

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

APPLETON EDUCATION ASSOCIATION and
STEPHEN DWORATSCHEK,

Complainants,

vs.

JOINT SCHOOL DISTRICT NO. 10, CITY OF
APPLETON, OUTAGAMIE, CALUMET and
WINNEBAGO COUNTIES, TOWNS OF BUCHANAN
and GRAND CHUTE, OUTAGAMIE COUNTY,
TOWN OF HARRISON, CALUMET COUNTY and
TOWN OF MENASHA, WINNEBAGO COUNTY:
and BOARD OF EDUCATION OF JOINT SCHOOL
DISTRICT NO. 10, CITY OF APPLETON,
OUTAGAMIE, CALUMET AND WINNEBAGO
COUNTIES, TOWNS OF BUCHANAN and GRAND
CHUTE, OUTAGAMIE COUNTY, TOWN OF
HARRISON, CALUMET COUNTY and TOWN OF
MENASHA, WINNEBAGO COUNTY,

Respondents.

Case XIV
No. 15578 MP-135
Decision No. 10996-A

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce Ehlke, for the
Complainants.

Mr. David G. Geenen, City Attorney, City of Appleton, for the
Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed on April 28, 1972, with the Wisconsin Employment Relations Commission in the above entitled matter and on May 11, 1972, the Commission having appointed Robert M. McCormick, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and on May 25, 1972, the Respondent, Joint School District No. 10, et al, having filed an answer to the original complaint filed by the above named Complainants; that hearing in such matter was held on June 6, 1972, after which both parties filed briefs and reply briefs by September 11, 1972; that the Examiner having considered the evidence, arguments and briefs of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Appleton Education Association, hereinafter referred to as the Association, is a labor organization as defined by Section 111.70(1)(j) of the Wisconsin Statutes and is recognized by the Respondent as the exclusive bargaining representative for all professional staff members in Respondent District who do not have

evaluative responsibility of other professional staff members including classroom teachers, traveling teachers, school psychologists and psychometrists, school social workers, attendance officer, school nurses and consultants; that the President of the Complainant Association is Edward S. Benedict and his post office address is 811 East Roeland Street, Appleton, Wisconsin 54911.

2. That Stephen Dworatschek, hereinafter referred to as Dworatschek, is a public school teacher certified by the State of Wisconsin, and at all times material herein has been employed as a school teacher by the Respondent District and Board and has been a member of the bargaining unit represented by Complainant Association.

3. That Joint School District No. 10, City of Appleton, Outagamie, Calumet and Winnebago Counties, Towns of Buchanan and Grand Chute, Outagamie County, Town of Harrison, Calumet County and Town of Menasha, Winnebago County, is a Municipal Employer as defined in Wisconsin Statutes, Section 111.70(1)(a); that its post office address is 120 East Harris Street, Appleton, Wisconsin 54911.

4. That Board of Education of Joint School District No. 10, City of Appleton, et al, hereinafter referred to as the School Board, is charged by statutes with the possession, care, control and management of the property and affairs of said Joint School District No. 10 and exercises general supervision over the schools in said District and that its President is Kenneth Sager; that its post office address is 120 East Harris Street, Appleton, Wisconsin 54911; that serving as District Administrator at said School District is Mr. Orlyn Zieman; that serving as Principal of Appleton High School East is Mr. Stan Ore.

5. That, at all times material herein, there was no collective bargaining agreement in full force and effect between the School Board and the Association; that the collective bargaining agreement had expired on December 31, 1971, and no new agreement had been reached in the course of the time material herein; that said agreement which expired on December 31, 1971, contained a grievance procedure with the terminal step containing an appeal to the School Board.

6. That on January 4, 1972, Dworatschek was informed by letter from Mr. Stan Ore that he could not recommend to the Respondent that Dworatschek's teaching contract be renewed for the 1972-1973 school year; that, in said letter, Mr. Ore suggested that Dworatschek begin looking for another position for the next school year.

7. That pursuant to Section 118.22, Wisconsin Statutes, school boards in the State of Wisconsin are obliged to give notice of an intention to nonrenew a teacher's individual contract for the ensuing school year; that said provision provides in material part as follows:

"118.22 Renewal of teacher contracts

. . .

(2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employe at the direction of the board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such notice is given on or before March 15, the contract then in force shall continue for the ensuing school year. A teacher who receives

a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew his contract for the ensuing school year on or before March 15, shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew his contract."

8. That on January 20, 1972, Mr. Ore sent a letter to the School Board containing information in support of his recommendation that Dworatschek not be offered a contract to teach at Appleton High School East for the 1972-1973 school year; that, on February 14, 1972, the Director of Operations for the School Board sent a letter to Dworatschek, informing him of reasons for the consideration of nonrenewal of his teaching contract and further informed him that,

"You may wish to request a conference and/or a public or private hearing with the Appleton Board of Education. Due process guaranties that right. You may wish to be represented by an attorney or another agent. Such request must be received in writing by Mr. Zieman within five (5) days of your receipt of this letter. If you wish both a conference and a hearing, the latter must be requested within five (5) days after the conference has been held."

9. That on February 16, 1972, Dworatschek informed the Board by letter that he desired "a conference and subsequent hearing should this question not be satisfactorily resolved during the conference"; that on or near February 22 the Executive Committee of the Association held a meeting at which Dworatschek and the Association's Attorney, Mr. Gordon Myse, were present, in the course of which the Association and Myse advised Dworatschek of his right to proceed under the statute, and in the course of which Myse advised the Association of its obligation and rights in further representing Dworatschek at the scheduled conference; that the purpose of said meeting of the Executive Committee of the Association was to determine whether the Association would represent Dworatschek at his nonrenewal conference and possible hearing; that no decision was reached with regard to the Association's performing such a representation function; that on or near February 26 the Association did decide to represent Dworatschek in the prospective nonrenewal proceedings; that on February 23, 1972, a conference between Dworatschek and the School Board was scheduled by the Board for the evening of February 28, 1972; that such a conference was conducted on February 28, 1972; that in attendance at

such conference before the School Board were the members of the Professional Rights and Responsibilities Committee of the Association, the Attorney for the Association, Mr. Gordon Myse, and the Association President, Mr. Edward S. Benedict, and Dworatschek; that after presentations by Dworatschek and the Administration, the School Board deferred decision in the matter until after the conference.

10. That, on March 3, 1972, the School Board, by the District Administrator's letter, informed Dworatschek that it "continues to consider nonrenewal of your teaching contract for the 1972-1973 school year" and

"As previously explained to you, you are entitled to a hearing with the Board of Education on this matter. Again, you may be represented by a person or persons of your choosing. Should you wish to have a hearing, please advise this office before 5:00 p.m. on Wednesday, March 8, 1972. Also, please indicate if you wish this hearing to be held in private or public. Following the hearing, the Board of Education will make a definite determination regarding renewal or nonrenewal."

11. That the School Board and the Association in their collective bargaining relationship at least since 1970 had not been involved in any case of a previous nonrenewal of a teacher; that the School Board, in its previous contact with the Association in the course of contract administration and grievance negotiations, had dealt with either Mr. Myse as the local Association's attorney or directly with Association officers.

12. That by letter dated March 6, 1972, Dworatschek informed the School Board that he desired "a date be set for a public hearing in this matter"; and that by letter dated March 8, 1972, signed by Zieman, the School Board informed Dworatschek that "the hearing will be scheduled for Tuesday evening, March 14, 1972, at 7:15 p.m. in the Board of Education meeting room" and "at this hearing you may appear with and be represented by counsel and may respond to the reasons and present evidence in refutation of the reasons"; and that said March 8th letter stated that should Complainant Dworatschek have any questions he should contact Mr. Orlyn A. Zieman; that said March 8th letter was hand delivered to Dworatschek by said Administrator on March 9, 1972.

13. That, on or about March 6, 1972, the Association, through its President, attempted to contact the Wisconsin Education Association for legal assistance; that such attempt was unsuccessful; that on March 8, 1972, the Association President contacted the Wisconsin Education Association and requested the assistance of the Wisconsin Education Association to arrange for an attorney to assist the Association and Dworatschek; that the Wisconsin Education Association instructed the Association to contact Mr. Bruce Davey for said legal assistance; and that on March 9, 1972, after the School Board had set hearing in the matter by its letter of March 8, 1972, the Association, through its President, made an oral request to Mr. Zieman that the hearing before the School Board regarding the nonrenewal of Dworatschek be postponed and rescheduled for a later date; that the basis for said request was that the attorney obtained to represent the Association and Dworatschek was unavailable for that evening.

14. That, on or about March 9, 1972, at the instructions of the Association, Dworatschek contacted Mr. Davey and requested that Mr. Davey represent him at said hearing; that on March 10, 1972, Mr. Davey called Mr. David Geenen, the City Attorney for the City of Appleton, who was representing the School Board, and informed Mr. Geenen that he was representing Dworatschek in said nonrenewal hearing, and further informed Mr. Geenen that he could not attend a hearing on the 14th of March due to a prior commitment and requested that the hearing be postponed until a later date; that Attorney Davey informed Geenen that Dworatschek would waive the requirement of Section 118.22 of the Wisconsin Statutes as it relates to a March 15th notice of intent to nonrenew, and that Dworatschek would further waive any right that he had to a contract for the 1972-73 school year if such notice were not given by March 15, 1972; and that Mr. Geenen, on behalf of the School Board, denied said request for postponement and declined to accept such a waiver on said terms.

15. That, on March 10, 1972, Dworatschek conferred with the Administrator of the School Board and requested that the hearing regarding the nonrenewal of his contract be postponed so that the Complainant Association could have counsel present; that said Administrator informed the Complainant that any postponement must be made by the School Board.

16. That, on March 13, 1972, Dworatschek hand delivered a letter, dated March 11, to Mr. Zieman, informing Mr. Zieman that Mr. Bruce Davey, of the firm of Lawton & Cates, "had been retained by the WEA" to represent Dworatschek at the public hearing; that Dworatschek further requested a postponement of the hearing date in order that Mr. Davey would have sufficient time to review the pertinent materials; that when reading said letter, Mr. Zieman orally informed Dworatschek that the Board would not grant a postponement of the hearing.

17. That on March 14, 1972, Mr. Davey called City Attorney Geenen and again requested that the hearing be postponed and again informed City Attorney Geenen that a written waiver of Complainant Dworatschek's rights under Section 118.22 of the Wisconsin Statutes would be provided by Dworatschek; that Mr. Davey was informed by City Attorney Geenen that the hearing date would not be postponed; that further, on March 14, 1972, Complainants' attorney called Mr. Zieman and requested that the hearing be postponed and informed the Administrator that he could not be present at said hearing because of a prior commitment and informed the District Administrator that Complainant would provide the Board with a written waiver of his rights under Section 118.22 of the Wisconsin Statutes; that the District Administrator informed Mr. Davey that the hearing would not be postponed.

18. That on the evening of March 14, 1972, a representative of the Association and Dworatschek, unaccompanied by legal counsel, appeared before the School Board; that at the outset of the proceedings Dworatschek requested that he be granted an adjournment of the hearing until a later date because his attorney was unable to attend the hearing due to a prior commitment and because said attorney did not have sufficient time to study the facts of the case and to present an appropriate defense; that Dworatschek further informed the Board that if his request would be granted, he would waive his right to notice regarding renewal or nonrenewal of his contract under Section 118.22 of the Wisconsin Statutes; that the School Board refused to grant an adjournment and proceeded with the hearing on the question of nonrenewal; that the representative of the Association, Benedict, informed the School Board that Dworatschek had

been advised not to respond to questions of the Board or to those of Board's counsel on the merits of the nonrenewal question because the School Board's denial of a postponement effectively deprived Dworatschek of counsel; that at said hearing, several individuals stepped forward to speak in favor of renewal of the contract of the Complainant; that there was no evidence to determine at whose request, if any, such persons appeared; that throughout the hearing Dworatschek and the President of the Association asked no questions and made no comments on the merits of the nonrenewal; that at the end of such hearing, on the question of whether to renew Dworatschek's teaching contract, the School Board voted to nonrenew said contract.

19. That at least from February 15, 1972, Dworatschek had received notice from the School Board through its representative, that he had a right and opportunity to have counsel present at both the prospective conference and possible hearing on nonrenewal; that the representatives of the School Board had knowledge at least from February 28, 1972 that the Association and its counsel Mr. Myse, were acting as the representatives of Dworatschek in the course of his challenge of the Board's action on nonrenewal; that the School Board had no different information until March 9, 1972, one day after it had noticed the matter for public hearing upon the request of Dworatschek; that the Association did not advise the School Board until March 9, 1972 that an attorney other than Mr. Myse had been employed by the Association to represent its member Dworatschek; that for all time material herein after March 9, 1972, neither the Association nor Dworatschek made any other arrangements to secure counsel, other than Davey, to be present and represent Dworatschek at the March 14th hearing; that the School Board by its conduct from February 14, 1972 through March 14, 1972, afforded Dworatschek reasonable opportunity to be represented by his bargaining representative, including its affording to Dworatschek reasonable opportunity to engage counsel to represent him and/or the Association at a nonrenewal hearing.

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

CONCLUSIONS OF LAW

1. That the decision of whether or not a teacher's employment contract is to be renewed involves a question, having a direct and intimate effect upon the wages, hours and conditions of employment of such teacher and constitutes a subject over which a labor organization may seek to influence through collective bargaining in performance of its function as the chosen bargaining representative of a teacher, within the meaning of Section 111.70(2) of the Wisconsin Statutes.

2. That, Stephen Dworatschek is a municipal employe within the meaning of Section 111.70(1)(b), Wisconsin Statutes, and as such has a right to be represented by the Appleton Education Association as a labor organization of his own choice in conferences and hearing with his Municipal Employer on questions affecting his conditions of employment, including the question of Complainant's continued employment which was to be determined by the School Board's ultimate decision on nonrenewal; and that the Commission has jurisdiction to hear and decide allegations in Dworatschek's complaint as to whether the School Board may have denied him representation by its refusal to postpone a hearing on nonrenewal, as a possible act of interference within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

3. That the School Board's action in denying the requests of the Association and Dworatschek for a postponement of hearing concerning the question of Dworatschek's nonrenewal, after it had scheduled same for March 14, 1972, and where such requests for postponement had been based upon the unavailability of Complainants' new counsel, did not constitute a denial of Dworatschek's right to representation, and did not constitute a denial of the Association's right to carry out its function as exclusive bargaining representative; and therefore the Respondent Joint School District No. 10, City of Appleton, et al, did not interfere with, restrain or coerce the Complainants in the exercise of their right under Section 111.70, and in that regard, Respondent Joint School District No. 10, City of Appleton, et al, did not commit, and is not committing, any prohibited practices within the meaning of Section 111.70(3)(a)1, or any other provisions of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions 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 Madison, Wisconsin, this 19th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

JOINT SCHOOL DISTRICT NO. 10, CITY OF APPLETON, ET AL, XIV,
Decision No. 10996-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On April 28, 1972, the Appleton Education Association and Stephen Dworatschek filed a complaint with the Wisconsin Employment Relations Commission alleging that the School Board's refusal to postpone a hearing on the question of Complainant Dworatschek's nonrenewal in order that he and Complainant-Association could be represented by their attorney at such hearing regarding his nonrenewal, constituted an interference with, restraint and coercion against the exercise of Complainants' rights secured under Section 111.70(2), Wisconsin Statutes, namely, to representation by the Association as bargaining representative; and that all of such conduct by the Respondent School Board constituted a prohibited practice in violation of Section 111.70(3)(a)1, Wisconsin Statutes.

In that regard, the answer filed on May 25, 1972, denied that the School Board's refusal to postpone the nonrenewal hearing constituted a prohibited practice. As a separate defense on the merits, the School Board alleged:

"1. That the Appleton Education Association and Stephen Dworatschek were represented by legal Counsel up to and at the hearing held on February 28, 1972. That no attorney-client relationship existed between Lawton and Cates and Stephen Dworatschek and between Lawton and Cates and the Appleton Education Association prior to March 10, 1972.

2. The availability or lack of legal counsel at the non-renewal hearing on March 14, 1972 was caused by the laches of the complainants who had notice commencing January 3, 1972 that the Board was considering non-renewal of Mr. Stephen Dworatschek's teaching contract. That responsibility for having legal counsel available if desired rests with the party being considered for non-renewal and that said non-renewal hearings are not adversary proceedings for which legal counsel is essential. That the Appleton Education Association was present at and spoke for Mr. Stephen Dworatschek at the non-renewal hearing and at the preliminary meetings.

3. That non-renewal of teaching contracts is a legislative function of the Board of Education reserved exclusively to it by both Wisconsin Statutes Sec. 118.22 and by the current collective bargaining agreement between the Appleton Board of Education and the Appleton Education Association. That the Wisconsin Employment Relations Commission lacks jurisdiction to review teacher non-renewal hearings.

4. That Wisconsin Statutes Section 118.22 requires written notice of non-renewal on or before March 15 or the teacher contract is continued for the ensuing year and that the statutory date is mandatory and cannot be waived."

JURISDICTION

The nonrenewal procedures of Section 118.22 involve the question of tenure of a teacher as an employee. Tenure is the most significant

single aspect of an employment relationship and any change in the tenure of an employe has a direct and intimate affect upon salaries, hours and working conditions. The Examiner concludes that the question of nonrenewal of a teaching contract is a mandatory subject for bargaining within the scope of Section 111.70. The procedures of Section 118.22 entitle a teacher, who is being considered for non-renewal, to a conference with his or her Municipal Employer. The Commission has jurisdiction to determine whether or not the rights secured under Section 111.70(2), namely, to be represented by a labor organization for purposes of collective bargaining with the Municipal Employer, have been interfered with by the Respondent School Board in violation of Section 111.70(3)(a) 1. 1/

WAIVER OF SECTION 118.22

The School Board contends that the March 15th deadline relating to notice requirements set forth in 118.22, Stats. are mandatory, and these cannot be waived. Whether such a waiver as was proffered by Dworatschek some four days before the scheduled nonrenewal hearing of March 14, 1972, would frustrate the purpose of the statute, is doubtful. However, 118.22(3) speaks in terms of "preliminary notice in writing that the board is considering nonrenewal of a teacher's contract. . .", which is to be given at least 15 days before a Board's written notice of its refusal to renew a teacher's contract for the next school year. Such preliminary notice leads to the private conference which in this case was conducted on February 28, 1972. The statute does not require a subsequent hearing of the kind scheduled here by the School Board for March 14, 1972. It may very well be that if a labor organization and a School Board have provided for hearing, after the statutory conference, in their collective agreement, that a labor organization representing a complaining teacher may properly offer a teacher's timely waiver of a March 15th notice for purposes of securing a short postponement of a nonrenewal hearing, without depriving a School Board of any substantial opportunity to search for a replacement. Even under 118.22, with its reference to April 15 as the date for incumbent teachers to accept or reject their individual contracts, a School Board would have little reason to begin a search for a replacement before the April 15 date, by which time other incumbent teachers throughout the state would have acted on acceptance or rejection of their contracts.

At the time of the scheduled nonrenewal hearing in this case, the School Board afforded a hearing after the statutory conference, not by virtue of a collectively bargaining requirement, but because the then existing Federal substantive law required a hearing on a teacher's non-renewal under the due process (as then interpreted) requirements of the Constitution. See Board of Regents of State Colleges et al v. David F. Roth, etc. 446 F. 2d 806 (1971). After the U.S. Supreme Court decision reversing the Seventh Circuit in Roth, 405 U.S. _____, 92 Sup. Ct. 2701 (1972), no such hearing thereafter would be required for non-tenured teachers, or for a teacher who had no property interest in con-

1/ Crandon Joint School District No. 1 (WERC 10271-B, 9/71); Joint School District No. 8, City of Madison et al, 37 Wis. 2d 483 (1967); See also, Kenosha Teachers Union v. WERC, 39 Wis. 2d 196 (1967) where the Commission determined that a School Board's nonrenewal of a teacher's contract was not motivated by the teacher's union activities.

tinued employment, or for a teacher who could not assert that he had been denied some liberty such as his interest in his reputation, by the action of nonrenewal. For purposes of disposing of the merits here, we shall assume that a teacher could properly waive the receipt of the 118.22 notice by March 15, as part of his request for a reasonable postponement of a post-conference hearing, even though in most instances the decisional rule of Roth no longer requires such a hearing.

DENIAL OF POSTPONEMENT AND THE RIGHT TO REPRESENTATION

The School Board has argued that Dworatschek had sufficient opportunity to obtain counsel for the hearing. The question is not whether or not there was a denial of right to counsel, no such separate right exists unless it be a right existing under certain conditions which may call for due process in the matter of nonrenewal hearings under the U.S. Supreme Court's test in Roth. The sole question here is whether the School Board effectively denied the Complainant's right to representation by its refusal to grant Complainants' requests for a postponement so that designated counsel of Dworatschek and the Association could be present at the nonrenewal hearing to represent both Complainants?

The record discloses that the School Board officially apprised Dworatschek as early as February 14, 1972 that both a conference and a hearing might be held and further alerted him to his right "to be represented by an attorney or another agent". Thereafter, and up to the time of the February 28, 1972 conference, the School Board had no other knowledge save the fact that the Association was assisting Dworatschek in the matter which included the assistance of the Association's local attorney, Mr. Myse. For Association representatives to testify, after the fact, in this prohibited practice proceeding, that Mr. Myse somehow performed a bifurcated representation role at the conference, namely, of representing the Association, but only incidentally engaged by the Association to alert the Complainant Dworatschek as to his rights, does not detract from the fact that the exclusive representative, the Association, allowed the School Board to draw the conclusion that Dworatschek and his bargaining representative were represented by Mr. Myse. The School Board communicated its decision on March 3, 1972 to "continue to consider nonrenewal of Dworatschek's teaching contract."

The mere fact that the School Board on March 3, advised Dworatschek that a hearing was a possibility if Dworatschek made timely request for same to consider the question of nonrenewal, did not afford Dworatschek and the Association the luxury of protracted consultation after February 28 as to whether a hearing may be required and whether other counsel should be engaged. Both Complainants permitted the Board to go through the process of setting a hearing date by March 8th and communicated in its delivery of a March 9th letter. It is significant that Dworatschek, after the February 28 conference, upon learning of the School Board's March 3rd decision to confirm nonrenewal, advised the Board in writing on March 6th, that he desired a hearing, but otherwise Dworatschek did not mention representation or the subject of securing counsel.

Though all of the previous correspondence of Board representatives had been with Dworatschek from at least January 20, 1972, the School Board first learned of Dworatschek's search for other counsel on March 9, 1972, from Benedict, President of the Association, who indicated that the Association was arranging for an attorney and that the attorney could not be available for a March 14th hearing. He further requested

a postponement from Zieman, the Administrator. Dworatschek retained Davey on Friday, March 10, 1972 and on that date orally advised Zieman of such fact and that his attorney from Madison could not be available on March 14th. Counsel for Complainants elicited from Dworatschek, on direct examination, that he (Dworatschek) first received information that he would be obliged to go to hearing on his nonrenewal as of the receipt of Zieman's letter dated March 3, 1972. The Examiner can only conclude that Complainant by his answer at hearing chose to ignore the information he had received from the Administration as early as January 20, 1972, that a hearing on nonrenewal might very well be possible. The testimony of witnesses for the Complainants would indicate that Dworatschek and the Association representatives elected to wait "by-the numbers" for the School Board's decision from conference to the date hearing was scheduled.

Under the foregoing circumstances we cannot give such breadth to Dworatschek's right to representation and to the Association's right to carry out its functions as a representative under Section 111.70(3)(a)1, Stats., which would in effect permit Dworatschek to secure representation and an adjourned hearing according to his timetable and that of his bargaining representative, after he and his bargaining representative permitted the School Board to make the tacit assumption from February 28 to March 10, 1972 that Complainants had sufficient representation to proceed to a prospective hearing.

Though Complainants have set forth allegations in their complaint, which if proven, may give rise to a claim for relief under Section 111.70 of the Municipal Employment Relations Act (MERA), the Examiner concludes, based upon the Findings, Conclusions and discussion thereon, supra, that the Complainants have failed to prove by a sufficient quantum of evidence, as required by Section 111.70(4)(a) and 111.07 of the Wisconsin Statutes, that the Respondent-School Board has committed an interference within the meaning of Section 111.07(3)(a)1 of MERA. Therefore, the Examiner has, in the attached order, dismissed the complaint filed herein.

Dated at Madison, Wisconsin, this 19th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Robert M. McCormick
Robert M. McCormick, Examiner

