfactory preponderance of the evidence that Besch sought to transfer Cohen because of her union activities. In order to meet that burden, the Association must prove that Besch was active on behalf of the Association, that Besch was aware of such activities, that Besch was hostile to such activities, and that Besch sought to transfer Cohen at least in part because of Cohen's activities on behalf of the Association. 1/

Secondly, it is not controlling as to whether Besch had other legitimate reasons for transferring Cohen, if said transfer was affected at least in part by discriminatorily related union considerations. For, as noted by the Wisconsin Supreme Court in Muskego-Norway Consolidated Schools v. Wisconsin Employment Relations Board, 35 Wis. 2d. 540 (1967):

An employe may not be fired where one of the motivating factors is his union activities, no matter how many other valid reasons exist for firing him.

This same principle, obviously, is likewise applicable to other aspects of the employment relationship, including transfers.

1/ See, for example, Wayne Mosley and Roger Brown, Rocky Rococco Corporation, Decisions 13556, A, B, and 13557-A, B (1976).

Thirdly, it is well established that the search for motive at times is very difficult, since oftentimes direct evidence is not available. As a result, self servicing denials regarding motivation must be viewed with caution. For, as noted in Shattuck Denn Mining Corp. v. NLRB, 362 F.2d. 466, 470, (C.A. 9, 1966):

Actual motive, a state of mind being the question, it is seldom that direct evidence will be available that is not also self-serving. In such cases, the self-serving declaration is not conclusive; the trier of fact may inter motive from the total circumstances provided. Otherwise, no person accused of unlawful motive, who took the stand and testified to a lawful motive could be brought to book.

With the foregoing general principles in mind, let us now turn to the specific facts at hand.

Here, there is no question but that Cohen sat in with the Riley building committee when it met with Besch on February 13, 1979, for the purpose of discussing teacher concerns. Since the building committee is expressly provided for in Part IV, Section X, of the master contract, and inasmuch as said committee is the primary vehicle for teachers at the local school level to discuss matters affecting their employment relationship, Cohen's participation on that committee constituted protected concerted activity. As a result, it is clear that Cohen participated in concerted protected activity and that Besch knew that fact.

That being so, it is therefore necessary to ascertain whether Besch bore any animus towards Cohen because of such activities. At the hearing, Besch denied that she bore any such animus towards either Cohen or any other teachers.

Besch's denial must be discredited. For, if the instant record establishes one fact above all else, it is that Besch simply could not tolerate any challenge to her authority and that she deeply resented those individuals who she suspected of turning against her. Thus, as noted below, Besch bore animus against both West and Childs because of their participation in concerted protected activities. Moreover, the record also shows that Besch interrogated Kromraj and Poklar after Besch learned that a prohibitive practices complaint would be filed against her.

In addition to that general union animus, the record establishes that Besch has a specific animus against Cohen. That animus is best reflected in Besch's May 18, 1979 conversation with Cohen. There, according to Cohen, Besch told her that she was being transferred because, in Besch's words:

You were involved in the building committee meeting and you had no business being there.

This statement was similar to the one Besch made to West on May 15, 1979, when Besch and West discussed West's evaluation. At that time, Besch told West that she had refused to give West a better evaluation because he had been on the building committee, because he did not support her against Cohen, and because he was not on Besch's "team". Besch also told West that she would never forget that West was on the building committee.

Besch's resentment against Cohen was also reflected in the conversation Besch had with Cohen and Anderson on February 13, 1979. There, according to both Cohen and Anderson, Besch stated that Cohen was responsible for calling in the Association and that Cohen was responsible for all the problems at the school.

Pursuant to her practice of denying every single piece of testimony which was adverse to her, Besch denied all of the above noted exchanges with either Cohen or West. That denial is discredited since: (1) Besch's statements are in line with the clear hostility that she bore against the Association during the 1978-1979 school year; and (2) Anderson, Cohen, and West, were much more credible witnesses at the hearing than was Besch.

Turning to the purported reasons as to why Besch recommended Cohen's transfer to another school, Besch noted on Cohen's May 18, 1979 evaluation that Cohen should be transferred because:

Mrs. Cohen needs a different school climate where her abilities can reach fulfillment.

That "reason" obviously, is hardly a model of clarity. At the hearing, Besch attempted to clarify her reasons for transferring Cohen by claiming in essence that Cohen repeatedly intruded into school matters which were of no concern to her and that Cohen refused to cooperate with her.

Since Besch never attempted to transfer Cohen before she became involved with the building committee in 1979, and since Cohen's evaluation's before 1979 were generally favorable, it is highly questionable as to whether Cohen's performance had deteriorated to the point that a transfer was warranted. That is especially so when it is remembered that Besch had noted a similar complaint in her 1977 evaluation of Cohen - two full years before she attempted to transfer Cohen in 1979. 2/

However, even if one were to assume arguendo that Besch's criticisms of Cohen were valid, Besch nonetheless could not attempt to transfer Cohen under Muskego - Norway, supra, if one of the reasons motivating the transfer stemmed from Besch hostility against Cohen's union's activities. Since Besch in fact told Cohen on May 18, 1979 that she was being transferred because she had been on the building committee, it follows that the transfer was at least in part based on unlawful anti-union considerations which were violative of Section 111.70(3)(a)(1) of MERA.

Moving now to the issues surrounding West's evaluation, the Association contends that Besch refused to give West the excellent evaluation he deserved because she resented West's activities on the building committee.

2/ In this connection, it should be noted that while the subject of Cohen's transfer arose in the February 22, 1979 meeting noted above, those present discussed that issue as only one of the many ways in which the Riley reading program could be improved. After Cohen there made it very clear that she was not interested in a transfer, none of those present thereafter insisted that Cohen should be transferred.

As noted above, the record establishes that West was on the building committee, that such activity constituted protected concerted activity that Besch was aware of that activity, and that Besch resented it.

As to her May 15, 1979 conversation with West, Besch flatly denied making any of the statements which West attributed to her. That denial is discredited since: (1) Besch deeply resented the activities of the building committee; and (2) Besch's exchange with West was partially overheard by Riley teacher Marcy Daley, who was standing about ten or fifteen feet from where Besch and West were talking. Daley testified that she heard West ask Besch "so you mean this is all because I served on the building committee?", to which Besch replied "Yes, and I'll never forget it." Since Daley has absolutely no self-interest in this proceeding, the Examiner credits her testimony, as there is no basis for believing that she would fabricate her testimony.

Accordingly, based on the composite credited testimony of West and Daley, the Examiner finds that Besch on May 15, 1979, told West that although his work was excellent, she had refused to give him an excellent evaluation because: (1) he was on the building committee; (2) he did not support her against Cohen; and (3) he was not on Besch's "team". Besch's animus against West was also reflected in her added remark to West that she would never forget that West was on the committee. As such statements establish that Besch's evaluation of West was at least partly dictated by anti-union considerations, it follows that Besch thereby violated Section 111.70(3)(a)(1) of MERA in giving West the evaluation she did.

The Association next charges that Besch issued a negative evaluation to Childs because Childs spoke up on behalf of other aides at a 1978 Christmas party. Childs, on behalf of her fellow aides, questioned the propriety of Besch's directive to them that they store the party leftovers so that they would be used on the following day. Childs testified that she did so because she believed that preparations for another party on the following day would take her away from those children who had a greater need for her time. Childs also informed Besch that the aides should take the leftovers home because, in her words, "it was just a hardship for all of us to go through this again." Besch replied that Childs was trying to take over the school, that Childs had brainwashed the other aides, that Childs had caused a lot of trouble, and suggested to Childs that she should transfer to a school which had a black principal. After Childs asked who was going to clean up the next day, Besch initially did not respond, but, finally replied that she didn't care what anyone did. As a result, the food was taken home that day and there was no party on the following day.

Thereafter, on June 1, 1979, Besch met with Childs for the purpose of discussing Childs' evaluation, one which had several negative comments. In that discussion, Besch called Childs a liar, stated that Childs and Cohen were the cause of all of the trouble that had occurred in the school that year, and told Childs to get a job elsewhere.

At the hearing, Besch denied making the latter statements. The Examiner discredits that denial since Childs appeared to be a much more credible witness at the hearing, and moreover, because the statements attributed to Besch were in accord with the overall pattern of anti-union hostility which Besch had displayed throughout this matter. 3/

It is in the context of those remarks that we must scrutinize Besch's evaluation of Childs in order to ascertain whether that evaluation was based on anti-union consideration. As to that issue, the record shows that Childs had received favorable evaluations from Besch in her prior years of employment. In light of that, it is difficult to accept at face value Besch's assertion that Childs' work deteriorated in the 1978-1979 school year, especially since Besch never once visited Childs' classroom to observe the latter's work. Instead, the real reason for Childs negative evaluation is reflected in Besch's admission at the hearing that Childs

"became their spokesman [the aides] and showed discontent and stimulated them to become disgusted with the work they had to do as if it was inferior domestic work they had never felt that way before."

Since Childs, who was the Association's chairperson for the 1978-1979 school year, was engaged in concerted protected activity when she acted on behalf of the aides, there is no question but that Besch resented those activities and that she gave Childs a negative evaluation in large part because Childs had engaged in those activities. Besch therefore violated Section 111.70(3)(a)(1) of MERA by issuing Childs such an evaluation.

The Association also charges that Besch interrogated Poklar on June 4, 6 and 7, 1979.

Poklar, who was on the building committee, testified that Besch told her on June 4, 1979 that she, Poklar, had been in the teacher's lounge on June 1, 1979. Poklar said that she was not in the lounge at that time. As this exchange did not constitute unlawful interrogation, this complaint allegation is dismissed.

Poklar also testified in substance that Besch asked her on June 6, 1979, whether she had signed an unfair labor practice complaint against Besch. Poklar added that on June 7, 1979, Besch came into Poklar's class and there stated in part "are you the one who's an instigator of some kind of plot against me. Are you the one who's circulating that sheet? Are you having some secret meetings with MTEA?"

3/ Neither of the two individuals who sat in on the June 1, 1979 meeting - Grzelak and a secretary - testified.

Besch denied all of Poklar's allegations. That denial is discredited as: (1) there is no reason to believe that Poklar would fabricate these allegations; (2) Besch's interrogations of Poklar are in line with Besch's overall campaign of interrogation, harassment and resentment of Association's activities; and (3) such interrogations occurred immediately after Besch learned on June 5, 1979, that the Association would be filing a complaint against her. Moreover, Poklar testified that Besch interrogated her on June 6, 1979, in the presence of fellow teachers Rick and Benz. At the hearing, both Rick and Benz were called as witnesses by the Board and testified on behalf of Besch on other matters. Neither teacher, however, was asked about this June 6, 1979 exchange. Since Rick and Benz were very credible witnesses on the issues they testified to, it is fair to assume that they would have responded truthfully to the June 6, 1979 incident, had they been asked about it by Board Counsel. Their failure to comment on that matter therefore creates an adverse incident that their testimony would have been damaging to Besch's defense. Lastly, as to the June 7, 1979 interrogation in Poklar's classroom, Poklar gave very specific testimony as to how Besch's interrogation disrupted her classroom of special students, something which she would not have been able to do had she fabricated this incident.

Having therefore found that Besch interrogated Poklar on June 6 and 7, 1979, regarding the latter's concerted protected activities, it follows that such conduct was violative of Section 111.70(3)(A)(1) of MERA.

Left, then, are the complaint allegations regarding Kromraj which asserts that: (1) Besch attempted to transfer Kromraj to a less desirable teaching assignment because of anti-union considerations; and (2) Besch unlawfully interrogated Kromraj on June 6, 1979.

As to this latter issue, Kromraj testified that on June 6, 1979 Besch stopped her in the school hallway when Kromraj was on her way to her classroom, and that Besch, in the presence of fellow teacher Allard, questioned Kromraj for over an hour regarding the latter's knowledge of a prohibitive practice complaint which was being filed against her. Besch there also warned Kromraj that she should be very careful before she signed anything.

Besch denied this exchange. That denial is discredited for several reasons. The first is that Kromraj and Besch had developed a social relationship before the 1978-1979 school year, one in which Besch had previously invited Kromraj to the latter's cabin. It was because of that very friendship that Kromraj had earlier volunteered to join the building committee so that she could help resolve the communication problem at Riley between Besch and the faculty. In the face of that friendship, it is improbable that that Kromraj, who appeared to be an extremely credible witness, would want to fabricate the exchange noted above. Besch, on the other hand, would have a reason to fabricate what happened, as the record shows that Besch was simply incapable of admitting any facts which were adverse to her. Secondly, Kromraj's testimony was corroborated by Allard who had no reason whatsoever to lie as to what took place on June 6, 1979. Thirdly, Besch's interrogation of Kromraj was consistent with her subsequent interrogation of Poklar, as the record shows that Besch was obviously concerned over the possibility that a prohibitive practices complaint would be filed against her.

Since the record therefore shows that Besch did interrogate Kromraj on June 6, 1979, regarding the latter's union activities, Besch thereby violated Section 111.70(3)(a)(1) of the MERA by engaging in such conduct.

Turning to the question of Kromraj's transfer, Besch attempted to reassign Kromraj from her former sixth grade class to a split fifth/sixth grade class, a less desirable assignment for the 1979-1980 school year. At the hearing, Besch claimed she wanted to transfer Kromraj in order to fairly rotate split grade assignments among the faculty staff.

The Association's brief attacks Besch's motivation in making assignment, contending that the record is completely barren of any evidence that Kromraj's work performance had deteriorated so as to warrant such a transfer. That is true. But, since Besch never claimed that Kromraj's work had deteriorated, and as there is no evidence that assignments are based on a teacher's supposed poor performance, this point is not controlling.

It is also true that Besch attempted to assign Kromraj's sixth grade class to Rick, a teacher who testified on Besch's behalf at the instant hearing. Since, as noted above, Besch developed a marked dislike for the Association and those who supported it, it would not be surprising if Besch bore that same animus against Kromraj, just as Besch had retaliated against Cohen, West, and Childs merely because they had chosen to engage in concerted protected activity. As a result, Besch's proffered explanation for the transfer must be viewed with very close scrutiny.

Here, however, the record shows that Rick herself had taught split grades in two of the four years that she was at Riley. Furthermore, Kromraj had taught split grades in four of her nine years at Riley. Accordingly, it is not beyond belief that Besch recommended Kromraj's transfer only in order to achieve a more equitable distribution of split classes, pursuant to what had been done in the past. Moreover, the record shows that Besch very clearly communicated her animus against Cohen, West, and Childs when she retaliated against them because of their Association related activities. The record, however, is totally barren of any such direct animus against Kromraj, as there is no evidence that Besch ever told Kromraj that the transfer was being made because of Kromraj's union activities. Accordingly, the Examiner finds that the Association has not established by a clear and satisfactory preponderance of the evidence that Kromraj's transfer was based on anti-union considerations. This complaint allegation is therefore dismissed.

The foregoing brings us to the question of remedy. In its brief, the Association asks for a cease and desist order to rectify Besch's unlawful conduct, along with an order expunging from employees' personnel files adverse remarks made by Besch. That remedy will be ordered, along with the notice which is customary for the kinds of conduct herein. Since school is not now in session, and in order to ensure that that notice can be seen by all Riley personnel, the Examiner has ordered that the notice be posted for thirty (30) days during the time that school is in regular session.

While the foregoing remedy may be sufficient in most cases, the unique facts herein dictate that a special remedy be fashioned in order to rectify Besch's pervasive prohibited practices. Here, as

noted above, Besch deliberately sought to punish Cohen, West, and Childs because of their activities on behalf of the Association. Moreover, Besch interrogated Kromraj and twice interrogated Poklar over their activities on behalf of the Association, i.e., the filing of the instant complaint. Besch interrogated Kromraj on June 6, 1979 for nearly an hour and a half, thereby forcing Kromraj to miss her classroom duties for that time. By the same token, Besch on June 7, 1979, entered Poklar's classroom when Poklar was attempting to teach her class which consisted of educably mentally retarded children. The result was that the children became extremely disruptive and that it took Poklar nearly fifteen minutes to quiet them down after Besch departed.

It is clear, in light of the above, that Besch's campaign of harassment, intimidation, and interrogation has had an extremely disruptive effect on the functioning of the Riley School. In such circumstances, the Examiner concludes that the members of the Milwaukee Board of School Directors, as well as school superintendent Dr. Lee McMurrin, should be informed of the facts herein, so that they can have a first hand knowledge as to what has transpired. In that way, they can perhaps ensure that Besch will not engage in such unlawful conduct in the future. As a result, the Examiner is forwarding a copy of this decision to all school board members and to Dr. McMurrin for their consideration. 4/

Dated at Madison, Wisconsin this 29th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

4/ While this remedy is not a common one, it has been utilized in similar circumstances. See, for example, Madison Area Board of Vocational, Technical and Adult Education District No. 4 (11/76) where Arbitrator Bryon Yaffe in an unpublished decision sent copies of his Award to all members of the District Board because of the pervasive misconduct engaged in by one of the District's representatives.