



School District No. 1, Kenosha, Wisconsin, hereinafter referred to as the Municipal Employer.

4. That the Kenosha Education Association is the exclusive bargaining representative of all certified teaching personnel of the Municipal Employer; that at all times material herein the Municipal Employer and the Association were parties to a "Master Contract Agreement," effective July 1, 1968, to June 30, 1969, covering all certified teaching personnel of the Municipal Employer; and that said agreement contained the following material provisions relating to grievance procedures:

#### IX. Grievance Procedure

##### A. Definitions

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##### B. Purpose

. . .

##### C. Procedure

Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum, and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual consent.

In the event a grievance is filed which might not be finally resolved under the time limits set forth herein by the end of the school term, and which if left unresolved until the beginning of the following school term could result in irreparable harm to a party in interest, the time limits set forth herein will be reduced so that the grievance procedure may be exhausted prior to the end of the school term or as soon thereafter as is practicable.

Any problem(s) involving teachers, or the Kenosha Education Association, concerning conditions of employment contained within the agreement shall be resolved in the following manner:

1. Level One. The teacher(s) involved shall, within five (5) school days of the grievance, go first to his immediate supervisor by himself, or with a representative of the PR&R Committee, in an attempt to resolve the grievance.
2. Level Two. (a) If the aggrieved person(s) is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within five (5) school days after presentation of the grievance, he may file the grievance in writing with the Chairman of the Association's PR&R

Committee within five (5) school days after the decision at Level One or ten (10) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Chairman of the PR&R Committee will refer it to the Superintendent of Schools.

(b) The Superintendent will represent the administration at this level of the grievance procedure. Within five (5) school days after receipt of the written grievance by the Superintendent, the Superintendent or his designee will meet with the aggrieved person and the Chairman of the PR&R Committee or his designee in an effort to resolve it.

(c) If a teacher does not file a grievance in writing with the Chairman of the PR&R Committee and the written grievance is not forwarded to the Superintendent within thirty (30) school days after the teacher knew or should have known of the act or condition on which the grievance is based, then the grievance will be considered as waived.

3. Level Three. (a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within five (5) school days after he has first met with the Superintendent or his designee, he may file the grievance in writing with the Chairman of the PR&R Committee within fifteen (15) school days after the grievance was submitted at Level Two. Within five (5) days after receiving the written grievance, the PR&R Committee will determine whether to refer the grievance to the Board of Education.

(b) The Board will meet in executive session at its next regularly scheduled meeting to consider all grievances which have been submitted to it since its last such meeting. Any party in interest shall have the right to appear before the Board and be heard.

5. That in the spring of 1969 the Municipal Employer notified Complainant that his teaching contract would not be renewed for the school year 1969-70; and that Complainant at no time protested his termination by filing a grievance in writing with the Association as required by the collective bargaining agreement.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

#### CONCLUSION OF LAW

That the Respondents have not committed any prohibited practices within the meaning of Section 111.70, Wisconsin Statutes, with respect to the representation of Ray Ahern in his dispute with the Municipal Employer over the termination of his employment.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 17th day of April, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

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Robert B. Moberly, Examiner

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

<p>RAY AHERN,</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">vs.</p> <p>KENOSHA EDUCATION ASSOCIATION AND ITS PRESIDENT WILLIAM KLENKE AND PRESIDENT- ELECT ROBERT BAETZ,</p> <p style="text-align: center;">Respondents.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p>Case I</p> <p>No. 13127 MP-73</p> <p>Decision No. 9239-B</p>
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MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

Complainant Ray Ahern alleged in his complaint that when he requested representation on a grievance on hours and working conditions, certain officers of the Respondent Kenosha Education Association stated that the Association would not represent Complainant in his grievance because he was not a member of the Kenosha Education Association. Respondents moved to dismiss the complaint, which was written in longhand by complainant apparently before he retained counsel. Said motion was denied, with the Examiner liberally construing the complaint to uphold its sufficiency and avoid a dismissal. Kenosha Education Association, et al, Dec. No. 9239-A, 12/69.

However, at the hearing it became apparent that the grievance involved the termination of Complainant's employment by his Employer, Kenosha Unified School District, and that the crux of the complaint involved the charge that the Association failed to represent Complainant fairly with respect to said termination.

Respondents again moved to dismiss the complaint, on the ground that Complainant failed to comply with the grievance procedure. In the alternative, Respondents moved that the Municipal Employer, Kenosha Unified School District, be made a party to the action.

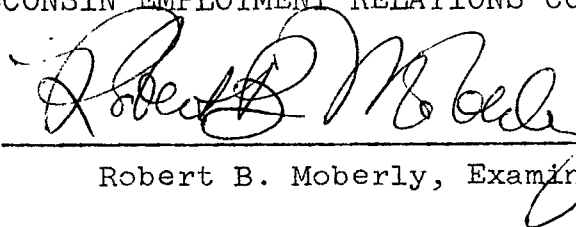
The parties stipulated that Complainant at no time filed his grievance in writing with the Association as required by the collective bargaining agreement. In short, the Complainant did not attempt to utilize or invoke the grievance procedures provided for by contract. Such an attempt is essential in order to prevail in a claim

of unfair representation, and in its absence the complaint will be dismissed. See, e.g., Selwyn Shoe Mfg. Corp., 172 NLRB No. 81, 68 LRRM 1417, 1420 (1968); Local 901 (Interstate Air Service Corp.), 167 NLRB No. 19, 66 LRRM 1011 (1967).

Dated at Milwaukee, Wisconsin, this 17th day of April, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

A handwritten signature in dark ink, appearing to read "Robert B. Moberly", is written over a horizontal line.

Robert B. Moberly, Examiner