

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

HOLMEN AREA FOOD SERVICES
EMPLOYEES ASSOCIATION,

Complainant,

vs.

HOLMEN SCHOOL DISTRICT,

Respondent.

Case 31

No. 52684 MP-3029

Decision No. 28523-A

Appearances:

Davis, Birnbaum, Marcou, Seymour & Colgan, Attorneys at Law, by Mr. James G. Birnbaum, on behalf of the Association.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Mr. Richard J. Ricci, and Ms. Victoria L. Seltun, on behalf of the District.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Amedeo Greco, Hearing Examiner: Complainant Holmen Area Food Services Employees Association, herein "Association", filed a prohibited practices complaint with the Wisconsin Employment Relations Commission, herein "Commission", on May 16, 1995, alleging that Respondent Holmen School District, herein "District", had committed prohibited practices within the meaning of the Municipal Employment Relations Act, herein "MERA", by interfering with and restraining employees' rights and by coercing and interrogating employees; by discriminating against employees and threatening employees because of their union activities; and by unlawfully refusing to bargain. The Commission on September 13, 1995, appointed the undersigned to make and issue Findings of Fact, Conclusions of Law and Order as provided for in Section 111.07(5), Wis. Stats. The Association filed an amended complaint and second amended complaint on September 13, 1995, and October 5, 1995, respectively, Respondent filed an answer on September 20, 1995, and an amended answer on April 24, 1996.

Hearing was held in Holmen, Wisconsin, on June 18, June 19, July 9, and September 10, 1996. The parties thereafter filed briefs and reply briefs which were received by January 28, 1997.

No. 28523-A

Having considered the arguments and the record, I make and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Association, a labor organization, maintains its principal address at 2020 Caroline Street, P.O. Box 684, LaCrosse, Wisconsin. At all times material herein, Coulee Region United Educators Executive Director Deborah Byers and/or former Coulee Region United Educators Executive Director Thomas Bina have served as one of the Association's representatives.

2. The District, a municipal employer, maintains its principal address at 500 North Holmen Drive, Suite 508, Holmen, Wisconsin 54636. At all times material herein, Superintendent Frederick D. Frick, Director of Food Services Susan Sullivan, and Director of Support Services Jay Clark have been employed by the District and have served as the District's agents.

3. The Association is the recognized collective bargaining representative for all regular food service employees employed by the District. The Association and District are privy to a 1993-1996 collective bargaining agreement which contained a grievance arbitration procedure that provided:

...

ARTICLE III - GRIEVANCE PROCEDURES:

A. Definitions.

1. A grievance is defined as a controversy that arises during the term of this agreement involving the interpretation or application of any article of this agreement.
2. The term "workday" when used in the grievance procedure will be defined as Monday through Friday, excluding any paid holidays specified in this contract, on which full-time employees are normally scheduled to work.
3. The term "grievant" shall include an employee, group of employees or the Association.

B. Purpose.

1. The purpose of this article is to provide for the exclusive method for resolving grievances. A determined effort shall be made to settle any grievance at the lowest possible level in the grievance procedure. There shall be no suspension of work or interference with the operation of the school system during the proceedings. Meeting or discussions involving this procedure shall not interfere with employees duties.
2. It is understood that the time limits set forth in this article shall be considered as substantive, and failure of the grievant to file and process the grievance within the time limits set forth in this article shall be deemed a waiver of the grievance.

C. Procedure.

Step One. As one objective of the first step of this grievance procedure is to resolve disputes in an informal and reasonable manner, a grievant must first informally discuss the grievance with the principal or immediate supervisor. A written and dated grievance must, however, be filed no later than fifteen (15) work days after the basis for the grievance has been established. If the grievance is not filed on a timely basis it shall be deemed waived. The principal or immediate supervisor shall respond to the grievance within five (5) (school) work days.

...

4. The following bargaining unit members have held various positions with the Association:

<u>Name</u>	<u>Association Position</u>	<u>Term</u>
Jean Evenson	Grievance Committee Co-Chair	1994-95
Kathy Gowdy	President	1992-93
Dawn Kast	President	1994-95
Nancy Kuczynski	Negotiations Chair/V.P.	1994-95
Mary Priebe	Treasurer/Negotiations Chair.	1994-95

Lenore Shird	President/Grievance Committee	
	Co-Chair	1994-95
Sandy Roubik	Grievance Committee Member	1995-96

5. Sullivan and/or Frick knew that the employees referenced in paragraph 4 above held Association offices and/or that they were engaged in certain concerted, protected activities during the time material herein.

6. The Association and District have had a difficult bargaining relationship ever since this bargaining unit was established in 1991. The Association has filed about 29 grievances over a three-year period and it also has filed two prohibited practices complaints against the District. Most of this turmoil has centered on Food Services Manager Sullivan who runs the District's food service program. The District has not experienced any such similar difficulties with the Holmen Area Teachers Association which represents the District's teaching personnel. The District has never evidenced any anti-union sentiments against its teaching personnel.

7. The District in 1991 informed its food service employees that they would be laid-off during the summer months. Association Representative Bina by letter dated September 10, 1991, informed Frick that the employees should not be laid-off and that the District would experience higher unemployment compensation costs if they were. Bina and several employees met with Frick on September 12, 1991, to discuss that and other matters, during which time Frick became angry and hit the table with his hand. He stated that employees should contact him before going to the Association; that if the food services employees were going to contact the Association every time they had a question, things were not going to go as well for them; that he would get someone else other than himself to deal with their complaints; and that a management company might be hired to replace the then-Food Services Director (not Sullivan) to run the District's food service operation. He at no time ever threatened to replace bargaining unit employees.

8. Sullivan told Head Cook Kast at the time of her hire in January, 1993, that she might have difficulty working with the employees in the Middle School kitchen; that food service worker Gowdy was the Association's president; and that she, Sullivan, was uncertain about their relationship. There was no other discussion between Sullivan and Kast involving the Association at that time.

9. Sullivan on May 18, 1994, issued Kast a "verbal written warning" for having her five-year old daughter draw a picture to commemorate Sullivan's upcoming marriage, rather than having her daughter write a letter or draw a picture about her participation in "Take-Your-Daughter-to-Work Day". Sullivan on May 18, 1994, also issued a "verbal written warning" to food service worker Priebe, who was absent on "Take-Your-Daughter-to-Work-Day", for not having her granddaughter immediately submit a picture or write a letter for that assignment. Priebe's granddaughter subsequently did so at a later date. Both reprimands were subsequently withdrawn after Kast and Priebe complained about them.

10. Sullivan on or about May 31, 1994, stated in food service worker Kuczynski's evaluation: "when conflict is being created, is sometimes the instigator". Said evaluation also

stated: "Nancy has a very good attitude in her jobs, the conflicts pointed out are of minor importance in relation to the concentrated effort given by Nancy, nor do the conflicts interfere with her job performance." Sullivan claimed that she used the word "instigator" because Kuczynski was instigating a majority of things that were going on, including keeping track of Sullivan's own activities. There is no evidence that Kuczynski ever did so and there is no evidence that Kuczynski ever did anything else to warrant such a label. Kuczynski grieved her evaluation and it was removed from her file.

11. Sullivan on or about June 1, 1994, wrote certain negative comments in Kast's evaluation. Said evaluation was subsequently rescinded.

12. Sullivan on June 1, 1994, made certain negative comments in food service worker Roubik's evaluation which was eventually expunged. Roubik, over Sullivan's apparent opposition, during the Fall of 1994 transferred from the position of cafeteria worker to the position of cashier/cook. Sullivan shortly after January 12, 1995, threatened Roubik with a reprimand if she did not complete all her work in time, a threat she immediately withdrew. Roubik then complained that she needed more help in performing her work and asked for easier and faster ways to do her work.

13. Sullivan on September 19, 1994, wrote a memo to her immediate superior, Director of Support Services Clark, criticizing Kast's job performance. Kast on September 30, 1994, wrote Clark regarding Sullivan's September 19, 1994, memo. Sullivan on October 12, 1994, verbally reprimanded Kast for a variety of matters, including sending her letter to Clark.

14. Sullivan on December 8, 1994, spoke to Kast, Evenson, and Gowdy over their attendance at a December 1, 1994, meeting involving the Wisconsin Retirement System ("WRS"). Employees were earlier told by Sullivan via a November 28, 1994, memo that they could not attend that meeting on work time. Following an inquiry from Clark, Sullivan became concerned when she learned about their attendance. The District initially refused to pay Evenson and Gowdy for their attendance at said December 8, 1994, meeting, but it subsequently did so after they filed a grievance. No employees were ever disciplined over that incident.

15. Sullivan via a December 8, 1994, memo placed limits on the number of photocopies Kuczynski could make on the District's copy machines and she also required Kast to first submit whatever needed to be photocopied to Sullivan before it could be photocopied. Said memo stated, inter alia: "Too much of your paid time is being spent on writing memos, union business, etc. on the S.U.N. Program time." It is unclear whether the memo referred to only one or both of the District's copying machines. Kast was the only employee who was told that all copies had to be pre-approved by Sullivan. Sullivan in said memo also prohibited Kast from using school mail to send work-related memos to co-workers and she accused Kast of conducting Association business during work time. Sullivan also told Kast -- who in fact never conducted Association business on paid work time and who in fact never abused her copying privileges -- that she henceforth could not conduct

any Association business on school time or break times. Sullivan claimed that she became concerned that Kast was working on Association business during working time; that she therefore directed Kast to conduct such activities "Just before and after work on her own time"; and that Kast therefore could not do so during "break time at all".

16. Sullivan on or about December 23, 1994, met with Randall, Priebe, and food service worker Jean Buroker regarding their supposed criticisms over the food service program and for discussing on work time whether a grievance should be filed over the District's actions in allowing an employe to stay in a job for over 40 days without posting it according to the contract. Sullivan stated that other employes had complained to her that the three were bad-mouthing the program and criticizing other employes. Sullivan told Byers at the end of the meeting that she would drop the matter and that she probably should never have threatened them with a reprimand. Hence, no reprimand was ever issued.

17. Sullivan on January 13, 1995, ordered Roubik, who at the time was eating lunch on a serving table, out of the "a la carte" room on the ground that Roubik was violating the health code. Other employes at the time were eating in the kitchen, but Sullivan did not order them to leave. It is unclear whether those other employes were eating at a serving table and whether the health code prohibited them from doing so.

18. The Association in January of 1995, arbitrated the subcontracting language now found in the parties' collective bargaining agreement. Kast participated in collecting data for submission in the arbitration hearing and in the preparation of exhibits. Frick on January 17, 1995, and January 27, 1995, sent memos to Kast questioning the arbitration research she had done and asking her whether she had done so on work time. Kast replied that she had not and the matter was ultimately dropped.

19. Sullivan on January 24, 1995, denied Kast permission to attend a training seminar on the ground that she had to be present in the kitchen when commodities were being delivered. Kast in fact did not have to be present, as other employes could have performed that chore. Kast was the only employe who was denied such permission.

20. Sullivan on or about February 2, 1995, changed from ordering canned goods on a monthly basis to ordering canned goods on a weekly basis. This caused Kast to lift, store, and inventory four (4) times as many cases of cans at one time than she had done before. Kast thus had less time on the new delivery day to perform other job duties even though a custodian has been assigned to help her during those times.

21. Sullivan on or about February 2, 1995, recorded as unexcused Nancy Randall's absence from a staff meeting that day, after Sullivan had earlier approved her absence.

22. The District in 1994 and 1995 scheduled certain after-school in-service meetings.

The District subsequently rescheduled those meetings after it was told by Association representatives that they violated the contract.

23. Sullivan wrote to bargaining unit employees on March 24, 1995, asking to know how they felt about the Association's complaints about the food service operations and concluding: "I will draw my own opinion of those who choose not to reply." Sullivan on March 30, 1995, wrote a letter to those employees who had not responded to her earlier memo and reminded them to let her know whether or not they supported the Association's actions and asked for a response by April 5, 1995. The letter also stated: "I have heard from 21 of the 28 employees on staff. . . These 21 co-workers do not agree with what has transpired and support my outstanding efforts. . ."

24. The Association on March 31, 1996, and May 16, 1995, via its attorney Ellen J. Henningsen, wrote Frick in reference to said responses and asked him to provide copies of the written responses, as well as the names of individuals who had responded orally and copies of Sullivan's notes of any oral responses. Frick by letter dated April 4, 1995 - which apparently was copied to all employees - informed Henningsen that the District had never endorsed Sullivan's actions and that employees were not required to respond to her letters. Frick also stated that only two responses had been filed to Sullivan's letters and that they had been destroyed. Hence, they were never supplied to the Association.

25. Sullivan on March 25, 1995, refused to meet with Priebe in the presence of Byers to discuss Priebe's complaint that she should be given more work hours. Byers that day dropped off her business card at the school's office because the building principal was not immediately available. Sullivan walked out of that scheduled meeting with Priebe on the ground that Byers had not properly checked in with the office. Sullivan told Priebe in a March 29, 1995, letter that she, Priebe, had shown her a lack of respect on March 28, 1995. Priebe was never disciplined over that matter and Sullivan's March 29, 1995, letter was ultimately destroyed after Priebe complained about it.

26. Sullivan after January, 1995, scheduled Priebe for fewer hours of work than other employees, with the result being that Priebe has less time to perform her job. Priebe's hours were going to be reduced because of incorrect data submitted by Sullivan to Wisconsin's Department of Public Instruction. After Priebe grieved, Frick restored the proposed reduction in hours.

27. Sullivan prior to April, 1995, regularly assigned Lenore Shird to work as a substitute in addition to her regular position. During April of 1995, Shird met with Sullivan to discuss a grievance filed by another members. For several weeks after that meeting, Sullivan apparently did not assign Shird any substitute work or additional hours, although such work was available. Instead, the District called in other employees for that work. It is unclear whether Shird could have performed that additional work and/or whether she wanted it.

28. Sullivan since the Fall of 1994 has criticized Kast in the minutes of staff meetings

and Sullivan during the 1994-95 school year imposed work requirements on Kast that were not imposed on others in her position, such as requiring Kast to submit complete food inventories, to turn in food labels, and to report more detailed information.

29. Sullivan on May 14, 1996, told Linda Manley, Priebe's daughter-in-law, that food service workers earn over \$10 an hour even though most of them do not have an 8th grade education and that she could not do a darn thing about it because of the Association. Sullivan at that time did not know that Manley was related to Priebe.

30. Sullivan after September 15, 1994, revised the evaluation form to be used to evaluate food service staff for the 1994-95 school year. The Association - whose consent was required under the collective bargaining agreement before the evaluation form could be changed - refused to agree to the contents of the new form. Sullivan subsequently told employees the new evaluation was voluntary and she met with employees for the purpose of helping draft a new evaluation form. Sullivan in March, 1995, also met with employees to discuss her proposed new evaluation and she in an April 5, 1995, memo to employees announced that a finalized evaluation would be made available April 7, 1995. Said memo also stated: "At this time, I will ask if the evaluation form is accepted as our program's instrument, that a waiver of Clause X.A. [in the collective bargaining agreement] can be developed so that I can proceed in the evaluations for this year." Priebe on or about May 15, 1995, told Sullivan that her intent to use the new form violated the 1993-96 agreement. In response, Sullivan announced that all staff would be evaluated using the old form.

31. Sullivan on or about May 18, 1995, conducted informal work evaluations on Priebe and Kast which resulted in certain negative comments. Byers by letters dated May 26, 1995, and May 30, 1995, asked Sullivan various questions about her observation of Kast and Priebe's work, which Sullivan subsequently answered several months later. In order to help her file grievances on Kast and Priebe's behalf, Byers by letter dated September 8, 1995, asked Frick for copies of the informal work observations done by Sullivan on other employees on May 18, 1995. Such information was never provided. Kast and Priebe's evaluations were ultimately rescinded.

32. Sullivan by letter dated May 25, 1995, criticized Kast for paying Sysco (a company that furnishes the Food Service Program with food and supplies) for the personal order placed by Shird. Ordering food for personal use had been previously allowed, as Sullivan set up an account for employees to use for this purpose with Sysco food consultant Barry Rumpel in about 1992. Sullivan's May 25, 1995, memo to Kast stated that, "Further disciplinary action. . ." could occur. Kast filed a grievance and Frick by letter dated August 2, 1995, announced that Kast would not be disciplined over that matter and he then ordered that Sullivan's May 25, 1995, memo to Kast be destroyed. He at that time also told Sullivan to clarify the District's policy on this issue.

33. Sullivan on August 30, 1995, told Priebe, Kast, and Evenson that she would not respond to any letters from Association representative Byers and that they would be disciplined if

they went to Byers with any problems before they went to her because Byers was not in the "chain of command". Frick was present during this conversation and did not repudiate Sullivan's comments. Frick subsequently did so in private when he told Sullivan that it was wrong for her to threaten employees for going to the Association. Frick's private admonition was never communicated to any bargaining unit employees.

34. Sullivan on September 1, 1995, informed employees in the bargaining unit that they would be reprimanded if she received any letters from Byers before an employee approached her about the problem because Byers was not in the "chain of command". Sullivan also told employees that Frick and the District's Board backed her up "100 percent".

35. Sullivan asked food service worker Linda LeFleur at about the time that the instant prohibited practices complaint was filed what she thought of the Association's instant complaint. She then also told LeFleur that the employees named in the complaint would not be returning to the District in the fall. LeFleur replied that she had no knowledge regarding the complaint.

36. Frick by letter dated September 14, 1995, informed Kast:

Dear Dawn,

Due to financial condition of the Food Service operation in the District, meetings have been held to gather ideas and information on how to reduce costs and ultimately get the Food Service operation into the black. At a meeting of head cooks in August, the number one priority identified was to cut employee costs. Therefore, since that time, ideas have been generated and explored as to how this first priority could be met. One of the actions to be taken is the elimination of the Head Cook I position (your position) at Viking school. In comparing the job description from the previous Head Cook I and the responsibilities you are presently performing, your job should be classified as Head Cook II. This letter is to serve as your notice of layoff.

According to Article VI, Staff Reduction of the Holmen Area Food Services Employees Association's contract with the Board of Education, the staff reduction process is identified. You are given notice today that effective October 12, 1995, your position with the Holmen School District is terminated. As of this point the following terms apply:

- * You are notified on September 14, 1995 of the notice of staff reduction.

- * Since you are the only Head Cook I, you do not have the option of replacing anyone within the classification who might be less senior. You do have the right to be recalled to vacant positions which include Head Cook II (Viking - 5.5 hours), Cashier (High School - 2.5 hours), Cafeteria Worker (High School - 2.0 hours, Viking - 3.5 hours and Viking - 1.5 hours). Since other employees are receiving staff reduction notices at the same time, date of layoff, seniority and qualifications will be the determining factors.

- * A meeting will be held with all people in this layoff pool on Friday, September 15, 1995 at 2:00 p.m. in the Board Room. Positions will be made available to employees in the layoff pool according to Article VI. E. of the negotiated agreement.

If you have any questions or concerns relative to this, please let me know. I hope all of this can be resolved, certainly with minimum impact to any of the District's employees.

...

The District relied on Sullivan's recommendation to lay-off Kast. Said recommendation was based, at least in part, on Sullivan's hostility to Kast's union activities. Kast grieved her proposed layoff and the District has never implemented it pursuant to an October 10, 1995, interim agreement reached between the parties.

37. Kast on September 18, 1995, submitted a leave slip for a personal day which Sullivan denied. The basis for the denial was that a scheduled Head Cook's meeting - for which there was no prior written notice - was mandatory. The District in the past had granted a personal day to another employee who was unable to attend a Cook's meeting.

38. Throughout much of this time, some of the District's food service employees opposed some of the Association's activities. About 17 of those employees on June 5, 1995, signed and submitted the following petition to the District.

To Whom It May Concern,

We, the undersigned, from the Holmen Food Service, are hereby

entering a complaint to the Union that we are going to resign, or demand a new representative.

Debbie Byers, our union representative, does not represent the majority of our group, just the select "8". We have tried to talk to her, but to no avail.

We feel we are being manipulated and lied to and that our jobs are in jeopardy. The next step for the School Board will be a catering service.

Ms. Byers and the select 8 have now filed a Prohibitive Practice suit against the District without our knowledge. Their main objective is to get rid of the Manager of the program. Because of their constant harassment and coercion our jobs are now at jeopardy.

A Union is supposed to be for all - not a select few. We have asked for meetings but they're always too busy! It appears there is no recourse but this drastic step.

...

Based upon the foregoing Findings of Fact, I make the following

CONCLUSIONS OF LAW

1. Respondent School District of Holmen violated Section 111.70(3)(a)1 of the Municipal Employment Relations Act when it referred to Nancy Kuczynski as an "instigator".
2. Respondent School District of Holmen violated Section 111.70(3)(a)1 of the Municipal Employment Relations Act when it interrogated bargaining unit members regarding their support for the Holmen Area Food Services Employees Association ("Association") and the instant prohibited practices complaint.
3. Respondent School District of Holmen violated Section 111.70(3)(a)1 of the Municipal Employment Relations Act by prohibiting employes from conducting union activities during their non-work break and lunch times.
4. Respondent School District of Holmen violated Sections 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act when it threatened employes with discipline if they violated the District's "chain of command" by first contacting their union representative before bringing any

work-related problems to management's attention.

5. Respondent School District of Holmen violated Section 111.70(3)(a)1 of the Municipal Employment Relations Act when it refused to meet with Association representative Deborah Byers to discuss Mary Priebe's grievance.

6. Respondent School District of Holmen violated Sections 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act when it threatened employes for filing grievances.

7. Respondent School District of Holmen violated Sections 111.70(3)(a) 1 and 3 of the Municipal Employment Relations Act when it refused to let Dawn Kast attend a training session; when it placed limits on her copying and mail privileges; when it refused to grant her a personal day; when it initially threatened to discipline her for paying for the personal food previously ordered by another employe; and when it initially told her in September, 1995, that she was being laid-off effective October 12, 1995.

8. Respondent School District of Holmen violated Sections 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act when it refused to furnish the Association with copies of employe responses to its March 24, 1995, and March 30, 1995, memos and when it refused to provide the Association with all copies of its May 18, 1995, evaluations.

9. Respondent School District of Holmen violated Sections 111.70(3)(a) 1 and 4 of the Municipal Employment Relations Act when it engaged in individual bargaining with its employes regarding its proposed new evaluation form.

10. Respondent School District of Holmen did not violate Sections 111.70(3)(a)1, 3, and/or 4 of the Municipal Employment Relations Act, nor any other section, when it issued verbal reprimands to Dawn Kast and Mary Priebe over their participation in "Take-Your-Daughter-To-Work-Day"; when it evaluated Sandy Roubik, when it told her not to eat in the kitchen's a la carte room, and when it failed to give her more training and more hours; when it questioned Dawn Kast, Jean Evenson, and Kathy Gowdy about their attendance at a December 1, 1994, meeting involving the Wisconsin Retirement System; when it placed certain limits on the use of its photocopying equipment; when it threatened to reprimand Nancy Randall, Mary Priebe, and Dawn Kast for supposedly discussing union matters on work time; when it asked Dawn Kast in January, 1995, to explain whether she had conducted any union business on work time; when it did not assign additional hours to Lenore Shird; and when it conducted informal work observations on Dawn Kast and Mary Priebe.

Upon the basis of the above Findings of Fact and Conclusions of Law, I make and issue the following

ORDER 1/

IT IS ORDERED that the Holmen School District, its officers and agents, and officials, shall immediately:

1. Cease and desist from referring to Nancy Kuczynski, or any other union supporters, as "instigators".

(Footnote 1/ appears on page 15.)

2. Cease and desist from interrogating any employees as to how they feel about any of the Association's activities, including the filing of the instant complaint.
3. Cease and desist from prohibiting any employees from conducting union activities during their non-work break and lunch times.
4. Cease and desist from threatening any employees with discipline if they violate the District's "chain of command" by first contacting their union representative before bringing any work-related problems to management's attention.
5. Cease and desist from refusing to meet with employees who wish to file a grievance because they are accompanied by a union representative.
6. Cease and desist from threatening employees for filing grievances.
7. Cease and desist from discriminating against Dawn Kast by unlawfully refusing to let her attend a training session; by unlawfully restricting her copying and mail privileges; by refusing to grant her a personal day; by threatening her with discipline for paying for the personal food purchased by another District employe from the District's food supplier; and by slating her for layoff and a reduction in hours.
8. Cease and desist from refusing to furnish the Association with relevant information and with copies of employe responses to the District's March 24, 1995, and March 30, 1995, memos and with copies of its May 18, 1995, evaluations.
9. Cease and desist from engaging in individual bargaining with its employees.
10. Cease and desist from engaging in any other like conduct which violates any employe rights set forth in the Municipal Employment Relations Act.
11. Take the following affirmative action to rectify the school district's prohibited practices:
 - a. Immediately rescind its policy which prohibits employes from engaging in union activities during their non-work break and lunch periods.
 - b. Immediately rescind its "chain of command" policy which prohibits employes from contacting their union representative before bringing any work-related problems to management's attention.

- c. Immediately rescind Dawn Kast's proposed layoff and reduction in hours and its unnecessary limitations on her copying and mail privileges.
- d. Notify all employes by posting in conspicuous places where employes are employed copies of the Notice attached hereto and marked "Appendix 'A'". That Notice shall be signed by the School District and shall be posted immediately upon receipt of a copy of the Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the School District to ensure that said Notice is not altered, defaced, or covered by other material.
- e. Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 2nd day of July, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco /s/
Amedeo Greco, 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 after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may

extend the time another 20 days for filing a petition with the commission.

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

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

1. WE WILL NOT refer to any union supporters as "instigators".
2. WE WILL NOT interrogate employees regarding their union activities.
3. WE WILL NOT prohibit employees from discussing union activities during their non-work break and lunch periods.
4. WE WILL NOT threaten or discipline any employees who first contact their union representative before bringing any work-related problem to management's attention.
5. WE WILL NOT threaten or discipline any employees for filing grievances.
6. WE WILL NOT discriminate against Dawn Kast, or any other employees, by refusing to let them attend training sessions; by refusing to grant them personal days off when there is no compelling business reason to do so; by threatening them with discipline for following the District's policy regarding the private purchase of food from the School District's food supplier; by imposing unnecessary restrictions on copying and mail privileges; and by threatening to layoff and cut their hours because of anti-union considerations.
7. WE WILL NOT refuse to furnish the Holmen Area Food Services Employees Association with copies of any information to which it is legally entitled.
8. WE WILL NOT engage in any individual bargaining with any employees regarding proposed new evaluation forms or any other such mandatory subjects of bargaining.

9. WE WILL NOT in any like, or related, manner violate any employe rights guaranteed by the Municipal Employment Relations Act.
10. WE WILL immediately rescind our policy which prohibits employes from discussing union matters during their non-work break and lunch periods.
11. WE WILL immediately rescind our "chain of command" policy which prohibits employes from contacting their union representative before bringing any work-related problem to management's attention.
12. WE WILL immediately rescind Dawn Kast's proposed layoff and reduction in hours and the unnecessary restrictions on her copying and mail privileges.

Dated at this _____ day of _____, 1997.

SCHOOL DISTRICT OF HOLMEN

By _____

THIS NOTICE MUST BE POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY MATERIAL.
HOLMEN SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

POSITIONS OF THE PARTIES

As related in greater detail below, the Association asserts that the District has committed multiple violations of MERA by coercing and interrogating its employees; by interfering with their union activities; by threatening and discriminating against union adherents; and by unlawfully refusing to bargain. The Association thus claims that it and its members "have experienced shockingly overt acts of anti-union sentiment, interference, and discrimination" and that this situation dates back to the very inception of the parties' collective bargaining relationship in 1991. Proof of that, claims the Association, is shown by the fact that it has filed about 29 grievances and 2 prohibited practices complaints over the years. The Association also complains that the District's actions have "caused substantial harm to the Union and to the individual members of the Union" because its membership is now deeply divided over the Association's representational efforts.

The District denies all of the Association's charges and claims that the problems herein have largely arisen "from personality conflicts between a minority group. . ." of employees and Sullivan. It also claims that the Association, "not the District, set the tone for. . ." the parties' bargaining relationship in 1991; that it "has attempted to resolve all concerns brought to its attention in a timely and reasonable manner"; and that the "District supervisor's practices, where inappropriate, have been repudiated or clarified."

DISCUSSION

The four-day hearing in this matter produced a plethora of charges and countercharges by the parties, involving almost every single aspect of the District's food service operations over the last five or so years. In addition, the parties have questioned the integrity and/or competence of many witnesses, as they claim that all of their own witnesses should be credited and that the other side's witnesses should be discredited for various reasons. Little will be gained by addressing all of these claims, particularly those arising outside the statute of limitations which began to run May 15, 1994. Instead, it suffices to say that all of them have been considered and that what follows here represents the most salient parts of this case.

A further caveat is in order: it is not the Commission's function to either judge the quality of the District's food service program or to second-guess the District's personnel practices, as the Commission's jurisdiction is limited to determining whether the District has violated MERA. As a result, there is no reason to review all of the District's questioned day-to-day business decisions or personnel practices except to whatever extent that they may involve possible violations of MERA.

A key element in this case involves motive: more specifically, whether any of the District's agents bore animus against either the Association or its supporters. The record on this score reveals that the District over the years has had a good relationship with the Association in its representation of the District's teaching personnel. The absence of any animus surrounding that relationship raises an inference that the District, as a matter of policy, does not have any animus against its food service workers because of their union representation.

In addition, and contrary to the Association's claim, there is no basis for finding animus merely because the Association over the years has filed about 29 grievances and two prohibited practices complaints. Those other disputes show only that the parties have had a difficult bargaining relationship and that they have been able to work out many of their problems. That, of course, is the very purpose of a contractual grievance procedure. Hence, no inference of animus can be drawn merely because the Association believes that the District in the past has violated the contract. That also is true even if the District has, in fact, violated the contract since the remedy in such situations is to file a grievance, rather than to have those contractual breaches resolved in a prohibited practices forum. 2/

Nevertheless, it is possible that individual District employees bear such animus even though there is no District-wide policy on this issue. Here, for instance, the Association argues that Superintendent Frick has exhibited animus against the Association and its representatives via statements he has made and the anger he has exhibited towards the Association and/or its representatives.

While Frick at times has taken umbrage at certain remarks made by Association representatives, and while he may have responded in intemperate ways over some of those matters, he nevertheless has never exhibited any overt union hostility during the period covered by the statute of limitations. 3/ Furthermore, there is no proof that any of Frick's actions were pretextual in

2/ That is why I have dismissed all claims which allege that the District has violated the contract.

3/ The Association points to statements made by Frick in 1991 in support of its contrary claim, the details of which are spelled out in Finding of Fact No. 7. Having reviewed that incident, I find that Frick acted as he did out of frustration, rather than because of any anti-union statements, and that that single incident, without more, does not establish any ongoing anti-

nature and/or that they were used to hide any anti-union sentiments on his part. To the contrary, Kast herself acknowledged that Frick has been responsive to the problems of her bargaining unit. Hence, none of his actions violated Section 111.70(3)(a)3 of MERA. (His possible violations of Sections 111.70(3)(a)1 and/or 4 is another matter and is addressed below).

Food Services Manager Sullivan stands on a different footing: she strongly resented any criticisms over the food service operations and she went to extraordinary lengths to stifle employee discontent. That is why - as related in Finding of Fact 23, supra - she wrote to employees on March 24, 1995, to inquire whether they supported the Association and why she on March 30, 1995, reminded unresponsive employees that they should respond to her by April 5, 1995; that is why - as related in Finding of Fact 35, supra - she interrogated LeFleur in May, 1995, regarding the Association's prohibited practices complaint; and that is why - as related in Finding of Fact 33 and 34, supra - she told employees that they would be disciplined if they violated the "chain of command" by first going to Association representative Byers before coming to her with any work-related problems.

Hence, I find that Sullivan throughout this time was strongly motivated by union animus. As a result, it is necessary to closely examine her actions to determine whether they were based on such unlawful animus.

In this connection, I have discredited Sullivan's testimony to whatever extent it contradicted the direct testimony of other witnesses, as I find her testimony to be at variance with the truth. Sullivan thus asserted that neither Kast nor Priebe were reprimanded in her May 18, 1994, memos to them relating to "Take-Your-Daughter-To-Work". In truth, her memo stated that it represents a "verbal written warning". Sullivan also initially claimed on direct-examination that Kast repeatedly had violated her copying privileges. However, Sullivan on cross-examination was unable to prove that she had ever done so. In addition, Sullivan initially claimed on direct-examination that she did not know until 1995 that employees were buying food for their own use from Sysco, the District's supplier. In fact, Sysco employee Rumpel testified that Sullivan years earlier had approved such private purchases. The fact that Sullivan would feign ignorance about this prior practice shows just how far she will go in order to retaliate against Kast. In addition, Sullivan flatly denied ever telling Kast that she would be disciplined for violating the "chain of command". Frick, however, acknowledged that Sullivan expressly told Kast and Priebe in his office that they would be so disciplined.

However, that does not necessarily mean that everything Sullivan did violated MERA. For given the District's legitimate business needs in running its food services program, and given Frick's own repeated efforts to repair Sullivan's damage, I also find, for the reasons stated below, that the Association has not met its burden of proof regarding some of the matters in dispute.

union bias on his part.

With the foregoing general principles in mind, it now is time to turn to the Association's specific claims.

1. Sullivan's March 24, 1995, and March 30, 1995, Memos and the District's Refusal to Provide Information

The Association asserts that Sullivan's memos to employees - set forth in Finding of Fact 23 above - violated Sections 111.70(3)(a)1 and 3 of MERA because they sought to interrogate employees about their support for the Association via Sullivan's statement: "I will draw my own opinion of those who choose not to reply," and because of their implicit threat that uncooperating employees would be disciplined. The only saving grace about this episode was the fact that Frick, following a complaint from Association attorney Ellen J. Henningsen, had the good sense to repudiate them in an April 4, 1995, letter to her which stated: "The District agrees that the memo should never have been issued, they were not authorized by the District, and the District totally repudiated them." Frick apparently also copied said letter to all employees and the District at that time destroyed the only two employee written responses to the memos.

Saying it "does not dispute that the subject memos should not have been disseminated to employees", the District nevertheless argues that it took "prompt, immediate remedial action to address the Union's concerns", and that the Association - after having secured a satisfactory resolution of this issue - is now litigating it to "deflect the unit's majority dissatisfaction with. . ." the Association.

As reflected by the petition referenced in Finding of Fact 38, supra, which criticized the Association's representational efforts, the record does, indeed, show a sharp division within the bargaining unit over the Association's activities. Moreover, I credit Kast's testimony that Sullivan's March 24, 1995, and March 30, 1995, letters "stirred up emotions within the membership" and that they had a lot to do with this situation. In addition, Frick himself acknowledged that the letters tended to polarize employees. That being so, the District can hardly escape the consequences of Sullivan's illegal actions by relying on the very result that Sullivan helped engineer. Hence, I find that Sullivan and the District violated Section 111.70(3)(a)1 of MERA by sending these letters.

The Association also asserts that the District violated Sections 111.70(3)(a)1 and 4 of MERA when it refused Byers' written request for the responses to Sullivan's aforementioned memos. The District contends that no "useful purpose" would have been served by turning them over.

In other circumstances, that might be true. But here, given the severity of Sullivan's misconduct and her blatant attempt to divide the Association's membership, the Association was entitled to the requested information in order to examine the responses filed and to try to repair the damage that had been done. Moreover, Byers testified that the responses were needed to insure that

they would not be used against the employees in the future and in order to determine whether other employees were receiving preferential treatment. Given Sullivan's union animus, I find that the Association's concerns were warranted and that it has satisfied its burden of proving that it was legally entitled to the requested documentation. The District therefore violated Sections 111.70(3)(a)1 and 4 of MERA when it refused to supply that documentation.

2. The "Chain of Command"

The Association claims that Sullivan repeatedly violated Section 111.70(3)(a)1 of MERA when - as set forth in Finding of Fact Nos. 33 and 34, supra - she told employees that they had to follow the "chain of command" by first contacting her regarding any work problems before going to Association representative Byers and that they could be disciplined if they did so. In response, the District claims that problems could be resolved without first going through the Association and that Article III, Section C, of the contract supports Sullivan's position because it states that "a grievant must first informally discuss the grievance with the principal or immediate supervisor."

This quoted contract language, however, only goes to the "chain of command" in filing grievances with the District. It says nothing about whether employees have waived their statutory right to first contact their union representative regarding work-related problems. Absent any clear waiver of that right, employees remain free on their own time to discuss whatever they want with their union representative before bringing it to the District's attention.

For as the Association rightfully points out: "It is not a violation of the 'chain of command' for union employees to consult with or ask the assistance of their union at any time regarding wages, hours and conditions of employment." To claim otherwise is to in effect gut an employee's statutory right to engage in concerted, protected activities before filing a grievance with management. Indeed, Frick himself acknowledged on cross-examination that Sullivan's threat interfered with employees' right to contact their union and that it was wrong. It therefore is immaterial that no employees were ever disciplined by going directly to their union representative, as Sullivan's edicts interfered with and tended to coerce employees regarding their right to obtain union representation in possible grievances. Her actions therefore violated Sections 111.70(3)(a)1 and 3 of MERA.

3. The Proposed New Evaluation Form

The Association argues that the District acted unlawfully when - as set forth in Finding of Fact No. 30, supra - it unilaterally tried to promulgate a new evaluation in the 1994-1995 school year and when it sought employee support for doing so. The District replies that it never implemented its new evaluation form and that "no harm" thus came from it; that Sullivan devised the new form to "simplify it and make it less time-consuming. . ."; and that Sullivan in an April 5, 1995, memo to employees asked if they would voluntarily agree to it and thereby waive Article X(A) of the contract.

The District's arguments miss the point: the Association is the authorized bargaining representative for the food service workers and it, and only it, can waive the provisions of the collective bargaining contract. Here, Sullivan made an illegal end-run around the Association by directly asking employees to waive a provision of the contract, something she could not do since that constituted individual bargaining in violation of Sections 111.70(3)(a)1 and 4 of MERA.

4. Le Fleur's Interrogation

The Association claims that Sullivan at the end of the 1994-95 school year violated Sections 111.70(3)(a)1 and 3 of MERA when - as set forth in Finding of Fact 35, supra, she told LeFleur that the six employees named in the instant complaint might not return to work in the following school year and when she asked La Fleur what she thought of the Association's instant complaint. While Sullivan denies ever making such an inquiry, I discredit her denial and, instead, credit La Fleur's contrary testimony that such an interrogation took place.

The District nevertheless asserts that any such possible interrogation was not illegal because La Fleur did not have any knowledge of the complaint, thereby leading it to ask, "Where is the harm to be remedied?" The harm, of course, was in the question, not the answer, as Sullivan's interrogation reasonably tended to intimidate and to thereby interfere with the Association's statutory right to file a prohibited practices complaint. Sullivan's conduct therefore violated Section 111.70(3)(a)1 of MERA.

5. Kuczynski's Evaluation

The Association argues that Sullivan acted unlawfully when - as related in Finding of Fact No. 10, supra - she labelled Kuczynski an "instigator" in the latter's evaluation because, in Sullivan's words, Kuczynski "was instigating a majority of things that were going on." The District contends that the evaluation was eventually destroyed and that it in any event was not unlawful because there was no reference in it to any of Kuczynski's union activities.

I disagree, as the record shows that the only thing that Kuczynski ever "instigated" was her union activities. Given Sullivan's union animus and her inability to justify the use of this label during her testimony, I find that Sullivan used it only because of her own anti-union sentiments. Moreover, while the District is to be lauded for eventually destroying this evaluation, the simple fact remains that Kuczynski was being singled out because of her union activities, which is something Sections 111.70(3)(a) 1 and 3 of MERA prohibit - even for a little while.

6. Kast

Kast throughout this time was one of the Association's chief spokespersons and one of Sullivan's chief protagonists. Hence, it is not surprising that Sullivan bore animus against Kast because of her union activities and that Sullivan did almost everything in her power to thwart the Association's representational efforts which often were spearheaded by Kast.

There simply is no other reasonable explanation as to why - as set forth in Finding of Fact No. 32, supra - Sullivan sought to discipline Kast after she paid for the personal food purchased by another employe from Sysco, the District's then-food supplier. Sullivan on direct- examination asserted that employes were prohibited from buying from Sysco and that she did not know that they

had been doing so. In truth, Sysco employe Rumpel testified that Sullivan had expressly approved that practice several years earlier. Given Sullivan's failure to tell the truth on this issue, I find that she retaliated against Kast in violation of Sections 111.70(3)(a) 1 and 3 of MERA by threatening her with discipline over a practice she herself had earlier personally approved.

Sullivan also violated Sections 111.70(3)(a)1 and 3 of MERA when - as related in Finding of Fact No. 19, supra - she refused to let Kast attend a training seminar. For while Sullivan asserted that Kast had to remain in school to check in a commodities' shipment due that day, the record shows that Kast's presence was not needed since other employes had in the past checked in commodities when Kast was absent. In addition, Priebe testified that when she attended training seminars other employes routinely handled such commodities' shipments. Moreover, Sullivan herself admitted that commodities have been unloaded by employes who were not cooks. I therefore find that Sullivan's stated reason for denying that training opportunity was pretextual in nature and that Sullivan did so in order to punish Kast because of her union activities.

The Association also asserts that Sullivan discriminated against Kast when - as related in Finding of Fact 37, supra - she refused to grant Kast's request for a personal day on September 18, 1995. The District asserts that there is no proof that Kast's request was denied. I disagree. Kast testified that she was denied leave even though other employes under similar circumstances have been given personal days off. I credit her testimony and find that Sullivan, in fact, denied Kast that personal day because of unlawful, anti-union considerations in violation of Sections 111.70(3)(a)1 and 3 of MERA.

Kast's proposed layoff in October, 1995 - referenced in Finding of Fact 36, supra - also violated Sections 111.70(3)(a)1 and 3 of MERA - even though it has not yet been effectuated because of an interim agreement between the parties - since Sullivan was behind that proposed layoff and since Sullivan's reasons for effectuating the layoff were pretextual in nature.

Thus, Sullivan said that "it would be more beneficial for me to be - to have my office in the central kitchen school, and to take away responsibilities from Dawn, and that I could take those over, and you know, just basically being real specific, you know paying attention to the budget and what dollars I have to work with." Sullivan added, "And I felt that there were things that Dawn was doing that had been changed since the original job posting. . ." and that, "Because there were so many things that were happening, complaints that were going on, and I just felt that I needed to be in the midst of the problem." She explained that the "complaints" related to "union business being conducted on paid District time. I also got complaints of people gossiping in the kitchen and speaking very poorly of the program, specifically, speaking very poorly of me." Sullivan also claimed that she wanted to take over control of the commodities from Kast and added: "What else? I don't know. I'm lost."

Frick testified that Sullivan's job as Head Cook I was being eliminated because "Sullivan felt there was extra labor time at the Viking kitchen. . ." and because "we needed to look at what

could be done to reduce the deficit."

Frick's testimony is notable for what it does not contain -- i.e., any reference to Sullivan's claims that Kast's position must be abolished to obtain better control over the kitchen operations; because Kast's duties supposedly had changed; and in order to help eradicate employee complaints. Sullivan's testimony is notable because - in the context of her other testimony - it is clear that her reference to "complaints" centered on Kast's criticisms of the food service program and her ongoing efforts to help police the collective bargaining agreement in the face of Sullivan's relentless assaults.

Given the different explanations offered by Frick and Sullivan as to why Kast's position should be abolished, and given Sullivan's strong union animus and her other discriminatory treatment of Kast, I conclude that the District's reasons for wanting to abolish Kast's Head Cook I position were based, at least in part, on Sullivan's union animus, as Frick acknowledged that the District relied on Sullivan's recommendation to eliminate her job. Hence, it follows that Kast was slated for layoff because of her union activities in violation of Sections 111.70(3)(a)1 and 3 of MERA. 4/

The Association also argues that Sullivan acted unlawfully when - as related in Finding of Fact 9, supra - she initially disciplined Kast (and Priebe) for not following Sullivan's directives regarding "Take-Your-Daughter-To-Work-Day".

Although her motives for doing so are suspect, I find that the Association has not proven that Sullivan's actions were predicated on her anti-union sentiments. Instead, I find that her actions merely reflected poor personnel practices and bad judgment on her part, something that she herself rectified by rescinding the discipline involved. Hence, this allegation is dismissed.

The Association also asserts that the District violated Sections 111.70(3)(a)1 and/or 3 of MERA when Sullivan made certain negative comments in Kast's June 1, 1994, evaluation; when Sullivan reprimanded Kast on October 12, 1994, for communicating with Clark; when the District on about February 2, 1995, started to order commodities on a monthly, rather than a weekly, basis; when Sullivan criticized Kast in the minutes of staff meetings; when the District imposed additional work requirements on Kast; when Sullivan made certain negative comments in her May 18, 1995, evaluation of Kast (and Priebe); and when Frick by memos of January 17, 1995, and January 27, 1995, asked Kast whether she was conducting Association business on paid work time.

Given Sullivan's animus against Kast, there certainly is a basis for questioning some of these matters. However, there is no clear proof that Kast's June 1, 1994, evaluation, her October 12,

4/ See, for example, Muskego-Norway C.S.J.D. #9 v. WERB, 35 Wis. 2d 540 (1967); Milwaukee Board of School Directors, Dec. No. 17104-A (Greco, 7/80), aff'd by operation of law - Dec. No. 17104-B (WERC, 8/80).

1994, reprimand, and her May 18, 1995, evaluation were based on discriminatory motives. Accordingly, and since all three matters were subsequently rescinded, these allegations are dismissed. As for Sullivan's remaining actions, I find that, while suspicious, the Association has not met its burden of proving that they were based on unlawful, anti-union considerations. I also find that Frick's January, 1995, inquiries to Kast - set forth in Finding of Fact 18 supra - were lawful since Frick had the right to ask Kast whether, in preparation for the parties' interest-arbitration proceeding, she had conducted any union activities on paid work time. There was nothing improper about Frick's inquiries and no disciplinary action was ever imposed on Kast regarding this matter. Hence, all of these complaint allegations are dismissed.

7. The District's Refusal To Provide Evaluations

The Association contends that the District violated Sections 111.70(3)(a)1 and 4 of MERA when - as related in Finding of Fact No. 31, supra - it refused the Association's initial request for the informal evaluations Sullivan prepared on May 18, 1995, for Kast and Priebe and when it also refused to turn over the other three informal evaluations that Sullivan supposedly prepared that day for three other employes. The District argues that it was not required to turn them over to the Association because Article X(A) of the contract states that such evaluations shall be given to employes when, as here, they do not relate to any discipline. It also points out that it eventually destroyed those informal evaluations and thus asks: "What harm is the Association seeking to rectify in this regard by way of the prohibited practice form?"

The "harm" centers on the fact that the Association immediately needed that information in order to properly process Kast and Priebe's grievances over those evaluations. By not immediately turning them over, the District impeded the Association's ability to process those grievances. Ditto for the District's failure to ever turn over the other three evaluations: they would have shown whether Sullivan told the truth when she claimed that she also evaluated those three other employes on May 18, 1995. In addition, those other evaluations - if they existed at all - would show what else Sullivan wrote that day and whether her harsh comments of Kast and Priebe were matched by any similar negative comments levied against those others in attendance.

Furthermore, there is no merit to the District's assertion that it was not required under the contract to provide those other evaluations, as Article X(f) of the contract states: "The Association may also ask for and receive copies of such documents. An employe may request that such documents not be transferred to the Association by filing a written request with the District Administrator." Here, no such objection was ever made.

The District's refusal to turn over any of these latter documents thereby violated Sections 111.70(3)(a)1 and 4 of MERA, as did its earlier delay in turning over to the Association Sullivan's May 18, 1995, evaluations of Kast and Priebe.

8. Roubik

The Association argues that Sullivan's evaluation of Roubik was unlawful because it contained certain negative comments; that Sullivan acted unlawfully when she failed to properly train Roubik for a new position; that Sullivan unlawfully threatened to discipline Roubik after the latter told Sullivan shortly after January 12, 1995, that she might be violating the contract; and that Sullivan acted unlawfully when she ordered Roubik out of the cafeteria's a la carte room.

Again, while all of Sullivan's activities are suspect, I find that the Association has failed to meet its burden of proof since Sullivan's evaluation of Roubik does not show any anti-union bias and since Roubik was responsible for training herself for her new position. Moreover, while Sullivan may have threatened to discipline Roubik, the record fails to clearly establish that any such threat was tied into Roubik's union activities. Thus, Roubik testified: "I was called in [by Sullivan] and [she] said it was going to be a reprimand, but then she [Sullivan] took that back and said she didn't say that." Roubik added that she also told Sullivan: "I wasn't getting my work done in a timely manner, and I suggested, you know, that if she would give me some help and suggest easier ways and faster ways to do it, I would certainly do it." None of this exchange evidenced any unlawful conduct by Sullivan.

Sullivan also did not discriminate against Roubik when she told Roubik that she could not eat her lunch in the lunch room's a la carte room. Sullivan claimed that she did not want any employees to eat there because it is against the health code which, of course, is a legitimate business reason. Moreover, while other employees were eating at other dining tables and while Sullivan did not tell them to stop eating, the record is unclear as to whether those other employees were prohibited under the health code from eating there. Absent such clear proof, I find that the Association has not met its burden of proof on this issue.

All of the allegations relating to Roubik are therefore dismissed.

9. The December 8, 1994, Meeting

The Association asserts that Sullivan acted unlawfully when - as set forth in Finding of Fact No. 14, supra - she supposedly granted permission to Kast, Evenson, and Gowdy to attend a December 1, 1994, meeting involving the Wisconsin Retirement System and when Sullivan on December 8, 1994, subsequently questioned them after they did so. There may have been a bona fide misunderstanding regarding this issue given the District's earlier directive that employees could not attend that meeting on work time. Accordingly, and since neither Kast, Evenson, nor Gowdy were ever disciplined, I conclude that the Association has not met its burden of proving that this particular incident was caused by Sullivan's union animus. This complaint allegation is therefore dismissed.

The Association also asserts that the District acted unlawfully by initially not paying employees for attending the December 8, 1994, meeting with Sullivan. In fact, employees were

eventually paid after a grievance was filed. Hence, there is no merit to this claim.

10. Restrictions On The Use of the District's Copying Machines and the Use of Inter-District Mail

The Association contends that Sullivan acted unlawfully when - as set forth in Finding of Fact No. 15, supra - she placed limits on the number of photocopies Kuczynski and Kast could make on District equipment and when she instituted procedures to make sure that the photocopies were limited for District use.

This represented a change from the prior case practice which allowed employes to copy almost anything they wanted with no supervision whatsoever, provided that they paid for all personal copies. The District, though, does retain the inherent right to control costs and to determine how its equipment shall be used. Hence, it was entitled to place limits on the number of copies that Kuczynski, or any other employes for that matter, could make.

Kast's situation is a little different because Sullivan's December 8, 1994, memo to her specified that Kast had to submit all proposed copies to her for pre-clearance and it further prohibited Kast from using inter-District mail for union business as Kast had done previously. Again, the District has the right to control its copying costs and mail procedures. Here, however, Kast is the only employe who is required to seek preapproval from Sullivan for all of her copying. Sullivan claimed that this directive was needed because Kast had violated her copying and mail privileges. However, she was able to only identify nine pieces of paper that Kast had supposedly copied without permission. In fact, all of them were properly paid for and they totaled less than a dollar in copying costs. The Association therefore complains that Sullivan's professed concern about copying costs is "ludicrous".

Since there is no proof that Kast ever violated either her copying or mailing privileges, and since Sullivan bore animus against Kast's union activities, I find that Sullivan's directive to Kast was based on anti-union considerations in violation of Sections 3(a)1 and 3 of MERA.

11. The December 23, 1994, Reprimand

The Association asserts that Sullivan on December 23, 1994, threatened to reprimand Randall, Priebe, and Buroker for criticizing the District's food service program and for conducting union business on work time, a matter supposedly having been brought to Sullivan's attention from several food service workers. In response, the District points out that it has the right to make sure that employes do not conduct union business on paid work time.

Given that legitimate business interest, I conclude that Sullivan's actions were not unlawful since the record does not clearly reveal whether these three employes ever discussed union business on paid work time. If they ever did, Sullivan's admonition was certainly warranted. However, even if they did not, Sullivan's remarks reflected a legitimate concern and they therefore were not unlawful.

12. Randall

The Association did not offer any proof of a discriminatory motive in support of its claim that Sullivan improperly recorded Randall - who did not testify - absent after Sullivan supposedly gave her permission to miss a February 2, 1995, meeting. Absent any such proof, this claim is hereby dismissed.

13. After-Hours In-Service Programs

The Association asserts that the District violated Article XIV, C, of the contract by not giving proper notice of several after-hours inservice programs. However, no employees were ever required to attend such inservices after they complained that proper notice had not been given under the contract and no employees were ever disciplined over this issue. The Association therefore has not met its burden of proving that the District's actions were unlawful under MERA. 5/

14. Priebe

The Association claims that the District discriminated against Priebe because of her union activities by not giving her more hours; by assigning her too many tasks to be performed within her scheduled hours; and by making negative comments in her May 18, 1995, evaluation. The District, in turn, denies any such discrimination and asserts that Priebe is not entitled to any more hours.

Given Sullivan's union animus, it can be inferred, and I so find, that Sullivan bears animus against Priebe for her union activities. However, the record shows that the District's treatment of Priebe is supported by legitimate business considerations and that, as a result, the Association has not met its burden of proving that the District has discriminated against her.

The Association also asserts that Sullivan sought to discipline Priebe for bringing Byers to a March 25, 1995, meeting with Sullivan and that Sullivan abruptly cancelled the meeting when she saw Byers. The District asserts that Priebe, in fact, was never disciplined over this incident and that Sullivan cancelled the meeting because Byers did not properly report her presence in the building that day.

Since Priebe was never disciplined over this incident, the District did not treat her in a

5/ Since this is the wrong forum for making any such determination, it is unnecessary to decide whether the District's actions violated the contract.

discriminatory manner. 6/

However, Priebe and any other employees clearly have the right to union representation when they are grieving - which is what Priebe was doing on March 25, 1995. Sullivan therefore violated Section 111.70(3)(a)1 of MERA when she refused to see Byers on March 25, 1995, as the record shows that Byers, in fact, reported her presence to the office when she dropped off her card. Sullivan therefore had no right to walk out of their meeting since Sullivan's true motive for doing so stemmed from her belief that Priebe had violated the "chain of command" by bringing in an outsider -- i.e., Association representative Byers.

15. Shird

The Association asserts that Sullivan discriminated against Shird, who did not testify, by not giving her additional hours after Shird had presented a grievance on the Association's behalf. Absent any testimony from Shird, and absent any direct evidence showing that Shird wanted the additional hours in question, I find that the Association has not satisfied its burden of proof on this issue. Hence, it is dismissed.

CONCLUSION

To review, the District violated Sections 111.70(3)(a)1, 3 and/or 4 of MERA by sending its March 24, 1995, and March 30, 1995, memos to employees; by refusing to turn over to the Association employee responses to those memos; by insisting that employees follow the District's "chain of command" and by threatening those who do not do so; by refusing to meet with Byers during a grievance meeting; by engaging in individual bargaining with employees over its proposed new evaluation form; by interrogating employee LeFleur; by calling employee Kuczynski an "instigator"; by prohibiting employees from engaging in union activities during their non-work and break times; by discriminating against Kast because of her union activities; and by not immediately providing the Association with the evaluations conducted on May 18, 1995. All other complaint allegations are dismissed.

That leaves the question of remedy. As set forth above, I have ordered the District to cease and desist from engaging in its unlawful activities and to take other affirmative action which includes the posting of a notice; the rescission of its "chain of command" policy; the rescission of its policy which prohibits employees from conducting union activities during their non-work break and lunch times; the rescission of its proposal to lay off Kast from her Head Cook's position and to reduce

6/ The same is true for Sullivan's May 18, 1995, evaluation of Priebe, since it was ultimately rescinded.

her hours; and the rescission of its discriminatory copying and mail directives to Kast.

Dated at Madison, Wisconsin, this 2nd day of July, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco /s/
Amedeo Greco, Examiner