

STATE OF WISCONSIN.

DANE COUNTY.

CIRCUIT COURT.

Wisconsin Federation of Teachers,
AFL-CIO,

Petitioner,

vs.

Wisconsin Employment Relations
Commission,

Respondent.

123-280
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123-286

November 13, 1967

THE COURT: The Court has listened to the arguments in this case and has read the briefs and believes it is a matter that can be decided from the bench and is now ready to make that decision.

The Court believes that the record in this case establishes that there has been no act of discrimination against the Plaintiff-Petitioner by any or either of the Respondents herein, nor has there been any prohibited practice indulged in by any or either of the Respondents.

The record in this case discloses that historically for many years the Wisconsin Education Association and the Wisconsin Federation of Teachers had held their conventions on the first Thursday and Friday of November of each year, and for all of those years the school calendars of the various schools of this state had been set and fixed to include those two days, the first Thursday and Friday in November, as the dates for such convention.

Now, the record establishes that in April of 1966 for the first time the Petitioner, Wisconsin Federation of Teachers, gave notice to the Respondents herein that that specific labor organization had concluded not to hold its 1966 convention on the usual, customary dates, namely, the first Thursday and Friday of November, but had concluded to hold it on a date earlier in the fall, in October, two days in October.

Now, at the time that that decision on the part of WFT was transmitted to the Respondents herein on or about April 29, 1966, the facts are established that previous to that time the school calendar for the 1966-1967 school year had been set and determined by the school boards of each of the respondents according to law; the record discloses that that school calendar in each instance had been negotiated with an affiliate of the WEA and that such affiliate in each of those cases was the majority representative of the teachers employed in the respective districts.

Now, so far as the question of convention dates, either the time of the convention or the duration of the convention or the remuneration for attending a convention, whether or not those issues are or are not the subject of negotiation or conference or agreement

under Section 111.70 I don't think it is necessary for me to determine because I believe this record bears out and substantiates that in every one of these cases the school board did, whether it was under a legal duty to do so or not, did call in and negotiate or confer with or bargain with the majority representative, namely, the WEA affiliate of its teachers, and in each case it was agreed that the teacher convention dates for 1966 would be November 3 and 4, 1966, and school calendars pursuant thereto were thereupon adopted, the record shows, in each of these cases.

Now, I recognize that Madison claims that this is not a bargainable issue, and I recognize that the City of Milwaukee claims that under Chapter 38 the setting of the school calendar is by statute a managerial act as far as the school board is concerned, but I don't believe this record requires me to determine that. If I were to determine it it would be my judgment that it is not a bargainable issue, but that does not need to be part of my decision because in this case, if it was a right, it was acceded to and followed.

Now, here we have a situation where the employer school board has, after proper negotiation and conference, set a school calendar and entered into an agreement that a convention will be held on certain dates. It seems to me unreasonable to then rule that a school board would have any duty, and I doubt if it would have any right, to thereafter grant other or different dates. convention dates, without the consent of the majority representative and merely at the request of some minority representative group.

But this goes even one step further. After this was all done by each of these Respondents individual contracts were then offered to all of these teachers who form the nucleus of the membership of either the Petitioner here or the intervening defendant, WEA, intervening respondent; individual teaching contracts were offered to all of these teachers on and between April 1 and April 15, 1966, and so far as the record discloses each of those teaching contracts incorporated the school calendar therein and that school calendar in each instance set forth November 3 and 4 as the dates upon which the State Teachers Convention, as it has historically been called, would be held in this state, and each teacher signed that contract and agreed to that date. Now, it seems to me that it is capricious to claim now that the members of these organizations have any right under Section 111.70 to claim discrimination or to claim the practice of a prohibited act because the school board in each case is following the contract that it had signed with each teacher. That is all these school boards are doing, living up to their respective contracts and living up to the school calendars that were negotiated and agreed upon between the majority representative in each case.

Any discontent that the Petitioner has here with the failure of the various Respondents to permit members of WFT to attend an October convention or to pay members of WFT for attendance at such convention is completely caused by the actions of WFT itself. After the school calendars had been firmly and fairly set by agreement and negotiation, and after binding teaching contracts had been entered into, then, for reasons which the WFT may feel are valid but which this Court would have grave doubts as to their validity, then for the first time the WFT seeks unilaterally to set a completely different convention date and then screams discrimination when that date is not acceded to. It would be in my judgment preposterous to permit that sort of activity and to give it any legal standing.

The Court determines that Section 40.40(3) grants to each school board a discretionary or permissive right to either permit the teachers of each district to attend a convention or not attend, to determine how long they can remain in attendance, and to determine whether they shall or shall not be paid. There is no mandatory right, as I read the statute, of any teacher to attend a school convention.

My findings or my reasoning, my legal reasoning, does not agree with some of the legal reasoning of the Commission but my result is the same, and the order of the Commission in each case is affirmed.

Counsel for Respondent and for the Impleaded Respondent may prepare in each case an order and judgment affirming that pronounced from the bench, submitted to the Court at Lancaster for signature and at the same time send a copy thereof to counsel for the Petitioner. I will hold it for a few days before I sign it so that if there should be any criticism as to its form Mr. Loebel can telephone me. That doesn't mean I will change my decision in any way but it just means if the form employed is not satisfactory he can notify me.