

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MILWAUKEE TEACHERS'	:	
EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	Case 275
	:	No. 48707 MP-2690
vs.	:	Decision No. 27685-A
	:	
MILWAUKEE BOARD OF	:	
SCHOOL DIRECTORS,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Mr. Richard Perry, Perry, Lerner & Quindel, S.C., Attorneys at Law, 823 North Cass  
Ms. Mary M. Kuhnmuench, and Mr. Thomas J. Beamish, Assistant City  
Attorneys, City of Milwaukee, 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 February 2, 1993, the Milwaukee Teachers' Education Association (MTEA) filed a complaint with the Wisconsin Employment Relations Commission (Commission) alleging that the Milwaukee Board of School Directors (Board) had committed prohibited practices within the meaning of Sec. 111.70(3)(a)1, Stats. After efforts to resolve the matter informally proved unsuccessful, the Commission, on June 14, 1993, appointed Richard B. McLaughlin, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Secs. 111.70(4)(a) and 111.07(5), Stats. Hearing on the matter was set for July 21, 1993. On July 6, 1993, the Board filed its answer to the complaint. On July 19, 1993, the MTEA filed notice that it intended to amend its complaint, and requested a postponement of the hearing. On July 29, 1993, the MTEA filed an amended complaint alleging Board violations of Sec. 111.70(3)(a)1, Stats. The Board filed its answer to the amended complaint on August 9, 1993. Hearing on the complaint was held in Milwaukee, Wisconsin, on October 6, October 15, December 14, December 15 of 1993 and on March 31 of 1994. During the course of the hearing, the MTEA was permitted to amend its complaint to allege that Board conduct also violated Sec. 111.70(3)(a)3, Stats. The parties filed briefs by May 24, 1994.

FINDINGS OF FACT

1. The MTEA is a labor organization and is the exclusive collective bargaining representative for certain professional certificated teaching personnel employed by the Board. Its principal offices are located at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.

2. The Board is a municipal employer which maintains its principal offices at 5225 West Vliet Street, Milwaukee, Wisconsin 53208.

3. Among the schools the Board operates is Alcott Elementary School. The Board has staffed Alcott for at least the past three school years with roughly sixteen teachers. The staffing assignment for certain full-time teachers who taught at Alcott throughout the period from the 1991-92 through the 1993-94 school year can be summarized thus:

<u>TEACHER</u>	<u>GRADE LEVEL</u> <u>1991-1992</u>	<u>GRADE LEVEL</u> <u>1992-1993</u>	<u>GRADE LEVEL</u> <u>1993-1994</u>
Svendson	Kindergarten	Kindergarten	Kindergarten
Raits	Kindergarten	Kindergarten	Kindergarten
Kirchner	First	Split 3-4	Fifth
Tillman	Second	Second	Second
Eversley	Second	Second	Second
Klovas	Third	Third	Third
Mutchie	Third	Third	Split 3-4
D'Amico	Split 4-5	Reading Resource	Reading Resource
Seidel	Fifth	Fifth	Fifth
Burns	Fifth	Fifth	Fourth

Throughout the school years noted above, Dennis D'Amico was the Building Representative for the MTEA.

4. The Board maintains four basic forms for the evaluation of teachers: 280, 281, 281-T and 282. A 280 card is for performance ranking "among the top members of the profession." A 281 evaluation card is for performance falling "in that large class of good teachers." A 281-T card is like the 281 except the evaluating principal has included a recommendation that the teacher transfer to a different school. A 282 card reflects unsatisfactory performance. The Board and the MTEA have, at all times relevant to this proceeding, been parties to a series of collective bargaining agreements covering teaching personnel represented by the MTEA. Part IV, Section M, 5, of the agreement in effect from July 1, 1990, through June 30, 1992, authorizes an evaluated teacher to submit a written response to the evaluation, to be included in the evaluation report.

5. Erma J. Cannon served the Board as a classroom teacher for over twenty years. In January of 1989 she became an Acting Principal. She came to

Alcott in August of 1991, as an Acting Principal, to replace the then incumbent Principal, who was on a leave of absence. In February of 1992, the incumbent resigned, and Cannon became Principal of Alcott School.

6. The Board hired Romelle Kirchner in September of 1964. She taught third grade in her early years of teaching, but became a first grade teacher in 1968. From September of 1968 until June of 1992 she taught first grade. In 1983 the Board assigned her to teach at Alcott. She has received evaluations on a 281 card, but received only 280 level evaluations at Alcott until the Spring of 1992. Kirchner has a 316 license, which is a certification by the Wisconsin Department of Public Instruction (DPI) of competence to serve as a Reading Teacher. D'Amico has a 315 license, which is DPI certification of competence to serve as a Reading Resource Instructor. No other Alcott faculty had, at all times relevant here, such licenses.

7. Cannon observed Kirchner's classroom performance in February of 1992, and stated her conclusions on a form which ranked various areas of performance on a 1 through 5 scale, with 1 indicating "Unsatisfactory" performance and 5 indicating "Outstanding" performance. Cannon gave Kirchner no rating less than 4. On thirty-six of the forty-nine areas of performance given a numerical rating, Cannon ranked Kirchner at 5. Cannon also wrote positive comments on the form, and added a note to Kirchner stating, among other things, that "You are doing a good job." Cannon gave 281 evaluations to each of the teachers she evaluated in the 1991-92 school year, except one teacher who had, after applying for employment in another school district, asked for and received a favorable recommendation. Cannon issued that teacher a 280 evaluation. Cannon viewed the 281 evaluations as a reflection of the limited time she had to observe classroom performance, and as a "baseline" for future evaluations. Kirchner did not agree with Cannon's establishment of a "baseline."

8. Kirchner received her 281 evaluation form at the end of the school day on Friday, May 29, 1992. Cannon included the following written comments on the form:

Mrs. Kirchner works well with the first grade students.  
She is nurturing but yet expects her pupils to do their best. Her lessons are age appropriate and well planned. She has tried several innovative projects with her class working with the 4/5 split grade level .  
. .

That evening Lynn Seidel, another Alcott teacher, informed Kirchner that one teacher had received a 280 card. On June 1, 1992, Kirchner confronted Cannon in an Alcott hallway. Kirchner, with her voice raised, stated her disagreement with her evaluation. Cannon responded that she was attempting to establish a baseline for future evaluations. Kirchner stated that she wished to be evaluated on her own merit for her own performance for that school year, asked if anyone had received a 280 evaluation, and, if so, who and why. Cannon declined to discuss other teachers, and stated her own concern about discussing

the performance of other teachers with Kirchner. By the end of the conversation, each understood Kirchner would supply a written comment to the evaluation.

9. Cannon, in a note to Kirchner dated June 2, 1992, asked Kirchner to:

"Please return your evaluation card with any attachments by the end of the day. Cards were due yesterday." Kirchner supplied Cannon with a written comment to the 281 evaluation, dated June 2, 1992, which reads thus:

I received my evaluation card on Friday--May 29 at the end of the school day. I had a brief meeting with Ms. Cannon on Monday-June 1. During the discussion I expressed my disappointment with the evaluation.

As an educator for 26 years, I know that positive recognition motivates students as well as teachers to do more and to achieve more. No recognition produces nothing.

The evaluation I received does not reflect my teaching.

Judith Raits also received a 281 evaluation for the 1991-92 school year, and also attached a written comment disagreeing with her evaluation.

10. On June 5, 1992, Cannon posted a notice to Alcott teachers informing them of tentative grade assignments for the 1992-93 school year. Kirchner, on that list, had been assigned to a 2-3 Split. Split classes reflect that enrollment in one grade level is insufficient, under Board class size guidelines, to fill a class restricted to that grade level. Grade levels are then combined. Splits are generally perceived by teachers and administrators as more difficult, and less desirable, to teach than a single grade level. Cannon did not discuss the assignment with Kirchner prior to this posting.

11. Kirchner decided to meet with Cannon about the evaluation and about her assignment to a 2-3 Split. She asked Judith Raits, a Kindergarten teacher at Alcott, and a former MTEA Building Representative, to accompany her. On June 8, 1992, Kirchner and Raits approached Cannon in her office before the start of the school day. Cannon was outside of her office door, attempting to leave the building to watch the playground and oversee the unloading of school buses. Kirchner asked to speak to Cannon about her concerns. Cannon, after some discussion, questioned Raits and Kirchner about who the elected Building Representative was, ultimately informing them that she would not meet with them. Kirchner and Raits understood Cannon's refusal to meet to be a refusal to meet with anyone but D'Amico as Kirchner's representative. Kirchner then contacted the MTEA, and spoke to Donald Deeder, an Assistant Executive Director.

12. Deeder unsuccessfully attempted to reach Cannon by phone. He left a message at Cannon's office that Kirchner could be accompanied by any person she chose for a meeting. Cannon responded by leaving a memo for Kirchner that Cannon could meet with her "on Friday, June 12, 1992 at 11:30 a.m." June 12

was the last scheduled day of school. An end of the year faculty luncheon had previously been scheduled for the noon hour of that date. Kirchner, unsatisfied to meet at that time, again called Deeder. Deeder phoned Cannon, and attempted to arrange another meeting time. Deeder unsuccessfully attempted to set up a meeting prior to June 12, and ultimately set up a meeting for 3:30 p.m.

13. In a memo to "All Staff Members", dated June 12, 1992, Cannon stated the following:

This year has been a year of learning and growing for me. I really appreciate the cooperation I received. The vast majority of you were very cooperative and helpful. However, I have recognized that there are a couple with hidden agendas. It is my hope that you would not let this get in the way of our focus - the children.

Excellence in teaching can mean many things to many people and I am very pleased with those of you who accepted my decision to get a baseline which is not unusual. Your reaction to this evaluation revealed a lot. That reaction to the evaluation let me know if your interest was: The improvement of learning for students or self-interest.

Sometimes we need to sit down and evaluate ourselves as effective educators and decide if we are willing to change or accept change or if we have become too complacent. Then often a change is good.

It is my hope that we come back in August ready to identify a focus for Alcott and work together for the betterment of the school and our students.

Enrollment and assignments are still tentative. You will be notified when we have all of our student enrollment. Have a safe summer!

14. Deeder, Kirchner and Cannon met on June 12, 1992, at 3:30 p.m. to discuss Kirchner's concerns. Deeder included, among those concerns, the memo set forth above. Kirchner, among other points, discussed the depth of her feeling regarding teaching first grade. Deeder, among other points, asked Cannon if Kirchner could revise her written statement or do anything else to regain a first grade assignment. Cannon did not agree to change Kirchner's assignment. Cannon did note that Kirchner was a strong, experienced teacher with a Reading License, who could do well with the 2-3 Split. She also noted she did not feel she had enough time to properly observe Kirchner and voiced a number of concerns with Kirchner's conduct. Among those concerns was the disrespectful manner in which Cannon felt Kirchner had voiced disagreement with

the evaluation.

15. In late August of 1992, Raits overheard a conversation between Cannon and a new teacher who was assuming the first grade classroom formerly occupied by Kirchner. Raits perceived Cannon's comments to the teacher to be that the former incumbent of the classroom was a troublemaker. After Cannon left, Raits took it upon herself to explain to the teacher that Kirchner was one of the most able of Alcott staff. Sometime prior to the first school day of the 1992-93 school year, Cannon determined to assign Kirchner to a 3-4 Split. She did not discuss this with Kirchner, who first learned of the change prior to the start of the school year when she and her husband were preparing her classroom for the anticipated 2-3 Split.

16. Cannon scheduled a meeting of the Alcott faculty for May 12, 1993. Included on the agenda was:

Music Schedule

- 1) Look at schedule
- 2) 10-15 min. more (?) is expected for each class to start today
- 3) Mrs. Czerwinski is teaching each day a total of 3 1/2 hours each day

Cannon included this item on the agenda because she had concluded that Czerwinski's schedule did not afford students instructional time complying with DPI guidelines. She felt she had thoroughly discussed the point with Czerwinski, without securing a satisfactory teaching schedule from her. During the May 12, 1993, meeting, Cannon instructed an Alcott teacher to write in on a transparency projected to a screen to be viewed by all faculty the hours Czerwinski had afforded each Alcott teacher. As each teacher stated their hours, those hours were written onto the transparency for their view. At the end of the presentation, Cannon highlighted that the listed hours did not, in her opinion, comply with DPI guidelines. Czerwinski, who was present at the meeting, was reduced to tears. Alcott faculty were, at a minimum, made uncomfortable by the presentation. Certain teachers were outraged. Among those were D'Amico, Kirchner and James Burns, then a fifth grade teacher, and the alternate MTEA Building Representative. After discussion among many Alcott faculty members, Burns contacted the MTEA. Deeder, on behalf of the MTEA, set a meeting with Alcott faculty for May 19.

17. D'Amico advised faculty of the May 19 meeting either personally or through a routing sheet distributed among faculty members. The sheet listed each Alcott teacher, and was delivered by a student so that each teacher could read the notice on the sheet, then put a check by their name to show they had read the sheet. D'Amico and Tracy Tillman discussed the meeting in the morning of May 18, 1993. That discussion upset Tillman, who mentioned the meeting and the reason for it to Cannon that day. Cannon advised Arilla Eversley of the meeting on May 19, 1993. Eversley advised Terri Thornton of the meeting. Neither had, to that time, seen the routing sheet. After the close of the

school day on May 18, 1993, Cannon's secretary posted the tentative teaching assignments for the following school year. Kirchner was given a fifth grade class, and Burns was given a fourth grade class.

18. The bulk of the Alcott faculty attended the May 19, 1993, meeting, which was conducted after the close of the school day. Cannon's handling of Czerwinski and of the 1993-94 grade assignments, among other points, were discussed. Feelings about both incidents ran deep, and the discussion was animated. Certain staff members believed Cannon selectively punished teachers who disagreed with her, others stated their belief that Cannon treated teachers even-handedly. Kim Klovass suggested Cannon should have been asked to attend the meeting. Thornton, in response to the assertion that the class assignments had been posted earlier that morning, noted the assignments had been posted the prior day. This suggestion, as Klovass', caused further disagreement and discussion. By the end of the meeting, a rough consensus had emerged that Deeder should seek to set up a meeting involving himself, Cannon and the Alcott faculty. By the close of the meeting the emerging consensus was discussed, with Eversley and Thornton believing they had been singled out by Deeder and others for blocking full consensus. At least Thornton feared this "singling out" had racial overtones. Eversley left the meeting before other faculty because she felt Czerwinski wanted to talk about her situation outside of the hearing of teachers who supported Cannon.

19. At Deeder's request, on June 2, 1993, Cannon met with Deeder and the Alcott faculty. Cannon started the meeting, and noted her belief that Deeder appeared only as an observer. Deeder took strong exception to this statement, and noted that he appeared as the spokesman for faculty concerns. An exchange followed, during which Cannon stated she would contact the Board's Central Offices to determine if such a meeting would be appropriate and if she should have representation if it was. She left the room to phone Central Offices. Cannon returned to the meeting, stating she would proceed with it, but that she would leave if she felt the meeting strayed from serving a productive purpose. The meeting continued, covering Cannon's handling of the May 12, 1993, faculty meeting and her handling of teachers who disagreed with her. Feelings ran high. Cannon and certain teachers felt Deeder treated Cannon disrespectfully. Other teachers felt Deeder advocated their position forcefully and fairly.

20. In a letter dated July 1, 1993, to the Executive Director of the MTEA, M. Nicol Padway, stated:

Be advised that the law offices of PADWAY & PADWAY, LTD. have been retained by Erma J. Cannon for the purpose of fashioning an appropriate remedy to correct the serious violations of her personal rights by Mr. Don Deeder, MTEA staff person, on June 2, 1993 at Alcott Elementary School. During the course of that meeting, Mr. Deeder exceeded the scope of his authorized presence by interrupting the meeting, challenging the principal Erma J. Cannon and making



several derogatory comments regarding Ms. Cannon. Furthermore, during the course of the meeting, he made false and defamatory statements regarding Erma J. Cannon . . .

Though our client has the above and foregoing claims, she is prepared to resolve this matter in an amicable fashion and short of litigation. As such, in order to bring this matter to a prompt resolution, we are requesting that Mr. Deeder immediately publish a letter directed to the staff of the Alcott Elementary School stating he did not have a basis for making the aforementioned statements at the meeting of June 2, 1993. For your information and as further support of our position, I am enclosing a copy of a letter from one of the staff members who participated in that meeting and was offended by Mr. Deeder's comments . . .

Tracy Tillman authored the letter referred to above, in which she also criticized Deeder's conduct and treatment of Cannon at the June 2, 1993, meeting.

21. The Board administers Iowa Basics testing to determine the learning skills of its students on a standardized test. Standardized tests are administered to second, third and fifth grade students. Iowa Basics scores for Alcott students were made available to Cannon in October of 1991. Those scores indicated Alcott student scores were below average. Cannon also became aware that Alcott third grade students scored fifty-nine percent below all other Board students on standardized reading tests. In January of 1992, Cannon completed a report to DPI to address DPI conclusions that Alcott did not comply with State guidelines regarding physical education, mathematics, art and music instruction. By February of 1992, when Cannon learned she was to become Alcott's Principal on a permanent basis, she had determined the test scores of Alcott students had to be improved, particularly regarding reading skills. She had also determined that Alcott budgeting and staffing should be changed to move Alcott into compliance with DPI guidelines. The process by which she made those budgeting and staffing decisions, for the 1992-93 school year, ran from February through June of 1992. She called in a curriculum specialist for reading from the Board's central office to assist her in her review of Alcott's reading program. She ultimately concluded that the Alcott reading program lacked focus and coordination. Some teachers, for example, taught reading skills tested by the Iowa Basics testing, some did not. Each grade level, Cannon concluded, had such widely varying reading skills within the grade level that it was difficult, if not impossible, for individual teachers to meaningfully communicate reading skills. Cannon surveyed the certification and experience of her staff and discovered that Kirchner and D'Amico possessed the reading licenses noted above. Prior to June of 1992, Cannon had concluded Kirchner should be assigned to grade levels in which standardized testing was administered. As of June 5, 1992, Cannon was not aware that Kirchner had taught first grade exclusively for roughly twenty-four years.

22. Cannon learned in the Spring of 1993 that Alcott would have to add an additional first grade class to its building for the 1993-94 school year. Cannon did so by placing that class in a room formerly devoted to Learning Disabilities (LD) instruction. LD resource instructors were moved into the non-LD classrooms. This "Inclusion Program" required teachers to cooperate with LD resource instructors in a setting like team teaching. Cannon wanted to use volunteers, if possible, to effect the Inclusion Program. She also determined to acquire more social work time and more teacher assistant time to effect this program and to address the performance levels of Alcott students. The Inclusion Program directly affected the first through third grade levels. After discussing the matter with Alcott staff, Cannon concluded, in good faith, that neither Kirchner nor Burns wanted to be a part of the Inclusion Program. Cannon also concluded that Burns did not administer the Iowa Basics testing on a timely basis for two consecutive school years. Cannon was unaware that Burns set up the May 19, 1993, meeting of Alcott staff with Deeder.

23. Cannon's issuance of the June 12, 1992, memo, and her August, 1992, remarks to the teacher assuming the first grade classroom occupied by Kirchner in the 1991-92 school year highlight a course of conduct which has a reasonable tendency to interfere with Kirchner's or other Alcott teachers' right to engage in lawful, concerted activity for the purposes of collective bargaining or other mutual aid or protection. Cannon believed, from a conversation preceding her becoming Acting Principal at Alcott, that the then incumbent Principal viewed Kirchner as a teacher who would not cause Cannon problems provided she got what she wanted. Cannon took offense at Kirchner's tone of voice when, at a staff meeting held late in the 1991-92 school year, Kirchner questioned whether Cannon would return to Alcott for the 1992-93 school year. That staff meeting concerned Cannon's treatment of the 1991-92 school year evaluations as a baseline for future evaluations. Cannon's reassignment of Kirchner for the 1992-93 school year, and of Kirchner and Burns for the 1993-94 school year reflect her attempt to address the below average test results of Alcott students, especially regarding reading skills. Those reassignments do not reflect, even in part, hostility toward Kirchner's or Burns' exercise of lawful, concerted activity.

#### CONCLUSIONS OF LAW

1. Alcott School teachers represented by the MTEA are each a "Municipal employe" within the meaning of Sec. 111.70(i), Stats.

2. The Board is a "Municipal employer" within the meaning of Sec. 111.70(1)(j), Stats.

3. Cannon's conduct, including the issuance of the June 12, 1992, memo and derogatory remarks about Kirchner made to a new teacher in August, 1992, had a reasonable tendency to interfere with Kirchner's and other teachers' rights to engage in activity protected by Sec. 111.70(2), Stats., in violation of Sec. 111.70(3)(a)1, Stats.

4. Cannon's assignment of Kirchner and other teachers from one grade level to another was not motivated by hostility toward any teacher for engaging in rights protected by Sec. 111.70(2), Stats., and thus did not violate Secs. 111.70(3)(a)1 or 3, Stats.

ORDER 1/

1. Those portions of the complaint and amended complaint alleging Board violations of Sec. 111.70(3)(a)3, Stats., are dismissed.

2. To remedy its violation of Sec. 111.70(3)(a)1, Stats., the Board, through its officers and agents, shall immediately cease and desist from:

a. Engaging in conduct having a reasonable tendency to interfere with the rights protected by Sec. 111.70(2), Stats., such as the right to express good faith disagreement with a Principal or the right to use MTEA representatives in a resource or advocacy role.

(Footnote 1/ appears on the next page.)

3. To remedy its violation of Sec. 111.70(3)(a)1, Stats., the Board, through its officers and agents, shall take the following affirmative action which the Examiner finds will effectuate the purposes and policies of the Municipal Employment Relations Act:

a. Notify teachers represented by the MTEA by conspicuously posting the attached APPENDIX "A" in places at Alcott School where notices to such employes are customarily posted, and take reasonable steps to assure that the notice remains posted and unobstructed for a period of thirty days.

b. Notify the Wisconsin Employment Relations Commission within twenty days of the date of this Order as to what steps the Board has taken to comply with this Order.

Dated at Madison, Wisconsin, this 24th day of August, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Examiner

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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

(Footnote 1/ continues on the next page.)

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(Footnote 1/ continues from the previous page.)

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.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

APPENDIX "A"

NOTICE TO EMPLOYEES OF THE MILWAUKEE BOARD OF SCHOOL DIRECTORS  
REPRESENTED BY THE MILWAUKEE TEACHERS' EDUCATION ASSOCIATION

As ordered by the Wisconsin Employment Relations Commission, the Milwaukee Board of School Directors notifies you as follows:

1. In the circumstances existing at the close of the 1991-92 school year, Principal Cannon's issuance of a June 12, 1992, memo which, among other points, labelled dissent to the baseline evaluation process as "self-interest" could reasonably have been viewed as retaliation against teachers, such as Romelle Kirchner, for stating their opposition to that evaluation process. Remarks made by Principal Cannon to an incoming teacher could also reasonably have been viewed as retaliation against teachers, such as Romelle Kirchner, for the expression of dissenting views and for the use of MTEA representatives as resources and as advocates. The Board, through Principal Cannon and as ordered by the Commission, will cease and desist from such conduct.
2. The Board, through Principal Cannon, has not, as determined by the Commission, retaliated against Romelle Kirchner or any other teacher by reassigning them from one grade level to another. Those reassignments, as determined by the Commission, were motivated by legitimate educational policy concerns and not by an intent to retaliate against any teacher for engaging in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By \_\_\_\_\_  
Erma J. Cannon, Principal

\_\_\_\_\_  
Date

THIS NOTICE IS TO REMAIN POSTED FOR 30 DAYS AND IS NOT TO BE COVERED OR OTHERWISE OBSTRUCTED OR DEFACED.

MILWAUKEE BOARD OF SCHOOL DIRECTORS

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THE MTEA'S POSITION

The MTEA contends that the retaliatory motivation for Cannon's actions toward Kirchner and other teachers grows from, and is manifested by, a lengthy course of conduct. That chronology is sketched by the MTEA's brief in considerable detail, but is ultimately rooted in a conversation preceding the time Cannon actually met Kirchner. More specifically, the MTEA notes that Cannon interpreted remarks from her predecessor concerning Kirchner in "an unwarranted suspicious" manner. According to the MTEA, by the time Cannon actually met Kirchner, Cannon believed Kirchner was a troublemaker. This is manifested, the MTEA contends, by Cannon's placing a sinister conclusion on remarks made by Kirchner at a faculty meeting late in the 1991-92 school year and by Cannon's overreaction to Kirchner's June 1, 1992, questioning of her 1991-92 evaluation.

The MTEA contends that the animosity felt by Cannon toward Kirchner for attacking her authority reached its initial peak on June 5, 1992, when Cannon reassigned Kirchner from the first grade position she treasured. Any doubt on the retaliatory nature of this reassignment is, according to the MTEA, obliterated by Cannon's unwillingness to discuss the matter with Kirchner and Raits on June 8, 1992; her unwillingness to schedule a prompt meeting on the matter with Deeder; her avowed animosity toward Kirchner at the June 12, 1992, meeting; her publication of an end of the year letter to faculty effectively singling out Kirchner for a public remonstrance; her August, 1992, "re-assignment" of Kirchner; and her August, 1992, comments about Kirchner to a new first grade teacher.

Events in the 1992-93 school year also manifest retaliatory action by Cannon, according to the MTEA. In reaction to the May 12, 1993, faculty meeting, Burns and others started in motion a chain of events leading to the June 2, 1993, confrontation between Deeder and Cannon. The MTEA contends that Cannon viewed this chain of events as yet another attack on her authority, and acted decisively to quell the assault. To silence the perceived sources of dissent, Cannon, according to the MTEA, reassigned Kirchner and Burns to assignments each considered objectionable, and employed an attorney to pressure Deeder and the MTEA.

Dismissing Cannon's testimony as incredible, the MTEA concludes that the record establishes a pattern of retaliation by Cannon against "teachers at Alcott School because they had engaged in concerted, protected activities during the 1991-92 and the 1992-93 school years." The MTEA concludes that the Commission should determine a violation of the MERA and order Cannon "to cease and desist from taking retaliatory, adverse actions against Romelle Kirchner and four other teachers because they . . . seek to be represented by the MTEA



in conferences with the principal." Beyond this, the MTEA seeks that Cannon be ordered to apologize to Kirchner at a faculty meeting for Cannon's retaliatory conduct, and be ordered to restore Kirchner and Burns to the first and fifth grade assignments they once held. The MTEA also requests certain monetary make whole relief be ordered.

#### THE BOARD'S POSITION

After an extensive review of the factual background, the Board notes that "the burden of proof is squarely upon the complainant to establish a violation by a 'clear and satisfactory preponderance of the evidence.'" Regarding the alleged violation of Sec. 111.70(3)(a)3, Stats., the Board notes that "the complainants generally must show anti-union motivation" rooted in four established elements of proof.

The Board argues that the MTEA "has failed to meet its burden of proof with respect to the allegations set forth in the complaint." More specifically, the Board contends that the record supports no more than a conclusion that "tension" and "strong disagreement" existed between Cannon and elements of Alcott's teaching staff. More specifically, the Board argues that "there is no factual basis" to suggest Cannon's initial assignment of Kirchner to a 2-3 split "had anything to do with Kirchner's exercise of any of her contractual rights or her rights provided under sec. 111.70, Stats." That reassignment and the reassignments of the 1992-93 school year are more properly ascribed, the Board concludes, to Cannon's attempts to address Alcott students' low scores on standardized tests. That staffing and budgeting decisions are typically made well in advance of the time Cannon allegedly acted to retaliate against Kirchner underscores this conclusion, according to the Board. That Cannon made no attempt to retaliate against Raits for essentially the same conduct as Kirchner's establishes definitively, according to the Board, that Cannon's assignments do not manifest illegal motivation.

Nor has the MTEA met its burden of proving Burns' reassignment was improper, the Board claims. That Cannon's handling of the music teacher can arguably be characterized as "insensitive" does not, the Board contends, "warrant the filing of a prohibitive practice complaint." That Cannon did not act against all of the teachers offended by the May 12, 1993, meeting; that Burns had failed to properly handle Iowa Basics testing in a timely fashion for two years; that Cannon posted the assignments before the Union meeting was held; and that there is no proof that Cannon knew who sought the Union meeting establish, according to the Board, that the MTEA cannot claim to have proven the 1993 reassignments violated MERA.

The Board concludes that the record demonstrates only that the "unfortunate truth is that communication between the principal of Alcott School and certain faculty members deteriorated over the course of two school years." The Board argues that who may have started or fostered this deterioration is irrelevant to the determinative issues posed by the complaint. Such matters pose educational policy and administrative issues, not issues of labor law.

The Board characterizes Cannon's use of a private attorney regarding the statements made at the June 2, 1993, meeting thus:

A consideration of the totality of the record supports the conclusions that Cannon was not taking any action to intimidate the MTEA's representative or thwart the faculty's exercise of its . . . rights, but was instead trying to defend her name against accusations she considered to be false or baseless.

These actions manifest a breakdown in communication, the Board concludes, not a violation of MERA. The Board concludes that the complaint should be dismissed in its entirety.

#### DISCUSSION

##### The 111.70(3)(a)1, Stats., Allegation

Sec. 111.70(3)(a)1, Stats. makes it a prohibited practice for a municipal employer to "interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed" by Sec. 111.70(2), Stats. Those rights are "to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

As a general rule, an independent violation of Sec. 111.70(3)(a)1, Stats. requires that the MTEA meet, by a clear and satisfactory preponderance of the evidence, 2/ the following standard:

Violations of Sec.111.70(3)(a)1, Stats. occur when employer conduct has a reasonable tendency to interfere with, restrain or coerce employes in the exercise of their Sec. 111.70(2) rights . . . If after evaluating the conduct in question under all the circumstances, it is concluded that the conduct had a reasonable tendency to interfere with the exercise of Sec. 111.70(2) rights, a violation will be found even if the employer did not intend to interfere . . . (E)mployer conduct which may well have a reasonable tendency to interfere with employe exercise of Sec. 111.70(2) rights will not be found violative of Sec. 111.70(3)(a)1, Stats. if the employer has valid reasons for its actions. 3/

The parties' arguments highlight the tension within this standard. The final sentence of the standard creates a "valid reasons" exception to the "reasonable

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2/ Sec. 111.07(3), Stats., made applicable by Sec. 111.70(4)(a), Stats.

3/ Cedar Grove-Belgium Area School District, Dec. 25849-B (WERC, 5/91) at 11-12.

tendency to interfere" rule stated in the first two sentences. Presumably, "the reasonable tendency to interfere" rule addresses the chilling effect on the exercise of employe rights which employer actions can have even if that effect is unintended. The Commission presumably intended that the exception not swallow the rule, and that each sentence of the standard be given effect. Doing so in this case poses problems.

As preface to applying the standard, it is necessary to specify the concerted activity at issue, and the response to it. Whether Kirchner's June 1, 1992, hallway conversation with Cannon constitutes concerted activity or not, her June 2 filing of a written response to her evaluation reflects the assertion of a contractual right, and thus lawful, concerted activity. 4/ Her use of Raits to accompany her on June 8 to discuss her evaluation and grade assignment with Cannon is concerted activity for "mutual aid or protection". Similarly, her use of Deeder as a spokesman at the June 12 meeting constitutes "concerted activity for the purpose of collective bargaining." The Alcott faculty's use of Deeder as a resource and as a spokesman at the May 19 and June 2, 1993, meetings also constitutes "concerted activity for the purpose of collective bargaining."

The relevant responses by Cannon which must be examined to address the complaint are her removal of Kirchner from the first grade; her response to meeting with Raits as Kirchner's representative on June 8, 1992; her issuance of the June 12, 1992, memo; and her reassignment of Kirchner and Burns for the 1993-94 school year.

The standard cited above poses an irreconcilable dilemma when applied to the reassignments. That a reassignment which punishes a teacher for concerted activity has "a reasonable tendency" to interfere with the exercise of protected rights is apparent. Alcott teachers could reasonably perceive the reassignments as retaliatory. Changes in grade assignment were few in the 1992-93 and 1993-94 school years. The 1992-93 assignments were posted in the midst of Kirchner's difficulties with Cannon over her evaluation, and the 1993-94 assignments coincided with the MTEA meeting concerning Cannon's handling of Czerwinski. The grade assignments perceived as most onerous fell on dissident members. Certain Alcott faculty, including D'Amico, Raits, Kirchner and Burns, viewed the reassignments thus, and their perception cannot be dismissed as unreasonable. Alcott teachers could, however, reasonably perceive the reassignments as valid exercises of Cannon's right to assign. Kirchner possessed a reading license, and was a strong teacher. Alcott students fared poorly on Iowa Basics testing, and trailed Board students generally in reading skills. Burns had failed to timely administer the Iowa Basics test to his fifth grade students for two successive years. Cannon did not perceive either teacher to be willing to participate in the Inclusion Program which was part of the instruction for grades 1, 2 and 3 in 1993-94. Each reassignment supported

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4/ This is akin to the filing of a grievance which is concerted activity. See Cedar Grove-Belgium Area School District, Ibid., and Monona Grove School District, Dec. No. 20700-G (WERC, 10/86).

Cannon's desire to improve student scores on the Iowa Basics tests.

This dilemma does more than point to a fault line dividing Alcott faculty. It reflects the impossibility, on this record, of reconciling the first two sentences of the Cedar Grove-Belgium standard to the final sentence without addressing the issue of intent. Viewing as determinative the reasonable perceptions of Kirchner and others toward the reassignment process would deny the reasonableness of the contrary view and Cannon's authority to assign teachers for valid reasons. Viewing as determinative the reasonable perceptions of Cannon and others toward the reassignment process would deny the reasonableness of the contrary view and the potential chill to the exercise of protected rights.

To meaningfully address this dilemma, it is necessary to subsume the examination of the reassignment process in the Sec. 111.70(3)(a)3, Stats., analysis. This protects Kirchner's and other teachers' rights from reassignment as a form of retaliation, while preserving Cannon's right to assign teachers for valid reasons.

It is now necessary to apply the Cedar Grove-Belgium standard to Cannon's non-reassignment responses. Cannon's refusal to meet with Kirchner and Raits on June 8, 1992, did have a reasonable tendency to chill Kirchner's choice to present a concern through an advocate of her choice. Cannon testified that she did not refuse to meet with Raits, but questioned whether Raits or D'Amico was the elected Building Representative, then declined to meet at that time. This does not, however, pose a significant issue of credibility. Cannon acknowledges she questioned why Raits was present. Kirchner and Cannon did not communicate with each other less than forcefully. That Cannon may not have had time to meet on June 8 does not explain why she questioned Kirchner's choice of Raits. The Board has not argued that Kirchner was not free to use an advocate of her choice. In sum, the evidence demonstrates Cannon seriously questioned Kirchner's use of Raits. It is impossible to reconstruct the precise content of the June 8 conversation. The general tone of the conversation is, however, apparent. Raits' and Kirchner's shared understanding that Cannon would not meet with anyone but the elected Building Representative cannot be dismissed as either unreasonable or inaccurate.

The June 12, 1992, memo effectively singled Kirchner out for a public rebuke. Cannon acknowledged it should have been interpreted in that light. The memo's content is significant. It linked agreement with Cannon's evaluation methodology with "(t)he improvement of learning." Opposition to that methodology was linked to "self interest." The public nature of the rebuke is significant. The content and the distribution of the memo, at a minimum, highlighted the costs of disagreement with Cannon. That this public rebuke could reasonably be expected to chill the assertion of dissenting views is apparent. That those dissenting views had, by June 12, 1992, become concerted is demonstrated by the involvement of Raits and Deeder.

The memo thus manifests a level of interference which violates Sec. 111.70(3)(a)1, Stats. Nor is there a valid reason for the rebuke. The

memo elevated what should have been a personal disagreement into an institutional issue. Cannon did not reach this point without some provocation. She interpreted, with good reason, much of Kirchner's conduct as disrespectful. Her position, however, carries the authority of the Board. She serves as the evaluator of teachers and as the on-site implementor of Board policy. Her memo carried the weight of her office, and it is this weight which elevated a personal disagreement into an institutional issue. Cannon's August, 1992, comment to the first grade teacher assuming Kirchner's former classroom echoes this same theme, but on a verbal and individual basis. 5/

The Alleged Violation of Sec. 111.70(3)(a)3, Stats.

Sec. 111.70(3)(a)3, Stats., makes it a prohibited practice for a municipal employer to "encourage or discourage a membership in any labor organization by discrimination in regard to . . . tenure or other terms or conditions of employment." To prove a violation of this section the MTEA must, by a clear and satisfactory preponderance of the evidence, establish that: (1) a municipal employe was engaged in activity protected by Sec. 111.70(2), Stats., (2) Cannon was aware of this activity; (3) Cannon was hostile to the activity, and (4) Cannon acted, at least in part, based upon her hostility to the employe's exercise of protected activity. 6/

The concerted activity at issue is noted above. That Cannon was aware of it, regarding Kirchner, is undisputed. Thus, the final two elements are in dispute. The focus of the complaint is the assignment process which thus must be the focus here.

As preface, it is necessary to stress that "hostility" as a labor law term does not encompass personality conflicts, standing alone. 7/ It is apparent Kirchner and Cannon bear hostility toward each other. This, however apparent or regrettable, is not a legal issue. The legal issue is whether the hostility borne by Cannon to Kirchner can be, even in part, characterized as hostility toward her exercise of rights protected by Sec. 111.70(2), Stats.

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5/ The remark is not excludable hearsay. It arguably does not meet the definition of hearsay in light of Sec. 908.01(b)(1), Stats. If it does, it meets the exclusion of Sec. 908.03(3), Stats., because intent is a necessary element of proof in this case. It would also meet the exception at Sec. 908.03(24), Stats., because Cannon testified, and could have rebutted Raits' testimony.

6/ The "in-part" test was applied by the Wisconsin Supreme Court to MERA cases in Muskego-Norway C.S.J.S.D. No. 9 v. WERB, 35 Wis.2d 540 (1967) and is discussed at length in Employment Relations Dept. v. WERC, 122 Wis.2d 132 (1985).

7/ See, for example, City of LaCrosse et. al., Dec. No. 17084-D (WERC, 10/83), and School District of Ripon, Dec. No. 27665-A (McLaughlin, 1/94) aff'd by operation of law, Dec. No. 27665-B (WERC, 2/94).

The record will not support a conclusion that Cannon's grade level assignments manifest this type of hostility. Rather, the record manifests a long-simmering personality clash, with educational policy overtones. Cannon's conduct can be accounted for as the result of her educational priorities, but cannot reliably be accounted for as the fruit of anti-union hostility. To flesh out this conclusion, it is necessary to review part of the history sketched by the MTEA.

It is undisputed that Cannon understood her immediate predecessor to view Kirchner as a good teacher who could cause problems unless "you give her what she wants." 8/ This attitude, as the MTEA observes, colored Cannon's view of Kirchner, surfacing when Cannon took offense at Kirchner's comments during a Spring, 1992, staff meeting. After the conversation of June 1 and Kirchner's submission of the June 2 note, the attitude had, according to the MTEA, blossomed into a level of hostility by which Cannon denied Kirchner a first grade assignment, solely to put her in her place.

This view cannot be dismissed as implausible. Record evidence does not, however, make it persuasive. The depth of feeling Cannon felt toward Kirchner by June 1, 1992, should not be overstated. She did not issue a 281-T card to attempt to rid herself of Kirchner. This can be accounted for under Cannon's view of educational policy. She knew Kirchner had a Reading License, was a strong teacher, and could contribute to improving reading scores at Alcott. There would be no reason to transfer a teacher who promised to be an asset to the program. It is difficult to account for under the MTEA's theory that Cannon was so hostile to Kirchner that she was primed to explode by June 5.

Beyond this, the MTEA view minimizes that the deterioration in the relationship was mutual, and that the concerted activity was, between June 1 and June 5, 1992, minimal. Kirchner's resentment of the 281 evaluation was strong and growing by June 1. It is impossible to precisely reconstruct the June 1 conversation, but the general tone of the exchange is clear. Kirchner, unable to wait any longer, confronted Cannon to vent her frustration. She did not intend to discuss the point. She stated her opposition, and forcefully questioned whether any other teacher received a 280 card. The question did not seek dialogue, since she already knew the answer. There is no reason to doubt Cannon's testimony that Kirchner addressed her loudly enough to draw the attention of students and teachers. This conversation is difficult to characterize as concerted activity. Kirchner approached Cannon alone, seeking to vent personal frustration and perhaps to alter her own evaluation. She mentioned other teachers not for "mutual aid or protection" but to underscore the wrong she viewed as having been done to her. 9/

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8/ Transcript of the second day of hearing (TR2) at 11.

9/ Cf. City of LaCrosse et. al., and Ripon School District, Footnote 7, above.

As noted above, Kirchner's June 2 note reflects concerted activity, but the evidence indicates Kirchner felt more strongly about that note than Cannon. This is not to deny the significance of the note. The note's content, however, points less to concerted activity than to a statement of deep personal resentment. The note is inaccurate, and arguably inflammatory. By June 2 Cannon had given Kirchner a 281 card, as she had all returning and evaluated Alcott teachers. Her formal evaluation was, as the MTEA characterizes it, "glowing." It cannot accurately be characterized as "no recognition." Whether or not the statement that "no recognition produces nothing" could be read to mean Kirchner would lessen her effort as a teacher if Cannon adhered to the 281 card, it is apparent Kirchner deeply resented the evaluation, and wanted Cannon to be clear on that.

The personal nature of the note makes it difficult to conclude Cannon responded with anti-union hostility. Related circumstances make it impossible to reach this conclusion. Cannon wrote Kirchner a note on June 2 to remind her to file her answer. She would have known from the June 1 conversation that the note was likely to be as confrontational as the conversation. Nothing in Cannon's conduct would indicate she wrote the note to provoke a response she could retaliate for. Beyond this, she took no action or offense at Raits' having filed an answer to her 281 evaluation. Beyond this, the evidence shows no basis to believe she knew, by June 5, how attached to the first grade assignment Kirchner was.

In sum, the record will not support the assertion that Cannon, prior to June 5, felt such hostility toward Kirchner's exercise of the right to file a response to her evaluation that Cannon would transfer her from the first grade to punish her for that activity. The concerted activity engaged in by Kirchner at that point was minimal, and the depth of feeling between Kirchner and Cannon was personal and professional in nature.

In sum, the record will not support the assertion that between June 1 and June 5 Cannon's view of Kirchner's concerted activity so deteriorated that she sought to punish her by taking away her first grade assignment.

Events following that date pose troublesome issues concerning Cannon's and Kirchner's professional relationship, but afford no solid basis to conclude the June 5 reassignment was based on other than educational-policy based motivation. The meetings of June 8 and June 12 cannot bolster the MTEA's view of the resentment involved, since each succeeded the June 5 reassignment. Even if they could, it is difficult to find in Cannon's conduct the hostility necessary to establish a violation of Sec. 111.70(3)(a)3, Stats. If the June 8 confrontation and the June 12 meeting angered Cannon to the point the MTEA urges, it is not apparent why she acted against Kirchner and ignored Raits, who also filed a written objection to her 281 evaluation and also attempted to force a meeting on June 8. The educational priorities articulated by Cannon fully account for the different treatment of the two teachers.

That Cannon would not meet until June 12, 1992, can reasonably be taken to indicate she was avoiding Kirchner. Deeder viewed it thus, but his view was

colored by Kirchner's deep hurt at the reassignment and urgent desire to correct it. It does appear that Cannon was in no hurry to meet, given her view of Kirchner's earlier conduct. Cannon's contention that she could meet no earlier cannot, however, be summarily dismissed. The final week of school is, presumably, a busy one.

Nor does the scheduling of the meeting for the day of the end-of-year luncheon warrant any weight. Kirchner took the suggested 11:30 a.m. appointment as a personal affront. This is difficult to accept given the fact that Cannon expected to attend the same luncheon.

The content of the June 12, 1992, meeting is the most troublesome aspect of the events of June. Deeder extended an opportunity for Cannon and Kirchner to reconcile at least some of their differences. That Cannon questioned aspects of Kirchner's teaching undercuts the educational policy considerations she testified prompted the reassignment. Although troublesome, this does not invalidate the conclusion that Cannon did not act to punish Kirchner through the reassignment. Deeder had attempted to soften the impact of Kirchner's conduct to pave the way for a restoration of her first grade assignment, or at least test Cannon's reaction. That Cannon would not agree can be taken to manifest unyielding hostility, but more persuasively indicates Cannon was standing by a decision she felt furthered the interest of Alcott students. That the meeting devolved into non-meritorious considerations reflects no more than the accelerating decline in Cannon's view of Kirchner's conduct as an educator.

The June 12 memo, as underscored above, manifests considerable feeling on Cannon's part. If the hostility is taken to manifest a considered course of action to punish Kirchner, it is not apparent why Cannon would advertise her plot, thus exposing it to scrutiny. The depth of feeling shown by the memo points not to anti-union hostility, but to Cannon's view that Kirchner showed an unwillingness to accept a change which might advance the Alcott program.

Events after June but before the start of the 1992-93 school year do not afford any insight into Cannon's motivation for the June 5 reassignment. This is not to condone Cannon's response in that period. That Kirchner taught a 3-4 Split in 1992-93 reflects no more than that the tentative 2-3 Split proved unnecessary. Kirchner, as a strong teacher, was qualified to handle either split. Either split put her with students taking the standardized tests Cannon was concerned with. That Cannon did not communicate the change to Kirchner may well be characterized as thoughtless, but cannot be characterized as illegal.

Nor do the 1993-94 reassignments manifest, in part, anti-union hostility. Here too, an inference of anti-MTEA hostility cannot account for the assignment, while Cannon's articulated educational priorities can. Burns initiated the May 19, 1993, MTEA meeting, but there is no persuasive evidence Cannon knew this. Cannon did view him as part of a clique of dissident teachers. She also, however, thought he had authored a letter seeking to have her appointed as Principal at Alcott. It is difficult, from this background, to sense the type and level of animosity sketched by the MTEA. There is, then, no persuasive basis to conclude she reassigned him from fifth grade to



retaliate for his opposition to her handling of Czerwinski. Against this must be placed the fact that she perceived him to have failed to timely administer the Iowa Basics test for two successive years. She also understood him to be uninterested in the Inclusion Program.

Kirchner's reassignment moved her from a split into a fifth grade assignment. That she was not returned to first grade is the most onerous part of this reassignment. The initial reassignment from first grade has already been discussed, and the May, 1993, reassignment poses no new issues on that point. The MTEA notes Cannon did move her from the grade levels she taught in 1992-93. There is, however, no persuasive basis to conclude that if Cannon would have given her a third or fourth grade assignment, it would have been viewed by Kirchner as favorable.

Against this background the move to a fifth grade Level is difficult, standing alone, to characterize as further retaliation. Nor is there any evidence that Kirchner engaged in concerted activity in that school year which Cannon wished to punish. Cannon viewed her as part of a clique of dissidents, but this carried over from the prior year. It is, then, difficult to account for the May, 1993, reassignment as the result of further retaliation.

Cannon's avowed educational priorities, however, account for the reassignment. The move put her at the upper grade level of the Iowa Basics test. Cannon viewed this as making the best use of her Reading License, and hoped interaction between Kirchner and other fifth grade teachers might yield added benefits through Kirchner's interaction with them. That Cannon highlighted, in the May, 1992 evaluation, Kirchner's participation in innovative projects involving a 4-5 Split indicates her interest in those grade levels was long-standing, not fabricated sometime after the initial reassignment.

The MTEA has forcefully argued that Cannon's actions are pretextual, and that inconsistencies in her testimony prove this. Even acknowledging the inconsistencies isolated by the MTEA, the fundamental issue under Sec. 111.70(3)(a)3, Stats., is whether her reassignments of Burns and Kirchner were motivated in part by her hostility toward their opposition to her evaluations and her handling of Czerwinski. The inconsistencies cited by the MTEA are more reconcilable to the personal and professional hostility noted above than to the type of hostility regulated by the MERA. D'Amico, Burns and Kirchner have all been reassigned between the 1991-92 and 1993-94 school years. Each reassignment flows directly from Cannon's desire to improve the reading levels and Iowa Basics test scores of Alcott students.

Certain other arguments warrant some discussion before closing. The MTEA has questioned Cannon's use of a law firm to reproach Deeder for his conduct at the June 2, 1993, staff meeting. This raises a series of close points, but the evidence and argument submitted will not support a definitive answer to those points. That the use of the civil legal process to interfere with the expression of rights established by Sec. 111.70(2), Stats., might violate Secs. 111.70(3)(a)1 or 3, Stats., can be granted. It is, however, impossible

to make that determination on this record. It is not clear if any "Municipal employe" under Sec. 111.70(1)(i), Stats., was aware of, or in any way affected by, the letter from Cannon's counsel to the MTEA. The prohibited practices noted above protect the rights of municipal employes, thus proof of some impact on a municipal employe is essential to determine the alleged violation. Beyond this, the civil law rights of individuals must be balanced against any impact the assertion of those rights has in the labor law arena. The parties' arguments do not take up this balance, and it is unpersuasive to attempt to do so in the absence of such arguments. Finally, the letter does not have remedial significance, given the conclusions stated above. The letter confirms themes already touched upon. Cannon took Deeder's defense of Alcott faculty personally, and acted accordingly, in her eyes. That response risked turning a personal disagreement into an institutional issue. The effect of such conduct regarding the June 12, 1992, memo, among other conduct, has already been discussed, and is remedied below.

Considerable evidence was adduced on the content of the May 19 and June 2, 1993, meetings. That the calling and holding of each meeting constitutes concerted activity has already been noted, and is the sole aspect of either meeting having significance here. The content of each meeting echoes themes already touched upon. The MTEA contends the June 2, 1993, meeting confirms anti-union hostility on Cannon's part. It reveals, in my opinion, that the MTEA had, not unreasonably, concluded Cannon's conduct threatened its members' ability to express opposition and thus its own institutional integrity. The effect of Cannon's conduct on the assertion of dissent has already been determined. The anti-union hostility has not, however, been proven. Cannon, in my opinion, reacted as she did because she felt her own ability to implement educational policy was threatened. She acted not to undermine the MTEA, but to defend, in her eyes, the integrity of her position. At the June 2, 1993, meeting as in the June 12, 1992, memo, she sought to encourage change at Alcott. Her memo sought to challenge those who were unwilling to cooperate, and her conduct at the meeting sought to defend her ability to lead the staff.

The underlying theme throughout this period of time is that communications within Alcott School was breaking down into factionalism. The content of the May 19, 1993, meeting, although not strictly relevant to resolution of the issues addressed above, manifests this process. Eversley's testimony was balanced and reliable. That testimony indicates she, among others, felt dissenters to some of the content of the meeting had been singled out, possibly along racial lines. That testimony was credible. The perception of being singled out had a reasonable basis. It does not, however, follow that this singling out had any relationship to race. The depth of feeling among the teachers who had called the meeting turned on access to information concerning Cannon's relationship to Kirchner and others which Eversley was not fully apprised of. The depth of feeling of those more intimately involved in the long simmering dispute between Kirchner and Cannon reflected the not unreasonable perception that Cannon was punishing teachers who turned to the MTEA. Their perception of anti-union animus, in my opinion, is analogous to the perception Eversley alluded to and Thornton specifically testified about. Each perception had a reasonable basis. However reasonable the basis, the

meeting of May 19, 1993, did not concern race any more than the reassignments discussed above concern anti-union animus.

The Issue of Remedy

The most contentious point in this litigation is whether Burns and Kirchner can be returned to their former fifth and first grade assignments. The conclusion that Cannon did not, in violation of Sec. 111.70(3)(a)3, Stats., reassign them to punish them for exercising protected rights makes this remedy inappropriate. As noted above, that conclusion affirms that she had valid, within the meaning of the Cedar Grove-Belgium standard, reasons for the reassignments.

This leaves the issue of how to remedy the violations of Sec. 111.70(3)(a)1, Stats. The Order entered above seeks to do so through a cease and desist order and through a compliance notice confirming and publicizing that Order. This will parallel the distribution of the June 12, 1992, memo. The Order refers to Kirchner and Cannon by name and is to be signed by Cannon, as the Board's agent. This risks further personalizing an already over-personalized dispute. However, the June 12, 1992, memo, and the August, 1994, remarks carried her name and the weight of her office. The compliance notice should do no less. The Order seeks to balance the effect of her signature by confirming that the reassignments have not been found to be illegal. This balance is necessary because this litigation, regrettably, has posed a dispute between identifiable factions of Alcott School. This is not a litigation in which one faction can, or should, be said to prevail over the other. The Order seeks to isolate and to state the scope of the contested legal rights.

The balance sought by the Order reflects how regrettable this litigation is. The record shows a quality teacher confronting an administrator no less concerned about the welfare of Alcott students. The balance sought by the Order reflects that if, as D'Amico put it, "some healing is to go on" 10/, that healing must ultimately come from within Alcott, not from Commission orders.

Dated at Madison, Wisconsin, this 24th day of August, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Examiner