STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GERHARDT STEINKE, Complainant, vs. MILWAUKEE AREA VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT, and LOCAL 212, AMERICAN FEDERATION OF TEACHERS, Respondent.	Case 320 No. 43724 MP-2332 Decision No. 26459-F

Appearances:
Mr. Gerhardt Steinke, 4642 West Bernhard Place, Milwaukee, Wisconsin 53216, appearing for himself.
Shneidman, Myers, Dowling & Blumenfield, Attorneys at Law, P.O. Box 442, Milwau
Davis & Kuelthau, S.C., Attorneys at Law, Suite 1400, 111 East Kilbourn Avenue

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING COMPLAINT

On February 27, 1990, Complainant Gerhardt Steinke (hereafter, Complainant), filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, in which he alleged Local 212, American Federation of Teachers (hereafter, the Union or Respondent), and the Milwaukee Area Vocational, Technical and Adult Education District (hereafter, MATC or the Respondent), had committed prohibited practices within the meaning of the Municipal Employment Relations Act.

On May 10, 1990, the Commission consolidated the instant complaint with two other cases filed by Complainant against said Respondents, cases Nos. 315 and 324. Hearing was held on May 25, 1990. Additional hearing was held on September 11, 1990, at which time Complainant withdrew cases Nos. 315 and 324. On March 20, 1991, the Examiner issued an order which addressed procedural matters and clarified the complaint.

Additional hearing in the matter was held on September 6, 1991. A transcript was prepared and received October 10, 1991. The parties filed briefs and reply briefs, the last of which was received February 28, 1992. The Examiner, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Complainant Gerhardt Steinke is an individual whose mailing address is 4642 West Bernhard Place, Milwaukee, Wisconsin 53216.

2. Respondent Local 212, American Federation of Teachers, is a labor organization whose offices are at 703 West Juneau Avenue, Milwaukee, Wisconsin 53233.

3. Respondent Milwaukee Area Vocational, Technical and Adult Education District is a municipal employer whose offices are at 700 West State Street, Milwaukee, Wisconsin 53233.

4. On February 28, 1989 Complainant was employed by MATC as a teacher. On that date the following Settlement Agreement was executed by Complainant

and representatives of the Union and MATC:

AGREEMENT

BETWEEN

MILWAUKEE AREA TECHNICAL COLLEGE

AND

GERHARDT STEINKE AND AFT LOCAL 212

The following points represent the full terms and conditions by which the undersigned parties agree to resolve their dispute concerning the contract status of Gerhardt Steinke:

1. Gerhardt Steinke will immediately consult the Milwaukee Area Technical College Employee Assistance Program (EAP) or any other licensed physician's assistance in addressing personal problems and conditions which may be affecting his effectiveness as an employee.

2. Gerhardt Steinke will leave all classroom instructional assignments by March 3, 1989. Gerhardt Steinke may, at his discretion, advise his students that he is leaving his instructional assignment for purposes of assuming a special assignment with the District.

3. On March 6, 1989, Gerhardt Steinke will assume a special assignment project designed, directed and supervised by Tony Baez, Acting Dean of General Education. It is understood that Gerhardt Steinke can be relieved from the special assignment if it is verified that Gerhardt Steinke is proceeding in his special assignment in a non-productive manner or creates an adverse academic environment such that students and/or faculty are negatively affected by his behavior or efforts in producing the special assignment requirements. If such verification is established, Gerhardt Steinke will be recognized as immediately relieved of his special assignment and placed on medical leave of absence.

4. Effective May 22, 1989, Gerhardt will be recognized as going on

medical leave of absence.

5. For the 1989-90 academic year, Gerhardt will remain on medical leave of absence and at his option will receive sick leave pay or long-term disability benefits if eligible.

6. Milwaukee Area Technical College will agree to maintain an employment relationship with Gerhardt Steinke and provide a renewal of his 1989-90 and 1990-91 employment contract. The district reserves the right to establish Gerhardt Steinke's instructional assignment for the 1990-91 academic year.

7. Gerhardt Steinke agrees to retire at age 60 and will be eligible for the full faculty early retirement benefits as provided under Article VII, Section 4 -- Early Retirement. Further, Gerhardt Steinke agrees to give active consideration to any new legislative program which will provide full Wisconsin Retirement System benefits to Milwaukee Area Technical College employees prior to reaching the age 60.

8. If upon Gerhardt Steinke's return to active employment, Gerhardt Steinke begins to demonstrate what the District perceives as previously observed instructional deficiencies, the District reserves its right to initiate non-renewal proceedings of Gerhardt Steinke's contract for the subsequent academic year. Gerhardt Steinke and AFT Local 212 reserve the right to challenge any such proceeding.

9. If Gerhardt Steinke, while on medical leave, exhausts his sick leave balance, or the balance is reduced to such an extent such that Gerhardt Steinke has a reduced retirement sick leave pay-out, the District will pay the maximum 30-day sick leave retirement benefit regardless of Gerhardt Steinke's sick leave balance at the time of retirement.

10. Through a licensed physician or Employment Assistance Program account/coordinator, Gerhardt

Steinke will provide the District with notice that a treatment program has been established with which Gerhardt Steinke has acknowledged a full willingness to comply. In addition, periodic notices will be provided to the District by the licensed physician or EAP representatives, as they determine necessary, indicating to the District that Gerhardt Steinke is continuing to follow the prescribed program as provided by that licensed physician or the EAP. Gerhardt Steinke will agree to execute if necessary, a waiver of confidentiality allowing employer notification in order to insure compliance to this section.

11. Failure of Gerhardt to comply with Point 10 waives the District's obligation to commit to a continuance of Gerhardt Steinke's employment with Milwaukee Area Technical College for the 1990-91 contract, and Gerhardt Steinke will be considered as having resigned his employment from Milwaukee Area Technical College.

12. The District reserves its right to pursue employment action based upon just cause should it be verified that Gerhardt Steinke has conducted fraudulent or illegal activity through his employment during the 1987-88 or 1988-89 academic year.

13. This agreement shall not serve as an admission of culpability by Gerhardt Steinke or AFT Local 212.

14. This agreement is entered into willingly and without duress by all the undersigned parties. No other terms, conditions, or promises have been made or are recognized which are not specifically referenced in the above points.

Gerhardt Steinke /s/ Gerhardt Steinke	Paul Vance /s/ Paul Vance
Frank Shansky /s/ Frank Shansky	Tony Baez /s/ Tony Baez
William K. Thomas /s/ William K. Thomas	2-28-89 Date

Robert Jakubiak /s/
Robert Jakubiak

5. Complainant sent Local 212 Director of Labor Relations Frank Shansky a letter dated July 9, 1989. Among other things, the letter asked the following questions regarding the creation and basis of the Settlement Agreement.

> Regarding the individual "AGREEMENT" that I signed 28 February 1989 I would like you to furnish me within five days the following:
>
> 1. Who wrote the copy?
>
> 2. What excuse is used to claim that I need medical leave?
>
> 3. What am I alleged to have done that is wrong?
>
> 4. Who specifically makes these allegations - if any?

In a letter to Complainant dated July 18, 1989, Shansky enclosed documents he believed to be part of the bases of the creation of the Settlement Agreement, and made the following responses to Complainant's questions:

> This memorandum is written in response to the memo you sent me asking for information. I hope the following information will be helpful.
>
> 1) The "copy" you refer to originated from Paul Vance's office at MATC. It was revised subject to discussion with Union representatives and yourself.
>
> 2) In regard to this issue, I cannot speak for the employer. From the Union's perspective, the medical leave served as a basis for you to utilize your sick leave and thus receive full income during the leave of absence.
>
> 3) Again, I can't speak for the employer, but I have enclosed some correspondence this office has received from the employer which may help you in this matter. The material is attached.
>
> 4) Please refer to No. 3 above and attached documents.

6. After the exchange of letters referenced in Finding of Fact 5, in July, 1989, Shansky and Union Grievance Chair Robert Jakubiak met with Complainant at which time Complainant asked about the possibility of overturning the Settlement Agreement and Shansky advised Complainant that if the Agreement were nullified he might be non-renewed for the 1990-91 school year. Having heard this advice, Complainant did not request that the Agreement be overturned.

7. Complainant sent the following letter dated November 12, 1989.

Local 212
Frank Shansky
Bill Thomas
Bob Jakubiak
Tim Hawks

Please see attached two letters from Paul Vance wherein he requests an answer by Friday 17 November 1989. I would appreciate any suggestions that you have that would contribute to my response. I will be back home on Thursday 16 November 1989. Under the circumstances it would be best that your suggestion(s) be **in writing.** You may respond by mail or via my MATC mail box - whichever proves most convenient. Please note that my supposed "condition" has not changed since last spring. In other words there is no defined physical or mental "problem" that lends itself to a "treatment plan". Repeated requests directed to all parties concerned have been ignored. It's a rather obvious attempt to stigmatize me.

1. From a legal viewpoint what letter should be generated by myself?

2. What wording should letters from "licensed physicians" take?

Please get back to me with a short written response before next Thursday.

Shansky, in a letter dated November 17, 1989 made the following response:

I am in receipt of your memo dated Nov. 12, 1989. I received the letter late in the afternoon of Nov. 15, 1989.

I have spoken to you on three occasions since you received Mr. Vance's letter, and I offered my suggestions to you concerning your response. I will repeat them in writing.

I suggest you answer Mr. Vance's letter, in a timely manner, as was requested. You should include in that letter the name of your physician, or a letter from the physician, stating the pertinent facts. Those facts might include the physician stating that you are following the advice he/she has given you, if any, or that there is no medical need for an ongoing program.

I hope this will be of some help to you.

8. Shansky sent Complainant a letter dated December 6, 1989. The letter opened as follows:

I am in receipt of your Nov. 24, 1989 memo requesting materials by Monday, Dec. 4, 1989, or reasons why the materials can't be sent by that date. I received your letter at my home on Saturday Dec. 2, 1989. As a result, it was impossible to act on any of the requests in the time allowed. I offer the following for each of

your requests.

Thereafter followed six numbered paragraphs on questions only generally related to the Settlement Agreement. The letter concluded with the following:

. . .

7. I am not sure what unanswered questions you have.

Furthermore, I would suggest that you let me know, in writing, all questions you have that you feel have been unanswered by Local 212.

In regard to the issue of fair representation, I am not aware of any conflicts of interest in representing you. I would suggest you let Local 212 know immediately what rights of yours have been infringed upon and what conflict exists.

Lastly, I would like to reiterate a point I have made to you on several occasions, including on two occasions in the last three weeks. The District has requested information pursuant to Point No. 10 of the Feb. 28, 1989 agreement between MATC, Local 212 and yourself. In that agreement you agreed to provide information from your physician or the EAP. You are under obligation to fulfill that request, or MATC may move to discontinue your employment. I strongly urge you to follow that agreement and have your physician indicate what prescribed programs you are under, or that he/she deems it unnecessary for you to follow any program. Should you have questions regarding your obligations under the agreement, please let me know immediately so that we can discuss it further.

I hope this letter will be of help to you.

9. In duplicate letters dated January 26 and February 3, 1990 and received by Shansky on February 5, 1989, Complainant asked questions regarding the time spent by various Union officials on his case. The letter also stated Complainant's position regarding various physicians and psychologists and Complainant's belief as to the origin of his employment problems. The letter concluded with the following:

Under the circumstances, I consider the forced early retirement agreement to have been obtained under fraud and duress and therefore **unenforceable.** Assuming argumento, that no fraud or duress was involved. Further assume, argumento, that this "Agreement" is consistent with the Local 212 contract, the Local 212 Constitution, the WFT Constitution, the AFT Constitution and the Constitution of the United States. **A problem remain (sic) as to what the words mean in the contract. The "Agreement" language is less than clear. The words used in the "Agreement" need working practical do-able and clear operational definitions intelligible to a person of normal intelligence and understanding. You as a signatory have a duty to define vague terms.** No such good faith definitions

have come from **any** of the signatories. Vance has ignored five certified letters on this subject. In a brief telephone talk he alleged that he "forwards all such inquiries to the Union" and that I should "see my Union representatives for an explanation" **Is this really true?** For the record, **Three** different attorneys examining my forced early retirement "Agreement" tell me words to the effect that the contract language **and** the subsequent response (if one can call it that) on the part of those in Local 212 having a duty to fairly represent me smacks of a **"wink and a nod, under the table understanding between Union and management".** Consider this letter an opportunity to **set the record straight if these allegations are groundless.** I am respectfully directing my inquiries as in this letter to Frank **Shansky**, William **Thomas**, Robert **Jakubiak** and Timothy **Hawks**.

7. Is Dr. Michael Lynch, M.D. to be considered as a licensed physician?

8. **How many licensed physicians must I consult?**

9. Am I assumed crazy or impaired for duty unless I prove otherwise?

10. What does "personal problems and conditions" mean? My file is clean. **Why has the Union ignored my inquiries** on "hidden secret files"?

11. What is meant by "effectiveness as an employee"? **Definition please. Does this mean anything that MATC wants it to mean? <u>Your</u> position?**

12. It (sic) item 1 to be interpreted as my being **forced** to see a psychiatrist? If I choose experimentally to see a psychiatrist **is this really relevant?**

REFER TO FORCED EARLY RETIREMENT AGREEMENT ITEMS 2 and 3.

13. I considered my **special assignment** to be a **temporary promotion** in that **high level computer-related skills were required.** See my summary report and recommendations that I arrive at after **intensive research.** Is there a hidden agenda on my special assignment? Is there more to the special assignment than meets the eye? Less? **<u>What is the Union's position</u> on the meaning of my special assignment?** Do you consider it a demotion? Do you consider my special assignment to be a **promotion?** Do you consider the special assignment to be **a failed attempt to stigmatize me?** Interview any of the approximately 20 people at the community-based organizations that I visited and consulted with respect to computer hardware and software any (sic) you will learn, with all modesty, that my suggestions and proposals were **very well received.** At the conclusion of the special assignment,

Tony Baez thanked me in writing and indicated that he would try to implement the basics of what I suggested in my formal analysis and report. **Please advise.**

14. **What is the intent of the stigmatizing language** evident in the body of the paragraph such as "non-productive manner". Please advise.

The ignoring or evading of my specific and focused questions directed to Frank Shansky, Bill Thomas, Bob Jakubiak and Tim Hawks is a serious matter. The preceding 14 questions are <u>not</u> new. Your prompt and considered response to the preceding fourteen questions will help lift the perceived cloud of doubt that hovers over your respective roles in the forced early retirement agreement obtained under fraud and duress and will indicate good faith. Consistent with your duty of fair representation please act now, without further delay, to honor my right to fair representation.

Shansky sent Complainant a letter dated February 16, 1989 including, among other things, the following response:

. . .

7. My assumption is yes, he is a physician.

8. The agreement does not call for seeing a specific number of physicians.

9. I don't understand the question.

10. The Union has not ignored any of your requests. I don't know what "hidden secret files" you are referring to. Local 212 has no "hidden secret files."

11. The terms you refer to imply the District's concern is your ability to perform your teaching duties.

12. Item 1 does not refer to any particular type of physician.

13. I know of no hidden agenda on the special assignment you refer to or any hidden meaning in the special assignment.

14. I cannot answer for the District as to its intent.

10. Complainant sent Paul Vance a letter dated July 8, 1989, the body of which read as follows:

Re: "Agreement" dated 28 February 1989.

Within five days I would like answers to the following:

0. In your estimation what problem exists that you

consider "medical"?

1. What is the "dispute" referred to? Is "sign this - or get fired" the dispute?

2. If I have done something wrong, what is it? Who are my accusers?

3. What is your working definition of "instructional effectiveness"? How is the "instructional effectiveness" measured for the overwhelming majority of instructors who are not evaluated? I see nothing in my file that is identified as an evaluation for the last three years in my personnel file. Prior to that, the so-called "evaluations" by Krall and colleagues have low credibility and validity. To what degree does measureable (sic) and observable student outcome play?

4. Could you provide me with a list of persons who have received our February "agreement" that I supposedly signed "without duress". It is pretty obvious that Vic Langer was extremely familiar with this so-called "agreement". Dr. Slicker referred to this in letters to prominent legislators. Who else has a copy?

11. Complainant sent Vance a letter dated July 17, 1989, the body of which reads as follows:

> Well over a week ago I asked you for a response to the following questions regarding individual "Agreement" signed under threat on 28 February 1989.
>
> If you know the answers to these questions please respond. If you do not know the answers to any of the questions please indicate that you do not know and identify those who would be in a position to know.
>
> 1. Who wrote the copy?
>
> 2. What is the alleged "medical problem" referred to that would indicate that a medical leave is appropriate? Details please.
>
> 3. What am I alleged to have done that is wrong? Please specify the names, dates, and places upon which such allegations are based. What is the intent of the collection of words that in effect impugns my personal integrity? Who accuses me of what?
>
> 4. Rus Slicker and Vic Langer apparently have the "agreement". Did they prepare the copy? Do others have copies of the "agreement". Please send me a list of those who have been furnished with copies.
>
> 5. For the record **I have a right to know** if Vic

> Langer acted alone **or** with your understanding when he ordered my name purged from the MATC directory. Do (sic) know of any good reason why he would do this on his own? To my knowledge this is the first time a name has been purged in MATC history. Was Mr. Langer just carrying out orders?
>
> **Please respond within three days to the above five inquiries.**

12. Complainant sent Vance a letter dated September 5, 1989, which incorporated the letter set forth in Finding 10, above, preceded by the following opening:

> Your letter to Dr. Winston refers to "job performance problems". Would you please summarize in writing within five days **what you mean by this?** Are these words chosen to further stigmatize me? I have a right to know who is accusing me of what so that I many (sic) have an opportunity to respond. It is unfair and unethical for you and other highly placed officials of MATC to place in motion actions that are clearly stigmatizing and that serve only to impugn my character. As a matter of record I do not recognize the credibility or applicability of Krall's so-called "remediation plan". **He is legally accountable for this kafkian effort.**
>
> On a closely related matter I have not received a response to my certified letter to you dated Saturday 8 July 1989. That is sixty days ago. Why the extreme delay? Why no response from either you or Dr. Slicker? Am I to expect an endless vicious pattern whereby you and other high MATC officials feel free to smear my good name?
>
> **REPEAT DEMAND FOR A EXPLANATORY RESPONSE OF SIXTY DAYS AGO.**

13. After receiving the letter noted in Finding 12, in a face-to-face encounter, Vance told Complainant that he should consult with his Union representative to receive answers to his questions.

14. By letter dated November 2, 1989, Vance asked Complainant to supply confirmation of his participation in a treatment program pursuant to the terms of the Settlement Agreement.

15. By letter dated November 17, 1989 Complainant stated the name and address of this primary care physician and included the following statement:

> You will recall my certified letters of inquiry delivered to you several months ago. **I'm disappointed in not hearing from you with a timely response.**
>
> Please answer my letter from last summer before 28 November 1989.

16. In a letter dated December 14, 1989 Vance repeated his request for confirmation of compliance with a treatment program.

17. The Union responded to Complainant's inquiries regarding the Settlement Agreement in a manner that was reasonable, responsible and in good faith.

18. MATC's limited responses to Complainant's inquiries regarding the Settlement Agreement did not interfere with Complainant's exercise of his rights protected by the Municipal Employment Relations Act.

19. MATC's limited responses to Complainant's inquiries regarding the Settlement Agreement did not threaten the independence of the Union.

Upon the basis of the above and foregoing Findings of Fact, the Examiner issues the following

CONCLUSIONS OF LAW

1. The Union, by its responses to Complainant's inquiries regarding the Settlement Agreement, after the signing of said Agreement, did not violate Sec. 111.70(3)(b)1, Stats.

2. The District, by its limited responses to Complainant's inquiries regarding the Settlement Agreement, after the signing of said Agreement, did not violate Sec. 111.70(3)(a)1, Stats.

3. The District, by its limited responses to Complainant's inquiries regarding the Settlement Agreement, after the signing of said Agreement, did not violate Sec. 111.70(3)(a)2, Stats.

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

ORDER 2/

1/ 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

1. It is ordered that the complaint as regards the Union be dismissed.

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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.

2. It is ordered that the complaint as regards the District be dismissed.

Dated at Madison, Wisconsin this 13th day of May, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/
Jane B. Buffett, Examiner

MILWAUKEE AREA VOCATIONAL, TECHNICAL
AND ADULT EDUCATION DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINT

BACKGROUND

On February 28, 1989 Complainant was a teacher employed by MATC. On that day a Settlement Agreement was executed by Complainant, the Union and MATC. The Agreement provided that Complainant would discontinue his classroom assignments and have a special assignment for the remainder of the semester. It provided that he could have a medical leave of absence during the 1989-90 academic year. On February 27, 1990 Complainant filed a complaint with the Wisconsin Employment Relations Commission. 3/

The exact nature of the unlawful conduct being alleged by complainant was unclear in the original complaint. In an attempt to clarify said complaint, extensive hearing was held on September 11, 1990. Subsequently, on March 20, 1991 the Examiner issued an order which, among other things, clarified the complaint in the following manner:

> In summary, what remains of the amended complaint document is an implied allegation that after the signing of the Settlement Agreement, MATC and the Federation did not respond to inquiries regarding the Settlement Agreement, and I conclude that proceedings in this matter should go forward on that allegation. 4/

POSITIONS OF THE PARTIES

Complainant

Complainant asks that the Settlement Agreement be declared null and void and describes an alleged vendetta and conspiracy that created the Agreement. Complainant's brief does not address the question of whether the Union and MATC responded to his inquiries regarding the Settlement Agreement which he made after the execution of the Agreement.

In his response brief, Complainant states he repeatedly sought answers to clearly focused questions regarding the Settlement Agreement. He characterizes said Agreement as vague and confusing. He analyzes the various responses he received from the Union and finds them inadequate. He asserts his requests for rational, operational definitions of the terms of the agreement were ignored.

Additionally, the response brief has many accusations about individuals and events that are not the subject of the complaint addressed herein. Also, there is extensive reference to documents which are not a part of the instant record.

Union

The Union enumerates each letter Union Director of Labor Relations Frank

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2/ See the jurisdictional preface, above, for the two additional complaints that were filed after the instant complaint was filed, were consolidated with this complaint and withdrawn at the September 11, 1990 hearing.

3/ Dec. No. 26459-D.

Shansky received from Complainant and asserts that each was answered with accurate and appropriate advice. Additionally it points to conversations held between Complainant and Shansky in which it asserts Shansky offered similarly sound advice. It asserts that its responses to Complainant met its responsibility for fair representation of a unit member.

MATC

MATC asserts the Settlement Agreement is a collective bargaining agreement under the Municipal Employment Relations Act and as such is administered by the bargaining representative who is the proper recipient of communication regarding it. It would be a prohibited practice for MATC to deal directly with Complainant on the Agreement. MATC argues in the alternative that if the Examiner should conclude that it had any obligation to bargain directly with Complainant over the Agreement, his questions were not relevant to the administration to the Agreement and therefore MATC did not have a legal obligation to provide responses to Complainant's inquiries.

DISCUSSION

I. The Union's Alleged Violation

Complainant argues that the Union violated Sec. 111.70(3)(b)1, Stats., by failing to answer his inquiries regarding the February 28, 1989 Settlement Agreement. 5/

Section 111.70(3)(b)1, Stats., provides:

> It is a prohibited practice for a municipal employe, individually or in concert with others:
>
> > 1. To coerce or intimidate a municipal employe in the enjoyment of his legal rights, including those guaranteed in sub.(2).

Subsection 2 provides:

> **(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. . . (hereinafter follows provision for fair-share agreements, not pertinent to the instant case.)

The Commission and the courts have interpreted this provision to mean that a

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4/ In his brief, Complainant makes other allegations regarding other inquiries that did not specifically relate to the Settlement Agreement. Since those allegations are irrelevant to this complaint, evidence regarding them which was offered at the hearing was not admitted to the record and those allegations are not discussed herein.

union must treat a member of the collective bargaining unit in a way which is not arbitrary, discriminatory or in bad faith. 6/

Contrary to Complainant's allegations of Union unresponsiveness, the record shows that there were both meetings between Union Director of Labor Relations Frank Shansky and Complainant and four exchanges of letters in which Shansky responded to Complainant's questions. The inquiries fall into two general categories: the first, factual questions regarding the creation of the Agreement and the second, questions relating to compliance with its terms and the advisability of allowing the Agreement to stand.

Comparison of Complainant's letters with Shansky's responses reveals that Shansky responded to each letter in less than two weeks. 7/ A review of Complainant's and Shansky's numbering of question and answers shows that each of Complainant's questions were addressed. As to the factual questions, the Complainant does not argue that any of those responses was factually incorrect, nor does the evidence show any such inaccuracy. In some instances, such as a response to a question asking the District's intent, Shansky asserted he did not have the information, and there is no evidence to contradict that assertion. In some instances, Shansky stated that he did not understand the questions, but Complainant did not restate the question in a further attempt to receive a response.

Although Complainant in his letters and other actions expressed general dissatisfaction with the answers, that dissatisfaction was more a measure of Complainant's vehement disagreement with the underlying positions of the parties than an indication that the Union was not forthright in response to his inquiries.

The Union offered reasonable advice regarding the Agreement's value to Complainant and compliance with it. At a July, 1989 meeting of Complainant, Shansky and Union Grievance Chair Robert Jakubiak, Complainant asked about the possibility of overturning the Settlement Agreement and the effects of such a recision. Although the Union offered to request the District to overturn the Agreement if Complainant so desired, Shansky indicated that the Union believed that if the Agreement did not stand, Complainant would be in danger of being non-renewed. There is no evidence that such a conclusion had no reasonable basis.

Consistent with the Union's belief that the continued existence of the Agreement was in Complainant's best interest, Shansky, in his letter of November 17, 1989, unambiguously answered Complainant's question regarding an appropriate response to the request for information regarding medical treatment which came from Paul Vance, MATC's Director of Labor Relations. Shansky's December 6, 1989 letter was forceful in its admonition to Complainant to fulfill his obligation under the Agreement to provide certain information to the District.

Nothing in the record indicates that the Union's advice regarding the value of the Agreement was not reasonable and made in good faith. Additionally, the Union responsibly framed its advice in a manner that could be understood by the Complainant, and transmitted it to Complainant promptly.

5/ Vaca v. Sipes 386 U.S. 171 (1967); Mahnke v. WERC, 66 Wis.2d 524 (1975).

6/ These calculations are based on the receipt dates stated in Shansky's testimony which was credited by the Examiner.

In summary, the undersigned concludes that the Union responded to Complainant's inquiries in a manner that was reasonable, responsible and in good faith, and therefore did not violate Sec. 111.70(3)(b)1, Stats.

II. MATC's Alleged Violations

Complainant argues that MATC improperly failed to respond to his inquiries regarding the February 28, 1989 Settlement Agreement. Some of those inquiries, noted in Findings 10 through 12, questioned the bases of the agreement, as shown in such questions as two from the July 8, 1989 letter: "In your estimation what problem exists that you consider 'medical'?" and "If I have done something wrong, what is it? Who are my accusers?" Other questions sought information about the actual creation of the Agreement, such as this question from the July 17, 1989 letter: "Who wrote the copy?" None of the questions sought information that had any apparent bearing on what MATC would consider satisfactory compliance with the Agreement, nor does Complainant make that argument.

The record shows that MATC did not respond by letter, nor did it respond to each individual question, but rather, in a face-to-face encounter, Vance told Complainant that he should seek clarification from the Union.

Section 111.70(3)(a)1, Stats., makes it a prohibited practice for a municipal employer:

> 1. To interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in sub. (2).

The rights guaranteed by subsection 2 are set forth above, at page 18. They include, basically, the right to form labor organizations, 8/ support them, 9/ bargain collectively 10/ seek to enforce collective bargaining agreements, 11/ and engage in other concerted activity intended to improve wages, hours and conditions of employment. 12/

Employers are found to have interfered with these rights when they promise benefits to employes for abandoning their subsection 2 rights or make threats of reprisal for the exercise of those rights. 13/ These employer actions are found to undermine labor organizations by chilling employes' willingness to exercise their statutory rights.

In the case at hand, MATC's failure to give individual answers to Complainant's questions left him dissatisfied, as is clearly shown by his

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7/ Town of Mercer, Dec. No. 23136-B (Buffett, 5/86) Adopted, Dec. No. 23136-C (WERC, 7/86)

8/ Cedar Grove - Belgium Area School District, Dec. No. 25849-B (WERC, 5/91).

9/ Kewaunee County, Dec. No. 21624-B (WERC, 5/85).

10/ Richland County (Sheriff's Department), Dec. No. 26352-A (Schiavoni, 7/90) Aff'd by operation of law, Dec. No. 26352-B (WERC, 8/90).

11/ Juneau County (Pleasant Acres Infirmary), Dec. No. 12593-B (WERC, 1/77).

12/ Cedar Grove-Belgium Area School District, ibid.

repeated letters. That dissatisfaction, however, does not necessarily indicate that a prohibited practice has occurred. The undersigned is unaware of case law wherein it was found that an employer committed a prohibited practice by its failure to answer questions of a dissatisfied employe regarding the creation of, and rationale for, a collective bargaining agreement. In short, there is no basis to conclude that MATC's limited responses to Complainant's questions interfered with his statutorily-protected rights. No violation of Sec. 111.70(3)(a)1, Stats., is found.

In the amended complaint, Complainant also asserted MATC had violated Sec. 111.70(3)(a)2, Stats., which provides:

> **(3)** PROHIBITED PRACTICES AND THEIR PREVENTION (a) It is a prohibited practice for a municipal employer individually or in concert with others:
>
> . . .
>
> 2. To initiate, create, dominate or interfere with the formation or administration of any labor or employe organization or contribute financial support to it, but the employer shall not be prohibited from reimbursing its employes at their prevailing wage rate for the time spent conferring with the employes, officers or agents. . . .

In order to find a violation of this subsection, the employer's action must pose such a threat to the independence of the Union that the Union is turned into a proponent of the employer's interests. 14/ There is no showing here that MATC's limited responses to Complainant had the effect of subverting the Union in this prohibited manner.

C. Conclusion

Having found that neither the Union nor MATC has violated the Municipal Employment Relations Act, the Examiner determines the complaint should be dismissed.

Dated at Madison, Wisconsin this 13th day of May, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/
Jane B. Buffett, Examiner

13/ Green County (Sheriff's Department), Dec. No. 26080-B, 26081-B (Shaw, 10/90), Aff'd by operation of law Dec. No. 26080-C, 26081-C (WERC, 11/90).