

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WHITEHALL TEACHERS ASSOCIATION AND PATRICIA TURNER, Complainants, vs. WHITEHALL SCHOOL DISTRICT AND BOARD OF EDUCATION OF THE WHITEHALL SCHOOL DISTRICT, Respondents.	: :	Case III No. 14567 MP-95 Decision No. 10268-B
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ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
AND AMENDING MEMORANDUM ACCOMPANYING SAME

Examiner Marvin L. Schurke having on August 20, 1971 issued his Findings of Fact, Conclusions of Law and Order in the above entitled proceeding wherein the above named Respondents were found to have committed prohibited practices within the meaning of Section 111.70(3) (a)(1), Wisconsin Statutes; and said Examiner having issued an order to remedy the acts found to be prohibited by the Examiner; and no petition for review of said Findings of Fact, Conclusions of Law and Order having been filed within the statutory period set forth in Section 111.07(5), Wisconsin Statutes; and the Commission having reviewed the entire record in the matter and being satisfied that the Findings of Fact, Conclusions of Law and Order issued by the Examiner should be affirmed, however that the Memorandum accompanying same should be amended;

NOW, THEREFORE, it is

ORDERED

That, pursuant to Section 111.07(5), Wisconsin Statutes, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusions of Law and Order issued in the above entitled matter as its Findings of Fact, Conclusions of Law and Order and that the Memorandum accompanying same is amended as reflected in the attached Memorandum.


IT IS FURTHER ORDERED that said Respondents shall notify the Wisconsin Employment Relations Commission within ten (10) days of

the receipt of a copy of this Order as to what steps have been taken to fully comply with the Order.

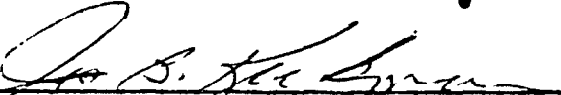
Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WHITEHALL TEACHERS ASSOCIATION
AND PATRICIA TURNER,

Complainants,

vs.

WHITEHALL SCHOOL DISTRICT AND BOARD
OF EDUCATION OF THE WHITEHALL SCHOOL
DISTRICT,

Respondents.

Case III
No. 14567 MP-95
Decision No. 10268-B

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
AND AMENDING MEMORANDUM ACCOMPANYING SAME

On August 20, 1971, the Examiner issued his decision in the instant matter wherein he concluded, among other things, that the Respondents had committed a prohibited practice in denying Patricia Turner, a teacher in its employ, the right to be represented by the Whitehall Teachers Association and the Wisconsin Education Association in a conference with the Respondents concerning Turner's conditions of employment. The Examiner ordered the Respondent to cease and desist from such activity; to expunge from Turner's employment record any and all reference to actions taken by the Respondents affecting the nonrenewal of the teaching contract, to the extent that such actions were taken on or after March 8, 1971; to repeal its resolution of refusal to renew Turner's teaching contract, to reinstate Turner as a teacher; and, further, to notify the Wisconsin Employment Relations Commission, in writing, within twenty days from receipt of a copy of the Order as to what steps it had taken to comply therewith.

On September 1, 1971, Counsel for the Respondents contacted Patricia Turner and inquired as to whether she planned on returning to her former teaching position. On September 4, 1971, Turner, in writing, advised the Respondents that she was presently enrolled at LaCrosse State University and therefore was resigning from her position. On September 10, 1971, Counsel for the Respondents advised the Commission, in writing, of such resignation and in said letter indicated:

"We assume there will be no further requirements on the part of the Whitehall School Board concerning this matter. If there are any further requirements, please advise us."

We affirm the entire Order of the Examiner, which required the Respondent to also:

"Expunge from the employment record of Patricia Turner any and all reference to actions taken by the Whitehall

School District and Board of Education of the Whitehall School District affecting the nonrenewal of the teaching contract of Patricia Turner, to the extent that such actions were taken on or after March 8, 1971.

Repeal its resolution of refusal to renew the teaching contract of Patricia Turner and reinstate Patricia Turner as a teacher in the Whitehall School District with all rights and privileges enjoyed by her prior to March 8, 1971, until such time as the Whitehall School District and Board of Education of the Whitehall School District may take new action affecting nonrenewal of her teaching contract consistent with Section 111.22, Wisconsin Statutes, Section 111.70, Wisconsin Statutes, and this Order."

In order to fully comply with the Order it is also necessary that the Respondents comply with the above portions of the Order issued by the Examiner and affirmed by the Commission.

As we have indicated in our Order, the Commission has affirmed the Examiner's Findings of Fact, Conclusions of Law and Order. It, however, does not entirely agree with the rationale of the Examiner in the Memorandum attached to his Order. The portion of the rationale involved appears on page 12 of the Examiner's decision and is contained in the first full and second paragraphs appearing on that page. In order to avoid any confusion, we are amending said two paragraphs to read as follows:

"It is clear that Section 111.70 does not provide that a Municipal Employer engages in a prohibited practice by refusing to bargain or by refusing to engage in conferences and negotiations in good faith with the representative of its employees. The legislature has created fact finding procedures for such situations. This principle was fully discussed in City of New Berlin (7293) 3/66 and the decision of the Commission in that case was acknowledged in Joint School District #8 vs. WERC 37 Wis. 2d 483 (1967). It would not be a prohibited practice, at least insofar as Section 111.70 is concerned, for a Municipal Employer to entirely refuse to confer or negotiate with the labor organization representing its employees. In Milwaukee County (8707) 10/68; Aff. Dane Co. Cir. Ct., Case No. 126-321 (1970) the reviewing Court followed substantially the same line of reasoning in finding that a denial of representation in a conference called by a Municipal Employer at its option was not a prohibited practice within the meaning of Section 111.70. The decision of this Commission in the Milwaukee County case was based on the history of negotiations and the negotiated collective bargaining agreement between the municipal employer and the Union which sought to represent the employe who was involved there. The decision of the reviewing court went beyond the scope of the decision under review and is not controlling on this case. Apart from any duty to confer and negotiate, Section 111.70(2) clearly mandates that municipal employes have a right to be represented by a labor organization of their own choice when conferences and negotiations do occur concerning their wages, hours and working conditions. The denial of representation in a conference does interfere with the right to be represented set forth in Section 111.70(2), and in denying

representation in such a conference the Municipal Employer here has committed prohibited practices within the meaning of Section 111.70(3)(a)(1)."

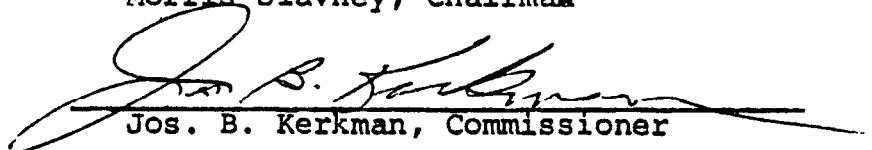
Dated at Madison, Wisconsin, this 30th day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Jos. B. Kerkman, Commissioner