

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JUDITH D. BERNS,

Complainant,

vs.

MILWAUKEE BOARD OF SCHOOL DIRECTORS,

Respondent,

MILWAUKEE DISTRICT COUNCIL 48 and
ITS AFFILIATED LOCAL NO. 1053,
AFSCME, AFL-CIO,

Intervenor.

Case XLI
No. 15992 MP-168
Decision No. 11280-B

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

Examiner Marshall L. Gratz having on November 27, 1972, issued his Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, in the above entitled matter, wherein he found that the above named Respondent did not commit any prohibited practice within the meaning of the Municipal Employment Relations Act, and further, wherein he issued an Order dismissing the instant proceeding; and on December 15, 1972, the above named Complainant, by its Counsel, having filed a petition requesting the Commission to review the Examiner's decision; and the Commission having reviewed the entire record, the decision of the Examiner, and the Petition for Review, and being satisfied that the Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, issued by the Examiner should be affirmed;

NOW, THEREFORE, it is

ORDERED

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

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of December, 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

1/ The Commission has expanded on the Examiner's Memorandum in responding to the Petition for Review.

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

In her petition for review the Complainant alleges that the Examiner was in error in finding that the failure of the Respondent to provide a prompt hearing to the Complainant regarding her grievance did not violate the collective bargaining agreement existing between the Respondent and Milwaukee District Council 48 and its affiliated Local No. 1053, AFSCME, AFL-CIO, and further the Complainant alleged in her petition for review that the Conclusion of Law to the effect that the failure of the Respondent to provide a prompt hearing in the matter did not constitute a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

The Memorandum accompanying the Examiner's decision, in our opinion, succinctly sets forth the Examiner's rationale for his decision, and we agree with his rationale.

The Examiner concluded that Section 111.70(4)(d)1, while affording a "right" to individual employes to present and confer with a municipal employer on grievances, does not grant that employe any contractual rights with respect to processing her grievance. The Complainant in her petition for review contends that the grievance procedure established in the collective bargaining agreement is available to her as an individual employe without union representation by virtue of Section 111.70(4)(d)1.

The above statutory provision provides, in material part, that ". . . any individual employe, or any minority group of employes in any collective bargaining unit, shall have the right to present grievances to the municipal employer in person or through representatives of their own choosing, and the municipal employer shall confer with said employe in relation thereto, if the majority representative has been afforded the opportunity to be present at the conferences"

Said statutory provision merely requires the Municipal Employer to confer with an individual employe or minority group of employes on grievances presented to the municipal employer. The provision implements Section 111.70(2) granting a "right" to employes to refrain from engaging in concerted activity for the purpose of collective bargaining. The right to present grievances and the duty of the employer to confer on those grievances, as required in the above quoted provision, does not grant the grievant involved the grievance procedure negotiated in the collective bargaining agreement between the Union and the Municipal Employer. The Complainant, by not utilizing the Union to process her grievance, in fact, exercised her right not to engage in concerted activity and the right not to be represented by the Union. The grievance procedure contained in the collective bargaining agreement resulted from collective bargaining between the Union and the Municipal Employer. The first step in the contractual grievance procedure, which permits an employe to submit a grievance, was not included in the collective bargaining agreement to grant employes the rights set forth in Section 111.70(4)(d)1 with respect to the filing of grievances but, in fact, constitutes the initial step in the contractual grievance procedure. Absent such a step in the grievance procedure in a collective bargaining agreement

individual employes would still have a right to present a grievance to the employer, and the employer would still have an obligation to confer with the grieving employe with respect thereto. It is clear from the grievance procedure in the collective bargaining agreement that a grievance with respect to an alleged violation of the collective bargaining agreement "belongs to the Union" in the second step of the grievance procedure. Furthermore, the duty of the Municipal Employer to confer with an individual who files a grievance without the desire to be represented by the Union does not obligate the Municipal Employer to go beyond conferring on the grievance with that employe.

Unless the collective bargaining agreement specifically provides that an individual employe, without union representation, can utilize all the steps of the grievance procedure, a grievance filed by an individual employe who does not seek union representation does not have access to the contractual grievance procedure. We are, therefore, affirming the decision of the Examiner issued in the instant matter.

Dated at Madison, Wisconsin, this 28th day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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

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Jos. B. Kerkman, Commissioner