

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

MILWAUKEE COUNTY DISTRICT COUNCIL 48	:	
and LOCAL 2, AMERICAN FEDERATION OF	:	
STATE, COUNTY AND MUNICIPAL EMPLOYEES,	:	
AFL-CIO,	:	
	:	Case II
Complainants,	:	No. 8728 MP-2
	:	Decision No. 6195
vs.	:	
	:	
SCHOOL DISTRICT NO. 6, CITY OF GREENFIELD,	:	
	:	
Respondent.	:	

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Richard M. Goldberg, for the Complainant.
Quarles, Herriott & Clemons, Attorneys at Law, by Mr. James Urdan, and Mr. George F. Redmond, Attorney at Law, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above entitled matter came on for hearing before the Wisconsin Employment Relations Board at Milwaukee, Wisconsin, on July 24, 1962, Chairman Morris Slavney and Commissioner J. E. Fitzgibbon being present. Following the close of the hearing, the Respondent filed a motion to reopen the record on the basis of claimed newly discovered evidence. Such motion was opposed by the Complainants. The Board denies the motion for the reason that the proffered evidence is immaterial to the issues involved. The Board has considered the testimony, arguments and briefs of Counsel, and being fully advised in the premises, does hereby make and file the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Milwaukee County District Council 48 and Local 2, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Complainants, are labor organizations representing employees in municipal employment in the Milwaukee, Wisconsin area for the purposes of conducting conferences and negotiations on questions

of wages, hours, and conditions of employment and have their offices at 536 West Wisconsin Avenue, Milwaukee, Wisconsin.

2. That School District No. 6, City of Greenfield, hereinafter referred to as the Respondent, is a municipal employer having its offices at 4800 South 60th Street, in the City of Greenfield, Wisconsin.

3. That on June 26, 1961, the Respondent received a letter from John C. Zinos, Executive Director of Council 48 of the Complainants, stating that "employees of the City of Greenfield had chosen our International Union as their representatives in matters affecting hours, wages, and conditions of employment" and further containing a statement of the aims of the International and a request to be notified of budget hearings; that on December 13, 1961 Zinos wrote a similar letter to the Respondent stating that employees of the Respondent had chosen his organization as their representative; that on February 8, 1962, the effective date of Section 111.70, Wisconsin Statutes, Zinos and Frank DacQuisto, an employee of the Respondent and President of Local 2, wrote a letter to the Respondent stating that Local 2, comprised of non-teaching employees of the Respondent, had been formed and requested recognition from the Respondent; that on March 26, 1962 a representative of Council 48 appeared at a regular meeting of the Respondent and claimed that his organization represented a majority of the Respondent's non-teaching employees; that on April 3, 1962 the Respondent sent to its custodial employees its proposed payroll and benefit schedules for the ensuing school year and a notice of a meeting concerning them; that at such meeting, DacQuisto and John Werner, a representative of the Complainants, appeared but did not participate in such meeting, having indicated that they objected to the meeting; that on April 12, 1962 the Complainants filed a petition with the Board requesting that an election be conducted to determine the bargaining representative for certain employees employed by Respondent, excluding supervisors and all craft employees; that on May 7, 1962 the Board issued and served upon the parties a Notice of Hearing on the Complainants' petition, setting

the matter for hearing May 24, 1962; that said representation proceeding is presently pending before the Board.

4. That on November 10, 1961 the Respondent promulgated and published the following work rule:

"ABSENCE FROM BUILDING

All custodians and matrons must have permission from the building principal before leaving the building during normal working hours."

5. That in September 1961, at the commencement of the school year, Dorothy Savatovic and Paula Rogman, employed as matrons by the Respondent at the Greenfield School became members of the Complainants; that their activity in such regard was unknown at all times material herein to any representatives of the Respondent; that on or about April 1, 1962 Savatovic and Rogman, who usually drove to and from work together, commenced the practice of reporting late for work and quitting early; that between April 1 and April 10, 1962 the principal of Greenfield School complained to Clarence Allender and Virgil Jenkins, the Respondent's Superintendent and Business Manager, respectively, concerning poor custodial work being performed at Greenfield School and of employees reporting late and leaving early; that commencing April 10, 1962 Allender and Jenkins personally conducted a surveillance of the arrival and departure of Savatovic and Rogman, whose normal working hours were from 4:00 P.M. to 8:00 P.M.; that such surveillance disclosed the following arrival and departure times on the dates indicated:

<u>DATE</u>	<u>ARRIVED</u>	<u>DEPARTED</u>
April 10, 1962	4:05	7:30
11	4:10	7:38
12	4:00	7:20
13	4:05	7:42
17	4:12	7:25 - Savatovic
		8:00 - Rogman
18	4:05	7:20

6. That on April 19, 1962 Allender and Jenkins conferred with Casimir Drewitz, the head custodian of Greenfield School, who advised them that he had warned Savatovic and Rogman repeatedly in regard to their reporting late and quitting early; and that Allender and Jenkins thereupon on April 19, 1962 discharged Savatovic and Rogman.

7. That also on April 19, 1962, Allender and Jenkins confronted DacQuisto, whom they knew to be president of Local 2 and who was employed by the Respondent at the Badger School, with the charge that he had been reporting late and leaving early from work; that DacQuisto admitted such charge and indicated he did not have permission from the building principal to do so; that DacQuisto attempted to justify his conduct by saying he had worked overtime hours and that he didn't feel well the days he left early; and that Allender and Jenkins stayed any penalties against DacQuisto because of the reasons he advanced.

8. That the discharge of Savatovic and Rogman by the Respondent was not motivated by any intent or desire of the Respondent to discourage activity on behalf of or membership in the Complainants.

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

CONCLUSIONS OF LAW

That the discharge of employees Dorothy Savatovic and Paula Rogman, by School District No. 6, City of Greenfield was not for the purpose of discouraging membership in and activities on behalf of, Milwaukee County District Council 48 and Local 2, American Federation of State, County, and Municipal Employees, AFL-CIO, and therefore School District No. 6, City of Greenfield did not commit any prohibited practice within the meaning of Section 111.70 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Board makes the following

ORDER

IT IS ORDERED that the complaint of Milwaukee County District Council 48 and Local 2, American Federation of State, County, and Municipal Employees, AFL-CIO, be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of December, 1962.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

SEAL

J. E. Fitzgibbon /s/
J. E. Fitzgibbon, Commissioner

Arvid Anderson /s/
Arvid Anderson, Commissioner

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MEMORANDUM ACCOMPANYING

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Complainants allege that the Respondent discharged employes, Dorothy Savatovic and Paula Rogman to discourage membership in the Complainants. The Respondent denies such allegations and alleges the discharges were for cause. No dispute exists that the Complainants were engaged in organizational activities among the employes of the Respondent and made repeated demands upon the Respondent for recognition. Furthermore the uncontroverted evidence indicates that the Respondent declined to recognize the Complainants or enter into negotiations with them. However although the evidence does establish that the Respondent was aware of the membership and activity of DacQuisto, the Complainants did not establish that any representative of the Respondent was aware of the activity or membership of Savatovic or Rogman.

The Complainants attempted to show that the Respondent was hostile toward labor organizations. It introduced evidence concerning discussions at School Board meeting in June of 1961 and introduced evidence concerning a remark Allender allegedly made after the discharges. The original draft of the School Board minutes of the meeting on June 26, 1961 were prepared by Jenkins, the business manager, a few days after the meeting and contained the following statement:

"Mr. Dallman made a motion, seconded by Mr. Schlinkman, that if any

more custodial help is needed or hired in the future, that we would hire women at 4 hours a day, they wouldn't be Union members and would be available in case of a strike. Unanimously approved.";

that said minutes were sent to the School Board members for possible corrections and additions; that after receiving comments with regard to the proposed minutes they were changed by deleting the words "they wouldn't be Union members and would be available in case of a strike"; that the officers of the Respondent who were in attendance at such meeting and who were questioned at the hearing by the Complainants had no recollection of the discussion or who suggested the deletion of the phrase the Complainants claim indicates an anti-union bias from the final official draft of the minutes.

The Complainants have failed to show that Savatovic and Rogman were discharged to discourage membership in the Complainants. The Complainants did not establish that Allender and Jenkins were aware that Savatovic and Rogman were members of the Complainants. Moreover, they did know that DacQuisto was an official of Local 2 and had an opportunity to discharge him if they so chose. DacQuisto acknowledged being away from his job without permission. Allender and Jenkins withheld any disciplinary action with regard to DacQuisto because they felt that DacQuisto had not been adequately warned and on the basis of the explanation he offered.

Complainants attempted to show that a representative of the Respondent, at an open meeting with employees on November 10, 1961, had made a statement to the effect that custodial employees who worked overtime might take compensatory time off. The evidence with regard to the instance is vague and does not establish any permissive action on behalf of an employee on his own initiative. As a matter of fact the discussion occurred on the same date that the Respondent advised the employees of the rule pertaining to obtaining permission for leaving the building during working hours. Even if the Respondent had agreed to granting any compensatory time off for working overtime there was no proof established that employees could determine for themselves when to take such compensatory time.

The Complainants attempted to establish that Drewitz had not issued any warnings to Savatovic and Rogman prior to their discharge except for one given earlier in September, 1961. The rule violated does not require any warning therefore if the Board were satisfied that no warning was given during the week of the discharge the lack of same would not establish an illegal purpose in the discharge.

The burden of proving a violation of Section 111.70 rests upon the Complainants. The Respondent need not have the burden of proving that the discharges were for cause. The Complainants have not established their case, and we therefore are dismissing the complaint herein.

Dated at Madison, Wisconsin this 21st day of December, 1962.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

J. E. Fitzgibbon /s/
J. E. Fitzgibbon, Commissioner

Arvid Anderson /s/
Arvid Anderson, Commissioner