

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

ORDER DENYING MOTION

The Wisconsin Employment Relations Commission having previously assigned the above entitled matter to Marshall L. Gratz, a member of the Commission's staff, to conduct hearing therein as a Hearing Officer on behalf of the Commission, and said staff member having, on October 16, 1975, issued a notice, setting hearing in the matter for November 5, 1975; and on October 28, 1975, the Kenosha Teachers Union Local 557, WFT, AFT, AFL-CIO having moved to intervene in the proceeding; and on the basis of the request of said Intervenor said staff member on November 4, 1975, having issued a notice postponing hearing to December 3, 1975; and on November 28, 1975, said Intervenor having filed a motion with the Commission requesting the Commission (a) to appoint said staff member as a Hearing Examiner, with authority to issue Findings of Fact, Conclusions of Law and Orders, in the matter, (b) to direct said staff member to cease taking any further action as a Hearing Officer, and (c) to direct said staff member as a Hearing Examiner, to set a new hearing date; and the Commission, being fully advised in the premises, issues the following

ORDER

IT IS ORDERED that the motion filed by the Intervenor, Kenosha Teachers Union Local 557, WFT, AFT, AFL-CIO, as set forth above, be, and the same hereby is denied.1/

Given under our hands and seal at the
City of Madison, Wisconsin, this 2nd
day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Howard S. Bellman, Commissioner

Herman Torosian, Commissioner

1/ On December 1, 1975, the Commission sent telegrams to the parties indicating that the motion was denied and that a formal order would follow.

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION

In this proceeding the Commission designated Marshall L. Gratz, a member of its staff, to conduct the hearing on behalf of the Commission. It did not authorize said staff member to issue Findings of Fact, Conclusions of Law and Orders in his own name. After the staff member had set hearing on the complaint and postponed same to December 3, 1975, Counsel for the Intervenor filed a motion requesting the Commission to appoint said staff member as a Hearing Examiner, contending that "the procedure established by the legislature in prohibited practice cases does not permit a Hearing Officer to set a hearing date or conduct a hearing and because the rules promulgated by this Commission do not permit a Hearing Officer to set a hearing date or schedule a hearing." The Intervenor also requested the Commission "to direct the Trial Examiner that is appointed to conform to the requirements of Section 111.07 in setting a time for a new hearing."

The complaint filed herein alleged that the Respondent committed certain prohibited practices within the meaning of the Municipal Employment Relations Act. Section 111.70(4)(a) provides that "Section 111.07 shall govern procedures in all cases under this subchapter" The latter section does not set forth who shall conduct a hearing involving the complaint of unfair labor practices (prohibited practices). Section 111.07(5) does provide that the "commission may authorize a commissioner or examiner to make findings and orders. . . ."

Chapter ERB 12 sets forth procedural rules adopted by the Commission with respect to prohibited practice cases. Rule ERB 12.04(3) provides as follows:

"(3) BEFORE WHOM HELD. The hearing may be held by the full commission, or any member or members thereof or examiner acting on behalf of the commission. A single member or examiner appointed by the commission may be authorized by an order of the commission to make findings of fact, conclusions of law and order."

Further, Rule ERB 12.06, in material part, provides as follows:


"Findings of fact, conclusions of law and order.
(1) Issuance. After the close of the hearing, or upon granting a motion for dismissal of a complaint, the commission, or single member or examiner, if authorized to do so, shall make and file findings of fact, conclusions of law and order. . . ."


It is clear from the above rules that the hearing may be conducted by a designee of the Commission who may or may not be authorized by an order of the Commission to make Findings of Fact, Conclusions of Law and Order. Absent such an order, the Hearing Officer merely conducts the hearing on behalf of the Commission making only such determinations as are necessary to said role, including the scheduling of the hearings. The Findings of Fact, Conclusions of Law and Orders will initially be issued by the Commission.

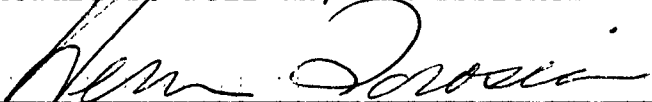
The staff member designated to conduct the hearing herein has the proper authority to do so on behalf of the Commission, and, therefore, we have denied the motion filed by the Intervenor.

Dated at Madison, Wisconsin, this 2nd day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner