

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

-----:
ARCHY JAECKS, :
Complainant, : Case III
vs. : No. 10552 MP-24
WEST MILWAUKEE-WEST ALLIS, JOINT : Decision No. 7664
CITY SCHOOL DISTRICT #1, :
Respondent. :
-----:

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Richard M.
Goldberg, for the Complainant.
Mr. William T. Schmid, City Attorney, for the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Board on December 9, 1965, Milwaukee, Wisconsin, Kenneth R. Loebel, Examiner, 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 the Complainant, Archy Jaecks, is an individual residing at 2380 Root River Parkway, West Allis, Wisconsin.
- 2. That the Respondent, West Milwaukee-West Allis, Joint City School District #1, has its offices in the City of West Allis, Wisconsin.
- 3. That at all times material herein, the Complainant has been employed by the Respondent as a teacher in its school system.
- 4. That the Wisconsin Education Association and the Wisconsin Federation of Teachers, separate organizations, have among their membership certificated teachers employed in the State of Wisconsin, including teachers in the employ of the Respondent; that local affiliates of both of such organizations engage in conferences and negotiations on behalf of their teacher members with employer school boards; and that both the Wisconsin Education Association and the Wisconsin Federation of Teachers assist their local affiliates in such endeavors.

5. That on November 2, 1964, the Respondent's Superintendent of Schools issued the following bulletin to principals and teachers in the employ of the Respondent:

"The Board of Education approved a calendar for the 1964-65 school year which lists Thursday and Friday, November 5 and 6 as convention dates. Teachers will be dismissed from school on Thursday and Friday, November 5 and 6, to attend either the Wisconsin Education Association convention or the Wisconsin Federation of Teachers' convention, both of which will be held in Milwaukee--the WEA convention at the arena and the WFT convention at Lincoln High School. Teachers are expected to attend the convention of their choice.

There is no provision made for paying teachers for November 5 or 6 if they do not attend either convention. On Monday or Tuesday following the convention, teachers will be asked to sign a payroll statement of attendance....".

6. That the Respondent closed it's schools on said convention days, November 5 and 6, 1964; and that the teachers who attended either convention on those dates, and who executed the payroll statement of attendance, received their regular pay for the month of November, 1964, computed on the basis that said convention dates were considered as two regular school days of the nineteen regular school days scheduled by the Respondent for the month of November, 1964.

7. That the Complainant did not attend either of the aforementioned conventions; and that, as a result, his paycheck for the month of November, 1964 indicated a deduction of \$95.10 because of Complainant's failure to attend either convention, such deduction being coded as "Voluntary Lost Time" on his check stub.

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

CONCLUSIONS OF LAW

That the West Milwaukee-West Allis, Joint City School District #1, by deducting two days' from the salary of Archy Jaecks for the month of November, 1964 for his failure to attend the conventions of either the Wisconsin Education Association or the Wisconsin Federation of Teachers on November 5 and 6, 1964 while not making similar deductions from salaries of teachers who attended such conventions, discriminated against Archy Jaecks for his nonattendance and thereby interfered with, coerced and restrained him in the exercise of his right to refrain from participating in the activities of any organization representing

teachers for the purposes of conferences and negotiations with their school board employers on questions of wages, hours and conditions of their employment; and thereby, the West Milwaukee-West Allis, Joint City School District #1 has committed prohibited practices within the meaning of Section 111.70(3)(a)1 and 2 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, West Milwaukee-West Allis, Joint City School District #1, its officers and agents, shall immediately:

1. Cease and desist from:
 - (a) Deducting pay from teachers' salaries in the event they do not attend a convention of either the Wisconsin Education Association or the Wisconsin Federation of Teachers, or the convention of any other employee organization representing teachers for the purposes of conferences and negotiations on matters pertaining to wages, hours and conditions of employment, while paying teachers in its employ for attending such conventions.
 - (b) Or in any other manner interfering with, restraining or coercing any of its employees in the exercise of their rights of self-organization, to affiliate with or be represented by any labor organization of their own choosing, for the purposes of conferences and negotiations on wages, hours and conditions of employment, or to refrain from any and all such activities.
2. Take the following affirmative action which the Board finds will effectuate the policies of Section 111.70 of the Wisconsin Statutes:
 - (a) Notify all its teacher employees by posting, in conspicuous places at its schools, where all teachers may observe same, a copy of the notice attached hereto and marked "Appendix A". Copies of such notice shall be duly signed by the Superintendent of Schools of the West Milwaukee-West Allis, Joint City School District #1. Copies of such notice shall be posted at the commencement of the coming school year and shall remain

posted for a period of thirty (30) days thereafter. Reasonable steps shall be taken to insure that said notice is not altered, defaced or covered by any other material.

- (b) Notify the Wisconsin Employment Relations Board in writing within ten (10) days after the commencement of the coming school year as to what steps it has taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of July, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

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

APPENDIX A

NOTICE TO ALL TEACHING PERSONNEL

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 teaching personnel that:

WE WILL NOT deduct pay from teachers' salaries solely because they do not attend a convention of the Wisconsin Education Association or the Wisconsin Federation of Teachers, or the convention of any other employe organization, representing teachers for the purposes of conferences and negotiations on matters pertaining to salaries, hours and conditions of employment.

WE WILL NOT in any other manner interfere with, restrain or coerce any of our employes, or discriminate against them in the exercise of their right to refrain from self organization, to refrain from, affiliation with, or representation by, any labor organization of their choice, or in the exercise of their right to participate in self organization, to affiliate with or be represented by any labor organization of their choosing.

WEST MILWAUKEE-WEST ALLIS, JOINT
CITY SCHOOL DISTRICT #1

By _____
Superintendent

Dated at West Allis, Wisconsin, this _____ day of _____, 1966.

THIS NOTICE MUST REMAIN POSTED FOR 30 DAYS 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

The complaint herein, filed by Jaecks as an individual, alleged that the School District, by making deductions from his pay check for November, 1964 because of nonattendance at teacher conventions scheduled during that month, violated his rights under Section 111.70 of the Wisconsin Statutes to refrain from any and all employe organizational activity, and unlawfully interfered with, restrained and coerced him by attempting to encourage his activity in employe organizations by discrimination.

In its answer, the School District admitted withholding sums from Jaecks salary for November, 1964, and denied that such action constituted a Violation of Section 111.70, and alleged that the payment to those teachers in its employ who attended either teacher convention was permissible under Section 40.40 and 40.45 of the Wisconsin Statutes.

Section 111.70(2) establishes the right of municipal employes to participate in or to refrain from any and all activities relating to self organization and to affiliation with employe organizations of their own choosing, and the right to participate in or to refrain from being represented by organizations of their own choosing in conferences and negotiations with municipal employers on questions of wages, hours and conditions of employment. Section 111.70(3)(a) prohibits any municipal employer from interfering with the rights of municipal employes

to refrain from the activities previously noted, and also prohibits municipal employers from discriminating against its employees with regard to terms or conditions of employment as a result of an employee's choice to refrain from the protected activities.

Section 40.40(3) and 40.45(1) provide as follows:

40.40(3) Teachers' Contracts.

The Board may give to any teacher, without deduction from her wages, the whole or part of any time spent by her in attending a teacher's institute held in the county, or a school board convention or the meeting of any teachers' association, upon such teacher's filing with the school clerk a certificate of regular attendance at such institute, convention, or by the secretary of the association.

40.45(1) School month; holidays; special observance days.

Twenty school days constitute a school month. Not to exceed 5 Saturdays may be counted as school days in any school year when school is taught thereon with the consent of the board. School days are days on which school is actually taught (including the special observance days mentioned in sub. (2)) and the following days on which school is not taught.

(a) Labor Day, Thanksgiving, Christmas, New Year's Day, and Memorial Day, if within the scheduled school term, and not within a scheduled vacation period.

(b) Days on which state and county teachers' conventions are held.

(c) Days on which school is closed by order of a health officer.

As has been the past practice of the School District, it determined that for the year 1964, the schools would be closed on November 5 and 6, the dates selected by both the Wisconsin Education Association and the Wisconsin Federation of Teachers for their annual conventions and it determined that no classes would be taught on those dates.

Pursuant to Section 40.40(3) and 40.45(1), the School District determined that it would not deduct any wages from the salaries of teachers who attended either convention who displayed proof of their attendance. Jaecks did not attend either convention, and he did not teach on said dates, since the schools were closed.

The Board has previously determined, in a case involving the identical School District, that local affiliates of the Wisconsin

Education Association are labor organizations within the meaning of Section 111.70 of the Wisconsin Statutes.^{1/} The same can be said concerning local affiliates of the Wisconsin Federation of Teachers. We conclude that the parent organizations, that is, the Wisconsin Education Association and the Wisconsin Federation of Teachers, are likewise labor organizations within the meaning of Section 111.70, because representatives of said parent organizations assist their local affiliates in conferences and negotiations with their school board employers on matters pertaining to salaries, hours and conditions of employment of teachers.

Deducting from the salaries of teachers for not attending conventions of the Wisconsin Education Association or the Wisconsin Federation of Teachers, while at the same time not making similar deductions from teachers who did attend such conventions, discriminates against those not in attendance as a result of the exercise of their statutory right not to participate in the activities of such labor organizations, and thereby interferes with their right to refrain from such activity.

The Board has considered the effect of Section 40.40(3) and 40.45(1) of the Statutes quoted above, and we are of the opinion that the provisions therein do not grant any license to any school district to discriminate against any teacher in its employ in violation of Section 111.70. It would appear to us that, if a school district determines to pay teachers for attendance at conventions of teacher organizations which represent employes in conferences and negotiations with their school board employers, it would be reasonable and proper for such school districts to require duties to be performed relating to their teaching assignments by those teachers not attending conventions in order to avoid any deduction to be made from their monthly salary, since Section 40.45(1) specifically provides that convention days are considered school days.

There is no statutory requirement that school districts are required to pay teachers for attendance at teacher conventions. The statute permits the discretion to pay or not to pay. The determination of a school district in this regard may be affected by the scheduling of convention days by the various teacher organizations. However, we see no legal impediment to condition pay on either attendance at a convention or performing duties related to the educational

^{1/} Dec. No. 6544, 11/63.

process on convention dates. If, under such conditions, a teacher would refuse to attend either convention or to perform the related work, and a deduction is made from his salary, we see no violation of Section 111.70. While it may be argued that that requirement to perform such duties on convention dates is discriminatory, we can not agree. Teachers conventions are not only concerned with matters relating to the internal structure of the organization conducting the convention and to its policies and program with respect to collective bargaining, but also with the educational process and program as a whole. Therefore, we do not consider that assignments relating to teaching, which might be required in lieu of attending a convention, to be a penalty or an act of prohibited discrimination.

We have determined that the School District's policy and practice herein is prohibited since it violated Jaecks' right to refrain from participating in the activity of any labor organization without penalty. Nevertheless, we have not ordered, as requested by Jaecks, that the School District reimburse the sum deducted from Jaecks' November, 1964 salary. Such a determination was reached after thoughtful consideration by the Board. The practice of deducting from the pay of a teacher for nonattendance at teacher conventions was in no way considered unlawful or prohibited prior to the enactment of Section 111.70. It has been, at least until the adoption of Section 111.70, the policy of this state to permit school districts to pay teachers for attendance at teacher conventions. The School District herein continued its practice of denying pay to those teachers who did not attend. Furthermore, there was no evidence introduced which established any other prohibited activity or any discriminatory motivation with respect to the action of the School District. While the deduction for the reasons found in itself constituted a prohibited act, the practice of long standing and the absence of any other evidence of a discriminatory intent, and the fact that the complaint was not filed until eleven months after the occurrence of the act convinced the Board that no back pay order should issue.

Nevertheless, we wish it to be understood that if, in the

future, similar prohibited practices are established involving any school district, the Board will order that the employes be made whole for loss of salaries as a result of discriminatory treatment.

Dated at Madison, Wisconsin, this 15th day of July, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

BY Thomas Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

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