STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS-AMERY and HENRY YETTER, Complainants, vs. AMERY SCHOOL DISTRICT, Respondent.	Case 36 No. 44199 MP-2370 Decision No. 26545-A

Appearances:

Ms. Melissa A. Cherney, Staff Counsel, and Mr. John R. Davis, Associate Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, on behalf of Northwest United Educators and Henry Yetter.

Weld, Riley, Prenn & Ricci, S.C., by Ms. Kathryn J. Prenn, 715 South Barstow Street, Suite 111, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of Amery School District.

FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Northwest United Educators-Amery and Henry Yetter having, on June 21, 1990, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Amery School District had committed certain prohibited practices; and the District having filed an answer to said complaint on July 5, 1990; and hearing having been held in Amery, Wisconsin on July 20, 1990 before Examiner Peter G. Davis; and the parties having filed written argument, the last of which was received on August 21, 1990; and the Commission having considered the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Northwest United Educators-Amery, herein NUE, is a labor organization functioning as the collective bargaining representative of certain employes of the Amery School District. NUE has its principal offices at 16 West John Street, Rice Lake, Wisconsin, 54868.

2. Henry Yetter, herein Yetter, is a municipal employe of the Amery School District. Yetter is represented for the purposes of collective bargaining by NUE.

3. Amery School District, herein the District, is a municipal employer maintaining its principal offices at 115 North Dickey Avenue, Amery, Wisconsin, 54401.

4. At all times material herein, the District and NUE were parties to collective bargaining agreements which contained the following provisions:

ARTICLE V - PLACEMENT

A. The Board retains the right to determine grade, subject, and activity assignments and to make transfers between schools as necessary in the best interests of the district.

B. Assignments and transfers will take into consideration employee professional training, experience, specific achievements, and service in the local district.

C. Any teacher wishing another assignment or transfer to another school shall make his/her wishes known by February 1, in order to be given consideration for the following school year. Applications must be renewed annually to remain valid.

D. In making involuntary assignments and transfers, the convenience, wishes and seniority of the individual teacher will be honored to the extent they do not conflict with the instructional requirements and best interests of the school system and the pupils. Permanent assignments or transfers will not be made without prior

agreement with the teacher.

ARTICLE IX - WORK CONDITIONS

. . .

E. Contracts

1. The Board will give written notice of renewal of teacher contracts for the ensuing year on or before March 15. The teacher must accept or reject the contract in writing no later than April 15.

2. Teachers who are not to be renewed will be notified in writing on or before February 28.

3. Contracts cannot be terminated without mutual consent during the period for which they are written.

4. Teacher contracts will list grade or subjects and/or extra-curricular activities assigned with the agreement that the administration may, if necessary, change these assignments during the term of the contract. The teacher shall be notified at the earliest time possible of any change.

5. No teacher shall be discharged, non-renewed, suspended, or reduced in compensation without cause.

ARTICLE XII - MANAGEMENT RIGHTS

A. The Board hereby retains and reserves unto itself all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and Constitution of the State of Wisconsin, and the United States.

B. These rights include, but are not limited by enumeration to, the following rights:

. . .

3. To hire, promote, transfer, schedule, and assign employees in positions with the school system.

. . .

C. The exercise of the powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof and the use of judgment and discretion in connection therewith shall be limited only by the terms of this agreement and then only to the extent such terms hereof are in conformance with the Constitution and the laws of the State of Wisconsin and the Constitution and the laws of the United States.

5. On June 19, 1989, NUE filed a complaint with the Wisconsin Employment Relations Commission (case 28) alleging that the District had committed prohibited practices within the meaning of Sec. 111.70(3)(a)1, 4 and 5, Stats. by conduct related to and involving the District's removal of Yetter as Head Wrestling Coach following the 1988-1989 school year. Following hearing and receipt of written argument, Commission Examiner Richard B. McLaughlin issued Findings of Fact, Conclusions of Law and Order, as to said complaint on February 19, 1990. Examiner's McLaughlin's Conclusions of Law stated in pertinent part:

> 5. The District has not demonstrated cause for reducing Yetter's compensation by denying him the assignment of Head Wrestling Coach for the 1989-90 school year, in violation of Article IX, Section E, 5, of the collective bargaining agreement noted in Finding of Fact 3 above. The District's violation of the collective bargaining agreement constitutes a violation of Sec. 111.70(3)(a)5, and, derivatively, Sec. 111.70(3)(a)1, Stats.

Examiner McLaughlin's Order stated in pertinent part:

> (2). Reinstate Yetter in the position of Head Wrestling Coach for the 1989-90 school year.

The District did not appeal the Examiner's decision and advised the Examiner by letter dated March 6, 1990 that it had reinstated Yetter and made him whole. By operation of Sec. 111.07(5), Stats., the Examiner's decision became the Commission's on March 12, 1990.

6. On March 6, 1990, Darold Niccum, a member of the District's School Board, had a conversation with Byron Bird, Jr., a parent who had children on the District's wrestling team and who wanted Yetter to be the Head Wrestling Coach. During that conversation Niccum advised Bird that the Board did not know whether the District was required to "give (Yetter) his job back."

7. In late February and early March, 1990, the District determined that Cory Otterness would be offered the Head Wrestling Coach position for the 1990-1991 school year. In reaching its decision, the District concluded that the wrestling program had flourished under Otterness' direction during the 1989-1990 school year and that it would be desirable to provide the wrestling program with continuity. In late February or early March 1990, Otterness asked a District representative about his status in light of the McLaughlin decision and was advised that he would be the Head Wrestling Coach for the 1990-1991 school year.

8. After concluding that it would offer Otterness the Head Wrestling Coach position, the District then considered the available activity assignments for Yetter in light of: (1) the interests of the District; (2) Yetter's training, experience, achievements and service with the District, and (3) the contractual obligation to provide Yetter with compensation equal to or greater than that which he would have received for fulfilling Head Coach responsibilities during the 1990-1991 school year. The District decided to assign Yetter to the positions of Assistant Junior High Wrestling Coach, Assistant High School Boys' Track Coach and Seventh Grade Football Coach. Yetter had previously coached track, football and wrestling for the District. On or about March 14, 1990 the District offered a Teacher's Contract to Yetter which included the three above-noted coaching assignments. On or about April 2, 1990, Yetter signed and returned the Teacher's Contract offered by the District.

9. The District was not motivated in whole or in part by hostility toward Yetter's involvement with and victory in the June 19, 1989 prohibited practice complaint when it decided to assign Otterness to the High School Wrestling Coach position for the 1990-1991 school year and to assign Yetter to the 1990-1991 coaching positions referenced in Finding of Fact 8.

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

CONCLUSION OF LAW

The Amery School District did not violate Secs. 111.70(3)(a)3 or 5, Stats. when it assigned Otterness the High School Wrestling Coach position for the 1990-1991 school year and assigned Yetter to the 1990-1991 coaching positions referenced in Finding of Fact 8.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER 1/

The complaint is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By ______________________________
Herman Torosian, Commissioner

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William K. Strycker, Commissioner

I Concur

____
A. Henry Hempe, Chairman

(See Footnote 1/ on Page 5)

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

AMERY SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT ,
CONCLUSION OF LAW AND ORDER

BACKGROUND

This complaint was filed during the pendency of proceedings before the Commission in which NUE was asserting that the District had failed to comply with the Commission's March 12, 1990 Order in Case 28 that Yetter be reinstated to the Head Wrestling Coach position. Because of the overlap between the compliance proceeding and this complaint, the parties agreed the matters should be consolidated for hearing and further agreed to waive Secs. 111.07(5) and 227. 46(2), Stats. so that the Commission could issue a decision in this case without an intervening Examiner decision.

On October 17, 1990, the Commission issued Findings of Fact, Conclusion of Law and Order in Case 28 wherein we determined that the District had not complied with that portion of the Commission's Order that Yetter be reinstated as Head Wrestling Coach. We ordered the District to immediately reinstate Yetter. We further stated:

> In reaching our conclusion, we made no determination regarding the District's contractual right or lack thereof to give Yetter different activity assignment(s) following compliance with our Order. We hold only that until the District reinstates Yetter, it cannot exercise whatever reassignment rights it possesses.

By letter dated October 23, 1990, the District advised the Commission that it would reinstate Yetter. Both parties also advised us that we should proceed to issue a decision in Case 36.

POSITIONS OF THE PARTIES

NUE-YETTER

NUE-Yetter argue that the District violated Sec. 111.70(3)(a)5, Stats. by failing to comply with Article V, Sections B and D of the parties' 1989-1992 contract in March 1990 when it again removed Yetter from the Head Wrestling Coach position.

NUE-Yetter assert that under Article V, Section B, the District was obligated to measure both Yetter and Otterness against the contractual factors listed therein. They contend that an unbiased comparison could only produce a decision that Yetter should retain the position. NUE-Yetter argue the District not only failed to make the requisite comparison but inappropriately considered Otterness' status and performance as the 1989-90 incumbent in the position. NUE-Yetter allege that it is unfair to allow the District to consider such factors which are the "fruit of the poison tree", the result of action previously found improper by the Commission when Yetter was first removed from the position in 1989.

NUE-Yetter also argue that under Article V, Section D, the District needed Yetter's agreement before permanently transferring him from the Head Wrestling Coach position and assigning him to three new positions. As the District did not obtain Yetter's agreement, NUE-Yetter contend that the District thereby violated Section D.

Lastly, NUE-Yetter contend that the District violated Sec. 111.70(3)(a)3, Stats. because the reassignment of Yetter was taken in part to retaliate against Yetter for his successful challenge of the District's earlier removal. In support of its argument, NUE-Yetter cite the District's: failure to balance the relative qualifications of Yetter and Otterness; willingness to ignore community sentiment for retaining Yetter; undue reliance on Otterness' performance during 1989-1990; demeaning assignment of Yetter to the Assistant Junior High Wrestling Coach; and failure to discuss the action with Yetter. When the District's action is viewed in totality, NUE-Yetter argue that the District's action can only be explained if a retaliatory motive played a role in the District's decision.

DISTRICT

The District denies that it violated either Sec. 111.70(3)(a)3 or 5, Stats. when it determined the 1990-1991 coaching assignments for Yetter and Otterness. The District argues that it acted in compliance with Article V, Sections A and B when it concluded that the 1990-1991 assignments were consistent with the District's best interests and appropriately considered qualifications of Otterness and Yetter.

The District further asserts that there is no evidence to support NUE-Yetter's allegation of retaliation. As to the testimony and events cited by

NUE -- Yetter in support of a retaliation theory, the District notes that Administrator Norsted's comment that "The Board can do what they desire with extra-curricular contracts . . . ." predated Examiner McLaughlin's decision and thus came at a time when the parties' good faith differences over application of just cause to coaching assignment had yet to be resolved. The District asserts that a Board member's comment to a citizen that he did not know if the Board would reinstate Yetter provides no evidence of animus.

The District contends that its sole motivation has always been and continues to be concern over Yetter's job performance. The District argues that NUE-Yetter are seeking a lifetime position for Yetter as Head Wrestling Coach which the bargaining agreement does not guarantee. The District contends that NUE-Yetter seek to have the Commission usurp the District's authority under Article V, Section A by second guessing the District's decision that the 1990-1991 assignments were in the best interest of the District.

The District argues that the NUE-Yetter "fruit from a poison tree" metaphor is misplaced. It asserts its loss in the McLaughlin case under a just cause standard ought not deprive it of other contractual rights. Thus, the District asserts it could properly consider Otterness' performance as Head Wrestling Coach during 1989-1990 when determining 1990-1991 assignments.

The District denies that it violated Article V, Section D when making 1990-1991 assignments. It argues that Section D limits general Section A assignment rights by providing that the District cannot involuntarily and permanently assign an employe to an activity assignment. Under Section D, if Yetter rejects the 1990-1991 activity assignments, the District cannot permanently assign him same and must commence its recruitment of teachers willing to accept said assignments. However, in the District's view, Section D does not prohibit it from involuntarily removing an assignment from a teacher.

Given the foregoing, the District asks that the complaint be dismissed.

DISCUSSION

Article IX (E) 4. of the parties' contract provides in pertinent part:

ARTICLE IX - WORK CONDITIONS

. . .

E. Contracts

. . .

4. Teacher contracts will list grade or subjects and/or extra-curricular activities assigned with the agreement that the administration may, if necessary, change these assignments during the term of the contract. The teacher shall be notified at the earliest time possible of any change.

Yetter's 1990-1991 Teacher's Contract listed the extra-curricular assignments of Assistant Junior High Wrestling Coach, Assistant High School Track Coach and Seventh Grade Football Coach. Whether the District violated Sec. 111.70(3)(a)5, Stats. by making these assignments to Yetter instead of assigning him the Head Wrestling Coach position is determining by the content of Articles V and XII of the parties' contract.

Article XII states in pertinent part:

ARTICLE XII - MANAGEMENT RIGHTS

A. The Board hereby retains and reserves unto itself all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and Constitution of the State of Wisconsin, and the United States.

B. These rights include, but are not limited by enumeration to, the following rights:

. . .

3. To hire, promote, transfer, schedule, and assign employees in positions with the school system.

. . .

C. The exercise of the powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof and the use of judgment and

discretion in connection therewith shall be limited only by the terms of this agreement and then only to the extent such terms hereof are in conformance with the Constitution and the laws of the State of Wisconsin and the Constitution and the laws of the United States.

Article XII gives the District broad assignment rights except as limited by other portions of the contract. Article V contains the limitations on assignment rights pertinent to resolution of the parties' dispute herein.

Article V states:

ARTICLE V - PLACEMENT

A. The Board retains the right to determine grade, subject, and activity assignments and to make transfers between schools as necessary in the best interests of the district.

B. Assignments and transfers will take into consideration employee professional training, experience, specific achievements, and service in the local district.

C. Any teacher wishing another assignment or transfer to another school shall make his/her wishes known by February 1, in order to be given consideration for the following school year. Applications must be renewed annually to remain valid.

D. In making involuntary assignments and transfers, the convenience, wishes and seniority of the individual teacher will be honored to the extent they do not conflict with the instructional requirements and best interests of the school system and the pupils. Permanent assignments or transfers will not be made without prior agreement with the teacher.

Article V A. restates the District's right to make assignments subject to the limitation that the assignments be "in the best interests of the district." Article V B. requires that the District consider certain factors when making assignments. Article V C. sets forth the manner in which teachers can seek new assignments. Article V D. contains the parties' agreement regarding the District's ability to make involuntary and permanent assignments.

Central to the parties' disagreement over the proper interpretation of Article V is the question of whether the incumbent in an assignment is entitled by Article V B. to a comparative analysis with the individual to whom the District wishes to give the assignment the next year. NUE-Yetter argues that such a comparison must but did not take place while the District asserts it is free to act in its best interest so long as it considers the Article V B. factors when matching individual teachers with specific assignments. We think the District's position is more persuasive.

Article V A, and Article XII B. 3. provide the District with broad authority and discretion to give teachers extra-curricular assignments which are in the District's "best interests". Here, the District concluded that having Otterness as Head Wrestling Coach during the 1990-1991 year served its "best interests" because it was pleased with his performance during the 1989-1990 school year and valued the continuity his continued performance of that assignment would provide. We find the District's judgment in this regard to be a reasonable exercise of the contractual right it has retained under Article V and XII. Contrary to the argument of NUE-Yetter, the District is entitled to consider Otterness' performance and incumbent status despite the fact that Yetter's displacement was found to violate other provisions of the contract at issue herein. To hold otherwise would be to expand the scope of the remedial Order in Case 28 by denying the District the opportunity to exercise contractual rights it otherwise possesses in addition to remedying the violation it committed. Clearly this was not the intent of the Commission's Order.

Article V B. does not contain any explicit requirement that the District use the factors contained therein to compare the incumbent in an assignment with the teacher to whom the District wishes to give the assignment the next school year. Nor do we think it reasonable to find such a requirement to be implicit in this contract language. Such a significant restriction on the District's otherwise broad assignment rights would almost inevitably have been the product of substantial discussion at the bargaining table and would, in turn, likely be explicitly reflected in the contract language. Instead, we believe Article V B. can more reasonably be interpreted as requiring the District to consider the factors listed therein so that teachers receive

assignments for which they are suitable. The District met this obligation when it gave Yetter and Otterness 1990-1991 assignments in sports with which they were familiar and as to which they had previous District coaching experience. 2/

Nor did the District violate Article V D. by deciding not to assign Yetter as the Head Wrestling Coach for the 1990-1991 year. Contrary to the argument of NUE-Yetter, Article V D. cannot reasonably be read as requiring a teacher's agreement before the District can permanently remove the teacher from an existing assignment. Such an interpretation is totally at odds with the assignment authority retained by the District elsewhere in Article V. Instead, Article V D. can more reasonably be interpreted as allowing a teacher to advise the District that they do not wish to have an assignment on a permanent basis. Thus, the District was not obligated by Article V D. to obtain Yetter's agreement to leave the Head Wrestling Coach assignment.

Turning to the alleged violation of Sec. 111.70(3)(a)3, Stats., NUE-Yetter must establish that the District' decision to give Yetter new 1990-1991 assignments was motivated in some part by hostility toward Yetter's participation in Case 28. 3/ The chronology of events and the comment of the Board member set forth in Finding of Fact 6 provide inferential support for the linkage between Case 28 and the Board's action. NUE-Yetter also cite Yetter's record and community support as support for the proposition that there must be some invidious basis for the District's desire to end the career of such a successful coach. However, in our view, these inferences fall short of establishing the requisite linkage when measured against the District's assertions as to why it wanted Otterness in the assignment. Thus we find no violation of Sec. 111.70(3)(a)3, Stats.

Dated at Madison, Wisconsin this 4th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By ____
Herman Torosian, Commissioner

____
William K. Strycker, Commissioner

2/ As noted in Finding of Fact 8, Yetter had coached all three sports for the District while Otterness had been the Assistant Wrestling Coach for 17 years before he replaced Yetter in 1989.

3/ See generally Muskego-Norway v. WERB, 35 Wis.2d 540 (1967) and State of Wisconsin v. WERC, 122 Wis.2d 131 (1985).

CONCURRENCE

Courts are historically unwilling to issue advisory opinions, even when requested to do so by both parties. 4/ Although this judicial restraint has a Constitutional basis, 5/ from a public policy standpoint it appears well justified: not only are courts thus enabled to make more efficient use of their time, but parties are thus encouraged to settle their own issues without gratuitous, premature interferences from a third party.

It is a sound doctrine, not unknown to this Commission. 6/ In this instance, however, we have elected to issue an opinion on a state of purely local (albeit unique) facts which do not now exist, may never exist, and by virtue of our previous decision in which we found the District had failed to reinstate Coach Yetter, have never legally existed. Thus, whether our determination today constitutes an "advisory opinion" is a question on which reasonable minds may differ.

Nonetheless, notwithstanding some lingering reservations, given the uniqueness of this situation coupled with the joint request of the parties that we proceed, I believe we have a sufficient basis to issue a decision on the merits.

As to the merits, I concur with the decision of the majority.

It may be worth noting, however, that the decision we give in the instant matter answers only the issues raised by the parties, no more, no less. For instance, we make no determination as to the respective rights of the parties in the event Coach Yetter declines a permanent reassignment to humbler, less desirable coaching or other extra-curricular responsibilities, should such reassignment occur. Such issue was neither raised nor argued by the parties.

With the guidance we provide today, we have every confidence that should any more issues threaten to emerge in connection with this case, the parties will be capable of developing mutually acceptable solutions of their own, instead of seeking (risking) further interpretation by this Commission of what is, after all, contract language which belongs to the parties. In the final analysis, it seems clear that the parties who create a collective bargaining agreement are in the most advantageous position to mutually determine the meaning of its provisions and to mutually harmonize any apparent conflicts.

Dated at Madison, Wisconsin this 4th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By ______________________________________
A. Henry Hempe, Chairman

4/ Even statutes permitting actions for declaratory judgments (e.g., s. 806.04, Stats.,) are subject to carefully drawn, court imposed limitations. See City of Madison v. Town of Fitchburg, 112 Wis.2d 224, 228 (1983).

5/ Article III, United States Constitution. See Wisconsin's Environmental Decade, Inc. v. State Bar of Wisconsin, 747 F.2d 407, cert. denied 471 U.S. 1100, 105 S.Ct. 2324, 85 L.Ed.2d 842 (1984).

6/ Manitowoc Education Association v. Manitowoc Public School District, Case 32, No. 37972, MP-1905, Dec. No. 24205, Schiavoni (WERC; 10/87); Also, see Washburn Education Association, Case 26, No. 44243, ME-428, Dec. No. 26780 (WERC; 2/91).