

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EUGENE A. HEM, Complainant

and

MILWAUKEE PUBLIC SCHOOLS AND MARY ANN ZAPALA, Respondents

Case 322
No. 53075
MP-3066

Decision No. 28584-B

APPEARANCES

Mr. Eugene A. Hem, 43 West Grand, Chilton, Wisconsin, 53014, appearing pro se.

Mr. Thomas Beamish, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin, 53202, appearing on behalf of Milwaukee Public Schools and Respondent Zapala.

**ORDER AFFIRMING AND MODIFYING EXAMINER'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW AND AFFIRMING EXAMINER'S ORDER**

On October 8, 1996, Examiner Sharon A. Gallagher issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein she concluded the Respondents had not committed any prohibited practices within the meaning of the Municipal Employment Relations Act. She therefore dismissed the complaint.

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On October 21, 1996, Complainant filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. The parties thereafter filed written argument in support of and in opposition to the petition, the last of which was received December 5, 1996. Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

1. The Examiner's Findings of Fact and Conclusions of Law are affirmed as modified to correct the Examiner's misspelling of Respondent Zapala's name.

2. The Examiner's Order is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of December 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

MILWAUKEE PUBLIC SCHOOL

**MEMORANDUM ACCOMPANYING ORDER AFFIRMING AND MODIFYING
EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
AFFIRMING EXAMINER'S ORDER**

In her Memorandum, the Examiner summarized the pleadings and Complainant's position as follows:

Complainant alleges Respondents violated various State laws when they assigned him to teach part-time at the RHS Outpost for the 1995-96 school Year. Complainant also alleges that the placement of Science teachers in hallway outside the auxiliary gym at RHS for the October 19, 1995 parent-teacher conferences injured him because he was required to remain at the conferences until 9:00 p.m. even though he had only meetings with two parents. On January 2, 1996, Complainant amended his complaint to allege violations of the collective bargaining agreement between MTEA and Respondent MPS, specifically violations of Part IV, Section T(5) and Part VI, Sections D, G, H, K, J and M. Complainant also alleged that the following conduct was violative of Sec. 111.70, Stats.: his being harassed and/or criticized by fellow employes during the 1995-96 school year and his being disciplined for videotaping employes during September 1995.

Respondents MPS and Zepala resisted all of Complainant's allegations and defended on the basis that insufficient evidence existed to show that any violation of Section 111.70, Stats., had occurred in regard to Hem's treatment by either Respondent MPS or Respondent Zepala. In addition, the Respondents contended that Hem's arguments that Respondents had violated provisions of the labor agreement could not lie, as Hem had failed to exhaust his rights under the grievance arbitration provision of the effective labor agreement.

Positions of the Parties:

Complainant:

Complainant submitted a document as his brief in this case entitled "Chicago Stockyard Pymalons" (sic). Hem stated in the cover letter attached to his brief that it "cannot be copied because it has been copyrighted". Without quoting from the document submitted, its contents can be summarized as follows. Complainant contends, among other things, that elaborate conspiracies existed and continue to exist between various MPS managers (including Respondent Zepala) and MPS employes (not agents of MPS) to discriminate against Hem and favor other MPS employes because of their race, age, religion and/or sexual orientation. Complainant described the underlying facts of his disputes with Respondents 2/ which dated back to 1992. Complainant also recounted facts regarding Zepala, other MPS managers and MPS employes (dating back to the 1970's and 1980's) involving whether these individuals possessed proper teaching and/or administrative credentials to hold their current or prior positions and whether these individuals had placed false information on past employment and/or licensing applications.

In regard to the specific events which led to the Complainant filing the instant complaint and amended complaint, Complainant primarily argued that Zepala's assigning Complainant in 1995-96 to teach at the RHS Outpost was a punishment because the Outpost is in an unsafe neighborhood, the facility is too small and ill equipped to teach students, and the students sent to the Outpost are the least capable of learning and often have behavior problems. Complainant contended that the real reason he was sent to the Outpost by Zepala was because of his lower class standing, because of his religion, and/or because he is a white male. Complainant disputed the reasons which Zepala gave for assigning him to the Outpost but did not go into detail. Complainant asserted that in 1994-95, Zepala had purposely filled his classes with difficult students, one set of twins, students with behavior problems, and black students with whom Complainant had nothing in common, so that Zepala would have excuses to transfer Complainant to the Outpost in 1995-96.

Complainant also submitted several documents on March 18, 1996 and with his brief which were not offered during the instant hearings. In addition, WERC General Counsel Davis forwarded the Examiner other documents which she received on June 19, 1996 for her consideration in the instant case. Those documents had been sent to Mr. Davis by Complainant without copying the Examiner. Complainant also urged that the physical setting of the October 19, 1995 parent-teacher conferences and the fact that Complainant felt embarrassed or injured that he had only two conferences while other science teachers had many more, also injured Complainant in violation of the Municipal Employment Relations Act.

2/ Complainant declined to testify in the instant hearings.

Following a discussion of the applicable law and the evidence presented, the Examiner concluded that Complainant had not established any violations of the Municipal Employment Relations Act.

On review, the Complainant asserts the Examiner treated him unfairly and erroneously failed to find that Respondents Milwaukee Public Schools and Riverside High School Principal Zapala violated the Municipal Employment Relations Act. We have reviewed the record and conclude the Examiner conducted herself appropriately and correctly analyzed the law and facts presented to her. Therefore, we have affirmed her dismissal of the complaint.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of December 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner