

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AFSCME, COUNCIL 24, WISCONSIN STATE
EMPLOYEES UNION, AFL-CIO, and its
appropriate affiliated LOCAL NO. 1,

Complainants,

vs.

STATE OF WISCONSIN, DEPARTMENT OF
ADMINISTRATION, and its EMPLOYMENT
RELATIONS SECTION,

Respondent.

Case LXII
No. 19057 PP(S)-30
Decision No. 15261-A

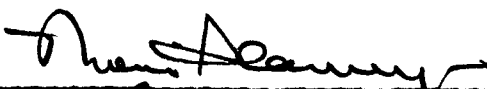
ORDER DENYING MOTION FOR REHEARING

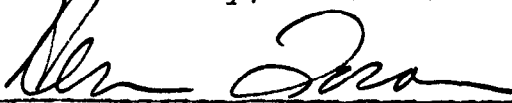
On the record and file herein,

IT IS ORDERED that complainants' petition for rehearing be,
and the same hereby is, denied.

Given under our hands and seal at the
City of Madison, Wisconsin this 30th
day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION FOR REHEARING

Complainants, on January 23, 1978, filed a petition for rehearing of the commission's decision in this matter dated January 13, 1978. In that petition, complainants pose the following question:

"Does the assault and battery committed on the duly designated representative of State employees and in their presence by officers or agents of the State of Wisconsin constitute a violation of Section 111.84(1)(a), Wis. Stats.?"

We agree that an assault and battery, or any excessive use of force, by an employer or its agents, committed against a union representative in the presence of employees represented by the union, constitutes a violation of sec. 111.84(1)(a), Stats. However, the commission effectively found that no such assault and battery or excessive use of force occurred in this case. The commission in its memorandum, at page 13, stated:

"As to the question concerning the amount of force necessary, the commission is not convinced by a satisfactory preponderance of the evidence that Kennedy used excessive force in removing Kenyatta."

While the construction of the testimony of certain witnesses would support a finding of an excessive use of force, in particular that testimony suggesting that Kennedy pulled Kenyatta's leg in a manner causing him to fall or tend to fall and at a time when such conduct was not reasonably necessary to bring Kenyatta under control, the commission has found more credible and reliable the testimony which tends to show that the officer's conduct in this respect was reasonably necessary to complete the arrest and handcuffing of Kenyatta.

Dated at Madison, Wisconsin, this *30th* day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner