

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	Case CXXI
	:	No. 25777 MP-1075
vs.	:	Decision No. 17651-A
	:	
MILWAUKEE BOARD OF SCHOOL DIRECTORS (RILEY ELEMENTARY SCHOOL - II),	:	
	:	
Respondent.	:	
	:	

Appearances:

Perry, First, Reiher & Lerner, S.C., 222 East Mason Street, Milwaukee, Wisconsin 53202, by Mr. Richard Perry, for the Complainant.

Mr. James B. Brennan, City of Milwaukee, City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202, by Mr. Jeffrey Bassin, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above named Complainant having filed a complaint with the Wisconsin Employment Relations Commission on February 19, 1980 alleging the above named Respondent had committed certain prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Peter G. Davis, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.07(5), Stats; and hearing on said matter having been held in Milwaukee, Wisconsin on June 5, 1980 and June 20, 1980; and Respondent and Complainant having filed their post-hearing briefs on October 30, 1980 and December 22, 1980, respectively; and the Examiner having considered the evidence and arguments, makes and issues the following

FINDINGS OF FACT

1. The Milwaukee Teachers Education Association, herein Complainant, is a labor organization which functions as exclusive collective bargaining representative of certain individuals, including classroom teachers, employed by the Milwaukee Board of School Directors.
2. The Milwaukee Board of School Directors, herein the Respondent, is a municipal employer which operates a public school system in Milwaukee, Wisconsin. At all times material herein, Dr. Grace Besch was employed by Respondent as principal of Riley Elementary School and functioned as an agent of Respondent.
3. On June 21, 1979 Complainant filed a complaint with the Wisconsin Employment Relations Commission alleging that Besch had committed numerous prohibited practices against Riley employes because of their activity on behalf of Complainant during the 1978-79 school year. Hearing on said complaint was held before Examiner Amedeo Greco, Esquire on October 9, 1979 and October 10, 1979. During said hearing Riley employes Daley, Cohen and Hendricksen testified against Besch. Riley employe Fisher was present during said hearing but did not testify.

4. Following the October, 1979 prohibited practice hearing, Complainant's Building Committee, which included employes Wisniewski and Fisher and which met with Besch on a regular basis, prepared a survey in an effort to determine the feelings of the teaching staff about certain subjects including the scheduling of recess and school sing-a-longs, and the desirability of the existing busing procedures. On November 5, 1979 the survey was distributed to teaching staff by employes Wisniewski and Fisher. Principal Besch was aware that Fisher was distributing some document that morning and "surmised" that it was some kind of survey.

5. During the 1979-80 school year, certain teachers, including Wisniewski, Fisher, Daley and Hendricksen, were assigned to duty posts within the building which were to be manned while students came in off the playground after recess and went to their classrooms. Although Principal Besch expected teachers to be at their duty posts when the recess bell rang, several teachers, including Wisniewski, Fisher, Daley and Hendricksen, consistently arrived at their duty posts during the two to four minute period after the bell rang and before any children had actually reached the area the teachers were to be supervising. During the Fall of 1979 Besch had repeatedly and futilely asked that all teachers be at their duty posts when the bell rang. On November 5, 1979 Besch observed that Wisniewski, Fisher, Daley and Hendricksen were not at their duty posts when the recess bell rang. The teachers in question did reach their duty posts prior to the arrival of students in their respective areas of supervision. On November 6, 1979 Wisniewski, Fisher, Daley and Hendricksen received the following document from Besch:

Staff members are expected to be at their duty posts on time. You were not at your post at the end of the P.M. recess on November 5th.

Please take the necessary steps to avoid future repetition.

6. At 3:30 p.m. each day during the 1979-80 school year, a bell rang which signalled teachers to prepare their students for dismissal. The dismissal process involved getting the children ready to leave the building and then marching them through the school and out to designated dismissal locations on the playground. At 3:35 p.m. a dismissal bell rang which allowed children from the neighborhood to leave for home while children who ride school buses were loaded, one classroom at a time, into waiting vehicles. Teachers were expected to have their students lined up on the playground when the 3:35 bell rang. On November 5, 1979 Daley's and Fisher's classes arrived at their designated dismissal points several seconds after the 3:35 p.m. bell. On November 6, 1979 Fisher and Daley received the following document from Besch:

Staff members are expected to be at the Dismissal duty post on time. You were not at your post at the 3:35 dismissal, thereby causing confusion with our established routine.

Please take the necessary steps to avoid future repetition.

Both on November 5 and on following days, other teachers arrived at their dismissal duty posts substantially later than Fisher and Daley. None of these teachers received verbal or written warnings from Besch.

7. On November 6, 1979 Besch informed Cohen, a Reading Resource teacher, that she was to begin teaching reading to small groups of children while continuing her previously assigned full time responsibilities. Cohen began to perform this dual function shortly thereafter. Cohen had testified against Besch during the October, 1979 Greco hearings in the following manner about a meeting she had with Besch in February, 1979.

Q (by Mr. Perry) Okay. Now what happened at that meeting?

A Well, the meeting, what happened when---they discussed the things on the agenda when the whole committee was there.

Q Do you remember the portion that occurred---the meeting ended, the building committee left, do you recall anything happening at that time?

A Yes, I do.

Q Who remained, if anyone, at that time?

A Dr. Besch, myself, and Mr. Anderson.

Q And what was said and by whom at that time?

A Dr. Besch did most of the talking.

Q What did she say and what was said by anyone else?

A Well, she accused me of all the trouble that was going on in the building, and she accused me of being---

EXAMINER GRECO: Excuse me, ma'am. I know it's difficult to remember back that far. Can you recall what she said? The words, if you remember?

THE WITNESS: I know she accused me of being responsible for calling in the MTEA, because she was having contact with the union, never had contact with the union before. And she accused me of all the problems that were being---

Q (by Mr. Perry) Were those the words?

A I really don't remember.

Q I don't mean the exact words. But did she use the word "problems" and did she use the word "MTEA"?

A Yes.

Q What did she say about the MTEA?

A She said: I have been vice-principal and principal for many, many years and never had any contact with the MTEA before. Until I came on to the scene. It is as if I was the one responsible.

Q Continue. What else did she say?

A And she accused me of just everything that was wrong in the school, it was my fault, I did it all.

Q Try to remember what she said about those things.

A That I was---didn't---I went beyond the role of reading resource teacher, I had no business to question as to where children are placed, I had no business questioning as to what books that were being ordered. Again she repeated the fact that she didn't know what I did with my time all day long. She mentioned the fact: I see you walking in the halls; and why are you doing that. And---

Q Would you say it was a friendly exchange?

A No, it was very hostile.

8. In late October, 1979 Fisher had obtained written approval from Besch to take her class on a field trip on November 8. Fisher's absence on that day required that a replacement be found to fulfill noon lunchroom supervision duty which she had voluntarily assumed at the start of the school year. Besch expected that teachers in Fisher's situation make every effort to secure a replacement. Only if the teacher failed to find a volunteer replacement would Besch then assume responsibility for assuring that the position would be covered. Several days before the field trip Besch asked Fisher if she had found a replacement and Fisher responded by indicating that it wasn't her responsibility to secure a replacement. Shortly thereafter Fisher unsuccessfully asked two teachers to assume her lunchroom responsibilities. She then notified the school secretary of her failure and proceeded with the field trip. No replacement was present for Fisher's noon lunchroom supervision duties on November 8. On November 9 Fisher received the following document from Besch:

Since you went on a field trip yesterday, it was your responsibility to find a replacement for your noon lunch duty.

You were reminded of this task on Tuesday, November 7th, verbally.

Be sure this is not repeated in the future.

In writing, on the Riley daily agenda, on Oct. 24, 1979, this reminder was posted:

"Staff: If you know you will be absent (Field trips, etc.) It is your duty to supply a replacement for your duty. Thank you"

You have not complied with this directive.

When the principal spoke to you in the office today, you turned your body and walked away while she was addressing you.

On Nov. 5 and 6, you also walked away while the principal was talking to you on the playground.

9. On November 20, 1979 Fisher, Wisniewski and Hendricksen had a Thanksgiving potluck lunch for their classes. The lunch was substantially the same in all respects to the Thanksgiving celebrations these teachers had held the preceding two years. Besch had been notified about the past parties but due to the lack of communication which pervaded Riley during the 1979-80 school year and the teachers' perception that she didn't care, Besch was not told of the 1979 edition. On November 21, 1979 Besch met with Fisher, Wisniewski and Hendricksen and heatedly complained primarily about their failure to notify her of the party. Following the oral discussion, Fisher, Wisniewski and Hendricksen received the following document from Besch:

Today, we gathered to discuss the children's Thanksgiving party, which is an excellent educational endeavor, that your 3 classes carried out yesterday during the P.M.

Because school activities, whether field trips, programs, get-togethers or any change or alteration in programming, should be under administrative scheduling and approval, it is imperative that the above be discussed with the writer.

Congratulations are in order on the planning and presenting of such a fine activity for the children, including their part in the preparation of the banquet.

Please let me know of any future changes because, among other considerations, they affect (1) phone calls from parents, (2) the use of auxiliary personnell [sic], (3) and the shifting and/or release of some special class time.

10. Throughout the 1979-80 school year, Fisher and Kalmhofer, another Riley teacher, had engaged in a discussion with Besch over their failure to receive two of the limited number of parking spaces on the school grounds. Parking spaces had historically been assigned on the basis of seniority with several slots being retained for visitors, snow removal usage and the school engineer. Fisher and Kalmhofer felt that the visitor/snow removal spaces and the engineer's slot should be made available to them. On or about March 16, 1980, pursuant to Step 1 of the "Grievance and Complaint Procedure" contained in the contract between Complainant and Respondent, Fisher and Kalmhofer made an oral complaint to Besch over her failure to assign them parking spaces. On or about March 21, 1980, Fisher and Kalmhofer pursued their complaint to Step 2 of the contractual procedure by filing a written complaint with Respondent over the parking problem. On or about March 21, 1980 Besch contacted Respondent's maintenance personnel about the parking situation and shortly thereafter posts were imbedded in the disputed parking slots which made them virtually unusable for automotive parking.

11. On July 29, 1980 Examiner Greco issued his decision in the case referred to in Finding of Fact 3 herein. Greco's Conclusions of Law included the following:

. . .

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.

Examiner Greco's decision also contained the following statements:

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.

. . .

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 she bore against the Association during the 1978-1979 school year; . . .

. . .

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.

Greco's decision was not appealed and was subsequently affirmed by the Commission.

Based on the foregoing Findings of Fact the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. Respondent Milwaukee Board of School Directors, through its agent Grace Besch, did not commit a prohibited practice within the meaning of Sections 111.70(3)(a)1 and 3 of MERA by issuing the November 9 letter to Fisher criticizing her failure to find a lunchroom replacement.

2. Respondent Milwaukee Board of School Directors, through its agent Grace Besch, did not commit a prohibited practice within the meaning of Sections 111.70(3)(a)1 and 3 of MERA by issuing the November 21 Thanksgiving letters to Wisniewski, Fisher and Hendricksen.

3. Respondent Milwaukee Board of School Directors, through its agent Grace Besch, committed prohibited practices within the meaning of Sections 111.70(3)(a)1 and 3 of MERA by: (1) issuing recess duty post reprimands to Wisniewski, Fisher, Daley and Hendricksen; (2) issuing bus dismissal reprimands to Fisher and Daley; (3) altering Cohen's work assignment; and (4) causing posts to be placed in certain Riley School parking spaces, all at least part because the foregoing employes had engaged in protected concerted activity.

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

ORDER

IT IS ORDERED that the portion of the instant complaint which alleges that Besch discriminatorily issued lunchroom and Thanksgiving reprimands to Fisher and to Wisniewski, Fisher and Hendricksen, respectively, is hereby dismissed.

IT IS FURTHER ORDERED that the Milwaukee Board of School Directors, its officers and agent, shall immediately:

1. Cease and desist from retaliating against employes, reprimanding employes or imposing additional assignments upon employes because they have engaged in protected concerted activity on Complainant's behalf or in any other manner interfering with, restraining or coercing employes in the exercise of their right to engage in concerted activity protected by Section 111.70(2) of MERA.

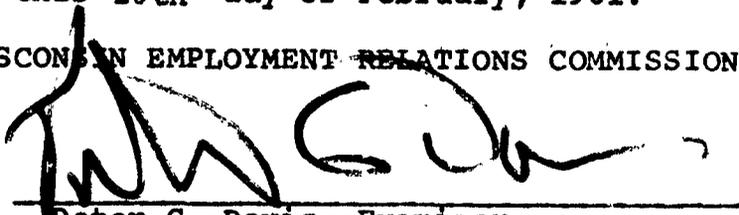
2. Cease and desist from retaliating against employes, reprimanding employes or imposing additional assignments upon employes because they have engaged in protected concerted activity on Complainant's behalf or in any other manner discriminating against employes in regard to hiring, tenure and other terms and conditions of employment because of said employes' protected concerted activity.

3. Take the following affirmative action which the Examiner believes will effectuate the policies of MERA.

- a. Expunge the recess duty post reprimands received by Wisniewski, Fisher, Daley and Hendricksen and the bus dismissal reprimands received by Fisher and Daley from any and all files maintained by the Milwaukee Board of School Directors, its officers and agents.
- b. Notify all employes at the Riley School by posting in conspicuous places in its offices copies of the notice attached hereto 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 from the date of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 20th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Peter G. Davis, 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 reprimand Kathy Wisniewski, Marva Fisher, Mary Daley, Phyllis Hendricksen or any other employe because of their activity on behalf of the Milwaukee Teachers Education Association (MTEA).
2. WE WILL NOT impose additional assignments upon Clarice Cohen or any other employe because of their activity on behalf of the MTEA.
3. WE WILL NOT retaliate against Marva Fisher or any other employe because of their use of a contractual "Grievance and Complaint Procedure".
4. WE WILL NOT in any like or related manner discriminate against employes because of their activity on behalf of the MTEA or interfere with employes in the exercise of their rights under Section 111.70(2) of the Municipal Employment Relations Act.
5. WE WILL expunge from any and all files the duty post reprimands received by Wisniewski, Fisher, Daley and Hendricksen and the bus dismissal reprimands received by Fisher and Daley.

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

Complainant alleges that Besch was hostile toward the protected union activity of Wisniewski, Fisher, Daley, Hendricksen and Cohen and that, because of her hostility, Besch retaliated against said individuals by (1) issuing written duty post reprimands to Wisniewski, Fisher, Daley and Hendricksen on November 6, 1979; (2) issuing written bus dismissal reprimands to Fisher and Daley on November 6, 1979; (3) altering Cohen's work assignment on November 6, 1970; (4) issuing a written noon hour reprimand to Fisher on November 9, 1979; (5) issuing written Thanksgiving reprimands to Wisniewski, Fisher and Hendricksen; and (6) having posts imbedded in certain parking spaces after Fisher complained.

Respondent denies said allegations and contends that in each instance Besch was simply asserting her managerial prerogative to insure that the school was functioning properly. The undersigned turns to a consideration of these competing allegations.

Initially it should be noted that the Complainant bears the burden of proving by a clear and satisfactory preponderance of the evidence that the teachers in question had engaged in protected union activity, that Besch was aware of said activity and hostile thereto, and that Besch was motivated at least in part to take action against the teachers because of her hostility. 1/ Furthermore it should be clear that the presence of legitimate reasons for Besch's actions is not controlling if it can be demonstrated that Besch was motivated in any way by anti-union animus. 2/

Duty Post Reprimands

The record reveals that on November 6, 1979 Wisniewski, Fisher, Daley and Hendricksen received written reprimands for failing to be at their November 5 P.M. recess duty posts on time. It is clear that all four individuals had engaged in protected union activity either as members of Complainant's Building Committee or as participants in the Greco hearing and that Besch was aware of said activity. The Complainant contends that the distribution of the Building Committee survey on November 5 triggered a spasm of anti-union action by Besch against those who were challenging her authority. Respondent urges that the timing of the reprimands was mere coincidence and that they were the culmination of Besch's unsuccessful efforts to acquire compliance with her duty post procedure. The record does indeed demonstrate that Besch had been making repeated efforts to have teachers present at their duty posts when the recess bell rang, not simply prior to the actual arrival of the students. It is also clear that the teachers in question were indeed "late" on November 5. However the timing of the reprimands vis-a-vis the known distribution of survey, a form of protected activity which was coming hard on the heels

1/ Drummond Integrated School District, 15909-A (3/78); Village of Union Grove, 15541-A (2/78).

2/ Muskego-Norway Consolidated Schools v. WERB, 35 Wis. 2d 540 (1967).

of the acrimonious Greco hearing, requires a finding that the November 6 reprimands were motivated at least in part by a desire to retaliate against the four teachers for their union activity. Thus Besch's action violated Secs. 111.70(3)(a)1 and 3 of MERA.

Bus Dismissal Reprimands

Also on November 6, 1979 Fisher and Daley received written reprimands for failing to have their classes precisely at their designated dismissal slots when the 3:35 p.m. bell rang. As previously noted Besch was clearly aware of Fisher's activity on behalf of the Association. Indeed she knew that Fisher had distributed the Building Committee survey November 5. Daley had testified against Besch during the Greco hearing. Here again the undersigned is confronted with a choice between Complainant's assertion that Besch, spurred on by the Building Committee survey, seized upon a minute rule infraction as her opportunity to retaliate against union activists and Respondent's contention that Besch was simply attempting to manage the school. Here again the timing of the reprimands, especially when combined with unrebutted evidence that on November 5 and on subsequent days other non-activist teachers who were much later than Fisher and Daley did not receive reprimands, compels a finding that Besch was motivated, at least in part, by a desire to strike against her union "tormentors" and thus that a violation of Secs. 111.70(3)(a)1 and 3 of MERA occurred.

Change in Duties

The third November 6 occurrence was the assignment of additional teaching responsibilities to Cohen. While there can be little doubt of the educational benefits derived from this assignment of Cohen to provide special help to students with reading problems, it also seems clear that Besch was in essence asking Cohen to perform two full time jobs at the same time. Again the Examiner is confronted with the question of why the assignment was made. Was it an effort to punish Cohen for her protected testimony during the Greco hearing or was it an effort by Besch to make the most effective educational use of her teaching staff. Given the timing of the assignment and the depth of the conflict between Cohen and Besch which was revealed during the Greco hearing, the undersigned cannot conclude that it was exclusively an educational decision devoid of anti-union consideration. Therefore Besch's action has been found to be violative of Secs. 111.70(3)(a)1 and 3 of MERA.

Lunchroom Reprimand

As Finding of Fact 8 indicates, the November 9 reprimand to Fisher resulted from her failure to obtain a lunchroom duty replacement. The record clearly reveals that Fisher and Besch had a sharp difference of opinion as to who bore the responsibility for securing a replacement and the amount of effort which a teacher should put forth when attempting to secure a replacement. The record also demonstrates that given past duty post and bus dismissal conflicts, Fisher and Besch had some difficulty communicating information as simple as whether a replacement had been found. The questions before this Examiner is not one of determining the merits of the replacement dispute but rather determining whether Besch issued the reprimand at least in part because of hostility toward Fisher's union activity. While fully aware of the temporal proximity of this reprimand to the November 6 flurry, the undersigned does not believe that the evidence supports a finding of anti-union motivation. Instead this conflict

appears to have been a product of the mutual personal disregard which Fisher and Besch possessed for each other. While it is difficult to conclude that this mutual distaste was not generated in some small part by Fisher's union activity, the Examiner is satisfied that Besch's perception that Fisher was being extremely uncooperative in seeking a replacement was the motivating factor herein. Thus no statutory violation has been found.

Thanksgiving

Finding of Fact 9 details the gist of the Thanksgiving party incident. The issue raised herein is whether Besch's oral and written criticism of Wisniewski, Fisher and Hendricksen was premised in part upon hostility to their union activity. As the testimony of Wisniewski indicates and the lunchroom conflict verifies, a communication chasm of some depth had developed between the teachers in question and Besch. This chasm led the teachers to conclude that they should depart from their prior practice of notifying Besch of the Thanksgiving celebration. The undersigned concludes that it was Besch's anger at not being notified of the event which motivated her criticism of the teachers and not anti-union animus. Thus no finding of statutory violation has been made in this regard.

The Posts

As Finding of Fact 10 reveals, Besch and two teachers had been embroiled in a year long dispute over parking spaces at Riley School. Almost immediately after the teachers in question finally brought the dispute to a head by filing a contractual complaint, Besch caused posts to be placed in the disputed slots. Given the timing of this action, it must be concluded that Besch was motivated by a desire to retaliate against the two teachers for their protected use of the contractual procedure which was available for the resolution of such disputes. Therefore it has been found that Besch's action constituted prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 3 of MERA.

Dated at Madison, Wisconsin this 20th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Peter G. Davis, Examiner