

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHN PIERPONT, BRENT DAVIS and
MERCER EDUCATION ASSOCIATION,

Complainant,

vs.

MERCER COMMON SCHOOL DISTRICT NO. 1,

Respondent.

Case IV
No. 20424 MP-612
Decision No. 14597-D

ORDER CLARIFYING EXAMINER'S FINDINGS OF FACT, CLARIFYING
EXAMINER'S CONCLUSIONS OF LAW, AND ADOPTING EXAMINER'S ORDER

Examiner Amedeo Greco, having issued his Findings of Fact, Conclusions of Law and Order, with accompanying memorandum, in the above entitled matter, wherein the Examiner concluded that the above named Respondent did not violate the terms of the collective bargaining agreement existing between it and Complainant Education Association with respect to the non-renewal of Complainants John Pierpont and Brent Davis, teachers in the employ of the Respondent, and further, wherein the Examiner concluded that the non-renewals of such teachers by the Respondent were not discriminately motivated, and therefore that such non-renewals were not violative of any provision of the Municipal Employment Relations Act; that following the issuance of the Examiner's decision, the Commission, on its own motion, pursuant to Section 111.07(5), Wisconsin Statutes, issued a notice indicating that the Commission would review the Examiner's decision; that thereafter the Complainants filed a brief wherein they took exception to the Examiner's Conclusion of Law to the effect that the non-renewals of the two individual Complainants were not in violation of the Municipal Employment Relations Act; that the Respondent, in response to the Commission's determination to review the Examiner's decision on its own motion, in writing, advised the Commission that it supported the Examiner's decision, and in that regard, the Respondent indicated that it was relying on the record and on its brief filed with the Examiner; and the Commission having review the entire record and the briefs of counsel, and being satisfied that the Examiner's Findings of Fact be clarified, that the Examiner's Conclusions of Law be clarified, and further that the Examiner's Order be affirmed;

NOW, THEREFORE, it is

ORDERED

A. That the Examiner's Findings of Fact be clarified to include the following Finding of Fact:

1B That the non-renewal of Davis and Pierpont by the District was not motivated as a result of any protected concerted activity exercised by Davis and/or Pierpont.

B. That the Examiner's Conclusions of Law be clarified as follows:

1. That, since the Association and the District had at no time agreed to include a tenure provision in any collective bargaining agreement existing between the District and the

Association, the District, by refusing to include a tenure proposal in the collective bargaining agreement material herein, has not violated Section 111.70(3)(a)4, nor any other section of MERA.

2. That, since the collective bargaining agreement in existence between the Association and the District at the time material herein contain no contractual restriction on the right of the District to non-renew teachers in its employ, the District did not violate the collective bargaining agreement in non-renewing Davis and Pierpont, and therefore, in said regard, the District did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of MERA.

3. That the District has not unlawfully refused to bargain with respect to the non-renewal of Davis and Pierpont and therefore, in said regard, the District has not violated Section 111.70(3)(a)4 and 1 of MERA.

4. That, since the non-renewal of Davis and Pierpont by the District was not motivated as a result of any concerted activity exercised by Davis and/or Pierpont, the District has not violated Section 111.70(3)(a)3, nor any other section of MERA, with respect to the non-renewal of Davis and Pierpont.

On the basis of the above and foregoing Clarified Findings of Fact and Clarified Conclusions of Law, the Commission makes the following

ORDER

IT IS ORDERED that the complaint filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

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

As noted in the preface contained in the Commission's decision, the Commission, on its own motion, determined to review the Examiner's decision. The parties received copies of the notice and were given the opportunity to respond thereto and did so as indicated in the preface.

On examination of the Findings of Fact issued by the Examiner the Commission noted that the Examiner did not make a specific finding as to the motivation of the District with respect to the non-renewal of Davis and Pierpont. The Commission is satisfied that the record supports the Finding of Fact that the non-renewal of Davis and Pierpont was not motivated as a result of the exercise of any protected concerted activity on their behalf. Such a finding is also consistent with the Examiner's Conclusions of Law as well as with the memorandum accompanying the Examiner's decision.

The Commission has also clarified the Conclusions of Law to specifically set forth the activity involved with reference to each Conclusion of Law.

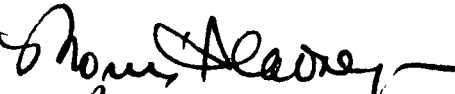
The Commission has, in its Order, dismissed the complaint, consistent with the Order issued by the Examiner.

The memorandum issued by the Examiner accompanying his decision not only supports his decision but also supports the Commission's Clarified Findings of Fact, Clarified Conclusions of Law, as well as its Order dismissing the complaint, and therefore we hereby adopt the Examiner's memorandum.

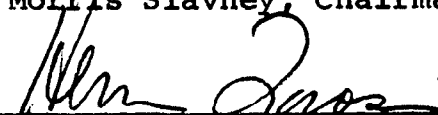
Dated at Madison, Wisconsin, this 21st day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner