

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WAUWATOSA BOARD OF EDUCATION,

Complainant,

vs.

DISTRICT COUNCIL 48, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO; LOCAL 1561, affiliated with
DISTRICT COUNCIL 48, AFSCME, AFL-CIO;
THOMAS J. KING; GEORGE SOMMER; ROBERT
OLSON; VERN THAYER AND CARROL PETERSON,

Respondents.

Case XI
No. 11913 MP-48
Decision No. 8636

Appearances:

Lamiron, Peck, Ferebee & Brigden, Attorneys at Law, by
Mr. Willis B. Ferebee, for the Complainant Employer.
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S.
Williamson, Jr., for the Respondent Union and other
Individual Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter and hearing thereon having been conducted on February 22, 1968, at Milwaukee, Wisconsin, Commissioners Zel S. Rice II and William R. Wilberg being present; and the Commission having considered the evidence and arguments of counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Wauwatosa Board of Education, hereinafter referred to as the Complainant, is a municipal employer, having its address at 1732 Wauwatosa Avenue, Wauwatosa, Wisconsin.
2. That District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as Respondent District Council, is a labor organization representing municipal employees; that Local Union 1561, hereinafter referred to as Respondent Local, is affiliated with Respondent District Council and has as its members certain custodial and maintenance employees

of the Complainant; that the offices of said Respondent labor organizations are maintained at 615 East Michigan Street, Milwaukee, Wisconsin; and that at all times material herein Respondent District Council has been the certified exclusive bargaining representative of certain custodial and maintenance employees in the employ of the Complainant,

3. That Respondent Thomas J. King is a staff representative of Respondent District Council and in that capacity services Respondent Local; that Respondents George Sommer, Robert Olson, Vern Thayer and Carrol Peterson are employees of Complainant employed in the collective bargaining unit represented by Respondent District Council and respectively hold the positions of President, Vice President, Secretary and Treasurer of Respondent Local.

4. That in December 1967 Complainant and Respondents District Council and Local were involved in a controversy with respect to wages, hours and conditions of employment governing employees of the Complainant represented by said Respondents; that on December 19, 1967, Mary Heinlein, an employee of the Complainant not employed in the collective bargaining unit, received a call from Respondent Sommers requesting her to attend a meeting to be held prior to normal work period on December 20, 1967, in regard to not working on December 20, 1967; that on December 19, 1967, Kenneth LaBlanc, an employee employed by the Complainant received a telephone call from Respondent King requesting him to attend a meeting the following morning to be held prior to normal first shift working hours with respect to not working on December 20, 1967; and that LaBlanc was further asked if he intended not to work that date; and that both Heinlein and LaBlanc did not attend such meeting, but rather reported to work and did work their normal shift on December 20, 1967.

5. That on December 20, 1967, prior to his leaving home for reporting to work Joseph Guagliardo, an employee of the Complainant, at approximately 5:00 a.m. received a telephone call from an unidentified person who advised Guagliardo not to open the doors of the school building in his custodial charge on December 20, 1967; and that Guagliardo did not report for work on December 20, 1967.

6. That on December 20, 1967, of 48 first shift employees who normally would have reported for work in the various buildings operated by the Complainant, 29 failed to report for work; that on the same day of 27 second and third shift employees 22 failed to report for work.

7. That upon learning of the failure of employees to report for work on December 20, 1967, the Complainant sent the following telegram to those employees who absented themselves from employment:

"Your failure to report for work this date as scheduled is in violation of Section 111.70 Wisconsin Statutes prohibiting strikes by public employees. Your participation in such concerted activities is prohibited under the law and will be dealt with accordingly. Please be advised that your failure to report for work on Thursday, December 21, 1967, as scheduled, will result in a termination of your employment and the loss of all employee rights and benefits."

8. That also on December 20, 1967, Complainant sent the following telegram to Respondent King and officers of the Respondent Local:

"A strike in violation of Wisconsin Statutes 111.70 is in progress at the Wauwatosa Public Schools by employees represented by Local 1561. As officers of Local 1561 we insist that your union cease all illegal strike activities and order all employees back to work immediately in compliance with state law.

At such time as all illegal activities have stopped we stand ready to meet with you or your representative to negotiate concerning our proposal of December 13, 1967. You are hereby further informed that a continuation of these illegal strike activities will result in immediate disciplinary action against all participants with a loss of all rights and benefits contained in the labor agreement. Please be further advised that the board of education will hold your organization legally responsible for any and all damages sustained as a result of your illegal activities."

9. That on December 21, 1967, all employees of the Complainant reported for work except one who was ill.

10. That the failure of the employees of the Complainant to report for work on December 20, 1967, except one employee who reported ill on that day, constituted a concerted refusal to work and a strike by said employees; that such activity occurred as a result of the determination of Respondents District Council and Local, through its officers, members and agents, including individual Respondents King, Sommer, Olson, Thayer and Peterson, to

voluntarily engage in such activity; and that, however, the failure of any employe of the Complainant to report for work on December 20, 1967, did not result from any interference, restraint or coercion exercised by Respondents District Council and/or Local or by any of their officers, members or agents or the individual Respondents named herein.

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

CONCLUSIONS OF LAW

1. That, while Section 111.70(4)(1) of the Wisconsin Statutes expressly prohibits strikes in municipal employment, there is no provision in Section 111.70, Wisconsin Statutes, which grants jurisdiction to the Wisconsin Employment Relations Commission to restrain or terminate any strike or any other concerted refusal to work by municipal employes.

2. That since the concerted refusal to work, resulting in a strike by certain employes of Wauwatosa Board of Education on December 20, 1967, resulted from voluntary action by those employes engaging therein and not from any interference, restraint or coercion by Respondents District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, and/or its Local 1551, or officers, members or agents, including Respondents Thomas J. Kang, George Sommer, Robert Olson, Vern Thayer and Carrol Peterson, said Respondents did not commit any prohibited practices in violation of Section 111.70(3)(b), or any other provision of Section 111.70 of the Wisconsin Statutes, in connection with said strike activity.

Upon the basis of the foregoing Findings of Fact and Conclusions 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

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pleadings

In its complaint the Wauwatosa Board of Education alleged that the Respondent labor organizations and the individual Respondents, who were representatives and officers thereof, violated certain provisions of Section 111.70 of the Wisconsin Statutes by having "participated in and instituted, induced, inspired, ordered, assisted and abetted each other and certain employees" of the School Board to engage in a strike on December 20, 1967. Sections 111.70(4)(1), 111.70(3)(b)(1) and 111.70(3)(c) were the specific sections alleged to have been violated.

The Respondents in their answer admitted that the employees represented by the Respondent labor organizations did not report for work on December 20, 1967, however, generally denied violating any provision of Section 111.70.^{1/}

Positions of the Parties

The School Board contends that the refusal to work by certain of its employees on December 20 constituted a strike within the meaning of Section 111.70(4)(1), and that the Respondents were

^{1/} The answer also contained three affirmative defenses which were withdrawn at the outset of the hearing and therefore need not be discussed herein.

responsible for such strike activity by its employees. It argues that since the statute contains an absolute prohibition against strikes, municipal employees have a right to continued employment without interruption by strikes and in that regard employees have a legal right to continue their employment and that by initiating and continuing the strike the Respondents committed an act of interference with respect to the right of employees to continue their active employment in that the Respondents "actively interposed into the affairs of the employees involved and without being asked", in instigating and carrying out the strike in disregard of statutory prohibition and that such an act constituted unlawful interference within the meaning of Section 111.70(3)(b)(1) and Section 111.70(3)(c). It further argues that the individual efforts of various Respondents to adduce and abet employees to refrain from working also constituted an act of unlawful interference.

Position of the Respondents

The Respondents admit that certain employees of the School Board determined not to and did not work on December 20, however, that there was no evidence adduced during the hearing which established that any of the Respondents had "interfered" with the choice of the employees to work or not work on the date in question, and therefore, that the complaints should be dismissed.

Pertinent Statutory Provisions

The statutory provisions alleged pertinent to the issues herein are as follows:

"Sec. 111.70(2) Municipal employees 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 questions of wages, hours and conditions of employment, and such employees shall have the right to refrain from any and all such activities.

Sec. 111.70(3)(a) Municipal employers, their officers and agents are prohibited from:

1. Interfering with, restraining or coercing municipal employees in the exercise of rights provided in Sub. (2) (Emphasis added.)

Sec. 111.70(3)(b) Municipal employees individually or in concert with others are prohibited from:

1. Coercing, intimidating or interfering with municipal employees in the enjoyment of their legal rights including those set forth in Sub. (2). (Emphasis added.)

Section 111.70(3)(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).

Sec. 111.70(4)(1) Nothing contained in this subchapter shall constitute a grant of the right to strike by any county or municipal employee and such strikes are hereby expressly prohibited."

Discussion

The gist of the School Board's argument is that the action of the Respondents with respect to the strike constituted unlawful interference with the rights of the employees, in violation of Section 111.70(3)(b) and that the Respondents by instigating and carrying out the strike committed such unlawful "interference".

The evidence with respect to the activity of the individual Respondents discloses that two calls were made by two of the Respondents to two employees of the School Board requesting their presence at a meeting to be held prior to the first shift starting time on December 20. No threats of reprisals or promises of benefits were made to these employees nor was there any implication thereof. A third employee, Guagliardo, testified that prior to his normal reporting time he had received a call from an unidentified person who advised Guagliardo not to open the doors of his building on December 20. Guagliardo chose not to report for work that day. Since the caller did not identify himself and since Guagliardo did not recognize the caller's voice, we cannot assume that the Respondents were responsible for said phone call.

While strikes in municipal employment are specifically prohibited in Section 111.70(4)(1), strike activity by municipal employees is not made a prohibited practice. In our opinion if the legislature had intended that a strike of municipal employees constituted interference with the rights of municipal employees as

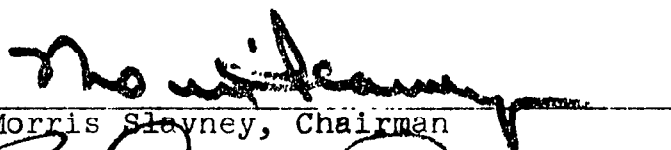
representatives and agents engage in accompanying acts of interference, restraint or coercion of employees, the Wisconsin Employment Relations Commission has jurisdiction and the right to restrain such accompanying activity as prohibited practices.

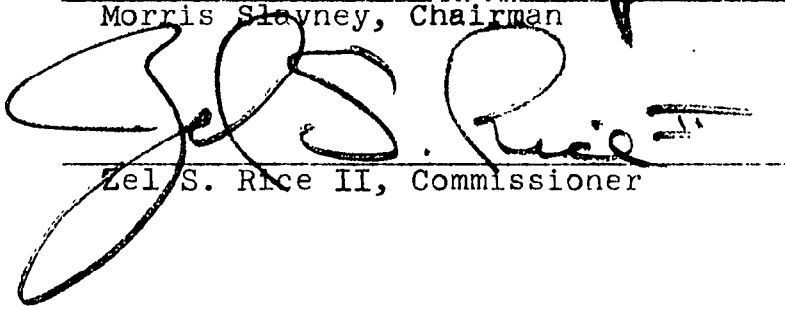
Since the School Board did not establish that the decision of any of its employees to strike on December 20 resulted from any act of the Respondents which constituted interference within the meaning of Section 111.70(3)(b), the complaint is being dismissed.

Dated at Madison, Wisconsin, this 29th day of July, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slaveney, Chairman


Zel S. Rice II, Commissioner