STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION, Complainant,

vs.

RACINE UNIFIED SCHOOL DISTRICT AND THE BOARD OF EDUCATION OF THE RACINE UNIFIED SCHOOL DISTRICT, Respondents.

Case 147
No. 54514
MP-3228

Decision No. 28979-B

Appearances
Weber & Kaferty, S.C., by **Mr. Robert K. Weber**, 2932 Northwestern Avenue, Racine, Wisconsin 53404, appearing on behalf of Racine Education Association.

Melli, Walker, Pease & Ruhly, S.C., by **Mr. Jack D. Walker**, 119 Martin Luther King, Jr. Boulevard, P.O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the Racine Unified School District.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Racine Education Association filed a complaint with the Wisconsin Employment Relations Commission on October 10, 1996, alleging that the Racine Unified School District and its Board of Education had committed prohibited practices in violation of Sec. 111.70(3)(a)1, Stats. On January 22, 1997, the Commission appointed Sharon A. Gallagher, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. On January 14, 1997 the Racine Unified School District filed a complaint with the Wisconsin Employment Relations Commission alleging that Racine Education Association had committed prohibited practices in violation of Sec. 111.70(3)(b)3, Stats., (Case 149, No. 54796, MP-3261). On January 29, 1997, the Commission appointed Sharon A. Gallagher to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats., in Case 149. On January 14, 1997, Racine Unified School District filed a motion to consolidate cases 147 and 149 which was unopposed by Complainant and which was granted by the Commission on January 28, 1997. A hearing was scheduled and held on April 15, 1997 in Racine, Wisconsin on the consolidated cases. A stenographic transcript of the proceedings was made and received on June 3, 1997. Thereafter, briefs were submitted, and the record was closed on August

8, 1997, no reply brief having been received from REA. The Examiner, having considered the evidence and the arguments of Counsel, makes and issues the following Findings of Fact, Conclusions of Law and Orders herein.

FINDINGS OF FACT

1. The Racine Education Association (hereafter REA) is a labor organization within the meaning of 111.70(1)(h), Stats., and its offices are c/o James J. Ennis, 516 Wisconsin Avenue, Racine, Wisconsin. At all times material, REA's Executive Director was James J. Ennis and he has acted on behalf of the Association.

2. The Racine Unified School District (hereafter District or RUSD) is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and its principal office is located at 2220 Northwestern Avenue, Racine, Wisconsin. At all times material Major Armstead, Jr., was the District's Superintendent; Frank L. Johnson, was the District's Director of Employe Relations; and Keri Paulson was the District's Supervisor of Employe Relations. Each of these individuals has acted on behalf of the District.

The REA is the duly certified exclusive bargaining representative for all regular full-time and regular part-time certified teaching personnel employed by the Racine Unified School District, but excluding on-call substitute teachers, interns, supervisors, administrators, and directors, as described in the certificate instrument issued by the Wisconsin Employment Relations Board on April 28, 1965 (Dec. No. 7053). The Association and the District have been parties to a series of collective bargaining agreements, the last of which expired on August 24, 1993. The parties have been unable to reach successor agreements since 1993.

James Ennis has at all times material herein been responsible for grievance processing and collective bargaining on behalf of REA with RUSD. In his capacity as Executive Director, Ennis regularly meets with various District officials and Administrators for purposes other than collective bargaining. Frank Johnson has been Director of Employe Relations for RUSD for the past seventeen years. Johnson has normally represented RUSD regarding teacher matters and disputes. Ms. Keri Paulson has been employed by RUSD's Employe Relations Department as Supervisor of Employe Relations at all times material herein. Paulson's immediate supervisor is Johnson. Paulson has normally represented RUSD in matters and disputes regarding non-certified RUSD personnel.

Following three major strikes in the 1970's, REA and RUSD attempted to deal with a large backlog of grievances by setting up regular bi-weekly meetings in the schools where the Principal and the REA Building Representatives could exchange information and express concerns regarding day-to-day events in each school. At this time, building Principals and Union Building Representatives received training from the FMCS in order to perform in these new roles on a local level. No central leadership was involved in this training – neither Ennis nor Johnson or their representatives were involved in the FMCS training. Thereafter, bi-weekly meetings (which occurred on pay days) were set up at certain District schools where the parties were having less trouble talking to and dealing with each other. RUSD has 35 schools and 30 of them have had "payday meetings" in the past. As of September 27, 1996, there had never been a "payday meeting" at Gifford Elementary School.

Sometime in September, 1996 REA Building Representative Sandy Berezowitz requested of Gifford Elementary Principal Richard Fornal that a payday meeting occur at Gifford. Fornal, Principal of Gifford Elementary for approximately three years, agreed and a meeting date was set for September 27, 1996. Approximately one or two days before September 27th, Fornal called Frank Johnson and asked him to attend the payday meeting at Gifford. Johnson replied that he had a conflict that day and could not attend. Johnson agreed to send Keri Paulson in his place on September 27th. In addition, Fornal also asked Dr. Ann Laing,

Director of School Operations for RUSD, to attend the September 27th payday meeting at Gifford. Dr. Laing stated herein that she regularly attends payday meetings at the Elementary School level on behalf of the District and that Fornal asked her to attend the payday meeting at Gifford the day before that meeting was to occur. Dr. Laing also stated that she saw a copy of the agenda for the meeting on or about September 26, 1996. Dr. Laing stated that Ennis has been present at payday meetings which she has attended; and that Ennis was present at two payday meetings which were scheduled and held at Gifford Elementary School after September 27, 1996 but that neither Johnson nor Paulson was present at those meetings.

7. Principal Fornal is not on the RUSD negotiating team and he did not know whether he otherwise has the authority to negotiate on behalf of the District. Fornal wished to have Frank Johnson or his designee present at the September 27th payday meeting because REA Building Representatives had told him (Fornal) that Ennis would be present at that meeting. Fornal also stated herein that as this was to be the first payday meeting at Gifford and he was unsure as to what the procedure should be, he wanted Johnson present to assist him. No grievances had been filed as of September 27th regarding student referral issues or the other topics listed on the agenda for the September 27, 1996 payday meeting at Gifford.

8. The topics listed on the agenda for the September 27th payday meeting at Gifford were as follows: "Building discipline concerns; blue slips; student classroom placements; other." The reference to building discipline is to the discipline of students for their behaviors while on school premises. The reference to blue slips concerns the District's use of blue slips which students receive so that they can be returned to their classrooms after they are referred for discipline by a teacher to administration. The reference to student classroom placements involved Principals allegedly reassigning gifted and talented white students out of the classrooms of black teachers and replacing those white students with black students in a disproportionate number.

9. The District has a student discipline procedure, revised March 16, 1992 which reads as follows:

. . .

> When teachers refer a student to the office, they must supply necessary background information on a form to assist an administrator in making a decision about the referral. The student will not be returned to the classroom until the administrator communicates with the teacher on the form about the disposition of the referral.
>
> A teacher has the right to get school district personnel to escort to the office students

referred for disciplinary action.

Chronic Student Misbehavior: Before a teacher seeks to have a student excluded from a class because of chronic disruption, the teacher shall at least (1) conduct a conference with the student and (2) contact the student's parents by letter or telephone and discuss the problem.

A teacher may use reasonable and appropriate means, including the use of physical restraint, to prevent a threatened or continuing breach of discipline that is endangering the safety of others. Physical restraint will be used only when other means of preventing a breach of discipline or stopping its continuance have been ineffective.

Self defense means the use of such force as is necessary to protect oneself. Self defense is permissible when teachers find it necessary to guarantee their safety.

When transferring a student from one school to another with the District, the social worker from the sending school shall bring the student AND his/her records to the receiving school and meet with the receiving school's social worker, counselor, and principal.

Since there are no time requirements to place a student into classes upon enrolling, a grace period of 1-2 days should be established to ensure appropriate placement. Information should be gathered during the intake conference. The student should then be sent HOME; the counselor should contact the student when the appropriate schedule has been arranged and the receiving teachers have been contacted.

The above information should be given to ALL administrators, social workers, and counselors.

Prospective teachers should be invited to the above mentioned intake conference. If unable to attend, a "please see me regarding a new student" memo from the counselor should serve to notify teachers of violent/aggressive behavior and the purpose of the transfer.

A standardized form should be developed which will be used in all schools to notify teachers regarding additions and withdrawals from their classes – within district and within building.

A separate disciplinary folder will be kept along with a cumulative folder. This discipline folder should include home reported, blue referrals, suspension letters, etc.

Disciplinary record folders will be maintained on a year to year basis, and will be

passed along with the cumulative folder from school to school as the student progresses through the district.

Principals are responsible for updating the pink notation cards (which must be kept in the cumulative folder) regarding M-Teams, suspension hearings, etc.

These records should all be in one place, accessible on a need to know (sic) basis.

Cumulative folders must be kept in a designated place and be accessible to all staff.

Disciplinary folders must be kept in the principal's office and be accessible to all staff.

10. The 1992-93 collective bargaining agreement between the parties contains the following grievance procedure relevant hereto:

. . .

Grievance Claim

A grievance is a claim which alleges that one or more provisions of this Agreement or established District policy has been incorrectly interpreted and applied. Such claim must be based on an event or condition which affects wages, hours and/or conditions of employment of one or more teachers.

Purpose of Grievance Procedure

The purpose of this procedure is to secure equitable solutions to the problems which from time to time arise, affecting the welfare of working conditions of teachers.

Processing of Grievances

Grievances of teachers will be considered and processed in the following manner:

Level One—Principal, Supervisor or Assistant Superintendent

Informal Discussion

A teacher who believes he/she has cause for a grievance will orally discuss the matter with his/her principal or supervisor with the objective of resolving the matter informally at the lowest possible administrative level. In appropriate cases, the assistant superintendent will be the Level One administrative person to be contacted. If there is a failure to resolve the matter informally, the aggrieved teacher may present his/her grievance in writing to the same person such was discussed with orally, either directly or through the Association's designated representative.

. . .

Section 9.3.1.1 constitutes an informal discussion procedure of disputes which may arise between a bargaining unit member and RUSD. Ennis has attended hundreds of these informal meetings in the past and neither Frank Johnson nor his designee has ever attended such meetings.

11. By letter dated May 21, 1996, RUSD Vice President Deborah Reis wrote Ennis a letter which read in relevant part as follows:

> . . .
>
> The Board of Education's Negotiating Committee asked me to reconfirm the fact that the Director of Employee Relations, Frank Johnson, is the District's representative for any teacher labor matters and is the only person that can sign tentative agreements that adjust the terms of the collective bargaining agreement between the Association and the District. In addition, all tentative agreements must be approved by the Board of Education before they are binding. Please note that we want Mr. Johnson to be present at any and all discussions between District personnel and the Association that may lead to side agreements or modifications of the collective bargaining agreement. If Mr. Johnson cannot be present, Keri Paulson will attend in his absence. If neither of these persons are available, the discussion should be postponed.

> If you have any questions with respect to the terms of my letter, please feel free to contact me.
>
> . . .

12. By letter dated May 31, 1996 Ennis wrote Board Vice President Reis the following letter:

> . . .
>
> Your letter of May 21, 1996 (a copy of which is enclosed for your review) raises crucial questions concerning the relations between the School Board and the Association.
>
> I regularly meet with members of the Board, Assistant Superintendents and Directors of Instruction on a wide variety of issues which result in "side agreements" as you refer to them. When I meet with these people to work out mutual problems – often raised by the District – I assume they are acting with the Superintendent's and Board's authority, and that if a matter may have any impact on the collective bargaining agreement, that they will or have cleared the matter with Mr. Johnson.
>
> I really do not understand what you are saying. You seem to be encouraging the Association not to have contact on any issues of import with anyone but Mr. Johnson and/or Ms. Paulson. If this is really your position, please advise. If

not, please clarify.

. . .

13. By letter dated May 28, 1996 Johnson wrote Ennis clarifying his letter of May 21, 1996, as follows:

. . .

> Superintendent Armstead indicated that you expressed some concern that the Negotiating Committee's recent letter would prevent you from meeting with the Superintendent and others on matters of mutual interest. Please be assured that it does not. In fact, such involvement is encouraged.
>
> The letter was simply reminding you that I am the Board's designated collective bargaining representative. There is nothing that would prevent you from discussing items of educational interest with administrators as long as such does not specifically include matters intended to become part of the collective bargaining agreement. For example, staff development discussions that may lead to District policy would be permissible without my involvement while staff development discussions for inclusion as contract language would need my involvement.
>
> I am sure you will agree that this is the current law in Wisconsin and in order to avoid future problems similar to those we have experienced in the past, such procedure should be followed.

. . .

On September 27, 1996, Ennis arrived early for the payday meeting at Gifford. Ennis asked Paulson why she was there and Paulson responded that she had been asked to attend the meeting by Frank Johnson. Ennis admitted making the following statements on

September 27th: that he believed that Paulson's duties and responsibilities were with non-certified employes, not teachers; that he would file grievances instead of pursuing the topics at the payday meeting that day; and that he would meet with Frank Johnson on September 27th but not meet with Paulson present that day. Ennis stated that he had no intention of engaging in collective bargaining on September 27, 1996 and that he felt that Ms. Paulson's presence changed the tenure of the meeting. Ennis stated herein that he canceled the September 27th payday meeting at Gifford in part to avoid the possible construction by the WERC that that meeting was for the purpose of collective bargaining and that he was afraid that he would be "convicted" again of violating Sec. 111.70, Stats., if the meeting evolved into a collective bargaining discussion. Ennis also stated at the instant hearing that he canceled the September 27th meeting because he was not prepared to bargain that day and because he was not told in advance that Paulson would be present.

15. Dr. Laing stated that on September 27th, Ennis approached and told her that he would not meet if Paulson was in the room; and that unless Laing removed Ms. Paulson the meeting would not occur. Dr. Laing stated that Ennis did not state that he was not prepared to meet that day or that he was refusing to meet because he had not been told in advance that Paulson would be present at the September 27th meeting. Laing stated that Ennis told her that he did not believe that

the September 27th meeting was within Paulson's job description; and both Laing and Fornal stated that Ennis said the meeting would not be held that day because Paulson was present and because she represented custodians and educational assistants. Fornal also stated that Ennis told him that he would have met with Frank Johnson but not with Paulson present. Fornal stated that Ennis told him that he would file grievances to resolve the concerns on the agenda for September 27th as the meeting would not take place. Fornal stated that Ennis made this last statement just before he left the meeting room. Fornal stated that Ennis did not say that he would not meet on September 27th because he was not prepared or that he would not meet that day because he had not been told that Paulson would be there. Fornal stated that Ennis never made a statement that he thought he was being set up by the District.

16. Later on September 27, 1996 Johnson sent the following letter to Ennis regarding Ennis' alleged refusal to meet on September 27th at Gifford:

> On September 26, 1996, Richard Fornal, principal at Gifford School, telephoned and stated that a meeting was scheduled for September 27, 8:00 a.m. with him, principal Bernice Jefferson, and the three REA building representatives. The purpose of the meeting was to discuss the items the REA set out in the attached agenda.
>
> Mr. Fornal stated the meeting was scheduled at the request of REA building representative, Sandy Berezowitz. Mr. Fornal was told you would also be present. Because of this, I thought it best that this office be represented. I could not be there so I designated Keri Paulson to attend in my place since Ms. Paulson is the District's labor relations representative for teachers in my absence.
>
> It has been brought to my attention that when Ms. Paulson appeared this morning, you refused to participate or to allow the meeting to be held as long as she (Paulson) was present. In addition, you said to Ms. Paulson that she is not the District's representative for teachers, but that I was, therefore, you would meet with me but not her. You walked out of the building stating that you would just file grievances instead of trying to work things out.

> Jim, it is entirely appropriate that somebody from this office be present whenever principals have been requested by union officials to meet with you on building concerns that may lead to grievances. For you to refuse to meet with school officials because a representative of the Employee Relations office was present is, in my opinion, a violation of Section 111.70 of the Wisconsin Statutes (prohibited practice).
>
> In the future, I am requesting that you notify this office whenever you plan to meet with District administrators so that it can be determined whether or not a representative from this office should be present at the meeting.
>
> . . .

Johnson did not direct any District Administrator to refuse to meet with Ennis if Ennis failed to notify Johnson of the meeting in advance. When Johnson sent Paulson to the September 27th payday meeting at Gifford he had not seen a copy of the agenda and he did not know what the meeting would cover, however he assumed that because Ennis was attending that the September 27th meeting had something to do with labor relations in the District.

17. James Ennis is not a municipal employe within the meaning of Sec. 111.70, Stats., and is not entitled to the protections of MERA in his position as REA Executive Director. RUSD's letter to Ennis had no reasonable tendency to interfere with rights protected by Sec. 111.70(2), Stats.

Based upon the above and foregoing Findings of Fact, the Examiner issues the following

CONCLUSION OF LAW

The REA failed to demonstrate by a clear and satisfactory preponderance of the evidence that the RUSD interfered with any bargaining unit employe's exercise of rights guaranteed by MERA by RUSD sending Ennis the letter of September 27, 1997 authored by RUSD agent Johnson, and therefore RUSD did not violate Sec. 111.70(3)(a)1, Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Examiner issues the following

ORDER

IT IS ORDERED that the Complaint be, and the same hereby is, dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 21st day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Sharon A. Gallagher /s/
Sharon A. Gallagher, Examiner

Racine Unified School District

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

POSITIONS OF THE PARTIES

REA:

REA argued that Frank Johnson's letter to Union Representative Ennis dated September 27, 1996 constituted a significant change in the District's past practice of allowing/encouraging communication between District Administrators and REA representatives which had a tendency to interfere with the REA's exercise of protected activity and "was retaliatory in nature". In REA's view, RUSD's actions in this regard violated Sec. 111.70(3)(a)1, Stats., citing, CITY OF LACROSSE, DEC. NO. 18096-A (MCCORMICK, 8/84); CITY OF LACROSSE, DEC. NO. 17084-D (WERC, 10/83).

REA noted that on May 21, 1996, the RUSD vice president wrote to Ennis advising him that discussions that might lead to modifications of the labor contract should be attended by Frank Johnson and that tentative agreements modifying the labor contracts should be executed by Frank Johnson. In REA's view, Johnson's September 27th letter to Ennis, requesting that Ennis notify his office whenever Ennis planned to meet with District Administrators so that Johnson could determine whether he or his designee should be present, was certainly a change in District practice which had the affect of retaliating against unit employes and had a reasonable tendency to interfere with and/or restrain Ennis from engaging in protected activities on behalf of unit employes. In this regard, REA noted that the fact that Johnson may not have intended to restrain or coerce Ennis and the fact that Ennis never complied with Johnson's directive does not require a conclusion that Johnson's letter had no reasonable tendency to interfere. Even if Ennis had been wrong in canceling the September 27th "payday" meeting, REA urged, the District had no right to curtail or attempt to impose limitations on future meetings between REA and RUSD representatives citing MILWAUKEE COUNTY (SHERIFF'S DEPT.), DEC. NO. 27664-A (CROWLEY, 10/93). In all of these circumstances, REA sought an order stating that RUSD had by its conduct violated MERA and remedying that violation.

RUSD:

RUSD observed that as Ennis is not a municipal employe, Johnson's September 27th letter to Ennis cannot violate Sec. 111.70(3)(a)1, Stats. Furthermore, RUSD urged Johnson's letter merely constituted a request (not a directive), that Ennis follow the bargaining law; that Johnson did not direct any administrators not to meet with Ennis; and that MERA entitles the District to designate who will bargain on its behalf.

RUSD argued that in these circumstances, Johnson's letter had no reasonable tendency to interfere with, restrain or coerce employes; and that Johnson's letter did not restrict the ability of

RUSD employes to meet with managers to discuss grievances. In any event, RUSD contended, it had a legitimate business reason for requesting Ennis to notify the RUSD Employee Relations Department prior to Ennis' meeting with administrators – to assure that administrators did not settle complaints/grievances/disputes without first clearing them with Johnson's office, which RUSD claimed had occurred in the past, to the detriment of the District's policies, strategies and

its past interpretations of the parties' labor agreement, citing CITY OF GREEN BAY, DEC. NO. 12352-B and C (1975). Therefore, RUSD urged that the REA complaint be dismissed because the District, through Johnson, had the right to make such a request for notification.

RUSD asserted that if the Commission found in favor of REA on its complaint, such would abrogate the rights stated in Sec. 111.70(3)(b)3, Stats. RUSD noted that REA has no MERA right of "free access to any and all District personnel"; that Ennis (and REA) were not engaged in lawful concerted activities when Ennis refused to meet with Ms. Paulson on September 27th; and that RUSD had a right to attempt to enforce its MERA rights against Ennis' continued violations. RUSD urged it was mere speculation for REA to argue that Johnson and Paulson are frequently unavailable and no showing was made by REA that Johnson and Paulson were not ready to meet and confer at "reasonable times" pursuant to MERA. Johnson's request in his September 27th letter that Ennis notify him of any meetings did not violate Sec. 111.70(3)(a)1 by its broadness. RUSD stated that ". . . the District could no longer trust Mr. Ennis and wanted to be able to make its own decision as to whether a particular meeting was for the purpose of collective bargaining or not."

REPLY BRIEF

RUSD's reply brief was received on July 29, 1997 and the record was held open for an REA brief until August 8, 1997. As REA chose not to file a reply brief the record was then closed.

RUSD:

RUSD argued that REA failed to demonstrate how Johnson's September 27th letter interfered with, restrained or coerced municipal employes in the exercise of their Sec. 111.70(2), Stats., rights. Second, RUSD contended that REA's argument that the September 27th meeting was not a grievance meeting misses the clear teaching of the statute – any meeting to resolve questions arising under a labor agreement is one covered by MERA.

DISCUSSION

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

> 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 concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sections 111.70(l)(i) and (j), Stats., define "municipal employe" and "municipal employer" respectively. Implicit in these definitions is the notion that to be protected by Sec. 111.70(2), Stats., one must first be a municipal employe. Furthermore, in order to prevail upon the allegation that an employer has violated Sec. 111.70(3)(a)1, Stats., the complainant must demonstrate, by a clear and satisfactory preponderance of the evidence, that an employer has engaged in conduct which has a

reasonable tendency to interfere with, restrain or coerce employes in the exercise of their Sec. 111.70(2) rights. 2/ A violation may be found even where the employer did not intend to interfere and an employe did not feel coerced or the employe was not, in fact, deterred from exercising his/her Sec. 111.70(2) rights. 3/ A finding of anti-union animus or motivation is not necessary to establish a violation of Sec. 111.70(3)(a)1. 4/

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

REA has argued that Johnson's September 27, 1997 letter to Ennis violated Sec. 111.70(3)(a)1, Stats., for purposes of this case. As Ennis is not a municipal employe within the meaning of Sec. 111.70(l)(I), Stats., he is, therefore, not protected by Sec. 111.70(2), Stats. RACINE UNIFIED SCHOOL DIST., DEC. NO. 20736-A (WERC, 1984). 9/ The question arises whether any municipal employe's rights protected by MERA were interfered with or restrained when Ennis received and read Johnson's September 27, 1997 letter. In this regard, I note that the letter was addressed solely to Ennis with copies going only to RUSD representatives. In addition, Johnson merely requested that Ennis notify him of future meetings and that Johnson did not direct any RUSD managers to refuse to meet with REA Building Representatives or employes if Ennis failed to comply with Johnson's request for notification. Furthermore, no evidence was offered to show that any municipal employe was restrained, coerced or interfered with in the exercise of his/her Sec. 111.70(2), Stats., rights due to Johnson's issuance of the September 27th letter to Ennis. 10/ Finally, REA proffered no evidence to demonstrate how Johnson's September 27th letter, expressed or implied a threat of reprisal or promise of benefit thus reasonably tending to interfere with employes' exercise of Sec. 111.70(2), Stats., rights. In all of the circumstances of this case, I find that REA has failed to meet its burden of proof in this case and this complaint has, therefore, been dismissed. 11/

Dated at Oshkosh, Wisconsin this 21st day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Sharon A. Gallagher /s/
Sharon A. Gallagher, Examiner

ENDNOTES

1/ WERC v. EVANSVILLE, 69 WIS.2D 140 (1975).

2/ BEAVER DAM UNIFIED SCHOOL DISTRICT, DEC. NO. 20283-B (WERC, 5/84); CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 1/84); JUNEAU COUNTY, DEC. NO. 12593-B (WERC, 1/77).

3/ CITY OF EVANSVILLE, DEC. NO. 9440-C (WERC, 3/71).

4/ ASHWAUBENON JT. SCHOOL DISTRICT NO. 1, DEC. NO. 14774-A (WERC, 10/77).

5/ See generally: LISBON-PEWAUKEE JT. SCHOOL DISTRICT NO. 2, DEC. NO. 14691-A (MALAMUD, 6/76); DRUMMOND JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 15909-A (DAVIS, 3/78); and BROWN COUNTY (SHERIFF-TRAFFIC DEPARTMENT), DEC. NO. 17258-A (HOULIHAN, 8/80).

6/ Id.

7/ CITY OF MILWAUKEE, DEC. NO. 26728-A (LEVITAN, 11/91).

8/ REA asserted that CITY OF LACROSSE, DEC. NO. 18096-A (MCCORMICK, 8/84) and MILWAUKEE COUNTY (SHERIFF'S DEPT.), DEC. NO. 27664-A (CROWLEY, 10/93) are applicable to this case. I disagree. These cases concerned municipal employes' activities which Complainants had asserted were protected, concerted activities.

9/ Indeed, it is clear on this record that Ennis never complied with Johnson's request. Johnson could have received the requested notification by directing RUSD managers to notify him of future meetings with Ennis.

10/ RUSD has argued that Johnson had a valid business reason for requesting that Ennis notify him of meetings that might involve collective bargaining which would privilege Johnson's request. I fail to see how Johnson's request to Ennis could constitute a valid business reason. Indeed, I note that Johnson might have had better results with his request had he addressed it to RUSD managers, who have a responsibility to comply with Johnson's requests.

SAG/rb
28979-B.D