

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :  
 DEPARTMENT OF ADMINISTRATION, :  
 STATE OF WISCONSIN :  
 for :  
 Declaratory Ruling :  
 ----- :

Case II  
 No. 12108 DR(S)-2  
 Decision No. 8509-A

DECLARATORY RULING

Following a petition for declaratory ruling filed by the Department of Administration, State of Wisconsin, the Wisconsin Employment Relations Commission set hearing in the matter to take evidence and to hear such arguments pertinent to the disposition of the question which was posed in the petition, and further solicited briefs from interested parties to be filed prior to the hearing; and the full Commission having conducted a hearing thereon on May 8, 1968, at Madison, Wisconsin, where the Department of Administration, State of Wisconsin, and the other parties having an interest therein, namely, Wisconsin Nurses Association, Wisconsin Hearing Examiners Association, Wisconsin State Employees Association, and the Milwaukee Building Trades Council, were given the opportunity to present evidence and oral arguments material to the proceeding.

In its petition the Department of Administration, State of Wisconsin, requested the Commission to issue a declaratory ruling on the following question:

"Is the State of Wisconsin committing a prohibited practice under section 111.84(1), Wis. Stats., by continuing to allow delegates and members of the Wisconsin Nurses Association time off with pay to attend annual conventions conducted by the Wisconsin Nurses Association while denying this benefit to representatives of other labor organizations?"

The Commission, having considered the evidence, briefs and arguments of the petitioner and the other interested parties named above, and being fully advised in the premises, makes and files the following

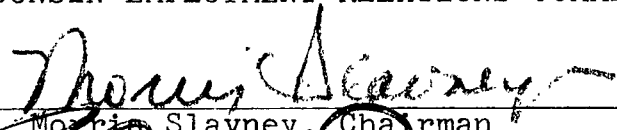
DECLARATORY RULING

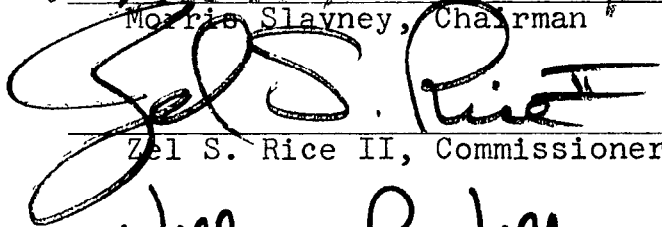
That the State of Wisconsin, by permitting its professional employes, who are either members or non-members of a professional organization which represents State employes for the purposes of collective bargaining, to attend, with time off with pay, conventions and meetings conducted by such an organization or affiliate thereof, which conventions and meetings are primarily devoted to the enlightenment and betterment of the profession involved, where permission to attend or not attend such conventions and meetings is not conditioned on the employes' membership in said professional organization, does not, per se, constitute a prohibited practice within the meaning of the State Employment Labor Relations Act.

Given under our hands and seal at the City of Madison, Wisconsin, this 5<sup>th</sup> day of August, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slayney, Chairman

  
Zel S. Rice II, Commissioner

  
William R. Wilberg, Commissioner

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MEMORANDUM ACCOMPANYING DECLARATORY RULING

BACKGROUND

It has been an established practice in the State of Wisconsin to allow nurses in the employ of the various state agencies time off with pay to attend annual conventions of the Wisconsin Nurses Association, hereinafter referred to as the WNA, a professional organization admitting registered nurses into membership. The WNA presently claims to represent professional nurses in the employ of the various state agencies and election proceedings with respect thereto are presently pending before the Commission.

The annual conventions of the WNA are primarily devoted to matters aimed toward the enlightenment and betterment of the nursing profession. A small portion of the time spent at the convention is devoted to matters of economic security and employment standards. Members, as well as non-members, are permitted to attend the annual conventions as well as its business sessions. However, only elected delegates and officers may vote on business matters and those matters which require formal action with regard to the establishment of policies of the WNA.

The State of Wisconsin has no standard practice with regard to the attendance of its professional nurses at annual WNA conventions. Practices are established on an agency-wide, and even in some instances on an institution, basis.

PERTINENT STATUTORY PROVISIONS

"Section 111.82: State employes shall have the right of self organization and also the right to refrain from any or all of such activities."

"Section 111.84(1)(b): It is a prohibited practice for a state employer to 'initiate,' create, dominate, or interfere with the formation or administration of any labor or employe organization or contribute financial support to it..."

"Section 111.84(1)(c): It is a prohibited practice for a state employer 'to encourage or discourage membership in any labor organization...by discrimination in regard to hire, tenure or other conditions of employment."

#### POSITION OF THE PARTIES

The position of the State is reflected in its brief as follows:

"The State would like to continue its present practices with respect to giving nurses time off with pay, and in some cases expenses, for attendance at the annual meetings of the Wisconsin Nurses Association. It recognizes the benefits to be derived from these programs and wishes to encourage attendance for the benefit of the State and of the patients and inmates at the various state institutions. It fears, however, that it may be providing unlawful assistance to the WNA if it continues to do so since the WNA is--in addition to its professional functions--a labor union, and the law clearly appears to forbid an employer giving financial assistance to a labor union...."

The WNA states its position as follows:

- "1. The granting of time off with pay to all registered nurses in any unit of state employment, whether WNA members or not, to attend annual conventions of WNA does not 'initiate, create, dominate or interfere with the formation or administration of any labor or employe organization or (to) contribute financial support to it.'
- "2. These prohibited practices are aimed at domination or interference - a Rival-Union concept.
- "3. The Rival-Union concept relates to an intra-unit rivalry, not an inter-unit comparison.
- "4. WNA conventions are predominately professional in subject content and are open to all, whether WNA members or non-members.
- "5. WNA conventions would qualify under the majority representative privilege even if there were rival representative agencies in the unit.
- "6. In any event leave has been equally available to all in the unit whether members of WNA or not, as it should be.

"7. The unilateral denial of professional benefits long granted might be considered to be a prohibited practice, but their continuance could not be so considered.

"8. A blanket rule by declaratory judgment might be premature because a determination of prohibited practice must depend upon the specific facts of an actual situation."

The Wisconsin Hearing Examiners Association urges the Commission to answer the question posed in the petition in the negative.

The Wisconsin State Employees Association contends that the question posed in the petition is so fraught with factual questions that no general ruling should be made by the Commission and that the rights and duties of the parties should not be determined without the full litigation of the facts in each case.

Milwaukee Building Trades Council also argues that the question should be answered in the negative, contending that when the time off is for bona fide purposes, whether for employer purposes or labor organization purposes, such time off with pay does not per se constitute aid, assistance or financial contribution to the labor organization involved.

#### DISCUSSION

The granting of time off to employes with pay by the State to attend conventions of employe organizations which exist in whole or in part for the purpose of representing State employes in collective bargaining may constitute a prohibited practice if said action is intended to or does result in interfering with the rights of employes as set forth in Section 111.82 since such an act may be deemed to initiate, create, dominate or interfere with the formation or administration of any labor or employe organization or contribute financial support thereto as prohibited in Section 111.84(1)(b), and/or may constitute discrimination within the meaning of Section 111.84(1)(c).

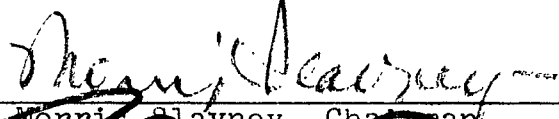
If the permission granted to nurses in the State service to attend the WNA annual convention is not conditioned upon membership or non-membership in the WNA, or any other factor which might constitute discrimination under Section 111.84(1)(c), it would appear, in our opinion, that no violation of the latter section occurs, nor under similar circumstances would we consider permission to attend such convention a violation of Section 111.84(1)(b). The State, as an employer of professional nurses, reaps some benefit from the attendance

at such conventions by their professional nurse employes. To date the primary purpose of the WNA conventions has been for the betterment of the nursing profession as such rather than the strengthening of the WNA as a labor organization representing State employes for the purposes of collective bargaining with the State on those limited matters which are subject to mandatory bargaining under the State Employment Labor Relations Act.

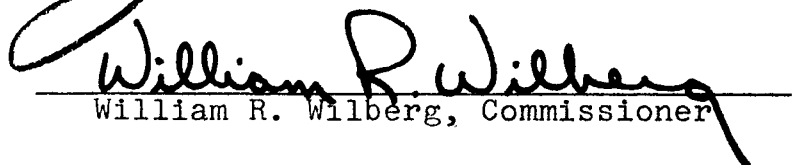
Dated at Madison, Wisconsin, this 5<sup>th</sup> day of August, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Blavney, Chairman

  
Ted S. Rice II, Commissioner

  
William R. Wilberg, Commissioner