

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENOSHA EDUCATION ASSOCIATION, :

Complainant, :

vs. :

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1; :

BOARD OF EDUCATION, KENOSHA UNIFIED :

SCHOOL DISTRICT NO. 1; OTTO F. HUETTNER, :

SUPERINTENDENT OF SCHOOLS, KENOSHA :

UNIFIED SCHOOL DISTRICT NO. 1, :

Respondent. :

Case XXI
 No. 15280 MP-115
 Decision No. 10752-B

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

Examiner Howard S. Bellman having, on July 19, 1972, issued his Findings of Fact, Conclusion of Law and Order, together with a Memorandum accompanying, in the above entitled matter, wherein the above named Respondent was found not to have committed any prohibited practices within the meaning of the Municipal Employment Relations Act, and wherein the Examiner dismissed the complaint; and the above named Complainant having timely filed a petition with the Wisconsin Employment Relations Commission requesting a review of the Examiner's decision as well as a brief in support thereof; and the Respondent having filed a memorandum in opposition to said petition for review; and the Commission, having reviewed the Examiner's decision, the entire record, the petition for review and the brief filed in support thereof, as well as the memorandum opposing the petition for review, being satisfied that the Findings of Fact, Conclusions of Law and Order issued by the Examiner be affirmed and, further in that regard, the Commission adopts the rationale set forth in the Examiner's Memorandum accompanying said decision, however, the Commission being satisfied that it desires to add further rationale to the Memorandum;

NOW, THEREFORE, it is

ORDERED

That, pursuant to Section 111.05(7) of the Wisconsin Employment Peace Act, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusion of Law and Order issued in the above entitled matter as its Findings of Fact, Conclu-

sion of Law and Order, and further adopts the Memorandum accompanying the Examiner's Findings of Fact, Conclusion of Law and Order, with additional Commission rationale.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of October, 1972.

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

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

In its petition for review, the Complainant contends that the Examiner erred in finding that the participation of the teachers in the American Education Week program "was required", contending that such required attendance was not established by a preponderance of the evidence, and therefore, the Examiner should have found that the activity of the teachers in not participating in said program was protected activity, and that the Respondent, by issuing the letter of reprimand to employes who did not participate in said activity, committed the prohibited practice as alleged in the complaint.

In its memorandum opposing the petition for review, the Respondent contended that the record contained more than sufficient evidence to support the Examiner's decision and that the petition for review therefore should be denied.

The Commission hereby adopts the well-reasoned rationale set forth in the Examiner's Memorandum in support of his order dismissing the complaint. However, we wish to discuss an additional factor, which in our opinion, supports the conclusion that the participation of the teachers in the program involved was not considered voluntary. This additional factor is reflected in the fact, and as found by the Examiner in paragraph 4 of his Findings of Fact, that the Complainant requested the Respondent to postpone the American Education Week program until after the parties had concluded their negotiations on the 1971-1972 collective bargaining agreement. Such request was contained in a letter, dated October 20, 1971, over the signature of the Complainant's president, addressed to the president of the Respondent Board of Education. More specifically, in said letter, in addition to requesting that the Respondent postpone the program and indicating that a substantial majority of the teachers would not be present, the letter ended with the following statement, "we ask that plans be made to reschedule these open houses after we have agreed upon a master contract."


It would appear to the Commission that had not the Complainant deemed that the participation of teachers was required in the scheduled program, it would not have asked that the program be rescheduled.


As discussed by the Examiner in his decision, the teachers had participated, as they had done in the past, in planning the program involved. Past practice throughout the years indicates that when a teacher desired not to participate in the program, said teacher would obtain an excuse from such participation. Under the circumstances we wonder what would have been the Complainant's position had the Respondent, rather than the Complainant, unilaterally canceled the program and indicated that it would reschedule same after the parties

had completed their negotiations. It is to be understood that our determination to adopt the Examiner's decision is in no way based on such probability, but rather on the facts adduced during the course of the hearing before the Examiner.

Dated at Madison, Wisconsin, this 12th day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkmann, Commissioner