

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ETHEL NYLAND AND JANIS MEYER,	:	
	:	
Complainants,	:	
	:	
vs.	:	Case I
	:	No. 20436 MP-614
	:	Decision No. 14608-A
RICHARD ABELSON, AMERICAN FEDERATION	:	
OF STATE, COUNTY, AND MUNICIPAL	:	
EMPLOYEES, AND BETTY CORNELL, PRESIDENT,	:	
COURTHOUSE, LOCAL 990,	:	
	:	
Respondents.	:	
	:	

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Appearances:

Ethel Nyland and Janis Meyer, appearing on their own behalf.  
Mr. Richard Abelson, District Representative, American Federation  
of State, County, and Municipal Employees, appearing on  
behalf of the Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above-named Complainants having on April 30, 1976 filed a complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondents committed prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Peter G. Davis, a member of its staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law, and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaint having been held before the Examiner in Kenosha, Wisconsin, on June 1, 1976; and the Examiner having considered the evidence and arguments of counsel makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Ethel Nyland and Janis Meyer, herein Complainants Nyland and Meyer, are municipal employes within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act (MERA), who were, at all times material herein, employed by Kenosha County, a municipal employer within the meaning of Section 111.70(1)(a) of MERA.

2. That Respondent American Federation of State, County, and Municipal Employees, Local 990, herein Respondent Union, is a labor organization within the meaning of Section 111.70(1)(j) of MERA and the exclusive collective bargaining representative of certain employes of Kenosha County, including Complainants Nyland and Meyer; that Richard Abelson, herein Respondent Abelson, is an individual who, at all times material herein, functioned as the District Representative for Respondent Union and as its agent; and that Betty Cornell, herein Respondent Cornell, is an individual who, at all times material herein, served as President of Respondent Union.

3. That on March 1, 1976 Respondent Union held a membership meeting at which time a vote was taken to determine whether the membership wished to authorize a strike against Kenosha County; that Complainants Nyland and Meyer attended said meeting as members of Respondent Union and participated in the strike authorization vote; and that Respondent Union struck Kenosha County on March 1, 1976.

4. That Complainant Nyland did not report for work during the strike; that for the first two days of the strike Complainant Nyland participated in picketing which was conducted by Respondent Union for the purpose of supporting the strike action taken against Kenosha County; and that Complainant Nyland refrained from picketing for the remainder of the strike.

5. That on March 31, 1976 Complainant Nyland attempted to attend a membership meeting called by Respondent Union for the purpose of considering the ratification of a strike settlement which had tentatively been reached by Kenosha County and Respondent Union; that Respondent Abelson informed Complainant Nyland that she had been fined \$75.00 by Respondent Union for failing to picket in support of Respondent Union's strike against Kenosha County and that unless said fine was paid she would be suspended from Respondent Union and forbidden from attending the ratification meeting; that Complainant Nyland refused to pay the fine and was subsequently suspended from Respondent Union and barred from attending the ratification meeting; and that, inasmuch as ballots were available outside the meeting hall, Complainant had an opportunity to vote on the strike settlement but opted not to exercise that right due to her inability to attend the membership meeting where the terms of the tentative settlement were discussed.

6. That Complainant Meyer did not report to work during the strike; that for the first several days of the strike Complainant Meyer participated in picketing which was conducted by Respondent Union for the purpose of supporting the strike action taken against Kenosha County; that Complainant Meyer subsequently refrained from picketing for the remainder of the strike.

7. That on March 31, 1976 Complainant Meyer attempted to attend a membership meeting called by Respondent Union for the purpose of considering the ratification of a tentative strike settlement reached by Respondent Union and Kenosha County; that Complainant Meyer was informed by a representative of Respondent Union that she had been fined \$75.00 by Respondent Union for failing to picket in support of Respondent Union's strike against Kenosha County; that Complainant Meyer was presented with the following statement:

"I, Janice [sic] Meyer, do hereby agree to make arrangements with the Coalition to pay my strike fine of \$75.00. Such agreement and payment of fine shall keep me in good standing as a union member and entitle me to all privileges of union membership.";

that Complainant Meyer refused to sign said statement or to pay the fine; that Complainant Meyer was informed that she was suspended from Respondent Union and barred from attending the ratification meeting; and that, inasmuch as ballots were available outside the meeting hall, Complainant Meyer did however vote on the settlement terms considered at the March 31 membership meeting from which she was excluded.

Based upon the above and foregoing Findings of Fact, the Examiner makes the following

#### CONCLUSION OF LAW

1. That by suspending Ethel Nyland and Janis Meyer from membership because of their refusal to pay a fine imposed because of their unwillingness to engage in activity supportive of an illegal strike, Respondents coerced and intimidated Nyland and Meyer in the exercise of their legal right to refuse to support an illegal strike and thereby committed and continues to commit a prohibited practice within the meaning of Section 111.70(3)(b)1 of MERA.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

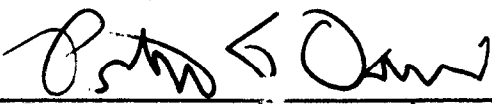
ORDER

IT IS ORDERED that the Respondent American Federation of State, County and Municipal Employees, Local 990, its officers and agents shall immediately:

1. Cease and desist from suspending Ethel Nyland and Janis Meyer or any other municipal employe because of their refusal to support any illegal strike prohibited by Section 111.70(4)(1) of MERA.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
  - (a) Offer Ethel Nyland and Janis Meyer reinstatement to membership on the same terms and under the same conditions that membership is available to other members and expressly state in such offer of reinstatement that they are under no obligation to pay a \$75.00 fine or to do any other thing because of their refusal to engage in activity supportive of strikes prohibited by Section 111.70(4)(1) of MERA. Because Ethel Nyland and Janis Meyer have been wrongfully suspended from membership in the Respondent Union since March 31, 1976, they shall not be required to pay any portion of the dues attributable to the period of their suspension as a condition of reinstatement. 1/
  - (b) Notify all of the employes of Kenosha County which it represents that it will not coerce or intimidate any of said employes for exercising their legal right to refuse to engage in or otherwise support an illegal strike by posting the notice attached hereto, marked "Appendix A", in its offices and in those places provided by Kenosha County for the posting of notices by the Respondent Union. Said notice shall be signed by Respondent Union's President and shall remain posted for sixty (60) days. Respondent Union shall take all reasonable steps necessary to ensure that said notice is not altered, defaced or covered by any other material.
  - (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order regarding the steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 3rd day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Peter G. Davis, Examiner

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1/ However, nothing herein is intended to excuse the Complainants from compliance with a lawful fair-share agreement.

"APPENDIX A"

NOTICE TO ALL EMPLOYEES OF KENOSHA COUNTY REPRESENTED BY  
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 990

Pursuant to an Order of the Wisconsin Employment Relations Commission, all employes of Kenosha County represented by American Federation of State, County and Municipal Employes, Local 990, are hereby notified that:

1. WE WILL NOT coerce or intimidate any of our members for exercising their legal right to refuse to support a strike prohibited by Section 111.70(4)(1) of the Wisconsin Statutes by suspending or threatening to suspend them unless they engage in activity in support of such a strike or pay a fine in lieu thereof or threatening to do any other thing to said members or requiring any other thing of said members not required of other members;
2. WE WILL offer Ethel Nyland and Janis Meyer reinstatement to membership on the same terms and under the same conditions that membership is available to other employes of Kenosha County and advise them that they are under no obligation to pay a \$75.00 fine or to do any other thing because of their refusal to support strikes prohibited by Section 111.70(4)(1) of the Wisconsin Statutes.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 990

By \_\_\_\_\_  
President

Dated this \_\_\_\_ day of \_\_\_\_\_, 1976.

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

It is undisputed that the Complainants, who were members of the Respondent Union and participated in the voting on the question of whether an illegal strike should be authorized, refused to picket in support of an illegal strike by Respondent Union against Kenosha County and were ultimately suspended from Respondent Union because of their unwillingness to pay a fine incurred as a result of their failure to picket. The Complainants contend that Respondent Union violated their rights under the Municipal Employment Relations Act by suspending them because of their refusal to support an illegal strike. The Respondents urge that the instant suspensions were made pursuant to Respondent Union's constitution and by-laws and that, in the absence of any evidence of discriminatory application of said constitution and by-laws, they have not committed any violation of the Municipal Employment Relations Act.

The issue before the Examiner is one of determining whether a labor organization coerces and intimidates a municipal employe in the enjoyment of his or her legal rights under MERA when it suspends a member for refusing to engage in certain activity which supports an illegal strike. The Commission has in the past determined that, by expelling a municipal employe from membership because of the employe's failure to support an illegal strike, a labor organization commits a prohibited practice within the meaning of Section 111.70(3)(b)1 of MERA. <sup>2/</sup> This conclusion is premised upon the findings that Section 111.70(4)(1) of MERA, which prohibits strikes by municipal employes, creates the legal right of municipal employes to refrain from engaging in or otherwise supporting an illegal strike <sup>3/</sup> and that Section 111.70(3)(b)1 protects this right from coercive and intimidating action by a labor organization. <sup>4/</sup> In the instant case the Respondents fined and ultimately suspended the Complainants for their refusal to picket in support of the illegal strike against Kenosha County. Given the Commission's holding in American Federation of Teachers, the Examiner must conclude that Respondents' action of barring Complainants from the March 31 meeting and from future participation in Union affairs because of their refusal to picket or to pay a fine in lieu thereof constitutes coercion and intimidation of the Complainants in the exercise of their legal right to refrain from engaging in activity which supports an illegal strike and thus that said action violated Section 111.70(3)(b)1 of MERA. Respondent Union's willingness to allow Complainants to vote on March 31 does not blunt the coercive and intimidating effect of barring Complainants from the March 31 meeting inasmuch as said act prevented the Complainants from knowing the precise terms of the settlement, participating in any discussion thereon, and subsequently making an informed voting decision. It should also be noted that the fact that Complainants did not report to work during the strike and did engage

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<sup>2/</sup> American Federation of Teachers, Local Union 1714 and Steve Konalsky, (12708-A) 2/75; Affirmed (12708-B) 1/76.

<sup>3/</sup> Kenosha Unified School District No. 1, (12029-E) 12/74; Affirmed (12029-F) 1/75.

<sup>4/</sup> Racine Policeman's Professional and Benevolent Association, (12637) 4/74; Affirmed (12637-A) 5/74.

in picketing for a brief period of time does not eliminate MERA's protection of their right to subsequently refrain from activity which supports an illegal strike.

Dated at Madison, Wisconsin this 3rd day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



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Peter G. Davis, Examiner