

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

-----:
MILWAUKEE TEACHERS UNION LOCAL 252, :
affiliated with the AMERICAN FEDERA- :
TION OF TEACHERS, AFL-CIO, :
Complainant, : Case VIII
vs. : No. 10021 MP-20
Decision No. 6995-A
BOARD OF SCHOOL DIRECTORS OF THE :
CITY OF MILWAUKEE and MILWAUKEE :
TEACHERS' EDUCATION ASSOCIATION, :
Respondents. :
-----:

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Richard M.
Goldberg, for the Complainant.
Mr. Carl F. Kinzel, Assistant City Attorney, for the Respondent,
Board of School Directors.
Mehigan and Hayes, Attorneys at Law, by Mr. Irving P. Mehigan,
for the Respondent Milwaukee Teachers' Education Association.

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 2, 1965, at Milwaukee, Wisconsin, Commissioners Arvid Anderson and Zel S. Rice II being present; and the Board having 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, Conclusions of Law and Order.

FINDINGS OF FACT

- 1. That Complainant Milwaukee Teachers Union Local 252, affiliated with the American Federation of Teachers, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its principal place of business at 6333 West Bluemound Road, Milwaukee, Wisconsin.
- 2. That Respondent Board of School Directors of the City of Milwaukee, Wisconsin, hereinafter referred to as School Directors, is a municipal employer having its offices at 5225 West Vliet Street, Milwaukee, Wisconsin.
- 3. That Respondent Milwaukee Teachers' Education Association,

affiliated with the Wisconsin Education Association, hereinafter referred to as the Association, is a labor organization having its offices at 4011 West Capitol Drive, Milwaukee, Wisconsin.

4. That on February 11 and 12, 1964, pursuant to a Direction of Election issued by it, the Wisconsin Employment Relations Board, hereinafter referred to as the WERB, conducted an election among all regular teaching personnel teaching at least fifty percent of a full teaching schedule (including Recreation Instructors V and Vice Principals teaching a full schedule) employed by the Board of School Directors in the City of Milwaukee, excluding substitute per diem teachers, office and clerical employees, and all other employees, supervisors and executives, to determine whether said employees desired to be represented, for the purposes of collective bargaining, pursuant to Section 111.70 of the Wisconsin Statutes, by the Association, or the Union, or by neither of said organizations; that a majority of the teachers voting designated the Association as their exclusive collective bargaining representative; and on February 19, 1964, the WERB issued its Certification of the results thereof.

5. That on June 30, 1964, the School Directors, after reaching an agreement thereon with the Association adopted the following procedure with respect to matters concerning teachers' organizations other than the exclusive bargaining representative:

- "1. That communications addressed to the Board of School Directors from a teachers' organization not officially certified as the exclusive bargaining representative of the teaching staff be received at a regular meeting of the Board and referred to the appropriate committee.
2. That at the option of the committee, time be made available at a meeting of the committee to hear individuals on those matters in the communication which are not considered to be subject to collective bargaining. Those matters in the communication which are considered to be subject to collective bargaining are to be referred directly to the Board's designated bargaining representative and under no circumstances are they to be the subject of a hearing before the committee. Speakers are to appear as individuals and not as representatives of the teachers' organization submitting the communication.
3. That following the hearing, if any, unless the committee takes some action, or unless it directs

the Superintendent or Secretary-Business Manager to prepare a report, the communication be placed on file.";

that by adopting such procedure, the School Directors interfered with, restrained and coerced teachers in its employ in their right to affiliate with a labor organization of their own choosing; and further, that by its action therein, the Association has also interfered with, restrained and coerced teachers in the employ of the Board of School Directors in their right to affiliate with a labor organization of their own choosing.

6. That on August 27, 1964, the School Directors, in a joint public meeting of its Committee on Finances, and its Committee on Building, held in its Administrative Building, denied Gerald Gosenheimer, a teacher in the employ of the School Directors and Legislative Chairman of the Union, an opportunity to speak on matters affecting salaries and other conditions of employment of teachers in the employ of the School Directors, on the basis of the procedure adopted by it on June 30, 1964; and that, however, at the same meeting, representatives of groups, other than teacher organizations, were given the opportunity to speak on said matters; and that by such denial, the School Directors interfered with, restrained and coerced teachers in its employ, who were members of the Union, in their right to affiliate with a labor organization of their own choosing.

7. That on October 14, 1964, the School Directors, while conducting a public meeting of its Committee of the Whole in its Administrative Building, for the purpose of providing the public an opportunity to be heard on the proposed school operation budget for the year 1965, denied Gerald Gosenheimer, as the Legislative representative of the Union, an opportunity to speak on matters relating to salaries, insurance, and reclassification of teachers, while at the same time permitting representatives of groups other than said teacher's organization to speak on the subject; and that by such denial the School Directors interfered with, restrained and coerced teachers in its employ in their right to affiliate with a labor organization of their own choosing.

8. That on October 6, 1964, at a regular meeting, the School Directors, in considering proposals from the Association as the certified collective bargaining representative of the teachers in its

employ adopted a resolution granting the Association the exclusive right to dues check-off and extending the exclusive use of a bulletin board in each school to the Association, conditioned upon affirmation of such matter in a declaratory ruling proceeding then pending before the WERB; and that at no time material herein have the School Directors implemented any exclusive dues check-off or exclusive use of bulletin boards to the Association.

9. That, pursuant to further negotiations with the Association, the School Directors, at a regular meeting on November 4, 1964, adopted the following as the Complaint Procedure agreed upon between the Association and the School Directors:

"ARTICLE XIII - COMPLAINT PROCEDURE

1. Purpose

The complaint procedure is designed to insure adequate consideration of questions concerning wages, hours and conditions of employment, of teachers, but not to prevent the continuation of rapport between teachers, principals, the Superintendent, his staff and the Board.

2. Definitions

A complaint is defined to be a question concerning:

a. The interpretation or application of a Board rule, Board action of record or a published administrative rule; and

b. A working condition endangering health or safety.

3. Steps of Complaint Procedure

Complaints will be processed as follows:

First Step. A teacher should promptly submit his complaint directly to his principal orally, but he may request his principal to send for (a) a representative of the Association or (b) a fellow teacher of his own choosing who is not an officer, agent, or other representative of another teacher organization, for the purpose of joint oral presentation and discussion of the complaint at a mutually convenient time.

Second Step. If the complaint is not adjusted in a manner satisfactory to the teacher or the

Association within two working days after the presentation and discussion, then the complaint may be set forth in writing by a representative of the Association on a form provided by the Superintendent. The complainant shall sign the complaint. Thereafter, the Association representative shall transmit the written complaint to the Assistant Superintendent. The Assistant Superintendent shall, at the Association's request, set a mutually convenient time for discussion of the complaint. The Assistant Superintendent shall advise the Superintendent in writing of his disposition of the complaint, with a copy for the Association.

Third Step. If the written complaint is not adjusted in a manner satisfactory to the teacher or the Association within three working days after the discussion with the Assistant Superintendent, it may be presented by the Association to the Superintendent (or his designate) for discussion. Such discussion shall be held within five working days at a mutually convenient time fixed by the Superintendent or his designate.

Fourth Step. If the complaint is not satisfactorily adjusted within five days after discussion with the Superintendent or his designate, it may be presented by the Association to the Rules and Complaints Committee for prompt hearing. The committee shall forward its recommendation in writing, for action by the Board.

Fifth Step. As soon as mutually convenient, the Board shall pass upon the complaint. Such action is subject to review, as provided by law.

4. Presence of Complainant

Complainant may be present at every step of the procedure and shall be present at the request of the Association, the Superintendent, the Assistant Superintendent or the Committee, as the case may be.

5. Group Complaints

The Association may process a complaint involving a group of teachers through the complaint procedure, commencing at the third step thereof.

6. Disciplinary Matters

Appeals from disciplinary action by the Superintendent shall be processed in accordance with present statutory procedures.";

that by such procedure the School Directors have discriminated, and

are discriminating, against teachers in its employ, who are not members of the Association, who desire to be represented in the first step of the complaint procedure by a representative of a labor organization other than the Association, and thereby, the School Directors have also interfered with, restrained and coerced its employees in the exercise of their right to affiliate with a labor organization of their own choosing; and that the Association, by negotiating and agreeing to the complaint procedure noted above, has interfered with, restrained and coerced teachers in the employ of the School Directors in the exercise of their right to affiliate with a labor organization of their own choosing.

10. That on a date during the last week of January, 1965, the School Directors by its Superintendent, Harold A. Vincent, denied the Union permission to use the teachers' mail boxes in the various schools for the distribution of a leaflet, bearing a cartoon critical of the efforts of the Association, as the exclusive collective bargaining representative, during the year 1964, which leaflet also urged membership in the Union; and that Superintendent Vincent denied such permission because the cartoon in said leaflet depicted teachers as wearing diapers, and that, in his opinion, such cartoon did not enhance the image of the teaching profession.

11. That the denial of the use of teachers' mail boxes to the Union for the distribution of the literature referred to above was reasonable and proper and did not constitute interference with, restraint or coercion of any of the teachers in the employ of the School Directors.

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

CONCLUSIONS OF LAW

1. That the Respondent, Board of School Directors of the City of Milwaukee, by conditionally granting the Respondent, Milwaukee Teachers' Education Association, exclusive dues check-off and exclusive use of bulletin boards has not interfered with, restrained or coerced any teachers in its employ in the exercise of their rights guaranteed them in Section 111.70(2), and therefore, in that regard Respondent, Board of School Directors of the City of Milwaukee, has not committed any prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes.

2. That the Respondent, Board of School Directors of the City of Milwaukee, by its agent, Superintendent Harold A. Vincent, in denying, in January, 1965, the Complainant, Milwaukee Teachers Union Local 252, use of teacher mail boxes to distribute literature, did not interfere with, restrain or coerce any of its teachers in the exercise of their rights guaranteed them in Section 111.70(2), and therefore, the Respondent, Board of School Directors of the City of Milwaukee, in that regard has not committed any prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes.

3. That the Respondent, Board of School Directors of the City of Milwaukee, by adopting procedures prohibiting representatives of minority labor organizations from appearing before its various committees in public meetings, and by denying a representative of a minority teacher organization the opportunity to be heard at a public hearing on its budget and operating function, unlawfully interfered with, restrained and coerced its employees in the exercise of their right to affiliate with a labor organization of their own choosing, and by such acts has committed prohibited practices within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

4. That the Respondent, Board of School Directors of the City of Milwaukee, is unlawfully discriminating against teachers in its employ by denying them the right to be represented in the first step of the complaint procedure by a representative of a minority teacher organization, and thereby has also unlawfully interfered with, restrained and coerced its employees in the exercise of their right to affiliate with a labor organization of their own choosing, and by such acts, the Respondent, Board of School Directors of the City of Milwaukee, has committed, and is committing, prohibited practices within the meaning of Section 111.70(3)(a)2 and 1 of the Wisconsin Statutes.

5. That the Respondent, Milwaukee Teachers' Education Association, by jointly agreeing with the Respondent, Board of School Directors of the City of Milwaukee, to deny a representative of a minority teacher organization an opportunity to be heard at a public hearing on its budget, and to deny the right of a teacher to be represented in the first step of the complaint procedure by a representative of a minority teacher organization, unlawfully interfered with, restrained and coerced employees in their right to affiliate with

a labor organization of their own choosing, has committed a prohibited practice within the meaning of Section 111.70(3)(b)1 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

I. IT IS ORDERED that the Respondent, Board of School Directors of the City of Milwaukee, its officers and agents, shall immediately:

A. Cease and desist from:

- (1) Interfering with the rights of its employees by depriving any member or representative of any organization representing any of its employees from the opportunity to be heard at public hearings on matters affecting its operation or budget, or at any public meeting held for any purpose.
- (2) Giving effect to the provision in its complaint procedure which denies to any teacher in its employ the right to be represented in the first step of the complaint procedure by any representative of an organization representing a minority of its employees.

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

- (1) Immediately notify Complainant, Milwaukee Teachers Union Local 252, in writing that it will afford any of its members, officers or representatives the same rights and privileges afforded to the public or representatives of other organizations at public hearings on matters affecting its operation, budget, or any other matters relating to its business.
- (2) Notify all of its employees by posting in all of its schools where notices to teachers are usually posted, copies of the Notice attached hereto and marked "APPENDIX A". Copies of said Notice shall be signed by the Superintendent of Schools, Harold A. Vincent, and the President of the Milwaukee

Teachers' Education Association, and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent, Board of School Directors of the City of Milwaukee, to insure that said Notice is not altered, defaced, or covered by other material.

- (3) Notify the Wisconsin Employment Relations Board, in writing, within fifteen (15) days of the receipt of a copy of this Order what steps it has taken to comply herewith.

II. IT IS FURTHER ORDERED that the Respondent, Milwaukee Teachers' Education Association, its officers and agents, shall immediately:

A. Cease and desist from:

- (1) Interfering with the rights of teachers in the employ of Respondent, Board of School Directors, by inducing it to interfere with the rights of teachers in its employ by denying them the right to be represented in the first step of the complaint procedure by any representative of an organization representing a minority of employees employed by Respondent, Board of School Directors of the City of Milwaukee.

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

- (1) Immediately notify the Complainant, Milwaukee Teachers Union Local 252 that it will not object to any member of the Complainant, Milwaukee Teachers Union Local 252, to the right to be represented in the first step of the complaint procedure by any representative of an organization representing a minority of employees in the employ of Respondent, Board of School Directors of the City of Milwaukee.
- (2) By its president, sign copies of the Notice attached hereto and marked "APPENDIX A", where indicated on said Notice.

- (3) Notify the Wisconsin Employment Relations Board, in writing, within fifteen (15) days of the receipt of a copy of this Order what steps it has taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of March, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

Arvie Anderson
Arvie Anderson, Commissioner

Zel S. Rice II
Zel S. Rice II, Commissioner

APPENDIX "A"
NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Board, and in order to effectuate the policies of Section 111.70 of the Wisconsin Statutes, we hereby notify our employees that:

Board of School Directors of the City of Milwaukee and Milwaukee Teachers' Education Association WILL NOT deny the right of a teacher who has a grievance to be represented, in the first step of the Complaint Procedure, by a representative of a minority teacher organization.

BOARD OF SCHOOL DIRECTORS
of the City of Milwaukee

By _____
Harold A. Vincent
Superintendent of Schools

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION

By _____
President

Dated this _____ day of March, 1966

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pleadings

In its initial complaint filed herein, the Union only named the School Directors as the Respondent, alleging that the School Directors had denied a member of the Union the right to speak on "matters related to wages, hours or working conditions" at meetings on August 27 and October 14, 1964, in violation of Section 111.70(2), (3)(a)1 and 2 of the Wisconsin Statutes.

The complaint also alleged that the School Directors, in adopting its Complaint Procedure, denied members of the Union the right to be represented throughout the Complaint Procedure by a representative of the Union in violation of Section 111.70(2), (3)(a)1 and 2.

On December 24, 1964, the School Directors filed its answer wherein it denied the commission of any prohibited practices, and alleged that the procedures applicable to the hearings before its various committees was a matter of internal determination and could be conducted in accordance with rules and regulations and methods selected by the School Directors in the performance of its business under applicable provisions of the Wisconsin Statutes.

On January 4, 1965, the Union amended its complaint, and therein named the Association as an additional Respondent, and reaffirmed the allegations contained in the original complaint, and further

alleged that the Association had requested and urged the School Directors to deny members of the Union the right to speak at public meetings, and to adopt the Complaint Procedure, and that, thereby, the Association had committed prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes.

The School Directors stood by its original answer with respect to the allegations in the amended complaint, and on January 25, 1965, the Association filed its answer, denying any violation of the statutes, contending that it carried on its conferences and negotiations with the School Directors as the certified collective bargaining representative of the teachers in the employ of the School Directors and that the procedure followed with respect to matters complained of were done in a manner in accordance with the rules and regulations and methods selected by the School Directors for the performance of its business with the Association.

The complaint and amended complaint also alleged that the School Directors further violated Section 111.70 by "other acts".

Background

The Wisconsin Employment Relations Board on February 19, 1964, after an election conducted by it, certified the Association as the exclusive collective bargaining representative for the non-supervisory teachers in the employ of the School Directors, and pursuant to that relationship, representatives of the School Directors and the Association engaged in collective bargaining with respect to wages, hours and conditions of employment of said municipal employees. In their negotiations, the School Directors and the Association agreed upon, among other things, the manner in which communications from other than the certified bargaining representative would be handled by the various committees of the School Directors, and the manner in which individuals would be permitted to speak on matters subject to collective bargaining.

The School Directors and Association also consummated a Complaint Procedure, setting forth the nature in which complaints or grievances concerning the interpretation or application of any rule, action of record or published administrative rule of the School Directors, and any working condition endangering health or safety, would be processed.

The procedure with respect to communications and appearances before the various committees of the School Directors and the Complaint Procedure, as adopted, are set forth in the Findings of Fact.

Appearances at Committee Meetings or Hearings

After the School Directors had adopted its procedure with respect to public hearings or meetings before its committees, on two occasions Gerald Gosenheimer, the Legislative Representative of the Union, the minority organization, was denied an opportunity to speak on matters relating to wages, hours and conditions of employment of teachers before two separate committees of the School Directors. Other individuals, who were representing groups other than teacher organizations, were given an opportunity to speak on the subject.

Paragraph 2 of the Procedure permits the committee to make available at its meetings time for individuals to be heard on matters which are not considered to be the subject of collective bargaining. The rule further provides that speakers are to appear as individuals and not as representatives of teacher organizations submitting the communication.

We recognize the purpose and necessity for limiting discussion on all matters considered at a public hearing. However, the rule in effect is improper in that it discriminates against speakers who are representatives of a minority teacher organization, while it permits others to appear.

Where the municipal employer engages in collective bargaining with the exclusive collective bargaining representative, it need not afford equal treatment to any minority representative, and therefore, under Section 111.70, it can normally refuse to discuss matters which would be within the boundaries of collective bargaining. However, in the procedure adopted by it, the School Directors would permit, and did permit, individuals who represent other groups to be heard in the matter while denying the same privilege to representatives of minority teacher organizations. The procedure itself interferes with the rights of employees to affiliate with a labor organization of their own choosing since it discriminates against its representatives who desire to appear at public hearings conducted by any committee of the School Directors and in that regard constitutes a violation of Section 111.70(3)(a)1 of the Wisconsin Statutes.

The application of said procedure by the School Directors is evidence of its purpose.

A review of the minutes of the October 14, 1964 meeting of the Committee of the Whole indicates that Gosenheimer, the Union Legislative Representative, was denied the opportunity to speak on the basis that it was assumed that he would speak "on matters of negotiable subjects." However, subsequently in the meeting, said committee permitted Norman Gill, of the Citizens' Governmental Research Bureau to speak with respect to such budgetary matters as: (1) recommending that official notices of budget hearings contain additional basic statistics such as per pupil costs and pupil-teacher ratios; (2) commending technical improvements in the manual of budget requests; (3) improving records and accounting, making possible more accurate and standardized comparisons to communities with per pupil costs, etc.; (4) recommending that the School Directors reach some type of a decision on salary ceilings and ranges prior to the public hearing; (5) urging the School Directors not to use all of the present resources for salary adjustments; (6) commenting on adjustments for salaries and fringe benefits being considered that would place Milwaukee in a favorable competitive position nationally as to recruitment and retention of teachers; (7) commending the recommendation for consideration of graduated service increments instead of flat, across-the-board adjustments, and at the same time, suggesting that there was an inadequate awareness of total compensation; (8) suggesting that a statement be submitted annually to each employe on the monetary value of fringe benefits received each year; (9) suggesting that the annual salary schedules should distinguish between amounts and cost of graduated service increments and the cost of increases over and above the increments; (10) recommending "like pay for like work", and in that regard involving the Milwaukee Vocational School Board; and (11) contending that merit rating of teachers is "anathema to the teaching profession" and suggested that seniority ratings should be the criteria.

After Mr. Gill had concluded his remarks at said meeting, various members of the School Directors responded to some of the questions and suggestions made by him. For example, one of the Directors requested of an administrative employe of the School Directors, the current amount of money available as of January 1, 1964

for teacher salaries without any increment or salary increases. A discussion was had with regard to that matter and such discussion included the total revenues of the School Directors for the year.

Mr. Howard Haverson, who appeared at the same meeting representing the Northwest Taxpayers League and the Southwest Economy League, was permitted to speak. Haverson made recommendations that: (1) salary increases be granted on a selective basis rather than across-the-board; (2) teachers should be advanced on merit and consideration should be given to merit increases; and (3) the School Directors live within the tax limitation in considering the budget.

It is quite apparent that individuals representing organizations other than labor organizations were permitted to speak on matters which affected, and which were subject to, collective bargaining between the Association and the School Directors. Under the circumstances, the refusal of the School Directors, by its Committee of the Whole, to permit the Union's Legislative Representative to speak on matters similar to those covered by other individuals who were permitted to speak, effectually interfered with, restrained and coerced teachers, who were members of the Union, in their right to affiliate with the Union, and therefore, such denial constituted an unlawful act within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

Apparently the School Directors concluded that when representatives of groups other than minority teacher organizations speak on matters before its committees which concern collective bargaining matters, such appearances and remarks do not constitute an encroachment on the prerogatives, privileges and rights of the exclusive collective bargaining representative of the teachers, but if a representative of a minority teacher organization were permitted to speak, such an encroachment would occur.

Such a conclusion is illogical and unwarranted. It appears to us that where the municipal employer has been bargaining with a labor organization representing a majority of its employees, as the exclusive bargaining representative, public hearings on the budget to be adopted by the municipal employer can not exclude consideration or discussion of matters subject to collective bargaining. Salaries and other monetary benefits paid to municipal employees are part and parcel of a budget of a municipal employer. To deny taxpayers

or residents the right to appear before the municipal employer, and the right to be heard on its proposed budget would be contrary to public policy, and in violation of the Wisconsin Statutes.^{1/} To deny representatives of a minority labor organization the right to make a similar appearance and to comment on the budget would likewise be violative of the same sections of the statutes, and also constitute a violation of Section 111.70(3)(a)1.

An appearance at a public hearing on the budget is not to be equated with collective bargaining in public employment. Collective bargaining contemplates the give and take between the majority representative of the employees and the municipal employer across the "bargaining table." Collective bargaining in public employment is not conducted in the form of a public hearing. The mere fact that individuals, or groups or organizations, desire to speak on matters at a public hearing with which the municipal employer is concerned in collective bargaining does not preclude or defeat the right of any taxpayer or resident or group thereof to speak on those matters at the public hearing. The fact that teachers, who are not members of the majority representative, desire to make their positions known, on various budgetary matters, through their organization at public hearings, should not deprive them of their rights as residents or taxpayers, either singly, or in an organized group.

The fact that the procedure permits an individual teacher to appear at public hearings, but denies the same opportunity to their organization, establishes the discriminatory^{2/} treatment resulting from such procedure which unlawfully discourages membership in the minority organization. The School Directors have the right to establish reasonable rules for all individuals and groups appearing at their public hearings and such rules, if otherwise lawful, should be equally applied to all.

Complaint Procedure

As indicated in the companion decision issued today on the

^{1/} 38.16(5); 65.90(4).

^{2/} Since the Board does not consider such discriminatory treatment as affecting conditions of employment, such unlawful conduct would not be considered an independent violation of Section 111.70(3)(a)2.

Declaratory Ruling involving the School Directors,^{3/} the Board held that an election conducted by it to determine whether municipal employees desire to be represented by a labor organization would result in the selection of the exclusive representative for all the employees in the appropriate unit for the purposes of collective bargaining. The Board reached this conclusion on the statutory language contained in Section 111.70(4)(d) and Section 111.05(1), which provide as follows:

Section 111.70(4)(d)

"Collective bargaining units. Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employees of the employer, either the union or the municipality may petition the board to conduct an election among said employees to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with ss 111.02(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 board shall not order an election among employees in a craft unit except on separate petition initiating representative proceedings in such craft unit."

Section 111.05(1)

"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 purposes 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."

It is obvious that in Section 111.05(1) the exclusive representative status of the majority representative is limited by permitting any employee, or a minority group of them, the right to present grievances to their employer, either individually, or through a representative of their own choosing, and the duty of the employer to confer with regard thereto.

In the first step of the Complaint Procedure adopted by the School Directors, a teacher may process his complaint as an individual,

^{3/} Decision No. 6833-A.

or may be represented by a fellow teacher, who is not an officer, agent or representative of a minority teacher organization, or by a representative of the Association, the majority representative, "for the purpose of joint oral presentation and discussion of the complaint at a mutually convenient time." To deny a teacher the right to be represented by an officer, agent or representative of a minority teacher organization denies said teacher of the right to be represented by a representative of his own choosing, and therefore, would be contrary to the proviso in Section 111.05(1).

The latter proviso does not require the municipal employer to bargain collectively on any grievance or complaint. It merely establishes the right of employees to confer with a representative of the employer on said matter. If the first step of the Procedure did not exclude representation by a minority representative and would permit such representation, we would conclude that the obligation of the municipality to confer with such representative on said complaint would comply with the requirement in Section 111.05(1). The majority representative is the only one authorized to bargain collectively for the employees in the collective bargaining unit.

To deny an employee the right to select a minority representative to present his complaint or grievance in the first step of the Complaint Procedure unlawfully interferes with his statutory right under Section 111.70, and thereby, the School Directors have committed a prohibited practice within the meaning of Section 111.70(3)(a)1.

Denial of Use of Teacher Mail Boxes to
Minority Representative

As indicated in our Findings of Fact, the School Directors, by its Superintendent, denied the Union permission on one occasion^{4/} in January, 1965, to use the teacher mail boxes for the distribution of a leaflet prepared by the Union, which contained two cartoons, depicting a "baby in diapers," indicative of the new year 1964, and an old man depicting the old year 1964, with captions critical of the

^{4/} During the course of the hearing, the Union attempted to establish that it was denied the use of the mail boxes on a subsequent occasion for the distribution of an additional matter. Because of the lack of substantiating evidence, the Board has not considered the matter (See Tr. p. 20).

efforts of the Association as the collective bargaining representative of the teachers in the employ of the School Directors during that year.

The record discloses that the School Directors have in the past permitted the reasonable distribution of organizational and propaganda material by both teacher organizations on a non-discriminatory basis.

In our Declaratory Ruling issued today, the Board concluded that the majority representative was entitled to the exclusive use of teacher mail boxes in carrying out its purpose and function as the majority representative. We also concluded that the use of such facilities for internal organizational purposes could not be limited to the majority representative only.

The denial to the Union of the use of the mail boxes in January, 1965, was not violative of Section 111.70. While the denial of the Superintendent of the permission to use the mail boxes to distribute said leaflet was based on his opinion that the leaflet did not enhance the teaching profession, we believe that the denial was also reasonable on the basis that it was a direct attack on the status of the majority representative with whom the School Directors were engaged in collective bargaining, pursuant to Section 111.70. The leaflet went far beyond the organizational or internal affairs of the Union, and the permission for the use of the mail boxes to distribute such a leaflet might very well have placed the School Directors in such a position where they could have been charged with aiding and assisting the Union in attacking the majority representative.

A municipal employer may lawfully cooperate with the exclusive representative of its employees when it bargains collectively with such representative. The majority organization is entitled to certain benefits in order to effectuate and properly carry out its duties as the majority representative. To permit any minority organization to distribute, through the employer's facilities, propaganda similar to the Union leaflet herein, would be contrary to the intent of the statute, and would unlawfully affect the stability of the collective bargaining relationship.

Conditional Grant of Exclusive Dues
Check-Off and Use of Bulletin
Boards

During the course of the hearing, evidence was adduced with respect to the fact that the School Directors had conditionally agreed

to grant the Association, as the exclusive collective bargaining representative, the exclusive privilege of check-off of dues and the use of bulletin boards in the various schools. There was no specific allegation with respect to these matters in the complaint. However, and because no objection was made during the course of the hearing, or at any time, the Board has considered said matters since the Union included a general allegation covering "other acts" engaged in by the School Directors, which were alleged to be unlawful.

The Board does not consider that the conditional grant of such privileges to have constituted any prohibited practice. Said privileges would be implemented only if the Board, in its Declaratory Ruling proceeding, would have found that such matters were permissible. In any event, the privileges were not granted.

It might be observed that in its Declaratory Ruling the Board has determined that the granting of check-off exclusively to the majority representative is proper and that the municipal employer may grant the exclusive use of its facilities to the majority representative for the purpose of carrying out its function as said representative.

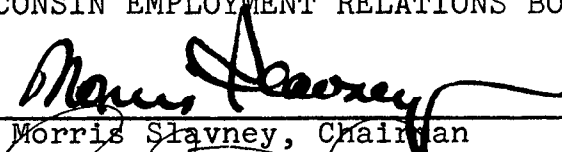
Prohibited Practices by the Association

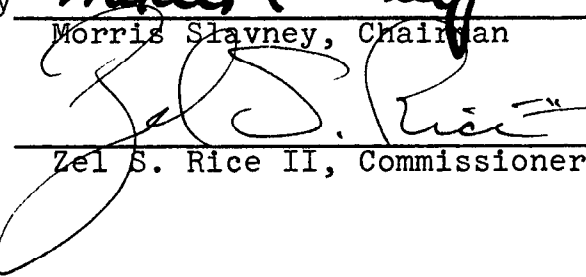
Since the adoption of the rules with respect to appearances at public hearings and the complaint procedure by the School Directors resulted from conferences and negotiations with the Association, the latter is deemed to have also committed prohibited practices with respect thereto, and therefore, we have found the Association likewise in violation of Section 111.70(3)(a)1 of the Wisconsin Statutes.

Dated this 24th day of March, 1966, at Madison, Wisconsin.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

CONCURRING OPINION OF COMMISSIONER ARVID ANDERSON

I concur in the opinion of the majority herein but wish to add the following opinion with respect to the Finding, Conclusion and Order that the Board of School Directors and the Milwaukee Teachers' Education Association committed a prohibited practice by agreeing to a complaint procedure which denied the right of a teacher to select a representative of a minority teachers' organization to represent him in presenting his grievance.

As the Board has stated earlier in its Memorandum, the right of the minority representative under Section 111.05(1) to present grievances and to confer thereon does not include the right to negotiate with respect to such grievance and does not include any obligation on the part of the municipal employer to negotiate with the minority representative with respect to such grievance. In my dissenting memorandum in the City of New Berlin and in the Declaratory Ruling issued today, I concluded that the right to confer and negotiate with the municipal employer is the exclusive privilege of the majority representative and the obligation of the municipal employer to confer and negotiate exists solely with such majority representative. Therefore, if an employer entered into an agreement with a minority representative adjusting the employee's grievance, and such adjustment was in any manner inconsistent with the agreement negotiated with the majority representative, the municipal employer would be committing a prohibited practice in that it was bargaining with a minority representative in derogation of its obligation to bargain exclusively with the majority representative.


I believe it is important to emphasize this point because experience in the administration of the Employment Peace Act and interpretations of the Labor Management Relations Act demonstrate that the grievance procedure in the collective bargaining agreement is part and parcel of the collective bargaining process. In this regard, the U. S. Supreme Court has stated, "The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content is given to the collective bargaining agent."^{5/}

^{5/} Steel Workers v. Warrior and Gulf Navigation Co., 45 Sup. Ct. (1960), 363 US 574, 46 LRRM 2419.

It is for this reason that in Section 9(a) of the Labor Management Relations Act, a proviso similar to Section 111.05(1) of the Employment Peace Act, provides that any adjustment of a grievance which has been presented by an individual or group of employees must not be inconsistent with the terms of a collective bargaining contract and further provides that the majority bargaining representative shall be given the opportunity to be present at such adjustment. The administrative and judicial interpretations of Section 9(a) have held that the proviso merely gives an employee a permissive rather than an absolute right to present grievances to his employer.^{6/} The reasoning stated in the interpretations by the National Labor Relations Board and the federal courts has been that the denial of the grievance procedure to the minority union representative is necessary to prevent the use of the grievance procedure as a vehicle for rival union activity, rather than for the processing of legitimate employee grievances.^{7/}

The possibility of rival union activity in the case herein, is the apparent reason for the complaint procedure adopted by the Board of School Directors and the Milwaukee Teachers' Association which denied the right of minority organizations to present grievances on behalf of employees.

While I believe such reasoning to be sound labor relations policy, I cannot ignore the express provisions of Section 111.05(1) which are in important respects different from Section 9(a), since Section 111.05(1) requires the employer to confer with a minority group of employees in relation to such grievance.


Arvid Anderson, Commissioner

^{6/} Federal Telephone and Radio Company vs. I.A.M., 107 NLRB 649, 652; Black Clawson vs. International Association of Machinists, 313 F 2d 179, 52 LRRM 2038; Serra vs. Pepsi Cola General Bottlers, U.S.D.C. (Northern District of Illinois), 60 LRRM 2080, 2082.

^{7/} Hughes Tool Co. v. NLRB, CA 5th, 147 F 2d 69, 15 LRRM 852, 1945.