

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RONALD BERBY and TOMAHAWK EDUCATION
ASSOCIATION,

Complainants,

vs.

UNIFIED JOINT SCHOOL DISTRICT NO. 1,
CITY OF TOMAHAWK; BOARD OF EDUCATION,
UNIFIED JOINT SCHOOL DISTRICT NO. 1,
CITY OF TOMAHAWK,

Respondent.

Case XXII
No. 27883 MP-1212
Decision No. 18670-A

Appearances:

Mr. C. Gordon Paulson, Korth, Rodd, Mouw, Johnson & Mustacci, S.C.,
Attorneys at Law, First National Bank Building, P. O. Box
757, Rhineland, WI 54501, on behalf of the Respondent.

Mr. Stephen G. Katz, Kelly and Haus, Attorneys at Law, Suite 202,
302 East Washington Avenue, Madison, WI 53703, on behalf
of the Complainants.

ORDER DENYING MOTION TO DISMISS AND MOTION
TO MAKE MORE DEFINITE AND CERTAIN

Ronald Berby, an individual, and the Tomahawk Education Association, a labor organization, herein Complainant, having, on April 27, 1981, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, wherein it is alleged that the Unified Joint School District No. 1, City of Tomahawk; Board of Education, Unified Joint School District No. 1, City of Tomahawk, herein Respondent, has committed certain prohibited practices within the meaning of Section 111.70(3)(a)5, Wis. Stats., and the Commission, on May 8, 1981, having appointed William C. Houlihan, a member of its staff, to act as Examiner in the matter; and Respondent having, on May 18, 1981, moved for an order dismissing the complaint, or in the alternative making the complaint more definite and certain; and the Complainant having opposed the motions by letter of May 20, 1981; and Respondents having, on May 28, 1981, submitted a letter in support of their motions; and the Examiner, for the reasons outlined in the Accompanying Memorandum, believing that the complaint sets forth a clear and concise statement of facts, which, if true, constitute a violation of Section 111.70, Wis. Stats.; makes and issues the following

ORDER

Denying Respondent's Motion to Dismiss and Motion to Make More Definite and Certain.

Dated at Madison, Wisconsin, this 12th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

William C. Houlihan
William C. Houlihan, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO
DISMISS AND MOTION TO MAKE MORE DEFINITE AND CERTAIN

On April 27, 1981, Donald Berby and the Tomahawk Education Association commenced this action against the Unified Joint School District No. 1, City of Tomahawk; Board of Education, Unified Joint School District No. 1, City of Tomahawk, by filing a complaint of prohibited practice.

In relevant part, the complaint alleges that the Association and the School District are signatories to a collective bargaining agreement, which agreement contains a "just cause" standard governing the non-renewal of teachers, and also contains a grievance procedure. The complaint goes on to allege that Respondent School District has non-renewed the teaching contract of an employee by the name of Ronald Berby, who is covered by the provisions of the aforementioned collective bargaining agreement; that Berby thereafter filed a grievance alleging that his non-renewal violated the "just cause" standard of the contract; that the grievance has been processed through the grievance procedure and that there exists no final and binding arbitration provision in the contract.

The Complainant makes reference to a grievance which purportedly alleges that Berby's non-renewal violates the just cause provision of the collective bargaining agreement. The complaint goes on to allege that by refusing to renew Berby's contract, the Respondent violates the collective bargaining agreement and, derivatively, Section 111.70(3)(a)5, Wis. Stats. This Examiner believes that the complaint puts the Respondent fairly on notice that it is charged with violating the just cause provision of the collective bargaining agreement by refusing to renew the contract of Mr. Berby.

Since Section 111.70(3)(a)5, Wis. Stats., makes it a prohibited practice for a municipal employer to violate the terms of a collective bargaining agreement, Complainant's breach of contract contention accompanied by contentions that the grievance procedure, which lacks final and binding arbitration, has been exhausted, suffice to make out a prima facie claim of prohibited practice.

Accordingly, both motions have been denied.

Dated at Madison, Wisconsin, this 12th day of June, 1981.

By

William C. Houlihan
William C. Houlihan, Examiner