

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRAD KOZACZUK and the NEW HOLSTEIN EDUCATION ASSOCIATION, Complainants,

vs.

SCHOOL DISTRICT OF NEW HOLSTEIN, Respondent.

Case ID: 145.0005
Case Type: COMP_MP

DECISION NO. 37954-B

Appearances:

Rebecca Ferber Osborn, Staff Attorney, Wisconsin Education Association Council, 13805 W. Burleigh Road, Brookfield, Wisconsin, appearing on behalf of Brad Kozaczuk and the New Holstein Education Association.

Tony J. Renning, Attorney, Strang, Patteson, Renning, Lewis & Lacy, 2935 Universal Court, P.O. Box 3505, Oshkosh, Wisconsin, appearing on behalf of the School District of New Holstein.

DECISION AND ORDER ON PETITION FOR REVIEW

On January 8, 2019, Brad Kozaczuk and the New Holstein Education Association (NHEA) filed a complaint with the Wisconsin Employment Relations Commission alleging the School District of New Holstein (District) had committed prohibited practices within the meaning of §§ 111.70(3)(a)1 and (3), Stats. Peter G. Davis was assigned by the Commission to serve as hearing examiner.

A hearing was held on March 1, 2019, in New Holstein, Wisconsin. A stenographic transcript was received on March 18, 2019, and the parties thereafter filed written argument until May 10, 2019. On June 24, 2019, Examiner Davis was formally appointed as the hearing examiner. On July 5, 2019, Examiner Davis issued Findings of Fact, Conclusions of Law, and Order finding the District had engaged in prohibited practices within the meaning of §§ 111.70(3)(a)1 and 3, Stats.

On July 30, 2019, the District filed a Petition for Review of the decision issued by Examiner Davis. Pursuant to the established briefing schedule, the District filed their initial brief on September 3, 2019. NHEA submitted their responsive brief on October 1, 2019, and the District's reply brief was received on October 17, 2019.

The Commission has reviewed the record and concludes that Examiner Davis' decision should be affirmed.

NOW, THEREFORE, it is:

ORDERED

The Examiner's Findings of Fact, Conclusions of Law, and Order are affirmed.

Dated at Madison, Wisconsin, this 22nd day of November, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER ON PETITION FOR REVIEW**

Brad Kozaczuk is employed by the New Holstein School District (District) as a teacher and has served as president of the New Holstein Education Association (NHEA) since June, 2018. On November 15, 2018, Kozaczuk sent an email during his “prep time” from work, reminding colleagues to vote for NHEA in the upcoming recertification election. In his email, Kozaczuk indicated that, if NHEA was not recertified, complete power would be transferred to Superintendent Dan Nett in determining salaries.

After receiving a copy of the email, Nett suspended Kozaczuk for one day without pay. Nett supported the suspension by indicating Kozaczuk created documents and sent out emails via school resources in support of NHEA’s recertification during school hours. Nett cited District Policy 3231 and Administrative Guideline AG 3231 in support of Kozaczuk’s discipline. Additionally, Nett voiced his displeasure with the email by stating that the statement attributing absolute power of salary determination to Nett was false.

During the hearing, Nett admitted that had the communication been limited to informing others of the election, no disciplinary action would have taken place. Thus, the discipline hinges on the statement relating to Nett having unilateral authority to make salary determinations. While that statement is not factually correct, it may be reasonably read that Kozaczuk used Nett as the figurehead representative of the District’s ability to do so, including the School Board itself. As such, the misrepresentation is immaterial and not egregious to the point of requiring discipline to be imposed on Kozaczuk.

After receiving his suspension notice, Kozaczuk grew ill and left the District with permission. From his home and using his personal computer, Kozaczuk sent another email urging employees to vote for recertification. In addition, Kozaczuk shared he had been disciplined by Nett for using school email in the previous communication.

After receiving a copy of this email, Nett proceeded to suspend Kozaczuk again, this time for three days without pay. Nett declared the suspension was due to Kozaczuk engaging in communication with staff that was divisive towards Nett. Additionally, Nett stated the email was not entirely true, as it only mentioned the District’s resources as the cause for the discipline and did not include his false statement regarding Nett’s alleged unilateral ability to determine salaries as additional grounds to support the action Nett took.

As already indicated, the statement regarding Nett’s authority to unilaterally determine salaries was a misstatement that was immaterial. Even if it were material, it is hard to see how the absence of a reference to something could be grounds for discipline in an otherwise appropriate communication from a home computer by an individual who was not working at the time.

The Commission has reviewed the file, transcript, exhibits, and arguments made by the parties and having considered the matter concludes the July 5, 2019 decision does not contain any

errors of fact or law. As such, Examiner Davis' Findings of Fact, Conclusions of Law, and Order are affirmed

Dated at Madison, Wisconsin, this 22nd day of November, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman