8683-C

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

LaCROSSE COUNTY INSTITUTION EMPLOYEES LOCAL 227, AFSCME, AFL-CIO,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

#127-361

MEMORANDUM DECISION

This is an action pursuant to Sec. 111.07(8), Wis. Stats., to review a decision and order of the Wisconsin Employment Relations Commission.

The LaCrosse County Institution Employees Local 227, AFSCME, AFL-CIO, and the petitioner herein, was certified as the bargaining representative of the employees at the Oak Forest Sanatorium in Onalaska, Wisconsin. Prior thereto the employees at Oak Forest received one free meal per shift as part of their compensation. On June 30, 1968, after the certification of the petitioner but before any negotiation between petitioner and LaCrosse County, the County Board of Supervisors by resolution eliminated free meals to employees, which prompted the filing of a complaint with the Commission, charging a prohibited practice. The Commission ordered the complaint dismissed.

Before this court the petitioner asserts that the Commission's order should be reversed for two reasons: (1) the Commission made an error of law when it held that the County Board's action withdrawing a free meal at Oak Forest was not a prohibited practice under Sec. 111.70(3)(a)1, Wis. Stats., and (2) the Commission's finding that the Board's action was not motivated by anti-union animus was arbitrary and capricious.

To constitute a prohibited practice, there must be a finding of an interference with the employee's rights provided in Sec. 111.70(2), Wis. Stats. Petitioner's position then is that the unilateral action by the Board in eliminating free meals constitutes an interference with sec. 2 rights, or a refusal to bargain.

The court can discover nothing in the Act that makes a refusal to bargain a prohibited practice. The National Labor Relations Act and the Wisconsin Employment Peace Act expressly provide that such a refusal is prohibited as an unfair labor practice. On the other hand, the Municipal Employment Act makes no such provision. The clear legislative intent was to avoid mandatory bargaining in the public sector and, if there is to be a change, it must come from the legislature. The Supreme Court in Joint School Dist. No. 8 v. Wis. E. R. Board (1967), 37 Wis. 2d 483, recognized this when it said on page 489: "Because of these differences in language, we do not think the legislature intended in Sec. 111.70, Stats., that a school board should be under a duty to collectively bargain."

Petitioner also claims that the refusal to bargain here is motivated by animosity toward the union and this could lead to a finding of a prohibited practice if satisfactorily proven. On the record before the court the finding of the Commission that there was no anti-union motivation established is supported by substantial evidence, and the court cannot interfere with this factual determination.

The findings and order of the Commission must be affirmed, and counsel may prepare an appropriate judgment for the court's signature.

Dated: July 1, 1970.

BY THE COURT:

/s/ William C. Sachtjen
William C. Sachtjen, Judge
Circuit Court, Branch 4

cc Attys. Wilker, Carlson, Sundet