

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS' EDUCATION
ASSOCIATION,

Complainant,

vs.

MILWAUKEE BOARD OF SCHOOL DIRECTORS,

Respondent.

Case 289

No. 49955 MP-2810

Decision No. 27867-B

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.

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

ORDER AFFIRMING IN PART AND MODIFYING IN PART
EXAMINER'S FINDINGS OF FACT,
AND REVERSING EXAMINER'S
CONCLUSIONS OF LAW AND ORDER

On June 24, 1994, Examiner Coleen A. Burns issued Findings of Fact, Conclusions of Law and Order in the above matter wherein she concluded the Milwaukee Board of School Directors had not committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 or 3, Stats. She therefore dismissed the complaint.

On July 13, 1994, the Milwaukee Teachers' Education Association timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. The parties thereafter filed written argument in support of and in opposition to the petition, the last of which was received August 29, 1994.

Having reviewed the record, the Examiner's decision, and the parties' positions on review, the Commission makes and issues the following

No. 27867-B

ORDER 1/

- A. Examiner Findings of Fact 1 - 3 are affirmed.

- B. Examiner Finding of Fact 4 is affirmed as modified through deletion of the lined-through words.

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.

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

(footnote 1 continues on page 3)

(footnote 1 continued from page 2)

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

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

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing.

The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

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(footnote 1 continues on page 4)

C. Examiner Finding of Fact 5 is affirmed.

D. Examiner Finding of Fact 6 is affirmed as modified through deletion of the lined-through words and addition of the underlined words.

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. Prior to January, 1993, contact between Trotman and Cetera was limited to that necessary for them to perform their respective responsibilities and to occasional contact in the teachers' lunch room. On one occasion, following the January, 1993, conversation, 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 in the teachers' lunch room 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.

(footnote 1 continued from page 3)

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

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

E. Examiner Findings of Fact 7 - 8 are affirmed.

F. Examiner Findings of Fact 9 - 10 are affirmed as modified through deletion of the lined-through words and addition of the underlined words.

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 para-professional 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. None of 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.

G. Examiner Finding of Fact 11 is affirmed in part and reversed in part through the addition of the underlined words.

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, and because of her hostility toward Cetera's activity as a Building Representative. 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.

- H. Examiner Finding of Fact 12 is affirmed.
- I. Examiner Conclusions of Law 1 - 2 are set aside.
- J. Examiner Conclusion of Law 3 is renumbered to Conclusion of Law 1 and affirmed.
- K. Examiner Conclusion of Law 4 is renumbered to Conclusion of Law 2 and reversed through deletion of the lined-through words.

2. 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 employees 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.

- L. Examiner Conclusion of Law 5 is renumbered to Conclusion of Law 3 and reversed through deletion of the lined-through words.

3. ~~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., and ~~or~~ derivatively, Sec.

111.70(3)(a)1, Stats.

M. Examiner Order is reversed and the following Order is made:

1. Milwaukee Board of School Directors, its officers and agents, shall cease and desist from engaging in conduct which has a reasonable tendency to interfere with, restrain or coerce employes in the exercise of Sec. 111.70(2), Stats., rights.

2. Milwaukee Board of School Directors, its officers and agents, shall cease and desist from engaging in conduct which is motivated in part by hostility toward the exercise of Sec. 111.70(2), Stats., rights.

3. Milwaukee Board of School Directors, its officers and agents, shall take the following affirmative action which the Commission finds will effectuate the purposes of the Municipal Employment Relations Act.

A. Immediately reinstate Wendy Cetera to a full-time librarian position at Clement Avenue School and make her whole with interest ^{2/} for the difference, if any, between the wages and fringe benefits she would have received as a full-time librarian as opposed to the wages and fringe benefits she received as a half-time librarian and half the wages and fringe benefits she would have received if she had accepted the Board's offer of a full-time position as a day-to-day substitute.

B. Notify all employes in the bargaining unit represented by the Milwaukee Teachers' Education Association by

^{2/} The applicable interest rate is the Sec. 814.04(4), Stats., rate in effect at the time the complaint was initially filed with the agency. The instant complaint was filed on October 20, 1993, when the Sec. 814.04(4) rate was "12 percent per year." Section 814.04(4), Wis. Stats. Ann (1986). See generally Wilmot Union High School District, Dec. No. 18820-B, (WERC, 12/83) cites Anderson v. LIRC, 111 Wis. 2d 245, 258-9 (1983) and Madison Teachers Inc. v. WERC, 115 Wis. 2d 623 (CtApp IV, 1983).

positing in conspicuous places on its premises where notices to such employes are usually posted, a copy of the Notice attached hereto and marked "Appendix A." The Notice shall be signed by an authorized representative of the Board and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Board to insure that said Notices are not altered, defaced or covered by other material.

C. Advise the Wisconsin Employment Relations Commission within 20 days of the date of this Order as to the steps it has taken to comply therewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of May, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

MILWAUKEE PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING IN PART AND MODIFYING IN PART
EXAMINER'S FINDINGS OF FACT,
AND REVERSING EXAMINER'S
CONCLUSIONS OF LAW AND ORDER

The Examiner's Decision

In her decision, the Examiner made the following analysis as to the Complainant's contention that Trotman violated Sec. 111.70(3)(a)1, Stats., during a January, 1993 conversation.

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." 3/ 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

3/ T. 36-37.

building, and I see teachers putting children first every day." 4/ 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." 5/ 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. 6/ 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 him and that Cetera stated that Trotman could not allow teachers to take the child to the lavatory. 7/ 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. 8/ Trotman recalls that the conversation lasted from three to five minutes.

4/ T. 38.

5/ T. 37.

6/ T. 177-78.

7/ T. 178.

8/ T. 179-80.

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.

As to the contention that the decision to reduce Cetera's position from full-time to part-time

was motivated at least in part by hostility toward Cetera's protected activity, the Examiner reasoned as follows:

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 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. 9/ 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." 10/

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 (sic) 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 have not always agreed with these opinions.

9/ 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.

10/ T. 42.

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. 11/ 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. 12/ 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

11/ T. 158.

12/ T. 13.

order to acquire the positions.

While Complainant argues that this statement is inconsistent with Trotman's 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 13/ and (2) she believed that a half-time Librarian would be sufficient to meet the educational needs of Clement students. 14/

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." 15/ 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

13/ T. 155-56.

14/ T. 159.

15/ T. 16.

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.

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. 16/ 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. 17/

16/ 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.

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

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 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. 18/

Ruhl and Cetera agree that, prior to Cetera's assumption of the BR position, there was not any union activity at Clement. Ruhl

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

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. 19/ 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

19/ T. 72.

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 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.

Given her analysis, the Examiner dismissed the complaint in its entirety.

Positions of the Parties

The Complainant

Complainant urges the Commission to reverse the Examiner's dismissal of the complaint.

As to the allegation that Respondent violated 111.70(3)(a)1, Stats., by Trotman's January, 1993 remarks to Cetera, Complainant contends that Trotman's refusal to deal with Cetera as a Building Representative interfered with Cetera's right to engage in protected activity. While acknowledging a management representative may voice generalized opinions about the Association as an organization, Complainant asserts the representative cannot do so in a manner which interferes with the exercise of a building representative's functions and duties. Here, Complainant argues the comments made by Trotman disparaging the Association were not made as part of a general discussion but rather were related to a grievance discussion in which Cetera was attempting to carry out her function as the Building Representative. Complainant notes that immediately following the verbal confrontation, Trotman reiterated her hostility in her written comments on a calendar distributed to teachers. Complainant argues that such conduct clearly has a reasonable tendency to interfere with protected rights and had such an actual affect because Cetera was deterred from further action on the basis of Trotman's hostile response. Given Trotman's direct discussion with Cetera and her written comments on the calendar, Complainant argues it was reasonable for Cetera to feel upset and, humiliated and deterred from carrying out her union responsibilities. Complainant contends the clear message presented by Trotman was that anyone wishing to properly exercise their function as a representative of the union would be met with hostility. Complainant alleges such a message would certainly chill someone from undertaking the role of business representative, thus placing an improper obstacle in the path of legitimate union activity.

Turning to the reduction of Cetera's position to half-time, Complaint contends that it has established all the elements required for a finding that Respondent thereby violated Sec. 111.70(3)(a)3, Stats. Complainant more specifically asserts the record establishes that Cetera engaged in lawful, concerted activity protected by Sec. 111.70(2), Stats.; that Trotman was aware of

that activity; that Trotman was hostile toward that activity; and that Trotman's reduction of Cetera to half-time was based, at least in part, on that hostility. Complaint argues the Examiner erred when concluding that Trotman was hostile toward the Complainant but not toward Cetera as a Complainant's representative. Complainant contends such a distinction is legally insupportable. It argues the Building Representative is the "Union" in any given school. Complainant contends that to disparage the Complainant is to show hostility towards any representative of the Complainant, particularly in the context when the individual is acting specifically in her Building Representative capacity.

Complainant further argues that Trotman's hostility toward Cetera's activity is established by Trotman's reaction to Cetera's communication of the Complainant's opposition to assisting Respondent in the identification of potential budget reductions. Complainant argues the Examiner erred by concluding that Trotman did not know of Cetera's role in distributing Complainant's newsletters or offering advice to employees in that regard. Complainant contends that given Trotman's knowledge of Cetera's position as the Building Representative and Trotman's 16 years of experience as a Principal for Respondent, it is reasonable to infer that Trotman was aware of Cetera's role in advising unit members as to the Complainant's recommendations. The Complainant notes that when Trotman discussed possible cuts with teachers in a staff meeting, Trotman noted her disgust with the teachers' lack of participation in the Respondent's survey of potential areas for reductions. Complainant contends that because Cetera was the "face" of the Complainant at the school, Trotman's negative comments show hostility towards Cetera in her capacity as Complainant's representative.

Complainant asserts the record contains other evidence that Trotman's hostility played at least a partial role in her decision to reduce Cetera from full-time to part-time. Complainant contends the timing of the announcement (i.e., the Cetera cut, immediately followed Trotman's stated dissatisfaction with the Complainant's advising against input by staff) and the false allegations presented against Cetera at a subsequent meeting, all provide evidence of Trotman's discriminatory motivation. Complainant contends these facts and the logical inferences drawn from them prove that whatever legitimate factors were later used to justify Trotman's staffing decision, her decision was motivated, in part, by her hostility towards Cetera's protected activity.

Lastly, Complainant argues the Examiner improperly concluded that Trotman's public criticism of Cetera during a May 18, 1993 meeting did not violate Secs. 111.70(3)(a)1 and 3, Stats. Complainant contends Trotman had never before publicly criticized the performance of any teacher in the manner that occurred on May 18, 1993. Given Cetera's role as the Building Representative, employees could reasonably believe that serving as a Building Representative would expose them to hostility and a public evaluation, matters which would have a strong chilling effect on their willingness to engage in protected activity. Complainant further argues that a violation of Sec. 111.70(3)(a)3, Stats., also occurred because Trotman's criticism of Cetera was clearly motivated, at least in part, by her hostility toward Cetera's having engaged in protected concerted activity. In this

regard, Complainant notes that there were no indications of any prior dissatisfaction with Cetera's performance prior to her assumption of her Building Representative responsibilities. Complainant asserts Trotman's intervening comments regarding the Complainant provide ample evidence of the basis for the change in Trotman's attitude and require an independent finding that her public criticism of Cetera on May 18, 1993 violated Sec. 111.70(3)(a)3, Stats.

Given the foregoing, Complainant asks for an order requiring Respondent to cease and desist from its illegal activity, to affirmatively require Respondent to post appropriate notices, to reinstate Cetera to a full-time Librarian position at Clement Avenue School, and to make Cetera whole for her reduction to half-time.

The Respondent

Respondent asserts the Commission should affirm the Examiner's dismissal of the complaint.

Respondent contends the Examiner's Findings of Fact and Conclusions of Law relating to the January, 1993 conversation are supported by the record. At most, Respondent argues the record would lend support to the conclusion that Trotman made critical statements regarding Complainant during the January, 1993 conversation. Respondent contends that Trotman's reactions during her interaction with Cetera reflect only Trotman's annoyance with the manner in which the problem was raised by Cetera. Although the discussion led to "bruised feelings" on Cetera's part Respondent contends the incident did not have a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Sec. 111.70(2), Stats., rights particularly when one recognizes that Trotman subsequently dealt with the merits of the problem raised by Cetera.

The brief conversation between Cetera and Trotman in January, 1993 provides the sole basis for Complainant's contention that Trotman engaged in retaliatory behavior. Respondent contends that the record does not establish Trotman knew Cetera was involved in advising teachers not to respond to Respondent questionnaires as to suggested budget reductions nor Cetera's advice to faculty members with regard to said questionnaires. Thus, Respondent asserts that the January, 1993 confrontation does not establish any persuasive basis for retaliation. Respondent notes that had Trotman been looking for an opportunity to retaliate against Cetera, she could have taken a disciplinary response when Cetera went on a field trip in May, 1993 without permission. Respondent further notes that Trotman did not further reduce Cetera's hours during the summer of 1993 even though she needed to make significant additional budget cuts. Respondent also notes that it made every effort to find alternative or additional employment for Cetera following the reduction of her position.

Respondent contends the totality of the testimony demonstrates that Trotman had a

legitimate basis for reducing Cetera's position to half-time. Respondent contends the record firmly establishes Trotman's devotion to her school and to the use of resources in the best interest of children. The fact that Cetera understandably disagreed with Trotman's vision as to how the library could best operate with the resources available does not amount to evidence of discrimination. Respondent asserts Trotman's frustration that the faculty did not provide her with ideas on how a potentially painful reduction in the school's budget could best be accomplished is not a persuasive basis for concluding that she was retaliating against Cetera.

Given all of the foregoing, Respondent asks that the Commission affirm the Examiner.

DISCUSSION

As found by the Examiner and the Commission in Finding of Fact 4, Cetera became the Building Representative for Complainant at Clement Avenue School during the 1992-1993 school year. In January, 1993, acting in her capacity as Building Representative, Cetera approached Principal Trotman to discuss an issue which had been raised by a fellow teacher about toileting responsibilities for a handicapped student. During the conversation, as found by the Examiner and the Commission in Finding of Fact 5, Trotman expressed substantial hostility toward Complainant and advised Cetera that she would not speak to her as Building Representative.

Complainant alleges Trotman's conduct violated Sec. 111.70(3)(a)1, Stats.

Section 111.70(3)(a)1, Stats., makes it a prohibited practice for a municipal employer:

1. To interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in sub. (2).

Section 111.70(2), Stats., describes the rights protected by Sec. 111.70(3)(a)1, Stats., as being:

(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 ...

Violations of Sec. 111.70(3)(a)1, Stats., occur when employer conduct has a reasonable tendency to interfere with, restrain or coerce employes in the exercise of their Sec. 111.70(2) rights.

20/ If after evaluating the conduct in question under all the circumstances, it is concluded that the conduct had a reasonable tendency to interfere with the exercise of Sec. 111.70(2) rights, a violation will be found even if the employer did not intend to interfere and even if the employe(s) did not feel coerced or was not in fact deterred from exercising Sec. 111.70(2) rights. 21/ However, in recognition of the employer's free speech rights and of the general benefits of "uninhibited" and "robust" debate in labor disputes, employer remarks which inaccurately or critically portray the employe's labor organization and thus may well have a reasonable tendency to "restrain" employes from exercising the Sec. 111.70(2) right of supporting their labor organization generally are not violative of Sec. 111.70(3)(a)1, Stats., unless the remarks contain implicit or express threats or promises of benefit. 22/ Similarly, employer conduct which may will have a reasonable tendency to interfere with employe exercise of Sec. 111.70(2) rights will not be found violative of Sec. 111.70(3)(a)1, Stats., if the employer had valid business reasons for its actions. 23/

The Examiner found no violation of Sec. 111.70(3)(a)1, Stats., occurred during the January, 1993 conversation between Principal Trotman and employe Cetera. She viewed Trotman's remarks as expressions of general distaste for Complainant MTEA which are not violative of Sec. 111.70(3)(a)1, Stats., unless accompanied by prohibited threats or promises. We disagree. When Trotman flatly refused to acknowledge Cetera in her capacity as a representative of the Complainant, she clearly interfered with Cetera's exercise of what Respondent concedes are rights protected by Sec. 111.70(2), Stats. Her remark also clearly had a reasonable tendency to chill Cetera's exercise of such rights in the future. Trotman's refusal to recognize Cetera's status as Building Representative is precisely the kind of conduct which Sec. 111.70(3)(a)1, Stats., seeks to deter. Thus, we reverse the Examiner's conclusion to the contrary.

The Reduction of Cetera to Half-Time

On May 14, 1993, Trotman announced to the Clement staff that Cetera's full-time Librarian position would be reduced to half-time for the 1993-1994 school year. On May 18, 1993, during an emergency faculty meeting called by Trotman to discuss teacher concern about the reduction in

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

21/ 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).

22/ Ashwaubenon Joint School District No. 1, Dec. No. 14474-A (WERC, 10/77); Janesville Board of Education, Dec. No. 8791 (WERC, 3/69).

23/ City of Brookfield, *supra*, footnote 4.

Cetera's position, Trotman was highly critical of Cetera's job performance.

Complainant alleges Trotman's actions of May 14 and May 18, 1993 violated Secs. 111.70(3)(a)1 and 3, Stats.

The Examiner dismissed these complaint allegations based upon her view that Trotman's hostility was directed at Complainant but not at Cetera's conduct on behalf of Complainant; that there were valid justifications for the reduction in Cetera's position; and that Trotman's "intemperate" remarks on May 18th reflected hostility toward the teachers' challenge to her budgetary choice but not toward Cetera's protected activity.

Section 111.70(3)(a)3, Stats., is violated when a municipal employer takes negative opinion toward a municipal employe which is motivated, at least in part, by hostility toward employes protected activity. 24/ We believe the record clearly establishes that Trotman's reduction of Cetera's position and public criticism of Cetera's performance were based, in part, upon Trotman's hostility toward Cetera's status as Building Representative and her activity in that capacity. Thus, we reverse the Examiner.

Trotman's general hostility toward the Complainant MTEA is definitively established by the record. The three times she expresses her views of Complainant MTEA to Cetera and/or the employes Complainant represents, her disdain and contempt for the Complainant's existence and conduct are clear. The Examiner in effect concluded that Trotman's general hostility toward Complainant did not translate into personal hostility toward Cetera's role as a representative of Complainant. She noted that Trotman told Cetera not to "take it personally" when she refused to acknowledge her Building Representative status. Presumably, Trotman would have told Cetera the same thing again the next day after Trotman blasted the Complainant in a handwritten note on an event calendar or again in May, 1993 when she sneered at the employes for following Complainant's advice not to assist Respondent in identifying possible budget cuts. But what is clear to us is that Trotman did "take it personally." She saw Complainant's existence in her school as an obstacle which interfered with her own intense commitment to educating children. As argued by Complainant, Cetera was "the Complainant" at Clement Avenue School. By assuming the status of Building Representative, she was engaged in protected activity and personified Complainant. In the context of Trotman's intense feelings, we think it inevitable that some of Trotman's hostility toward Complainant extended to Cetera's role as Building Representative and that said hostility inevitably played a partial role in both Trotman's reduction of Cetera's position and her public criticism of Cetera's performance as Librarian.

24/ Muskego-Norway v. WERB, 35 Wis. 2d 540 (1967).

In reaching our conclusions, we acknowledge that Trotman's hostility toward Cetera's role as Building Representative provided only a partial basis for her actions. The record establishes that Trotman's library staffing decision was part of a resource alignment through which Trotman sought to better serve student needs. Even having a half-time Librarian put Clement Avenue School well above the District library staffing norm. Further, it is apparent that part of the reason Trotman lashed out at Cetera during the emergency staff meeting was her frustration that staff would question the resource choice of someone so committed to serving children. Nonetheless, we have no doubt that Cetera's role and status as Building Representative also played a motivating part in Trotman's decisions and conduct. Thus, Respondent violated Sec. 111.70(3)(a)3, Stats., through Trotman's actions.

Further, as argued by Complainant, when Trotman's criticism of Cetera is viewed in the context of Trotman's criticizing of Complainant for not assisting in the identification of possible budget cuts, the public criticism had a reasonable tendency to chill employe exercise of Sec. 111.70(2) rights. Thus, a violation of Sec. 111.70(3)(a)1, Stats., is found as well.

Remedy

To remedy the violations found, we have ordered Respondent to reinstate Cetera to a full-time Librarian position at Clement Avenue School and to post appropriate notices. However, we have limited Cetera's entitlement to back pay because she failed to appropriately mitigate her wage loss.

In Brown County, Dec. No. 20857-D (WERC, 5/93) we set forth the following:

MITIGATION

Under Wisconsin law, an employer can seek to reduce the back pay an employe would otherwise receive by asserting that the employe failed to mitigate his/her damages by not seeking or accepting alternative employment. Glamann v. St. Paul Fire Ins., 140 Wis.2d 640 (1987); State ex rel Schilling & Klinger v. Baird, 65 Wis.2d 394 (1974). To meet its burden as to this affirmative defense, the employer must establish that: (1) the employe failed to exercise reasonable diligence seeking alternative employment and (2) it was reasonably likely the employe might have found comparable work by exercising reasonable diligence. Glamann, supra; Schiller v. Keuffel & Esser Co., 21 Wis.2d 545 (1963); Grant v. Milwaukee Athletic club, (sic) 151 Wis. 333 (1912); Barker v. Knicker-bocker Life Ins. Co., 24 Wis. 630 (1869). An employe is

not obligated to seek or accept employment of a "different or inferior kind" Schiller, supra; Mitchell v. Lewensohn 251 Wis. 424 (1947); State ex rel Schmidt v. Dist. No. 2, 237 Wis. 186 (1941), but rather must only make reasonable efforts to seek and/or accept work of "like character" with similar and not inferior "terms and conditions at a place reasonably convenient to the employe." Parish v. Anshn Properties, 247 Wis. 166 (1943); Schmidt, supra; Loss v. Geo. Walter Brewing Co., 145 Wis. 1 (1911).

An employe's mitigation obligations extend to an offer of work by the employer who wrongfully discharged or laid off the employe. Larson v. Fisher, 259 Wis. 355 (1951); see also Murbro Packing, Inc., 276 NLRB No. 9 (1985). Further, if an employe effectively removes himself/herself from the employment market, for instance through pursuit of additional education, back pay obligations are tolled for the period of removal. Brady v. Thurston Motor Lines, Inc., 753 F.2d 1269 (1985), Taylor v. Safeway Stores, Inc. 524 F.2d 263 (1971).

Following Trotman's decision to reduce Cetera's position to half-time, the District offered Cetera a full-time bargaining unit position as a day-to-day substitute. Cetera rejected this offer and elected to continue on as a half-time employe at Clement. By rejecting the unit job, we conclude Cetera failed to meet her mitigation obligations and thus limited her entitlement to back pay as indicated in our Order.

Dated at Madison, Wisconsin, this 10th day of May, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/

William K. Strycker, Commissioner

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the purposes of the Municipal Employment Relations Act, we hereby notify our employes that:

WE WILL NOT interfere with the rights of our employes under Se. 111.70(2) of the Municipal Employment Relations Act.

WE WILL NOT discriminate against employes based upon hostility toward their exercise of rights under Sec. 111.70(2), Stats.

WE WILL offer reinstatement to Wendy Cetera to a full-time Librarian position at Clement Avenue School and make her whole for any lost wages and fringe benefits.

DIRECTORS MILWAUKEE BOARD OF SCHOOL

By _____

Dated this ____ day of _____, 1995.

**THIS NOTICE MUST REMAIN POSTED FOR 30 DAYS FROM THE DATE HEREOF,
AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER
MATERIAL.**