

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SUPERIOR BOARD OF EDUCATION EMPLOYEES
LOCAL UNION NO. 1397, AFSCME, AFL-CIO,

Complainant,

vs.

SUPERIOR BOARD OF EDUCATION JOINT
SCHOOL DISTRICT NO. 1, CITY OF SUPERIOR,
ET AL.,

Respondent.

Case XXV
No. 17155 MP-282
Decision No. 12174-D

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

Examiner Amedeo Greco having, on May 3, 1974, issued his Findings of Fact, Conclusions of Law and Order, with accompanying Memorandum, in the above-entitled matter, wherein he concluded that the above-named Respondent had committed certain prohibited practices within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act, and wherein he ordered the Respondent to cease and desist from such prohibited activity, and to take certain affirmative action which would effectuate the policies set forth in said Act; and thereafter the Respondent having timely filed a petition for review in the matter and a brief in support thereof; and the above-named Complainant having filed a brief in opposition to the petition for review; and the Commission, having reviewed the entire record, the Findings of Fact, Conclusions of Law and Order, with accompanying Memorandum, issued by said Examiner, the petition for review and the briefs with respect thereto, being satisfied that the Examiner's Findings of Fact and Conclusions of Law be affirmed, but, however, that the Order issued by the Examiner be expanded; 1/

NOW, THEREFORE, it is

ORDERED

1. That the Findings of Fact and Conclusions of Law issued by the Examiner in the above-entitled matter be, and the same hereby are, affirmed.
2. That the Order of the Examiner be expanded to read as follows:

ORDER

IT IS ORDERED that Superior Board of Education Joint School District No. 1, City of Superior, et al., its officers and agents, shall immediately:

1. Cease and desist from refusing to adhere to the collective bargaining agreement reached on January 21, 1973, under which Respondent agreed to elect to provide unemployment compensation coverage for school bus drivers and class V secre-

1/ We also adopt the Examiner's Memorandum accompanying his decision.

taries during the summer months they usually did not work in 1973.

2. Cease and desist from refusing to abide by the Arbitration Award rendered by Arbitrator Kerkman, in which the Arbitrator found that Respondent was contractually required to elect to provide unemployment compensation coverage for school bus drivers and class V secretaries during the summer months they usually did not work in 1973.

3. Take the following affirmative action which the Commission finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes.

- (a) Comply with the collective bargaining agreement reached on January 21, 1973, which existed between it and the Complainant, including that provision under which Respondent agreed that it would elect to grant to school bus drivers and class V secretaries unemployment compensation coverage during the summer months of 1973.
- (b) Comply with the terms of Arbitrator Kerkman's award in which he found that Respondent was contractually required to elect to grant unemployment compensation coverage to school bus drivers and class V secretaries for those two summer months they did not usually work in 1973.
- (c) Immediately take all reasonable steps, consonant with the principle of good faith, to see that bus drivers and class V secretaries receive such unemployment compensation for those summer months in 1973 when they were not scheduled to work.
- (d) Immediately notify the Department of Industry, Labor and Human Relations, Unemployment Compensation Division, that for the term of the collective bargaining agreement reached on January 21, 1973, the Respondent elected to grant unemployment compensation coverage to bus drivers and class V secretaries for the summer months of 1973, a period in which said employees did not usually work, and in said notification request the Department of Industry, Labor and Human Relations to approve of said election. Should the Department of Industry, Labor and Human Relations approve the election for unemployment compensation coverage to the employees involved, the Respondent shall immediately pay the unemployment compensation due them for the period involved. Should the Department of Industry, Labor and Human Relations not approve the payment of such funds, then the Respondent has no obligation to pay said employees any unemployment compensation for the period involved. However, should the Department of Industry, Labor and Human Relations refuse to rule on the matter because of the lapse of time, or for any other reason or reasons, the Respondent shall reimburse such employees for unemployment compensation benefits for which they would otherwise be entitled.
- (e) Notify all employees, by posting in conspicuous places in its offices where the employees are employed, copies of the notice attached hereto and marked "Appendix A" which notice shall be signed by Respondent, and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter.

Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by other material.

- (f) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days of the date of this Order what action has been taken to comply herewith.

3. IT IS FURTHER ORDERED that "Appendix A" shall be amended to read as noted on the following page of this Order.

Given under our hands and seal at the
City of Madison, Wisconsin, this 21st
day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

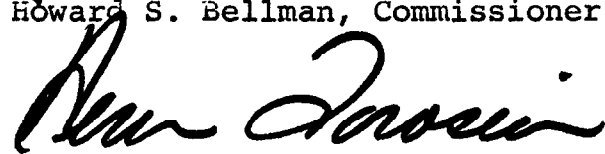
By



Morris Slavney, Chairman



Howard S. Bellman, Commissioner



Herman Torosian, Commissioner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE WILL comply with the terms of the collective bargaining agreement reached with Superior Board of Education Employees Local Union No. 1397, AFSCME, AFL-CIO, under which we agreed to elect to provide unemployment compensation coverage to bus drivers and class V secretaries during the summer months.
2. WE WILL comply with the terms of the Arbitration Award rendered on or about May 31, 1973, under which the Arbitrator found that we were contractually obligated to elect to provide the above-mentioned coverage.
3. WE WILL comply with the January 21, 1973 collective bargaining agreement and the May 31, 1973 Arbitration Award by electing to grant unemployment compensation coverage to school bus drivers and class V secretaries for those summer months they did not work in 1973.
4. WE WILL immediately notify the Department of Industry, Labor and Human Relations, Unemployment Compensation Division, that for the term of the collective bargaining agreement reached on January 21, 1973, the Superior Board of Education Joint School District No. 1, City of Superior, et al. elected to grant unemployment compensation coverage to bus drivers and class V secretaries for the summer months of 1973, a period in which said employees did not usually work, and in said notification request the Department of Industry, Labor and Human Relations to approve of said election. Should the Department of Industry, Labor and Human Relations approve the election for unemployment compensation coverage to the employees involved, the Respondent shall immediately pay the unemployment compensation due them for the period involved. Should the Department of Industry, Labor and Human Relations not approve the payment of such funds, then the Respondent has no obligation to pay said employees any unemployment compensation for the period involved. However, should the Department of Industry, Labor and Human Relations refuse to rule on the matter because of the lapse of time, or for any other reason or reasons, the Respondent shall reimburse such employees for unemployment compensation benefits for which they would otherwise be entitled.
5. WE WILL NOT in any other or related matter interfere with the rights of our employees, pursuant to the provisions of the Wisconsin Employment Peace Act.

By _____

Superior Board of Education
Joint School District No. 1,
City of Superior, et al.

Dated this _____ day of May, 1975.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

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

In its petition for review the School Board alleged that in its negotiations leading to the collective bargaining agreement involved, the School Board did not agree to seek or provide unemployment compensation coverage during the summer months for the bus drivers or the class V secretaries. In other words, the School Board takes issue with the Findings of the Examiner that such an agreement was reached and, therefore, it contends that it did not commit the prohibited practices alleged by not seeking such coverage, or paying unemployment compensation benefits to the employees in said classifications. The School Board contends that there was insufficient evidence adduced at the hearing to establish such an agreement.

Generally, as indicated by the Examiner, the Commission will not review the merits of a grievance where the parties in their collective bargaining agreement provide for final and binding arbitration. Prior to the filing of the complaint herein the parties did proceed to final and binding arbitration on the issues involved, and an arbitration award was rendered. During the course of the hearing on the complaint, as indicated by the Examiner, the parties fully litigated the merits of the dispute, as well as whether Respondent complied with the arbitration award. No objection was raised by the School Board that the Examiner should only consider the issue as to whether there was compliance with the arbitration award by the School Board. As a result, the Examiner issued a determination on the merits of the complaint as well as the meaning of the arbitration award. His Findings and Conclusions in both regards were consistent, that is to say, his determination on the merits of the dispute and his determination of the arbitration award were consistent.

Contrary to the School Board, we conclude that the Complainant has established, by a preponderance of the evidence, that the collective bargaining agreement required the School Board to seek unemployment compensation coverage for the classifications of employees involved, and, therefore, we have affirmed the Examiner's Findings of Fact and Conclusions of Law. We have expanded the Examiner's Order to require the School Board to seek approval from the Department of Industry, Labor and Human Relations to provide such coverage. However, it is to be understood that should the Department of Industry, Labor and Human Relations deny such approval, the employees are not entitled to any unemployment compensation. If D.I.L.H.R. should refuse to rule on the matter because of the lapse of time, or for any other reason attributable to the Employer's delay in this matter, the employees involved shall not be deprived, as indicated in the Order, of payments equal to what they would have been entitled to as unemployment compensation had the School Board complied with its obligations under the collective bargaining agreement to make an election to provide unemployment compensation for the employees involved and to seek approval thereof from the Department of Industry, Labor and Human Relations.

Dated at Madison, Wisconsin, this 21st day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner