STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION,	:	
Complainant,	:	Case LXXII No. 30477 MP-1390
vs.	:	Decision No. 20736-A
RACINE UNIFIED SCHOOL DISTRICT,	:	
Respondent.	:	

Appearances:
Schwartz, Weber & Tofte, Attorneys at Law, by Robert Weber, for the Complainant Racine Education Association.
Frank Johnson, Director of Employee Relations, for Respondent Racine Unified School District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant, Racine Education Association, hereinafter Association or REA, having, on October 8, 1982, filed a complaint with the Wisconsin Employment Relations Commission, hereinafter Commission, wherein the REA alleged that Respondent, Racine Unified School District, hereinafter District, had committed unfair labor practices within the meaning of Sections 111.70(2) and 111.70(3)(a)(1) of the Municipal Employment Relations Act (MERA); and the District having, on June 27, 1983, filed an answer, wherein it denied that it committed any prohibited practices; and the Commission having appointed David E. Shaw, a member of its staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been held at Racine, Wisconsin on September 29, 1983; 1/ and the parties having filed post-hearing briefs herein by November 8, 1983; and the Examiner, having considered the evidence and the arguments of the parties and being fully advised of the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Association is a labor organization and is the certified 2/ exclusive collective bargaining representative for all regular full-time and regular part-time certified teaching personnel employed by the Racine Unified School District; and that the Association's principal address is 701 Grand Avenue, Racine, Wisconsin 53404.

2. That at all times material herein, James Ennis has been employed by the Association as its Executive Director, and has been chief negotiator on behalf of the Association concerning the employes in the collective bargaining unit described above in Finding No. 1; and that at no time material herein has Ennis been employed by the District.

3. That the District is a municipal employer and has its principal offices at 2220 Northwestern Avenue, Racine, Wisconsin 53403; and that at all times material herein, William Kumm was the President of the Board of Education of Racine Unified School District.

1/ The parties and the Commission engaged in extensive efforts to resolve this dispute, but were unsuccessful. It was also necessary to twice postpone and reschedule the hearing at the request of the Complainant.

2/ Decision No. 70531 (WERC, 4/65).

4. That the Association and the District have been parties to successive collective bargaining agreements covering wages, hours and working conditions of the employes in the unit described above in Finding No. 1; that the most recent agreement between the parties expired on August 24, 1979; that commencing in January, 1982, the parties met approximately ten times in an effort to negotiate a successor collective bargaining agreement; that until after September 28, 1982, all contract negotiation sessions between the parties were held at the District's offices at 2220 Northwestern Avenue, Racine, Wisconsin; that, although the Association had on numerous occasions prior to September 28, 1982 requested that the parties hold negotiations at a neutral site outside the District's offices and that Board of Education members be present at negotiations, offering on these occasions to pay one-half the cost of neutral meeting facilities, the District refused those requests; that the parties' efforts to reach agreement were unsuccessful, and on August 27, 1982, the REA filed a petition for mediation-arbitration in Case LXVIII, No. 30300, MED/ARB-1886; that thereafter the Commission assigned a member of its staff to mediate and investigate the parties' contractual disputes; that, by letter dated September 8, 1982, the Investigator scheduled investigation/mediation sessions with the parties at the District's principal offices for, inter alia, September 28, 1982; that by letter dated September 23, 1982, Ennis requested that the District confirm the REA's contention that the Board of Education had refused to attend the September 28, 1982 meeting; that by letter dated September 23, 1982, Frank L. Johnson, Director of Employe Relations for the District, responded that he (Johnson) was the designated representative of the Board of Education, that he would bargain on behalf of the District on and after September 28, 1982, and that he denied the REA's renewed requests to meet at a neutral location and to split the cost of such meeting facilities on the ground that facilities at the District's principal offices were available for the parties' meetings; and that prior to September 28, 1982, Johnson informed Ennis that no Board members would be present at the meeting on that date.

5. That the District maintained two parking lots for employes and visitors of the District; that one such lot is a paved lot, located immediately adjacent to and parallel with a wall of the District's office building at 2220 Northwestern Avenue; that the other parking lot is a gravel lot located across a private roadway from the District's office building, and the spaces in this gravel lot are from one-half to one city block's distance from the main entrance to the District's principal offices; that there is also parking on the street in front of the District's offices; that the parking spaces which are closest to the main entrance of the District's offices are positioned along a wall of the building and are, in order of closeness to the main entrance, one space posted and reserved for the handicapped, and two spaces posted and reserved for members of the Board of Education; that approximately one half of the other spaces along this wall of the building are restricted to five-minute parking, while the remainder along this wall are unrestricted spaces; and that immediately in front of the main entrance to the District's offices and immediately adjacent to the handicapped space is a bike rack, and this area is also a posted loading and unloading zone.

6. That approximately four years ago, the District established and posted as reserved the above-described two parking spaces for Board of Education members; that the signs currently posted on the wall of the District's office building in front of these two Board members' parking spaces state that these spaces are reserved for Board members and that unauthorized vehicles will be ticketed and towed at the owner's expense; that the District's parking lots are not regularly patrolled by the police for parking violations; that an agent of the District must call the Racine Police Department to request that a vehicle the District believes is illegally parked be ticketed, and a District agent must also call a towing service and arrange for a ticketed vehicle to be towed away; and that Sec. 346.55(4), Stats., provides as follows:

> Owners or lessees of public or private property may permit parking by certain persons and limit, restrict, or prohibit parking as to other persons if the owner or lessee posts a sign on the property indicating for whom parking is permitted, limited, restricted or prohibited. No person may leave or park any motor vehicle on public or private property contrary to a sign posted thereon.

7. That it is the District's normal practice to attempt to personally notify and/or to page persons who have parked in the spaces reserved for Board members without permission, giving those persons an opportunity to move their vehicles before those vehicles are ticketed or towed away; that, except for the incident of September 28, 1982 involving Mr. Ennis, no one who has parked illegally in the District's lots has had his/her car ticketed; that, since September 28, 1982, the District's agents have placed three calls to the Racine Police Department to request that illegally parked vehicles be ticketed, but there is no evidence that they placed any such calls prior to September 28, 1982; that Ennis' REA vehicle is the only one which has ever been ticketed; that approximately six years ago, a vehicle which had been abandoned on the street and thereafter parked in a District lot to facilitate snow removal on the street, was towed away from the District's lot; that this car was not towed away until approximately two weeks after the police had called the owner and requested him to remove his car; and that prior to September 28, 1982, no Board member had ever asked District agents to have a car ticketed and/or towed away.

8. That on September 28, 1982, James Ennis arrived at the District's offices, along with several members of the REA bargaining team, in a car owned by the REA; that on this day Ennis had a total of between 150 and 185 pounds of computer equipment, briefcases, and boxes filled with bargaining materials; that on said date, Ennis turned into the driveway leading from Northwestern Avenue into the parking lot closest to the District's main entrance and, seeing that there were no unrestricted parking spaces available in this lot, parked the REA car in one of the two parking spots reserved for Board members; that Ennis and his passengers then unloaded most of the equipment and materials and took same into the Board room where the mediation session was scheduled; that it took Ennis and the REA team approximately five to ten minutes to unload the car; that Ennis did not check the gravel parking lot for available spaces before he parked the REA car; that on September 28, 1982, Ennis saw the sign posted on the side of the building at the front of the space and was fully aware of the restrictions on the space where he parked, and that Ennis was aware that the District maintained a loading zone next to the main entrance to the building.

9. That after placing the REA bargaining team's material and computer equipment in the Board room at the District's offices on the morning of September 28, 1982, Ennis went to Ruth Miller, the secretary to Frank Johnson and informed her that he had parked his car in a Board member's spot; that Miller then went to Johnson's office and informed him as to what Ennis had told her; that approximately twenty to thirty minutes after Miller talked to Johnson regarding what Ennis had said, Board President William Kumm arrived at the District's offices and complained to Marge Kern, the secretary to the District's Superintendent of Schools, that an unauthorized vehicle was parked in a Board member's space; that at that time Miller, whose office is across from Kern's, told Kumm the same thing she had told Johnson regarding what Ennis had said to her earlier that morning; that Kumm then directed Miller to pass a note to Johnson in the mediation session, asking Johnson if having Ennis' car ticketed and towed away would be a detriment to the mediation; that the Board room in which the mediation session was being held does not contain a loudspeaker for a public address system; that Kumm was the only Board member present during the day at the District's offices on September 28, 1982, and that he was there on Board business unrelated to the mediation session; that shortly after Kumm's conversation with Miller, he directed the District's Director of Buildings and Grounds, David Bidstrup, to have Ennis' car ticketed and towed away; that after receiving Kumm's instructions on the morning of September 28, 1982, Bidstrup called the Racine Police Department and requested that Ennis' car be ticketed, and also called Mac's Towing Service to have Ennis' car towed away; that shortly thereafter a Racine police officer arrived and ticketed Ennis' car for parking illegally on private property; that Ennis and members of the REA bargaining team then left the parties' mediation session to go to lunch, discovered the parking ticket on Ennis' car, and left for lunch; that except for two briefcases of confidential bargaining material they placed in Ennis' car, Ennis and the REA bargaining team left their equipment and materials in the Board room; that Mac's Towing Service arived shortly after Ennis had left; and that at no time on September 28, 1982 did Kumm or any employe or agent of the District attempt to contact Ennis in any manner to request that he move his car from the Board member parking space, or to advise him that the car would be ticketed and towed away if it were not moved.

10. That after lunch on September 28, 1982, Ennis and the REA bargaining team returned to the District's offices and Ennis again parked in a space near the main entrance to the offices and reserved for Board members; that before parking Ennis looked and saw no other vacant parking spaces in the lot closest to the building, but that he did not check to see if there were any parking spaces open in the gravel parking lot; that when Ennis parked the Association's car after lunch, he parked between the two spaces reserved for Board members so that the car was partially in both spaces; and that upon parking the car after lunch, Ennis and the REA bargaining team unloaded the car and returned to the mediation session in the District's Board room.

11. That upon returning from his lunch, Board President Kumm found Ennis' car parked so as to straddle both spaces in the District's parking lot reserved for Board members; that thereafter Kumm again notified Bidstrup and told him to have Ennis' car ticketed and towed away; that Bidstrup then called the Racine Police Department and requested that the car be ticketed, and also contacted Mac's Towing Service to have Ennis' car towed away; that shortly thereafter, a Racine police officer responded to Bidstrup's complaint and ticketed Ennis' car; that after Ennis' car had been ticketed in the afternoon of September 28, 1982, a representative of Mac's Towing Service arrived and towed away Ennis' car; that at no time in the afternoon of September 28, 1982 did Bidstrup or any other agent of the District attempt to contact Ennis about moving his car; that sometime between Ennis' returning from lunch on September 18, 1982 and his car being towed away, the District's Supervisor of Operations, Todd Munson, took a picture of Ennis' car parked so as to straddle both of the spaces reserved for Board members; that no one directed Munson to take the picture of Ennis' car and that this was the only instance in which Munson has taken a picture of a car parked illegally in the District's parking lots; and that on one occasion prior to September 28, 1982, Ennis had parked in a parking space in the District's offices reserved for Board members and had moved his car from that space at Kumm's request.

12. That late in the afternoon of September 28, 1982, Johnson, Ennis, and the Mediator from the Commission had a discussion regarding whether they would continue the mediation session into the evening hours; that during that discussion Johnson mentioned for the first time that the rooms at the District's offices would not be available that evening due to another meeting having been scheduled there; that it was during that discussion that Ennis first learned that the mediation session would have to be moved if it was to continue that evening; that the parties subsequently agreed to move the mediation session to Geise School for that evening; that Geise School is located approximately four miles from the District's central offices; that at approximately 5:15 p.m. on September 28, 1982, Ennis and the REA bargaining team packed up their computer equipment and bargaining materials to move to Geise School; that upon leaving the District's offices at that time Ennis discovered that his car was missing and he was informed that it had been towed away; that a member of the REA bargaining team had a car parked in the back side of the parking lot, and Ennis and the team loaded that car with their equipment and materials and went to find Ennis' car; that Ennis was able to find his car at Mac's Towing Service, but was unable to retrieve the car that evening; that although Ennis was unable to retrieve his car, and his personal bargaining notes in the car, the mediation session continued into the evening of September 28, 1982 at Geise School; that Ennis was able to recover his car from Mac's Towing Service at approximately 11:00 a.m. on September 29, 1983 by paying the towing fee of $31.50; that the parties met again on September 29, 1982 at the District's offices for a mediation session; that on that date, Ennis parked in a "five minute" parking space at the District's offices for approximately ten to twelve hours and the car was not ticketed; and that thereafter the parties met on numerous occasions in mediation until a petition for a declaratory ruling was filed in June of 1983.

13. That Ennis twice illegally parked his car at the District's offices on September 28, 1982 with full knowledge that he had parked illegally and that a loading zone existed next to the District's offices for the purpose of loading and unloading; and that after September 28, 1982, the Union offered to pay the full cost of meeting facilities at a neutral site for the parties' mediation and did pay the cost incurred; and that the parties' meetings after September 28, 1982 were held slightly more than half of the time at neutral sites, and slightly less than half the time at the District's facilities.

Based upon the above findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That James Ennis is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. That pursuant to Sec. 346.55(4), Stats., it is unlawful to park a motor vehicle on public or private property contrary to a sign posted thereon.

3. That the actions of the Respondent, Racine Unified School District, or its agents or officers, on September 28, 1982 in having the car driven by James Ennis ticketed and towed away during a mediation session involving the District and the Racine Education Association, after Ennis had parked the car in a space reserved for members of the District's Board of Education, did not interfere with, restrain, or coerce the District's employes represented by the Association in the exercise of their rights guaranteed in Sec. 111.70(2), Stats., and, therefore, did not violate Section 111.70(3)(a)1, or any other section, of the Municipal Employment Relations Act.

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

ORDER

That the complaint be, and the same hereby is, dismissed. 3/

Dated at Madison, Wisconsin this 18th day of July, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

David E. Shaw, Examiner

3/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

CONTENTIONS OF THE PARTIES:

District

The District contends that Ennis "deliberately" parked the REA vehicle illegally "to provoke the District in retaliation for its refusal to participate in" (and pay one-half the cost of) mediation sessions at a hotel rather than at District's facilities. Although the District concedes that Ennis and all of the REA representatives present were engaged in statutorily protected bargaining activities on September 28, 1982, it asserts that Ennis broke Wisconsin law (Sec. 346.55, Stats.) by parking illegally. Thus, the District argues that it should be able to enforce state law on its property at all times and as to all violators, even as to those, such as Ennis, who are otherwise engaged in protected activities. The District also contends that the REA has failed to sustain its burden of proof to show that the District's actions tended to interfere with, restrain and/or coerce bargaining unit employes in the excercise of their MERA rights, citing Milwaukee Teachers Education Association, 16231-E (10/81); City of La Crosse, 17076-A and 17084-B (7/81).

Association

The REA contends that its allegations that the District violated Section 111.70(3)(a)(1), raise issues identical to those raised before the National Labor Relations Board in Section 8(a)(1) cases. Thus, the REA would have the Examiner analyze the instant case in the same manner that the Labor Board analyzes a case wherein Charging Party has claimed that employes were interfered with, restrained or coerced in the exercise of their rights under the National Labor Relations Act.

In keeping with the above approach, the REA makes the following arguments. First, the Association asserts that its bargaining representatives were engaged in protected activities and that the District had knowledge of those activities. The REA contends that Ennis' requests that mediation be held at a neutral site, with Board members present, and the activities of Ennis and the other REA representatives on September 28, 1982, were known to the District and its agents and were protected by MERA. (Citing Sec. 111.70(2), Stats.) The REA also asserts that this case is distinguishable from those cases involving organizational activity where a union's intrusion on an employer's property may legitimately be limited, since in this case the District insisted that the Association use the District's offices.

Second, the REA urges the application of the "reasonable expectation" test here; i.e., if the District's actions might reasonably be expected to chill unit employes in the exercise of their rights protected under MERA, then a violation of Sec. 111.70(3)(a)(1), Stats., has occurred. The REA asserts that the violation herein is not de minimus and contends that the District's actions in fact interfered with the exercise of protected rights in that: (1) the District refused to meet at a neutral site; (2) it scheduled the facilities at its office building for other activities on the evening of September 28, 1982, and caused Ennis' vehicle to be towed away, knowing that the REA would have to transport its equipment and materials to another facility; and (3) by having Ennis' REA vehicle towed away the District caused Ennis to be unable to retrieve the car, and certain documents left in it that he needed that night, until the next morning. In support of its contentions that such conduct constitutes interference, the REA cites several NLRB cases for the proposition that "(e)ven trivial harrassment has been the basis for Section 8(a)(1) charges brought by the General Counsel . . ."

Finally, the REA contends that the District lacked a legitimate business purpose for having Ennis' car ticketed and towed away. According to the REA, since the evidence indicates that the District has discriminatorily enforced its parking restrictions, such restrictions cannot stand as a defense to the complaint allegations, citing cases arising under the NLRA. Similarly, the Association argues that increased documentation and coincidental enforcement of rule violations in response to protected activites, such as is the case here, is evidence of improper motivation.

DISCUSSION

The Association alleges that the District violated Sec. 111.70(3)(a)1, Stats., by its actions in having James Ennis' car ticketed and towed away during a mediation session at the District's offices. Section 111.70(3)(a)1 makes it a prohibited practice for a municipal employer:

> To interfere with, restrain or coerce municipal employes in the exercice of their rights guaranteed in sub. (2).

Section 111.70(2), Stats., enumerates the "rights of municipal employes" and provides in relevant part:

> (2) Rights of Municipal Employes. Municipal employes shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employes shall have the right to refrain from any and all such activities except that employes may be required to pay dues in the manner provided in a fair-share agreement. . .

As can be seen, Secs. 111.70(2) and 111.70(3)(a)1, Stats., relate to rights of "municipal employes". That term is specifically defined in Sec. 111.70(1)(i), Stats.:

> (i) "Municipal employe" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe.

As stated in the Findings of Fact and the Conclusions of Law, Ennis is employed by the Association as its Executive Director and is not an employe of the District, and therefore, he is not a "municipal employe" within the meaning of Sec. 111.70(1)(i), Stats..

In order to prevail on its complaint of interference with employe rights, the Association must demonstrate, by a clear and satisfactory preponderance of the evidence, that the District's complained of conduct was likely to coerce or intimidate its employes in the exercise of their rights guaranteed by Sec. 111.70(2), Stats.. 4/ It is not necessary to show that the Respondent District intended its conduct to have the effect of interfering with those rights. 5/

The Association cites a number of NLRB cases in support of its position that the District's actions as to Ennis constitute interference. Of those cases, however, only Chalk Metal Co., 197 NLRB 1133 (1972), involved a non-employe of the respondent employer. Chalk Metal, supra, is, however, inapposite in this case. There, the allegations were that the employer had violated Secs. 8(a)(1), (3), and (5) of the NLRA and that an unfair labor practice strike had occurred, all in the context of an initial union organizing campaign. It was found that, under the circumstances, the employer had engaged in bad faith surface bargaining from the beginning of its relationship with the union as evidenced, in part, by its pre-election conduct. That pre-election conduct included the employer's act of knowingly refusing to allow the union representative to park in the employer's parking lot on the day of the representation election and threatening to call the police if the representative did not move his car. There was no separate finding made regarding that conduct. The conduct was instead considered to indicate that the employer bore animus toward the union and was used to establish that the employer bargained with the union with no intention of reaching an agreement. There was no determination that the employer's conduct in refusing to allow the union representative to park in its parking lot, by itself, constituted a separate violation of the NLRA.

4/ City of La Crosse, Decision No. 17076-B, 17084-C (WERC, 4/82).

5/ City of Evansville, Decision No. 9440-C (WERC, 3/71).

Similarly, the Commission cases cited by the Association also involved employes of the respondent employer. Although the CETA employes found to have had their rights interfered with in the decision in Winnebago County 6/ were not members of the bargaining unit, they were determined to be "municipal employes". In that case, however, the examiner found that, although no CETA employes had engaged in any protected concerted activities, they were aware of the causal connection between unit members' protected concerted activities in filing the unit clarification and their (the CETA employes') loss of employment. It was concluded that this "awareness" had a "reasonable tendency" to make CETA employes less likely to engage in protected concerted activities. 7/ Likewise, in Fennimore Community Schools 8/ cited by the Association, the individual found to have engaged in protected concerted activity and to have had her rights under Sec. 111.70(2), Stats., interfered with was an employe of the respondent school district and a "municipal employe". The examiner also found, however, that by retaliating against the individual for pursuing her grievance, the employer has also interfered with the union's right to engage in protected activity on behalf of its members, reasoning that the employes would necessarily be chilled in pursuing their right to file grievances. 9/

Where, as here, the conduct was engaged in by a bargaining unit representative who is not a "municipal employe" within the meaning of MERA, and the action of the employer that is complained of is against that individual and not one of its employes, the issue is whether the employer's action had a reasonable tendency to "interfere, restrain or coerce" the employes in the exercise of their rights under Sec. 111.70(2), Stats., to engage in collective bargaining with their employer through their chosen representative. For the following reasons it is concluded that, under the circumstances present in this case, the actions taken by the District against Ennis on September 28, 1982, did not have a reasonable tendency to interfere with the exercise of the rights of the District's employes under Sec. 111.70(2) of MERA.

First, it is Ennis' conduct in parking illegally, and not his conduct concerning bargaining, that forms the basis for the allegations in the instant complaint. 10/ It is noted in this regard that it was not a matter of Ennis' either parking in a Board member's space or parking far away and having to cart heavy materials and equipment for bargaining the full distance to the District's office building. The record indicates there is a loading/uinloading zone in front of the main entrance to the building. The materials and equipment could have been unloaded there and a proper parking space then found. Similarly, the reasons given by Ennis for parking in the Board space after lunch on September 28, 1982 are not convincing. Receiving a ticket for parking in the Board spaces in the morning put Ennis on notice that the parking restriction was being enforced, and did not constitute a valid basis for parking there again in the afternoon. Further, Ennis testified that he did not learn until late in the afternoon on that day that they would have to move from that building if they wanted to continue the mediation session into the evening. Hence, when he returned from lunch and again parked in a space reserved for Board members, he could not have foreseen the need to move the materials and equipment again shortly.

6/ Decision No. 16930-A (Davis, 8/79), aff'd pro forma, Decision No. 16930-B (WERC, 9/79), Order Denying Request to Dismiss, Decision No. 16930-D (WERC, 4/80).

7/ Ibid, Decision No. 16930-A, at pages 6-7.

8/ Decision No. 18811-A (Malamud, 1/83), aff'd pro forma, Decision No. 18811-B (WERC, 10/83).

9/ Ibid, at pages 16-17.

10/ The fact that the REA had requested to meet at a neutral site with Board of Education members present is irrelevant under the circumstances. Both parties had the right to designate who would represent them in bargaining and to refuse to incur additional costs by meeting at a motel or hotel.

It is also noted that, contrary to the Association's contention, the District had enforced the parking restrictions on the Board spaces prior to September 28, 1982 in that it had a practice of warning persons over the public address system that their car would be ticketed and towed away if they did not move it from the spaces reserved for Board members. Thus, it was the manner in which the Distsrict enforced the parking restriction relative to Ennis, rather than the enforcement itself, that differed in this case.

Secondly, Ennis' conduct in knowingly parking in a space reserved for Board members, contrary to the sign posted at the front of the space, was in violation of Sec. 346.55(a), Stats., and therefore, was unlawful both times. That the District did not accord Ennis the same courtesy as it had shown others, i.e., warn him to move his car or it would be ticketed and towed away, does not change the fact that his conduct was unlawful.

The Commission has previously held that unlawful conduct is not protected under MERA. In the context of determining whether the conduct engaged in by an employe was "protected" activity under Sec. 111.70(2), Stats., the Commission held in City of La Crosse: 12/

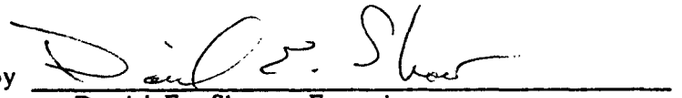
> "The MERA does not refer to protected activities. Section 111.70(2) of the MERA identifies certain rights of municipal employes which, broadly stated, are to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . . The rights thus identified are enforced by Secs. 111.70(3) and 111.70(4) of MERA. Protected activity is, then, a shorthand reference to those lawful and concerted acts identified and enforced by the MERA. Thus, acts which are not lawful or not concerted within the meaning of Sec. 111.70(2) of MERA are not protected." (At pages 4, 5; Emphasis added).

Thus, Ennis' conduct in parking illegally, even if engaged in by an employe in the bargaining unit, was not "protected" activity under MERA.

On the basis of the foregoing, it is concluded that the District's actions against Ennis in regard to his parking illegally did not have a reasonable tendency to interfere with, restrain or coerce the District's employes in the exercise of their rights under Sec. 111.70(2), Stats.

Dated at Madison, Wisconsin this 18th day of July, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
David E. Shaw, Examiner

11/ In his testimony, Ennis admitted that he was aware of the parking restrictions on the Board spaces and that he had seen the signs warning that violators would be ticketed and towed away. He also testified to having heard warnings given to other persons over the public address system for parking in the spaces reserved for Board members.

12/ Decision No. 17084-D (WERC, 10/83).