

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LA CROSSE COUNTY INSTITUTION EMPLOYEES
LOCAL 227, AFSCME, AFL-CIO,

Complainant,

vs.

LA CROSSE COUNTY,

Respondent.

Case IX
No. 12350 MP-54
Decision No. 8683-C

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

On February 20, 1969, Examiner Byron Yaffe issued his Findings of Fact, Conclusion of Law and Order in the above entitled proceeding, finding that the above named Respondent had not committed any prohibited practice within the meaning of Section 111.70(3)(a) 1 and 2, Wisconsin Statutes, and the Examiner dismissed the complaint; and that thereafter the Complainant timely filed a petition for review of said Examiner's Findings of Fact, Conclusion of Law and Order.

The Commission has reviewed the rulings made by the Examiner at the hearing and in the Findings of Fact, Conclusion of Law and Order. Said rulings are hereby affirmed. The Commission has considered the Examiner's Findings of Fact, Conclusion of Law and Order, the petition for review, and the entire record and is satisfied that the Findings of Fact, Conclusion of Law and Order of the Examiner be adopted, and in that regard, issues the following

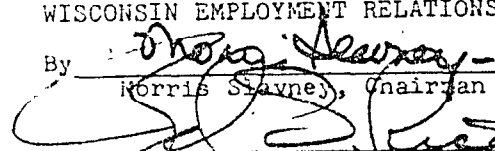
ORDER

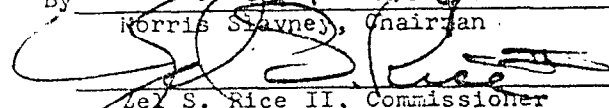
That, pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusion of Law and Order as its Findings of Fact, Conclusion of Law and Order, and, therefore, the complaint filed in the above entitled matter be, and the same hereby is, dismissed.

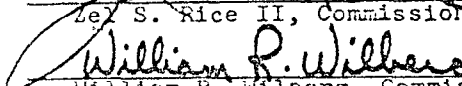
Given under our hands and seal at the
City of Madison, Wisconsin, this 8th
day of April, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Rex S. Rice II, Commissioner


William R. Wilberg, Commissioner

No. 8683-C

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MEMORANDUM ACCOMPANYING ORDER AFFIRMING
EXAMINER'S FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

While we agree with the Examiner's Findings of Fact and the Conclusion of Law to the effect that the Municipal Employer herein did not commit a prohibited practice within the meaning of Section 111.70, Wisconsin Statutes, as well as the Examiner's Order dismissing the complaint, we disagree with certain conclusions stated by the Examiner in his memorandum accompanying his decision.

In the first full paragraph on Page 13 of the Memorandum, the Examiner states as follows:

"However, Section 111.70, Wisconsin Statutes, as construed by the Wisconsin Employment Relations Commission, does not include a refusal to bargain as a prohibited practice, and accordingly, absent a clear showing of unlawful intent, a municipal employer's refusal to negotiate changes in benefits, even though such activity undermines the bargaining representative, does not constitute a prohibited practice."

Regardless of any established unlawful intent or any other established unlawful activity by the municipal employer, a municipal employer's refusal to bargain in good faith with the representative of its employees cannot constitute a prohibited practice since Section 111.70 does not make such activity prohibited.

In the last paragraph of his Memorandum, the Examiner concluded that the Municipal Employer's conduct in discontinuing free meals to the employees involved was based on the County Board's opposition to the unauthorized action by the Trustees of the Institution. The Examiner further concluded that "such conduct clearly had the effect of undermining the employees' bargaining representative, and in the Examiner's

opinion, such conduct is contrary to the spirit of Section 111.70 Wisconsin Statutes, which was intended to protect the right of employees to be represented by labor organizations of their own choice in conferences and negotiations with the Municipal Employer or their representatives on questions of wages, hours and conditions of employment."

Under the present status of the law, we cannot agree with the opinion of the Examiner that the conduct of the Municipal Employer in denying free meal privileges is "contrary to the spirit" of the Statute as such "spirit" pertains to prohibited practices proceedings. While this unilateral action by the Municipal Employer did constitute a refusal to bargain in good faith, such action, although not a basis for a prohibited practice proceeding, is a basis for fact finding, and to that extent the action of the Municipal Employer may have been contrary to the "spirit" of the collective bargaining process.

Dated at Madison, Wisconsin, this 8th day of April, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Thomas J. Hawkey
Thomas J. Hawkey, Chairman

Earl S. Rice II
Earl S. Rice II, Commissioner

William R. Wilberg
William R. Wilberg, Commissioner