

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RAY AHERN,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case I
	:	No. 13127 MP-73
KENOSHA EDUCATION ASSOCIATION AND ITS	:	Decision No. 9239-C
PRESIDENT WILLIAM KLENKE AND PRESIDENT	:	
ELECT ROBERT BAETZ,	:	
	:	
Respondents.	:	
	:	

ORDER AMENDING EXAMINER'S
FINDINGS OF FACT, CONCLUSION OF LAW
AND AFFIRMING EXAMINER'S ORDER

Examiner Robert B. Moberly having, on April 17, 1970, issued Findings of Fact, Conclusion of Law and Order in the above entitled matter, and the above named Complainant, having, pursuant to Secs. 111.70(4)(a) and 111.07, Wisconsin Statutes, timely filed a petition with the Wisconsin Employment Relations Commission for a review of the Examiner's Findings of Fact, Conclusion of Law and Order, and the Commission having reviewed said Findings of Fact, Conclusion of Law and Order, the entire record and said petition for review; and, being fully advised in the premises, makes and files the following Order Amending Examiner's Findings of Fact and Conclusion of Law and Affirming Examiner's Order.

AMENDED FINDINGS OF FACT

1. That Ray Ahern, hereinafter referred to as the Complainant, is an individual residing at 1419 South Pershing Boulevard, Kenosha, Wisconsin.
2. That the Respondent Kenosha Education Association, hereinafter referred to as the KEA, is a labor organization having its principal offices at 2525 63rd Street, Kenosha, Wisconsin; that Respondents

William Klenke and Robert Baetz, both of Kenosha, Wisconsin, at all times material herein, were President and President-Elect, respectively of the KEA.

3. That at all times material herein KEA has been, and is, the exclusive collective bargaining representative of all certified teaching personnel in the employ of Kenosha Unified School District #1, Kenosha, Wisconsin, hereinafter referred to as the Municipal Employer; and 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

. . .

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."

4. That during the school year 1968-1969 the Complainant was employed as a teacher by the Municipal Employer and was included in the collective bargaining unit represented by the KEA, and that the conditions of the Complainant's employment was subject to the collective bargaining agreement noted above; that in early March, 1969, the Municipal Employer gave Complainant a preliminary notice of non-renewal of his teaching contract for the school year 1969/70, that thereafter, upon a timely request, Complainant was afforded a private conference with the Municipal

Employer, that as a result of said private conference Ahern was suspended from his teaching position on March 10, 1969.

5. That Complainant consulted orally with Respondent Klenke on March 21, 1969, and with Robert Baetz on March 25, 1969, concerning the termination of his employment, and that as a result of such conferences the matter was referred to the KEA Professional Rights and Responsibilities Committee, hereinafter referred to as PRR, which is charged with the responsibility of investigating, processing, handling and adjustment of bargaining unit employes' grievances; and that the PRR investigated the circumstances surrounding Complainant's termination, including conferring and consulting with Complainant and his attorneys, reviewing the specific charges 1/ made against Complainant, as well as the facts supporting such charges, with the Superintendent and the Complainant's Principal and Assistant Principal.

6. That the PRR arranged and attended on Complainant's behalf, a conference on April 16, 1967, between Complainant and his attorneys and the Superintendent of Schools and the Municipal Employer's attorney for the purpose of reviewing and discussing the charges against Complainant, as well as the facts supporting such charges; that as a result of such conference Complainant agreed to perform certain conditions for the purpose of obtaining facts to present to the Municipal Employer which could refute the charges against him, and the Municipal Employer agreed to call a special meeting of its Board of Education to consider such evidence on a forty-eight hour call; and that, nonetheless Complainant refused to fulfill such conditions.

7. That as a result of its investigations and deliberations, the PRR concluded it could not take an active part in contesting such dismissal, but it advised the Complainant that it would support Complainant in an attempt to see that his rights to all aspects of a fair dismissal were protected, and by letter dated May 7, 1969, so informed Complainant

1/ For the purpose of the Commission's decision, it deems it unnecessary to specify the charges.

and his attorneys; that by letter dated May 9, 1969, the PRR was informed by Complainant's attorneys they had advised Complainant to submit his resignation; and that prior to the close of the school year Complainant submitted his resignation.

8. That on September 10, 1969, Complainant at his request, met with the officers of the KEA, claiming that he had resigned under duress and that he desired the KEA to support his "grievance"; thereupon the representatives of the KEA requested the Complainant to execute a written authorization to permit the KEA to examine the Complainant's personnel file, the written charges against him, as well as the written statement of supporting facts, in order for the KEA to determine whether Complainant's "grievance" had any merit; that the Complainant executed subject authorization, but at the same time demanded that the KEA guarantee that it would represent him unconditionally; that the representatives of the KEA indicated to the Complainant that it could make no such guarantee; that thereupon the Complainant withdrew and destroyed said authorization; and that thereafter no action was taken by the individual Respondents or the KEA on behalf of the Complainant.

9. That the Respondent KEA and individual Respondents Klenke and Baetz did not deny Complainant fair representation in the matter involving his resignation as a teacher in the school system operated by the Municipal Employer or in his efforts to seek re-employment as a teacher of said Municipal Employer.

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

AMENDED CONCLUSION OF LAW

1. That the Respondents Kenosha Education Association, William Klenke and Robert Baetz, having fairly represented the Complainant Ray Ahern in the matter involving his resignation as a teacher employed by Kenosha

Unified School District #1 and in his efforts to seek re-employment as a teacher with said Municipal Employer, did not interfere, restrain or coerce the Complainant Ray Ahern in the exercise of any rights provided in Section 111.70(2), Wisconsin Statutes, nor did said Respondents attempt to induce Complainant Ray Ahern's Employer, Kenosha Unified School District #1, to coerce, intimidate or interfere with Complainant Ray Ahern's rights as set forth in Section 111.70(2), Wisconsin Statutes; and that therefore none of said Respondents have committed, or are committing, any prohibited practices within the meaning of Section 111.70, Wisconsin Statutes.

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

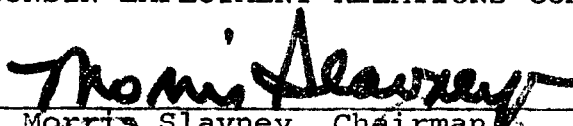
ORDER


It is ordered that the complaint filed in the instant matter be, and the same hereby is, dismissed.


Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN.

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ELECT ROBERT BAETZ,	:	
	:	
Respondents.	:	
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MEMORANDUM ACCOMPANYING
ORDER AMENDING EXAMINER'S
FINDINGS OF FACT, CONCLUSION OF LAW AND AFFIRMING ORDER

On September 15, 1969 the Complainant filed a complaint with the Commission alleging that the Kenosha Education Association and its President, William Klenke, and its President-Elect Robert Baetz, engaged in prohibited practices in violation of Section 111.70 of the Wisconsin Statutes in the following respects:

"My rights as a municipal employee in the public schools of Kenosha, Wisconsin have been violated on March 21, 1969 and again on March 25, 1969. At 4:30 PM on March 21, 1969, I went to the Kenosha Education Building at 2525 - 63rd Street, Kenosha, Wisconsin to see William Klenke, President of K.E.A. to ask him for K.E.A. representation on a grievance on hours and working conditions at McKinley Jr. High School, 5710 - 32nd Ave. Kenosha, Wisconsin. I asked Mr. Klenke for this support and he walked away and didn't return. At 8:00 PM on March 21, 1969, I phoned Mr. Klenke at his home. I asked him to have the K.E.A. represent me in the grievance and he said, "Mr. Ahern, we cannot represent you because you are not a member of K.E.A." On Tuesday evening, March 25, 1969, I called by phone Robert Baetz, President Elect of K.E.A., and asked him if he would have the K.E.A. represent me on the grievance of hours and working conditions at McKinley Jr. High School, 5710 - 32nd Ave. Kenosha, Wisconsin. Mr. Baetz said, 'We cannot represent you because you are not a K.E.A. member.'

"My legal rights as a municipal employee have been interfered and restrained by the Kenosha Education Association, through the above named officers, when they refused me my legal right to be represented."

On October 15, 1969, said Respondents filed an answer to the complaint wherein it requested that the complaint be dismissed and wherein it alleged certain facts as an affirmative defense.

Hearing in the matter commenced on October 24, 1969 before Examiner Robert B. Moberly, at which time the Respondents moved for dismissal of the complaint on the grounds that (1) it did not state a cause of action and (2) that the Commission lacked jurisdiction over the subject matter set forth in the complaint. The hearing was adjourned pending a ruling on the motion. On December 2, 1969 the Examiner issued an order denying said motion and the Commission herein affirms the ruling of the Examiner in that regard.

The hearing was reconvened on December 11, 1969 before said Examiner, where the only individual to testify was Respondent Klenke, who was called as an adverse witness by counsel for the Complainant. Following a review of the record and arguments of counsel, the Examiner, on April 17, 1970 issued his Findings of Fact, Conclusion of Law and Order in the matter, wherein he dismissed the complaint on the basis that the record had established that the Complainant at no time filed a grievance with the Association with respect to the matter as required in the collective bargaining agreement.

Following the issuance of the Examiner's decision the Complainant filed a petition for review thereof. While the Commission agrees with the Examiner's order that the complaint should be dismissed, it is of the opinion that the Findings of Fact and the Conclusion of Law should be amended so as to avoid the inference that the Respondents were not involved in any efforts to represent the Complainant because of the finding that he filed no formal grievance as required by the collective bargaining agreement.

As indicated in the Amended Findings of Fact the Respondents made a diligent effort to represent the Complainant with respect to the termination of his employment and with respect to his efforts to seek re-employment for the ensuing school year. Further we wish to observe that no evidence was adduced during the course of the hearing with respect to the allegations in the complaint to the effect that Respondents Klenke and Baetz stated that the Respondent KEA would refuse to represent Complainant because the Complainant was not a member of the KEA. The facts contained in the Amended Findings of Fact were adduced, in part, through the testimony of Respondent Klenke and from the uncontroverted facts alleged in the answer supporting the affirmative defense of the Respondents.

Despite the fact that no formal grievance was filed, the Respondents made every reasonable effort to represent the Complainant. The initial investigation prior to May 7, 1969 by the Professional Rights and Responsibilities Committee of the KEA convinced the Respondents, in absence of any proof to the contrary that the Complainant's grievance with respect to his dismissal was not meritorious.

Further, in the fall of the year when the Complainant apparently was seeking re-employment, the Respondents, in order to properly represent the Complainant if it were to process his "grievance" with respect to the failure of the Municipal Employer to employ him as a teacher for the school year 1969-1970, requested written authorization from the Complainant to represent him, in order to obtain his personnel file from the Municipal Employer to determine facts that might convince the Respondents that the Complainant's "grievance" was meritorious. On said occasion, the Complainant demanded a commitment from the Respondents that they would represent him, that implied proceeding with the processing of said "grievance" through all steps of the grievance procedure, regardless of the merit of said "grievance". When the Respondents refused to make such

a commitment, the Complainant withdrew the written authorization which he had executed and as a result the Respondents did not proceed further in the matter.

Under such circumstances we have concluded that the Respondents had not denied fair representation to the Complainant, and therefore the Respondents did not interfere with any of Complainant's rights, as set forth in 111.70, Wisconsin Statutes.

Dated at Madison, Wisconsin, this 30th day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner