

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MILWAUKEE TEACHERS' EDUCATION :
ASSOCIATION, :
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Complainant, : Case 243
: No. 46530 MP-2539
vs. : Decision No. 27137-B
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MILWAUKEE BOARD OF SCHOOL DIRECTORS, :
:
Respondent. :
:
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Appearances:

Perry, Lerner & Quindel, S.C., Attorneys at Law, 823 North Cass Street, Milwaukee, Wisconsin 53202-3908, by Mr. Richard Perry, appearing on behalf of the Milwaukee Teachers' Education Association.  
Ms. Mary Kuhnmuench, Assistant City Attorney, City of Milwaukee, Office of the City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, appearing on behalf of the Milwaukee Board of School Directors.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On November 5, 1991, the Milwaukee Teachers' Education Association filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission alleging that the Milwaukee Board of School Directors had committed prohibited practices in violation of Sec. 111.70, Stats. On July 16, 1992, and on August 13, 1992, the Milwaukee Teachers' Education Association filed amendments to the complaint. On January 24, 1992, the Wisconsin Employment Relations Commission appointed Coleen A. Burns, a member of its staff, as Examiner to conduct a hearing on the complaint, and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Secs. 111.70(4)(a) and 111.07, Stats. Hearing on the matter was held on August 6, 1992, and September 23, 1992, in Milwaukee, Wisconsin. The record was closed on January 19, 1993, upon receipt of post-hearing written argument.

The Examiner having considered the evidence and arguments of the parties, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Milwaukee Teachers' Education Association, hereafter MTEA or Complainant, is a labor organization and is the certified exclusive collective bargaining representative of certain professional certificated teaching employes employed by the Milwaukee Board of School Directors. MTEA has its principal offices at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.
2. Milwaukee Board of School Directors, hereafter Board or Respondent, is a municipal employer with authority to control and direct the operations of the Milwaukee Public School System (MPS) and has its principal offices located at 5225 West Vliet Street, Milwaukee, Wisconsin 53208.
3. The MTEA and the Board have been parties to a series of collective bargaining agreements covering certificated teachers employed in the Milwaukee Public Schools. Sam Carmen has been employed by the Milwaukee Teachers'

Education Association as Assistant Executive Director since March of 1979. Carmen's principal duties are to act as the chief spokesperson at the bargaining table and to coordinate day-to-day labor relation matters between MTEA and the Board. The contract provision governing parent-teacher conferences states as follows:

#### **PARENT CONFERENCE DAYS**

The parent-teacher conference schedule of two (2) days per year, if scheduled, shall be conducted during the regular school hours or on consecutive hours equal to the normal school day not to exceed 9:30 p.m.

Parent-teacher conferences are held in the fall and the spring of each school year. Fall parent-teacher conferences are generally held in October and spring parent-teacher conferences are generally held in March. In the mid-80's, MTEA and the Board began negotiating deviations from the contract which permitted a portion of the parent-teacher conference to be held in the evening of one day and the remainder of the parent-teacher conference to be held during the following day. In the Spring of 1991, during the tenure of the previous Superintendent, Robert Peterkin, MTEA and the Board had discussions on the scheduling of parent-teacher conferences in which MTEA was advised that the Board was concerned that there was no parental input into the scheduling of parent-teacher conferences and that there was a need to modify the scheduling procedures to provide for parental input. Pursuant to their normal procedure, in the fall of 1991, MTEA advised its Building Representatives to poll their staff to determine preferences on the October parent-teachers conference so that MTEA and the Board would have time to negotiate a memorandum of understanding regarding any deviation from the contractual requirements. MTEA Building Representatives have a responsibility to enforce the contract, handle first step grievances or complaints, provide representation to teachers, and serve as a conduit for information between MTEA and its membership. On September 16, 1991, the Office of the Deputy Superintendent issued a MPS Principals Bulletin which, inter alia, reminded the principals to meet with the Building Representatives to establish modified parent-teacher conferences and also listed options for the fall and spring parent-teacher conferences. This bulletin did not state that MPS administration would not accept a single day conference. The deadline for a request for an evening and morning conference was Friday, September 20, 1991 and the deadline for notification of request approval was Friday, October 11, 1991. Pursuant to their normal procedures, the staff of Hamilton High, which includes approximately 115 teachers, voted to have the parent-teacher conference on Thursday, October 24, 1991 from 2:45 - 9:30 p.m., and to be off on Friday, October 25, 1991. Clark Lovell has been employed by MPS for twenty-five years and has been the Principal of Hamilton High for four years. When Lovell received the results of the vote, he did not have any objection to the form of the parent- teacher conference requested by the Hamilton High staff. Lovell forwarded the results of the vote to the MPS Department of Labor Relations. Thereafter, an individual from the MPS Department of Labor Relations advised Lovell that the MPS administration would not accept the parent-teacher conference requested by the Hamilton High staff because the MPS administration was not accepting any single day conferences. On September 26, 1991, Carmen was notified that the Hamilton High staff was conducting another vote because Nancy Lorenz, of the Board's Department of Labor Relations, had advised them that no single day conferences would be allowed. On September 27, 1991, MTEA representatives met with representatives of the Board, i.e., Deputy Superintendent Robert Jasna and Associate Superintendent Aquine Jackson, to discuss the parent-teacher conferences. Carmen understood that the MPS administration had accepted some deviations from the contract, but had not accepted the Thursday, 2:45 to 9:30 p.m., deviation. Carmen requested the MPS administration to reconsider this decision. On October 1, 1991, Jackson advised Carmen that the MPS administration was

unwilling to agree to the Thursday parent-teacher conference schedule selected by the Hamilton High staff. Thereafter, MTEA advised its membership to reconsider the matter and provide MTEA with an alternative to the Thursday conference schedule. On October 2, 1991, MTEA Executive Director Donald Ernest sent a letter to Dr. Howard Fuller, Respondent's Superintendent of Schools, asking Fuller to reconsider this decision.

4. On September 26, 1991, Lovell informed MTEA Building Representative Chair Carol Pingel that the Central Office had denied the request to have the parent-teacher conference on Thursday, October 24, 1991, from 2:45 to 9:30 p.m. Lovell did not provide Pingel with any alternative times, or Central Office suggestions, as to when the parent-teacher conferences could be held. Pingel suggested to Lovell that a meeting be held after school to discuss the matter. While Pingel intended this meeting to be a MTEA meeting, this intent was not communicated to Lovell. Thirty to forty faculty members attended the meeting which was held after school on September 26, 1991. When Lovell arrived at the meeting, Pingel was providing suggestions as to alternative parent-teacher conference times. Lovell, believing the meeting to be a staff meeting, began to Chair the meeting. Lovell normally chairs staff meetings. Neither Pingel, nor any other person, told Lovell that the meeting was a union meeting or objected to his presence at the meeting. During the meeting, Lovell told the staff that they would need to take a second vote on the parent-teacher conference schedule because they would not be permitted to have the single day conference. Believing that the staff wanted to have a split day conference, Lovell indicated that he could arrange to have the staff work late on Thursday and to work for a short time on Friday. When a staff member asked how long the staff would have to vote, Lovell replied that the results did not have to be reported to the Central Office until 4:30 p.m. the next day, which was a Friday. Neither Lovell, nor anyone else, made any other statement regarding time constraints for the Friday vote. One of the Building Representatives then advised Lovell that, in accordance with past procedures, the voting would have to be by written secret ballot. Lovell agreed and indicated to Pingel that she should prepare the ballots. Following the meeting, Pingel prepared the ballots and left the ballots to be distributed to the staff by the school secretary. Pingel and the other faculty who were present at the meeting of September 26, 1991 acquiesced to Lovell's attendance at and participation in the meeting of September 26, 1991.

5. On September 27, 1991, the Hamilton High MTEA conducted a secret ballot election to determine staff preference on the scheduling of the parent-teacher conference. Consistent with prior parent-teacher conference votes, the ballots were collected in an open wire basket which was set on the counter in the main office. Normally, a Building Representative would remove the ballot box from the main office at 3:45 p.m., the time at which the office was closed to staff members, and a Building Representative would count the ballots. The ballot for the September 27, 1991 election did not identify the time at which the ballot basket would be closed. At 1:00 p.m. on September 27, 1991, Pingel went to the office, counted the ballots, and found that there were 51 votes to have the Thursday night, Friday morning split and 35 votes to have conference all day on Friday. As Pingel was counting the ballots, Lovell told Pingel that he, or the office secretary, had either counted or looked at the ballots. Lovell also told Pingel that the Central Office had called and that he had told them that the conference would be Thursday evening and Friday morning. On Friday, September 27, 1991, at approximately 1:00 p.m., Christine Anderson, a Hamilton High School Building Representative, entered the main office of Hamilton High and asked how the balloting was going. Lovell responded that he had counted the ballots and that the split had won. Neither Lovell, nor any other member of the MPS administration, had authority to count the ballots or to determine the results of the vote. Rather, such authority resided with the Building Representatives. Lovell interfered with the conduct of the MTEA election when he informed Building Representative Pingel that he, or the office secretary, had counted the ballots and that he had told the

Central Office that the conference would be on Thursday evening and Friday morning. Lovell interfered with the conduct of the MTEA election when he told Building Representative Anderson that he had counted the ballots and that the split had won.

6. After leaving the main office on September 27, 1991, Pingel spoke with the other Building Representatives and explained that Central Office had already been called about the vote. The Building Representatives met during the 8th hour to discuss the situation and decided to invalidate the vote because they believed that Lovell had reported the results of the vote to the Central Office prior to the time in which the ballot basket was closed, thereby, depriving staff of the opportunity to vote. The ballots which were cast after Pingel's discussion with Lovell were not counted by the Building Representatives. The Building Representatives also decided to issue a letter to the Hamilton High staff explaining their position on the scheduling of the parent-teacher conference. In addition to Anderson and Pingel, Building Representatives Jim Jones, Ron Wild and Eric Oliver were at this meeting. On September 27, 1991, the Hamilton High Building Representatives sent a letter to Carmen which stated as follows:

We would like to protest the lack of regard that MPS administration has shown us with the farce of voting for parent/teacher conferences. It was our understanding that teacher empowerment meant allowing teachers to make professional decisions regarding the educational scope of the schools in which we work. So much for the words . . . since action speaks with a louder message.

We held conferences last year from 2:45 to 9:30 p.m. A majority of our parents came to our school from 7:00 to 7:30 and the building was full until 9:00 p.m. Since we have a very few parents attending in the past on Fridays, we believe that we are best serving our parents by staying later on Thursday evening. We have documents to prove the numbers.

Is parent attendance of importance to central office administration? Obviously not, nor do they seem to care that an overwhelming number of the staff voted to extend the Thursday evening conferences.

Hamilton teachers now have the message that "teacher empowerment" really means "Do as we say." Please remember to thank Dr. Fuller for his support.

7. On or about October 2, 1991, the following letter was distributed to the Hamilton High staff:

**To: The Hamilton Staff**

**From: BRs**

**Re: Parent/Teacher Conference Day**

As BRs, we have been beseiged (sic) with complaints/concerns from the staff regarding the 'vote' which took place. These are the facts as we see them:

\*Two years ago we had a 7:30 split conference. That evening many of us were embarrassed to find that on our way out of school many of our parents were on their way into school. Still other teachers meet with parents way past the 7:30 time because parents were lined up outside of classroom doors.

\*Last year, after a vote to extend hours and a battle to do so, the results were what we had all hoped. The counts kept by teachers showed that we had more parent contact on the extended evening hours than ever before.

\*We have a working base of parents here. Our parents work until 5:30, get home at 6:00, feed the family and come to school between 7:00 and 7:30. The school had many parents here at 9:00 p.m.

\*In the interest of meeting our parents' needs, this year we again voted to have extended evening hours with a vote of 78 for and 6 against.

\*Mr. Lovell approved the vote and sent it to central office.

\*Mr. Jasna denied the vote and told us to re-vote.

\*The Hamilton BRs wrote a letter to Mr. Sam Carmen of the MTEA voicing our concern regarding Dr. Fuller's comments regarding teacher empowerment. We were under the impression that decisions regarding the educational scope of schools would have teacher input. We told Mr. Carmen about the statistics of parent contacts and asked him to meet with Mr. Jasna to discuss our concerns.

\*Mr. Carmen met with Mr. Jasna and told him not only of the concerns of Hamilton, but of other high schools as well.

\*Mr. Jasna agreed to reconsider his decision.

\*On Tuesday, October 1, Mr. Aquine Jackson informed Mr. Carmen that now the central office decision is that teachers could vote for a Monday/Tuesday evening and have off Friday, a Tuesday/Wednesday evening or a Wednesday/Thursday evening, but no extended hours on Thursday night. He said that he had no reason for his position.

\*The BRs held a meeting regarding the teacher comments coming to us. These comments included: 'This is a joke; So much for teacher empowerment; Why did we even bother to vote?'

\*The BRs contacted Director O'Neil to express concern and to give him the information. He is going to contact Mr. Jasna and Dr. Fuller and if that fails will write a resolution addressing the issue for future conferences.

As BRs we are concerned that votes in the school have no meaning. Asking for teacher input (sic) required thought, effort and a time commitment on the teachers' part. We feel tired. It has been a rough year and teacher bashing is taking its toll on all of us. We have decided to take a stand on this issue. We voted. The results were overwhelming for an extended Thursday evening. We are not willing to keep on voting until we 'get it right.' If teacher empowerment means that teachers are required to do as we are told without question or reason, then we want no part of it. The contract language is specific. Our vote is for an extended Thursday (sic) evening. If central office decides that they 'know best,' our regular Friday conference will be held. We want to know NOW whether or not a vote means a vote. We need to know before a vote is taken if there are central office guidelines. And we need to know for the future if we should even bother to ask for teacher

input. Our credibility is in question and we would like an answer.

If you have any questions/concerns, please see one of the BRs.

Sincerely,

Carol Pingel  
Cris Anderson  
Jim Jones  
Ron Wild  
Eric Oliver

cc: Mr. Lovell  
Director O'Neil  
Mr. Carmen

8. On October 2, 1991, Lovell met with MPS principals and other representatives of the MPS administration. During this meeting, MPS Superintendent Fuller discussed the scheduling of the parent-teacher conferences. Lovell understood that Fuller was concerned that parents who worked second shift were not being provided with an opportunity to attend the conferences and that Fuller told the principals that conferences should not be scheduled on a single day. When Lovell returned from this meeting, he received the letter regarding the parent-teacher conferences which had been sent to the Hamilton High staff by the Building Representatives. W. Eric Oliver has been a teacher at Hamilton High School for six years and was a Building Representative during the 1991-92 school years. On October 2, 1991, Oliver had initiated a discussion with Lovell on a matter unrelated to the parent-teacher conference.

This discussion occurred in Lovell's office. During this discussion, Lovell asked Oliver if he knew about the letter from the Building Representatives to the Hamilton Staff regarding the Parent/Teacher Conference Day. Oliver responded that he did. Lovell then told Oliver that the Building Representatives did not know all of the facts about the situation. During this conversation, Lovell brought up the fact that Hamilton High had received some unusual benefits, i.e., an activity bus and monies for inservicing. Oliver interpreted Lovell's remarks to mean that if Dr. Fuller was bucked too much, then Hamilton High would not receive these extra perks. Oliver responded that if Dr. Fuller had a problem with what the Building Representatives were doing, then he would be happy to meet with Fuller and explain their position. Oliver further stated that he thought that the other Building Representatives would also be happy to meet with Fuller. On Wednesday, October 2, 1991, Lovell had a conversation with Pingel regarding the letter which was sent by the Building Representatives. The conversation, which was a private conversation between Lovell and Pingel, occurred in the library. Lovell initiated the conversation by telling Pingel that he was concerned about the letter because it was confusing the teachers. Lovell then asked Pingel who wrote the letter, and before she could respond, he asked her who had typed the letter. Pingel responded that she did not know who had typed the letter. Lovell made no further comments to Pingel. The conversation between Pingel and Lovell ended approximately five minutes after it began. By asking Pingel who wrote and who typed the letter, Lovell made an inquiry of an employe concerning the exercise of the right to engage in lawful protected concerted activities.

9. At the faculty meeting on Wednesday, October 7, 1991, Lovell brought up the parent-teacher conferences as an item on the agenda. During the staff meeting, Lovell said that Fuller wanted parental involvement in the scheduling of the conferences. Lovell told the staff that Fuller had been supportive of them and that Lovell would like to continue to have this support.

Lovell referred to \$20,000 for staff development funds and an activity bus which had been given Hamilton High School. Pingel understood Lovell's remarks to mean that Hamilton High would lose money if the staff did not cooperate with Fuller. At the end of the faculty meeting, Lovell remarked that, in the past,

he had never asked the faculty to be at graduation, but that now he was going to require all of the staff to be at graduation. Lovell also stated that if he couldn't do that, he was sure that Pingel would let him know. As a Building Representative, it is Pingel's responsibility to advise Lovell when he engages in conduct which violates the labor contract. During the staff meeting of October 7, 1991, Lovell made statements to employees represented by MTEA which expressed or implied threats of reprisal or promises of benefits for engaging in protected concerted activity.

10. During the 1991-92 school year, Hamilton High had four Assistant Principals, one of whom was Ben Nelson. All of the Assistant Principals, as well as the Principal, were responsible for evaluating and observing Hamilton High staff during the 1991-92 school year. On October 7, 1991, Carol Pingel received the following notice:

October 7, 1991  
Date

To: Ms. Pingel

From: B. Nelson

Re: Teacher Observation/Evaluation

It is Evaluation/Observation Time Again and You are on my list as staff member to be Observed/Evaluated. I will be talking to you and visiting your classroom several times during the year.

Thanks

Nelson sent a similar note to the other twenty-four teachers who were evaluated or observed by Nelson during the 1991-92 school year. Nelson had been evaluating and observing teachers for a number of years prior to the 1991-92 school year. While the evaluation process was a formal process in which the teacher received a written evaluation, the observation process was informal. Nelson observed teachers, including Pingel, by visiting their classroom and talking to teachers about their concerns. Pingel, who has been a MPS teacher for twenty-five years, has been a Librarian at Hamilton for twelve years. Pingel understood the memo to mean that she was going to be evaluated, but she did not discuss this memo with Nelson. Pingel was evaluated during the 1990-91 school, but was not evaluated during the 1991-92 school year. As reflected in the note of October 7, 1991, Nelson observed Pingel, i.e., he visited the library on several occasions to see how things were going. Nelson observed Pingel in the same manner as he observed other staff members. Lovell never told Nelson to evaluate Pingel, nor did he tell Nelson how many observation visits he should make to her work site. Nelson sent the note to Pingel shortly after receiving the list identifying the teachers that he was to observe and evaluate.

11. Prior to October 10, 1991, Lovell was informed by DPI and MPS Central Office that he needed to establish a career lab within Hamilton High. On October 10, 1991, Lovell and Guidance Counselor Wierzbicki viewed a room which was adjacent to the library. When Lovell looked at the room, he thought that the room was dusty and full of old equipment. The equipment, however, was the current AV equipment. Wierzbicki told Lovell that the room met the requirements of the career lab and Lovell told Pingel that the room would be used as a guidance room. While Lovell thought that Pingel had told him that the room was only occasionally used by the ex ed teachers, Pingel had been using the room as a media room, i.e., students used the room to make-up media assignments from their teachers. At various times, the room had also been used by the coaches and by other teachers. The room was also used to store extra chairs. Pingel knew that the Guidance Department had made a request for

additional space. At the next meeting of the building committee, Pingel resigned as a member of the building committee because she felt that she had been harassed because of the disagreement over the parent-teacher conferences. According to Pingel, the harassment included being made the butt of a joke at a faculty meeting and having library space taken away.

12. On October 17, 1991, Carmen received a phone message from Pingel which stated: "Principal called faculty meeting. Please be early (Mr. Ernest knows about the call)." Lovell called the October 17, 1991 staff meeting to discuss the parent-teacher conference. When Lovell asked if there were any questions, Carmen raised his hand. Lovell told Carmen that he would not allow Carmen to ask a question at the staff meeting, but that if Carmen wanted to ask him a question, then they could discuss the matter in Lovell's office. Lovell also told Carmen that it was unfair and unprofessional to walk unannounced into a staff meeting and to ask a question. After the staff meeting, Lovell came up to Carmen and asked if Carmen wanted to talk. When Carmen made no reply, Lovell walked away.

13. Dr. Christine Anderson has been employed as a MPS teacher for eighteen years. During the 1991-92 school year, Anderson was the full-time Human Relations Liaison at Hamilton High and had held this position for five or six years. Anderson was evaluated during the 1991-92 school year. Under the MPS evaluation system, a teacher can receive one of four cards, i.e., below average, average, outstanding, and average but asks for a transfer. Assistant Principal Kovochich evaluated Anderson during the 1991-92 school year and gave Anderson an outstanding rating, the same rating that she had received during the preceding eighteen years. Anderson's evaluation was signed by Lovell. Anderson is married to Robert Anderson who is an Assistant Executive Director of MTEA. Anderson has been employed by MTEA as a part-time field staff person and has been President and Vice-President of MTEA. Anderson has served on the MTEA bargaining team since at least 1979.

14. In late November or early December of 1991, there was an inservice for Hamilton High teachers. Jackie Scudder, the Chair of the Renaissance team, told Anderson that Anderson was excused from the inservice to attend a Renaissance planning meeting. Anderson attended the Renaissance planning meeting, rather than the inservice. The day after the inservice, when Anderson was in the main office of Hamilton High, Lovell stopped Anderson and told her that he had missed her at the inservice and that she was to have made a presentation on the K-12 curriculum. Anderson explained that she did not know that she had been expected to make a presentation at the inservice and that Scudder had told her to attend the Renaissance planning meeting. Lovell responded by stating that he was Anderson's Principal, and that Scudder was not. Anderson responded that she knew that he was the Principal and that she was sorry for the misunderstanding. Following this conversation, Anderson met with Scudder. Thereafter, Scudder wrote a note to Lovell stating that she was sorry for the misunderstanding. Lovell had not intended Anderson to be excused from the inservice. Prior to the inservice, Lovell had not notified Anderson that she was to make a presentation at the inservice.

15. The Ameritech Award is a teaching award sponsored by Wisconsin Bell. There are three levels of the Award, i.e., gold, silver, and bronze. Anderson, a bronze winner, was invited to the January 22, 1992 dinner honoring the winners. The \$30 per plate dinner was held at the Wyndham Hotel in Milwaukee. Anderson recalls that, during the dinner, Ann Brownfield of First Wisconsin told Anderson that it was a shame that none of Anderson's friends could be at the dinner. Anderson further recalls that she asked what Brownfield meant and that Brownfield responded that First Wisconsin had purchased the table and that she had told Lovell that Anderson was free to invite guests. There were three empty seats at the table. On the following day, Anderson asked Lovell why she was not told that she could invite guests. Lovell denied that Brownfield had ever said that Anderson was free to invite

guests and said that he wished he had known about the space at the table because then he would not have had to buy tickets for his children. Lovell's wife received an Ameritech Award at the January 22, 1992 dinner. Lovell's wife had received two tickets and Lovell had purchased two tickets for his children.

16. As Hamilton High Human Relations Liaison, Anderson held human relations planning team meetings once a month. These meetings were attended by parents, community members, administration and staff members. Normally, Anderson met with Lovell to discuss and gain approval of the agenda that she had prepared for the monthly meeting. On one occasion, Lovell approved the agenda submitted by Anderson, but when he came to the meeting, he reversed one of his decisions. The subject of the meeting was multi-cultural workshops. Anderson, who disagreed with Lovell's decision, wrote a letter to Lovell expressing her concern that racial tensions might be heightened because programs were centered on only one group of students within the building. Anderson wrote the letter to Lovell because she felt that it was her responsibility as the Human Relations Liaison to define her position and make a recommendation. Anderson cc'd a copy of this letter to Don Ernest, Executive Director of MTEA. On February 6, 1992, Anderson and Lovell had a discussion in Lovell's office in which Lovell told Anderson that she was getting her role as Human Relations Liaison and Building Representative confused. Lovell further stated that Anderson should come to him only with issues like those raised in the letter and should not involve the union. Anderson explained that she was not comfortable with not apprising the union of her concerns because she was worried that Dr. Fuller would hold her responsible if there were to be a race riot in the building because she was in charge of the human relations program. Anderson's concerns about Fuller stemmed from a recent incident in which she understood that Fuller had disciplined teachers based upon thirty seconds of a videotape which had been shown on national television and the fact that Fuller had recently removed a principal from Bell. Lovell did not make any response to these comments from Anderson. Anderson and Lovell then discussed and resolved the issue which had concerned Anderson.

17. David Roth is a trainer with the American Jewish Committee. Anderson, who had heard Roth speak at a workshop, arranged, with the assistance of the Milwaukee Jewish Committee, to have Roth inservice teachers at Hamilton. Anderson and Lovell picked the teachers who would be inserviced. The inservice involved two training sessions, the last of which was held in March of 1992. At the second training session, it was decided to develop a student component, *i.e.*, the Hamilton High Student Human Relations Club. The inserviced teachers, *i.e.*, the faculty human relations committee, selected two of its members, Roger Reitman and Diane Reed, to be the faculty advisors of the student component. Although Anderson was present at the two training sessions, she was not present at the conference call in which members of the faculty committee, including Reitman and Reed, spoke with Roth, who was in Chicago. The conference call was held in Lovell's office. While Lovell was present during the conference call, Roth and the members of the faculty human relations committee made the arrangements to have Roth meet with the students on June 4, 1992. Lovell had been informed by his secretary that Anderson was unavailable for the conference call because she was outside of the building. On June 4, 1992, as Anderson was in a hallway at Hamilton High, she met some people who asked whether she knew about a meeting in the library. When Anderson went to the library, she saw that Roth was meeting with the students and two staff members from Hamilton High, Roger Reitman and Diane Reed. Lovell, who came out of the library at that time, said good morning to Anderson. Anderson thought it was odd that she had not been informed of, or invited to, the meeting because she was the Human Relations Liaison and the student committee had been her idea. Anderson believes that she missed one meeting of the faculty human relations committee and one telephone conference call due to her negotiations duties. Anderson had arranged to have Carla Schultz fill in for her and to provide Anderson with notes of the meetings.

18. As Hamilton High Human Relations Liaison, Anderson was in charge of crisis intervention, race relations, staff morale problems, and worked with parents and community programs. Normally, teachers at Hamilton High are assigned five teaching duty assignments and one equivalency assignment. At the beginning of the 1991-92 school year, Anderson's five teaching duty assignments included four periods of human relations and one period of curriculum writing. Anderson's equivalency assignment was cafeteria duty. For budgetary reasons, the Board had cut human relations to three periods. Lovell, however, had not reduced Anderson's assignment at Hamilton because he valued her program. Lovell made up for the budget cuts by increasing class sizes in other areas. As of the second semester of 1991-92, Anderson was assigned another cafeteria duty, which Anderson considered to be the worst assignment that a teacher could receive. No other Hamilton High teacher was given two cafeteria assignments during the 1991-92 school year. Hamilton High teachers were given two cafeteria assignments in the following year. Anderson received the additional cafeteria assignment because Assistant Principal Kovoichich had told Lovell that he needed more coverage in the cafeteria and that he wanted to assign Anderson an additional hour in the cafeteria. Lovell, understanding that Anderson's human relations assignment had been reduced by the Central Office, told Kovoichich that he could assign Anderson the additional cafeteria duty. In June of 1992, Anderson was notified that her 1992-93 teaching assignment at Hamilton High would include two periods of competency English, and that her Human Relations assignment would be reduced accordingly. Anderson, who had not taught English for seven years, understood that she would be teaching remedial English to students who had failed their competency test. Anderson did not consider the competency English assignment to be a plum assignment. Lovell did not assign the English competency classes to Anderson. Rather, the assignment was made by the English Department Chairperson and Assistant Principal Kovoichich. Anderson applied for, and received, a transfer from Hamilton High and did not teach at Hamilton High during the 1992-93 school year.

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

#### CONCLUSIONS OF LAW

1. Complainant Milwaukee Teachers' Education Association is a labor organization within the meaning of Sec. 111.70(1)(h), Stats.
2. Respondent Milwaukee Board of School Directors is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats, and Principal Clark Lovell is an agent of Respondent Milwaukee Board of School Directors.
3. Complainant Milwaukee Teachers' Education Association has failed to demonstrate by a clear and satisfactory preponderance of the evidence that the conduct of Principal Clark Lovell, described in Finding of Fact Four, interfered with, restrained or coerced employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats., and, therefore, has not established a violation of Sec. 111.70(3)(a)1, Stats.
4. On September 27, 1991, Principal Clark Lovell interfered with the conduct of the MTEA election held at Hamilton High on September 27, 1991, thereby, engaging in conduct which interfered with, restrained, or coerced employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats., and, therefore, Respondent Milwaukee Board of School Directors, by the conduct of its agent Principal Clark Lovell, has violated Sec. 111.70 3(a)(1), Stats.
5. Complainant Milwaukee Teachers' Education Association has failed to demonstrate by a clear and satisfactory preponderance of the evidence that, during the conversation with Building Representative W. Eric Oliver described

in Finding of Fact Eight, Principal Clark Lovell made any statement which interfered with, restrained, or coerced employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats., and, therefore, has not established a violation of Sec. 111.70(3)(a)1, Stats.

6. On October 2, 1991, Principal Clark Lovell interfered with, restrained, or coerced employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats., when Lovell asked Building Representative Carol Pingel who wrote and who typed the letter issued by the Building Representatives and, therefore, Respondent Milwaukee Board of School Directors, by the conduct of its agent Principal Clark Lovell, has violated Sec. 111.70(3)(a)1, Stats.

7. At the faculty meeting of October 7, 1991, described in Finding of Fact Nine, Principal Clark Lovell made statements which, construed in the light of surrounding circumstances, had a reasonable tendency to interfere with, restrain or coerce employes in the exercise of their Sec. 111.70(2) rights and, therefore, Respondent Milwaukee Board of School Directors, by the conduct of its agent Principal Clark Lovell, has violated Sec. 111.70(3)(a)1, Stats.

8. Complainant Milwaukee Teachers' Education Association has failed to demonstrate that the decision to observe Carol Pingel during the 1991-92 school year and the decision to convert the library media room to a career lab were motivated, in whole or in part, by union animus, or hostility toward the concerted protected activities of employes, and, therefore, has not established a violation of Sec. 111.70(3)(a)3, Stats.

9. Complainant Milwaukee Teachers' Education Association has failed to demonstrate by a clear and satisfactory preponderance of the evidence that, during the conversation described in Finding of Fact Fourteen, Principal Clark Lovell made any statement to Christine Anderson which had a reasonable tendency to interfere with, restrain, or coerce employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats., and, therefore, has not established a violation of Sec. 111.70(3)(a)1, Stats. Nor has Complainant Milwaukee Teachers' Education Association demonstrated that, during the conversation described in Finding of Fact Fourteen, Principal Clark Lovell harassed, discriminated or retaliated against Christine Anderson for engaging in protected concerted activities in violation of Sec. 111.70(3)(a)3, Stats.

10. Complainant Milwaukee Teachers' Education Association has failed to demonstrate that Christine Anderson was deprived of the opportunity to invite friends and family to the January 22, 1992 Ameritech Awards dinner because Principal Clark Lovell harassed, discriminated or retaliated against Christine Anderson for engaging in protected concerted activity and, therefore, has not established a violation of Sec. 111.70(3)(a)3, Stats.

11. Complainant Milwaukee Teachers' Education Association has failed to demonstrate that Christine Anderson was not invited to the June 4, 1992 meeting of the Hamilton High Student Human Relations Club because Principal Clark Lovell harassed, discriminated or retaliated against Christine Anderson for engaging in protected concerted activity and, therefore, has not established a violation of Sec. 111.70(3)(a)3, Stats.

12. Complainant Milwaukee Teachers' Education Association has failed to demonstrate that the decision to assign an additional cafeteria duty to Christine Anderson during the second semester of the 1991-92 school year and the decision to alter Christine Anderson's 1992-93 teaching assignment by assigning Anderson two periods of competency English were motivated, in any part, by union animus, or hostility toward employes for engaging in concerted protected activity and, therefore, has not established a violation of Sec. 111.70(3)(a)3, Stats.

13. Complainant Milwaukee Teachers' Education Association has failed to

demonstrate by a clear and satisfactory preponderance of the evidence that, during the conversation described in Finding of Fact Sixteen, Principal Clark Lovell made any statement to Christine Anderson which had a reasonable tendency to interfere with, restrain, or coerce employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats., and, therefore, has not established a violation of Sec. 111.70(3)(a)1, Stats.

14. Complainant Milwaukee Teachers' Education Association has failed to demonstrate that Respondent Milwaukee Board of School Directors has violated Sec.111.70(3)(a)2, 3, 4, or 5, Stats.

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

ORDER 1/

IT IS HEREBY ORDERED:

1. The portions of the complaint and amended complaint alleging violations of Secs. 111.70(3)(a) 2, 3, 4 and 5, Stats., are hereby dismissed.

2. Respondent Milwaukee Board of School Directors, its officers and agents, shall immediately

a. Cease and desist from interrogating employes or in any other manner interfering with, restraining or coercing employes in the exercise of rights protected by Sec. 111.70(2), Stats.

b. Take the following affirmative action which the Examiner finds will effectuate the policies of MERA.

1. Post the Notice attached hereto as Appendix "A" in conspicuous places at Hamilton High School where notices to such employes are usually posted. The notice shall be signed by an authorized representative of the Respondent Milwaukee Board of School Directors and shall remain posted for thirty days thereafter. Reasonable steps shall be taken by the Respondent Milwaukee Board of School Directors to insure that said notices are not altered, defaced or covered by other material.

2. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 7th day of April, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Coleen A. Burns /s/  
Coleen A. Burns, Examiner

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1/ See footnote on Page 13.

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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 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.



MILWAUKEE PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On November 5, 1991, the MTEA filed a complaint with the Wisconsin Employment Relations Commission alleging that the Milwaukee Board of School Directors, by its agent and High School Principal, Clark Lovell, violated Sec. 111.70, Stats., by interfering with Union meetings, interrogating building representatives concerning their Union activities, and threatening and retaliating against them because of their activities as building representatives. The complaint was amended on July 16, 1992, and again on August 13, 1992, to allege that Principal Lovell also retaliated against Christine Anderson because of her protected and concerted activities as a member of the MTEA building committee. Respondent denies that it has committed any prohibited practices.

DISCUSSION

The original complaint filed on November 5, 1991, alleges that Respondents violated Sec. 111.70(3)(a)1, 2, 4 and 5, Stats. The amendments to the original complaint, which were filed on July 16 and August 13, 1992, incorporate the paragraphs of the original complaint which allege that Respondent has violated Sec. 111.70(3)(a)1, 2, 4 and 5, stats. In post-hearing written argument, however, Complainant asserts that its complaint alleges that Respondent has violated Sec. 111.70(3)(a)1, 2, and 4, Stats. 2/

Neither Complainant's opening statement at hearing, nor Complainant's written argument, addresses the allegation that Respondent has violated Sec. 111.70(3)(a)5, Stats. Accordingly, the Examiner has concluded that Complainant has abandoned this claim. The Examiner has dismissed that portion of the complaint which alleges that Respondent has violated Sec. 111.70(3)(a)5, Stats., without discussion.

The complaint, amendments to the complaint, and the Complainant's written argument do not specifically reference Sec. 111.70(3)(a)3, Stats. These documents, however, do raise the claim that Respondent has retaliated against employes for engaging in protected concerted activities. Moreover, such a claim was litigated at hearing. Accordingly, the Examiner is satisfied that Complainant has raised a claim that Respondent has violated Sec. 111.70(3)(a)3, Stats.

Sec. 111.70(3)(a)1, Stats.

Section 111.70(3)(a)1, Stats., provides that it is a prohibited practice for a municipal employer "To interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in sub. (2)." Section 111.70(2), Stats., provides as follows:

(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,

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2/ Respondent did not file any written argument. Nor did Respondent make any oral argument upon completion of the hearing.

concerted activities for the purpose of collective bargaining or other mutual aid or protection.

In order to prevail upon the allegation that an employer has violated Sec. 111.70(3)(a)1, Stats., the complaining party must demonstrate, by a clear and satisfactory preponderance of the evidence, that an employer has engaged in conduct which has a reasonable tendency to interfere with, restrain or coerce employes in the exercise of their Sec. 111.70(2) rights. 3/ A violation may be found where the employer did not intend to interfere and an employe did not feel coerced or was not, in fact, deterred from exercising Sec. 111.70(2) rights. 4/ A finding of anti-union animus or motivation is not necessary to establish a violation of Sec. 111.70(3)(a)1. 5/

Just as employes have a protected right to express their opinions to their employers, so also do public sector employers enjoy a protected right of free speech. 6/ Recognizing that labor relations policy is best served by an uninhibited, robust and wide-open debate, the Commission has found that neither inaccurate employer statements, nor employer statements critical of the employes' bargaining representative are violative of Sec. 111.70(3)(a)1, per se. 7/ The test is whether such statements, construed in light of surrounding circumstances, express or imply threats of reprisal or promises of benefits which would reasonably tend to interfere with, restrain, or coerce municipal employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats. 8/

Sec. 111.70(3)(a)2, Stats.

Under Sec. 111.70(3)(a)2, Stats., it is a prohibited practice for a municipal employer to "initiate, create, dominate or interfere with the formation or administration of any labor or employee organization or contribute financial support to it, . . ." This statutory proscription contemplates a municipal employer's active involvement in creating or supporting a labor organization. 9/ Sec. 111.70(3)(a)2 "interference" is of a magnitude which threatens the independence of a labor organization as the representative of employe interests." 10/ "Domination" involves the actual subjugation of the labor organization to the employer's will. 11/ A dominated labor organization is so controlled by the employer that it is presumably incapable of effectively

3/ WERC v. Evansville, 69 Wis. 2d 140 (1975).

4/ Beaver Dam Unified School District, Dec. No. 20283-B (WERC, 5/84); City of Brookfield, Dec. No. 20691-A (WERC, 2/84); Juneau County, Dec. No. 12593-B (WERC, 1/77).

5/ City of Evansville, Dec. no. 9440-C (WERC, 3/71).

6/ Ashwaubenon Jt. School District No. 1, Dec. No. 14774-A (WERC, 10/77).

7/ See generally: Lisbon-Pewaukee Jt. School District No. 2, Dec. No. 14691-A (Malamud, 6/76); Drummond Joint School District No. 1, Dec. No. 15909-A (Davis, 3/78); and Brown County (Sheriff-Traffic Department), Dec. No. 17258-A (Houlihan, 8/80).

8/ Id.

9/ Menomonie Jt. School District No. 1, Dec. No. 14811-C, (McGilligan, 3/78).

10/ Columbia County, Dec. 22683-B (WERC, 1/87).

11/ Barron County, Dec. No. 26706-A (Jones, 8/91).

representing employe interests. 12/

Sec. 111.70(3)(a)3, Stats.

Section 111.70(3)(a)3, Stats., makes it a prohibited practice for a municipal employer to encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment. In order to establish a violation of this section, a complainant must show all of the following elements:

1. The employe was engaged in protected activities; and
2. The employer was aware of those activities; and
3. The employer was hostile to those activities; and
4. The employer's conduct was motivated, in whole or in part, by hostility toward the protected activities. 13/

It is well-settled under Wisconsin's "in-part" test that anti-union animus need not be the employer's primary motive in order for an act to contravene this statute. 14/ If such animus forms any part of the decision to deny a benefit or impose a sanction, it does not matter that the employer may have had other legitimate grounds for its action. 15/ An employer may not subject an employe to adverse consequences "when one of the motivating factors is his union activities, no matter how many other valid reasons exist" for the employer's action. 16/

Sec. 111.70(3)(a)4, Stats.

Sec. 111.70(3)(a)4, Stats., states that it is a prohibited practice for a municipal employer, individually or in concert with others:

4. To refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit. Such refusal shall include action by the employer to issue or seek to obtain contracts, including those provided for by statute, with individuals in the collective bargaining unit while collective bargaining, mediation or fact-finding concerning the terms and conditions of a new collective bargaining agreement is in progress, unless such

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

13/ Milwaukee Board of School Directors, Dec. No. 23232-A (McLaughlin, 4/87); Kewaunee County, supra.

14/ Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B., 35 Wis. 2d 540 (1967); Employment Relations Department v. WERC, 122 Wis. 2d 132 (1985).

15/ Ibid.

16/ Muskego-Norway, supra, at p. 562.

individual contracts contain express language providing that the contract is subject to amendment by a subsequent collective bargaining agreement. Where the employer has a good faith doubt as to whether a labor organization claiming the support of a majority of its employees in an appropriate bargaining unit does in fact have that support, it may file with the commission a petition requesting an election to that claim. An employer shall not be deemed to have refused to bargain until an election has been held and the results thereof certified to the employer by the commission. The violation shall include, though not be limited thereby, to the refusal to execute a collective bargaining agreement previously agreed upon. The term of any collective bargaining agreement shall not exceed 3 years.

A municipal employer who violates Sec. 111.70(3)(a)4, Stats., derivatively interferes with the Sec. 111.70(2), Stats., rights of bargaining unit employees in violation of Sec. 111.70(3)(a)1, Stats. 17/

#### The September 26, 1991 Meeting

On September 26, 1991, Principal Clark Lovell informed MTEA Building Representative Chair Carol Pingel that the MPS Central Office had denied the faculty's request to have the parent-teacher conference on Thursday, October 24, 1991, from 2:45 to 9:30 p.m. At that time, Pingel told Lovell that "we should have a meeting after school". 18/ Pingel's testimony establishes that she intended the meeting to be a MTEA meeting. This intent, however, was not communicated to Lovell.

Thirty to forty faculty members attended the meeting, which was held after school on September 26, 1991. When Lovell arrived at the meeting, Pingel was offering suggestions as to alternative parent-teacher conference times. Lovell, believing the meeting to be a staff meeting, began to chair the meeting and told the staff that they would need to take a second vote because they were not going to be able to have the single day conference. Lovell normally chairs staff meetings.

When Lovell appeared at the meeting and began to chair the meeting, neither Pingel, nor any other individual, told Lovell that they were having a MTEA meeting. Nor is it evident that Pingel, or any other individual, objected to Lovell's presence at or participation in the meeting.

The Examiner is satisfied that Lovell had a reasonable basis to believe that he was participating in a staff meeting, rather than a union meeting. By failing to object to Lovell's attendance at, or participation in, the meeting of September 26, 1991, Building Representative Pingel, and the other staff who were present at the meeting, acquiesced to Lovell's attendance at and participation in the meeting. Despite the Complainant's argument to the contrary, the Examiner has not found Lovell's conduct at the September 26, 1991 meeting to constitute interference with a union meeting. The record fails to demonstrate that, during the meeting of September 26, 1991, Lovell engaged in any conduct which interfered with employee rights guaranteed by Sec. 111.70(2), Stats.

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17/ Green County, Dec. No. 20308-B (WERC, 11/84).

18/ T. (II) at 123.

## Parent-Teachers Conference Vote

At the meeting of September 26, 1991, it was decided that the MTEA Building Representatives would conduct a secret ballot election on the parent-teacher conference schedule. Pingel prepared the ballots and left the ballots to be distributed to the faculty by the school secretary. On Friday, September 27, 1991, pursuant to the normal MTEA procedure for such votes, a ballot basket was placed in the main office of Hamilton High. Normally, when the MTEA Building Representatives conduct such an election, the ballot basket remains in the office until 3:45 p.m. While the ballots for the September 27, 1991 election did not indicate when the ballot basket would be closed, during the meeting of September 26, 1991, Lovell had indicated that he needed to report the results of the election to the MPS Central Office by 4:30 p.m. on September 27, 1991.

Christine Anderson, one of the MTEA Building Representatives at Hamilton High, recalls that, on Friday, September 27, 1991, at approximately 1:00 p.m., she entered the main office of Hamilton High and asked how the balloting was going. Anderson further recalls that Lovell responded that he had counted the ballots and that the split had won. According to Anderson, she was surprised that the ballots had been counted because traditionally the ballot boxes had remained open until 4:00 or 4:30 p.m. and the ballots were counted by a Building Representative.

Pingel recalls that at 1:00 p.m. on September 27, 1991, she went into the main office at Hamilton High, counted the ballots that were in the basket, and found that there were 51 votes to have the Thursday night, Friday morning split conference and 35 votes to have conferences all day on Friday. Pingel also recalls that, when Lovell saw Pingel looking at the ballots, Lovell told Pingel that either he had counted the ballots, or that the school secretary had looked at the ballots, and that, when the Central Office called, he had told the Central Office that the parent-teacher conference would be Thursday evening and Friday morning. Pingel recalls that she then finished counting the ballots and, as she walked to the door of the main office, the office secretary asked for the count. According to Pingel, she then told the secretary the ballot count. Pingel denies that she had any other conversation with Lovell on September 27, 1991 concerning the balloting.

Lovell recalls that after he returned from lunch, at approximately 1:30 p.m., he asked his secretary how the vote was going and that she replied that the teachers were telling her that they want a split conference. Lovell denies that the secretary would have counted the ballots and maintains that she relied upon information provided by the teachers. Lovell also denies that he ever counted the ballots which were cast during the election conducted on September 27, 1991.

Lovell further recalls that, following the conversation with his secretary, he went to the library and asked Pingel about the count; that Pingel responded that the count was something like 51 to 30 in favor of the split; and that he then told Pingel that he had to inform Central Office of the vote before it closes. Lovell denies that he told Pingel that he had already called the results of the vote in to the Central Office. Lovell recalls that he called the Central Office at 2:00 or 2:30 p.m. and, relying upon information supplied by Pingel, indicated that the teachers had voted in favor of a split. Lovell remembers talking with Anderson concerning the vote which occurred on September 27, 1991, but does not recall the specifics of the conversation.

While Lovell disputed Pingel's version of events, he did not deny making the statements which were attributed to him by Anderson. The Examiner credits Anderson's testimony concerning her conversation with Lovell and is persuaded that, at approximately 1:00 p.m., on September 27, 1991, Lovell told Anderson that he had counted the ballots and that the split had won. Lovell's remark,

indicating that the election was a fait accompli, lends credence to Pingel's testimony that, at 1:00 p.m., Lovell had advised her that he had called in the results of the election.

Upon comparison of the testimony of Lovell and Pingel, and consideration of the record as a whole, the Examiner is persuaded that Pingel has the better recollection of the events which occurred on September 27, 1991. Accordingly, the Examiner has credited Pingel's testimony concerning the events of September 27, 1991.

As discussed above, the Examiner has credited Anderson's testimony that Lovell told Anderson that he had counted the ballots. Lovell, however, denies that he counted the ballots. Given Pingel's testimony, which suggests that Lovell may have received ballot results from the secretary, as well as Lovell's acknowledgement that he did ask the secretary about the vote, it is likely that Lovell did not count the votes.

While it appears that the office secretary did obtain information on the results of the vote, it is not evident that the secretary was directed to obtain such information by Lovell, or any other agent of Respondent. Nor is it evident that the secretary obtained information by counting the ballots or polling the voters, rather than by receiving information volunteered by teachers. Contrary to the argument of the Complainant, the record does not warrant the conclusion that Lovell, or any other agent of the Respondent, counted the MTEA ballots on September 27, 1991.

Crediting the testimony of Anderson and Pingel, the Examiner has concluded that, at approximately 1:00 p.m. on September 27, 1991, Lovell made statements to Building Representatives Anderson and Pingel which indicated that the ballots had been counted by someone other than the MTEA Building Representatives and that the split conference had won. By indicating to the MTEA Building Representatives that the results of the election was a fait accompli, Lovell interfered with the conduct of a MTEA election, thereby, interfering with employe rights guaranteed by Sec. 111.70(2), Stats. Accordingly, the Examiner has concluded that Respondent, by its agent Lovell, has violated Sec. 111.70(3)(a)1, Stats.

#### October 2, 1991 Discussion With Oliver

Building Representative W. Eric Oliver recalls that, on October 2, 1991, he had a discussion with Lovell which occurred in Lovell's office. Oliver further recalls that the discussion was initiated by Oliver for the purpose of discussing an issue unrelated to the parent-teacher conference. According to Oliver, during this discussion, Lovell asked Oliver if he knew about the letter from the Building Representatives to the Hamilton Staff regarding the Parent/Teacher Conference Day and Oliver responded that he did. Oliver recalls that Lovell then said that the Building Representatives did not know all of the facts about the situation and mentioned that "we had just gotten the activity bus which was over and above what was normal at that point for the high schools. And we had gotten some extra monies for the inservicing of teachers and was at that point over and above". 19/ Oliver further recalls that he responded by telling Lovell that if Fuller had a problem with what the Building Representatives were doing, then he, and the other Building Representatives would be happy to discuss the matter with Fuller. According to Oliver, he construed Lovell's remarks to mean that if Dr. Fuller were "bucked too much", then Hamilton would not get these extra perks.

Lovell does not recall having the discussion with Oliver, but does not

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19/ T. (II) at 7.

deny that such a discussion could have occurred. According to Lovell, he considered the letter from the Building Representatives to contain some inaccurate and incomplete information. Lovell maintains that he wanted to find out who had sent the letter because he wanted to make some corrections. Since Lovell has not denied making the remarks attributed to him by Oliver, the Examiner is satisfied that Lovell did make these remarks.

With respect to unlawful interrogation, it is well established that an employer may not make an inquiry of employees concerning the exercise of rights protected by MERA, except under exceptional circumstances. 20/ Given the fact that the letter expressly identifies Oliver as one of the authors of the letter, the Examiner is not persuaded that Lovell interrogated Oliver in violation of Sec. 111.70(3)(a)1, Stats., when Lovell asked Oliver if Oliver knew about the letter.

As discussed above, neither inaccurate employer statements, nor employer statements critical of the employees' bargaining representative are violative of Sec. 111.70(3)(a)1, *per se*. It was not unlawful for Lovell to criticize the Building Representatives by telling Oliver that the Building Representatives did not know all of the facts.

As also discussed above, a test for determining a Sec. 111.70(3)(a)1 violation is whether Lovell's statements, construed in light of surrounding circumstances, express or imply, threats of reprisal or promises of benefits which would reasonably tend to interfere with, restrain, or coerce municipal employees in the exercise of rights guaranteed by Sec. 111.70(2), Stats. While the Examiner does not doubt that Oliver understood Lovell's remarks to mean that if Dr. Fuller were "bucked too much", then Hamilton would not get extra perks. However, Oliver's testimony concerning Lovell's remarks does not establish that Oliver had a reasonable basis for this understanding.

By stating that the Building Representatives did not have all of the facts, and mentioning the activity bus and the extra monies for the inservicing of teachers, Lovell indicated that the Building Representatives should give consideration to the benefits which the MPS administration had provided to Hamilton High. However, Oliver's testimony does not demonstrate that Lovell made any remark to Oliver which expressed, or implied, that Fuller would take away benefits, or not continue to provide benefits, if the Building Representatives, "bucked" Fuller.

Contrary to the argument of the Complainant, the record does not establish that, during the conversation of October 2, 1991, Lovell made any statement to Oliver which has a reasonable tendency to interfere with, restrain, or coerce Oliver, or any other employee, in the exercise of Sec. 111.70(2) rights. Nor does the evidence of this conversation demonstrate any other violation of the Municipal Employment Relations Act.

#### October 2, 1991 Conversation With Pingel

Pingel recalls that, on Wednesday, October 2, 1991, Lovell came into the library and indicated that he was concerned about the letter issued by the Building Representatives on the subject of the parent-teacher conference because a number of teachers were confused by the letter. Pingel further recalls that Lovell then asked Pingel who wrote the letter, and before she could respond, he asked her who had typed the letter. Pingel responded that she did not know who typed the letter. 21/ Pingel did not recall that Lovell

20/ City of Evansville, Dec. No. 9440-B (WERC, 3/71), *aff'd*, WERC v. Evansville, 69 Wis. 2d 140 (1975).

21/ While Pingel stated that she later learned that Lovell had questioned all of the Building

made any other remarks at that time.

Lovell recalls that he had a conversation with Pingel in which he asked who wrote the letter. Lovell further recalls that he mentioned that the letter contained information which was incomplete or needed clarifying.

Lovell does not deny making the statements attributed to him by Pingel during the conversation of October 2, 1991. While Lovell's account of the October 2, 1991 conversation with Pingel varies somewhat from Pingel's account, Lovell's testimony is not inconsistent with that of Pingel. The Examiner finds no reasonable basis to discredit Pingel's testimony concerning the conversation of October 2, 1991.

As discussed above, neither inaccurate employer statements, nor employer statements critical of the employees' bargaining representative are violative of Sec. 111.70(3)(a)1, per se. Regardless of whether or not Lovell was correct when he told Pingel that teachers were confused by the letter, he did not violate Sec. 111.70(3)(a)1, Stats., when he made such a statement to Pingel.

It was not unreasonable for Lovell, who was cc'd on the letter, to wish to discuss the letter with the Building Representatives who issued the letter. However, when Lovell approached Pingel, the chief Building Representative, he did not indicate that he wanted to discuss the letter with her, or with any of the other Building Representatives. Rather, he sought the identity of the individual who wrote or typed the letter. Since the letter clearly stated that the Building Representatives were the authors of the letter, it must be concluded that, when Lovell asked Pingel who wrote and who typed the letter, he was asking who had physically prepared the letter. Lovell had no legitimate reason to ask for this information. The preparation and distribution of the letter involved the exercise of rights guaranteed by Sec. 111.70(2), Stats. By asking Pingel who wrote and who typed the letter, Lovell made an inquiry of an employe concerning the exercise of rights protected by MERA and, therefore, unlawfully interrogated Pingel. Accordingly, the Examiner has concluded that Respondent, by the conduct of its agent Clark Lovell, has violated Sec. 111.70(3)(a)1, Stats.

#### Staff Meeting Of October 7, 1991

Pingel recalls that Lovell raised the issue of the parent-teacher conferences at the staff meeting of October 7, 1991. Pingel further recalls that Lovell indicated that Hamilton High would lose \$20,000 which had been granted to the school and money for things like buses if the teachers did not cooperate with the superintendent by accepting the split conference. Pingel further recalls that, at the end of the faculty meeting, Lovell indicated that, in the past, he had never asked the faculty to be there for graduation, but that now he was going to require all of the staff to be at graduation. Pingel recalls that Lovell also stated that if he couldn't do that, he was sure that Ms. Pingel would let him know.

Lovell does not deny that he discussed the \$20,000 staff development funds and the activity bus during the staff meeting of October 7, 1991. Lovell does deny, however, that he said that Fuller would take the activity bus or the staff development funds away. According to Lovell, he indicated that Fuller had been supportive of them and that Lovell would like to continue to have this support. Lovell did not deny making the statement regarding attendance at graduation.

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Representatives, Anderson denied that he had questioned her about the letter. If Lovell did question Building Representatives other than Pingel and Oliver, the record does not reveal the contents of such conversations.

The Examiner credits Lovell's testimony that he did not say that Fuller would take the activity bus or the staff development funds away. The Examiner is satisfied, however, that Lovell referenced the staff development funds and the activity bus when indicating to the faculty that Fuller had been supportive of them and that he, Lovell, would like to continue to have this support. Given the context of the discussion, i.e., the disagreement between the administration and the MTEA regarding the scheduling of the parent-teacher conferences, Lovell's remarks reasonably imply that continued receipt of such benefits as the activity bus and the staff development funds was conditional upon MTEA's conduct in scheduling the parent-teacher conference. Likewise within the context of the discussion, Lovell's statement that he would now be requiring the teacher's to attend graduation implies a reprisal for the MTEA's disagreement with the MPS administration on the scheduling of parent-teacher conferences. The Examiner is satisfied that Lovell's statements, construed in light of surrounding circumstances, implied a threat of reprisal or a promise of benefit which would reasonably tend to interfere with, restrain, or coerce municipal employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats. Accordingly, the Examiner has concluded that Respondent, by the conduct of its agent Clark Lovell, has violated Sec. 111.70(3)(a)1, Stats.

It was not unlawful for Lovell to single out Pingel as the one responsible for telling Lovell if he could not require attendance at the graduation ceremony. As Pingel acknowledged at hearing, as Building Representative, she would have the responsibility to tell Lovell that he could not require faculty attendance if she thought that he did not have such authority. 22/

According to Pingel, Lovell also said that, as far as he was concerned, the parent-teacher conferences would be Thursday night and Friday morning. Assuming arguendo, that Lovell did make such a statement at the staff meeting of October 7, 1991, the Examiner does not consider such a remark to be unlawful. Lovell, like the teachers, was entitled to express an opinion on the scheduling of the parent-teacher conferences.

#### Alleged Retaliation Against Carol Pingel

Complainant argues that Pingel was evaluated during the 1991-92 school year and that this evaluation was in retaliation for her protected concerted activities. As the record establishes, Pingel was not evaluated during the 1991-92 school year. Rather, Pingel was observed during the 1991-92 school year.

As the testimony of Assistant Principal Nelson establishes, early in the 1991-92 school year, each of the Assistant Principals was assigned a group of teachers to evaluate or observe. As Nelson's testimony further establishes, a note similar to the one provided to Pingel on October 7, 1991 was sent to all of the teachers who were to be observed or evaluated by Nelson. Nelson's testimony further establishes that he had done similar evaluations in years past and that, during the 1991-92 school year, he observed Pingel in the same manner as he observed the other teachers who were assigned to him. The record does not establish that the decision to observe Pingel was motivated, in any part, by union animus, or hostility toward Pingel for engaging in protected concerted activity.

The MTEA argues that Pingel was deprived of the use of the library media room in retaliation for engaging in union activities. Lovell denies that he ordered the media equipment taken out of the media room in retaliation for the

protected union activities of Pingel. According to Lovell, DPI and Central Office guidelines required that he establish a career lab within Hamilton High.

Lovell recalls that he asked Assistant Principal Schmidt, whom he considered to be more familiar with the physical plant, which room could be used and Schmidt responded that there was a storage room which was adjacent to the library. According to Lovell, he viewed the room and found it to be dusty and full of old equipment. Lovell recalls that, when Guidance Counselor Wierzbicki, who was viewing the room with Lovell, indicated that the room would be satisfactory for a career lab, Lovell made the decision to transfer use of the room to the guidance department and advised Pingel of this decision.

While Pingel disputes the claim that the media room was a storage room, she did not dispute Lovell's testimony that the room was dusty. Moreover, Pingel acknowledges that the room was used to store extra chairs. Pingel also acknowledges that she was aware of the fact that the guidance department had requested additional space. The Examiner finds no reasonable basis to discredit Lovell's testimony that he assigned the media room to the Guidance Department because it was needed for a career lab. Contrary to the argument of the MTEA, the record does not establish that the assignment of the media room to the Guidance Department was motivated, in any part, by union animus, or hostility toward Pingel for engaging in protected concerted activity.

#### Alleged Retaliation Against Christine Anderson

##### Conversation With Lovell Regarding Inservice

During the 1991-92 school year, Christine Anderson was a Building Representative at Hamilton High. In late November or early December of 1991, there was an inservice for Hamilton High teachers. Anderson did not attend the inservice because she had been told by Jackie Scudder, the Chair of the Renaissance team, that she had been excused from the inservice to attend a Renaissance planning meeting.

Anderson recalls that, on the day after the inservice, as she was in the main office of Hamilton High, Lovell stopped Anderson and stated that he had missed her at the inservice and that she was to have made a presentation of the K-12 curriculum. According to Anderson, she replied that she did not know that she had been expected to make a presentation at the inservice and explained that she had been told by Scudder to meet with the Renaissance team. Anderson recalls that Lovell responded by stating that he was Anderson's Principal and that Scudder was not. According to Anderson, she responded that she knew that he was the Principal and that she was sorry for the misunderstanding. Anderson did not claim that Lovell made any other remarks during this conversation.

Lovell recalls having a conversation with Anderson concerning her absence from the inservice. According to Lovell, he had not intended to have Anderson excused from the inservice, but rather, had intended Anderson to be a group leader at the inservice. Lovell confirmed that, prior to the inservice, he had not notified Anderson that he wanted her to be a group leader at the inservice.

Lovell further recalls that, following the conversation with Anderson, Scudder confirmed that she had told Anderson that Anderson had been excused from the inservice.

The record does not demonstrate that Lovell's questioning of Anderson was motivated, in any part, by union animus or hostility toward Anderson for engaging in protected concerted activity. Rather, the record demonstrates that Lovell initiated the conversation because he did not know why Anderson had not attended the inservice. While Lovell's remark that he was Anderson's principal and that Scudder was not, may have been rude, it was not violative of the Municipal Employment Relations Act. Contrary to the argument of the

Complainant, the record does not demonstrate that Lovell reprimanded and criticized Anderson in retaliation for engaging in protected concerted activities.

#### Ameritech Dinner

The Ameritech Award is a teaching award sponsored by Wisconsin Bell. There are three levels of the Award, i.e., gold, silver, and bronze. Anderson, a bronze winner, was invited to the January 22, 1992 dinner honoring the winners. The \$30 per plate dinner was held at the Wyndham Hotel in Milwaukee. Lovell's wife also received an Ameritech Award at this dinner.

Anderson recalls that, during the dinner, Ann Brownfield of First Wisconsin told Anderson that it was a shame that none of Anderson's friends could be at the dinner. Anderson further recalls that she asked what Brownfield meant and that Brownfield responded that First Wisconsin had purchased the table and that she had told Lovell that Anderson was free to invite guests. There were three empty seats at the table.

Anderson recalls that, on the following day, Anderson asked Lovell why she was not told that she could invite guests to the Ameritech Dinner and that Lovell denied that Brownfield had ever said that to him. According to Anderson, Lovell said that he wished that he had known about the space at the table because then he would not have had to buy tickets for his children.

Lovell recalls that, on the day following the dinner, he had a conversation with Anderson regarding the tickets, but does not recall what was said. Having no reasonable basis to discredit Anderson's testimony concerning her conversation with Lovell, the Examiner is satisfied that Lovell did make the remarks attributed to him by Anderson.

The MTEA argues that Lovell harassed Anderson by failing to notify Anderson that there were seats available at the Ameritech dinner which could have been used by Anderson's friends and relatives. In making this argument, the MTEA relies upon the hearsay testimony of Anderson, to wit, that while she was at the awards dinner, Ann Brownfield of First Wisconsin told Anderson that Brownfield had told Lovell that Anderson was free to invite guests. Brownfield did not testify at hearing and the Examiner does not consider Anderson's hearsay testimony to be sufficient to establish that Brownfield made such a statement to Lovell.

As Anderson's testimony establishes, when confronted by Anderson, Lovell denied that Brownfield had told him that Anderson could invite guests. At hearing, Lovell recalled only one conversation with Brownfield. According to Lovell, Brownfield had telephoned him to inform him that First Wisconsin intended to purchase a table and to ask him if he had any suggestions on whom to invite. Lovell recalls that he mentioned the last year's winner and that Brownfield indicated that she would invite last year's winner, as well as another recipient.

The record does not warrant the conclusion that Anderson was deprived of the opportunity to invite friends and family to the Ameritech dinner because Lovell retaliated or discriminated against Anderson for engaging in protected concerted activity. Nor does the evidence demonstrate that Lovell harassed Anderson in violation of MERA.

#### February 6, 1992 Conversation With Lovell

While at Hamilton High, Anderson was the Human Relations Liaison and held human relations planning team meetings once a month, which meetings were

attended by parents, community members, administration and staff members. It was Anderson's procedure to meet with Lovell to discuss and obtain approval of her agenda prior to the monthly meeting.

Prior to February 6, 1992, Lovell attended one of these monthly meetings. The topic of this meeting was multicultural workshops. Lovell, who had approved the agenda for the meeting, changed the direction of the meeting and reversed one of his prior decisions. Anderson, who disagreed with Lovell's decision, wrote him a letter expressing her concern with his decision. This letter was cc'd to Don Ernest, Executive Director of MTEA. While the letter was not introduced into evidence, Anderson indicated that the concern expressed in the letter was that racial tensions would be heightened because programs were centered on one group of students at Hamilton High. According to Anderson, she felt that it was her responsibility as the Human Relations Liaison to lay out her position to Lovell.

Anderson recalls that, on February 6, 1992, she had a discussion with Lovell and that this discussion occurred in Lovell's office. Anderson did not state whether she, or Lovell, had sought the meeting. According to Anderson, Lovell told Anderson that she was getting her role as Human Relations Liaison and Building Representative confused and that she should come to him only with issues like those raised in the letter and should not involve the union. Anderson recalls that she responded that she was not comfortable with not apprising the union of her concerns because she was worried that Dr. Fuller would hold her responsible if there was a racial incident at Hamilton High. According to Anderson, Lovell made no reply to Anderson's response and the two proceeded to discuss and resolve the issue which had been the subject of the letter.

Lovell did not recall having the February 6, 1992 conversation with Anderson, but did not expressly deny that he made the statements attributed to him by Anderson. The Examiner finds no reasonable basis to discredit Anderson's testimony concerning the content of the February 6, 1992 discussion with Lovell.

Neither Anderson's testimony, nor any other record evidence, indicates that Lovell's remarks were made in other than a conversational tone. While it is true that Anderson is a Building Representative, neither her testimony, nor any other record evidence, indicates that the conversation of February 6, 1992 occurred during a meeting in which Anderson was acting in her capacity as a union representative. As Anderson herself acknowledged, she wrote the letter to Lovell in her capacity as Human Relations Liaison. While the letter was not introduced into evidence, Anderson's remarks concerning the content of the letter do not indicate that the letter addressed any matters involving the exercise of employe rights guaranteed by Sec. 111.70(2), Stats. Rather, Anderson's testimony demonstrates that the letter addressed race relations within Hamilton High. Anderson's testimony establishes that Lovell listened to Anderson's explanation of her rationale for her decision to cc MTEA without comment. When Anderson finished this explanation, she and Lovell proceeded to discuss and resolve the issue which was the subject of the letter.

Construing Lovell's remarks in light of the surrounding circumstances, the Examiner is satisfied that Lovell's remarks indicate that professional disagreements between Lovell and Anderson, in her capacity as Human Relations Liaison, concerning matters involving racial relations at Hamilton High should be kept confidential between Lovell and Anderson. Given the sensitive nature of the topic of race relations, and the lack of any evidence that the matters raised in the letter involved the exercise of rights guaranteed in Sec. 111.70(2), Stats., it was not unreasonable for Lovell to have told Anderson that she was getting her role as Human Relations Liaison and Building Representative confused and that she should come to him only with issues like those raised in the letter and should not involve the union.

The Examiner is not persuaded that Lovell made any remark which, construed in light of surrounding circumstances, expressed or implied, that (1) Anderson, or any other employe, should not engage in concerted protected activity, or (2) Anderson, or any other employe, should not contact MTEA about matters relating to protected concerted activities. Nor is the Examiner otherwise persuaded that Lovell's remarks, construed in light of surrounding circumstances, express or imply threats of reprisal or promises of benefits which would reasonably tend to interfere with, restrain, or coerce municipal employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats. Contrary to the argument of the Complainant, the record does not warrant the conclusion that, on February 6, 1992, Lovell engaged in any conduct which was violative of Sec. 111.70, Stats.

#### June 4, 1992 Meeting of the Hamilton High Student Human Relations Club

Lovell's testimony establishes that the June meeting of the Hamilton High Student Human Relations Club was scheduled during a conference call between David Roth and members of the faculty committee responsible for developing the student club. Lovell's testimony further establishes that, while Lovell was present during the conference call, he was not the one who scheduled the meeting. According to Lovell, his secretary had told him that Anderson, who had been active in the creation of the student committee, was not available for the conference call because she was outside of the building. Anderson acknowledges that she had missed one conference call involving the faculty human relations committee.

Lovell denies that it was his responsibility to invite Anderson to the June meeting of the Student Human Relations Club. The record does not demonstrate otherwise. As the MTEA argues, Anderson was not notified of the June, 1992 meeting of the Hamilton High Student Human Relations Club. The record, however, fails to establish that Anderson's lack of notification was due to any unlawful retaliatory or discriminatory conduct by Lovell.

#### Change in Anderson's Assignments

As the MTEA argues, Anderson was given an additional cafeteria assignment in the second semester of the 1991-92 school year. According to Lovell, the assignment was made because Assistant Principal Kovoichich stated that he needed additional help in the cafeteria and wanted to assign Anderson an additional hour in the cafeteria. The record does not demonstrate otherwise. Contrary to the argument of the MTEA, the record does not establish that the additional cafeteria assignment was motivated, in any part, by union animus, or hostility towards Anderson for engaging in protected concerted activity.

As the MTEA argues, in June of 1992, Anderson was advised that she would be assigned a reduced human relations assignment and two periods of competency English for the following year. According to Lovell, the decision to reduce Anderson's human relations assignment was mandated by Board budget cuts and the decision to assign the competency English to Anderson was made by the Chairman of the English Department and Assistant Principal Kovoichich. The record does not demonstrate otherwise. Contrary to the argument of the MTEA, the record does not demonstrate that the decision to alter Anderson's teaching assignment for the 1992-93 school year was motivated, in any part, by union animus or hostility towards Anderson for engaging in protected concerted activity.

#### Remaining Allegations

Although the complaint alleges that Respondent has violated

Sec. 111.70(3)(a)2 and 4, Stats., Complainant offered little, if any, argument to this effect. Nor did Complainant provide evidence at hearing to support these allegations. Accordingly, the Examiner has dismissed these allegations.

#### Conclusion

Complainant has not established that Respondent has violated Sec. 111.70(3)(a)2, 3, 4, or 5, Stats. Accordingly, the Examiner has dismissed that portion of the complaint and amended complaint which alleges that Respondent has violated Sec. 111.70(3)(a)2, 3, 4 and 5, Stats.

Complainant has established that Respondent has violated Sec. 111.70(3)(a)1, Stats. In remedy of Respondent's Sec. 111.70(3)(a)1 violation, the Examiner has issued a cease and desist order. Additionally, the Examiner has ordered the Respondent to post the appropriate notice.

Dated at Madison, Wisconsin, this 7th day of April, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Coleen A. Burns /s/  
Coleen A. Burns, Examiner