

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GAIL ANDERSEN, MARJORIE BIERBRAUER,
ALICE EARLY, JENNIFER HASKINS, BETH
HAWKINS, MARGARET KITZE, ROSEMARY LYNCH,
ELEONORE RICHARDS, JANE SCHOBERT, JOAN
SVLEN AND THE RIVER FALLS EDUCATION
ASSOCIATION,

Complainants,

vs.

JOINT SCHOOL DISTRICT NO. 1, CITY OF
RIVER FALLS, et. al. and PAUL W.
PROESCHOLDT,

Respondents.

Case II
No. 17983 MP-367
Decison No. 12754-B

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

Examiner Marvin L. Schurke naving, on April 23, 1975, 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 Respondents had committed certain prohibited practices within the meaning of Sections 111.70(3)(a)3 and 1 of the Municipal Employment Relations Act, and wherein he further issued an order requiring the Respondents to take certain affirmative actions to remedy the prohibited practices found to have been committed by the Respondents; and the Respondents having timely filed a petition requesting the Commission to review the Examiner's decision; and the Commission having reviewed the Examiner's decision, the entire record in the matter, the briefs filed in support of the petition for review, the brief filed in support of the Examiner's decision, and being fully advised in the premises, and being satisfied that the Findings of Fact, Conclusions 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, Conclusions of Law and Order, with Accompanying Memorandum, issued in the above entitled matter as its Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, and, therefore, the Respondents, Joint School District No. 1, City of River Falls, et. al. and Paul W. Proescholdt, shall notify the Wisconsin Employment Relations

No. 12754-B

Commission within ten (10) days of the receipt of a copy of this Order as to what steps they have taken to comply therewith.

Given under our hands and seal at the
City of Madison, Wisconsin this 26th
day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

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

The Examiner's Conclusions of Law and Order:

In his decision the Examiner concluded that the Respondents committed prohibited practices within the meaning of Section 111.70(3)(a) 3 and 1 of the Municipal Employment Relations Act by denying the request of a part-time teacher for maternity leave, by terminating the employment of regular part-time teachers, and threatening such teachers with the possibility of loss of future employment because of and in retaliation for, engaging in protected concerted activities. 1/ To remedy such violations of the Act the Examiner ordered the Respondents to cease and desist from engaging in such acts, to grant the teacher involved a maternity leave of absence, to offer to reinstate certain of the terminated part-time teachers, 2/ and to make them whole with respect to salaries and other benefits, to post notices, and to notify the Commission as to compliance with the Examiner's Order.

The Petition for Review:

In their Petition for Review, which was timely filed, the Respondents alleged that the inferences drawn by the Examiner to support his Findings of Fact were contradictory and not supported by evidentiary facts and that, therefore, his Conclusion of Law setting forth the aforementioned violations of the Act must fall. The Respondents further contend that the Examiner's Findings of Fact, relied upon to conclude that the Respondents had committed the specified prohibited practices, and the Order to remedy same, were "the result of bias, a posture of advocacy for Complainant's personal animus toward Respondents' Counsel and Respondents and arbitrariness and capriciousness on the part of the Examiner." As stated by Respondents' Counsel:

"The position of Respondents remains that the Examiner, in the substance and wording of his memorandum opinion, and in the punitive directions of his order, demonstrated injudicious animus toward Respondents, denying them a reasonable and fair interpretation of the evidence presented at the hearing."

Respondents also argue that the Order of the Examiner, as it relates to given effect to the termination of the part-time teachers, and the Order to reinstate them, was contrary to the individual teacher contracts, Section 118.22, Wisconsin Statutes, and to the State Constitution.

Discussion:

The Commission has reviewed the record, the Examiner's decision, the briefs filed in support of the Petition for Review, and the brief of the Complainants supporting the Examiner's decision. Had the Commission conducted the hearing, and issued the initial decision herein,

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- 1/ The Examiner concluded that the School District did not commit a prohibited practice in not engaging in collective bargaining with the Association, since the latter was not then the representative of the part-time teachers.
 - 2/ Some teachers were already re-employed or were not interested in being re-employed.

we may not have characterized the motivation and conduct of the Respondents in the said manner as the Examiner.

Be that as it may, the record supports the inferences drawn by the Examiner, as well as his Findings of Fact and Conclusions of Law, and resulting Order. The fact that the teacher contracts involved expired does not preclude an order remedying the prohibited practices of not renewing the part-time teachers because of the exercise of their rights under the Act. 3/ The Order is not punitive, but rather requires the Respondents only to remedy the results of the prohibited practices committed by them. The Commission concludes that there was no bias on the part of the Examiner in reaching his decision, and, therefore, we affirm his Findings of Fact, Conclusions of Law and Order.

Dated at Madison, Wisconsin this 26th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

3/ Neither Section 118.22, Wisconsin Statutes, nor the State Constitution preclude such an Order.