

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS'
EDUCATION ASSOCIATION, Complainant,

vs.

DR. ROBERT WENNER, PRINCIPAL OF SARAH SCOTT MIDDLE SCHOOL, and
MILWAUKEE BOARD OF SCHOOL DIRECTORS, Respondents.

Case 409
No. 62630
MP-3962

Decision No. 30720-A

Appearances:

Richard Perry, with **B. Michele Sumara** on the brief, Hawks, Quindel, Ehlke & Perry, S.C., Attorneys at Law, 700 West Michigan, Suite 500, P.O. Box 500, Milwaukee, Wisconsin 53201-0442, appearing on behalf of Milwaukee Teachers' Education Association.

Donald L. Schriefer, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, with **Luis Garza**, Director, Division of Labor Relations, Milwaukee Public Schools, P.O. Box 2181, Milwaukee, Wisconsin 53201-2181 on the brief, appearing on behalf of the Dr. Robert Wenner, Principal of Sarah Scott Middle School and Milwaukee Board of School Directors.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On August 21, 2003, Complainant filed a complaint of prohibited practices with the Commission alleging that Respondents had violated Sec. 111.70(3)(a)1, Stats., by interfering with, restraining and retaliating against certain teachers represented by Complainant. Complaint filed an amendment, updating the complaint, on October 15, 2003. On October 21, 2003, the Commission appointed Richard B. McLaughlin, a member of its staff, to act as Examiner. On November 21, 2003, during an active conciliation effort by William Houlihan, a Commission conciliator, I issued a notice setting hearing for January 27, 28 and 29, 2004.

No. 30720-A

By letter filed on January 8, 2004, the parties requested a postponement of the matter “to three days in late March 2004”. On January 14, 2004, Complainant filed an amendment adding further factual allegations to the complaint. On January 22, I issued a notice setting hearing for March 30, March 31 and April 1. Respondents filed an answer to the complaint on March 19, and an amended answer on March 25. Hearing was conducted in Milwaukee, Wisconsin on March 30, March 31, April 1, May 11, June 3, June 8, October 6, November 4 and November 18, 2004. At the March 31 hearing, Complainant amended the complaint to allege a violation of Sec. 111.70(3)(a)3, Stats. Schindhelm/Peppey Reporting Co. filed a transcript of each day of hearing by December 2, 2004, and the parties filed briefs by September 7, 2005.

FINDINGS OF FACT

1. Milwaukee Teachers’ Education Association (MTEA), is a labor organization which has its principal offices at 5130 West Vliet Street, Milwaukee, Wisconsin 53208. At all times relevant here, Samuel Carmen has served as MTEA Executive Director, and Barry Gilbert, Cheryl Barczak, Stephanie Walters and Nancy Costello have served as MTEA Assistant Executive Directors.

2. The Milwaukee Board of School Directors (MBSD) is a municipal employer which has its principal offices located at 5225 West Vliet Street, Milwaukee, Wisconsin 53208. MBSD operates a public school district which includes a number of educational facilities, including Sarah A. Scott Middle School for the Health Sciences (Sarah Scott), which provides educational services to students in grade levels six through eight. From May 31, 1995 until the end of the 2003-04 school year, Dr. Robert Wenner was Principal of Sarah Scott. In that position, Wenner reported to a Principal Coach, Melanie Moore.

3. Sarah Scott succeeded a school known as the Eighth Street Middle School. Unlike Eighth Street, Scott is structured on an accelerated schools model. Broadly speaking, this model is a reaction against the attempt to remediate students not functioning at their enrolled grade level. The model is designed to demand performance from students to accelerate their performance to no less than their enrolled grade level. In January of 2002, Sarah Scott received a grant from the State of Wisconsin to undertake comprehensive school reform. The grant was effective through January of 2005. The grant was built on a “Powerful Learning Framework”, and sought to implement certain core principles and processes to unite teaching staff, support staff, administrators, parents and students. The process was designed to devolve authority in varying degrees among these groups, emphasizing that teachers should play a fundamental role in setting, implementing and being accountable for the implementation of educational policy. In certain respects, the accelerated model implemented at Sarah Scott emphasized the coordinator/facilitator role of the position of Principal over that of manager. Teachers were organized into cadres, which are groups of instructors who coordinate work across instructional disciplines to develop cooperative projects with students and teachers to promote the common goals of Sarah Scott. At all times relevant here, before and after the grant noted above, Sarah Scott was overseen by a Shared Governance Council (SGC), which

included representation from teachers, support staff, parents, community leaders and the Principal. Michael Blake was an active parent member in the SGC.

4. MBSD and MTEA have been parties to a series of collective bargaining agreements governing a bargaining unit of professional staff, including teachers. The labor agreement in effect for the time period relevant here includes the following provisions:

PART IV
TEACHING CONDITIONS AND EDUCATIONAL IMPROVEMENTS

. . .

B. TEACHING DAY

. . .

3. ADDITIONAL ASSIGNMENTS

a. In addition to the regular school day, teachers are required to perform collateral duties related to their teaching functions . . . One (1) open house per semester shall be considered part of a teacher's assignment. . . .

E. BUILDING SECURITY

. . .

7. All teachers and MTEA staff who are issued identification cards shall show such cards upon request . . . The MTEA staff representatives shall be furnished an identification card from central services. . . .

N. ALLEGATIONS OF MISCONDUCT

1. **MISCONDUCT.** No teacher shall be suspended, discharged, or otherwise penalized, except for "just cause." No teacher shall be involuntarily transferred . . . as a disciplinary measure. In the event a teacher is accused of misconduct in connection with his/her employment, the accusation, except in emergency cases as referred to herein, shall be processed as follows:

a. The principal or supervisor shall promptly notify the teacher on a form memo that an accusation has been made against the teacher, which if true, could result in proceedings under Part IV, Section N, of the contract. The memo will also indicate that it will be necessary to confer on the matter . . . This notice shall be followed by a scheduled personal conference during which the teacher will be informed of the nature of the charges of alleged misconduct in an effort to resolve the matter . . .

R. MTEA AND TEACHER REPRESENTATION

1. **BUILDING REPRESENTATIVE AND SCHOOL REPRESENTATIVE COMMITTEE.** The MTEA may, in each school have a building representative and a school representative committee. The administration shall recognize such committee and shall meet with such committee . . . Such meetings must be conducted once a month, where a meeting is requested by either the administration or the MTEA committee. . . .

**PART V
TEACHER ASSIGNMENTS AND REASSIGNMENTS**

. . .

Q. EXPANDED AUTHORITY FOR REASSIGNMENTS THROUGH SCHOOL INTERVIEWS

. . .

9. If a teacher assigned to a qualified school believes that he/she is incompatible with the school, that teacher shall confer with his/her evaluator(s). An incompatibility evaluation form shall be written and the teacher shall, at the earliest opportunity, be reassigned to another MPS school or be placed on day-to-day assignment. Teachers who have received an unsatisfactory evaluation form may not be reassigned under this provision. When the transfer is made, the evaluation form shall be destroyed and there shall be no documentation of the reassignment in the permanent file of the teacher.

The “form memo” referred to in Subsection 1, a of Part IV, Section N is referred to as a “certain facts letter”, due to the form reference that “certain facts” have arisen that could prompt supervisory accusation of teacher misconduct. The “certain facts letter” is the first step in the misconduct process.

5. Sarah Scott did not have a “school representative committee” (SRC) during the 1995-96 school year. Sarah Scott teachers formed an SRC for the 1996-97 school year. In Spring of 1995 John Segala, an MBSD teacher of Math, Science and English, served as Sarah Scott Acting Assistant Principal. He felt he enjoyed a good working relationship with Wenner while he served as Acting Assistant Principal in the 1995-96 school year. In the following school year, Segala served as Building Representative and Nancy Linn served as an SRC member. During that year, Segala processed at least two grievances and received a written reprimand from Wenner for his issuance of a memo regarding a change of the start time for the teacher day following a vote of Sarah Scott staff. Segala perceived his working relationship with Wenner deteriorated throughout the 1996-97 school year. Segala and an MTEA representative reached an agreement with Wenner concerning the reprimand, but Segala decided he wished to leave Sarah Scott, in part because he had become convinced he could not share a good working relationship with Wenner. Linn had been a Building Representative at Eighth Street and filled that role during part of her tenure at Sarah Scott. During the 1997-98 school year, she discussed staff concerns with Wenner regarding the creation of a teaching model linking students and teachers throughout a student’s middle school career. Because of resistance of some staff to the change, she suggested implementing it over part of the school. Wenner’s reaction to the suggestion, when they discussed it one-on-one, was personal and hostile. She perceived that hostility to grow. After a meeting Wenner initiated with her to address problems regarding a Worker’s Compensation posting, Wenner labeled her a cancer on staff and suggested she leave the building if she did not like it there. Linn was sufficiently shaken by the experience to request a transfer from Sarah Scott and considered leaving teaching rather than staying at the school. She successfully transferred from Sarah Scott at the close of the 1997-98 school year. For the following two school years, James Gray served as the Building Representative for Sarah Scott. Under MTEA procedures, an incumbent Building Representative runs an election at the close of their annual term to determine the next Building Representative. The teacher with the greatest vote total becomes Building Representative, and alternates are selected to fill the position in the order of their vote total. Thus, the first alternate if a Building Representative leaves or resigns is the one who received the next highest vote total. The second alternate would be the teacher with the third highest vote total, and so on. A problem arose regarding an election conducted by Gray, after which a number of teachers complained to Wenner, who referred them to the MTEA, which conducted a rerun election. Gray did not win that election. Gray and Wenner did not share an effective working relationship, and Gray left Sarah Scott at the close of the 1998-99 school year after a near-physical confrontation with Wenner. Wenner phoned an MTEA representative after this confrontation to seek assistance in resolving the matter. Darold Lawrence and Nicholas Verban shared Building Representative duties for the 1999-2000 school year. Dorothy Hancock and Cathy Golden shared the duties for the 2000-01 school year, with Hancock filling the Building Representative role in the 2001-02 school year. Hancock ran the election to determine the Building Representative for the 2002-03 school year. In order of most votes received, the Building Representative/Alternates were: La Juan Barnes; Aimee Moschea and Linda de Arteaga.

6. Barnes is a Physical Education teacher, who has served MBSD roughly eighteen years and worked at Sarah Scott from 1994 through April of 2003. Wenner and Barnes had experienced difficulty prior to the start of the 2002-03 school year, including the initiation of the “certain facts” process. Wenner conducted a meeting on April 25, 2001 concerning his belief that Barnes conducted non-MBSD sponsored fund raising activities from Sarah Scott, using MBSD equipment and supplies. Wenner summarized the meeting in a letter to Barnes dated May 3, 2001, which states:

By the conclusion of the meeting you had agreed to reimburse the school for materials, i.e. paper, per copy expense that you used. Please do so as soon as possible. Also, be advised that any further involvement on your part in these activities will lead to charges of insubordination.

In a letter to Barnes dated June 5, 2002, Wenner stated his concerns with a conversation involving Barnes reported to him by Blake. Wenner stated:

. . . he explained to me that he had had a conversation with you on his way to my office. He was dismayed by the fact that you made a concerted effort to discourage him from enrolling his child at Scott. . . .

As I have stated to the staff publicly, if you do not want to be a part of this comprehensive school reform initiative, now is the time to seek a teaching position in another school. Openly undermining this effort will not/no longer be tolerated by the school community.

Blake told Wenner that Barnes stated the program at Sarah Scott was “no good”. Barnes viewed the conversation to turn not on Sarah Scott’s program, but on behavioral problems Blake’s daughter had experienced at Sarah Scott.

7. September 4, 2002 was a Banking Day, which is a non-student contact day devoted to preparation and enrichment activities. On that day, Sarah Scott conducted a large number of meetings, and a number of staff approached Barnes to advise her that the meetings precluded classroom preparation. As a result, Barnes contacted the MTEA, and set a meeting of the SRC for September 16. The SRC included a number of Sarah Scott teachers, including Barnes, Russell Hynst, Betty Duxbury, Connie Phillips and Linda de Arteaga (then Linda Zahorik). Walters and Costello attended the meeting for the MTEA. The meeting took place outside of Sarah Scott. Barnes and de Arteaga at a minimum felt that meeting at Sarah Scott might provoke Wenner. The meeting primarily concerned the Banking Day issue and the MTEA representatives indicated they would research whether a grievance was appropriate and meet with teachers as the SRC wished. On September 19, the MTEA filed a grievance concerning the Banking Day issue. Because the grievance was a group grievance, the MTEA filed it at Step 3, with the MBSD Superintendent. On September 19, Barnes and Moschea met with Wenner and another administrator concerning issues raised by Fine Arts and Vocational Education (FAVE) teachers, including funding for consumable supplies and overcrowded

classrooms. On October 2 Wenner issued a “certain facts” letter to Barnes, concerning his desire to impose a three-day suspension for her leaving a classroom unattended. On October 22, Wenner issued a “certain facts” letter to Barnes, concerning his desire to impose a five-day suspension for failing to supervise students. On October 23, MBSD representatives issued a Step 3 answer to the Banking Day grievance. The answer found that the labor agreement had been violated, and granted the grievance. Between her meeting with Wenner on September 19 and Wenner’s issuance of the “certain facts” letters, Barnes attended to a variety of Building Representative functions, including listening to teacher concerns as well as issuing and collating a survey of teacher concerns. The SRC met without Wenner in Hynst’s classroom on October 30. On November 20, the SRC again met in Hynst’s classroom, without Wenner. Barnes left the meeting to try to phone Wenner’s office to set a date for an SRC meeting. She could not reach Wenner, but got a date from his secretary, who said she would confirm Wenner’s availability and return the call. The following day, the secretary returned the call, advising Barnes that Wenner was not available and wanted to know who would attend the meeting. Barnes supplied SRC member names, but was unable to secure a date. Sometime after this conversation, Wenner personally asked Barnes how the SRC members had been selected. Barnes ultimately asked MTEA representatives to assist her in getting an SRC meeting set with Wenner. Walters and Costello made repeated efforts, informally and in writing to set a date with Wenner. Their efforts proved unsuccessful and the MTEA filed, on January 2, 2003, a grievance concerning Wenner’s failure to meet with the SRC. On January 9, 2003, Therese Campos, an MBSD Administrative Specialist, summarized the results of the meeting held on November 21, 2002 concerning Wenner’s October 2 “certain facts” letter. The letter noted that Barnes admitted that she had forgotten that she had agreed to cover an eighth hour class for another teacher and did not report to that class until paged. The letter states:

As a resolution to this matter, a copy of this letter will be placed in your personnel file at Central Services. Any future activity which may rise to the level of misconduct will result in further disciplinary action up to and including termination.

The MBSD dropped further processing of the October 22 “certain facts” letter. In a letter to Barnes dated March 7, 2003, Wenner stated:

On Friday, February 28, 2003, during Hr. 7, I entered the gym to speak to another physical education teacher. As I entered I noticed that there was only one teacher present . . . There were far too many children in the gym for one teacher to supervise effectively. As we have discussed on at least two other occasions, you are expected to supervise your students at all times as the classroom teacher.

The second issue is your continuing practice of not communicating and purposely causing problems for Sarah Scott administration and staff as well as district staff. After several reminders/requests from Labor Relations, I told

them that to my knowledge a vote had not been taken on the days that Sarah Scott would hold the spring parent-teacher conferences. This was after I had given you at least three written notices requesting the information. Finally, after Ms. Haney-Madlock contacted you, you informed her that you had turned the information in to the MTEA before the January 31 deadline. You failed to share that information with me so that I could share it with Labor Relations. This unprofessional, purposefully misleading behavior will no longer be tolerated.

A further example of this divisive irresponsible behavior has been brought to my attention. A teacher who had left Sarah Scott for a number of years contacted me inquiring about the possibility of returning to our school if a position was available. Shortly afterwards the teacher returned . . . Upon encountering the teacher, you confronted her by asking her why she would return to this hell-hole . . . Behaviors such as the ones delineated above seem to indicate that it is time for you to seek another school assignment. Several staff members have informed me they have encouraged you to do just that and have expressed concerns about you and the negative attitude you display daily. . . .

Barnes responded by phoning Costello, stating her desire to invoke the Q9 process and to have representation for the March 13 meeting with Wenner. Costello could not make that meeting, but informed Wenner that Barnes wanted to transfer; that Wenner should be willing to destroy the letter; and that Wenner should be prepared to give dates to meet with the SRC. They agreed to meet on March 17. At that meeting, Costello denied the misconduct alleged by Wenner; Wenner and Barnes completed the necessary Q9 forms; Wenner agreed to destroy the March 7 letter; and Wenner indicated his availability to meet the SRC on March 26, 2003. He did not attend the SRC meeting held on that date, but did meet with the SRC later in that school year. Barnes transferred from Sarah Scott on April 1, 2003.

8. De Arteaga is an art teacher, who, as of the 2003-04 school year, had been employed by MBSD for eleven years at Sarah Scott. She served on the SRC for roughly six years prior to becoming Building Representative, and served as a member of the SGC, elected by fellow teachers. De Arteaga experienced difficulty in her working relationship with Wenner regarding the SGC in the 1999-2000 and 2000-01 school years. In late March of 2000, de Arteaga attempted to organize teachers and parents to oppose the implementation of budget cuts in a fashion that would hurt FAVE courses more than traditional academic courses. She learned of possible budget-cutting efforts at SGC meetings, drafted a formal response to parents and showed the response to several teachers and at least one parent. She hoped to make the draft a petition, signed by teaching staff. De Arteaga consulted MTEA representatives concerning the confidentiality of SGC meetings, and understood the MTEA's position to be that SGC meetings, under MBSD policy, were public. Wenner perceived the effort to breach a level of confidentiality agreed upon by SGC members, and during a Sarah Scott staff meeting in early April of 2000, Wenner showed a copy of the draft response, which

de Arteaga had not signed and which he had received from a parent. He denounced the effort, saying it sought to divide staff between administration and union. De Arteaga, during the meeting, acknowledged that she had authored the draft, and later discussed with Wenner her contact with the MTEA regarding the confidentiality issue. De Arteaga also served as the FAVE team leader for the 2000-01 school year. Wenner conducted a meeting of FAVE teachers on or about November 10, 2000, to “discuss this year’s budget issues and plan to avoid problems for next year.” In a letter to FAVE teachers dated November 13, 2000, Wenner sought to have them “select a representative who would act as team leader on an annual basis.” The letter reminded teachers that “the leader should support the school’s vision and mission . . . and support the interest of all team members.” In a letter to de Arteaga dated November 14, 2000, Wenner stated, “Over the next few budget cycles, funds will be appropriated to other FAVE teachers who did receive funds this year due to your mismanagement of funds.” De Arteaga considered this warning to misstate her role in the budget process and wrote a formal response which she shared with a few teachers. She also phoned the MTEA, seeking and receiving representation at a meeting with Wenner on the point, sometime after November 19, 2000. At the November 23, 2000 SGC meeting, Blake and Wenner discussed a number of points, including their perception of the breach of confidentiality that had occurred the prior March and April concerning the petition effort started by de Arteaga. Wenner asked de Arteaga to resign. De Arteaga declined, asserting among other points that SGC meetings were open meetings, and that she would continue as an elected representative. On November 29, 2000, Wenner observed a class instructed by de Arteaga, and completed an “Instructional Observation Form” including the following notes:

5. Attitude

Although the teaching skills are satisfactory, this teacher’s skills and strengths are not compatible w/the vision at Sarah Scott. Every effort will be made to find a school for her that is a closer match w/her attitude. . .

6. Classroom Management

Teacher seems to have established a rapport w/students. Students were well-behaved and productive throughout the class period.

9. Communication

Teacher has alienated members of the (SGC) by breaching the accepted rule of confidentiality . . .

10. Collaboration

This teacher spends a great deal of time trying to intimidate teachers and other staff and undermine administrative efforts to achieve the school’s goals. . .

11. Professional Growth

Teacher has conducted herself in an unacceptable professional manner for quite some time. She seems unable to take into consideration anyone's needs but her own when dealing w/other stakeholders . . .

At the close of the 2000-01 school year, Wenner gave de Arteaga a favorable evaluation.

9. After Barnes left Sarah Scott, Moschea became Building Representative, but resigned shortly after Barnes' departure because she was leaving MBSD at the end of the 2002-03 school year. De Arteaga became the Building Representative. Sometime on or about May 20, 2003, de Arteaga received a copy of SGC minutes that implied an art position might not have been included in the Sarah Scott budget. De Arteaga attempted to find out what the budget included, and on May 22 spoke with Wenner, who asked to speak with her privately. De Arteaga was uncomfortable speaking to Wenner privately and asked that another teacher participate. She declined Wenner's offer of Hynst, and sought the presence of Fontella Dye-Thompson, who was then in the area and who reluctantly agreed to sit in on the conversation. During that conversation, Wenner attempted to cover two points. The first was his view that De Arteaga was incompatible with his vision of Sarah Scott as an Accelerated School dedicated to a Powerful Learning Model. The second was his view that she manifested single-minded opposition to him. During this conversation he specifically questioned whether the stress of her opposition to him was detrimental to her health. In making these points, he stressed to de Arteaga that other staff were concerned by her conduct. De Arteaga understood Wenner's first point to be that she did not fit the vision of the school and that she should seek an incompatibility transfer. She understood him to assert that unspecified staff found her abrasive and that she spent too much time talking to the MTEA. She also understood him to assert that she took staff issues too seriously and might be compromising her health. De Arteaga sought, without success, to learn the identity of complaining staff members and informed Wenner she would speak to the MTEA. De Arteaga understood Wenner to have labeled her "divisive." Each of the participants to this conversation was aware that de Arteaga was about to take a medical leave for a kidney transplant. During the 2002-03 school year, Dye-Thompson, Barnes and de Arteaga ate lunch together frequently. Each viewed the other as a work-friend. Dye-Thompson had no warning regarding what the May 22 conversation was to cover. She perceived it as an argument, with Wenner stating that he was unhappy with slanderous accusations made against him. Dye-Thompson understood Wenner to be attributing the accusations to de Arteaga, who denied making them. She understood that Wenner had called de Arteaga's health into the discussion, but Dye-Thompson did not take this to be threatening, but a statement of concern. Dye-Thompson did not understand Wenner to have labeled de Arteaga "divisive", but did understand him to suggest to de Arteaga that if she was unhappy, she should leave Sarah Scott. De Arteaga met with Walters later on May 22 regarding other matters, and brought up the earlier conversation with Wenner. Walters thought the matter might constitute a prohibited practice. De Arteaga responded that she would meet with Walters after the surgery.

10. In early August of 2003, de Arteaga met with MTEA representatives, who recommended she prepare a statement reflecting her recollection of the May 22 conversation and that she seek a statement from Dye-Thompson. De Arteaga phoned Dye-Thompson on several occasions prior to the start of the 2003-04 school year, to encourage her to write a statement, and offered to provide her own statement to Dye-Thompson when it was completed. On August 21, 2003, the MTEA filed a prohibited practice complaint including allegations regarding the May 22 conversation. De Arteaga completed her written statement on or about August 25, 2003. Sometime in early September, in the presence of other teachers, de Arteaga asked Dye-Thompson if she had been able to write a statement. Dye-Thompson responded that she had not, adding that she did not support the prohibited practice. De Arteaga asked about the statement on other occasions, with Dye-Thompson demurring on the point each time de Arteaga raised it. De Arteaga viewed her contacts with Dye-Thompson to seek no more than Dye-Thompson's understanding of the May 22 conversation, and her offer of her own statement as an opportunity to proof it for accuracy. Dye-Thompson believed from their discussion following the May 22 meeting that de Arteaga wanted Dye-Thompson to confirm de Arteaga's view of the conversation, including Wenner's use of the term "divisive." Dye-Thompson did not understand de Arteaga's offer of her completed statement to seek her proofing, but to coach Dye-Thompson on what to say. Dye-Thompson also believed that she might be subpoenaed to testify if she did not write a statement. Dye-Thompson's discomfort during these discussions did not lead her to refuse to write a statement. Rather, she would put the matter off.

11. Sometime in early August of 2003, Wenner issued a schedule for the start of the school year. The schedule included two open houses, one on Thursday, August 28 between 6:30 and 7:30 p.m. for Grade 6 and one on Tuesday, October 28 for Grade 5 students interested in enrolling at Sarah Scott. Attendance for each was mandatory. Friday, August 29 was not a workday, and the first student contact day was Tuesday, September 2, the day after Labor Day, a paid holiday. On August 26, Phillips informed de Arteaga that she had contacted Gilbert, because she believed holding two open houses in a single semester violated the labor agreement. De Arteaga discussed the matter with other teachers and reported the concerns of staff to the MTEA sometime after her discussion with Phillips. Staff opinion was not uniform, but opposition to the schedule reflected in part that some teachers had planned end-of-summer vacations which the August 28 open house interfered with. On August 28, Gilbert phoned Wenner and informed him that a teacher had called to complain about the two open houses. Wenner informed Gilbert that it had been the practice at Sarah Scott for roughly eight years to hold two open houses in the first semester and none in the second. Gilbert responded that if Wenner held the scheduled October 28 open house, the MTEA would file a grievance. Wenner informed Gilbert that the recruiting effort at the October 28 open house was important to Sarah Scott and that letters had already been issued to potentially interested parents and Sarah Scott staff. Wenner asked for some time to work through the problem, and they agreed that the MTEA would take no action before mid-September.

12. Wenner was allotted twelve minutes as part of the agenda for a Sarah Scott Staff Meeting on September 8, 2003, to speak on "Morality and Sergioivanni." The presentation included excerpts from a book by Thomas Sergioivanni which included the experience of Principal Thomas McGinnity from Garfield School, an MBSD facility. During his presentation, Wenner displayed the following excerpt from the book:

How did they do it? Principal McGinnity and some of his staff worked to create a community within Garfield . . . In the new Garfield peer pressure was a powerful self-policing force. Accounts of teachers who didn't carry their weight . . . traveled through the grapevine . . . Other teachers, intentionally or not, began to apply the screws – the cold shoulder, disapproving glances, curt remarks . . . If (McGinnity) couldn't reform them, perhaps he thought he might make them uncomfortable enough to leave . . .

Wenner also commented, among other points, that because of teacher contact with the MTEA, the October 28 open house could not be held without negotiating a Memorandum of Understanding (MOU). He commented that this was not how policy was handled at Sarah Scott, and that such matters should have been brought before the staff for a discussion and a vote. The issue was contentious among teachers. Some were concerned that a failure to host an open house would hamper Sarah Scott recruiting efforts and could lead to a drop in enrollment, causing further budget complications. De Arteaga was one of the teachers who spoke on this point to support the MTEA. Teacher reactions split on the presentation, with some who supported Wenner viewing the presentation as a general "get on board" pep talk with a "shape up or ship out" component and those who opposed Wenner viewing the presentation as a personal attack on whomever complained to the MTEA or as a more general attack on those who doubted Wenner's leadership or supported MTEA intervention. Phillips and de Arteaga, at a minimum, felt Wenner spoke directly to de Arteaga. Other teachers attributed little significance to the presentation, since two open houses had been held in a single semester at Sarah Scott in the past. Sarah Scott staff had, at some point in the past voted on whether to hold two open houses in a single semester. No vote was taken for the 2003-04 school year. Attempts to reach an MOU broke down between this staff meeting and one set for September 22, 2003.

13. At the September 22, 2003 staff meeting, Wenner announced that an MOU had not been negotiated and that as a result, there could not be required, staff-wide presence at the October 28 open house. The presentation provoked discussion, reflecting the split between staff who feared this would hurt Sarah Scott recruitment and staff who felt the labor agreement needed to be enforced as written or that the entire matter could have been avoided by not holding an open house on August 28. Wenner made a series of controversial comments, including a suggestion that dues-paying teachers who wanted the MOU should contact the MTEA directly. He also made comments that the grievance regarding the second open house lacked merit; that teachers who opposed his efforts had misrepresented fact; that certain teachers who opposed him had engaged in a prolonged course of nasty behavior to undermine him; and that he had endured "years of this crap" from such teachers. He added comments to

the effect that the bulk of such people were no longer at Sarah Scott, but a few remained. De Arteaga and other teachers attempted to defend MTEA involvement. The SGC met on the evening of September 22, 2003. At that meeting, Wenner noted that the MTEA had denied an MOU. Blake asked who the MTEA presence was at the SGC, and de Arteaga identified herself as an MTEA supporter. A conversation followed during which Wenner noted that two other teachers had quit the SRC because they were uncomfortable with de Arteaga. Wenner and de Arteaga discussed whether she had phoned the MTEA to complain about the October 28 open house, with de Arteaga denying being the complaining party but acknowledging that she had followed up on the concern.

14. The MTEA issued a letter, dated September 30, 2003 under the signatures of Carmen, Walters and Costello, to the teaching staff at Sarah Scott. The letter made a number of allegations regarding Wenner's conduct over the 2002-03 and 2003-04 school years, concluding that:

These actions show a continuing pattern of disregard for the negotiated contract and a lack of respect for the teachers and their elected representatives at Sarah Scott . . . Such disregard for the collective bargaining agreement and union representatives will not be tolerated.

We want to assure you that your union will continue to support you and your Building Representatives in the ongoing effort to secure the fair and respectful treatment you deserve – and to uphold your contractual rights.

Wenner was on the agenda for a ten-minute presentation on "Moral Leadership" during an October 6, 2003 staff meeting. During that presentation, Wenner handed out a document indicating the October 28 open house was to be made a recruitment fair. He then made comments that a few people making phone calls had caused this. He added that a few people continued to slander him and that a few people were trying to get others to make false statements against him. The latter comments reflected that Wenner was aware that Dye-Thompson had been approached for a statement regarding the events of May 22, 2003, and that Dye-Thompson did not feel that those who approached her appreciated that she did not share their view of those events. Wenner's comments concerning unspecified people working against him included MTEA representatives, specifically Costello and Walters, whom he knew to be meeting with de Arteaga at Sarah Scott. In a letter dated October 7, 2003, Wenner stated:

The purpose of this letter is to inform you that our school community will host the Sarah Scott Early Admissions Recruitment Fair on Tuesday, October 28, 2002, from 6:00-8:00 p.m. In an era when families have a myriad of school choices for their children, it is crucial that Sarah Scott keep pace by aggressively marketing the unique program we have to offer.

Please be reminded that teachers and other staff are not requested, required and/or expected to attend the Recruitment Fair. No compensation will be payable to any staff members voluntarily choosing to attend.

Our Recruitment Fair is but another effort to continue the positive momentum generated at Sarah Scott Middle School this year.

In a letter to de Arteaga dated October 8, 2003, Wenner noted, "On Tuesday, October 7, 2003, during Hour 2, two staff members informed me that they observed you speaking to an MTEA staff member in a remote corner of the art wing near your classroom." The letter asserted that the MTEA staff member had not followed Sarah Scott security policy of signing in at the "Main Office counter" before entering the school. The letter sought, "Your cooperation in this matter". Wenner discussed the matter with de Arteaga, but did not attempt to verify whether or not the MTEA staff member had reported to the Main Office prior to speaking to de Arteaga or whether or not de Arteaga played any role in bringing the MTEA staff member into Sarah Scott. Under a grievance arbitration award, an MTEA staff member does not have to follow individual building security policy, but can enter an MBSD facility by displaying their MBSD-issued identification badges to administrative staff. Wenner had questioned a supervisor regarding compliance of MTEA staff with building security policy prior to issuing the letter of October 8. Neither Wenner nor the administrator he consulted was aware of the arbitration award.

15. On October 9, 2003, Carmen and Costello went to Sarah Scott to address a number of matters with teachers. Costello met briefly with de Arteaga, then the two of them spoke with Dye-Thompson, who was then on her prep period, sometime around 10:00 a.m. De Arteaga introduced Costello to Dye-Thompson. Costello and de Arteaga asked whether she had completed the statement concerning May 22, 2003, with Costello emphasizing the significance of protecting Building Representatives. Dye-Thompson told them she had been too busy, but would give them a statement, which might not be the statement they were looking for. De Arteaga and Costello left, convinced Dye-Thompson would write a statement and unaware that she was troubled by their request. Dye-Thompson was, however, angered by the conversation, and was sufficiently upset that she thought she could not teach that day and would have to leave the building. She was convinced that Costello and de Arteaga were interested only in corroboration of de Arteaga's account and not in Dye-Thompson's recollection of the May 22 conversation. After leaving Dye-Thompson on October 9, 2003, de Arteaga and Costello met with Carmen in de Arteaga's classroom. Wenner entered and asked the MTEA representatives whether or not they had signed in at the Main Office. Carmen responded that they did not have to, but had only to display their identification badges. Wenner detailed his security concerns. Carmen and Wenner discussed those concerns, arriving at a mutually agreeable conclusion. Wenner then left de Arteaga's classroom, followed shortly after by Costello and Carmen.

16. Shortly after leaving de Arteaga's classroom on October 9, 2003, Wenner received a phone call from Hynst, indicating that Dye-Thompson was in her computer lab and

was very upset about being coerced to make a statement. Wenner made an announcement over the school's PA system, asking Costello and Carmen to report to his office. De Arteaga heard the announcement, perceived anger in Wenner's tone of voice, went to her classroom and locked the door. Costello and Carmen did not report to Wenner's office. Wenner went to de Arteaga's classroom, demanding to know where Costello and Carmen were. Wenner was upset, and his voice reflected his considerable agitation. De Arteaga pointed in the direction Costello and Carmen had left, but Wenner proceeded to take his keys from his pocket to unlock the door. De Arteaga then unlocked the door, and attempted to leave. Wenner again demanded to know where Costello and Carmen were, then said words to the effect that because of de Arteaga, he had a teacher crying and that de Arteaga was a trouble-maker who needed to get out of the building. Wenner ultimately went to Phillips' classroom and confronted Costello regarding what she was doing at Sarah Scott and what she had done to upset Dye-Thompson.

17. De Arteaga and Dye-Thompson shared the same lunch hour in the 2003-04 school year and often ate together. During her lunch hour on October 9, 2003, de Arteaga discussed the morning's events with other teachers, guessing that Dye-Thompson would not be willing to share lunch with her because of her attempt to get her to write a statement. De Arteaga learned that Dye-Thompson was in the staff lounge, and decided to speak with her. De Arteaga initiated a discussion concerning the statement and the two teachers discussed de Arteaga's attempt to get the statement over the summer, including her offer to give Dye-Thompson the statement when it was complete. De Arteaga perceived Dye-Thompson's discomfort with giving the statement, interpreted the discomfort as fear of Wenner, and tried to address that fear. Dye-Thompson attempted to tell de Arteaga that she did not share her view of the May 22 conversation, did not appreciate de Arteaga's bringing Costello to badger her for a statement, and did not recall Wenner referring to de Arteaga as "divisive." De Arteaga felt betrayed by Dye-Thompson's responses, and grew increasingly frustrated with them. Dye-Thompson felt that de Arteaga was not listening to her, did not understand her discomfort and cared for nothing beyond corroboration of de Arteaga's view of May 22. De Arteaga eventually made a comment to the effect that she could not believe Dye-Thompson was going to lie about the conversation. The conversation became sufficiently heated that another teacher, who was eating with Dye-Thompson, left the lounge. Dye-Thompson then left, with de Arteaga following her, making statements to the effect that Dye-Thompson was a liar. Dye-Thompson then went to Wenner's office, asking to leave and then breaking down into tears. Wenner calmed her, advising her not to let others "pull you in their mud". He arranged coverage for her afternoon classes. He persuaded Dye-Thompson to remain in his office while she completed a statement about the events of October 9. De Arteaga returned to her classroom after the confrontation in the lounge, and completed the teaching day.

18. On October 10, 2003 Wenner reviewed the events of October 9 with Moore and with his administrative team at Sarah Scott. None of them contacted de Arteaga. After meeting with his administrative staff, Wenner phoned the Milwaukee police to complain of verbal harassment by one teacher of another teacher. During First Hour on October 10, a school safety employee and a Sarah Scott administrator informed de Arteaga that she should report to the Main Office. When de Arteaga entered Wenner's office, she confronted the

entire Sarah Scott administrative team and three Milwaukee police officers. De Arteaga was taken to a side room, and there related her view of the events of October 9. When she was dismissed from the room, she phoned Costello, who arranged for MTEA assistance.

19. Wenner issued de Arteaga a “certain facts” letter dated October 14, 2003. The letter did not specify the alleged misconduct and set October 23 for a conference on the matter. De Arteaga and Costello left that conference because they concluded that Wenner would not specify the misconduct at issue. In a letter to de Arteaga dated October 28, 2003, Wenner stated the alleged misconduct thus, “Harassing, intimidating, and/or coercing at least two board employees.”

20. Sarah Scott SRC meetings during the 2002-03 school year constitute lawful, concerted activity. De Arteaga’s attempt to organize teachers and parents to oppose budget cuts being considered by the SGC in March of 2000 constitutes lawful, concerted activity. Barnes and de Arteaga’s performance in the role of Sarah Scott Building Representative during the 2002-03 and the 2003-04 school years, including their role in processing of the Banking Day and Open House grievances, constitutes lawful, concerted activity. De Arteaga’s efforts to secure a statement from Dye-Thompson concerning the May 22, 2003 conversation between Wenner and de Arteaga prior to de Arteaga’s labeling Dye-Thompson a liar during a lunch break conversation on October 9, 2003, constitutes lawful, concerted activity. Dye-Thompson’s refusal to supply a written statement to the MTEA constitutes lawful, concerted activity. De Arteaga’s labeling Dye-Thompson a liar for not producing a statement concerning the May 22, 2003 conversation between Wenner and de Arteaga does not constitute lawful, concerted activity. Wenner was aware of all of the lawful, concerted activity noted in this Finding of Fact. Wenner was hostile to the exercise of the lawful, concerted activity noted in this Finding of Fact, with the exception of Dye-Thompson’s refusal to provide the MTEA with a statement. Wenner’s refusal to meet with the SRC prior to Barnes’ transfer from Sarah Scott and his attempts to force Barnes and de Arteaga to transfer from Sarah Scott, including his summoning of police on October 10, 2003, was motivated at least in part by his hostility to the exercise of lawful, concerted activity.

CONCLUSIONS OF LAW

1. The MTEA is a “Labor organization” within the meaning of Sec. 111.70(1)(h), Stats.
2. Sarah Scott teachers represented by the MTEA, including Linda de Arteaga, Lu Juan Barnes and Fontella Dye-Thompson are each a “Municipal employee” within the meaning of Sec. 111.70(1)(i), Stats.
3. The MBSD is a “Municipal employer” within the meaning of Sec. 111.70(1)(j), Stats., and Wenner, as Principal of Sarah Scott, is an agent of the MBSD.

4. Wenner's refusal to meet with the Sarah Scott SRC prior to Barnes' transfer from Sarah Scott and Wenner's conduct to force Barnes and de Arteaga to transfer from Sarah Scott during the 2002-03 and the 2003-04 school years, including his summoning police to Sarah Scott on October 10, 2003, were based in part on his hostility toward the exercise of lawful, concerted activity protected by Sec. 111.70(2), Stats., and thus violated Sec. 111.70(3)(a)3, Stats., and derivatively, Sec. 111.70(3)(a)1, Stats.

ORDER

To remedy its violation of Secs. 111.70(3)(a)1 and 3, Stats., the Milwaukee Board of School Directors, its officers and agents, including Dr. Robert Wenner, shall:

1. Cease and Desist from interfering with, restraining or coercing Linda de Arteaga or any of its employees in the exercise of their rights guaranteed in Sec. 111.70(2), Stats.
2. Cease and desist from discriminating against Linda de Arteaga or any of its employees for engaging in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.
3. Take the following affirmative action which the Examiner finds will effectuate the purposes of the Municipal Employment Relations Act:
 - a. Notify its employees at Sarah A. Scott Middle School for the Health Sciences represented by the Milwaukee Teachers' Education Association, by posting in conspicuous places where employees are employed, including Sarah A. Scott Middle School for the Health Sciences and the principal offices of the Milwaukee Board of School Directors at its Department of Labor Relations, copies of the Notice attached hereto and marked "Appendix A". The Notice shall be signed by Dr. Robert Wenner, on behalf of the Milwaukee Board of School Directors; shall be posted upon receipt of a copy of this Order; and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Milwaukee Board of School Directors to insure that the notices are not altered, defaced, or covered by other material.

- b. 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.

Dated at Madison, Wisconsin, this 7th day of July, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Richard B. McLaughlin /s/

Richard B. McLaughlin, Examiner

APPENDIX "A"

**NOTICE TO ALL EMPLOYEES OF THE MILWAUKEE BOARD OF SCHOOL
DIRECTORS EMPLOYED AT SARAH A. SCOTT MIDDLE SCHOOL FOR THE
HEALTH SCIENCES AND REPRESENTED BY THE MILWAUKEE TEACHERS'
EDUCATION ASSOCIATION**

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

1. WE WILL NOT interfere with, restrain or coerce Linda de Arteaga or any other employee in the exercise of their rights pursuant to the Municipal Employment Relations Act.
2. WE WILL NOT discriminate against Linda de Arteaga or any other employee because of their having exercised their rights pursuant to the Municipal Employment Relations Act.

Dated this _____ day of _____, 2006.

MILWAUKEE BOARD OF SCHOOL DIRECTORS

Dr. Robert Wenner, Principal
On Behalf Of The Milwaukee Board Of School Directors

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

MILWAUKEE BOARD OF SCHOOL DIRECTORS

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER**

THE PARTIES' POSITIONS

Complainant's Brief

Complainant offers an extensive review of the history of Principal/MTEA contacts at Sarah Scott dating back to the 1995-96 school year. That history is necessary to understand the impropriety of Wenner's treatment of MTEA representatives and supporters over the period of time relevant to the allegations of the amended complaint.

After this review, Complainant argues that the evidence dictates fourteen findings of fact which establish Respondents' violation of Secs. 111.70(3)(a)1 and 3, Stats. Complainant states those facts thus:

1. Dr. Wenner refused to participate in the contractually-required meetings with the MTEA building committee from November 2002 to March 2003.
2. During the time in which he deliberately refused to meet with the building committee, Dr. Wenner initiated a series of misconduct charges against the Building Representative, La Juan Barnes.
3. On March 7, 2003, Dr. Wenner sent a hostile letter to the Building Representative, La Juan Barnes, retaliating against her for concerted activity and forcing her to leave Sarah Scott.
4. On March 17, 2003, in continued harassment for Ms. Barnes' concerted activity, Dr. Wenner agreed to attend a contractually-required building committee meeting after Ms. Barnes agreed to transfer from Sarah Scott.
5. On May 22, 2003, Dr. Wenner confronted the new BR, Linda de Arteaga, in an attempt also to force her to leave Sarah Scott.
6. At a faculty meeting on September 8, 2003, in his actions and comments, Dr. Wenner created an atmosphere of intense fear and hostility against concerted activity.
7. At a faculty meeting on September 22, 2003, by his actions and comments, Dr. Wenner continued to create an atmosphere of intense fear and hostility against concerted activity.
8. On October 6, 2003, at yet another faculty meeting, Dr. Wenner made direct threats against the BR, Linda de Arteaga, because of her concerted activity.

9. On October 7, 2003, Dr. Wenner engaged in surveillance of an MTEA representative who was visiting Sarah Scott conducting Union business and threatened misconduct charges against the BR, Linda de Arteaga, because of the presence of MTEA representatives in the school.
10. On October 8, 2003, Dr. Wenner issued a reprimand and warning to the BR, Linda de Arteaga, because of her meeting with an MTEA representative in the school.
11. On October 9, 2003, Dr. Wenner again reprimanded the BR, Linda de Arteaga, for the presence of MTEA representatives at Sarah Scott, threatened Ms. de Arteaga in the presence of a Union representative, and harassed the Union representative.
12. On October 10, 2003, Dr. Wenner summoned the police and attempted to have Linda de Arteaga arrested because of her concerted activity in seeking to obtain a witness statement in connection with the instant Prohibited Practice proceeding.
13. On October 14, 2003, Dr. Wenner initiated a misconduct charge against the BR, Linda de Arteaga, for her concerted activity and efforts to obtain a witness statement in connection with the instant prohibited practice proceeding.
14. On October 28, 2003, Dr. Wenner held a formal misconduct meeting, in which he asserted that Ms. de Arteaga's request for a witness statement from Ms. Dye-Thompson constituted employee misconduct.

Complainant views these facts as "basically undisputed".

These facts support the alleged violations of Secs. 111.70(3)(a)1 and 3, Stats., which are governed by the Commission's analysis in CLARK COUNTY, DEC. NO. 30361-B (WERC, 11/03) and by TOWN OF STURTEVANT, DEC. NO. 30378-B (WERC, 11/03). CLARK COUNTY subsumes the Sec. 111.70(3)(a)1, Stats., analysis within that of Sec. 111.70(3)(a)3, Stats.

The review of the history at Sarah Scott establishes that Wenner "clearly exhibited union animus from his first days". Within the time period relevant here, Wenner acted to punish Barnes and de Arteaga for their exercise of protected activity. He succeeded in driving Barnes to an incompatibility transfer and harassed de Arteaga to force her to the same point. De Arteaga's refusal to follow the same path prompted Wenner to threaten her with arrest. Each teacher was well-regarded for their professional abilities, and both became the objects of Wenner's hostility because they opposed certain of his initiatives, internally and through the grievance procedure. Wenner took this action as "divisive" to his school and acted directly to punish each teacher, effectively making them examples against opposition to him.

More specifically, Wenner's evasion of "his contractual obligation to attend regular meetings of the MTEA building committee" effectively chilled the exercise of employee rights under Sec. 111.70(3)(a)1, Stats. That he attempted to become actively involved in MTEA internal procedures underscores the significance of the effort.

In fact, “Wenner made no secret of his anti-union animus.” His testimony at grievance arbitration hearings, his open criticism at faculty meetings of teachers he viewed as divisive, and his open threats to opponents regarding loss of employment at Sarah Scott confirms this. Beyond this, Wenner openly challenged and harassed MTEA Staff Representatives, including Costello and Walters. The depth of Wenner’s animus culminated in his attempt to have de Arteaga arrested for her attempt to obtain a statement from Dye-Thompson. An examination of the evidence establishes that Dye-Thompson’s reluctance to offer the statement reflects her own anxiety traceable to the “us or them” atmosphere created at Sarah Scott by Wenner.

As the remedy appropriate to the violations established by the evidence, Complainant requests that,

. . . the Commission order the Board to post an appropriate notice at Sarah Scott . . . indicating that Wenner violated Wis. Stat. Secs. 111.70(3)(a)1 and 3 by his hostile and retaliatory conduct towards the MTEA building committee, the duly elected MTEA building representatives and other staff of Sarah Scott . . . during the 2002-2003 school year. In addition . . . such notice (should) also be posted at the school of (Wenner’s) present assignment and at the MPS Department of Labor Relations. It is also respectfully requested that such notice enumerate each of the fourteen incidents of Dr. Wenner’s illegal conduct . . .

Respondents’ Reply

After a review of the evidence and specifically of Barnes’ work record, Respondents contend that Complainant’s brief gives “no recognition or responsibility to the exhibited behaviors” of Barnes, de Arteaga and MTEA representatives. The extensive history cited by Complainants in fact is “based upon perceptions” designed to yield the impression that Wenner “consistently exercised a prohibited interference into the matters of the school building committee” and bore an unflinching hostility toward the MTEA.

An examination of the evidence will not, however, support this perception, since “Wenner did not attempt or actually interfere with the election of members to the school building committee.” Rather, he refrained “from meeting with this body until he received confirmation that the membership was truly selected by the school faculty.” That the committee chose to conduct its first meeting outside of Sarah Scott and then chose subsequently to return to the school establishes that its actions rest on the perceptions of its members rather than any coercive conduct on Wenner’s part.

An examination of the evidence supports a conclusion that Complainants “themselves engaged in unlawful harassment and intimidation of a municipal employee” in violation of Sec. 111.70(3)(b), Stats. De Arteaga’s and Dye-Thompson’s testimony establishes that MTEA representatives coerced Dye-Thompson to author a statement supporting de Arteaga’s view that Wenner had labeled her as “divisive” as part of an effort to force de Arteaga from Sarah Scott. At best, the evidence shows Wenner “suggested” that she “should consider her personal well-

being and health and transfer to another school where her stress level could be better managed.” The perception of improper hostility from Wenner that Complainant seeks to create is belied by the evidence. The evidence shows a series of contacts by Costello and de Arteaga that culminated in de Arteaga accusing Dye-Thompson of lying, and berating her to the point that Dye-Thompson had “to leave her own classroom in a highly upset state.” There is no evidence to show Costello made any attempt to resolve the matter. Respondents conclude that this “aggressive behavior toward this fellow employee is clearly tantamount to coercion with an intent to intimidate for the purpose of exacting written evidence for litigation.”

On review, Complainant’s evidence is little more than “conjecture and subjective description of carefully selected events” winnowed to make Wenner appear “as carrying an ominous evil intent.” That evidence breaks down on closer scrutiny. The grievance concerning Wenner’s refusal to meet with the SRC alleges the refusal occurred on November 22, 2002, but this ignores that testimony establishes that the SRC was not ready to meet until November 20. Scrutiny of the evidence Complainant asserts to demonstrate Wenner’s refusal shows no more than that “he either was not available, not in the building when called on, or had other legitimate school business reasons for the momentary delay.” Significantly, Complainant’s arguments ignore that Barnes’ “employment record is not free of past improprieties” including “formal disciplinary action.” That Barnes maligned Sarah Scott to the parent of a potential student shortly “after her acceptance” of the Building Representative position indicates that her conduct plays a significant role in the tension within Sarah Scott. Viewed as a whole, the evidence establishes no more than that Barnes and de Arteaga may have harbored “unrealistic expectations of responsiveness from a busy administrator.” This makes the assertion of illegal hostility establish only “a hollow din of authenticity.” If there was a conflict between Wenner, Barnes and de Arteaga, it strains the bounds of credibility to conclude that Wenner bears sole responsibility for that conflict.

Complainant’s depiction of the “history” of this conflict pushes beyond MERA time limits and creates “the self-fulfilling prophecy, ‘Where there is smoke, there is fire.’” The filing of grievances against Wenner does no more than establish that the contractual dispute resolution mechanism is working. As with other evidence, the purported “history” established by the Complainant is less a work of history than of fiction. The conflict between Wenner, Barnes and de Arteaga is evident. It is no less evident that the “labor management relationship” at Sarah Scott was “wrought with tensions and the potential for confrontation” and Barnes and de Arteaga played a causal role in it. More specifically, the causal role of Barnes’ “unacceptable job behaviors” cannot be ignored. On balance, the evidence fails to establish hostility. More accurately assessed, it establishes the “everyday stresses of working in an urban educational environment where professional interactions can be a daily challenge.” Complainant’s arguments are “but a self-serving oversimplification” and must be rejected.

Complainant’s Reply

Respondents’ review of Wenner’s conduct regarding the SRC rests on a selective view of the facts. Respondents ignore that Barnes’ predecessor informed Wenner of the election

results that created the SRC and that Wenner delayed the first meeting four months, agreeing to meet only when Barnes requested a transfer. Further omissions can be noted, but none of Respondents' assertions can obscure that its own attempt to characterize Wenner's conduct as reasonable "contradicts the Board's own amended disposition of the grievance" which acknowledges a contract violation and requires Wenner to cease and desist from the violation as well as from questioning internal MTEA procedures. Wenner's conduct in fact has been proven to violate contract and statute.

Nor is Respondents' characterization of the conflict at Sarah Scott as a "mere personality conflict" persuasive. That characterization ignores the content and timing of the March 7, 2003 letter. The letter followed the grievance settlement by "just four days" after the original "grievance disposition issued by the Superintendent, denying the grievance". That letter was pivotal to securing Barnes' transfer request and thus Costello's ability to get Wenner to meet with the SRC. Respondents' "*ad hominem*" attacks on Barnes have no record support and will not justify his conduct concerning the March 7, 2003 letter.

Contrary to Respondents' assertions, Wenner showed overt hostility to "the MTEA and its elected representatives" at the faculty meetings of September 8, 22 and October 6, 2003. This confirms his avowed hostility to the MTEA dating from "the pre-complaint period." No objective assessment of Wenner's comments can support Respondents' assertions. That hostility culminated in his "calling the Milwaukee Police Department to demonstrate publicly the consequence of being a vigorous union representative."

Respondents mischaracterize the evidence regarding the events of October 9 and 10, 2003. Contrary to Respondent, the first meeting between de Arteaga, Costello and Dye-Thompson was brief, concluding in Dye-Thompson's agreement to supply a statement. Costello was not at the second meeting, which took place at lunch between de Arteaga and Dye-Thompson. That was the first time Dye-Thompson indicated she would not supply a statement attributing the use of the term "divisive" to Wenner. De Arteaga's shock is evident, but is not reconcilable to Respondents' characterization of her response. Under no objective view of the facts would that response require a call to the police. Wenner used the incident as a pretext to publicly humiliate de Arteaga. Complainant concludes that the record warrants the imposition of the remedy stated in Complainant's brief.

DISCUSSION

The MTEA filed the complaint and began its litigation focused on an alleged violation of Sec. 111.70(3)(a)1, Stats. Under this view, the conduct noted in its fourteen findings of fact produced an environment that interfered with the exercise of lawful, concerted activity (references to the fourteen findings of fact asserted by the MTEA are stated in lower case, and references to the Findings of Fact I adopt above are stated in upper case). Repeated references to "retaliation", however, prompted me to request that the complaint be amended to include a violation of Sec. 111.70(3)(a)3, Stats., and to grant the amendment.

Examination of the findings of fact establishes that Sec. 111.70(3)(a)3, Stats., must be the focus. The findings start with Wenner's refusal to meet with the SRC during the 2002-03 school year, proceed through Wenner's difficulties with Barnes and extend through Wenner's difficulties with de Arteaga, culminating in the events of October of 2003.

Each finding of fact does not, however, have independent significance as an act of interference. Under the grievance procedure, the MBSD rejected Wenner's refusal to meet with the SRC, and there is no reason to revisit this, if viewed in isolation. Similarly, Wenner's difficulty with Barnes predates the 2002-03 school year, and action through the grievance procedure again affected the course of conduct. The MBSD did not support Wenner's attempts to suspend Barnes, and the MTEA and Wenner worked out a Q9 transfer, which the MTEA does not question in its remedial request. Rather, the remedial request focuses on a detailed finding that Wenner's conduct violates MERA. Against this background, the findings of fact have less significance standing alone than as part of a course of conduct.

Three of the findings of fact focus on the impact of comments made during staff meetings. The evidence points to an "us/them" dichotomy at Sarah Scott which makes it impossible to establish precisely what was said at those meetings. The evidence reflects that supporters of de Arteaga perceived more focused language and a more strident tone from Wenner than did Wenner supporters. Such nuance is significant regarding potential WERC regulation of speech under Sec. 111.70(3)(a)1, Stats., cf. ASHWAUBENON SCHOOL DISTRICT NO. 1, DEC. NO. 14774-A (WERC, 10/77). This underscores, however, that the fundamental issue in this litigation is a course of conduct culminating in retaliatory action against de Arteaga. As noted in CLARK COUNTY, DEC. NO. 30361-B at 15, the Commission prefers such a case to be handled through a Sec. 111.70(3)(a)3, Stats., analysis.

Thus, the complaint turns on the application of Sec. 111.70(3)(a)3, Stats., which makes it a prohibited practice for a municipal employer:

To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms of conditions of employment . . .

In order to establish a violation of this section, the MTEA must establish, by a clear and satisfactory preponderance of the evidence, under Sec. 111.07(3), Stats., made applicable by Sec. 111.70(4)(a), Stats., each of the following elements:

1. Municipal employee exercise of lawful, concerted activity protected by Sec. 111.70(2), Stats.; and
2. Municipal employer awareness of that activity; and
3. Municipal employer hostility to that activity; and

4. Municipal employer conduct motivated, in whole or in part, by hostility toward the protected activity. MUSKEGO-NORWAY C.S.J.S.D No. 9 v. WERB, 35 Wis. 2d 540 (1967).

The parties' dispute focuses on the application of the final two elements, and specifically on whether Wenner, as an MBSD agent, acted adversely against an MTEA-represented teacher's conditions of employment based on proscribed hostility.

There is no significant dispute regarding the application of the first two elements. Focusing on the conduct underlying the findings of fact, it is undisputed that Barnes and de Arteaga were SRC members and Building Representatives. Each fielded and asserted teacher concerns including those prompting the Banking Day and Open House grievances. The Open House grievance is the focus of a policy dispute that colored the staff meetings of September 8, 22 and October 6 of 2003. Beyond this, de Arteaga actively consulted MTEA representatives on a number of matters, including obtaining evidence from Dye-Thompson regarding the complaint. There is no dispute that these activities represent lawful, concerted activity, with the exception of the arguably coercive aspects of the attempt to obtain a statement from Dye-Thompson, see MONONA GROVE SCHOOL DISTRICT, DEC. No. 20700-G (WERC, 10/86), regarding the protected nature of grievance processing; and more generally, TOWN OF STURTEVANT, DEC. No. 30378-A (Shaw, 7/03), *aff'd in relevant part* DEC. No. 30378-B (WERC, 11/03) regarding preparation of complaint litigation, and cf. BROWNE v. WERC, 169 Wis. 2d 79 (1992) regarding litigation more generally.

There is no meaningful dispute regarding Wenner's knowledge of these activities. Barnes and de Arteaga specifically informed Wenner of many of their activities, and responded directly to Wenner's questions regarding the SRC and regarding teacher support for the grievances noted above.

Thus, the parties' dispute focuses on the existence of hostility on Wenner's part toward this exercise of lawful, concerted activity and on whether any such hostility played a role in adverse employment actions toward Barnes and de Arteaga.

As preface to the application of this element, it is of some use to highlight what is not in dispute. As noted above, review of the record is complicated by an "us/them" dichotomy. As highlighted in evidence surrounding three staff meetings in the Fall of 2003, the roots of this dichotomy extend to educational as well as to labor relations policy. The issue here is not to isolate what constitutes appropriate educational policy, but to isolate whether Wenner's conduct strayed beyond the bounds of the labor relations policy embodied by Sec. 111.70(3)(a)3, Stats.

Nor does the assertion that Wenner specifically intended to cut off aggressive MTEA advocates afford a meaningful means to address the complaint. Segala's experience affords some support for this assertion, as does part of Wenner's testimony concerning whether the Eighth Street Middle School was a "union" school. Focus on such evidence, however, affords

little clarity. There is no evidence to indicate Wenner acted hostilely toward the MTEA upon his arrival at Sarah Scott. Segala's testimony highlights that the two enjoyed an effective working relationship for some time. Beyond this, MTEA attempts to causally link Wenner's conduct to the extent of grievance filing is tenuous. The attempt cannot account for evident anomalies. When Wenner's difficulties with Gray peaked, he sought the assistance of the MTEA. Beyond this, there is no evidence the difficulties involving Barnes and de Arteaga arose due to their advocacy of grievances or for the MTEA specifically. This prefaces that the protection of Sec. 111.70(2), Stats., is not restricted to grievances or to activity on behalf of a union. Rather, it broadly protects "lawful, concerted activities".

This broader focus is significant legally and factually. Factually, the evidence points to a broader type of hostility than specific concern with the MTEA. Rather, it points to hostility toward opposition generally. Legally, because this opposition grew into hostile action regarding conditions of employment that was directed at concerted activity, it strayed beyond the bounds of Sec. 111.70(3)(a)3, Stats.

The evidence poses a number of fine points, but I do not consider the finding of proscribed hostility one of them. This point is exemplified by Wenner's classroom observation of de Arteaga in November of 2000. De Arteaga had been elected to the SGC, and her activity flowing from it in March of 2000 was lawful, concerted activity. Wenner, however, did not appreciate her effort to contact teachers and parents regarding budget cuts while those cuts were in the deliberative phase. Eight months later, perhaps aggravated by her handling of FAVE budgets, Wenner sought to dislodge her from the SGC. He observed her classroom conduct within one week of her refusal to resign. His comments stray well beyond the classroom, pull in her conduct at the SGC and amount to a type of character assassination. This had no bearing on her teaching behavior, but bore directly on his avowed goal of inducing her to leave Sarah Scott. The observation form, coupled with her end-of-year evaluation, establish that the attack had no basis in teaching conduct. Rather, it was hostility flowing directly from her exercise of lawful, concerted activity. That Wenner distinguished between her conduct as a teacher and her conduct as an advocate underscores that he was not solely motivated by proscribed hostility, but the existence of such hostility is evident. This behavior is not directly at issue here, since it occurred more than one year prior to the filing of the complaint. However, conduct outside of the limitations period can be used as evidence to establish the unlawful nature of conduct which falls within the limitations period and which is in itself unlawful, see *CITY OF MEDFORD ET. AL.*, DEC. NO. 30537-B (WERC, 2/04) using the analysis stated in *LOCAL LODGE NO. 1424 V. NLRB (BRYAN MFG. CO.)*, 362 U.S. 411 (1960).

More specifically, this incident manifests a broad but consistent theme: Wenner identified himself personally with Sarah Scott educational policy; took opposition personally; responded to opposition in a personal, character-based fashion; and responded by seeking to remove the opponent from the school.

This theme stretches back as far as the evidence. The rupture in Segala's relationship

the start of the teacher day in the 1996-97 school year. For purposes of the Sec. 111.70(3)(a)3, Stats., analysis the most remarkable part of this difference is the stark contrast between Wenner's and Segala's recall. Wenner recalled the matter to have culminated in Segala's use of the PA system in Wenner's absence to unilaterally change the start of the school day. Segala recalled the matter to involve ongoing discussions which led to two staff votes and a memo authored by him but issued during Wenner's absence to summarize the result of the vote and its implementation. It is unnecessary to resolve which view of the facts is more accurate, but the end result of the process was Segala's transfer from Sarah Scott. More to the point, his testimony was more detailed and nuanced than Wenner's, which serves to preface the development of the theme noted above. Wenner's recall reflects how starkly he perceived opposition.

Linn credibly testified, noting that while on the SRC she and Wenner discussed a number of issues concerning Sarah Scott. Wenner was aware that she consulted the MTEA during some of these discussions, but the notable aspect of their interaction is Wenner's response. In one instance, Linn suggested a means to effect a policy change would be to implement it with one-half the staff. Wenner responded, not when Linn made the suggestion, but in a one-on-one meeting, by questioning why she argued with him so often and by adding a comment to the effect that he already had a wife. When Linn questioned a Sarah Scott Worker's Compensation posting that contained personal information regarding certain employees, Wenner called her into his office, questioned whether she had contacted the MTEA, then noted that his secretary had made a mistake. He added that his secretary had gotten into trouble and had ended up crying over the matter. Wenner labeled Linn a cancer on the staff and suggested she should leave Sarah Scott. Linn transferred at the end of that school year. The parallel to later actions by Wenner is unmistakable.

The roots of this line of conduct grow into action within the limitations period. Wenner's difficulty with Barnes had tangled roots, which need not be sorted out here. As the Findings of Fact demonstrate, Barnes had given Wenner basis for concern. However, nothing in the conduct addressed in testimony can account for the tone of the March 7, 2003 letter. Wenner testified this letter was not disciplinary. The remark, if taken in its context, is credible. He did not seek to start the "certain facts" process. Rather, he sought to induce her to leave. Broad character-based accusations such as, "purposely causing problems for Sarah Scott administration and staff as well as district staff"; or "(t)his unprofessional, purposefully misleading behavior"; or "this divisive irresponsible behavior" did nothing to isolate behavior to be corrected or sanctioned by the disciplinary process. Rather, they furthered the discomfort that ultimately drove Barnes from Sarah Scott. The parallel to his November, 2000 observation of de Arteaga is evident. In each case, Wenner acted to attack the character of an opponent to pressure them to transfer from Sarah Scott. This effort, however, sought to turn the transfer process into a basis for the suppression of legitimate dissent. Nothing in the contract or law supports this effort, which is, under Sec. 111.70(3)(a)3, Stats., proscribed hostility for the exercise of lawful, concerted activity.

The complexity of the events of the fall of 2003 can only be touched upon. Bona fide educational policy issues became irretrievably caught in labor relations difficulties. Prior to the start of the school year, the MTEA had filed this complaint and, through de Arteaga, was acquiring relevant evidence, including a statement from Dye-Thompson. At the start of the school year, Phillips contacted the MTEA regarding the propriety of two open houses in a single semester. The MTEA, stung by Wenner's treatment of the SRC the prior school year as well as by Barnes' and de Arteaga's treatment as Building Representatives, showed Wenner, on the Open House issue, the cooperation they felt he had extended them the prior year. This opened a sort of turf war, as shown by the MTEA mailing of September 30. Apart from labor relations issues swirled significant education and personal issues. Two open houses were not unprecedented at Sarah Scott and posed significant issues concerning recruitment. De Arteaga had already experienced the loss of a significant work-friendship the prior year, and had become convinced that Wenner bore personal animus toward her. That animus, as well as her animus toward Wenner, was apparent to other teachers. Igoister Harris, another FAVE teacher at Sarah Scott, asked Wenner to remove him from a duty assignment shared with de Arteaga because he found her constant complaints about Wenner intolerable. Hynst resigned from the SRC because he felt de Arteaga's advocacy was too colored by a personal conflict with Wenner. This is the background to the staff meetings of September and October, 2003. As noted above, those staff meetings manifest an "us/them" attitude that makes it impossible to isolate what precisely was said. Such imprecision cannot, however, mask Wenner's hostility toward de Arteaga's advocacy. Wenner's testimony establishes that he sought to separate those with a Sarah Scott vision from those who lacked it. This effort had a strong character-based element, focusing on morality as much as on education.

This is not to say that Wenner's view on appropriate teacher conduct violates statute. His staff meeting presentations focused on McGinnity's example, but that example focused on teaching conduct and motivation. The events of Fall, 2003 following the staff meetings establish that there was more to Wenner's attitude toward de Arteaga than educational policy. Norman Nutkis' testimony catches the necessary distinction. Nutkis, a Sarah Scott Guidance Counselor, disagreed with de Arteaga and the MTEA regarding the open house issue; disagreed with those teachers who believed Wenner focused his staff presentations on de Arteaga; included de Arteaga within a group who consistently opposed Wenner; and did not support her efforts on the SRC. Nevertheless, he recognized her as a good teacher, capable of contributing to team efforts at Sarah Scott. Similarly, Hynst, even after resigning from the SRC, was unwilling to generally characterize de Arteaga's performance as a Building Representative as "bad".

Such balance is lacking in Wenner's testimony. Her performance as a teacher, including her voluntarily taking training on the Sarah Scott teaching model, had no evident impact on Wenner's assessment of her fitness to contribute to Sarah Scott. His presentations at the September and October staff meetings may not have been aimed specifically at her. Phillips' discomfort was evident, however, because she perceived that de Arteaga was the focus of the attack while she knew that she, rather than de Arteaga, had initiated the

Wenner's presentation, reasonably caught its tone. That tone shines through the evidence, establishing that Wenner took opposition personally and that he linked opposition to him with tenure at Sarah Scott. It is impossible to cull from his testimony what the presentations sought to communicate about the quality of teaching effort. The October 8 letter highlights the line Wenner was drawing. His letter notes de Arteaga had been reported to be secretly consulting with MTEA representatives who had not complied with Sarah Scott building security processes. The evidence establishes that Wenner consulted with his supervisor on building security procedures. He, like Wenner, was unaware of a governing grievance arbitration award. That Wenner held this view in good faith cannot obscure that he took the assertions of unnamed staff members as fact; assumed without any factual basis that de Arteaga played a causal role in bringing the MTEA representatives to her; acted to isolate her; and saw no reason to consider her view on any part of the process. This continues a consistent pattern regarding de Arteaga's advocacy, reflecting his hostility to opposition and his unwillingness to consider her views on their merit.

This sets the combustible background to the events of October 9 and 10. It is impossible to piece together the events of that day with precision. The Findings of Fact set the broad parameters that have solid evidentiary support. They confirm the pattern of hostility noted above. Wenner uncritically accepted hearsay accounts from supporters regarding de Arteaga's conduct. His anger toward her was open. Granting that he had reason to be upset cannot obscure that his anger did not deflect or diminish his over-riding desire to have her transfer. While he tried to force his way into her classroom, he continued to direct her to leave Sarah Scott.

If this response can be taken as nuanced, his summoning of the police cannot. He had time to reflect and to consult others. None thought it necessary to consult de Arteaga or anyone on her behalf. The assertion that her behavior warranted such action is, to the extent understandable, unpersuasive. As is discussed further below, her behavior at the lunch break was ill-advised at best. However, there is no persuasive view of the facts that supports a conclusion that her behavior prior to that point was unacceptable. In spite of this, there was no evident interest from Wenner, or from those with whom he consulted, in the determination of fact beyond whatever Wenner took from the events of October 9. This led to the anomalous result that a teacher, who MBSD administrators assert needed to be investigated regarding a crime on October 10, was permitted to teach on October 9, the day of the purported crime, after the crime had been unearthed.

This anomalous decisional process bears directly on the complaint. The delay in the police report cannot be traced to exigent circumstances. On October 9, Wenner permitted Dye-Thompson time to write her statement while de Arteaga taught. This cannot be attributed solely to mercy to Dye-Thompson. The same mercy could have been achieved by letting her go home as she wished. However, doing this would not necessarily have yielded her written statement. If it was crucial to obtain that statement immediately, why was it unnecessary to obtain any others? In any event, public safety, whether teacher, student, administrator or

investigation, it is not clear why the certain facts process was put off until October 14. Presumably, evidence of a crime is evidence of disciplinary misconduct. It is evident that the delay was not for MBSD investigation. None occurred between October 9 and the call to the police on October 10. The taking of Dye-Thompson's statement was not an investigation. Rather, it was the start of a formal case against de Arteaga. Delay between October 9 and 10 reflects a consensus building effort initiated by Wenner. The call to police stands without any evident purpose other than to pressure de Arteaga. That pressure is inextricably intertwined with Wenner's desire to see her out of Sarah Scott. As noted above, that effort manifests hostility against the exercise of lawful, concerted activity.

Thus, the MTEA has proven the third element of the Sec. 111.70(3)(a)3, Stats., analysis. The final element is essentially addressed above, with the exception of certain nuances within the evidence. Wenner sought over several school years to induce de Arteaga to leave Sarah Scott. It cannot be said that de Arteaga has an unlimited right to remain there, but the contract sets forth a number of means to move or to remove a teacher, including the Q9 transfer and the disciplinary process. Under the labor agreement, a Q9 transfer is not Principal initiated and an involuntary transfer cannot be used as discipline. Wenner's conduct sought to force de Arteaga to transfer in a fashion that did not invoke contract provisions restricting his authority. The effort is incompatible with Sec. 111.70(3)(a)3, Stats., because it undermined de Arteaga's conditions of employment based in significant part on Wenner's hostility to her exercise of lawful, concerted activity.

Prior to addressing the issue of remedy, it is necessary to address certain nuances in the evidence. The findings of fact address the misconduct process following October 9, 2003. The nuance is whether any of de Arteaga's conduct on that date is other than lawful, concerted activity. From the MBSD perspective, the issue is whether de Arteaga or others improperly coerced Dye-Thompson to make a statement. There is no issue of coercion posed here as a legal matter concerning de Arteaga or the MTEA, since it would have to fall under Sec. 111.70(3)(b), Stats., and the pleadings contain no such allegation, see *GENERAL ELECTRIC CO. v. WERB*, 3 Wis. 2D 227 (1958).

However, the application of Sec. 111.70(3)(a), Stats., against the MBSD does call into question the extent to which de Arteaga's conduct is protected under Sec. 111.70(2), Stats. The evidence establishes that her conduct at the close of the lunch break on October 9, 2003 cannot be considered lawful, concerted activity. Here again the "us/them" dichotomy is an undercurrent that emerged in a torrent on October 9. Costello and de Arteaga credibly asserted they did not put undue pressure on Dye-Thompson. In its context, this testimony is reliable. However, it highlights that the context is broader than the "us/them" dichotomy at Sarah Scott.

Dye-Thompson was a credible witness. Her testimony establishes that she expressed her feelings reluctantly and subtly. She was an unwilling participant to the May 22, 2003 conversation with Wenner and de Arteaga. She let de Arteaga know as soon as they discussed

Arteaga. This is not surprising. She was then facing invasive surgery and Wenner's purported concern for her health. That concern, as his other concerns for her, ended in encouragement to leave Sarah Scott. Nevertheless, de Arteaga did not understand what Dye-Thompson tried to tell her, and that misunderstanding came to live a life of its own.

This pattern continued throughout the following Summer and Fall. Convinced Dye-Thompson feared Wenner, De Arteaga tried to cajole her to write a statement, ultimately offering her own statement for Dye-Thompson's use. It is neither necessary nor accurate to find de Arteaga's testimony incredible to conclude that Dye-Thompson perceived the offer as patronizing. It reflected to her an ongoing unwillingness on de Arteaga's part to recognize that they did not perceive Wenner's statements in the same fashion. De Arteaga's request for a statement in the presence of other teachers hardened this pattern. Dye-Thompson took it as coercive. Her displeasure grew, but went unexpressed. The morning of October 9, 2003 brought the matter to a head. Costello and de Arteaga testified there was no coercion, but Costello's testimony acknowledges that she made a comment to the effect that the MTEA had to protect its Building Representatives. From Costello's point of view, this was a simple statement of fact. From Dye-Thompson's, it was yet another attempt to coach her. Past this point, events took their own course, with the past boiling uncontrollably to the surface. However, nothing in the course of the events to this point hints of coercion in a legal sense.

De Arteaga, however, made the unfortunate choice of speaking with Dye-Thompson over their lunch break. During that conversation, the differences between them surfaced irreconcilably. De Arteaga, convinced that Wenner intimidated Dye-Thompson, grew increasingly angry and felt increasingly betrayed. By the end of the conversation, de Arteaga followed Dye-Thompson from the room, branding her a liar. In a sad, but ironic, end to a protracted course of events, de Arteaga used on Dye-Thompson the type of character assassination that Wenner used on her and on Barnes.

The MTEA assertion that Wenner somehow intimidated Dye-Thompson either expressly or implicitly through the uncertainty of her licensure situation is without persuasive evidentiary support. Fundamentally, it ignores the basic credibility of Dye-Thompson's testimony, substituting the "us/them" dichotomy in place of fact. Dye-Thompson simply did not view Wenner as de Arteaga and Barnes did. This reflects that Wenner gave her no reason to, not that Wenner somehow intimidated her.

Dye-Thompson's desire to voluntarily give or decline to give a statement to the MTEA is the flip side of the lawful, concerted activity protected by Sec. 111.70(2), Stats., which also extends to de Arteaga's and Costello's effort to get one. If she was going to be subpoenaed, as she had been warned, she is legally required and entitled to give her good faith view of the truth. De Arteaga's labeling Dye-Thompson a liar would be unlawful in the sense of Sec. 111.70(2), Stats., to the extent it sought to force from Dye-Thompson information she did not wish to convey voluntarily. More accurately in this case, it was not concerted, since de Arteaga's unfortunate outburst advanced nothing beyond the personal frustration she felt at the

(WERC, 10/83) at 5, cited with approval at DEC. NO. 30378-B at 24; and CITY OF KENOSHA, DEC. NO. 25226-B (WERC, 10/77). That portion of de Arteaga’s conduct is, therefore, not protected by Sec. 111.70(2), Stats.

This is the background to the Order. The Order does not include a notice specifying the findings of fact. As noted above, the evidence will not support them all, and the ultimate issue is a course of conduct over a considerable span of time. The factual specificity sought by the MTEA is noted in the Findings of Fact, Conclusions of Law and Order rather than the notice. The notice tracks Commission notices from the CLARK COUNTY and VILLAGE OF STURTEVANT cases cited above. The factual specificity sought by the MTEA highlights its desire to underscore the source of the violations. However, detailed specification of fact detracts from the fundamental purpose of the posting, which is to call attention to a statutory violation in a readable sense in a setting in which detailed or prolonged reading is unlikely. A serious reader can only be satisfied by recourse to the underlying decision, while the more typical reader must be able to get the message succinctly. The course of conduct the MTEA seeks to highlight is handled by the notice’s specific mention of the two individuals whose names became synonymous with that course of conduct.

De Arteaga is the only teacher mentioned by name. Beyond the more general point made above, this specifically reflects that the summoning of the police on October 10 was an exceptionally public way to bring pressure on an individual. Not all of her October 9 conduct is lawful, concerted activity, but the vast bulk of it is. More to the point, nothing in her conduct warranted the significant police presence she confronted on October 10. The posting’s public use of her name is to counteract the exceptional effort to bring public pressure to bear on her. The use of her name also reflects that she, unlike Barnes, consistently rejected the transfer process.

Beyond this, the MTEA does not seek, and the Order does not grant, specific relief for either teacher. The posting requirement for the notice is limited to Sarah Scott and to MBSD offices. It does not extend to Wenner’s current school, as sought by the MTEA. Of necessity, the discussion above focuses on Wenner and the MBSD, because they are the focus of the underlying statutory violations. This cannot obscure that there is more to the events discussed above than their labor relations content. To the extent the MTEA seeks that Wenner be branded with a “Scarlet Letter”, I decline. Too much of this record is obscured by an “us/them” dichotomy that can engulf the fundamental business of providing classroom instruction. If no labor relations issues exist at Wenner’s current school, I do not propose to create them. If they do, the Findings carry whatever relevance they may have to any such issues. A notice neither adds to nor detracts from that.

More fundamental issues concern the misconduct process that followed the events of October 9 and 10, 2003. The record does not contain evidence sufficient to address that process. It is impossible to know what, if anything, resulted from it. Not all of de Arteaga's conduct toward Dye-Thompson on October 9, 2003 enjoys statutory protection. Whether the misconduct process can isolate, or has isolated, that portion of de Arteaga's conduct which is not protected cannot be assessed on this record.

Dated at Madison, Wisconsin, this 7th day of July, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Richard B. McLaughlin /s/

Richard B. McLaughlin, Examiner

