

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

WEST MILWAUKEE-WEST ALLIS FEDERATION
OF TEACHERS, LOCAL 1067 and WISCONSIN
FEDERATION OF TEACHERS, AFL-CIO,

Complainants,

vs.

JOINT CITY SCHOOL DISTRICT NO. 1 OF
THE CITY OF WEST ALLIS, VILLAGE OF
WEST MILWAUKEE AND THE CITY OF
GREENFIELD IN MILWAUKEE COUNTY, AND
THE CITY OF NEW BERLIN IN WAUKESHA
COUNTY; WEST ALLIS-WEST MILWAUKEE
TEACHERS ASSOCIATION; WISCONSIN
EDUCATION ASSOCIATION,

Respondents.

Case I
No. 8991 MP-4
Decision No. 6544

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. David Leo Uelmen for the Complainants.

Mr. William T. Schmid, Attorney, for the City of West Allis, for the Respondent School District.

Quarles, Heriott & Clemons, Attorneys at Law, by Mr. John G. Kamps and Mr. James A. Urdan, for the Respondent Associations.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Board on February 25, 26 and March 1, 1963 at West Allis, Wisconsin, Chairman Morris Slavney and Commissioner Arvid Anderson being present; and the Board having considered the evidence, arguments and briefs of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Complainant West Milwaukee-West Allis Federation of Teachers, Local 1067, hereinafter referred to as Local 1067, has its offices at 10601 West Garfield Avenue, Wauwatosa,

Wisconsin and is affiliated with the Complainant Wisconsin Federation of Teachers, AFL-CIO, hereinafter referred to as WFT, which has its offices at 6333 West Bluemound Road, Milwaukee, Wisconsin.

2. That the Respondent Joint City School District No. 1 of the City of West Allis, Village of West Milwaukee and the City of Greenfield in Milwaukee County and the City of New Berlin in Waukesha County, hereinafter referred to as the School District, has its offices at 9333 West Lincoln Avenue, West Allis, Wisconsin; that the Respondent School District was created in April 1957 pursuant to act of the Wisconsin Legislature; that the affairs of Respondent School District are administered by a Board of Education, hereinafter referred to as the School Board, consisting of nine Commissioners; that Respondent School District maintains and operates 23 grade and high schools in West Allis, West Milwaukee, Greenfield and New Berlin, Wisconsin; that, in the maintenance and operation of said educational facilities, Respondent School District employs, among other, 514 non-supervisory certificated teachers and a number of supervisory certificated personnel, who include Superintendent Everald G. Kellogg and principals and vice principals.

3. That the Respondent West Allis-West Milwaukee Teachers Association, hereinafter referred to as the Local Association, has its offices at 2975 South 101st Street, West Allis, Wisconsin, and is affiliated with the Respondent Wisconsin Education Association, hereinafter referred to as WEA, which has its offices at 119 Monona Avenue, Madison, Wisconsin.

4. That the Complainant Local 1067 and the Respondent Local Association are unincorporated associations admitting into their membership primary and secondary certificated teaching personnel in the employ of the Respondent School District; and that said

associations, among their purposes and functions, have represented their membership in conferences and negotiations with the Respondent School District on questions of wages, hours and conditions of employment.

5. That the Complainant WFT is an unincorporated association admitting into its membership primary and secondary teaching and various supervisory personnel employed by various school districts throughout the State of Wisconsin; and that the Complainant WFT aids and assists local unions, chartered by and affiliated with it, in their conferences and negotiations with the various school districts with reference to matters relating to wages, hours and conditions of employment of their teaching personnel.

6. That the Respondent WEA, created by an Act of the Wisconsin Legislature in 1855, admits into its membership teachers, principals, superintendents and other supervisors who are actively engaged in the profession of teaching or other education work employed by various school districts and educational facilities in the State of Wisconsin; that the Constitution of the Respondent WEA contains among its provisions the following material herein to its relationship with local associations affiliated with it:

"ARTICLE VI
Representative Assembly

Section 1. The Representative Assembly shall be composed of professional members of the association chosen by the locals authorized by the association. Each local shall be entitled to one representative in the Representative Assembly for each 50 professional members of such local and an additional representative for any remaining major fraction of 50 such members; except that a local from a city or system which employs fewer than 50 teachers but no less than 26, shall be entitled to a representative when 100 per cent of the employed teachers are professional members. Committee chairmen of all standing committees and convention committees shall be official delegates-at-large. All members of the Executive Committee shall be official delegates-at-large.

* * *

Section 5. The Representative Assembly, subject to the provisions of the Articles of Incorporation and the

Constitution, shall have full power to transact all the business of the association at the annual meetings thereof, to enact legislation relating to the work of the association, the organization of locals, the duties of officers and committees and such other matters properly within the scope of legislative action. The Representative Assembly shall determine its own rules of procedure and shall have power to establish an official organ of the association to be published periodically. The Representative Assembly shall have the power over all funds of the association and shall control the expenditure thereof, except as such power may be delegated to the Executive Committee by act of the Representative Assembly, and shall adopt a budget for the association annually. All powers of the association not specifically delegated by the Representative Assembly, or otherwise authorized by the Articles of Incorporation and the Constitution, are reserved to the Representative Assembly."

"ARTICLE VII Locals

Section 1. Any group of teachers to the number of fifty, or more, or major fraction thereof, if that city or system does not employ fifty teachers, may form a local organization and such local organization when so organized shall be entitled to representation in the Representative Assembly as hereinbefore provided when petition therefore has been made to and approved by the Representative Assembly or the Executive Committee. Such locals shall be known and designated in the records of the association in the following manner: (Name of city or county) Local , Wisconsin Education Association. In any city school system not more than one local shall be established in any one school building. The petition for the establishment of a local shall be made to the Representative Assembly or to the Executive Committee and shall be accompanied by a list of the names of all teachers forming such local, the names of the officers thereof and the dues to the Wisconsin Education Association for said teachers for one year unless such dues have been previously paid for the then current year, in which case a statement covering all such previously paid dues shall be made. The form of government of any such local shall not be prescribed or controlled by the state association. When the petition of any such local shall have been approved by the Representative Assembly or the Executive Committee, the Executive Secretary of the Wisconsin Education Association shall issue credentials to such local entitling such local to all rights and privileges contained herein."

7. That the Respondent WEA, among other things, assists local associations in their function of proposing and negotiating wages, hours and working conditions affecting the membership of the local associations; that since the effective date of Chapter 111.70 of the Wisconsin Statutes, the Respondent WEA has provided

advice and counsel to various local associations seeking to obtain exclusive recognition for the purposes of collective bargaining, from various school districts in the state; that the incumbent officers of the Respondent WEA include John A. Bjorge, Superintendent of Schools at La Crosse, Wisconsin as President, Allen A. Anderson, a principal at Spring Valley, Wisconsin as President-Elect, Dorothy Rule, a school principal at Madison, Wisconsin as First Vice President, A. I. Winther, an Executive Committee Member, who is a dean at Wisconsin State College at Whitewater, Wisconsin, and also as an Executive Committee member, D. E. Field, a principal at La Crosse, Wisconsin; and that the Respondent WEA has 10 standing committees and that membership of said committees include, in addition to non-supervisory personnel, deans, superintendents and principals.

8. That since its creation in 1957, and prior to September 1962, the Respondent School District, by its School Board, entertained and considered proposals submitted both by the Complainant Local 1067 and the Respondent Local Association with regard to wages, hours and conditions of employment of the certificated teaching personnel in its employ; and in that regard permitted the representatives of said organizations to be heard on their respective proposals at meetings of said School Board.

9. That on September 4, 1962 employees of the Respondent School District, including certificated teaching personnel, reported for duty for the 1962-1963 school year and on September 6, 1962 the Respondent School District officially opened its schools for said school year; and that on September 19, 1962 the Respondent Local Association, over the signature of its President Kenneth Grove, presented the following request for recognition to the Respondent School District by depositing same in the mail box receptacle of the School Board:

"Subject: Recognition as Exclusive Negotiating Representative

Pursuant to the provisions of Section 111.70 of the Wisconsin Statutes, the West Allis-West Milwaukee Teachers Association hereby requests the Board of Education of Joint City School District No. 1 to recognize the West Allis-West Milwaukee Teachers Association as the exclusive negotiating representative on questions of wages, hours and conditions of employment for all non-supervisory certificated teaching personnel employed by said school district. Said West Allis-West Milwaukee Teachers Association has been designated by a majority of the Executive Board personnel to act as their negotiating representative.

This request has been approved by our Executive Board at a regular meeting of the Board of the West Allis-West Milwaukee Teachers Association held on September 19, 1962, at 4:00 p.m.

The West Allis-West Milwaukee Teachers Association, 2975 South 101 Street, West Allis 19, Wisconsin, affiliated with the Wisconsin Education Association, Madison, Wisconsin, is composed of 350 nonsupervisory, certificated personnel of the total staff of 510 nonsupervisory, certificated personnel under contract to the Joint City School District No. 1."

10. That, in preparing said request, Grove patterned same somewhat upon a form previously furnished to the Respondent Local Association by the Respondent WEA; and that accompanying said request was the following resolution proposed for adoption by the School Board, also prepared by Grove from a sample furnished by the Respondent WEA:

"RESOLUTION

Pursuant to the provisions of Section 111.70 (2) of the Wisconsin Statutes and to a request received from the West Allis-West Milwaukee Teachers Association, and said West Allis-West Milwaukee Teachers Association having satisfactorily shown that it is authorized by a majority of the nonsupervisory certificated teaching personnel employed by Joint City School District #1 and such request having been approved at a regular meeting of the West Allis-West Milwaukee Teachers Association Executive Board on September 19, 1962, the Board of Education of Joint City School District #1 does hereby resolve as follows:

SECTION 1. Recognition of Exclusive Negotiating Representative.

The West Allis-West Milwaukee Teachers Association, an affiliate of the Wisconsin Education Association, Madison,

Wisconsin, is recognized as the exclusive negotiating representative for nonsupervisory certificated personnel of Joint City School District #1 on matters of wages, hours and conditions of employment for the nonsupervisory teaching personnel employed by the Board of Education of Joint City School District #1.

SECTION 2. Effective Date. This resolution shall take effect on October 2, 1962.

COMMITTEE ON TEACHERS AND CURRICULUM
Joint City School District No. 1

Joseph W. Doolan, Chairman

Michael A. Durante

Mrs. Mary Keech

Walter H. Funke

Mrs. Ruth Keller"

11. That on September 24, 1962, at a regular meeting, the School Board considered the Respondent Local Association's request for exclusive recognition for all non-supervisory certificated teaching personnel in its employ and the proposed resolution; that on that occasion the School Board directed Superintendent Kellogg, who was also a member of the Respondent Local Association, to determine whether the Respondent Local Association, in fact, represented a majority of the non-supervisory teaching personnel employed by the Respondent School District; that prior to any further action on the request by Superintendent Kellogg the Respondent Local Association at a meeting of its members on October 3, 1962 where principals and other supervisory employees were also present, circulated authorization cards, as follows, prepared from a sample furnished by the Respondent WEA, to non-supervisory teaching personnel for their signature:

"I hereby designate the West Allis-West Milwaukee Teachers Association, an affiliate of the Wisconsin Education Association, as my exclusive bargaining representative in negotiation with the Board of Education of the Joint City School District No. 1 on questions of wages, hours and conditions of employment, pursuant to Section 111.70 of the Wisconsin Statutes.

This authorization will be in effect as long as I am a member of the teaching staff of Joint City School District No. 1, unless I terminate this agreement in writing.

Signature _____
Date _____
School _____"

12. That following October 3, 1962, and continuing through October 16, 1962, Building Representatives of the Respondent Local Association distributed an additional number of said authorization cards among the non-supervisory teaching personnel employed in the various schools operated by the Respondent School District; and that on October 5, 1962 Grove informed Superintendent Kellogg that the Respondent Local Association was in the process of obtaining authorization cards for the purpose of establishing a list of its members in support of its request for exclusive recognition.

13. That on or about October 9, 1962 the Respondent School District received the following letter from the Complainant Local 1067:

"The WEST MILWAUKEE-WEST ALLIS FEDERATION OF TEACHERS, Local 1067, requests the Board of Education of Joint City School District No. 1 to recognize the Federation as the exclusive bargaining representative for the purpose of collective bargaining on questions of wages, hours and conditions of employment for all classroom teachers employed by Joint City School District No. 1 excluding all other employees and supervisory personnel.";

and that neither upon the receipt of the above mentioned letter nor at any time thereafter has the Respondent School District, by any of its representatives or agents, communicated in any way with any of the officers, representatives or agents of the Complainant Local 1067.

14. That on or about October 21, 1962 the School Board received the following communication from the Respondent Local Association, over the signature of Grove:

"Enclosed is a list of teachers who have signed a card authorizing the West Allis-West Milwaukee Teachers Association as their exclusive bargaining representative

in negotiating with the Board of Education of the Joint City School District No. 1 on questions of wages, hours and conditions of employment, pursuant to Section 111.70 of the Wisconsin Statutes. The list includes 319 names. The district has a nonsupervisory teaching staff of 516, which gives us a clear majority. Our total membership is 415 as of Monday, October 15, 1962.

This is certainly evident that the majority of teachers support us in requesting recognition as the exclusive negotiating representative."

15. That attached to the aforementioned letter was a three-page list containing the names of 319 non-supervisory teaching personnel employed by the Respondent School District who allegedly had executed individual authorization cards noted in para. 11 supra; that on October 29, 1962 the School Board instructed Superintendent Kellogg to have said list checked against the authorization cards obtained by the Respondent Local Association; that on October 30 Superintendent Kellogg advised Grove to have said list certified by a public accountant and that on October 31, 1962 through arrangements made by Superintendent Kellogg an auditor in the employ of the City of West Allis, who was at the time performing an audit of the records of the Respondent School District in its offices, checked the names on the aforementioned list with the individual authorization cards and upon comparison thereof said auditor executed the following statement which was inserted on the October 21, 1962 letter written by Grove:

"I hereby certify that I have checked the enclosed list totaling 319 names with individual signature cards authorizing the West Allis-West Milwaukee Teachers Association as their exclusive bargaining representative."

16. That on November 5, 1962, at a regular meeting of the School Board where representatives of both the Complainant Local 1067 and the Respondent Local Association were present, the School Board, after considering the certified list as noted previously herein, formally adopted the resolution originally proposed by the Respondent Local Association, with the exception that the effective date noted thereon was November 6, 1962 rather than October 1, 1962; that representatives of the Complainant Local 1067 had no

knowledge until said School Board meeting that the Respondent School District was considering the adoption of such resolution; and that upon learning that said matter was on the agenda for the meeting, a representative of Complainant Local 1067 sought telephonic advice from counsel, and upon such advice, after the resolution was adopted, protested same alleging that the action of the School Board in adopting the resolution was "illegal".

17. That on November 9, 1962 Superintendent Kellogg caused the following bulletin to be distributed to all certificated teaching personnel in the employ of the Respondent School District:

"By a communication presented to the Board of Education of Joint City School District No. 1 on October 1, 1962, the West Allis-West Milwaukee Teachers Association requested that its organization be recognized as the exclusive negotiating representative on questions of wages, hours, and conditions of employment for all non-supervisory certified teaching personnel employed by the school district. The West Allis-West Milwaukee Teachers Association claimed that it represented a majority of the non-supervisory professional employees of the school district. The Board of Education, having satisfied itself that the West Allis-West Milwaukee Teachers Association does in fact represent the majority of the professional employees of the school district, adopted, on November 5, 1962, a resolution recognizing the West Allis-West Milwaukee Teachers Association as the exclusive negotiating representative for non-supervisory certified personnel of the joint city school district.

In arriving at its determination as expressed in the resolution adopted November 5, 1962, the Board of Education has endeavored to follow the exact letter of Section 111.70 of the Wisconsin Statutes and particularly that portion of Section 111.70 created by Chapter 663 of the 1961 Wisconsin Session Laws.

The Board of Education also received a communication from the West Milwaukee-West Allis Federation of Teachers requesting recognition as the exclusive collective bargaining representative on questions of wages, hours, and conditions of employment for all classroom teachers employed by the school district. Under the law, the local West Milwaukee-West Allis Federation of Teachers, as a union, appears to have the right to petition the Wisconsin Employment Relations Board for an election to determine whether all of the professional employees desire to be represented by the West Milwaukee-West Allis Federation of Teachers in negotiations with the Board of Education. Should the West Milwaukee-West Allis Federation of Teachers present such petition to the Wisconsin Employment Relations Board, an election on this question would undoubtedly be scheduled by the WERB in due course. If such an election is held, all teachers employed by the school district would be entitled to participate in a determination of the question as to

whether the petitioning group, the West Milwaukee-West Allis Federation of Teachers, should be designated as bargaining agent for all non-supervisory certified teaching personnel of the school district. Until the results of such an election are known, the West Allis-West Milwaukee Teachers Association will continue to be recognized by the Board of Education as exclusive bargaining agent for the above-named professional employees of the school district."

18. That following the adoption of said resolution on November 5, 1962, and prior to December 27, 1962, representatives of the Respondent School District, in accordance with and as a consequence of said resolution, met with and obtained proposals from representatives of the Respondent Local Association as the exclusive collective bargaining representative with respect to wages, hours and working conditions for all non-supervisory certificated teaching personnel in the employ of the Respondent School District; that on December 19, 1962 as a result of the aforementioned meeting and submission of proposals by representatives of the Respondent Local Association, the Respondent School District granted wage increases to the certificated teaching personnel in the employ of the Respondent School District; and that on December 27, 1962 the Respondent Local Association, in a letter over the signature of Grove, requested Respondent WEA to conduct a study and report on a pay plan which the Respondent Local Association had proposed to the Respondent School District.

On the basis of the above and foregoing Findings of Fact the Board makes the following

CONCLUSIONS OF LAW

1. That the Complainant West Milwaukee-West Allis Federation of Teachers, Local 1067 and the Complainant Wisconsin Federation of Teachers, AFL-CIO are labor organizations within the meaning of Section 111.70 (2) of the Wisconsin Statutes.

2. That the Respondent West Allis-West Milwaukee Teachers Association and the Respondent Wisconsin Education Association are

labor organizations within the meaning of Section 111.70 (2) of the Wisconsin Statutes.

3. That the Respondent Joint City School District No. 1 of the City of West Allis, Village of West Milwaukee and the City of Greenfield in Milwaukee County and the City of New Berlin in Waukesha County is a municipal employer within the meaning of Section 111.70 (1) (a) of the Wisconsin Statutes.

4. That on November 5, 1962 because of the conflicting demands for exclusive recognition submitted by the Complainant West Milwaukee-West Allis Federation of Teachers, Local 1067, affiliated with the Wisconsin Federation of Teachers, AFL-CIO and the Respondent West Allis-West Milwaukee Teachers Association, affiliated with the Wisconsin Education Association, there existed a real question concerning representation for non-supervisory certificated teaching personnel in the employ of the Respondent Joint City School District No. 1 of the City of West Allis, Village of West Milwaukee and the City of Greenfield in Milwaukee County and the City of New Berlin in Waukesha County within the meaning of Section 111.70 (4) (d) of the Wisconsin Statutes.

5. That the Respondent Joint City School District No. 1 of the City of West Allis, Village of West Milwaukee and the City of Greenfield in Milwaukee County and the City of New Berlin in Waukesha County, its officers and agents including Superintendent Kellogg by assisting the Respondent Local Association in obtaining proof of its alleged majority status and by granting exclusive recognition to the Respondent West Allis-West Milwaukee Teachers Association, affiliated with the Wisconsin Education Association, and thereafter by engaging in negotiations with said Respondent West Allis-West Milwaukee Teachers Association, affiliated with the Wisconsin Education Association, which negotiations resulted in an increase of pay to the certificated teaching personnel in its employ, interfered with the rights of said employees within the meaning of Section 111.70 (3) (a) 1, and 111.70 (2) of the

Wisconsin Statutes and thus committed, and is committing, prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes.

6. That neither the Respondent West Allis-West Milwaukee Teachers Association nor the Respondent Wisconsin Education Association have committed any prohibited practices 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 Respondent Joint City School District No. 1 of the City of West Allis, Village of West Milwaukee and the City of Greenfield in Milwaukee County and the City of New Berlin in Waukesha County, its officers and agents, including its Superintendent of Schools, principals and other personnel, shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of their right to organize, to form labor organizations, to join or assist any labor organization, to be represented by labor organizations of their own choice in conferences and negotiations with said Respondent on questions of wages, hours and conditions of employment, or to interfere with, restrain or coerce employes in the exercise of their right to refrain from any and all such activities.

2. Cease and desist from recognizing Respondent West Allis-West Milwaukee Teachers Association, affiliated with the Wisconsin Education Association, or any other labor organization or representatives of its certificated teaching personnel unless and until such time as said Respondent West Allis-West Milwaukee Teachers Association, affiliated with the Wisconsin Education Association, or any other labor organization or representative shall be

certified as the exclusive bargaining representative in a representation election conducted by the Wisconsin Employment Relations Board pursuant to Section 111.70 (4) (d) of the Wisconsin Statutes.

3. Take the following affirmative action which the Board finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:

- (a) Withdraw and withhold all recognition from the Respondent West Allis-West Milwaukee Teachers Association, affiliated with the Wisconsin Education Association, as the exclusive collective bargaining representative of its non-supervisory certificated teaching personnel unless and until such time that it has been certified as such representative after an election conducted by the Board pursuant to Section 111.70 (4) (d) of the Wisconsin Statutes.
- (b) Post throughout the various schools maintained and operated by it copies of the notice attached hereto, marked Exhibit "A", said copies after being duly signed by the Chairman of the Committee on Teachers and Curriculum as well as the Superintendent of Schools shall be posted by the Respondent Joint City School District No. 1 of the City of West Allis, Village of West Milwaukee and the City of Greenfield in Milwaukee County and the City of New Berlin in Waukesha County immediately upon receipt hereof and be maintained for a period of sixty (60) consecutive days thereafter in places where notices to such employees are customarily posted. Reasonable steps shall be taken to see that said notices are not altered, defaced or covered by any other material.
- (c) Notify the Wisconsin Employment Relations Board within

fourteen (14) days after receipt of a copy of this Order
as to what steps it has taken to comply therewith.

IT IS FURTHER ORDERED that the complaint as it pertains to
the Respondent West Allis-West Milwaukee Teachers Association and
the Respondent Wisconsin Education Association be, and the same
hereby is, dismissed.

Given under our hands and seal at
the City of Madison, Wisconsin this
18th day of November, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

APPENDIX "A"

NOTICE TO ALL CERTIFICATED TEACHING PERSONNEL

Pursuant to a decision of the Wisconsin Employment Relations Board, and in order to effectuate the policies of the municipal employer-municipal employe labor law, Section 111.70 of the Wisconsin Statutes, we hereby notify you that:

1. We will not grant exclusive recognition for all certificated non-supervisory teaching personnel in the employ of Joint City School District No. 1 of the City of West Allis, Village of West Milwaukee and the City of Greenfield in Milwaukee County and the City of New Berlin in Waukesha County to the West Allis-West Milwaukee Teachers Association affiliated with the Wisconsin Education Association or any other labor organization or employe representative until the West Allis-West Milwaukee Teachers Association affiliated with the Wisconsin Education Association or any such other labor organization or employe representative is certified after an election conducted by the Wisconsin Employment Relations Board as said exclusive bargaining representative for said employes.
2. We will not in any other manner interfere with, restrain or coerce employes in the exercise of their right to organize, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing for the purpose of conferences and negotiations with said School District, or to refrain from any and all such activities.

JOINT CITY SCHOOL DISTRICT NO. 1

By _____
Chairman, Committee on
Teachers and Curriculum

By _____
Superintendent of Schools

Dated _____, 1963.

THIS NOTICE MUST REMAIN POSTED FOR SIXTY DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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FEDERATION OF TEACHERS, AFL-CIO,

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JOINT CITY SCHOOL DISTRICT NO. 1 OF
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TEACHERS ASSOCIATION; WISCONSIN
EDUCATION ASSOCIATION,

Respondents.

Case I
No. 8991 MP-4
Decision No. 6544

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

The Pleadings

Complainant Local 1067 and Complainant WFT alleged that Respondent School District, notwithstanding the conflicting demands for exclusive recognition presented by both Complainant Local 1067 and Respondent Local Association as the bargaining representative for the non-supervisory certificated teaching personnel in its employ, by extending exclusive recognition to the Respondent Local Association, interfered with, restrained and coerced such employees in the exercise of their right to be represented by an organization of their own choice in violation of Section 111.70 (3) (a) 1 of the Wisconsin Statutes. The Complainants further alleged that Respondent Local Association was dominated and supported by Respondent School District and that Respondent WEA was and is established, dominated and supported by various School Districts throughout the State of Wisconsin and, in addition, that the

officers of Respondent WEA, include supervisory employees who also dominated and encouraged membership in Respondent WEA and its affiliated local associations, and in that regard, has violated Section 111.70.

Respondent School District denies the commission of any prohibited practices, contending that the exclusive recognition granted to Respondent Local Association did not deprive any of its employees of their rights under Section 111.70. Further Respondent School District affirmatively alleges that exclusive recognition was granted to Respondent Local Association for the reason that it represented a majority of the certificated teaching personnel in its employ.

Respondents Local Association and WEA deny any unlawful conduct as alleged by the Complainants.

Issues

The issues in this proceeding, as formulated by the pleadings, raise substantial questions with regard to the intent and application of Section 111.70 of the Wisconsin Statutes, the statute governing municipal employer-employee labor relations in this state. Basically these issues are as follows:

- I Are Respondent Local Association and Respondent WEA organizations capable of representing employees in conferences and negotiations with municipal employers within the meaning of Section 111.70?
- II Assuming the answer to the above is in the affirmative, are either Respondent Local Association or Respondent WEA dominated by supervisory employees so as to preclude them from acting in a representative capacity?
- III Did Respondent School District interfere with the rights of its non-supervisory certificated teaching personnel by granting exclusive recognition to Respondent Local Association at such time when a conflicting claim by the Complainant Local 1067 existed?
- IV Did Respondent School District unlawfully assist Respondent Local Association in obtaining its alleged proof of majority representation?

I

In a decision rendered in Milwaukee Board of Vocational and Adult Education^{1/} the Board discussed in detail the nature of organizations capable of having representative status under Section 111.70. The Board stated therein:

"If the employe organization, regardless of its name, satisfies the Board that its purpose is to represent municipal employes in conferences and negotiations with municipal employers on questions of wages, hours and conditions of employment, such organization or its representative shall be considered by the Board to have the right, under appropriate circumstances, to become a party in any proceeding conducted by the Board pursuant to Section 111.70 of the Wisconsin Statutes."

In the above noted case the Board placed on the representation ballot a local affiliated with Complainant WFT and also a local affiliated with the Respondent WEA. The record in the instant proceeding established that at least for the past five years the Respondent School District has recognized representatives of both Complainant Local 1067 and Respondent Local Association for purposes of considering requests for wages, hours and working conditions affecting teaching personnel employed by Respondent School District. We are satisfied, therefore, that Respondent Local Association, like Complainant Local 1067, has, among its purposes, the representation of employes on questions of wages, hours and conditions of employment and therefore must be considered a labor organization within the meaning of Section 111.70 (2) and (4) (d) of the Wisconsin Statutes.

Complainant WFT is composed of various local unions of teachers chartered by it. No party in this proceeding challenged Complainant WFT as not being a labor organization within the meaning of the Statutes. Complainants allege that Respondent WEA is a labor organization, but so dominated as not

^{1/} Decision No. 6343, 5/63.

to be allowed to function as such by the Board. Membership of Respondent WEA is composed of certificated teaching personnel throughout the State of Wisconsin including supervisory and administrative personnel. Local associations may become affiliated with Respondent WEA and, in fact, Respondent Local Association is so affiliated. The governing body of Respondent WEA is identified as the "Representative Assembly" and consists of individuals elected by the membership of local associations. The Representative Assembly, among its powers, transacts the business of the Respondent WEA at its annual meeting, enacts legislation relating to the programmed work of the association, to the organization of the locals and to the duties of its officers and committees.

The record in the instant proceeding discloses that Respondent WEA had furnished advice and guidance to Respondent Local Association in its quest for exclusive recognition from Respondent School District. Furthermore, after obtaining such exclusive recognition, Respondent Local Association requested Respondent WEA to conduct a survey on a pay plan which the Respondent Local Association proposed to Respondent School District. Respondent Local Association identified itself as being affiliated with the Respondent WEA. The resolution adopted by Respondent School District recognizes Respondent Local Association "affiliated" with Respondent WEA as the exclusive collective bargaining representative for the non-supervisory certificated teaching personnel. The activity of Respondent WEA for and on behalf of Respondent Local Association constitutes activity normally performed by parent labor organizations for their local affiliates, and therefore we conclude, at least for the purposes of this proceeding, that Respondent WEA is a labor organization within the meaning of Section 111.70.

II

The Complainants allege that Respondent Local Association was "dominated and supported" by Respondent School District and that Respondent WEA "is established, dominated and supported by the various school districts in the State of Wisconsin." The Complainants have not alleged that Respondent School District established, dominated or supported the Respondent WEA. The only municipal employer named as a respondent herein is Respondent School District. However, we deem it warranted, because of the importance of the question raised by the pleadings, to decide the issue as to whether Respondent WEA is, in fact, a dominated labor organization.

It is true that various individuals employed as supervisory personnel by various school districts throughout the State of Wisconsin, who are not named as parties herein, hold prominent and important offices in Respondent WEA. We recognize that many organizations, which represent municipal employes on matters of wages, hours and working conditions with their municipal employers existed long before the enactment of Section 111.70. Prior thereto such organizations not only represented rank and file employes, but also employes who occupied administrative and supervisory positions. Both Congress and the Wisconsin Legislature in enacting their respective labor acts recognized that there is a conflict between the interest of the employe and that of the employer, and they have also recognized that supervisory employes, for the most part, are agents of the employer, and thus are performing a management function. As a result, supervisory employes are not included in the definition of the term "employe" in either the federal or the state labor act. Section 111.70 does not adopt the definition of the term "employe" as included in the Wisconsin Employment Peace Act and does not exclude from the term

"employee" employees employed in a supervisory or executive capacity. The Board nevertheless has excluded supervisors from collective bargaining units established by the Board in representation elections. In Wausau City Employees^{2/} the Board stated:

"Should supervisors be included in the same bargaining unit with employees they supervise said individuals would be in a position either to prefer the interest of employees over that of the municipal employer or to prefer the interest of the municipal employer as the agents thereof over that of the employees."

Good faith bargaining as envisaged by Section 111.70 requires that there be two parties confronting each other on opposite sides of the bargaining table. [Supervisory personnel, because of their status with a municipal employer, could create the situation where the municipal employer would be dealing with itself if the supervisors were allowed to control the bargaining representative. The law abhors any possible conflict of interest or even a taint of conflict of interest. However, there is nothing in Section 111.70 which provides that mere membership of supervisors in a labor organization contaminates that organization for purposes under the Statute. The fact that supervisory personnel are members of, or may hold office in, any labor organization subject to the provisions of Section 111.70 may raise a suspicion, but does not in itself establish domination or interference with the organization by the municipal employer employing such supervisory personnel.] The number of supervisors among the membership of the organization and the ratio of supervisors to other members are factors to be evaluated in each case. Likewise, the office held by supervisors and the extent to which they formulate the bargaining policy and programs of their labor organizations will also be scrutinized in each case.

Respondent Local Association has among its members Superintendent Kellogg, other various supervisors and principals. One

^{2/} Decision No. 6276, 3/63.

supervisor is a member of the Representative Assembly of the Respondent WEA. Complainants contend that the activity of Superintendent Kellogg and various principals constituted domination of the Local Association, and interference with the rights of its members. The activity of Superintendent Kellogg, as established in the record and as reflected in the findings, was performed as a representative of Respondent School District in his capacity as Superintendent, an agent of his employer. It has not been established in this proceeding that the Respondent WEA or the Respondent Local Association are dominated labor organizations.

III and IV

The experience of the Board has indicated that there may be various forms and acts of interference, restraint and coercion of employes in their rights to engage in or to refrain from engaging in concerted activities. We recognize that it would be practically impossible for any legislative body to detail the forms of such action. We also recognize the fact that the Wisconsin Employment Peace Act and the National Labor Relations Act provide greater enumeration and more specifically describe standards of conduct for the treatment by the employer of his employes and vice versa than does Section 111.70. This Board in interpreting Section 111.70 shall consider any activity which interferes with, restrains or coerces employes in their rights guaranteed in the statute whether specifically enumerated or not, as prohibited practices as long as such determinations do not conflict with any other provisions of Section 111.70.

The undisputed facts indicate that for at least five years prior to the granting of recognition Respondent School District recognized and conferred with both representatives of Respondent Local Association and Complainant Local 1067. In fact, as late as

the spring of 1962 Respondent School District continued to recognize and deal with representatives of both organizations. It is clear that Complainant Local 1067 had a continuing interest in representing employees of the School District. Its demand for exclusive recognition therefore, on October 10, 1962, cannot be considered frivolous. In considering the demands of both organizations Respondent School Board chose to completely ignore the request of Complainant Local 1067 despite past "bargaining" history. Furthermore, the communication of November 9, 1962, which Superintendent Kellogg caused to be distributed to all teaching personnel indicated, with regard to the demand of the Respondent Local Association, that the Respondent School District was satisfied with a showing of authorization cards which Kellogg arranged to have certified, while at the same time, Kellogg indicated that, if the Complainant Local 1067 desired to have the matter of representation resolved, said Local should petition this Board for such determination. It is clear to us that the Respondent School District by the activity of its agent, Superintendent Kellogg, under all the circumstances herein unlawfully assisted the Respondent Local Association in obtaining its alleged proof of membership.

The Board cannot countenance such inequality of treatment. We believe it to be absolutely necessary that every municipal employer maintain strict neutrality when confronted with conflicting demands for recognition and it must, like Caesar's wife be "above reproach" in its dealings with its employees. The manner in which the Respondent School District determined the representative status denied the right of all non-supervisory certificated teaching personnel the opportunity to express themselves with respect to their choice of representative. Experience in dealing with labor problems of this nature leads us to believe that on balance,

more often than not, friction, unrest and suspicion of the employer can best be removed by allowing all employees a voice in their selection of the exclusive bargaining representative when there exists a real question concerning representation. Tradition, custom and experience all dictate that issues of this nature can best be resolved by a secret ballot election where all eligible employees can truly express their free choice. This principle is certainly one of the earmarks of our democratic system and we believe it is entirely consonant with the free choice of a bargaining representative. The Legislature provided for such secret ballot elections to be conducted by this Board. We are of the opinion that Respondent School Board should have taken the initiative to persuade either of the organizations to file a petition for an election, or to initiate the filing of a petition on its own behalf.

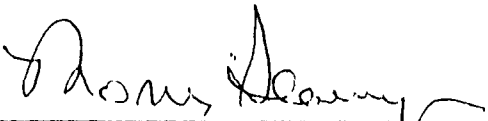
Our determination in this proceeding does not establish that the Board is opposed to voluntary recognition of labor organizations by municipal employers where only one organization seeks recognition in a particular unit, and that organization is able to establish, in the absence of any reasonable doubt, that it in fact represents an uncoerced majority of the employees involved. It is true that various principals attended the meeting at which officers of Respondent Local Association caused authorization cards to be distributed and executed. However the mere presence of the principals, unrelated to any of the signing of the cards, does not in itself establish interference. Our conclusion in this respect does not establish the right of supervisory personnel to assist any labor organization in obtaining membership.


We have concluded that Respondent School District, by granting exclusive recognition to Respondent Local Association in the face of a conflicting demand by the Complainant Local 1067, constituted

a prohibited practice within the meaning of the statute. We have also concluded that the Respondent School District, by the activity of its agent Superintendent Kellogg, unlawfully assisted the Respondent Local Association in obtaining its alleged proof of majority status. Therefore, in order to remedy the prohibited practices committed by the Respondent School District, we have ordered said Respondent to cease and desist from recognizing the Respondent Local Association as the exclusive bargaining representative of its employees and have further ordered that said Respondent School District withhold granting exclusive recognition to any labor organization until and unless a labor organization has been certified in an election conducted by this Board.

Dated at Madison, Wisconsin this 18th day of November, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By 
Morris Slavney, Chairman


Arvid Anderson, Commissioner