STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

WAUWATOSA BOARD OF EDUCATION OF THE CITY OF WAUWATOSA, a municipal corporation, * #361-388

Petitioner, *

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION, *

Respondent. *

Before: Hon. W. L. Jackman, Circuit Judge

Hearing: March 21, 1969
Appearances: For petitioner: Willis B. Ferebee
For respondent: William H. Wilker

The petitioner complains primarily that respondent refused to find that the respondents before it engaged in prohibited labor practices and failed to afford relief by way of a restraining order.

The evidence does establish with little dispute that many of petitioner's employees voluntarily stayed away from work for a day, and that we ordinarily refer to this as a strike. The evidence is well summarized in paragraphs 4, 5, 6, 7 and 8 of the respondent's findings of fact so we will not repeat.

We may begin with the premise that strikes by municipal employees are forbidden. Sec. 111.70. A strike is not a prohibited labor practice as defined by Sec. 111.70(a)(b)(c).

Petitioner claims that the evidence shows that the respondents below were guilty of the prohibited labor practice of "interfering with municipal employees in the enjoyment of their legal rights x x x,"

The Commission found that there was a concerted action by some of the employees to engage in a strike, but that the strike did not result from any interference, restraint or coercion by the union or its agents.

Assuming as petitioner asks us to do, that one of the legal rights enjoyed by municipal employees is the right to work, there might be some evidence from which one could infer from the evidence that the one day strike was an interference with the right of the non-strikers to work in the sense that there was created an abnormal condition for the work of non-strikers on that day. But the inference is stronger that the evidence shows nothing more than an invitation to a meeting to consider a strike, except possibly in the case of the witness

Guagliardo where there were veiled threats. But Guagliardo was unable to identify the person who called him so the threat cannot be traced to respondents below, except on the basis of a mere suspicion. We do not think that the evidence was of such compelling strength that the commission was compelled to accept the inferences petitioner offers as the basis of its position here.

There was a strike, but the matter of enjoining such a strike is for the courts, not the commission. The commission's powers are limited to preventing prohibited labor practices. Sec. 111.70. A strike is not listed as such, although it is forbidden by statute.

Suffice it to say that we cannot find that the Commission exceeded its powers or acted arbitrarily or capriciously. The problem here is very probably a lack of proof of interference of such compelling power as to require the Commission to make findings supporting petitioner's contention. We do not think that the proof in this case would warrant findings such as those in International Union v. WERB, 250 Wis 550.

We are compelled to confirm the findings, conclusion and order of the Commission. The Attorney General will prepare the proper judgment and, after submitting it to the opposing attorney for approval as to form, present it to the court for entry.

Dated March 24, 1969

BY THE COURT:

W. L. JACKMAN
Judge