

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

Case VI
No. 11557
PP(S)-1
Decision No. 8383

Appearances: Eisenberg & Kletzke, by Mr. Jerome Pogodzinski, Attorney,
for the Complainant.
Brady, Tyrrell, Cotter & Cutler, by Mr. T. L. Tolan, Jr.,
Attorney, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on August 29, 1967, at Milwaukee, Wisconsin, before Herman Torosian, Examiner; and the Commission having considered the evidence, arguments and briefs of counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That UWM Independent Maintenance Local No. 1, hereinafter referred to as the Complainant, is a labor organization having its offices at Milwaukee, Wisconsin.
2. That the University of Wisconsin-Milwaukee, hereinafter referred to as the Respondent, is an agency of the State of Wisconsin, operating and maintaining an educational facility at Milwaukee; and that Respondent employs, among others, building and maintenance employees, some of whom are members of the Complainant.
3. That at all times material herein no employee group or labor organization was ever voluntarily recognized or certified as the bargaining representative of any of Respondent's employees in any appropriate collective bargaining unit; and that at all times material

herein no collective bargaining agreement, covering the conditions of employment of Respondent employees, existed between the Respondent and any employee or labor organization.

4. That in June 1967, contrary to a grievance procedure previously unilaterally established by it, the Respondent failed to allow the Vice-President of the Complainant to assist in the proceeding of a grievance filed by various employees with respect to the placing of newly hired employees in a job assignment desired by employees having greater seniority; that, however, the Complainant did not establish that the Respondent's action with regard thereto was motivated in an attempt to dissuade or persuade any of its employees to form, join, or assist any employee or labor organization of their own choice, or to encourage or discourage employees to become members of any employee or labor organization.

5. That in December 1966, twelve employees of the Respondent, who had previously authorized the Respondent to make monthly deductions from their earnings for dues to Local 82, Wisconsin State Employees Association, AFSCME, a labor organization having as members various employees of the Respondent, attempted to rescind such authorization; and that, however, the Complainant failed to establish that the Respondent received such revocation in accordance with established procedure.

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

CONCLUSION OF LAW

That the Respondent, University of Wisconsin-Milwaukee, did not commit, and is not committing, any prohibited practice within the meaning of the State Employment Labor Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

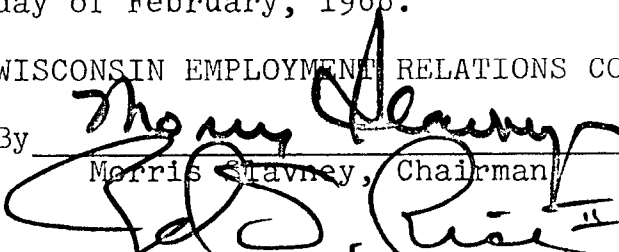
ORDER

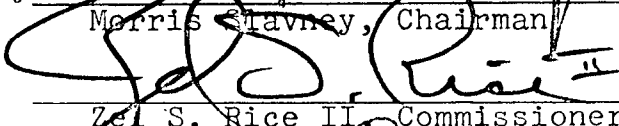
IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

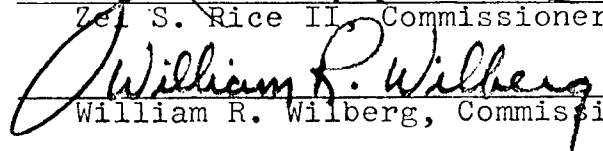
Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of February, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UWM INDEPENDENT MAINTENANCE LOCAL #1
1585 North Warren Avenue
Milwaukee, Wisconsin,

Complainant,

vs.

UNIVERSITY OF WISCONSIN-MILWAUKEE
Milwaukee, Wisconsin,

Respondent.

Case VI
No. 11557
PP(S)-1
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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint and amended complaint the UWM Independent Maintenance Local No. 1, hereinafter referred to as the Independent, alleged that the State Employer involved herein committed prohibited practices within the meaning of Sections 111.82, 111.84(a) and (d) and 111.91(c). The Independent alleged that such provisions were violated by the refusal of the State Employer to permit its Vice-President to assist in the processing of a grievance filed on behalf of a number of employees. The Independent also alleged that a prohibited practice was committed in refusing to honor employees' revocation of dues check-off in favor of Local 82, Wisconsin State Employees Association, AFSCME, hereinafter referred to as WSEA. The Independent further alleged that a prohibited practice was committed by the State Employer in refusing to compensate an employee for time spent in attending a representation hearing conducted by the Commission, while at the same time the State Employer was to have paid other employees who so attended. Prior to the close of the hearing the Independent withdrew the latter allegation. In its amended answer the State Employer denies the commission of any prohibited practices.

PERTINENT STATUTORY PROVISIONS

Section 111.82 of the State Employment Labor Relations Act establishes the right of state employees to form, join or assist labor organizations in the process of collective bargaining and the right to refrain therefrom. Section 111.84(a) provides that it is a prohibited practice for a State

Employer to interfere, restrain or coerce employees in the exercise of their rights granted in Section 111.82. Section 111.84(d) provides that it is an unfair labor practice for a State Employer to refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit. Section 111.91(c) sets forth that work schedules and shift assignments are subject matters for collective bargaining.

DISCUSSION

The facts established in the hearing disclosed that in June 1967, a vacancy occurred in the building and maintenance helper position in one of the buildings operated by the State Employer and that a new employee was placed in such position. A number of employees occupying said classification desired to be placed in said vacancy and a group grievance was filed on their behalf with respect thereto. At all times material herein, no collective bargaining representative was either voluntarily recognized or certified as the collective bargaining representative of any of the employees of the State Employer. At the time of the incident there existed an employee grievance procedure which had been unilaterally established by the State Employer. A group grievance was filed by a number of employees who occupied the classification of Building and Maintenance Helper II with respect to the placement of a new employee in the vacancy. Included among those employees, on whose behalf the grievance was filed, were James E. Higgins, the President, and Marvin Matuszak, the Vice President of the Independent. Contrary to the provision of the established grievance procedure, the State Employer rejected the request of the grieving employees that its Vice-President be permitted to participate in the grievance discussions. The Independent contended during the hearing that Matuszak was a necessary participant in the grievance procedure since he had experience therein. For some reason not explained, it made no contention that his participation was proper on the basis that he was one of the grieving employees. The Independent's position with respect to the State Employer's refusal to permit Matuszak to participate in the grievance discussion was based wholly on a claim that he had a right to do so under the grievance procedure.

There was no contention that the refusal of the State Employer to permit participation by Matuszak was motivated to either discourage or encourage membership or activity in any labor organization representing the State Employees. The existing grievance procedure was not established in collective bargaining nor was it included in any collective bargaining

agreement. Therefore, while there may have been a violation of the procedure, said violation, under the circumstances, does not constitute a prohibited practice.

The Independent contends that Section 111.83(1) establishes the right of individual employees, or a minority group, to present grievances to the State Employer in person or by representatives of their own choosing, and requires that the State Employer confer with said employees or minority groups in regard thereto. This "right" is not an absolute right but rather comes into being when a collective bargaining representative has been either voluntarily recognized or certified as the exclusive representative of employees in an appropriate collective bargaining unit. While the collective bargaining representative has the duty to represent all employees in said unit for the purposes of collective bargaining, however, individual employees or minority groups may present grievances in person or through representatives of their own choosing, although the majority representative must be given an opportunity to be present. The right thus established for individual employees or minority groups only arises where there is an exclusive bargaining representative and where a grievance procedure has been established in collective bargaining by the exclusive bargaining representative and the State Employer. In this instance there existed no exclusive bargaining representative and no grievance procedure which had been established through collective bargaining. Therefore, the "rights" set forth in 111.83(1) did not arise.

The second issue concerns an alleged failure of the State Employer to honor a purported revocation of dues check-off which previously had been executed by some 12 employees in favor of another labor organization. The evidence adduced by the Independent on said issue with respect to the alleged receipt of written revocation was based on hearsay at the most, and, therefore, the Independent did not establish that the revocations were properly received by the State Employer. Furthermore, there was no evidence adduced with respect to the terms of the check-off authorization, nor with respect to the terms provided therein for revocation.

The merit of the Independent's complaint is reflected by its withdrawal of a third allegation that the State Employer had refused to pay the Independent President for the time spent by him in attending a representation hearing conducted by the Commission involving the State Employer. The facts attempted to be established by the witness for the Independent were so confusing that Counsel for the Independent withdrew such allegation prior to the close of the hearing.

The Independent established no conduct by the State Employer which constituted a prohibited practice, and, therefore, we have dismissed the complaint.

Dated at Madison, Wisconsin, this 5th day of February, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Zel S. Rice II

Zel S. Rice II, Commissioner

William R. Wilberg

William R. Wilberg, Commissioner