6833-A

STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

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#120-017
BOARD OF SCHOOL DIRECTORS OF
THE CITY OF MILWAUKEE,

Petitioner, *

-vs-

WISCONSIN EMPLOYES RELATIONS BOARD, * MEMORANDUM

Respondent. OPINION

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#120-033
MILWAUKEE TEACHERS' EDUCATION
ASSOCIATION,

Petitioner, *

-vs-

WISCONSIN EMPLOYMENT RELATIONS BOARD, *

Respondent.

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#120-039
MILWAUKEE TEACHERS UNION LOCAL 252,
affiliated with American Federation
of Teachers, AFL-CIO, *

Petitioner,

-vs-

*

WISCONSIN EMPLOYMENT RELATIONS BOARD,

Respondent.

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These three actions of review involve basically a dispute between two labor organizations. The Milwaukee Teachers' Education Association (hereinafter called the "Association"), won the election and was certified by the WERB as the exclusive collective bargaining representative on February 19, 1964. The Milwaukee Teachers Union, AFL-CIO, lost the battle but continued the war, and is hereinafter referred to as the "Union." The Board of School Directors became involved because in negotiating with the Association certain rules were formulated respecting the manner in which the Directors would deal with the Association and the Union.

Each of the three parties was dissatisfied with one or more of the numerous orders entered by the WERB and each party started an action of review in this Court. The Court affirms in part and reverses in part the orders of the WERB.

The WERB held: (1) That the School Board committed a prohibited labor practice by prohibiting officers of the minority Union from discussing at the public hearing required by statute in connection with

the adoption of the fiscal budget the Agreement on wages and working conditions negotiated between the School Board and the Association; (2) That the School Board committed a prohibited practice by adopting a grievance procedure that specifically prohibited the minority Union from representing its members in grievance procedures; (3) That the School Board could agree to check off of dues in accordance with written authorization of members of the Association while either denying or granting the same privilege to the Union members; (4) That the School Board could grant exclusive use of the teachers' mailboxes and other physical facilities to the Association "when necessary to perform its function as the exclusive collective bargaining representative * * *," but that the use of such facilities for "normal union activities" could be granted only if granted to all labor organizations; (5) That the School Board could grant the exclusive privilege to the Association to examine the list of new teachers, or in its discretion also grant such privilege to the minority Union.

(1) By the enactment of Chap. 663, Laws of 1961, the Wisconsin Legislature embarked into a new field of labor relations.[1]

Since the enactment of the statute covering labor relations for public employees there has been indeed a sharp division of opinion between the three members of the WERB, with practically every decision containing a dissenting opinion or a separate concurring opinion. Sometimes the majority issued a supplementary "comment on minority opinion",[2] while as in this case the majority anticipated the minority opinion, and in the main decision made "comments on minority opinion." There has been no consistency as to what Board member would dissent when, and to what.[3] Generally speaking, Mr. Anderson has desired to expand the statute by subtle inferences to the effect that sub. Chap. IV relating to public employees should be read into and as a part of sub. Chap. I of Chap. 111.00. Chairman Slavney and Rice have persisted in giving a narrower interpretation of sub.Chap. IV giving the words in the statute no more than an ordinarily accepted meaning even to the point of holding that a municipal employer has no duty to bargain collectively with the exclusive representative, but that any such negotation is done on a purely voluntary basis by the employer. Slavney and Rice have gone even one step further and held that a statute of **general application** enacted twenty years before, namely, the Budget Law, should take precedence over and control the later legislation which dealt with a specific subject matter, all of which is contrary to all known elementary rules of interpretation in applying statutes.

With each of the Board members being a recognized legal scholar, the result has been voluminous opinions, concurring opinions and dissenting opinions employing all the possible known rules of reasoning and logic to sustain whatever side the particular member chose. This Court believes that the application of a few elementary rules of statutory interpretation will be much more fruitful and certainly more correct.

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1 For a complete discussion of the theory underlying the legislation and a discussion of the administration of the law and its phenomenal success, see 1965 Wis. Law Review, p. 652-670 and 671-701.

2 City of New Berlin, decision No. 7293, March 24, 1966

3 In Kenosha Teachers Union v. Kenosha Bd. of Education, Decision No. 8120, Aug. 3, 1967, Mr. Rice dissented on the grounds that the statute must be strictly and narrowly construed and that it was a prohibited practice to allow time off to attend a labor organization meeting even though the teacher was privileged to attend the meeting of the organization of his or her choice.

Neither the Court nor an administrative agency may legislate by adding to or detracting from the words used by the legislature. "Primarily however the meaning (of the statute) must be read from the language chosen by the legislature, and the courts are not free to determine whether different provisions would have been enacted if the legislators had given some or greater attention to the application of the statute upon a particular set of facts."[4]

Only if there is an ambiguity in a statute[5] or a conflict between different statutes, is the Court privileged to employ the various rules of statutory construction. If rules of statutory construction are to be employed, two of the primary rules are that if two statutes are repugnant and irreconcilable, the later-enacted statute prevails over and supercedes the earlier statute.[6] The second rule is that when both a general statute and a specific statute relates to the same subject matter, the specific statute is controlling.[7]

"Construction of statutes should be done in a way which harmonizes the whole system of law of which they are a part, and any conflict should be reconciled if possible."[8]

In determining whether or not there is a conflict between different statutes, the Court must first ascertain what the legislative purpose was in enacting each of the statutes; i.e., the evil that the statute was intended to remedy or the accomplishment to be attained. If the purpose of each statute can be accomplished without totally destroying the purpose of the other, effect shall be given to both such statutes.

The primary purpose of the Budget Law enacted by Chap. 221, Laws of 1941, is obvious and especially meaningful to those of us who were district attorneys at the time. The purpose was to force all units of local government into the degree of efficiency of planning their functions and expenditures for a year in advance, under penalty that if an item was not planned for and included in the budget, money for such purpose could not be expended excepting upon a vote of two-thirds of the entire membership of the governing body.

The second purpose was to require a public hearing, at which at least the more vocal taxpayers organizations could appear. The purpose of requiring some degree of efficiency has been accomplished as evidenced by the large number of Attorney General's Opinions, but the public hearings have been of little consequence. As stated in the Milwaukee Journal, Sunday, Nov. 5, 1967, "The (public budget)

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[4] Weather-Tite Co. vs. Lepper (1964) 25 Wis. 2d 70, 74, 130 NW 2d 198.

[5] State ex rel Badtke v. School Bd. (1957) 1 Wis. 2d 208, 83 NW 2d 724.

[6] Abdella v. Abdella (1954) 268 Wis. 127, 66 NW 2d 689; State ex rel Mitchell v. Superior Ct. of Dane County (1961) 14 Wis. 2d 77, 109 NW 2d 522.

[7] In Re: Estate of Miller, (1952) 261 Wis. 594, 53 NW 2d 172; City of Wauwautosa vs. Grunewald (1962) 18 Wis. 2d 83, 118 NW 2d 128.

[8] Muskego Norway Con. Sch. v. WERB (June 30, 1967) 35 Wis. 2d 540, 151 NW 2d 617, 625.

hearing is generally ignored by citizens. Rarely does a comment made at the annual hearing carry enough weight to produce any major change in the minds of city officials. * * * Each year, a dozen or so speakers stride to the platform in the council chambers to suggest changes while aldermen listen in silence. Inevitably, the speakers are headed by Normal Gill, Executive Director of the Citizens' Governmental Research Bureau * * *." The WERB based its decision on the fact that Mr. Gill was allowed to appear at the budget hearing in this case, but the minority Union was not.

Wisconsin has always been a pioneer in the field of labor legislation. The "Little Wagner Act" Chap. 51, Laws of 1937, followed the National Labor Relations Act by two years. The Little Wagner Act was repealed and replaced by the Labor Peace Act, Chap. 57, Laws of 1939, which covered the relation between private employers and unions. It has been amended very little except in regard to the requisite vote for a closed shop.

The public employees have campaigned through their expert lobbyists at least since 1951 to win a statute that would at least recognize the right of public employees to organize into unions and bargain collectively. The final victory was in 1961.

Sub. Chap. IV, s111.70, is unambiguous and complete in and of itself, with only three specific cross references to other sections in the Labor Peace Act. The cross references to ss111.02(6) and 111.05 relate to the definition of a "collective bargaining unit" and the definition of the exclusive nature of the collective bargaining rights of the representative of the majority of the employees. The third cross reference is to s111.07 relating to administrative and court actions to prevent prohibited practices.

The differences between the Public Employees Statute and the Labor Peace Act are obvious. While public employees have the same right to either belong to or not belong to a union and to bargain collectively through a union, they are proscribed from ever striking, and instead there is substituted a system of Fact Finding by impartial persons. The theory is that when an impartial person makes Fact Finding and recommendations that the force of public opinion will require the parties to either accept such recommendations or to immediately enter into a compromise respecting such recommendations. The penalty for either the employer or the union to fail to "negotiate in good faith at reasonable times: is Fact Finding.

For the employer to negotiate with the minority Union would be a prohibited practice of interfering with, restraining or coercing any municipal employee in the exercise of his rights to join or not join a union, and the penalty would be proceedings under s111.07 to prevent such prohibited practice.

It is a waste of time to engage in semantics as to whether the municipal employer has a duty to negotiate in good faith with the majority Union. If it fails to do so, it will be held up to public ridicule as a result of the public Fact Finding.

It is a privilege and not a right for a citizen to be employed by a governmental unit. "The right to work for the public is a privilege which may be granted on any conditions which the public agency may impose consistent with the law and public policy,* * * and when an individual enters such employment he impliedly surrenders

certain natural rights which would remain his if he were a private citizen.[9] It is conceded that the rule and the ordinance must bear a rational relationship to the maintenance of an efficient fire department," and the court held that a rule which prevented moonlighting on outside jobs bore a rational relationship to the ability of a fireman to respond to any off-duty call.[10] The Legislature has determined that it is good public policy to have a labor relations law for public employees under which the exclusive collective bargaining representative is democratically chosen, and when a citizen chooses to become a public employee he must abide by such legislation.

A person would have to be something more than naive to believe that the leader of the minority Union asked to appear at the public budget hearing for the purpose of congratulating the majority Association on the contract they had negotiated with the School Board. The minority Union representative was at the public hearing for the very purpose of short-circuiting the Fact Finding provided for in the Statute and make his appeal directly to the public through the medium of the public hearing. To permit the Union to take its case against the Association directly to the public in this manner is to nothing more nor less than completely undermine everything that had been accomplished through the election and the negotiation between the employer and the exclusive bargaining representative.

There is no conflict between the statute providing for a public budget hearing and s111.70 under which a public employee is proscribed from appearing on matters subject to collective bargaining when there is a duly-elected exclusive bargaining representative.

To permit the minority Union to negotiate wages and conditions of employment in a public meeting would be far more reprenhensible than for the School Board to meet privately and to negotiate with the minority Union, all of which of course would be a prohibitive practice violative of s111.70(3)(a)1.

(2) The attorney for the School Board argues that the cross references in s111.70(4)(b) is limited to "proceedings in representation cases shall be in accordance with s111.02 (6) and 111.05 insofar as applicable, except that where the Board finds that a proposed unit includes a craft the Board shall exclude such craft from the unit." The attorney argues that only such portions of s111.05 as relates to "proceedings" are incorporated in s111.70. The answer is that s111.05(1) doesn't have anything to do with proceedings, but is a definition of rights. It reads as follows: "Representatives chosen for the purpose of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all of the employees in such unit for the purpose of collective bargaining, provided that any individual employee or any minority group of employees in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and the employer shall confer with them in relation thereto." There is absolutely no justification for substituting a period for the comma preceding the word "provided," and accordingly the WERB order in this respect must be affirmed.

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[9] Huhnke v. Wischer (1955) 271 Wis. 66, 72, 72 NW 2d 915.

[10] Ibid. at p. 71.

(3), (4) Under the statutory definition of prohibited practices the municipal employer may not interfere in any way either to encourage or discourage membership in any labor organization. The WERB was exactly correct in its ruling respecting (4) that the School Board could grant exclusive use of the teachers' mailboxes and other physical facilities to the Association "when necessary to perform its function as the exclusive bargaining representative * * *", but that the use of such facilities for "normal union activities could be granted only if granted to all labor organizations."

Anyone who has ever belonged to a union knows that the life blood of the organization is the dues so that the union will have the wherewithal to accomplish its purposes. It is totally inconsistent for the WERB to say that a "checkoff of dues" is anything other than "noraml union activities." The School Board may negotiate with the majority Association for a checkoff of dues for those Association members who request it in writing, but they may not go to the next step and negotiate a contract which would prevent a nonmember of the Association making a written request or assignment of a portion of his or her wages to a competing Union.

(5) The list of new teachers and the salaries to be paid to them is a public record, and the School Board may not deny access thereto to any citizen.

Counsel for the WERB may prepare the appropriate Judgment in accordance with this Opinion, presenting the same to opposing counsel 10 days before presenting it to the Court for signature.

Dated this 17th day of November, 1967.

BY THE COURT:

Norris Maloney /s/

NORRIS MALONEY,
CIRCUIT JUDGE