

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRIAN ZORDEL, MARY ZORDEL, and the
WHITEWATER EDUCATION ASSOCIATION,

Complainants,

vs.

WHITEWATER UNIFIED SCHOOL DISTRICT
NO. 1, JOHN J. NEWHOUSE, and THANE
UGLOW,

Respondents.

Case X
No. 17661 MP-331
Decision No. 12503-B

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

Examiner George R. Fleischli having on December 12, 1974 issued Findings of Fact, Conclusions of Law and Order in the above-entitled matter wherein he found and concluded that the Respondents violated the provisions of a collective bargaining agreement existing between the Respondent School District and the Complainant Association by suspending Complainants Brian and Mary Zordel without pay for two and one-half days and thereby committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act; and that in said regard, the Examiner ordered said Respondent, among other things, to pay Brian and Mary Zordel a sum of money equal to that which they would have earned had they not been so suspended; and the Respondents having timely filed a petition with the Wisconsin Employment Relations Commission, wherein the Respondents contended that the Examiner erred in certain of his findings as well as his conclusion that the Respondents committed the prohibited practice as found by the Examiner; and the Commission having reviewed the entire record, the petition for review, as well as the briefs filed in support and in opposition thereto, and being satisfied that the Examiner's Findings of Fact 10 be revised, but that, however, the Examiner's Conclusions of Law and Order be affirmed;

NOW, THEREFORE, it is .

ORDERED

1. That paragraph 10 of the Examiner's Findings of Fact be revised as follows:

"10. That thereafter on August 28, 1973, Newhouse compiled a list of teachers who had failed to file their weekly lesson plans as of that date and issued a memorandum to that effect which read in relevant part as follows:

'In both the Superintendents Bulletin and the Faculty Handbook, the completion of weekly lesson plans are required to be turned in prior to departing on Friday.

The following staff members did not submit lesson plans covering the first days of school as was requested. Please arrange to do this each week from now on.

Mr. Bleck

Mrs. Wutti

Mr. Daniel

Mr. Nelson

Mrs. Flanagan

Mr. Zordel

Mr. Haring

Mrs. Zordel

Mr. Mead'

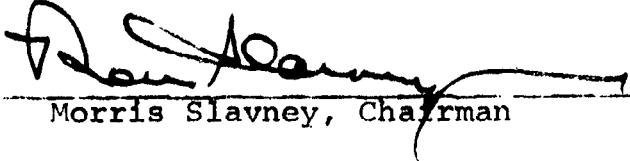
and that although there were seven teachers listed in the memo in addition to the Zordels, the disciplinary action taken against said teachers for failure to file lesson plans consisted only of being spoken to concerning their failure to submit lesson plans."

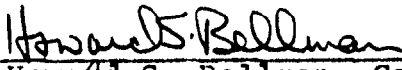
2. NOW, THEREFORE, the Commission hereby adopts the Examiner's Conclusions of Law and Order, as well as the Memorandum Accompanying same; and hereby further orders the Respondents to notify the Wisconsin Employment Relations Commission in writing within ten (10) days of the date of this Order as to what steps have been taken to comply herewith.

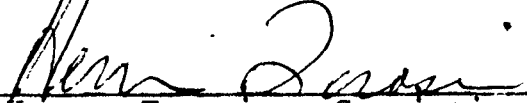
Given under our hands and seal at the City of Madison, Wisconsin this 29th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner

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

THE EXAMINER'S DECISION:

In his decision, the Examiner found that the School District had not violated the collective bargaining agreement existing between it and the Association by denying Brian Zordel and Mary Zordel personal leave pay for absences from their teaching duties on August 23 and 24, 1973 and concluding, in that regard, that the School District did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act. The Examiner, however, did conclude that the School District violated said agreement by suspending said teachers for two and one-half days without pay for such absences, and therefore, in the latter regard, that the School District committed a prohibited practice within the meaning of the above-noted section of the Act. The Examiner ordered the School District, among other things, to make such teachers whole for the period of their suspensions.

THE PETITION FOR REVIEW:

In its Petition for Review, the School District contends that the Examiner erred in certain of his Findings of Fact, (a) that the two teachers involved had advised Principal Newhouse that they intended to be absent on said two days, and (b) that other teachers had not been disciplined for failure to file lesson plans. The School District would have the Commission reverse the Examiner's conclusion that it committed a prohibited practice by suspending the teachers involved, and therefore the complaint should be dismissed.

DISCUSSION:

We conclude that the evidence adduced in this proceeding supports the facts as found by the Examiner, with the exception that we have revised paragraph 10 of the Examiner's Findings of Fact to indicate that other teachers who failed to file lesson plans were "disciplined" by being only spoken to concerning such delinquency. However, such "discipline" was of a materially lesser nature than that meted out to the Zordels because no pay was lost by the other teachers who failed to file lesson plans.

We are also satisfied that the preponderance of credible evidence supports the Examiner's finding that the Zordels had advised Principal Newhouse that they intended to be absent on the two days involved.

With the exception of modification of facts set forth in paragraph 10, we have affirmed the Examiner's Findings of Fact, Conclusions of Law and Order.

Dated at Madison, Wisconsin this 29th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
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