

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case LVI
No. 27564 DR(M)-168
Decision No. 18848

Racine Education Association (REA) having, on February 26, 1981, filed a petition for Declaratory Ruling, wherein it requested that the Commission rule on the question of the duty of Racine Unified School District No. 1 (District) to bargain with respect to the impact of its decision to close certain schools on the wages, hours and working conditions of employees covered by the collective bargaining agreement existing between the parties; and a hearing on the petition having been commenced on April 28, 1981, by Examiner Amedeo Greco of the Commission's staff, to take evidence and argument on behalf of the Commission; and after the commencement of said hearing, and during an off-the-record discussion, the Examiner having requested the parties to state their positions on the potential issues in dispute; and during the course of said discussion, the REA's attorney having inquired as to the procedure to obtain the appointment of a new Examiner and, after being advised by the Examiner that said procedure was set forth in the statutes, announced the REA's intention to leave the hearing room if Examiner Greco proceeded with the hearing; and the Examiner, off the record, having advised the representatives of the REA of his intention to continue the hearing on the record, and in the event that the REA representatives left the hearing room, and should the District move for dismissal, that he would grant such motion; and thereupon the Examiner opened the hearing for the purpose of taking evidence and argument; and after the Examiner, on the record, recited the conversation which had transpired off the record, the REA's attorney indicated his belief that the REA could not obtain a fair hearing before said Examiner, at which point the representatives of the REA, including their attorney, left the hearing room; and the Examiner, upon the motion of the District, orally "granted" the District's motion to "dismiss" the petition; and the REA having thereafter, on May 13, 1981, filed a petition, supported by affidavit and argument, requesting the Commission to review and reverse the dismissal by the Examiner, and to transfer the matter to a new Examiner; and the District having, on July 1, 1981, filed a brief in opposition to said petition, together with an affidavit, opposing the request of REA and in support of the Examiner's dismissal; and the Commission, having reviewed the Petition for Review and Transfer and the arguments and affidavits of the parties, and being fully advised in the premises and being satisfied that the facts alleged in the affidavits filed by REA, even if assumed to be true, do not establish personal bias or prejudice on the part of the Examiner, and further, however, that the Examiner did not have the authority to dismiss the petition;

No. 18848

ORDERED


1. That the Petition for Review and Transfer be, and the same hereby is, denied.

2. The action of the Examiner, in orally dismissing the petition for Declaratory Ruling filed herein by the Racine Education Association be, and the same hereby is, set aside.

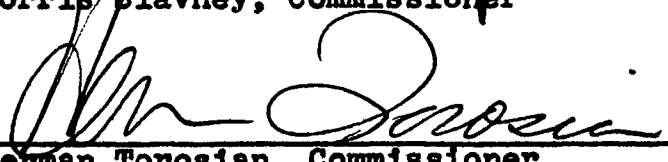
3. That the Examiner shall schedule and conduct further hearing in the matter for the purposes set forth in the preface to this Order.

Given under our hands and seal at the
City of Madison, Wisconsin, this 24th
day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR SUBSTITUTION OF
EXAMINER AND DIRECTING THAT HEARING CONTINUE

The Examiner involved herein had been authorized by the Commission only to conduct hearing in the matter on behalf of the Commission, and after reviewing the record and briefs of the parties, the Commission would issue its declaratory ruling. Shortly after the hearing opened, and in an off-the-record discussion, the Association and its Counsel became dissatisfied with the manner in which the Examiner engaged in the off-the-record discussion, and as a result indicated that it would seek a substitution of Examiner. The Examiner indicated that he would continue with the hearing and returned to hearing on the record. As indicated previously in the preface to our Order, the Association and its Counsel left the hearing room, the District moved to dismiss the instant proceeding, and such motion was orally granted by the Examiner, who thereupon closed the hearing.

We do not condone the Association's action, including that of its Counsel, in leaving the hearing room, apparently in protest of the Examiner's conduct of the hearing. However, as noted, the Examiner had no authority to dismiss the proceeding. Furthermore, the issue raised by the declaratory ruling petition needs to be resolved, as it pertains to an issue, which could be resurrected in a complaint proceeding.

We are, therefore, denying the Petition for Review and Transfer, and we are ordering that the Examiner schedule further hearing in the matter. Should the Association not choose to participate in the scheduled hearing, the Commission will dismiss the instant proceeding and will not process any complaint involving the same issue.

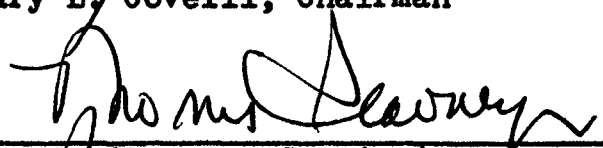
Dated at Madison, Wisconsin, this 24th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner