

No. 249

August Term, 1966

STATE OF WISCONSIN : IN SUPREME COURT

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City of Greenfield, a municipal corporation,

Appellant,

v.

Local 1127, affiliated with Dist. Council 48  
of the Am. Fed. of State, County, & Municipal  
Employees,

Respondents.

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APPEAL from a judgment of the circuit court for Milwaukee county: ELMER W. ROLLER, Circuit Judge. Modified and, as modified, affirmed.

Local 1127 is a chartered labor union affiliated with District Council 48 of the American Federation of State, County, & Municipal Employees, AFL-CIO, and represents various types of municipal employees. After a majority of the police personnel of the city of Greenfield, excluding the chief, had authorized Local 1127 to represent them by signing application-for-membership blanks, Local 1127, by a letter dated June 7, 1965, advised the finance committee of the city of Greenfield that all of the personnel of the police department had joined Local 1127 and requested to be heard by the finance committee. The finance committee denied this request and refused to meet with Local 1127.

On July 9, 1965, Local 1127 filed a petition with the Wisconsin Employment Relations Board (hereinafter WERB) for fact finding under sec. 111.70, Stats. On July 28, 1965, Howard Wahlen, police chief of the city of Greenfield, issued an order which read, in part, as follows:

" . . . /N/o member of the Greenfield Police Department /can/ be in any way affiliated by reason of membership or otherwise with a labor union affiliated with a national labor organization."

A hearing was held before the WERB on August 6, 1965, to determine whether a fact finder should be appointed. At the hearing the city of Greenfield contended that it had a right to refuse to negotiate and to meet with the designated representative of the police force because sec. 111.70, Stats., prohibits members of a police department from joining a labor organization which generally represents municipal employees other than police officers. The WERB concluded that the police officers could be represented by Local 1127 and ordered fact finding as required by sec. 111.70(4)(e).

On July 27, 1965, the city of Greenfield commenced this action for a declaratory judgment pursuant to sec. 269.56, Stats. In the city's complaint, the city asked the court to declare that Greenfield's police personnel could not be represented by Local 1127 in bargaining for wage, hour, and working conditions and that the WERB has no jurisdiction to hold any hearings. Local 1127 counterclaimed asking for a declaratory judgment that the order of Police Chief Howard Wahlen be declared null and void and that the city of Greenfield and its representatives and agents be permanently restrained from interfering with the selection of a representative for fact-finding proceedings. The facts were stipulated by the parties.

The trial court found that Local 1127 was a representative within the meaning of sec. 111.70(4)(j), Stats., and had been selected by a majority of police personnel of the city of Greenfield to represent them for purposes of fact finding. It also concluded that Police Chief Wahlen's order was inconsistent with sec. 111.70(4)(j), and was therefore null and void. The city's complaint was dismissed and the city or its representatives enjoined from disciplining any member of the police

department of the city of Greenfield for selecting, authorizing, or designating Local 1127 as its representative for the purpose of negotiating. The city appeals.

WILKIE, J. The first issue raised on this appeal is whether police officers in the city of Greenfield have the right to be represented in fact finding pursuant to sec. 111.70(4)(j), Stats., by a labor union affiliated with a national labor organization.

In 1959 the legislature enacted ch. 509, Laws of 1959, which created sec. 111.70, Stats. The new law granted to municipal employees the right to organize and join labor organizations, and also defined proper bargaining practices by both parties to a municipal bargaining agreement. City and village policemen were specifically excepted from the definition of municipal employee,<sup>1</sup> and sec. 111.70 did not grant to them the right to organize or be represented by a labor organization for the purposes of municipal bargaining.

In 1961 the legislature enacted ch. 663, Laws of 1961, which created sec. (4) of Wisconsin statute 111.70. Sec. (4) provides for the resolution of municipal employment disputes by fact finding. Sec. 111.70(4)(e) provides that fact finding may be initiated (1) when the parties become deadlocked after reasonable negotiation, or (2) when the employer or union refuses to meet or negotiate in good faith to arrive at settlement. Sec. (4)(f) provides the mechanism for establishing fact finding including the appointment of a qualified disinterested person or three-member panel. Sec. (4)(g) describes how the fact-finding hearings are to be conducted and describes what is to be the effect of fact finding. At the conclusion of fact finding, the fact finder makes recommendations for the solution of the dispute. These recommendations are not binding on either party.<sup>2</sup>

The parts of sec. 111.70, Stats., as effected by the 1959 and 1961 legislation, which are pertinent to this controversy are as follows:

"111.70 Municipal employment. (1) Definitions. When used in this section:

"(a) 'Municipal employer' means any city, county, village, town, metropolitan sewerage district, school district or any other political subdivision of the state.

"(b) 'Municipal employe' means any employe of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers.

"(c) 'Board' means the Wisconsin employment relations board.

"(2) Rights of Municipal Employes. Municipal employes shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on question of wages, hours and conditions of employment, and such employes shall have the right to refrain from any and all such activities.

"(3) Prohibited Practices. (a) Municipal employers, their officers and agents are prohibited from:

"1. Interfering with, restraining or coercing any municipal employe in the exercise of the rights provided in sub. (2).

"2. Encouraging or discouraging membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

"(b) Municipal employes individually or in concert with others are prohibited from:

"1. Coercing, intimidating or interfering with municipal employes in the enjoyment of their legal rights including those set forth in sub. (2).

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<sup>1</sup> Sec. 111.70(1)(b), Stats.

<sup>2</sup> Sec. 111.70(4)(g), Stats.; The **Strike** and its Alternative in Public Employment, 1966 Wisconsin Law Review, 549, 571.

"2. Attempting to induce a municipal employer to coerce, intimidate or interfere with a municipal employee in the enjoyment of his legal rights including those set forth in sub. (2).

"(c) It is a prohibited practice for any person to do or cause to be done, on behalf of or in the interest of any municipal employer or employee, or in connection with or to influence the outcome of any controversy, as to employment relations, any act prohibited by pars. (a) and (b).

"(4) Powers of the Board. The board shall be governed by the following provisions relating to bargaining in municipal employment:

"...

"(e) Fact finding. Fact finding may be initiated in the following circumstances: 1. If after a reasonable period of negotiation the parties are deadlocked, either party or the parties jointly may initiate fact finding; 2. Where an employer or union fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

"...

"(g) Same. The fact finder may establish dates and place of hearings which shall be where feasible in the jurisdiction of the municipality involved, and shall conduct said hearings pursuant to rules established by the board. Upon request, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the municipal employer and the union.

"(h) Parties. 1. Proceedings to prevent prohibitive practices. Any labor organization or any individual affected by prohibited practices herein is a proper party to proceedings by the board to prevent such practice under this subchapter.

"2. Fact finding cases. Only labor unions which have been certified as representative of the employees in the collective bargaining unit or which the employer has recognized as the representative of said employees shall be proper parties in initiating fact finding proceedings. Cost of fact finding proceedings shall be divided equally between said labor organization and the employer.

"...

"(j) Personnel relations in law enforcement. In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one-half of the costs of fact finding.

"...."

The effect of the 1961 enactment was to inaugurate fact finding for all municipal employees. Importantly, fact finding for municipal employees other than members of a police or sheriff or traffic officer department may be enforced by prohibited practice procedures.<sup>3</sup> In disputes involving such law enforcement personnel no such enforcement procedures may be used. Nevertheless, ch. 663, Laws of 1961, inaugurated fact finding for all municipal employees, including law enforcement personnel; not only for those municipal employees vested with collective bargaining rights by the 1959 law.

Under sec. 111.70(4)(j), Stats., policemen seeking fact finding are entitled to designate "a representative which may be one of the petitioners or otherwise." The language "or otherwise" is broad. It is ambiguous. We conclude that, in view of the entire purpose of the

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<sup>3</sup> Sec. 111.70(4)(h) 1, Stats.

fact-finding legislation, a broad construction should be given to the language, entitling the policemen to designate a labor union affiliated with a national labor organization as their representative in fact finding. Such a construction is consistent with our construction that an organization, such as a labor union, was intended by the legislative language; if an individual were intended the legislature would have said "a representative who."

We now reach a second issue in the case, namely, whether, even though the Greenfield police are entitled to designate Local 1127 as their fact finding representative, these policemen have a right to join that union. The trial court concluded that Chief Wahlen's order forbidding the Greenfield police from joining a labor union affiliated with a national labor organization was inconsistent with the right to designate the union as its representative, that the order contravened sec. 111.70(4)(j), Stats., and was void.

We conclude otherwise. We agree that sec. 111.70(4)(j), Stats., gives the policemen the right to designate an international labor union as their representative for fact finding. It does not follow, however, that the policemen are entitled to join that union. Sec. 111.70(1) and (2) establish the right of municipal employees to affiliate with labor organizations of their own choosing and to conduct collective bargaining through those organizations. However, municipal employees are defined by the 1959 law to exclude city and village policemen, sheriff's deputies, and county traffic officers.<sup>4</sup>

To interpret sec. 111.70(4)(j), Stats., as broadly as the trial court to guarantee the right of law enforcement personnel to have all of the rights given to other municipal employees under sec. 111.70(1) - (3) would constitute a repeal of sec. 111.70(1)(b). A well-established rule of statutory construction is that repeals by implication are not favored.<sup>5</sup> The new law in 1961 did not specifically repeal the provisions of sec. 111.70(1)(b) as embodied in the 1959 law. It does not accomplish this by implication. Thus we conclude that although the policemen did have the right to designate the respondent union as their fact finding representative, the individual policemen did not enjoy the right to join that union. Therefore, the judgment of the trial court, although correct in concluding that the policemen had the right to designate the union as their fact finding representative, was incorrect in voiding the police chief's order commanding that the members of his department refrain from in any way affiliating by reason of membership with an international labor organization.

The rights of the policemen to fact finding or to other labor rights are established by statute. At common law municipal policemen and firemen are not permitted to join labor organizations or unions which admit to membership persons other than members of the department. The common law rule is articulated in 31 A.L.R. (2d) as follows:

"The right of public employees in general to join or become members of labor units is becoming increasingly recognized, with the one marked exception that municipal firemen and policemen, . . . are barred from labor union membership. Policemen and firemen are denied union membership because they owe undivided allegiance to the public, and because it is absolutely necessary to the maintenance of discipline in the two services that public authorities have complete control over them."<sup>6</sup>

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<sup>4</sup> Sec. 111.70(1)(b), Stats.

<sup>5</sup> Kienbaum v. Haberny (1956), 273 Wis. 413, 78 N. W. (2d) 888; State ex rel. Peterson v. County Court (1961), 13 Wis. (2d) 37, 108 N. W. (2d) 146; Union Cemetery v. Milwaukee (1961), 13 Wis. (2d) 64, 108 N. W. (2d) 180; 82 C.J.S., Statutes, p. 479, sec. 288.

<sup>6</sup> Anno., Union Organization and Activities of Public Employees, 31 A.L.R. (2d) 1142, 1149.

Although this common law rule poses an absolute ban against membership in a union by policemen for any reason, by statute, local associations of policemen for bargaining purposes have been allowed. 7 Where no legislative enactments provide for the right to join unions, orders prohibiting policemen from becoming or remaining union members have frequently been upheld or approved. 8

More and more law enforcement officials are expected to render improved service under difficult circumstances. They should be able to work for the improvement of their own working conditions. As one device toward this end, the legislature has wisely provided for their use of fact finding.

By the Court. - Judgment modified by removing the portion thereof adjudging and decreeing the order of Police Chief Howard Wahlen, dated July 25, 1965, null and void; as modified, judgment affirmed and cause remanded for further proceedings consistent with this opinion.

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7 Perez v. Board of Police Commrs. (1947), 78 Cal. App. (2d) 638, 178 Pac. (2d) 537; Local 201 v. Muskegon (1963), 369 Mich. 384, 120 N. W. (2d) 197.

8 Perez v. Board of Police Commrs., supra, footnote 7; Jackson v. McLeod (1946), 199 Miss. 676, 24 So. (2d) 319; King v. Priest (1947), 357 Mo. 68, 206 S. W. (2d) 547; Hutchinson v. Magee (1923), 278 Pa. 119, 122 Atl. 234; Local 201 v. Muskegon, supra, footnote 7; Fraternal Order v. Police Com'rs. (1943). 306 Mich. 68, 10 N. W. (2d) 310.