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or refused to represent him in his grievance because he was not a member of the K.E.A. or for any other reason." The answer also denies that Respondents refused or failed to fairly represent Ray Ahern in the pursuance of his grievance. The answer further stated as an affirmative defense that Respondents "acted in good faith in considering the merits of Ahern's grievance and did fairly represent Ahern as a member of the bargaining unit in processing, handling and attempting to adjust such grievance."

At the outset of the hearing the Respondents moved to dismiss the complaint and the motion was taken under advisement. Respondent argues in its brief that the complaint should be dismissed because (1) it does not state a cause of action, and (2) the Commission lacks jurisdiction over the subject matter set forth in the complaint.

SUFFICIENCY OF THE COMPLAINT

Section 111.70(3)(b) and (c), Wisconsin Statutes, provide, inter alia, that municipal employees individually or in concert are prohibited from coercing, intimidating or interfering with municipal employees in the enjoyment of their legal rights, including the right to refrain from affiliating with any labor organization, and that it is also a prohibited practice for any person to do on behalf of any municipal employer or employee any act prohibited by paragraphs (a) and (b).

These statutory provisions clearly prohibit interfering with a municipal employee in the enjoyment of his right to refrain from affiliating with a labor organization. The complaint alleges that when Complainant requested representation on his grievance, the President and President-Elect of the Kenosha Education Association, respectively, told him that "We cannot represent you because you are not a member of K.E.A." and "We cannot represent you because you are not a K.E.A. member." It is to be noted that these allegations are denied in the answer. However, the question here is the sufficiency of the complaint, and in the opinion of the Examiner a cause of action exists if Respondents, as alleged in the complaint, refused to represent Complainant in his grievance because he was not a member of the Kenosha Education Association. Such a refusal would constitute discrimination against Complainant because of his nonaffiliation with the Kenosha Education Association, and would thereby interfere with Complainant's right to refrain from affiliation with a labor organization.

JURISDICTION

The Respondents contend that the Wisconsin Employment Relations Commission lacks jurisdiction over the subject matter because it is unable to grant relief to the aggrieved party. Although it may be true that the Commission under the circumstances here could not order reinstatement of the employe, the Commission is not without other remedies to ensure protection of an employe's statutory right to refrain from affiliation with a labor organization. Without precluding the possibility of other remedies, the Commission could, for example, attempt to remedy any such violation by the issuance of an appropriate cease-and-desist order and an order to provide an appropriate notice to members of the collective bargaining unit.

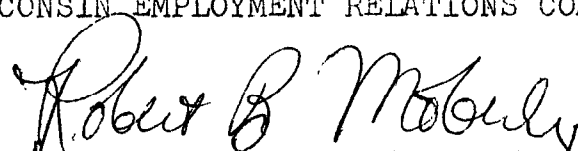
In its brief Complainant argues that Respondents, by filing an answer which does not object to the jurisdiction of the Commission to consider the complaint, have waived their right to object to the Commission's jurisdiction and to the sufficiency of the complaint. However, a determination of this issue is unnecessary in view of the conclusions of the Examiner that the complaint states a cause of action and that the Commission has jurisdiction over the subject matter.

In accordance with the above, the Examiner is today issuing an order denying the motion to dismiss the complaint and directing that the matter be brought on for further hearing.

Dated at Milwaukee, Wisconsin, this 2nd day of December, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Robert B. Moberly, Examiner