

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:
MILWAUKEE TEACHERS' :
EDUCATION ASSOCIATION, :
:
Complainant, : Case 288
: No. 49517 MP-2759
vs. : Decision No. 27809-A
:
MILWAUKEE BOARD OF :
SCHOOL DIRECTORS, :
:
Respondent. :
:

Appearances:

Perry, Lerner & Quindel, S.C., Attorneys at Law, by Mr. Richard Perry, 823 North Cass Street, Milwaukee, Wisconsin 53202-3908, appearing on behalf of the Milwaukee Teachers' Education Association.
Ms. Mary M. Kuhnmuensch, Assistant City Attorney, 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 July 1, 1993, the Milwaukee Teachers' Education Association filed a complaint with the Wisconsin Employment Relations Commission alleging that the Milwaukee Board of School Directors had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2 and 4 of the Municipal Employment Relations Act. On September 16, 1993, the Commission appointed Lionel L. Crowley, 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 Sec. 111.07(5), Stats. Hearing on the complaint was held in Milwaukee, Wisconsin, on October 22, 1993. The parties filed briefs which were exchanged on December 28, 1993. The parties reserved the right to file reply briefs by giving notice that they would do so within ten days after receipt of the opposing party's brief. The parties did not file reply briefs and the record was closed on January 10, 1994. The Examiner, having considered the evidence and arguments of Counsel, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Milwaukee Teachers' Education Association, hereinafter referred to as MTEA, is a labor organization and is the certified exclusive collective bargaining representative for certificated teachers and related professional personnel employed by the Milwaukee Public Schools, and its principal offices are located at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.
2. Milwaukee Board of School Directors, hereinafter referred to as the Board, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and its principal offices are located at 5225 West Vliet Street, Milwaukee, Wisconsin 53208. Dr. Howard Fuller is the Superintendent of the Milwaukee Public Schools and has acted on its behalf.
3. North Division High School is an inner-city high school in the City of Milwaukee, Wisconsin, and 99 percent of its students are African-Americans.

The High School has had three different principals in the last five years. The grade point average at North Division has been the lowest in Milwaukee, at around 1.12; the attendance was the poorest with as many as 40 percent of the students absent on a given day; the mobility rate was higher than any high school in the City; and it had the highest dropout rate.

4. In April, 1992, Superintendent Fuller appointed certain individuals to the North Division High School Advisory Committee. Maxine Hannibal, a teacher for 26 years at North Division, was appointed the Chairperson of the Committee. The Committee was comprised of 11 teachers, as well as alumni, parents, business partners from GE and Wisconsin Electric, the acting principal and a representative of the MTEA. The MTEA representative attended a few meetings but concluded that the Committee was making management/supervisory decisions and no longer attended Committee meetings.

5. Superintendent Fuller wanted the Committee to address the issues at North Division noted in Finding of Fact 3, to evolve a model that would improve North Division, and it was his intent that the Committee would operate for at least five years to give the Committee a chance to turn things around. Essentially, the Committee was charged with determining the educational policy at North Division High School. The Deputy Superintendent, Robert Jasna, was appointed to be the direct contact with the Committee from the Superintendent's Office.

6. On April 16, 1992, the Principal at North Division High School was informed that he would not return as principal and although he was principal until June 18, 1992, he essentially relinquished his duties to the Committee. The budget for 1992-1993 as well as the data processing plan documents were given to Ms. Hannibal and from that point on the Committee became involved in the budget and in the reduction of 15 teachers.

7. Annathee Boyd was an assistant principal at North Division High School and became the assistant principal in charge and is a member of the Committee. Boyd is responsible for the day to day running of North Division High School and the Committee sets policy and does planning including the scheduling and budget allocations with the budget established for North Division High School. The Committee's decisions were sent to Mr. Jasna who approved all of them except for two travel items.

8. The Committee developed a "plan" for the 1992-1993 school year which provided, in part, as follows:

NORTH DIVISION HIGH SCHOOL:
PLAN FOR 1992-1993 SCHOOL YEAR

BACKGROUND

North Division is one of the oldest high schools in the city. Because it has graduated many Milwaukee citizens and has suffered a well-publicized decline, the school continues to receive much attention. No other high school seems to evoke high levels of emotion and opinions as North Division.

Many efforts have been made to turn North around, including several expansive projects. The school has tried several systems for rewarding students who have improved their grade point averages and attendance. It presently offers incentives for students who qualify for college or other post-secondary institutions.

These efforts have had a positive impact on a small percentage of the school's population; however, there is a larger number of students, who, if they are able to graduate, have relatively few marketable skills or opportunities to become productive members of the community.

It is with this background in mind that the Advisory Committee has focused its efforts on a vision of North Division High School as an institution that needs to provide services to the students and community by enlisting the joint efforts of teachers, parents, alumni, business partners and other organizations. Joint efforts by these groups would establish the philosophy and direction of the school, offer a network of resources, and give each group a sense of responsibility and control over the future of the school.

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INTERIM ADMINISTRATION:

The advisory committee is making the following recommendations to the Superintendent regarding the 1992-1993 school year:

1. Keep the currently assigned assistant administrators during the 1992-1993 school year until the committee can develop a profile of the kind of administrative team that would best serve the interests of the school.
2. The assistant administrators will be known as the "administrative team" and will run the school according to the philosophy, policies, focus, and programs identified by the advisory committee.
3. No administrator will have the title of "principal;" (sic) the administrative team will

have a "lead administrator." The lead administrator will:

1. Coordinate the administrative team and their responsibilities;
 2. Work closely with the advisory committee in order to carry out policies set by the committee and to ensure that policies and procedures of the committee are achieved.
 3. Provide instructional leadership through high visibility in the classroom and through teacher supervision.
 4. Be the primary representative of North Division High School to the community and the public.
 5. Establish an academic school climate for a safe and orderly environment.
4. Mrs. Annethee (sic) Boyd has tentatively agreed to accept the role of lead administrator, upon assignment by the Superintendent.
 5. Data processing should be assigned to someone other than an administrator.

MISSION STATEMENT:

The mission of North Division High School is to provide educational excellence and challenging opportunities for its students, in order to prepare them to compete successfully in a socially, economically and culturally diverse environment. Upon graduation from North Division, students will be prepared to go on to post secondary education or be successful in employment.

In order to attain its mission for students, the staff at North Division High School will:

- Capitalize on the strengths of the African American culture;
- Use computer technology resources;
- Align the curriculum across content areas;
- Participate in staff training/development;
- Increase student attendance.

In order to attain its mission for students, the staff, students, and parents/community at North Division High School will strive to meet the following objectives:

OBJECTIVES:

Implementation of the following objectives will assist the staff, students, and parents/community at North Division in attaining the goals as described in the mission statement.

Objectives for Students:

- * Students will participate in an accelerated curriculum in English, mathematics, and reading.
- * Students will participate in an African-American centered curriculum.
- * Students will have options for an alternative school program (based on a community school concept), in addition to a regular school program.
- * Students will assist in the development of a positive school image and in recruiting students to North Division.
- * Students will have expanded supportive services available to them.
- * Students will assist in the development and enforcement of school-wide standards and codes of conduct.
- * Students who are failing courses will have interventions available to them prior to the end of the semester.

Objectives for Staff:

- * Staff members will have opportunities to observe other successful models.
- * Staff members will develop and participate in activities to build staff morale and commitment to the program at North Division High School.
- * Staff members will participate in staff development opportunities which assist in meeting the needs of students.

Objective for Parent/Community Involvement:

- * Parents and community members will provide input, involvement, and support for the programs at North Division High School through a mechanism to be developed by the Advisory Committee.

Advisory committee members, through a subcommittee structure involving all staff members at North Division High School, will develop specific strategies, or action plans, for putting these objectives into practice on a school-wide basis during the 1992-1993 school year.

Within a three- to five-year period, based on implementation of the action plans established, NDHS will meet or exceed city-wide average in all of the following indicators:

Drop-out rate
GPA
Mobility rate
Suspensions
Expulsions

In addition to the above objectives, the following additional components are recommended for implementation for the 1992-1993 school year.

DATA PROCESSING

GOALS:

The advisory committee has established the following goals related to data processing:

- * All students should have a complete and correct schedule on the first day of school.
- * Teachers should receive their class schedules in August in order to begin developing a syllabus and appropriate lesson plans for the assigned students.
- * Students who fail in the first semester of a course should receive program changes at the beginning of the second semester in order to reduce the number of failures in June.
- * The family or "house" structure for grades 9 and 10 should be implemented, and all teachers of each grade should have the same common planning period. Failed grade 9 students should not be assigned to families; the present structure, including assignment to "Empowerment English" should continue.
- * Advanced level courses should be offered in different periods during the day to enable

students to enroll in more than one.

- * Results of competency tests, and related course requirements, need to get to the school before the students are programmed into a class that they do not need.

RECOMMENDATIONS:

In order to attain the above goals, the advisory committee recommends that:

1. A teacher be placed in charge of data processing under the tutelage of an experienced (paid) consultant. Pete Garcia (teacher) has been specifically named, and he has tentatively accepted this role.
2. The persons involved in data processing should be identified by the end of this school year and should begin working on the student/teacher schedules immediately.
3. North Division should be exempt from the third Friday realignment.

COUNSELING

GOALS:

The advisory committee will recommend revisions in the counseling department relative to the responsibilities of counselors.

RECOMMENDATION:

The committee recommends that:

1. Students should be assigned to counselors by grade level, rather than by the present system of alphabetical order.

TEACHERS

GOAL:

Each teacher must become involved in an organization, activity or function of the school, outside of his/her regular teaching duties. This will not only help to even the burden of the workload, but will involve all staff more closely with students. The goal is for each teacher to sign up for one or more unpaid duties, along with one paid duty.

RECOMMENDATIONS:

It is recommended that:

1. Teachers should be allowed to return to school several days prior to the organization date for paid inservice and school planning.
2. Two people should be assigned to each homeroom. Teachers should stay with the homeroom for four years.
3. NDHS needs a critical number of African American educators to enhance its relationship to the students and community. The current ratio of Black to white staff represents a potential barrier to the accomplishment of the NDHS mission. It is recommended that all hiring and excessing should be done in consultation with the Advisory Committee to reduce the attrition of African American staff.

STUDENTS

GOALS:

- * All students should be involved in at least one school activity to ensure their continued involvement and success in the total school program.
- * A system should be developed for students to have a role in the decision-making process at North Division.

RECOMMENDATION:

It is recommended that a system for student input into the decision-making process at North Division be developed, utilizing the officers/members of the student council, class officers, and officers of various organization, (sic) e.g. the Student Leaders Group.

SCHOOL SCHEDULE:

GOAL:

The school schedule needs to be modified in order to:
-- address the needs related to student attendance,
and
-- provide some block time for teacher planning and
inservice.

RECOMMENDATION:

The advisory committee recommends that the schedule for
the 1992-1993 school year be modified.

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PLANNING - STAGE II
TO BE IMPLEMENTED IN SEPTEMBER 1993-1997

A plan, with a timeline, will be developed by the
Advisory Committee, with input from staff, students,
parents, and community, to address the following:

STAFFING

Select a permanent administrative team;
Use a modified form of school-based management,
or principal and administrators in charge;
Provide written job descriptions for all staff
members;
Exempt the school from the requirement for
racial balance in staffing.

EXPANDED PARTNERSHIP ROLE

Establish a full-time position of partnership
coordinator;
Establish a consultant team using the resources
of GE, WE and alumni who have expertise in
public relations, and who will develop a master
plan for building a positive image of the
school for recruiting new
students/stabilizing student body.

COMMUNITY SCHOOL CONCEPT

Begin working on a plan for North Division to be
a site as a community school with an alternate
program for students whose needs are not met
in a regular school program and as a site for
an adult education center.

Plan with other organizations for coordination of supportive services housed in the building for parents and students.

CURRICULUM

All departments are to work on curriculum revisions.
Establish interdepartmental alignment of courses.
Establish a committee to oversee revisions and alignment.

RESTRUCTURE SPECIAL DEPARTMENTS

Create a Vocational Education Department, whose members would work with the vocational education counselor to develop a school-to-work program.
Evaluate and make recommendations for the Medical Specialty program.

UNIFORM GRADING SYSTEM

Establish uniformity among teachers in grading student work.
Explore alternate systems of evaluating student progress, such as a portfolio system.

SCHOOL SCHEDULE

Develop teacher and student class (modular) schedules.
Develop replacement for the semester system.

STUDENTS

Codes of conduct;
Dress codes;
Extracurricular activities;
Community Service component;
Student contracts.

PARENTS

Organize parent activities.
Provide community and support services.

PROFESSIONAL DEVELOPMENT OF STAFF

Writing and reading across the curriculum through staff development.
Provide inservices (identified by teachers as needed) in learning styles of African American children, motivation techniques, and critical (sic) thinking skills.

PHYSICAL PLANT

Facilities and maintenance services
Replacements (sic) items needed
Intake

EVALUATION PROGRESS

Develop criteria.
Provide on-going assessment.
Communicate progress.

The plan was approved by Superintendent Fuller.

9. One of the Committee's recommendations to Mr. Jasna was that the schedule would be modified such that during four days the classes would be scheduled for a longer time and on the fifth day the classes would be shorter and students dismissed earlier. This recommendation had to be negotiated with MTEA and was not implemented. The Board made proposals as to the modification of the schedule to MTEA. Additionally, the Board is under a court order for faculty integration to be staffed at a primary range of + or -5% and the Committee made a recommendation that the current ratio of black to white staff represented a potential barrier to North Division's mission. Superintendent Fuller directed that North Division be staffed at + or -10%. MTEA filed a grievance over the change in the ratio. Pete Garcia, a mathematics teacher at North Division High School, was selected by the Committee to be the person in charge of data processing or a program implementor. Hannibal recommended to Superintendent Fuller that Garcia be appointed to the Committee and Fuller did so. Garcia does all the program implementation functions at North Division and at all other schools this function is done by an administrator.

10. Oliver Wendell Holmes Elementary School is a school for K through fifth grade students in the City of Milwaukee. Under the parties' 1990-1992 collective bargaining agreement, a Site Based Management (SBM) Committee had been established at Oliver Wendell Holmes. The SBM Committee was composed of the Building Representative, the alternative Building Representative, five elected teachers, two community representatives, the PTL president and vice president, the school business partner, two teachers appointed by the Principal for racial balance and one teaching assistant. The SBM Committee dealt with changes in the school, such as having a mural, allocating funds for field trips and making decisions as to specific expenditures from general funding like fencing the parking lot and playground restriping. The Committee talked about anything that did not have to do with contract obligations and the Principal was careful to remind everyone that collective bargaining items were not part of the Committee's responsibility. Employees of the District received their regular pay for the time spent on the Committee.

11. The parties' collective bargaining agreement had a sunset clause on Site Based Management and when the contract expired on June 30, 1992, the SBM Committee was disbanded. Principals were allowed to set up Advisory Committees and membership was strictly voluntary and unpaid and the recommendations of the Committee were only advisory. The Advisory Committee essentially handled non-contractual matters such as open house, school pictures, Literacy Committee monies, phones, and so on.

12. Near the end of the 1992-1993 school year, at a faculty meeting, the Principal brought up the fact that he had seen a type of Sylvan Reading Program that could be very beneficial to students. The Principal outlined that the bomb shelter would be remodeled into classrooms and students would be instructed by Sylvan's instructors in small group activities, in language, arts and reading tutorial programs. The cost for start up was about \$600,000.00. The Principal indicated he was going to bring this up to his Advisory Committee and any concerns should be given to Committee members.

13. On or about May 19, 1993, the Advisory Committee apparently was given the Principal's Sylvan plan and approved it. As the Sylvan System proposal was a subcontracting issue requiring negotiation and as the Commission was in Circuit Court seeking enforcement of a Settlement Agreement on subcontracting, the Sylvan Proposal was included in the Court proceeding with the result that the Sylvan Project was not implemented at Oliver Wendell Holmes Elementary School and at two other schools that were also proposing it.

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

CONCLUSIONS OF LAW

1. The North Division High School Advisory Committee is not a "labor organization" within the meaning of Sec. 111.70(1)(h), Stats.; thus, the Board's establishment of the Committee and its acceptance of recommendations from it and its approval of them did not constitute a violation of Secs. 111.70(3)(a)1, 2 or 4, Stats.

2. The Oliver Wendell Holmes Elementary School Advisory Committee was not a "labor organization" within the meaning of Sec. 111.70(1)(h), Stats.; thus, the Board has not committed a violation of Secs. 111.70(3)(a)1, 2 or 4, Stats., with respect to the establishment and actions with respect to said Committee.

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

ORDER 1/

Milwaukee Teachers' Education Association's complaint of prohibited practices be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin, this 3rd day of March, 1994.

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

1/ See footnote on Page 13.

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.

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

MILWAUKEE BOARD OF SCHOOL DIRECTORS

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint initiating these proceedings, MTEA alleged that the Board had violated Secs. 111.70(3)(a)1, 2 and 4, Stats., by initiating, creating and dominating "advisory" committees at North Division Senior High School and Oliver Wendell Holmes Elementary School. It alleged that these committees are labor organizations which at North Division established management policies, the managerial structure, major decisions related to staffing and changes to the work day which established Board bargaining proposals, as well as other areas which constituted mandatory subjects of bargaining. At Oliver Wendell Holmes Elementary School, it alleged that the Committee engaged in decisions concerning the subcontracting of bargaining unit work, a mandatory subject of bargaining. The Board answered the complaint denying it engaged in any prohibited practices and affirmatively alleged that the complaint failed to state a claim upon which relief may be granted.

MTEA'S POSITION

MTEA contends that the North Division and Oliver Wendell Holmes Committees are "labor organizations" within the meaning of Sec. 111.70(1)(h), Stats. It submits that the term "labor organization" is broadly defined and one exists even in the absence of organizational formalities if it meets the two requirements which are: 1. Employer participation; 2. A purpose of bargaining wages, hours and working conditions. MTEA refers to federal law and developments concerning the establishment of work place committees variously labelled focus groups, quality of work circles, work teams, etc., and notes that the National Labor Relations Board has developed a four-part test as follows:

1. Employer participation.
2. A purpose to deal with employers.
3. Concerning itself with conditions of employment or other statutory subjects.
4. If an "employee representation committee or plan" is involved, evidence that the committee is in some way representing the employees.

MTEA submits that the legislative history of the NLRA supports a conclusion that the law outlawing employer domination or interference was to target the evil of employer-dominated unions because they were the greatest obstacle to genuine collective bargaining. MTEA notes that there are "safe havens" for employer-established employee committees as follows:

1. Employee meetings to achieve improved quality or efficiency.
2. Delegation of managerial functions such as conclusive grievance adjudications.
3. Brainstorming, exchanging ideas, and sharing and

gathering information on topics such as safety or fringe benefits.

4. Non-representative employe work teams involving all employes in the work force which set goals and regulate matters such as work schedules and job rotations.

It submits that the instant committees do not fall within any safe haven but they unlawfully engaged in negotiations with the Board over mandatory subjects of bargaining.

With respect to North Division, MTEA asserts that although the Committee was established by Superintendent Fuller to perform certain management functions, it also represented teachers in mandatory subjects of bargaining. It points out that the Committee submitted proposals to the Board on wages, hours and working conditions including decisions to excess certain teachers, to increase the ratio of African-American teachers in excess of the contractual limits, the assignment of Garcia to perform an administration function, and to modify the school schedule and work week for teachers. It further notes that the Committee did not have the final say on these matters as Superintendent Fuller was not bound by the Committee's recommendations. MTEA contends that the schedule change became a proposal by the Board and was proposed to the MTEA in a Memorandum of Understanding. It argues that these were mandatory subjects of bargaining and the Committee was placing the imprimatur of employe support on the Board's bargaining proposal. MTEA insists that although the Committee was not a traditional labor union, it was a representative organization of employes that proposed hours and conditions of employment and was treated by the Board as the representative of employe interests at North Division. It maintains that the Board failed to consult with MTEA on a wide range of subjects, bypassed MTEA and circumvented the duty to bargain exclusively with MTEA. It claims that the Committee is analogous to unlawful employer-dominated committees and does not fall within any of the "safe havens" set out above. It submits that the Committee did more than share information and brainstorm and acted as the agent for the teaching staff. MTEA also argues that the Committee does not make conclusive management decisions. It submits that the record establishes that the North Division Committee is a "labor organization."

MTEA also submits that the Oliver Wendell Holmes Committee is a "labor organization" because it was used to bypass MTEA and solicit representative teacher approval for a major subcontracting project which was a mandatory subject of bargaining. The Board, according to MTEA, never sought to negotiate the decision to subcontract with MTEA.

MTEA insists that the Board unlawfully bypassed MTEA and initiated, interfered with and dominated the committees in violation of Sec. 111.70(3)(a)2, Stats. It points out that Superintendent Fuller personally initiated the Committee and appointed its members and determined its ongoing existence. At Oliver Wendell Holmes, the MTEA notes that the Principal initiated the Committee and appointed one-half of the teacher representatives. It submits that the Principal interfered with the Committee and asked the faculty to contact their "representatives" on the Committee with respect to the subcontracting project. It asserts that the Superintendent's and Principal's conduct constituted unlawful initiation, creation, domination and interference with a labor organization which constitutes a violation of Secs. 111.70(3)(a)1 and 2, Stats. It further submits the Board violated Sec. 111.70(3)(a)4, Stats., by using these labor organizations to bypass and refuse to bargain with MTEA. MTEA asks for a finding of said violations, a cease and desist order, disestablishment of the Committees and such other relief as deemed appropriate.

BOARD'S POSITION

The Board asserts that MTEA has the burden of proving by a clear and satisfactory preponderance of the evidence each and every element of the allegations in its complaint. The Board contends that the evidence fails to establish that the Advisory Committee at Oliver Wendell Holmes is a labor organization and that the Board unlawfully dominated the Committee. According to the Board, the evidence establishes that the Committee was lawful. It notes that the Committee consisted not only of teachers, but parents, business leaders and school administrators, the members were not paid and this Committee did not involve itself in matters such as wages, hours and conditions of employment. It also submits that the subcontracting issue was resolved in Circuit Court where the Commission was a party and thus the issue is moot.

With respect to North Division, the Board argues that the evidence fails to establish that the Committee was unlawful. It claims that there is scant evidence to support a finding that the Committee is a labor organization or that it dealt with wages, hours or conditions of employment. It asks that the complaint be dismissed in its entirety.

DISCUSSION

The issue presented in this matter is whether the Board violated Secs. 111.70(3)(a)1, 2 and 4, Stats., by establishing, dominating and negotiating with the Advisory Committees at North Division High School and at Oliver Wendell Holmes Elementary School. The first question for analysis is whether the Committees meet the definition of a labor organization. Sec. 111.70(1)(h) defines a "labor organization" as follows:

(h) "Labor organization" means any employe organization in which employes participate and which exists for the purpose, in whole or in part, of engaging

in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment.

There are only two requirements of a labor organization:

1. Employe participation.
2. A purpose of bargaining wages, hours and working conditions. 2/

As pointed out by MTEA, no formal structure is required, no constitution, by-laws, formal membership dues or even a name is needed to be a labor organization. 3/ MTEA has argued that recent employer-established committees, labelled as focus groups, quality of work circles, employe participation teams, etc., have been examined by the NLRB and found to be unlawful labor organizations. It cites Electromation, Inc., 142 LRRM 1001, 309 NLRB No. 163 (1992) and E.I. DuPont De Nemours, 142 LRRM 1121, 311 NLRB No. 88 (1993) which held committees were unlawful labor organizations and asserts that as MERA parallels the NLRA, the rationale of these cases is applicable to the Committees at North Division and Oliver Wendell Holmes. The facts in Electromation were that in the absence of any labor organization, the employer created five Action Committees that would come up with ways to resolve employe complaints that fell within five categories. The NLRB found that the Action Committees dealt with the employer on conditions of employment and that the only purpose of the Action Committees was to address employes' dissatisfaction with conditions of employment in a bilateral process. It held that the Action Committees acted on behalf of other employes and met the statutory definition of a "labor organization." In E. I. DuPont De Nemours, the employes were represented by a labor organization and the employer created six safety committees and a joint fitness committee. The NLRB found that these were labor organizations composed of employes which discussed mandatory subjects of bargaining and dealt with the employer on them.

A review of the record in the instant case establishes that the Committees at North Division High School and at Oliver Wendell Holmes Elementary School were composed in part of employes who participated in the Committee. The Committee also had parents, business partners and administrators. The Committee at North Division High School was established to turn the program around at North Division. The Committee was set up to improve the educational program at North Division, that is, to come up with management methods to improve the students' grade point and graduation rate and to decrease student absenteeism and mobility. These are entrepreneurial areas rather than mandatory subjects of bargaining. The purpose of the Committee was not to usurp MTEA's function of representing employes in the area of wages, hours and conditions of employment. Superintendent Fuller asked that an MTEA representative be put on the Committee and when the MTEA representative determined that the Committee was performing managerial functions, he stopped attending Committee meetings.

The Committee worked on the budget at North Division and determined the

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

3/ Id.

mix of class offerings and made decisions with respect to staffing to accomplish academic or program goals. These are all decisions which are related to educational policy and management and are not mandatory subjects of bargaining. To be sure, the impact of these decisions involves mandatory subjects of bargaining such as the impact of layoffs, but the decision to lay off is not a mandatory subject of bargaining. MTEA argued that the Committee negotiated with the Board over a change in hours; however, the evidence failed to prove any such negotiations ever occurred. The Committee recommended that a change in class time could benefit the program and there were no "negotiations" between the Committee and the Board. The Board then sought to negotiate with MTEA over this change before the change was made. There was no proof of any attempt to undermine MTEA nor was there any evidence that the Board attempted the change in hours without first negotiating with MTEA, the exclusive bargaining representative. The evidence failed to demonstrate that the Board did not follow the collective bargaining agreement with respect to the layoff procedure. A grievance was filed over the ratio of African-American teachers and the record indicates that Superintendent Fuller made that decision and there was no evidence that bargaining occurred between the Committee and Superintendent Fuller over this issue. The Committee indicated that the current ratio was a potential barrier to North Division's mission but that statement of a management goal does not translate into bargaining over a mandatory subject of bargaining.

It is not unlawful for the Board to involve employes in matters which are solely within management's purview such as budget and program direction or to make recommendations or express concerns that only the principal and other administrators have traditionally done in the past. Seeking employes know-how from their experience on program decisions which are not mandatory subjects of bargaining does not establish that a committee composed in part by employes is a labor organization. The record in the instant case shows that the Committee at North Division High School was composed in part of employes but its purpose was not to bargain wages, hours and conditions of employment with the Board. The Committee performed delegated management functions in determining educational goals and policy, and MTEA continued as the exclusive representative of employes and mandatory subjects were either negotiated between the Board and MTEA or the Board took action which MTEA grieved. Based on the fact that the Committee's purpose was not to negotiate over wages, hours and conditions of employment, and there was no evidence that the Committee engaged in such negotiations, it follows that the Committee is not a "labor organization" under Sec. 111.70(1)(h), Stats.

With respect to the Advisory Committee at Oliver Wendell Holmes Elementary School, the Committee was composed in part of teachers of the School. The record establishes that the Committee did not consider any mandatory subjects of bargaining except for one item. At the end of the 1992-1993 school year, the Principal at Oliver Wendell Holmes brought up the Sylvan Reading Program at a faculty meeting which he felt would be beneficial to students. The Principal indicated that the bomb shelter would be remodeled into classrooms and Sylvan's people would instruct students in these classrooms. There is nothing in the record to indicate that the Sylvan project was formulated or suggested by the Advisory Committee. The Principal indicated that he was going to consult with the Advisory Committee and if there were concerns these could be communicated with teachers on the Committee. The Principal brought this to the Committee which discussed it and approved the project by a vote on May 19, 1993. The decision to subcontract and the impact of the decision to subcontract are both mandatory subjects of bargaining. However, the Sylvan project was not implemented and did not go beyond the discussion stage. The record fails to establish anything other than that the Committee agreed with the Principal that the Sylvan project was desirable. The evidence fails to demonstrate that the Committee did anything other than listen

and agree about the project. The Committee did not propose the project. There were no negotiations on the subcontracting decision nor its impact. This was an isolated instance and the Committee made no proposals; rather, the Principal submitted his idea on an educational project and the Committee merely agreed with the Principal's idea on educational policy. It cannot be said that this is bargaining. In short, the evidence failed to prove that the Committee at Oliver Wendell Holmes Elementary School engaged in any collective bargaining over wages, hours or conditions of employment. Thus, it is concluded that the Advisory Committee at Oliver Wendell Holmes Elementary School is not a "labor organization" within the meaning of Sec. 111.70(1)(h), Stats.

Inasmuch as the Committees have been found not to be labor organizations, there is no violation of Secs. 111.70(3)(a)1, 2 or 4, Stats., and the complaint has been dismissed in its entirety.

Dated at Madison, Wisconsin, this 3rd day of March, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner