STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WESTERN WISCONSIN TECHNICAL INSTITUTE FACULTY, LOCAL 3605, WFT, AFT, AFL-CIO and WISCONSIN FEDERATION OF TEACHERS, AFT, AFL-CIO,	Case IX No. 25874 MP-1084 Decision No. 17714-B
Complainants,	
vs.	
WESTERN WISCONSIN VOCATIONAL, TECHNICAL, AND ADULT EDUCATION DISTRICT and ARLYSS GROSSKOPF,	
Respondents.	

Appearances:

Habush, Habush & Davis, S.C., Attorneys at Law, by Mr. John S. Williamson, Jr., First Wisconsin Center, Suite 2200, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Complainants.

Bosshard, Sundet & Associates, Attorneys at Law, by Mr. John Bosshard and Ms. Sabina Bosshard, Suite 500 Schneider Building, LaCrosse, Wisconsin 54601, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Stephen Pieroni, a member of the Commission's staff to act as Examiner; and a hearing on said complaint having been held on May 14 and May 16, 1980 before the Examiner; and the parties having filed briefs by October 9, 1980; and the Examiner having considered the evidence, arguments and briefs 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 Complainants, hereinafter referred to as the Union, is a labor organization which represents a bargaining unit composed of all regular contract instructors teaching at least fifty percent of a full teaching schedule at the District. The Union was certified as the exclusive bargaining representative of these employes by the Wisconsin Employment Relations Commission on May 14, 1976.

2. That Respondent, hereinafter referred to as the District is a municipal Employer which operates a vocational, technical and adult education institution in La Crosse, Wisconsin. Ms. Arlyss Grosskoph was at all material times relevant hereto employed by the District as the Division head of the Instructional Support Services Division, a management position.

3. The Complainants and Respondent were parties to a collective bargaining agreement which was in full force and effect from July 1, 1979 to June 30, 1981 covering, among others, instructors employed by the District in the Instructional Support Services Division. Said agreement contained the following pertinent provisions:

ARTICLE V - PROVISIONS RELATING TO WORK SCHEDULES

Section 5.01. Weekly Schedule. An instructor shall be responsible to the District for thirty-five (35) hours per week. At the beginning of each quarter, each instructor shall submit a weekly schedule to his Division chairperson. This schedule will set forth at least five (5) office hours per week at times which would be convenient for students to consult with the instructor.

The weekly schedule will also set forth those nonteaching hours outside his assigned teaching and office hours that he will be available during his scheduled workday to fulfill other duties.

. . . .

Also, the parties agreement contained a provision which stated that if Respondent desired to assign night classes to full-time instructors, the Union would have to sign a "waiver" of the contractual scheduling requirements.

4. That Ms. Diane Cunningham was at all material times relevant hereto employed by the District as a full-time teacher in the Support Services Division and, as such, was a bargaining unit employe. At all times relevant hereto Ms. Cunningham was chairman of the local's grievance committee and also held the position of vice president of the executive board of the Wisconsin Federation of Teachers.

5. That in October 1976, the Union filed a complaint of prohibited practices on behalf of Cunningham with the Wisconsin Employment Relations Commission in connection with her class assignments of four nights a week. Said Complaint was resolved prior to hearing by a settlement agreement entered into by the District and the Union on January 21, 1977. Thereafter, in 1978, Ms. Cunningham was assigned full-time teaching duties at the Riverfront Activities Center, hereinafter Riverfront. Prior to this time Ms. Cunningham was teaching remedial Reading and English at the main campus in downtown La Crosse. Riverfront is located several miles from the downtown campus.

6. That pursuant to the assignment of full-time teaching duties at Riverfront, Complainant filed a grievance which alleged that said assignment violated the collective bargaining agreement. Said grievance was settled prior to hearing by written agreement, dated May 5, 1978 between the District and the Union which stated in relevant part as follows:

> ". . . Diane Cunningham will not be assigned anymore than 2 1/2 hours per day at the Riverfront Activities Center effective August 1978 . . . ." (Exhibit 11).

At the time this agreement was reached, the parties orally agreed that said terms would contine from year to year as long as Cunningham was assigned to Riverfront.

7. That after the grievance settlement referred to in para. 6 above, commencing in August 1978, Grosskoph assigned Cunningham two 50 minute classes and one 25 minute class at Riverfront from 8:30 a.m. to 11:00 a.m., Monday - Friday. Cunningham indicated on her class schedule that her office hours at Riverfront were from 8:00 a.m. to 8:30 a.m., Monday - Friday. Apparently, both Grosskoph and Cunningham believed said schedule complied with the settlement agreement.

8. That shortly after Cunningham commenced working under said schedule, she found it difficult to travel from Riverfront to the main campus and still have a one hour lunch break before her next class began at the main campus. Accordingly, Cunningham asked the Union business representative, Mr. Skarich, to discuss the matter with Grosskoph. In September 1978, Cunningham, Skarich and Grosskoph met for the purpose of discussing the matter involving Cunningham's travel time to the main campus. Cunningham and Skarich pointed out to Grosskoph that Cunningham's schedule allowed for a one hour lunch break commencing at 11:00 a.m. After considering Cunningham's schedule, Grosskoph agreed that Cunningham could take a 10:30 a.m. bus to the main campus in order to arrive by 11:00 a.m. During said meeting no one raised a question concerning the number of minutes Cunningham was to teach, the number of classes she was assigned, or when her office hours were to be held.

9. That shortly after the meeting referred to in para. 8, Cunningham began teaching four one half hour classes without a break from 8:30 a.m. to 10:30 a.m. Monday through Friday and kept her office time 8:00 - 8:30 a.m. Monday - Friday. Cunningham did not advise Grosskoph of this change in her teaching schedule. At that time, Grosskoph believed Cunningham was teaching two 50 minute classes and one half hour class.

10. That for each successive quarter in the 1978-1979 school year Grosskoph continued to assign Cunningham classes from 8:30 a.m. - 11:00 a.m. Monday through Friday at Riverfront. Cunningham continued to accept said schedule and insert her office hours from 8:00 a.m. to 8:30 a.m. Monday through Friday. Said procedure continued thru the frist quarter of the 1979-80 school year (i.e. from September through November 1979). However, throughout this period, Cunningham continued to teach four one-half classes without a break from 8:30 to 10:30 a.m., Monday through Friday at Riverfront.

11. That Grosskoph did not become aware that Cunningham was not teaching two 50 minute classes and one 25 minute class until November 13, 1979 at which time Grosskoph requested that Cunningham teach one of the following schedules: either teach from 8:00 - 8:50; 9:00 - 9:50; 10:00 - 10:25 a.m. or teach five 30 minute classes with five minute breaks in between from 8:00 - 10:30 a.m. That on or about January 7, 1980 Cunningham commenced teaching five half-hour periods between 8:00 a.m. and 10:30 a.m. at the Riverfront activity center but, contrary to her contention, there is insufficient record evidence to conclude that said schedule had an adverse impact on her health.

12. That in February 1979 Grosskoph was notifed by the District Board that her department would have to cut 10% from its budget. In order to accomodate said budget cut, Grosskoph suggested to the Union in March 1979 that the afternoon classes, which had low enrollment, could be eliminated. Regular full-time instructors could be used to teach evening classes which had higher enrollment. The part-time teachers who taught the afternoon classes would thereby be laid-off. In order for instructors to teach split shifts (i.e. morning and evening), the parties' collective bargaining agreement required that the Union sign a "waiver" of their right to object to night classes. The Union did not initially agree to "waive" the regular day time schedule and in July 1979 officially notified Grosskoph that the "waivers" had been denied except for one instructor, Margaret Husky, who was allowed to teach nights for the first quarter of the 1979-80 school year. There is no evidence to suggest that Cunningham played any official Union role in denying the "waivers", nor is there evidence that Grosskoph believed that Cunningham played any such role.

13. That on November 20, 1979 Grosskoph again met with certain union representatives concerning "waivers" for evening classes. Ms. Husky sought a "waiver" for the second quarter and several other instructors had petioned the Union to grant waivers on their behalf. The Union representatives present at said meeting did not include Cunningham. The Union officials at said meeting indicated that they were not favorably disposed toward granting any "waivers" for evening classes. There was a heated exchange between Grosskoph and the union representatives concerning the "waivers".

14. That immediately following the meeting referred to in para. 13, a regularly scheduled staff meeting was held for instructors in the Support Services Division. As Grosskoph entered the meeting room, several instructors who had sought a schedule "waiver" were complaining about the union. Some instructors desired to work evenings because it was convenient for spouses to babysit. Other instructors desired to work evenings in order to increase their teaching load, thereby avoiding a lay-off for lack of work. By not obtaining a scheduled waiver, said instructors plans would be upset. When Grosskoph entered the meeting, one instructor asked her if the Union had granted the schedule waivers at the earlier meeting that day. Grosskoph replied that it appeared that the union would refuse all of the waiver requests. At that point several instructors indicated their displeasure and said they would "drop out" of the union or try to "get rid of the union". Then Grosskoph made a statement to the effect that rather than drop out of the Union, the instructors should become more involved, attend the union meetings, and get the contract language changed in order to allow an exception for the Support Services Staff to work nights. Grosskoph also indicated that she thought it was unfair to assign all of the night work to those few instructors who might be laid off due to lack of teaching hours, rather than spreading the night work among all of the staff. Previous to said meeting, Grosskoph had approached the then President of the Local and asked him what could be done to accomodate the special scheduling needs of instructors in the Support Services Division. The Local President's response was that the instructors should attend the Union meetings and lobby to have the contract language changed to accomodate the division's needs.

15. That on several occasions during 1979 Cunningham sought to have certain instructors substitute for her while she was on Union business. That on serveral occasions Grosskoph objected to the substitute instructors that Cunningham had designated because they were either from a different department or were assigned other classes to supervise at the same time they were to substitute for Cunningham.

16. That on one occasion when Cunningham and several other instructors were leaving the school grounds, Cunningham informed Grosskoph's secretary that she was also leaving the school grounds during her preparation period. The secretary indicated that a written note to that affect would be made but did not make a note concerning the other instructors. The purpose of keeping said written record was to be able to answer inquiries concerning an instructor's location. The secretary only wrote down the more complicated itineraries.

17. That on three separate occasions, Ms. Husky used Grosskoph's secretary and department stationary to type three memos concerning Husky's request for a schedule "waiver" in order to work a split shift. Husky sent said memo to District officials and union officials. The secretary typed the memos on her own time. Grosskoph did not authorize or otherwise know of said memos before Husky sent them. Grosskoph allowed any instructors without regard to union affiliation to use district stationary for matters relating to District business and further allowed her secretary to type same on her own time.

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

CONCLUSIONS OF LAW

1. That Respondent, by requiring Diane Cunningham to teach two and one-half hours at the Riverfront Activity Center, did not violate the settlement agreement referred to in Findings of Fact #6, and therefore Respondent did not violate Section 111.70(3)(a)5 Stats., or any other section of the Municipal Employment Relations Act.

2. That Respondent, by the statements made by Arlyss Grosskoph at the November 20, 1979 division staff meeting referred to in Findings of Fact #14, did not interfer with, restrain or coerce bargaining unit Employes in the exercise of their rights under MERA, nor did said statement dominate or interfer with the administration of Complainant's labor organization, and therefore Respondent did not violate Section 111.70 (3)(a)1 or 2 Stats.

3. That by the actions described in Finding of Fact #15, Grosskoph did not restrict Cunningham's right to use substitute instructors while she attended to union business because of union animus, and therefore Respondent did not violate Section 111.70(3)(a)1 or 3 Stats.

4. That referring to Findings of Fact #16, Grosskoph did not direct her secretary to discriminate against Cunningham because of her union activity with respect to leaving school grounds during preparation periods, and therefore Respondent did not violate Section 111.70 (3)(a) 1 or 3 Stats.

5. That by not objecting to Husky's use of department stationary and secretarial help in the factual context referred to in Finding of Fact #17, Respondent did not violate Section 111.70(3)(a)1, 2 or 3 Stats.

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

ORDER

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 16th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Pieroni
Stephen Pieroni, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The instant complaint alleges that Respondent, by Arlyss Grosskoph, commited several prohibited practices in violation of Section 111.70 (3)(a)1, 2, 3 and 5 Stats. This course of conduct allegedly included violating a grievance settlement agreement to the detriment of Diane Cunningham's health; several separate instances of interference with the internal affairs of the union and discriminatory treatment toward Diane Cunningham concerning substitute instructors while on union business and the use of preparation time. Respondent has denied each of Complainant's allegations. The relevant facts established at the hearing are enunciated in the Findings of Fact.

Position of Complainants

The Complainants position can be summarized as follows:

Referring to the May 5, 1978 grievance settlement (Finding of Fact #6), the Complainants contend that on or about November 13, 1979, Grosskoph changed Cunningham's schedule at Riverfront in violation of said settlement agreement. According to the Complainants, this settlement agreement continued to be binding so long as Cunningham was assigned to Riverfront. By violating the settlement agreement, Respondent committed a prohibited practices by violating Section 111.70 (3)(a)5.

In this connection, Complainants argue that Grosskoph changed Cunningham's schedule as part of an overall effort to penalize Cunningham for union activity and to seek revenge against the local for refusing to cooperate in granting waivers for teaching nights.

Next, Complainants allege that at the November 20, 1979 Division meeting, Grosskoph threatened the loss of jobs unless the instructors in her Division went to union meetings and got the contract language changed. According to Complainants, such conduct violated Section 111.70(3)(a)1 and 2.

Moreover, Complainants cite other instances of alleged interference with the internal affairs of the union and illegal tactics designed to pressure the Local leadership into granting the waivers. For example, Grosskoph permitted instructors who were opposed to the Union, the free use of Division stationary and secretarial personnel to raise their objections to the union's refusal to grant schedule waivers. Further, Grosskoph continually refused to accept Cunningham's classroom substitutes in order to make it more difficult for Cunningham to attend union business. Since Grosskoph allowed the same substitutes to be used by "friendly" instructors, Complainants allege that Grosskoph engaged in unlawfull discrimination against Cunningham.

Position of Respondent

Respondent asserts that complainants allegations are unfounded.

Initially, in response to said allegations, Respondent claims that it had authority to assign Cunningham to teach for two and one-half hours at Riverfront. A teaching hour normally consists of 50 minutes. Although Cunningham stated that she had always taught four one-half hour classes without a break from 8:30 a.m. to 10:30 a.m., the District believed that she was teaching the conventional two and one-half hours. Hence, the District argues that it is merely insisting that Cunningham perform according to her assignment. Moreover, the settlement agreement relied upon by the union covered only the 1978-79 school year,

In regard to the issue of union animus, the Respondent argues that there is no testimony to indicate that Grosskoph had any reason to believe that Cunningham had any involvment in the waiver matter. Also, there is no reliable evidence that the schedule required of Cunningham by the District in any way injured her health.

Looking to the issue of the statements made by Grosskoph at the November 20, 1979 Division meeting, said statements merely reflect what the local union, president told Cunningham and, in any event, do not amount to coercing the instructors for the purpose of undermining the collective bargaining agreement.

Lastly, Respondent denies that it used non-unit Employes to pressure the Union. Respondent denies that it treated Cunningham any differently than any other instructor with regard to her use of preparation time, and denies that it placed unwarranted restrictions on Cunningham's ability to take leave for union business.

Discussion

Alleged Violation of May 5, 1978 Grievance Settlement

The union's argument in this regard is two-foled. (see Finding of Fact #6 for relevant terms of settlement). First, did Respondent breach the settlement agreement? Second, was Respondent's action motivated by union animus toward Diane Cunningham and the Union? Although these issues overlap, they will be treated separately for purposes of discussion.

First, neither party disputed that failure to comply with a grievance settlement would constitute a prohibited practice within the meaning of Section 111.70(3)(a)5 Stats. Rather, Respondent contends that by its terms the grievance settlement expired after the 1978-79 school year; and, even if the terms of the settlement continued into 1980, the provisions were not breached.

The union demonstrated by clear and satisfactory preponderance of the evidence that the parties intended to abide by the settlement agreement so long as Cunningham was assigned to Riverfront. Thus, union witness Brandt's unrebutted testimony established that he met with Mr. Davis, who represented management, along with Fred Skarich at the time the settlement was reached. At that meeting Davis clarified that the terms "effective August 1978" meant that no time limitations were intended and said arrangement would continue from year to year. (See Union Exhibit 12).

Having concluded that the settlement agreement continued to be in effect during 1980, the more difficult issue to resolve is whether Respondent violated the terms of said agreement. The undersigned concludes that the record does not contain a clear and satisfactory preponderance of the evidence to warrant a finding in favor of the union.

In reaching this conclusion, the undersigned is mindful of the union's arguments in this regard. For example, Grosskoph did agree in 1978 to allow Cunningham to leave Riverfront at 10:30 a.m. (TR317) It is therefore peculiar that Grosskoph didn't raise a question at that time as to how Cunningham would be able to teach two and one-half hours, have one-half hour office and leave by 10:30 a.m. The examiner also credits Cunningham's testimony that thereafter she had office from 8:00 a.m. to 8:30 a.m. and taught from 8:30 a.m. to 10:30 a.m. in one half hour increments. However, Cunningham did not inform Grosskoph of this schedule change. Likewise, the undersigned has considered the union's argument that the two and one-half hours referred to in the settlement agreement should include a half hour of office time. (See Section 5.01 of the Contract Joint Exhibit 3).

However, evidence in support of the Respondent is, in the undersigned's opinion, more persuasive. Of key significance is the testimony of Cunningham, Skarich and Grosskoph concerning the 1978 meeting relating to Cunningham leaving at 10:30 a.m. (Cunningham testimony TR80-83; Skarich testimony TR122-124 and Grosskoph testimony TR317).

Said testimony reveals quite clearly that Cunningham had already received the teaching schedule (Joint Exhibit 1) at the time of said meeting. That schedule required Cunningham to teach from 8:30 a.m. to 11:00 a.m. at Riverfront. (Her last class was completed at 10:50 a.m.) Cunningham elected to have office from 8:00 a.m. to 8:30 a.m. According to Cunningham, after she began working under that schedule she experienced difficulty in traveling from Riverfront to the main campus so as to arrive by 11:00 a.m.

Therefore the meeting with Grosskoph must have been in September 1978. The only purpose was to discuss travel time not the number of teaching hours. The record is clear that at said meeting no one raised the issue that the number of teaching hours was in conflict with the settlement agreement. The only matter of concern was the travel time.

Having previously settled a prohibited practice complaint and a grievance over her assigned hours, the Examiner is convinced that Cunningham would have immediately raised the issue of compliance with the settlement agreement if her schedule was objectionable. Yet Cunningham began to teach from 8:30 to 11:00 a.m. with office from 8:00 a.m. to 8:30 without complaining about the hours. It was only after working under this schedule for a month that Cunningham discovered that she needed to leave at 10:30 a.m. Grosskoph agreed to accomodate that request. Therefore, Grosskoph had reason to assume that Cunningham continued to teach two and one-half hours.

Thus, the Examiner must conclude that the actions of the parties clearly evinced their mutual understanding that the phrase in the settlement agreement, "assigned . . . two and one-half hours per day at the Riverfront Activities Center," referred to teaching time. Said conclusion is bolstered by the fact that Cunningham didn't inform Grosskoph when she converted her schedule to half hour classes. Further, it is peculiar that Cunningham continued to accept class schedules in the following quarters which indicated she would teach from 8:30 to 11:00 a.m. and have office from 8:00 to 8:30 a.m. If Cunningham believed that Grosskoph's understanding of the settlement agreement coincided with hers, Cunningham would have corrected said schedule at the beginning of the next quarter (i.e. 1978) to reflect her understanding. This she did not do.

Thus, the Examiner concludes that Grosskoph credibly testified that she didn't become aware of Cunningham's schedule of four half hour classes (8:30 - 10:30 a.m.) until she accidently discovered it on November 13, 1979. The fact that Grosskoph didn't inquire during the meeting in 1978 as to when Cunningham would have office hours, appears to be consistent with Grosskoph's demonstrated lack of concern as to when instructors put in office hours. Hence, Grosskoph's insistance in November 1979 that Cunningham teach two and one-half hours at Riverfront did not breach the parties settlement agreement.

Did Grosskoph Change Cunningham's Schedule as a Result of Union Animus?

In order to prevail on this allegation, Cunningham must prove by a clear and satisfactory preponderance of the evidence that Grosskoph had knowledge of Cunningham's union activities, that Grosskoph was hostile toward such activities, and that Grosskoph's treatment of Cunningham was motivated at least in part by anti-union considerations. 1/

1/ Western Wisconsin Vocational, Technical and Adult Education District Case VII, No. 16509-A 6/80.

The Examiner finds that there is no merit to the allegation that Cunningham was assigned two and one-half teaching hours at Riverfront as a result of union animus. This is so because there is absolutely no reliable evidence to demonstrate that in November 1979, Grosskoph harbored animus toward Cunningham for her previous union activity. (Filing a prohibited practice and a grievance in 1977 and 1978 or being on the WFT executive committee). Moreover, no evidence was adduced which linked Cunningham to the union's handling of the waiver issue, nor could it be inferred that Grosskoph believed that Cunningham had any input into same. Further, there is insufficient evidence in the record to conclude that Grosskoph intended to retaliate against the local by punishing Cunningham.

Two arguments in this regard were raised in Complainant's brief and require discussion. It is true that Grosskoph testified that she was concerned about the ratio of students per class. (TR 322). On November 13, 1979, when Grosskoph discovered Cunningham was not teaching two 50 minute classes and one 25 minute class, she suggested to Cunningham that she do so or if she wished to continue teaching half hour segments, add one more class. (Employer Exhibit 32). Said suggestion is not contradictory as argued by the Union. By decreasing the number of classes taught by Cunningham from four to two and one-half, her ratio of students per class would increase. Likewise, if Cunningham taught an extra half hour segment with six students in the class, as was eventually done, more students were being served. Hence, Grosskoph's suggested alternative schedule of November 15, 1979 (Exhibit 32) does not suggest an illegal motive.

Likewise, Complainant's argument that the timing of the schedule change establishes Grosskoph's anti-union motivation must fail. Complainants argue that Grosskoph knew Cunningham was teaching four classes in successsion before she raised the issue in November 1979. Complainants aver that Grosskoph acted upon Cunningham's schedule when Grosskoph discovered she would not obtain the needed waivers. However, Grosskoph's testimony does not establish that she was aware of Cunningham's schedule before November 1979. Grosskoph testified that she performed a random sampling of Cunningham's student ratio early in the first quarter of 1979. Grosskoph found that Cunningham had under five students per hour for the whole week, including labs and her work at Riverfront. (TR340) When Grosskoph discovered that Cunningham was teaching four classes at Riverfront instead of two and one half classes, Grosskoph then figured her student ratio at Riverfront to be 3.6. (TR322). These figures are not inconsistent. Hence, the facts do not suggest that Grosskoph knew of Cunningham's Riverfront schedule before she acted upon it.

As to the issue of the timing of the schedule change, Grosskoph knew in March 1979 that the union had denied the previous waiver requests. The second round of waiver requests did not reach an impasse until November 20, 1979. Grosskoph notified Cunningham on November 15, 1979 of her requirement to teach two and one half hours at Riverfront. This was substantially after the initial union denial of the waivers and five days before Grosskoph could know of the union's response to the second round of requests for waivers. Hence, the record fails to support Complainants contention on this point.

Did Grosskoph's Statements at the November 20, 1979 Departmental Meeting Constitute a Violation of Section 111.70(3)(a)1 & 2?

Interference Within Meaning of Section 111.70(3)(a)1.

To sustain its burden of proof with respect to the alleged interference, Complainants must demonstrate by a clear and satisfactory preponderance of the evidence that Grosskoph's statements contained a threat of reprisal or a promise of benefit which would tend to interfer with employes' protected right to support the union 2/ In each

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2/ Drummond Integrated School District 15909-A 3/78; Ashwaubenon School District No. 1 14774-A 10/77.

case the remarks as well as the circumstances under which they were made must be considered in order to determine the meaning which the Employes would reasonably place upon said statements. 3/

Here, several witnesses testified on behalf of each party as to what Grosskoph said and the circumstances of the November 20, 1979 departmental meeting. (See Findings of Fact #14). Having reviewed the record, the Examiner is convinced that Grosskoph's statements, did not consitute threats of reprisals or coercion in violation of Section 111.70(3)(a)1.

It is important to note the context in which the statements were made. The undersigned is convinced on the basis of the testimony that it was the instructors who raised the issue. Grievant merely responded to the instructor's disgruntled remarks. Hence Grosskoph did not initiate antagonism toward the union.

Moreover, the only statement which could possibly be interpreted as coercive is Grosskoph's alleged reference to lay-offs. Hence, Cunningham's contemporaneous notes (Union Exhibit 32) reveal quite clearly the context in which the problem of lay-offs was raised. Cunningham writes: "At end of harrangue re having to lay-off "good" teachers or unfairly have them wh [work] all nights, . . ." This statement and the credible testimony of Respondent's witnesses reveal that Grosskoph was concerned about avoiding the layoff of instructors as well as spreading the night work evenly among all the instructors. Here, Grosskoph merely made a statement of fact as to what would occur if the waivers were denied. There was no exaggeration or coercion involved. 4/ It is therefore concluded that Grosskoph's statements in this regard did not contain express or implied threats and thus no violation is found.

Domination and Interference with Administration of Union Within Meaning of Section 111.70(3)(a)2.

Section 111.70(3)(a)2 makes it a prohibited practice for Respondent:

"To initiate, create, dominate or interfer with the formation or administration of any labor or Employe organization or contribute financial support to it. . . ." The only words of this statement having relevance to this case are "dominate or interfer with the . . . administration" of the union.

Two Examiners of this Commission, with pro forma Commission affirmance 5/, have said domination contemplates "active involvement in creating or supporting a labor organization." In Unified School District No. 1 of Racine County, Wis. 15915-B (12/77), Charles D. Hoornstra, acting as Examiner, noted that the general rule under the NLRA requires such Employer control over the operation or formation of

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3/ WERC vs. City of Evansville 69 Wis 2d 140 at 155 (1962).

4/ City of Menasha 13196-A 3/77.

5/ Jt. School District No. 2 Richmond Elementary School 14691-A, B (6/76); School District of La Farge 16810-A (8/79).

the union as to constitute it a mere tool of the Employer, rather than the freely chosen representative of the Employes, and that actual rather than potential control must be shown. 6/

Under neither test could the Complainants here prevail. The Examiner finds that Grosskoph's statement that the instructors should become active and attempt to change the contract language was merely a spontaneous expression of opinion in response to a topic which the teachers had raised. Indeed, Grosskoph was merely repeating the advice that the local union president had offered her when she inquired what the instructors could do to resolve the scheduling problems.

Likewise, the union failed to prove interference with the administration of the union as contemplated by Section 111.70(3)(a)2. In Hoornstra's decision supra., he offers a noteworthy summary of the application of similar language under the NLRA. Basically, it appears that interference with the administration of the union differs from domination only in the degree of control. In each case, the offensive conduct threatens the independence of the union as an entity devoted to the Employes' interests as opposed to the Employer's interest.

Given this interpretation of the nature of interference with the administration of a union, it is clear to the undersigned that Grosskoph did not take control over the local as an entity, as by the control of its officers or by-laws, etc. Nor is there evidence that Respondent asserted such control as to impair Complainants independence as the Employes' chosen representative.

Allegations Conerning Respondent Allowing Instructors to Use Stationary and Personnel to Pressure the Local's Leaders.

The relevant facts relating to this allegation are cited in Findings of Fact #17. Applying the above analysis concerning interference with the administration of a union to the present facts, leads the Examiner to conclude that the allegations in this regard are without merit.

Allegations Concerning Discriminatory Treatment of Cunningham's Requests For Substitutes While Attending Union Business.

The relevant facts relating to this allegation are contained in Findings of Facts #15 and #16. Applying the standards of proof regarding Section 111.70(3)(a)1 and 3 to the instant facts, requires a finding in favor of the Respondent. When Grosskoph refused to allow the substitute selected by Cunningham, Grosskoph had a legitimate reason (Employer Exhibit 17, 18, 19, 20, 21) Moreover, on every occasion Grosskoph attempted to assist Cunningham in locating a substitute who was familiar with the students and free from other duties.

As to Cunningham's use of preparation time, the record substantiates that on one occasion, Grosskoph's secretary wrote down Cunningham's explanation of her whereabouts but did not do so for other instructors who were leaving at the same time. However, the record reveals that Grosskoph had a policy that the secretary was to record the location of instructors so she could respond to inquiries intelligently. Although the secretary testified that she could not remember the occasion

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6/ Hoornstra at footnote 5 of Decision No. 15915-B cited the following decisions: See Hertzka & Knowles v. NLRB (9th Cir. 1974), 503 F.2d 625, 87 LRRM 2503, 2507; Duquesne University (1972), 198 NLRB No. 117, 81 LRRM 1091; Chicago Rawhide Mfg. Co. v. NLRB (7th Cir. 1955), 221 F. 2d 165, 35 LRRM 2665; and Coamo Knitting Mills, Inc. (1964), 150 NLRB No. 35, 58 LRRM 1116, 1117.

referred to by Cunningham, the secretary did state that she wrote down Cunningham's itinary when it was lengthy or complicated. Such conduct fails to amount to a statutory violation as contended by the union.

In summary, none of the Respondent's actions, taken together or independently, warrant a finding of a prohibited practice. The Complaint is therefore dismissed.

Dated at Madison, Wisconsin this 16th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Pieroni
Stephen Pieroni, Examiner