

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:

RACINE UNIFIED SCHOOL DISTRICT, :

:

Complainant, : Case 133

: No. 50636 MP-2864

vs. : Decision No. 27986-A

:

RACINE EDUCATION ASSOCIATION, :

:

Respondent. :

:

Appearances:

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by Mr. Jack D. Walker, and Mr. Hanson, Gasiorkiewicz & Weber, S.C., by Mr. Robert K. Weber, and Mr. Brian Wright, 514 Wisconsin Avenue, Racine, Wisconsin 53403, appearing on behalf of

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Racine Unified School District filed a complaint with the Wisconsin Employment Relations Commission on March 3, 1994, alleging that the Racine Education Association had committed prohibited practices in violation of Section 111.70(3)(b)3, Stats. On March 15, 1994, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Stats. On March 28, 1994, the District amended its complaint. Hearing on said complaint as amended was consolidated with a prior prohibited labor practices complaint filed by the Racine Education Association against the Racine Unified School District. Hearings were held on April 5, 28, and 29, 1994, in the City of Racine. Thereafter, briefs were submitted, with the last brief filed on July 18, 1994, at which point the record was closed. The Examiner, having considered the evidence and the arguments of counsel, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Racine Unified School District, is a municipal employer within the meaning of Section 111.70(1)(j), and its principal office is at 2220 Northwestern Avenue, Racine, Wisconsin, 53404. Major Armstead, Jr., is the District's Superintendent and Frank L. Johnson is the District's Director of Employee Relations and they have acted on its behalf.

2. The Racine Education Association, hereinafter referred to as the Association, is a labor organization within the meaning of Section 111.70(1)(h), and its offices are c/o James J. Ennis, 516 Wisconsin Avenue, Racine, Wisconsin 53403. Its Executive Director is James J. Ennis and he has acted on its behalf.

3. The Association is the duly certified exclusive collective bargaining representative for all regular full-time and regular part-time certified teaching personnel employed by the Racine Unified School District, but excluding on-call substitute teachers, interns, supervisors, administrators, and directors, as described in the certificate instrument issued by the Wisconsin Employment Relations Board on the 28th day of April, 1965. (Decision No. 7053).

4. The Association and the District have been parties to a series of collective bargaining agreements, the most current of which expired on August 24, 1992. The parties have been engaged in negotiations for a successor agreement and currently are in mediation, following the District's petition for interest-arbitration pursuant to Section 111.70(4)(cm)6., Stats., filed on January 15, 1993.

5. Mr. Ennis and Superintendent Armstead had established a practice of meeting on occasion to discuss a variety of issues of mutual concern. They scheduled a meeting for December 17, 1993, to discuss year round school. Dr. Armstead invited senior staff and also Mr. Johnson, the District's labor negotiator. Mr. Ennis had sent a letter to Mr. Johnson on November 29, 1993, indicating that he did not wish to bargain outside the normal bargaining structure on the topic of year round school. Mr. Ennis invited only two Union members. He did not invite the Association's bargaining team, as he had understood that the meeting was to be solely for the purpose of an informal discussion. He stated this understanding at the outset of the meeting and objected to Mr. Johnson's participation in the meeting. After some discussion, Mr. Ennis and Superintendent Armstead reached a compromise, whereby Mr. Johnson was allowed to remain at the meeting as a scribe and was not allowed to talk or participate. The meeting of December 17, 1993 was not a negotiating session.

6. Another meeting between Mr. Ennis and Superintendent Armstead was scheduled on or about March 4, 1994, at the suggestion of Mediator A. Henry Hempe, to look at educational policies and administrative regulations that could be extracted from issues on the bargaining table. When Mr. Ennis arrived for the meeting at which Mr. Johnson was not present, he told Superintendent Armstead that because the instant complaint had been filed against him, he had to protect himself from further violations and left and no meeting occurred. Mr. Ennis and Superintendent Armstead have continued to meet after the filing of the instant complaint to discuss a variety of mutual problems.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. The Association did not violate Section 111.70(3)(b)(3), when

Mr. Ennis, as its agent, refused to allow Mr. Johnson to participate in the December 17, 1993, meeting, since Mr. Ennis had understood it to be merely an informational meeting, and not a bargaining session.

2. The Association did not violate Section 111.70(3)(b)(3), when Mr. Ennis refused to meet with Superintendent Armstead on March 4, 1994, in the absence of Mr. Johnson, for the purpose of complying with Mediator Hempe's suggestion that they try to agree on removing some issues from bargaining.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER 1/

IT IS ORDERED that the Complaint, as amended, be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 15th day of September, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

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(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

RACINE UNIFIED SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

In its complaint as amended initiating these proceedings, the District alleged that the Association violated its duty of good faith bargaining under Section 111.70(3)(b)(3), due to the refusal of Mr. Ennis to allow Mr. Johnson to participate in the December 17, 1993 meeting and Mr. Ennis' refusal to meet Superintendent Armstead on March 4, 1994. The Association denied that it committed any prohibited practice and asked that the complaint be dismissed.

POSITION OF THE DISTRICT

The District contends that the Association is guilty of a failure to bargain in good faith because of Mr. Ennis' refusal to allow Mr. Johnson to participate in the December 17, 1993 meeting which had been arranged between Mr. Ennis and Superintendent Armstead, which it argues was intended to be a bargaining session. It relies upon the undisputed fact that Mr. Ennis refused to proceed with the meeting if Mr. Johnson, the chief negotiator for the District, was allowed to participate. It argues that Superintendent Armstead's agreement with Mr. Ennis, whereby Mr. Johnson was allowed to participate but not to talk, does not represent a condonation of the Association's refusal to meet and bargain with Mr. Johnson.

The District contends that the Association also violated its duty to bargain in good faith when on the basis that the prohibited practice complaint which had been filed against him in the interim, Mr. Ennis refused to participate in the meeting of March 4, 1994, which had been arranged between him and Superintendent Armstead, at the suggestion of Mediator Hempe, to attempt to remove some issues from bargaining.

POSITION OF THE ASSOCIATION

The Association contends that the December 17, 1993, meeting, arranged between Mr. Ennis and Superintendent Armstead, was not intended to be a bargaining session, but rather it was understood by him to be purely an informal, informational meeting. The Association argues that it had always taken the position that it would not bargain on year round education separately from other issues and that this corroborates Mr. Ennis' position that the December 17 meeting was not intended to be a bargaining session. It argues that this position is also supported by the fact that Mr. Ennis did not bring his bargaining committee to the meeting. Therefore, the refusal of Mr. Ennis to allow Mr. Johnson, as negotiator for the District, to participate does not represent a failure to bargain in good faith. The Association argues that the March 4, 1994, meeting arranged at the suggestion of Mediator Hempe was clearly understood by all parties to be merely an informal meeting between Mr. Ennis and Dr. Armstead rather than a bargaining session. The Association asks that the complaint be dismissed and the District be ordered to pay costs and attorney's fees.

DISCUSSION

Section 111.70(3)(b)(3) provides that it is a prohibited practice:

3. To refuse to bargain collectively with the duly authorized officer or agent of a municipal employer, provided it is the recognized or certified collective bargaining representative of employees in an appropriate collective bargaining unit.

In Unified School District No. 1 of Racine County, Dec. Nos. 13696-C and 13876-B (Fleischli, 4/78), the Examiner found that the Association violated Section 111.70(3)(b)(3), by refusing to bargain with the District's labor negotiator unless the District Board also attended the bargaining meetings. The Examiner stated that the composition of the party's bargaining team is a permissive subject of bargaining, and, ". . .it is a prohibited practice for either party to refuse to meet with the other party's duly authorized representative or representatives. . ."

The District's complaint is based on the refusal of Mr. Ennis to allow Mr. Johnson to participate in the meeting of December 17, 1993, which had been arranged between Mr. Ennis and Superintendent Armstead. 2/ Mr. Ennis understood that this meeting was to be solely for the purpose of an informal discussion, with no bargaining to occur. 3/ This was the reason he refused to allow Mr. Johnson, the District's chief negotiator, to participate. 4/ Similar informal meetings had taken place between Mr. Ennis and Mr. Armstead in the past. 5/ The evidence failed to establish that this meeting was different from these past informal meetings. Mr. Ennis' position was in accordance with his letter to Mr. Johnson dated November 29, 1993. 6/ The notes of the meeting indicate that Superintendent Armstead stated this meeting was not bargaining. 7/ The District argued that the parties had met to bargain on single issues in the past but there was no evidence that the parties agreed to do so on year round education in this instance. This is supported by the fact that Mr. Ennis did not bring the Association's bargaining committee to the meeting. The District does not contend that Mr. Ennis had ever tried to prevent Mr. Johnson from participating in any meeting which Mr. Ennis had understood to be for the purpose of bargaining.

These facts fall short of those involved in Racine, supra, relied upon by the District. There, the Association refused to participate in meetings which it clearly understood to be for the purpose of bargaining, unless District

2/ Tr. II -245.

3/ Ex. 19, Tr. II - 256.

4/ Tr. II - 247.

5/ Tr. II - 253-254.

6/ Ex. 19.

7/ Ex. 66.

Board members participated personally, along with the negotiator. Here, Mr. Ennis understood that the meeting was intended solely as an informal discussion meeting, rather than a bargaining session.

The Examiner concludes that the actions of Mr. Ennis did not constitute an effort by him to interfere with the District's right to select its own bargaining representatives or a refusal to meet with the District's duly authorized representatives in bargaining.

The District contends that the Association also breached its duty to bargain in good faith when Mr. Ennis withdrew from the meeting arranged at Mediator Hempe's suggestion between him and Superintendent Armstead for March 4, 1994, because the District had filed the instant prohibited labor practice action against him in the interim. 8/ It is not clear from the record but it appears that this meeting was for purposes of narrowing issues in bargaining. However, Mr. Johnson, the District's negotiator, was not present for this meeting. 9/ Under the circumstances, it cannot be concluded that Mr. Ennis' refusal to meet with Superintendent Armstead in the absence of Mr. Johnson to discuss bargaining items, in light of the complaint relating to his insistence that Johnson not participate at the December 17, 1993 meeting, constituted a refusal to bargain in good faith. Thus, the complaint has been dismissed in its entirety.

The Association has asked for costs and attorneys fees. The Commission has held that attorneys' fees are warranted only in exceptional cases where the allegations or defenses are frivolous as opposed to debatable. 10/ The Complaint has not been shown to be so frivolous, in bad faith or devoid of merit so as to warrant the imposition of costs and attorneys's fees and the Association's request for same is denied.

Dated at Madison, Wisconsin this 15th day of September, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/

Lionel L. Crowley, Examiner

8/ Tr. II - 249-250.

9/ Mr. Johnson is the only one authorized by the District's Board to negotiate collective bargaining agreements with the Association. (Tr. I-29).

10/ Wisconsin Dells School District, Dec. No. 25997-C (WERC, 8/90) citing Madison Metropolitan School District, Dec. No. 16471-B (WERC, 5/81).

