

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CRANDON EDUCATION ASSOCIATION :
AND RICHARD STASKA, :
 :
Complainants, :
 :
vs. : Case III
 : No. 14566 MP-94
CRANDON JOINT SCHOOL DISTRICT NO. 1 : Decision No. 10271-C
AND BOARD OF EDUCATION OF CRANDON :
JOINT SCHOOL DISTRICT NO. 1, :
 :
Respondents. :
 :

ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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 the Respondent having filed a petition with the Wisconsin Employment Relations Commission for review of the Examiner's Findings of Fact, Conclusions of Law and Order; and the Commission having reviewed the entire record in the matter, and being satisfied that the Findings of Fact and Conclusions of Law issued by the Examiner should be affirmed and that the Order and Memorandum accompanying same should be amended;

NOW, THEREFORE, it is

ORDERED

1. That, pursuant to Section 111.07(5), Wisconsin Statutes, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact and Conclusions of Law issued in the above entitled matter as its Findings of Fact and Conclusions of Law.

2. That the Examiner's Order issued in the above entitled matter is hereby affirmed in all respects except as to Item 2, b. which is amended to read as follows:

"b. Repeal its resolution of refusal to renew the teaching contract of Richard Staska and make Richard Staska whole by reinstating Richard Staska as a teacher in Crandon Joint School District No. 1 with all rights and privileges enjoyed by him prior to March 2, 1971, to teach the subjects taught by him in the same number of classes assigned to him during the 1970-1971 school year, until such time as Crandon Joint School District No. 1 may take new action affecting nonrenewal of his teaching contract consistent with Section 118.22, Wisconsin Statutes, 111.70, Wisconsin Statutes, and this Order."

3. That the Memorandum accompanying Findings of Fact, Conclusions of Law and Order issued by the Examiner is amended as reflected in the attached Memorandum.

IT IS FURTHER ORDERED that said Respondents shall notify the Wisconsin Employment Relations Commission within 10 days of the receipt of a copy of this Order as to what steps have been taken to comply with the Order.

Given under our hands and seal at the City of Madison, Wisconsin, this 7th day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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

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AND RICHARD STASKA,

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vs.

CRANDON JOINT SCHOOL DISTRICT NO. 1
AND BOARD OF EDUCATION OF CRANDON
JOINT SCHOOL DISTRICT NO. 1,

Respondents.

Case III
No. 14566 DP-94
Decision No. 10271-C

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

On August 20, 1971 the Examiner issued his decision in the instant matter wherein he concluded among other things, that the Respondent had committed prohibited practices in denying Richard Staska, a teacher in its employ, the right to be represented by the Crandon Education Association and the Wisconsin Education Association in a conference with Respondents concerning Staska's conditions of employment. The Examiner ordered that Respondents cease and desist from such activity, expunge from Staska's employment record any and all reference to action by the Respondents affecting the nonrenewal of the teaching contract of Staska to the extent that such actions were taken on or after March 2, 1971; to repeal the resolution of refusal to renew Staska's teaching contract, to reinstate Staska as a teacher, and, further, to notify the Wisconsin Employment Relations Commission in writing within 20 days from receipt of a copy of the Order as to what steps it had taken to comply therewith.

On August 26, 1971 Respondents directed a letter to the Commission as follows:

"In response to your order dated August 20, 1971, the following steps have been taken: we will cease and desist, expunge, repeal, permit and at this point, notify, in accordance with your directives.

Staska has been reinstated as of August 26, 1971. The following points should be brought to your attention as well. Since we were notified at a very late date of your decision and our schools opened August 23, 1971, I contracted the services of another teacher to replace Staska a short time ago. Your order for reinstatement of Staska at this time, along with our contracting another teacher due to the lateness of your decision, has caused us a few problems. It is impossible to rescind the contract of the replacement leaving us with a surplus of teachers in the science department. It

was also too late to juggle teaching assignments due to conflicts in students schedules to make the best possible use of the people we now have. We have, however, given Staska a very easy schedule to make him whole as directed. Records to the extent of action taken on or after March 2, 1971 against Staska have been removed from his employment record. The Crandon Joint School District will cease and desist from refusing CEA representatives to attend private conferences, repealed the resolution of refusal to renew Staska's teaching contract, and permitted Staska, (sic) et al, to be represented by qualified parties."

On August 27, Respondents directed a letter to the Commission as follows:

"Staska was reinstated with full rights and privileges as directed. A copy of his teaching schedule is listed below for a seven hour day.

Period 1: Preparation
2: Senior high study hall
3: 7th grade science
4: Senior high study hall

Lunch

5: Junior high study hall
6: " " " "
7: " " " "

Due to the late arrival of the decision which forced me to hire a replacement for him scheduling Staska became very difficult due to commitments to the replacement."

On September 15, 1971 the Commission received additional correspondence from Respondents as follows:

"Please be advised that after reinstatement of Richard Staska, Case III, No. 14566 MP-94: Mr. Staska was given the duties outlined in my letter of August 27, 1971.

On August 26, Mr. Staska entered my office and refused to teach in his assigned areas, indicating that he would go home and wait for me to call and change his schedule. As of this date I have not heard from him other than a phone call on the same day he left indicating that he would wait until our appeal was acted upon."

It is apparent from the correspondence directed to the Commission, in compliance with the Examiner's Order, that a dispute has arisen over the interpretation and application of the Examiner's Order. Reference is made to the Examiner's Memorandum Accompanying Findings of Fact, Conclusions of Law and Order and specifically to the last paragraph beginning on page 13 thereof wherein it is stated that "the remedy which has been ordered has been formulated with the intent that it make the teacher whole without being punitive against the Municipal Employer" and further "in accordance with the remedy which has been ordered, Staska will be made whole by restoring him to the status he held as of the moment preceding the improper refusal to permit representation in

the private conference held pursuant to Section 118.22." Unless it were the case that Mr. Staska was teaching one 7th grade science class and monitoring 5 study halls per day on March 2, 1971 and during the 1970-1971 school year, the schedule outlined by the Respondent in its letter of August 27 would not make Staska whole. The Commission has therefore amended the Examiner's Order to make it clear that Staska should not suffer in any way as a result of the prohibited practices of his Employer, and should be reinstated to the same or a substantially similar position to that which he held prior to the Employer's prohibited conduct.

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 pages 12 and 13 of the Examiner's decision and is contained in the last paragraph beginning on page 12 and the first full paragraph on page 13. In order to avoid any confusion, we are amending said two paragraphs to read as follows:

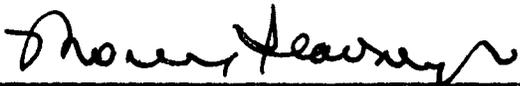
"It is clear that Section 111.70 does not provide that a Municipal Employer engages in a prohibited practice by refusing to bargain or by refusing to engage in conferences and negotiations in good faith with the representative of its employees. The legislature has created fact finding procedures for 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 as 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)."

Our Order herein is to remedy the prohibited practice committed by the Respondents in denying Staska the right to be represented in the private conference regarding the determination of the Respondents

not to renew his teaching contract for the year 1971-1972. Our decision is in no way intended to imply, provided Staska is given the right to be represented at his private conference, that Staska is or is not entitled to have his teaching contract renewed for said school year.

Dated at Madison, Wisconsin, this 7th day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner