

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MILWAUKEE TEACHERS' :

EDUCATION ASSOCIATION, :

:

Complainant, : Case 289

: No. 49955 MP-2810

vs. : Decision No. 27867-A

:

MILWAUKEE BOARD OF :

SCHOOL DIRECTORS, :

:

Respondent. :

:

Appearances:

Perry, Lerner & Quindel, S.C., Attorneys at Law, 823 North Cass Street, Milwaukee, Wisconsin 53202-3908, by Ms. Barbara Zack Quindel, appearing on behalf of the Milwaukee Teachers' Education Association.

Ms. Mary Kuhnmuench, Assistant City Attorney, City of Milwaukee, Office of the City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, and on brief, by Mr. Thomas J. Beamish, Assistant City Attorney, appearing on behalf of the Milwaukee Board of School Directors.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On October 20, 1993, the Milwaukee Teachers' Education Association filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission alleging that the Milwaukee Board of School Directors had committed prohibited practices in violation of Sec. 111.70, Stats. On November 11, 1993, the Wisconsin Employment Relations Commission appointed Coleen A. Burns, a member of its staff, as Examiner to conduct a hearing on the complaint, and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Secs. 111.70(4)(a) and 111.07, Stats. Hearing on the matter was held on December 10, 1993, in Milwaukee, Wisconsin. The record was closed on April 25, 1994, upon receipt of transcript and written argument.

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

FINDINGS OF FACT

1. Milwaukee Teachers' Education Association, hereafter MTEA or Complainant, is a labor organization and is the certified exclusive collective bargaining representative of certain professional certificated teaching employes employed by the Milwaukee Board of School Directors. MTEA has its principal offices at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.
2. Milwaukee Board of School Directors, hereafter Board or Respondent, is a municipal employer with the authority to control and direct the operations of the Milwaukee Public School system (MPS) and has its principal offices located at 5225 West Vliet Street, Milwaukee, Wisconsin 53208. Ray Nemoir is the Respondent's Director of the Department of Staffing Services. Nemoir confirms that, in the Spring of the 1992-93 school year, MPS Principals were responsible for preparing a needs form, indicating the type and number of teachers needed for the following school year, consistent with the budget which Respondent had approved for the principal's building. This needs form was then

submitted to the MPS administrative specialist in charge of the principal. While there are some MPS and DPI imposed requirements, there was no requirement that MPS elementary schools be staffed by a full-time Librarian for the 1993-94 school year. The principals received the directions for determining their staffing needs on or about April 6, 1993, with a due date of May 19, 1993. At that time, the principals were aware that Respondent could impose subsequent budget cuts. On June 30, 1993, the Board approved additional budget cuts of 2.64%. As of December 3, 1993, sixteen MPS elementary schools were staffed by a full-time Librarian; ten MPS elementary schools were staffed by a half-time Librarian; three MPS elementary schools were staffed by a quarter-time Librarian; and eighty-two MPS elementary schools were staffed by Education Assistants or Para-professionals. On April 20, 1993, MPS Deputy Superintendent Robert C. Jasna issued a memo to all MPS principals which contained the following:

In January, 1992, MPS was found to be in non-compliance at the elementary level. In October, 1992 MPS informed DPI that:

"Elementary schools will be assisted during the 1993-94 staffing process in providing counseling services to all students. Each elementary school's plan for providing guidance services will include one of the following options:

1) A part- or full-time counselor provides individual and group counseling, career education programs, and assistance to teachers in providing a curriculum. The guidance program is under the direction of the guidance counselor and supervised by the building administrator.

2) Individual and group counseling is provided by school social worker or school psychologist; career education programs are provided by designated staff in schools. The guidance program, under the direction of the administration, is supervised by counseling supervisors from central office."

3. Janetta Trotman has been the Principal at MPS Clement Avenue Continuous Progress School (Clement) for sixteen years. In determining staff allocations for the 1993-94 school year, Trotman had the discretion to retain the full-time Librarian position at Clement, to reduce this position, or to eliminate this position. Clement has 440 students and a total staff of about fifty, of which there are thirty-three full and part-time teachers. The part-time teachers are generally in supportive services. The Clement library, computer lab and reading center are in a complex which was constructed approximately six years ago. The Clement PTA was responsible for the design of the complex and the presentation of the design to the Respondent. The general aide who provided Library services at Clement retired at or about the time that the complex was inaugurated. Trotman never made a formal request for a Librarian, but when the previous MPS Superintendent, Dr. Peterkin, visited the new complex, Trotman, stated that all that Clement needed was a Librarian. Subsequently, MPS central administration provided monies for one Librarian in each of the six regions in the MPS system. The regional supervisor assigned a Librarian to Clement because it had the new library complex. At the time that the Librarian was assigned to Clement, MPS Principals did not determine staffing.

4. In August of 1990, Wendy Cetera became the full-time Librarian at Clement. Prior to that time, Cetera was an "itinerant" Librarian, working at several MPS schools. In the 1992-93 school year, Cetera assumed the position of the MTEA Building Representative (BR) at Clement and asked another teacher, April Swick, to be her alternate. Prior to that time, Cetera was not involved in union activity at Clement. Believing that the union lacked a visible presence at Clement, Cetera assumed the BR position after ascertaining that no other teacher wished to have the position. At the time that she assumed the BR position, Cetera understood that the previous BR had not attended any of the MTEA BR meetings and believed that, since it was a contract year, it was important for the Clement faculty to have a BR who would attend MTEA BR meetings and relay relevant information to the Clement faculty. According to Cetera, there had been little union activity at Clement because the teachers did not perceive a need for such activity. Prior to her assumption of the BR position, Cetera had attended a meeting of the Clement MTEA Building Committee. The meeting was chaired by Trotman. Cetera did not believe that Trotman should attend meetings of the MTEA Building Committee and discussed her concerns with the Clement BR. Cetera concluded that everyone else thought that Trotman should attend. Cetera further concluded that the faculty at Clement did not really understand the function of a Building Committee.

5. In January of 1993, Cetera and Trotman had a conversation in the main office at Clement. At least two other individuals, i.e., the two office secretaries, Sue James and Sue Sayers, were able to overhear the conversation. The conversation occurred in the early afternoon. Cetera, who was "on the fly" between classes, had not given Trotman any prior notice that she wished to meet with Trotman. Cetera initiated the conversation by saying "Mrs. Trotman, I would like to speak to you as the BR about the handicapped children's aide substitute" and Trotman responded "Don't talk to me about the Union. I never saw the Union put anyone first, and I'm disgusted with the level of dedication of the teachers. I just don't want to talk about that." Cetera responded "Mrs. Trotman, I am not your adversary. I think we could work together to find out why we are not getting the rightful substitute, which we should have, and that would make it easier on everyone, and no one would have to be delegated the job"; Trotman stated that "The Union never puts children first"; that Cetera responded "That's interesting, because we are all Union members in the building, and I see teachers putting children first every day." During this conversation, Trotman stated "I don't see that we have a problem" and Cetera stated "This is a big problem with Union." Trotman, indicating that they were talking about a six year old child in a wheelchair, stated that "This has nothing to do with the Union" and "Why should a six-year-old child not have someone to take him to the lavatory? He only goes two times a day, at 10:30 and 2:30." Cetera mentioned that someone had brought her a document during the lunch hour and, showing the document to Trotman, said "You've got to look at this." Trotman responded that they were talking about a six-year-old child who could not go to the lavatory without assistance. Cetera stated that Trotman could not allow teachers to take the child to the lavatory. To avoid further discussion with Cetera, Trotman walked to the copier. Cetera followed Trotman, insisting that Trotman read the document; Trotman responded that she would not read the document; that her concern was for the child; and that "we" will see that the child gets taken to the lavatory. While Cetera was at the copier, Trotman told Cetera "You can tell the Union for me I would not speak to you as the BR" and then stated "Oh, don't take it personally, Mrs. Cetera." Trotman told Cetera to return to her post and Cetera left the office. The conversation was less than five minutes in length. Trotman does not like confrontations. Cetera did not attempt to contact Trotman to schedule a more formalized meeting to discuss the issue. Under the terms of the collective bargaining agreement between Complainant and Respondent, Trotman cannot assign a teacher to take the handicapped child to the lavatory. Trotman did not assign a teacher to take

the handicapped child to the bathroom, but rather, had instructed the handicapped aide in the Early Childhood Program to take the child to the lavatory when his aide was absent. A few days after the January, 1993 conversation, Trotman placed an ad for the handicapped children's aide on the back of a form which was sent to the parents of Clement students. As Trotman and Cetera passed in the hall, Trotman acknowledged that she had prepared the ad and indicated that she was anticipating a response. Subsequently, a substitute aide was hired. Cetera and Trotman did not have any confrontations between the January, 1993 meeting and May of 1993.

6. On the day following the January, 1993 conversation, Clement faculty received the events calendar. Trotman, who had a practice of placing inspirational messages and quotes at the top of the calendar, had placed a diatribe on the calendar which criticized teachers for not being dedicated and for not putting children first. Cetera considered this to be in direct response to her conversation with Trotman. Prior to January of 1993, Trotman was not "ultra-friendly" towards Cetera. Cetera assumed that it "was her style." Cetera believes that, following the January, 1993 conversation, Trotman avoided Cetera at all costs, did not acknowledge her presence, and did not speak with her. On one occasion, Cetera entered the teachers' lunch room; sat down next to Trotman; spoke to Trotman; and Trotman turned away without responding to Cetera. Cetera and Trotman agree that their lunch discussions involved subjects such as welfare, politics, and social concerns. Cetera acknowledges that she has strong opinions, does not hesitate to state her opinions, and that, at times, others may not have agreed with these opinions. On one occasion during lunch, Cetera voiced an opinion on welfare families. Trotman, who did not agree with this opinion, discontinued eating lunch with the teachers because she did not want to get into a confrontation over a matter which was not a work issue.

7. Prior to May 14, 1993, Trotman provided teaching staff at Clement with a "needs survey," which document sought suggestions for additional budget reductions for 1993-94 and indicated that a name was optional. The April 1, 1993 issue of the MTEA newsletter, "The Sharpener," contained the following:

Caution on Involvement in School Budget Cuts

Several teachers have raised the concern that principals are attempting to involve staff members in developing ways to cut local school budgets. In many instances, this "involvement" is no more than principals using teachers to take the heat for disastrous cutbacks in staff and programs.

The MTEA recommends that teachers decline to participate in any discussions which may jeopardize the jobs of their colleagues and the programs which their students need. Instead, teachers should urge the principals to speak out in support of the funding that their schools need.

Copies of this "Sharpener" had been distributed at a meeting of MTEA BR's and had been placed in the Clement faculty mailboxes by Cetera. On one occasion, when Cetera was in the Clement faculty lounge with seven or eight teachers, she was asked her advice about completing the "needs survey." Cetera advised going along with the "Sharpener" and stated that it was best to not complete such a survey.

8. Corine Ruhl has been employed by Respondent as a teacher at Clement since 1956. Ruhl attended the regularly scheduled Clement faculty meeting on May 14, 1993. Trotman began the meeting by stating that she knew the MTEA had advised teachers not to fill out the needs survey, but that one teacher had completed the survey. This statement was made in a disgusted tone of voice. Trotman discussed a tangential matter and then announced that Cetera's position would be cut one-half time; that the art position was being increased to full-time; and that Trotman would try to obtain a half-time guidance counselor. The staff meeting was at least forty minutes in length. During the Spring semester, Ruhl had attended a staff meeting in which staff was advised that there would be cuts. Prior to the May 14, 1993 announcement, Ruhl and Cetera had not been advised that the Librarian position would be reduced to half-time, but Trotman had told the staff that the only sure positions were the classroom positions and that it was not known if she would have to cut aides or other extra personnel.

9. On May 18, 1993, the following letter was presented to Trotman:

As faculty members, we have a concern regarding the staffing for the '93-'94 school year. Our concern is the reduction of the librarian to a half-time position.

For the past three years, we have seen what a full-time professional certified librarian can add to the educational growth of all our students.

Besides using the library books, our children have the opportunity to learn how to do research, explore literature in small groups, and experience

lessons in library science, all under the guidance of our librarian.

We feel the loss of a full-time librarian would severely and noticeably hamper our work in preparing our students.

The letter was signed by fifteen Clement teachers, including Ruhl. Cetera had not signed this letter. Trotman called an emergency faculty meeting to be held at the end of the school day on Tuesday, May 18, 1993. While the faculty was not required to attend this meeting, a majority of the teachers were present. At this meeting, Trotman announced that she had received the letter and wanted to hear what people had to say. Ruhl asked a question about the budget cuts, but did not reiterate points made in the letter. Several other teachers discussed the work which Cetera had done with their students, reiterated points made in the letter and were supportive of Cetera. Following these comments, Trotman stated that she did not believe that it was necessary to have a full-time Librarian; that when she walked past the Library, she saw empty chairs, empty tables and a Librarian; that an aide could perform Cetera's work; that "If this is what you want, then you want a library run the way it was run in the 1950's"; that Cetera had blocked computerization of the Library; and that "Well, if you would like a librarian that does not work with children, rather than a guidance counselor who will work with children, then I will leave this as the budget and look at it and get back to you." Trotman did not get back to the teachers. Ruhl was shocked and surprised because she had never before witnessed criticism of this nature. Ruhl considers Cetera's lessons to be invaluable, covering subjects which Ruhl did not cover in classroom. Cetera, who did not defend herself, believed that her work history demonstrated that a full-time Librarian was important. Cetera understood that she would have paraprofessional aides assisting her in the 1993-94 school year. Cetera denies that the Library was empty, estimating that between 125 and 150 children were in the Library every school day. Cetera maintains that approximately 95% of her time is spent with students, teaching library skills and tie-ins with other curriculum. During the 1991-92 school year, Cetera, Computer Lab supervisor Jane Janicki, and Trotman discussed computerization of the Library. All three agreed that it would be good to have a five year plan, but that computerization was not the first priority. In the Spring of 1991, Trotman, Cetera and Cetera's supervisor, Lenore McGee, had a meeting in the Library. At this meeting, Trotman was very complimentary toward Cetera, mentioned Cetera's enthusiasm and personality, and stated that "Mrs. Cetera is like a magnet. She draws people to her, both the staff and students." The meeting, which was requested by McGee, was not a formal evaluation. Trotman formally evaluated Cetera on June 20, 1991. The evaluation form, one of three forms which could be used, contained the following standard language:

This teacher belongs in that large class of good teachers. He/she has many desirable traits and through his/her many fine talents, he/she contributes much to the school program. A school's success is, in large measure, due to a faculty that possesses and exercises a well-rounded combination of special abilities. This teacher is a contributor to such a group.

Trotman added the following comments:

Mrs. Cetera brings a wealth of knowledge to our library. She is very enthusiastic about promoting and encouraging children to read good literature. As Mrs.

Cetera improves her skills as a media specialist, she will increase her educational opportunities for children in the library.

10. On May 19, 1993, Cetera accompanied students on a field trip to the zoo. When Cetera returned, she found the following note in mailbox:

TO: Wendy Cetera, Librarian
FROM: J.S. Trotman, Principal
RE: Absence Without Permission

The role of the school librarian does not include serving as a chaperon for kindergarten children to the Milwaukee County Zoo. There were more than twenty-five parents and teachers scheduled to chaperon this trip.

Permission must be granted by the principal before a staff member leaves the building for a full working day; which you failed to secure from me. As a result, you did not supervise the playground as scheduled.

Should another absence without official leave occur, it will be necessary for me to take further action.

Cetera, who had not notified administration of her absence when she chaperoned previous field trips, believed that the Early Childhood teachers, Kotecki and Dittmar, had notified administration that Cetera was chaperoning the field trip.

Cetera went on the field trip because she understood that a chaperon was needed for the fifth graders. The fifth graders had been invited in recognition of the fact that they had worked with the students in the Early Childhood program.

Cetera believes that Trotman saw her leave on the field trip. According to Trotman, she learned of Cetera's absence when she noticed that the Library was dark; asked the aide in the computer lab if she knew where Cetera had gone; and was advised that Cetera was on the field trip. Aware of the fact that Cetera had playground duty that week, Trotman directed a secretary to obtain a substitute for the playground duty and wrote the memo to Cetera. When Cetera returned from the field trip, she found the memo in her mailbox. Thereafter, Cetera encountered Trotman in the hall, explained that she thought Dittmar or Kotecki had informed Trotman that she was chaperoning the field trip, and indicated that there must have been a misunderstanding. Trotman responded "I accept your apology" and walked on. Cetera does not believe that this incident resulted in any disciplinary action and considers the incident to involve a misunderstanding. Prior to May 19, 1993, Cetera had gone on field trips. Cetera did not recall that any of the previous field trips, which had been infrequent, had required her to be away at a time when she had playground supervision. On these prior occasions, Cetera had relied upon the sponsoring teacher to advise administration that she would be on the field trip. The policy at Clement is to have sponsoring teachers provide the office with the names of staff chaperons. Kotecki and Dittmar, the sponsoring teachers, did not notify the office that Cetera would be a chaperon.

11. The budget for the 93-94 school year was the second budget for which MPS principals had preparation responsibility. In the prior year, Trotman had eliminated the half-time Assistant Principal position. In the 1992-93 school year, Trotman received more than 300 referrals for discipline problems, which required her to either counsel students or contact their parents. This factor, as well as Jasna's memo regarding MPS elementary schools' non-compliance with DPI guidelines, were factors in Trotman's decision to seek a Guidance Counselor for the 1993-94 school year. Trotman increased the half-time Art position to full-time because Clement received additional monies due to efforts of the Clement PTA, which group had lobbied MPS Superintendent Fuller and the Board of Education for full-time Art and Music positions. Trotman did not have sufficient funds to increase the Music position to full-time. Trotman wanted to provide challenging experiences for children and improve the academic skills of at risk students. To that end, Trotman was interested in converting the Clement Library into a large learning center, using technology for remediation and enrichment. Trotman did not believe that this could be done with only one staff member in the Library. Trotman reduced Cetera's Library position because she felt Cetera could perform the necessary educational duties on a half-time basis and because she wanted to hire additional aides and paraprofessionals. For the 1993-94 school year, Trotman added one position of 30 hours for general aide; one paraprofessional position of 30 hours for the library; one half-time guidance counselor; and increased the art position from half-time to full-time.

12. On September 9, 1993, MPS Labor Relations Specialist Milton B. Ellis sent the following letter to MTEA Assistant Executive Director Barry Gilbert:

RE: Prohibited Practice - Clement Avenue School

In accordance with Part VII, Section J, of the teachers' contract, the following represents a response to the allegations raised in the prohibited practice complaint on the subject matter noted above.

The complaint alleges that the principal at Clement Avenue Elementary School, Ms. Janetta Trotman, reduced the school librarian's, Ms. Wendy Cetera, position half time in retaliation of her Union activities. The Complaint also alleges that the position was reduced half time effective the 1993-94 school year.

Contrary to the allegations raised in the complaint, the principal's decision to reduce the school librarian's position to half time was the result of limited resources confronted by the school. The principal had a need for two full-time educational assistants to provide more services to the students. The position was reduced half-time in order to acquire the positions. The Board acknowledges that Ms. Trotman should not have made comments to the staff concerning alleged statements made by the Union in regard to the questionnaire on the school budget. Her comments, however, had no bearing on her decision to reduce the school librarian position to half time.

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

CONCLUSIONS OF LAW

1. Complainant Milwaukee Teachers' Education Association is a labor organization within the meaning of Sec. 111.70(1)(h), Stats.
2. Respondent Milwaukee Board of School Directors is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and Principal Janetta Trotman, is an agent of Respondent Milwaukee Board of School Directors.
3. Wendy Cetera is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and was engaged in protected concerted activity when she approached Principal Janetta Trotman on January, 1993 to discuss concerns on the issue of substitute handicapped aides; when she distributed copies of the "Sharpener" to Clement faculty; and when she advised Clement faculty about responding to the "needs survey."
4. Principal Janetta Trotman's conduct during the January, 1993 meeting with Wendy Cetera did not have a reasonable tendency to interfere with, restrain or coerce employes in the exercise of Sec. 111.70(2) rights and, therefore, Respondent Milwaukee Board of School Directors has not violated Sec. 111.70(3)(a)1, Stats.
5. Complainant has not established, by a clear and satisfactory preponderance of the evidence, that Principal Janetta Trotman's reduction of the Librarian position of Wendy Cetera from full-time to half-time for the 1993-94 school year and Principal Janetta Trotman's criticism of Wendy Cetera on May 18, 1993 was motivated, in any part, by hostility toward Wendy Cetera for engaging in activity protected by Sec. 111.70(2), Stats., and, therefore, Respondent Milwaukee Board of School Directors has not violated Sec. 111.70(3)(a)3, Stats., or derivatively, Sec. 111.70(3)(a)1, Stats.

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

ORDER 1/

The complaint is dismissed in its entirety.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

(footnote continued on Page 11)

1/ (footnote continued from Page 10)

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 PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On October 20, 1993, MTEA filed a complaint with the Wisconsin Employment Relations Commission alleging that the Milwaukee Board of School Directors, by its agent Janetta Trotman, has interfered with, restrained and coerced Wendy Cetera in the exercise of her rights guaranteed under Sec. 111.70(2), Stats., in violation of Sec. 111.70(3)(a)1, Stats., and discriminated against Wendy Cetera for exercising rights guaranteed under Sec. 111.70(2), Stats., in violation of Sec. 111.70(3)(a)3, Stats. Respondent denies that it has violated any section of the Municipal Employment Relations Act.

POSITIONS OF THE PARTIES:

Complainant

Principal Trotman's refusal to deal with Wendy Cetera in her capacity as building representative constitutes an independent violation of Sec. 111.70(3)(a)1 and is evidence supporting the retaliatory nature of Principal Trotman's subsequent actions. The reduction in Cetera's position and the public berating of Cetera on May 18 constitute unlawful retaliation in violation of Sec. 111.70(3)(a)3, Stats., and, derivatively, Sec. 111.70(3)(a)1, Stats.

In January, 1993, Cetera, in her capacity as a Union representative, brought a complaint to Trotman's attention. At that time, Cetera was engaging in protected activity. Trotman responded to this attempt with hostility and refused to deal with Cetera in her capacity as building representative. This incident was followed by a marked deterioration in Trotman's relationship with Cetera.

Cetera again engaged in lawful and concerted activity when she distributed "the Sharpener" and informed Union members of MTEA advice not to participate in any surveys or questionnaires regarding budget cuts. Trotman was aware of this activity and was hostile to this activity.

The reduction of Cetera's position to half-time was a complete about face of Trotman's longstanding plan to have a full-time librarian at the Clement Avenue School. The timing and conflicting explanations for Trotman's staffing decisions is suspect.

Prior to May 14, 1993, there had been no indication that any of the current staff would be reduced. The statement reducing Cetera's position was made directly after Trotman had vented her hostility against the Union for directing teachers not to answer her survey.

Cetera's position as the only Librarian at Clement allowed Trotman to target Cetera. Had Trotman been motivated by legitimate concerns, it is unlikely she would have waited until the faculty meeting of May 14 to announce the reduction. Trotman has attempted to cover her anti-union action against Cetera under the guise of some need to increase art and to bring a guidance counselor into the school.

Trotman claims to have told the staff she was proposing the library cut at the April 13 faculty meeting, which claim is at odds with the testimony of Cetera and Corine Ruhl. Why did the letter signed by the majority of teachers following the May 14 faculty meeting not go out earlier? The most credible testimony is that the reduction was not announced until May.

By placing the announcement a month earlier, Trotman seeks to escape the linkage between her frustration with the Union's instructions not to complete the survey and the announced cut. It is significant that the rationale for the staffing decision shifted from the explanation given at the May 18 faculty meeting to the response from the labor relations specialist in September, 1993, to the hearing in December.

At the May 18 meeting, Trotman attempted to justify her reduction of Cetera to half-time based upon Cetera's poor performance in the library. In September of 1993, Milton Ellis, Labor Relations Specialist, stated that the reason the principal has reduced Cetera's position was that she had a need for two full-time educational assistants to provide more services to the students and that the position was reduced to half time in order to acquire the positions.

While Trotman claimed that the library was empty and that an aide could do what Cetera was doing, in fact, the library had 125 to 150 children per day attending classes regarding literature, library skills and other educational programs. Although Trotman criticized Cetera for opposing computerization of the library, Cetera credibly explained that she and Trotman had discussed computerizing the library when Cetera first began working in the school and, in uncontradicted testimony, established that Trotman agreed with the assessment that the financial and time investment involved in computerization was not currently worth the results.

Significantly, the comments Trotman made at the May 18, 1993 meeting were very different from comments made previous to the time that Cetera had assumed her building representative responsibilities. In the spring of 1991, Trotman met with Cetera and Library Supervisor Lenore McGee and was complimentary, praised Cetera's enthusiasm, and considered her a magnet drawing both the staff and students.

Even if there were other legitimate factors operative in Trotman's ultimate staffing decision, the fact that her decision was, in part, motivated by her hostility towards Cetera's union activity is sufficient to make it a prohibited practice under Sec. 111.70(3)(a)3 and, derivatively, Sec. 111.70(3)(a)1, Stats.

Trotman had never before publicly criticized the performance of a teacher in the manner which occurred on May 18, 1993. Significantly, this public criticism occurred less than a week after Trotman announced in a disgusted voice that, based upon MTEA advice, only one teacher responded to the needs survey. Respondent has not attempted to show that Trotman's attack on Cetera was based upon any legitimate basis. Cetera is the MTEA presence at Clement. If teachers believe that agreeing to be a building representative will expose them to a change in the manner in which they are evaluated; it will certainly have a strong chilling effect on their willingness to engage in Union activity.

There is no significant dispute as to the events of the January meeting. Trotman acknowledged her refusal to discuss the matter with Cetera in her capacity as Union representative and, in fact, ordered her to leave the office and return to the library. It is protected activity for Cetera to approach the Principal to attempt to resolve a dispute. For an employer to make disparaging remarks regarding the role of the Union, has a chilling affect on the employe's right to actively participate in a Union and to perform Union business.

Cetera stated that the building representative position was not one which teachers wanted due to a wide-spread perception that Trotman did not approve of the Union or independent meetings of staff members. Given this environment, it is critical that a Union representative be permitted to perform his/her representational duties without encountering hostility on the part of the Employer representative with whom the Union must relate. Because Trotman's refusal to deal with Cetera as a Union representative has a reasonable tendency to interfere with Sec. 111.70(2) rights, the refusal constitutes an independent violation of Sec. 111.70(3)(a)1.

The Examiner should find that the Board, its officers and agents should decess and desist from: (a) refusing to deal with the MTEA's building representatives and (b) reducing Cetera's position at Clement Avenue School to half-time and subjecting her to public criticism because she engaged in activity protected by Sec. 111.70(2), Stats. The Examiner should order the following affirmative action to effectuate the purpose and policies of the Municipal Employment Relations Act: (a) notify employes by posting in conspicuous employe notice locations in the Clement Avenue School a notice containing assurance that the Board will desist from the above-stated activities; (b) restore the librarian position at Clement Avenue School to a full-time position and make Cetera whole for her reduction to half time.

Respondent

Complainant has the burden of proof to establish the alleged violations by "a clear and satisfactory preponderance of the evidence." The WERC has not determined that an adverse employment decision coupled with protected Union activity always constitutes a basis for finding a violation of Sec. 111.70(3)(a), Stats. Although legitimate reasons for employer actions do not technically provide a complete defense to a charge of discrimination, in practice they can rebut an inference of pretext or animus. The Examiner is required to consider the "totality of the record" in determining whether unlawful discrimination did or did not occur.

At most, the record supports a conclusion that Trotman made a critical statement regarding the Union's true interest in a conversation with Cetera in January of 1993. This conversation lasted perhaps five minutes. Although the record reflects that Trotman may not have been pleased with the way Cetera brought a problem to her attention, two days later the Principal saw to it that an ad appeared in a newsletter that dealt with the problem.

The brief conversation in January of 1993, appears to be the sole basis

for the contention that Cetera's Union activity resulted in retaliatory action taken against her by Trotman. Cetera did not testify that Trotman knew that Cetera was actively involved in advising teachers not to respond to the Board questionnaire seeking suggested reductions in school expenses due to budget problems. In fact, Cetera testified that she did not tell faculty to refuse to fill out the form. She simply passed along the Union's advice. The testimony adduced by Complainant fails to demonstrate that Trotman's budgetary decisions for the 1993-94 school year were motivated, in any part, by Cetera's Union activity. At most, the record supports the conclusion that Cetera and Trotman may not have gotten along.

The record is devoid of any evidence to support the conclusion that Trotman retaliated against Cetera for Union activity. If Trotman were looking for an opportunity to injure Cetera because of her involvement with the Union, Trotman could have taken a more forceful disciplinary approach when Cetera went on the May 19, 1993 field trip without regard to her playground duty assignment for that day. Instead, Trotman simply provided Cetera with a letter warning her not to take unauthorized leaves in the future. On cross-examination, Cetera acknowledged that a teacher who failed to notify a principal of an absence could be subjected to discipline. Additionally, in the summer of 1993, when Trotman learned that she had to reduce the budget for Clement Avenue School by an additional 2.64 percent, Trotman did not take that opportunity to further reduce Cetera's hours, but instead reduced Clement Avenue's use of supplies and equipment.

Principal Trotman had a legitimate basis for developing the 1993-94 budget. Given that Trotman had minored in Library Science, she was certainly familiar with the operation of the library and had a clear view as to what was in the best interests of the school children with respect to the manner in which the School's library would be operated. Trotman's testimony clearly indicates that she felt that the Clement Avenue School's library could be successfully staffed by a librarian on a half-time basis, which would permit the use of funds in areas with greater need in the school, i.e., guidance counseling and an additional art class instruction.

Trotman's frustration that the faculty did not provide her with ideas on how a potentially painful reduction in the school budget could best be accomplished is being misrepresented as anti-union activity by a Principal who unlawfully retaliates against a Union member for protective activity. Trotman made her budgetary decisions based upon a good faith review of the needs of the students at Clement Avenue School. Complainant has failed to meet its burden of establishing by a clearly and satisfactory preponderance of the evidence that any unlawful activity took place and the complaint should be dismissed in its entirety.

DISCUSSION

Standards and Burdens

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

(2) RIGHTS OF MUNICIPAL EMPLOYES. Municipal employes shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or

other mutual aid or protection.

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

Just as employes have a protected right to express their opinions to their employers, so also do public sector employers enjoy a protected right of free speech. 5/ Recognizing that labor relations policy is best served by an uninhibited, robust and wide-open debate, the Commission has found that neither inaccurate employer statements, nor employer statements critical of the employes' bargaining representative, are violative of Sec. 111.70(3)(a)1, per se. 6/ The test is whether such statements, construed in light of surrounding circumstances, express or imply threats of reprisal or promises of benefits which would reasonably tend to interfere with, restrain, or coerce municipal employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats. 7/ Thus, the same statement made in two different circumstances might be coercive in one circumstance, but not in the other. Employer conduct which may well have a reasonable tendency to interfere with employe exercise of Sec. 111.70(2) rights will generally not be found to be violative of Sec. 111.70(3)(a)1 if the employer had valid business reasons for its actions. 8/

Section 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, Complainant 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) the employer was aware of this activity; (3) the employer was hostile to the activity, and (4) the employer acted, at least in part, based upon its hostility to the employe's exercise of protected activity.

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

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

4/ City of Evansville, Dec. No. 9440-C (WERC, 3/71).

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

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

7/ Id.

8/ City of Milwaukee, Dec. No. 26728-A (Levitan, 11/91).

January Conversation

Complainant argues that Trotman's refusal to deal with Cetera as the MTEA Building Representative, as evidenced by her conduct during a January, 1993 conversation with Cetera, constitutes an independent violation of Sec. 111.70(3)(a)1, Stats. This conversation between Cetera and Trotman occurred in the main office at Clement, in the early afternoon, and was initiated by Cetera. As Cetera stated at hearing, the discussion was "on the fly" and Trotman had not received prior notice that Cetera wished to discuss the issue with Trotman. Cetera and Trotman both believe that the two office secretaries were able to overhear their conversation.

According to Cetera, she initiated the conversation by stating "Mrs. Trotman, I would like to speak to you as the BR about the handicapped children's aide substitute" and that Trotman responded by saying "Don't talk to me about the Union. I never saw the Union put anyone first; and I'm disgusted with the level of dedication of the teachers. I just don't want to talk about that." 10/ Cetera recalls that she responded "Mrs. Trotman, I am not your adversary. I think we could work together to find out why we are not getting the rightful substitute, which we should have, and that would make it easier on everyone, and no one would have to be delegated the job." Cetera further recalls that Trotman stated that "The Union never puts children first" and that Cetera responded "That's interesting, because we are all Union members in the building, and I see teachers putting children first every day." 11/ According to Cetera, Trotman then came from behind her desk and walked to the copier and, that as Cetera followed Trotman to the copier, Trotman stated "You can tell the Union for me I would not speak to you as the BR." 12/ and then stated "Oh, don't take it personally, Mrs. Cetera." According to Cetera, she felt humiliated and left the office. Cetera believes that the conversation lasted about two minutes.

Trotman recalls that Cetera approached her as she was standing at the office counter and indicated there was a problem with the handicapped aides; that Trotman responded "I don't see that we have a problem"; that Cetera stated "This is a big problem with Union"; and that Trotman responded that they were talking about a six year old child in a wheelchair and that "This has nothing to do with the Union" and "Why should a six-year-old child not have someone to take him to the lavatory? He only goes two times a day, at 10:30 and 2:30. 13/ According to Trotman, Cetera stated that someone had brought her a document during the lunch hour; that Cetera put the document in Trotman's face and said "You've got to look at this"; that Trotman responded that they were talking about a six-year-old child who could not go to the lavatory unless someone took

9/ 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).

10/ T. 36-37.

11/ T. 38.

12/ T. 37.

13/ T. 177-78.

him and that Cetera stated that Trotman could not allow teachers to take the child to the lavatory. 14/ Trotman further recalls that, to avoid further discussion with Cetera, she walked away to the copier; that Cetera followed her, waiving the document in front of Trotman's face and insisting that Trotman read the document; that Trotman responded that she would not read the document, that her concern was for the child, and that "we" will see that the child gets taken to the lavatory; and that Trotman then asked Cetera to return to her post. 15/ Trotman recalls that the conversation lasted from three to five minutes.

As a comparison of the testimony demonstrates, Trotman's version of events differs from that of Cetera. However, since neither denied the others version of events and the testimony concerning statements made during the conversation is not contradictory, the Examiner finds no basis to discredit either account.

As the Complainant argues, Trotman did disparage the Union. However, as discussed above, an employer may criticize the Union without violating Sec. 111.70(3)(a) 1, Stats. Neither Trotman's criticisms of the Union, nor any other statements made by Trotman during the January, 1993 conversation, construed in light of surrounding circumstances, express or imply threats of reprisal or promises of benefits which would reasonably tend to interfere with, restrain, or coerce municipal employes in the exercise of rights guaranteed by Sec. 111.70(2), Stats.

As Complainant argues, Cetera was engaged in protected concerted activity when she approached Trotman to discuss the substitute aide issue. As Complainant further argues, Trotman did refuse to speak with Cetera in her capacity as BR.

Trotman's refusal to speak with Cetera, in her capacity as BR, occurred within the context of an informal discussion in which Trotman indicated that she did not consider the issue raised by Cetera to be a union matter. While it was reasonable for Cetera to feel frustrated by Trotman's refusal to discuss the issue on an informal basis, it was not reasonable for Cetera to be "chilled" from pursuing the matter through formal procedures, or to be "chilled" from seeking to discuss other "union" matters with Trotman. Despite Complainant's arguments to the contrary, the Examiner does not consider Trotman's conduct during the January, 1993 conversation with Cetera to have a reasonable tendency to interfere with, restrain or coerce employes in the exercise of their Sec. 111.70(2) rights. Accordingly, the Examiner has not found such conduct to be violative of Sec. 111.70(3)(a)1, Stats.

Reduction in Library Position and Meeting of May 18, 1993

Complainant argues that Trotman's decision to reduce Cetera's position for the 1993-94 school year and Trotman's "berating" of Cetera at the May 18, 1993 staff meeting constituted unlawful retaliation in violation of Sec. 111.70(3)(a)3 and, derivatively, Sec. 111.70(3)(a)1, Stats. Complainant relies upon a series of events, discussed more fully below, to support the alleged retaliation.

Statements made by Trotman during the January, 1993 conversation with Cetera do evidence hostility toward the Union. The record, however, does not

14/ T. 178.

15/ T. 179-80.

establish that Trotman viewed Cetera as the "Union." As Cetera recalls the conversation, Trotman said "You can tell the Union for me I would not speak to you as the BR." It is evident from this statement that Trotman recognized a distinction between the Union and Cetera. Moreover, Cetera recalls that Trotman ended the conversation by stating "Oh, don't take it personally, Mrs. Cetera." Despite Complainant's arguments to the contrary, the evidence of Trotman's conduct during the meeting of January 13, 1993, fails to establish that Trotman was hostile towards Cetera for engaging in union activity.

On the day after their January conversation, the Clement faculty, including Cetera, received copies of the events calendar. According to Cetera, Trotman had a habit of writing inspirational messages at the top of the calendar, but on this occasion, had written a diatribe against teachers for not being dedicated and for not putting children first. Cetera's testimony concerning the events calendar was not contradicted by Trotman.

Cetera recalls feeling bad when she saw the events calendar because she thought that Trotman's remarks were a response to the conversation which she had with Trotman. Given that Trotman evidenced disgust with the level of teacher dedication during her conversation with Cetera, it is likely that the remarks on the events calendar were in response to the substitute aide issue. 16/ Cetera, however, does not claim, and the record does not establish, that Trotman's remarks on the events calendar made any reference to Cetera. The evidence of Trotman's remarks on the events calendar fails to establish that Trotman was hostile toward Cetera for engaging in protected, concerted activity.

Cetera acknowledges that, prior to January of 1993, Trotman was not "ultra-friendly" towards Cetera. Apparently, Cetera did not take this personally, but rather, assumed that it "was her style." 17/

Cetera was informed of her reduction to half-time at the May 14, 1993 faculty meeting. At hearing, Cetera acknowledged that she did not have any "confrontations" with Trotman between January, 1993 and May 14, 1993. Cetera believes, however, that, following the January meeting, her relationship with Trotman deteriorated. Specifically, Cetera claims that Trotman avoided Cetera at all costs, sometimes would not acknowledge Cetera's presence, and, at lunch, would not speak to her. Cetera, however, provided only one example to support these claims. Cetera recalls that, on one occasion, Trotman and other teachers were seated at a lunch table; that Cetera sat down next to Trotman and spoke to Trotman; and that Trotman did not respond to Cetera. This example was not denied by Trotman.

Trotman acknowledges that, at times, she had lunch with Trotman and other teachers. According to Trotman, she discontinued these lunches because she did not agree with opinions that Cetera had expressed on welfare families and that Trotman wanted to avoid having a confrontation on issues that were not work related. Cetera confirms that, on occasion, the discussion at lunch would involve issues like welfare, politics, or social concerns. Cetera further confirms that she has strong opinions, states these opinions and that people

16/ Apparently, Cetera was not the only one who discussed this issue with Trotman on January 13, 1993. Trotman recalls that, at lunch, the ED teacher told Trotman that "there was a big issue" about taking the handicapped child to the lavatory and advised Trotman that the ED teacher would have her aide perform this task.

17/ T. 42.

have not always agreed with these opinions.

While it is evident that, on one occasion, Trotman did ignore Cetera at lunch, it is not evident that Trotman ignored Cetera because Cetera had engaged in protected concerted activity. Nor does the evidence of Trotman's conduct between January 13, 1993 and May 14, 1993, otherwise establish that Trotman was hostile towards Cetera for engaging in concerted, protected activity.

Prior to May 14, 1993, Trotman provided teaching staff at Clement with a "needs survey," which document sought suggestions for additional budget reductions for 1993-94 and indicated that a name was optional. The April 1, 1993 issue of the MTEA newsletter, "The Sharpener," contained the following:

**Caution on Involvement in School Budget
Cuts**

Several teachers have raised the concern that principals are attempting to involve staff members in developing ways to cut local school budgets. In many instances, this "involvement" is no more than principals using teachers to take the heat for disastrous cutbacks in staff and programs.

The MTEA recommends that teachers decline to participate in any discussions which may jeopardize the jobs of their colleagues and the programs which their students need. Instead, teachers should urge the principals to speak out in support of funding that their schools need.

As Complainant argues, Cetera was engaging in protected, concerted activity when she distributed copies of this edition of the "Sharpener" to Clement staff and when she provided advice to Clement staff concerning the "needs survey." The record, however, fails to demonstrate that Trotman was aware that Cetera had distributed the "Sharpener," or that Cetera had offered any advice to Clement staff regarding the "needs survey."

Corine Ruhl has been a teacher at Clement since 1956. Ruhl, who attended the regularly scheduled Clement faculty meeting on May 14, 1993, recalls that Trotman began the meeting by stating that she knew that the MTEA had advised teachers not to fill out the needs survey, but that one teacher had completed the survey. Ruhl considered this to be an anti-Union statement. Ruhl further recalls that Trotman then announced that Cetera's position would be cut one-half time; that the art position would be increased to full-time; and that Trotman would try to obtain a half-time guidance counselor.

Cetera confirmed that Trotman opened the meeting by stating that only one person had filled out the survey and indicating that she was aware that the Union had advised the faculty not to complete the survey. According to Cetera, Trotman's tone of voice was disgusted. Cetera believes that this "disgust" was directed at Cetera because of Trotman's belief that Cetera had talked to teachers about not completing the "needs survey." Cetera recalls that Trotman discussed some tangential matter prior to announcing the reduction in her position. Trotman did not offer testimony concerning the May 14, 1993 meeting.

Given Trotman's disgusted tone of voice, her statements concerning the Union and the "needs survey," may reasonably be construed to exhibit hostility toward the Union. However, as discussed above, the record does not establish that Trotman considers Cetera to be the "Union." Moreover, not only were Trotman's remarks consistent with the MTEA position published in the

"Sharpener," but it is not evident that, at the time of the May 14, 1993 staff meeting, Trotman had any knowledge that Cetera had distributed the "Sharpener" or that Cetera had advised teachers regarding the "needs survey." Despite Complainant's arguments to the contrary, Trotman's conduct at the May 14, 1993 staff meeting does not indicate that the price of non-compliance with Trotman's

request to complete the needs survey was to cut the position of the leader of the perceived defiance, i.e., Cetera. Nor does it otherwise establish that Trotman was hostile toward Cetera for engaging in protected, concerted activity.

The "needs survey" was related to the topic of the staff meeting, i.e., allocations for the 1993-94 school year. Thus, unlike the Complainant, the Examiner does not consider it to be "suspicious" that Trotman would refer to the "needs survey" and the lack of response thereto at the staff meeting on May 14, 1993.

As Complainant argues, Trotman does recall that, at a staff meeting in April 13, 1993, she discussed reducing the Librarian position. Given that Cetera and Ruhl agree that there was no mention of a reduction in the Librarian position prior to May 14, 1993, the examiner is satisfied that Trotman is mistaken when she states that she specifically mentioned reductions in the Librarian position at the April, 1993 staff meeting.

However, it is likely, as Trotman also claims, that she did tell the staff that the only sure positions were the classroom positions and that it was not known if she would have to cut aides or other extra personnel. 18/ Not only does the April, 1993 issue of the "Sharpener" recognize that there were concerns about "disastrous cutbacks in staff and programs," but also, Ruhl confirms that, at a faculty meeting in the Spring of 1993, she was told that there would be cuts. 19/ It is likely, however, as Ruhl claims, that the discussions of cuts occurred at the March, 1993, rather than the April, 1993 staff meeting. Despite the Complainant's arguments to the contrary, the record does not demonstrate that, prior to May 14, 1993, there had not been any indication that any current staff would be reduced.

As Complainant argues, it was not very considerate of Trotman to announce the reduction in the Librarian position without first speaking with Cetera. Such a ploy, however, is not inconsistent with Trotman's avowed preference to avoid confrontations.

The budget materials were sent to MPS Principals on or about April 6, 1993, with a due date of May 19, 1993. Thus, the May 14, 1993 announcements concerning 1993-94 budget allocations, including the reduction in Cetera's position, were certainly consistent with Trotman's budgetary time lines. Despite Complainant's arguments to the contrary, the "timing" of the announcement of the reduction in the Librarian position is not "suspicious," nor does it persuade the Examiner that Trotman's decision to reduce Cetera's position was motivated by hostility toward Cetera for engaging in concerted, protected activity.

As Complainant argues, Milton Ellis' letter of September, 1993, does state that:

The principal had a need for two full-time educational assistants to provide more services to the students. The position was reduced half-time in order to acquire the positions.

While Complainant argues that this statement is inconsistent with Trotman's

18/ T. 158.

19/ T. 13.

testimony at hearing, the undersigned disagrees. At hearing, Trotman indicated that she reduced the Librarian position because (1) she thought that she could expand services if she hired additional aides and had more than one "body" in the Library 20/ and (2) she believed that a half-time Librarian would be sufficient to meet the educational needs of Clement students. 21/

Trotman called an emergency staff meeting on May 18, 1993, in response to the teachers' letter. According to Ruhl, the letter was drafted because the teachers valued Cetera's work with the children and the teachers believed that the reduction in the Librarian position would harm the student's academic work.

At this meeting, which was attended by the majority of the Clement staff, Trotman announced that she had received the letter and wanted to hear what people had to say. Ruhl asked a question about the budget cuts, but did not reiterate points made in the letter. Several other teachers discussed the work which Cetera had done with their students. Ruhl recalls that, following these comments, Trotman stated that she did not believe that it was necessary to have a full-time Librarian; that when she walked past the Library, she saw empty chairs; empty tables and a Librarian; that an aide could perform Cetera's work; and that "If this is what you want, then you want a library run the way it was run in the 1950's." 22/ Ruhl recalls that Trotman ended the meeting by stating that she would review the budget and get back to the teachers.

Cetera's account of this meeting is consistent with that of Ruhl. Cetera recalls that Trotman also stated that Cetera had blocked computerization of the library and further stated "Well, if you would like a librarian that does not work with children, rather than a guidance counselor who will work with children, then I will leave this as the budget and look at it and get back to you." Trotman did not deny making any of the statements attributed to her by Ruhl and Cetera. Nor did she give any account of the meeting of May 18, 1993.

Cetera denies that she "blocked computerization of the library." Cetera recalls that she, Trotman and the teacher who ran the computer lab had discussed computerization of the library and that all agreed that computerization was not the first priority. Since Trotman did not rebut this testimony, it must be concluded that Trotman's "computerization" remarks are unfounded. Nor is it evident that Trotman was correct about the lack of students in the Library.

20/ T. 155-56.

21/ T. 159.

22/ T. 16.

As the Complainant argues, Trotman's previous evaluation of Cetera and her comments to Cetera's supervisor do not contain the criticisms which were expressed on May 18, 1993. Nor is it evident that Trotman had previously indicated any dissatisfaction with Cetera's performance of her Librarian duties.

Certainly, Trotman's remarks on May 18, 1993 were intemperate. Moreover, the lack of foundation for some of these remarks does suggest, as Complainant argues, that Trotman's allegations are pretextual. It is not evident, however, that Trotman was wrong in her assertion that aides could perform some of Cetera's duties and that Clement only needed a half-time Librarian. 23/ Indeed, as the Respondent argues, it is unusual for a MPS elementary school to have a full-time Librarian and, in the vast majority of cases, MPS elementary libraries are serviced by aides and paraprofessionals, rather than a Librarian.

To be sure, this was the first occasion in which Trotman had criticized a teacher in front of her peers. It is not evident, however, that, in the past, Trotman had been called upon to justify a reduction in staff. 24/

Neither Cetera, nor Ruhl, claim that Trotman made any reference to Cetera's union activity or the Union, at the meeting of May 18, 1993. While Trotman's comments were about Cetera, they were not, in fact, directed at Cetera. Rather, Trotman was responding to the teacher letter which, by championing a full-time Librarian, was challenging Trotman's decision to reduce the Librarian position.

As Trotman stated at hearing, she does not like confrontation. While it is evident that Trotman went off "half-cocked" in her attempt to justify the reduction of Cetera's position, the evidence does not warrant the conclusion that Trotman's criticism of Cetera was motivated, in any part, by hostility towards Cetera for engaging in protected, concerted activity.

To be sure, Trotman referenced the Guidance Counselor at the meeting of May 18, 1993. However, other comments were in justification of her conclusion that Clement did not need a full-time Librarian. Contrary, to the argument of the Complainant, an examination of Trotman's testimony, as a whole, does not establish that Trotman contended that the Librarian position was reduced for the purpose of increasing guidance and art.

The Clement Library was built because of the persistence of the local PTA. Trotman never formally asked for a full-time Librarian, but during a visit of the previous Superintendent, did indicate that there was a need for a Librarian. Thereafter, central administration made monies available for several elementary

23/ Nor are these statements inconsistent with Trotman's testimony at hearing indicating that she wanted more than one body in the Library and believed that the educational needs could be met with a half-time Librarian.

24/ Indeed, this was only the second year that Trotman had control over staffing decisions. In the prior year, she had eliminated the half-time Assistant Principal position.

Librarians and Trotman's area supervisor assigned one of these Librarians to Clement. Despite Complainant's argument to the contrary, the record does not establish that a full-time Librarian was central to any plan which Trotman had initiated and implemented for Clement. 25/

Ruhl and Cetera agree that, prior to Cetera's assumption of the BR position, there was not any union activity at Clement. Ruhl did not offer any opinion as to the lack of union activity. Cetera offered the opinion that the teacher's had not perceived the need for such activity. 26/ The undersigned does not consider Cetera's hearsay testimony concerning a conversation with the previous BR, i.e., that the BR position was difficult because Trotman did not hold with the Union and nobody wanted to tangle with the situation, to be persuasive. Despite the Complainant's arguments to the contrary, the record does not establish that there was a wide-spread perception that Trotman did not approve of the Union.

Complainant argues that Trotman did not approve of independent meetings of staff members. This argument, however, is not supported by the record evidence. While the record does indicate that Trotman had chaired MTEA Building Committee meetings, it is not evident that the members of this committee objected to Trotman's presence at the meetings.

On May 19, 1993, Cetera went on a field trip to the zoo. When Cetera returned, she found a note from Trotman which indicated that she had been absent from school without permission and which stated:

The role of the school librarian does not include serving as a chaperon for kindergarten children to the Milwaukee County Zoo. There were more than twenty-five parents and teachers scheduled to chaperon this trip.

Permission must be granted by the principal before a staff member leaves the building for a full working day; which you failed to secure from me. As a result, you did not supervise the playground as scheduled.

Should another absence without official leave occur, it will be necessary for me to take further action.

Cetera, who had not notified administration of her absence when she chaperoned previous field trips, believed that the Early Childhood teachers, Kotecki and Dittmar, had notified administration that Cetera would be chaperoning the field trip. After receiving the memo from Trotman, Cetera encountered Trotman in the

25/ At the time that the Librarian was assigned to Clement, Trotman did not have control over staffing decisions.

26/ T. 72.

hall and had a discussion concerning the matter. Cetera does not believe that this incident resulted in any disciplinary action and considers the incident to involve a misunderstanding. The undersigned agrees.

In Summary

Complainant has not established, by a clear and satisfactory preponderance of the evidence, that either Trotman's reduction of Cetera's Librarian position to half-time for the 1993-94 school year or Trotman's criticism of Cetera at the May 18, 1993 staff meeting was motivated, in any part, by hostility toward Cetera for engaging in activity protected by Sec. 111.70(2), Stats. Accordingly, the Examiner has rejected the claim that this conduct of Trotman violated Sec. 111.70(3)(a)3, and, derivatively, Sec. 111.70(3)(a)1, Stats. Having rejected Complainant's allegations that Respondent has violated Sec. 111.70(3)(a) 1 and 3, Stats., the Examiner has dismissed the complaint.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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