

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOCAL 882, Affiliated with DISTRICT	:	
COUNCIL 48 OF THE AMERICAN FEDERATION	:	
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,	:	
	:	Case XXVI
Complainant,	:	No. 11855
	:	MP-47
vs.	:	Decision No. 8707
	:	
COUNTY OF MILWAUKEE,	:	
	:	
Respondent.	:	
-----	:	

Appearances:
Mr. Robert G. Polasek, Assistant Corporation Counsel, for the
Municipal Employer.
Mr. John S. Williamson, Jr., Attorney at Law, for the Union.

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission at Milwaukee, Wisconsin, on March 8, 1968, Commissioner William R. Wilberg being present, and the Commission having considered the testimony, arguments and briefs of counsel, and being fully advised in the premises, does hereby make and file the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Complainant, Local 882, affiliated with District Council 48 of the American Federation of State, County and Municipal Employees, hereinafter referred to as the Union, is a labor organization having its principal place of business at 615 East Michigan Street, Milwaukee, Wisconsin.
2. That Respondent, County of Milwaukee, hereinafter referred to as the Municipal Employer, is a municipal employer having its offices at the Milwaukee County Courthouse, Milwaukee, Wisconsin.
3. That the Union is the certified bargaining representative of certain employes of the Municipal Employer and in that relationship the parties entered into a Memorandum of Agreement governing said employes on or about February 3, 1967; and that said agreement, in effect at all times material herein, contains among its provisions the following material herein;

"PART IV -- DEPARTMENTAL WORK RULES

The Union recognizes the prerogative of the County to operate and manage its affairs in all respects in accordance with its responsibilities, duties and powers, pursuant to the statutes of the State of Wisconsin, the ordinances and resolutions of the County and the rules of its Civil Service Commission. The Union recognizes the exclusive right of the County to establish reasonable work rules.

GRIEVANCE PROCEDURE

(1) Application: Exceptions. A grievance shall mean any controversy which exists as a result of unsatisfactory adjustment or failure to adjust a claim or dispute by an employee or group of employees concerning the application of wage schedules and provisions relating to hours of work and working conditions. The grievance procedure shall not be used to change existing wage schedules, hours of work, working conditions, fringe benefits and position classifications established by ordinances and rules which are matters processed under other existing procedure.

(2) Representatives. An employee may choose to be represented at any step in the procedure by representatives (not to exceed three) of his choice, except that as to the first step, the choice shall be limited to employee representatives."

4. That during the course of the negotiations leading toward the execution of the aforementioned agreement, the Union proposed the inclusion in the collective bargaining agreement of the following provision:

"When Supervision is discussed with an employee, a matter likely to result in his discharge or suspension, or when a derogatory notation is to be placed on his record, the employee will be reminded of his right to bring his union representative into the discussion at that time.";

that, however, the Municipal Employer rejected the inclusion of said proposed provision, and as a result, such provision was not included in the existing collective bargaining agreement.

5. That on January 30, 1967, Edmund Koczkowski, an employee in the bargaining unit, was called into a hearing with supervisory personnel to discuss Koczkowski's conduct in the performance of his duties, as well as probable imposition of discipline upon Koczkowski as a result of such conduct; that prior to the said hearing Koczkowski requested the presence of a Union representative at said hearing; that, however, such request was denied; and that Koczkowski attended such hearing without a representative of his choosing.

Upon the basis of the above and foregoing Findings of Fact

the Commission makes the following

CONCLUSION OF LAW

That the Respondent, County of Milwaukee, by refusing to permit employe Edmund Koczkowski to have a person of his choosing, a representative of Local 882, affiliated with District Council 48, of the American Federation of State, County and Municipal Employees, present at a pre-disciplinary hearing involving Koczkowski, has not interfered with, restrained or coerced its employes in the exercise of their rights guaranteed them in Section 111.70(2), Wisconsin Statutes, and, therefore, in that regard the Respondent, County of Milwaukee, has not committed any prohibited practices within the meaning of Section 111.70(3)(a), Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Commission makes the following

ORDER

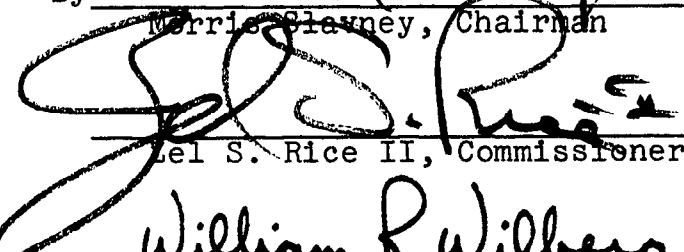
IT IS ORDERED that the complaint filed in this proceeding be, and the same hereby is, dismissed.

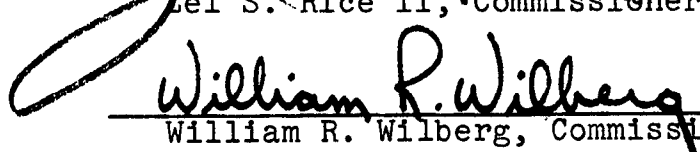
Given under our hands and seal
at the City of Madison, Wisconsin,
this 3rd day of October, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Mel S. Rice II, Commissioner


William R. Wilberg, Commissioner

STATE OF WISCONSIN

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COUNCIL 48 OF THE AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,

Complainant,

vs.

COUNTY OF MILWAUKEE,

Respondent.

Case XXVI
No. 11855
MP-47
Decision No. 8707

MEMORANDUM ACCOMPANYING FINDINGS
OF FACT, CONCLUSION OF LAW AND ORDER

On or about January 30, 1967, Edmund Koczkowski, an employee in the bargaining unit represented by the Union, requested that a Union representative be present at a hearing which the Respondent called for the purpose of determining whether the employee was to be disciplined. The Municipal Employer denied the request, and Koczkowski attended the meeting without Union representation.

Prior to the initiation of the instant proceeding, pursuant to their agreement, the Union submitted the dispute as to whether the collective bargaining agreement had been violated by the Municipal Employer in denying employees Union representation at pre-disciplinary hearings. The umpire concluded that such refusal did not violate the collective bargaining agreement. The Union thereafter filed the complaint initiating the instant proceeding, wherein it alleged that the Municipal Employer committed a prohibited practice within the meaning of Section 111.70(3)(a)1 by refusing to permit employee Koczkowski to have a Union representative present at the hearing in question.

The facts stipulated by the parties during the course of the abbreviated hearing in the instant matter included the full award of the umpire, and since the facts as found by the umpire were not controverted, we have included the facts found therein, which are material to the disposition of the issue before the Commission.

The Union cites as relevant to the issue, Section 111.05(1), which is incorporated by reference into Section 111.70, Wisconsin Statutes. This provision expressly provides that individual employees have the right "at any time to present grievances to their employer

in person or through representatives of their own choosing, and the employer shall confer with them in relation thereto." The Union argues that under this section, a municipal employer and union cannot agree to prevent an employee from exercising this right,^{1/} and accordingly, a municipality cannot unilaterally prevent an employee from exercising this right even if the union is unable to negotiate the right into a collective bargaining agreement. The Union, therefore, submits that an employee has a statutory right to union representation in conferences and negotiations involving questions of discipline; and denial of the right to union representation at a meeting called by the Municipal Employer to consider an employee's discipline interferes with the employee's right to union representation in his direct dealings with his employer on the terms and conditions of his employment, which right is protected under Section 111.70(2), Wisconsin Statutes.

The Respondent contends that the imposition of discipline in the form of a suspension not exceeding ten days is totally within the discretion of the department head, pursuant to Section 63.10, Wisconsin Statutes, which provides in pertinent part:

"Nothing in this subsection shall limit the power of the department head to suspend a subordinate for a reasonable period not exceeding 10 days. In case an employee is again suspended within 6 months for any period whatever, the employee so suspended shall have the right of hearing by the commission on the second suspension or any subsequent suspension within said period the same as herein provided for in demotion or dismissal proceedings."

It is noted that the Statute specifically provides that nothing contained therein shall be construed to limit the department head's authority to discipline employees in accordance with the limits imposed in said Section of the Statutes. The Respondent argues that, with the exception of hearings before an umpire, nothing in Section 63.10, Wisconsin Statutes, or in the agreement between the parties, entitles employees to be represented at any time in the disciplinary process; nor is the department head required to consult with the employee prior to the imposition of discipline.

When the form of discipline is either discharge or suspension in excess of ten days, such discipline must be imposed by the Civil Service Commission after a hearing. In such cases, although the employee

^{1/} Board of School Directors of the City of Milwaukee, Dec. No. 6995-A, 3/66; Affd. Dane County Circuit Court, No. 120-017. (Said case involved representation by a minority union in attempting to process a grievance in accordance with the contractual grievance procedure.)

is entitled to a hearing on the merits, the Respondent asserts that his right to representation is discretionary with the Civil Service Commission.

The Respondent argues that if the Union is correct in its assertion that Section 111.05(1) entitles an employee to representation at all disciplinary meetings, said statutory provision is in direct conflict with Section 63.10, and if there is such conflict, it must be resolved in favor of Section 63.10(1). Section 111.70(4)(d), Wisconsin Statutes, applies to all municipal employers in the State, and includes by reference, Section 111.05(1), which applies generally to all employers in the private sector. Chapter 63, however, establishes a system of civil service for counties with a population in excess of 500,000, which at the time of the legislative enactment, and at all times thereafter, has reference to the County of Milwaukee, only. Thus, in accordance with established principles of statutory construction, where there is a conflict between general statutes and those which are specific, both relating to the same subject matter, that which is specific controls.

Secondly, the Respondent argues that where more recent legislation is in conflict with an older statutory provision, the later enacted statute controls; and with respect to this principle, it is noted that Section 111.05(1) was enacted in 1939, while the portion of Section 63.10(1) relied upon by the Respondent, was enacted in 1963.

DISCUSSION

Section 111.05(1), which is incorporated in Section 111.70 by reference, sets forth not only that representatives chosen for collective bargaining by a majority of employees voting in the collective bargaining unit to be the exclusive representative for all employees in such unit for purposes of collective bargaining, but also permitting individual employees or a minority of employees "in any collective bargaining unit" to have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and that the employer shall confer with them in relation thereto. There are two conditions which must exist in order to implement the proviso with respect to representation by an individual employee. The first being that there must be a collective bargaining relationship in existence, and that there is a majority representative. Absent such status, an employer would have no obligation to meet and confer with any representative of any of its employees. In order to protect the rights of employees not to engage in concerted activity, the proviso permits such employees to designate their own representatives in the processing of grievances. This raises the second requirement -- that

a grievance exists.

Here the majority representative and the Municipal Employer negotiated a specific grievance procedure. As a matter of fact, the grievance procedure does not contemplate the presence of such representative in a meeting such as involved herein; as a matter of fact, the Union attempted to persuade the Municipal Employer to agree to such a procedure; however it was unsuccessful in this regard. Under Part IV of the collective bargaining agreement, the municipal employer retains the right to "operate and manage its affairs," as well as the exclusive right to establish reasonable work rules. In doing so its agents must converse and discuss with employees, issue them instructions and orders, ask them questions and give information. In carrying out its administrative duties it must of necessity talk with its employees. This applies to the administrative processes of laying off, reassigning, transferring or disciplining employees. These are management functions. If there is a collective bargaining agreement in existence, it may make such decisions subject to the provisions in the agreement, and, if the agreement is violated by the Municipal Employer in the performance of its management function, it is subject to the grievance procedure, and it may be required to right the alleged wrong.

The collective bargaining agreement material herein contains no limitation on the management's right to confer with employees in pre-disciplinary meetings. Therefore, such meeting does not constitute a grievance either within the meaning of the collective bargaining agreement or Section 111.05(1). We are aware of the National Labor Relations Board's decision in Texaco, Inc. (168 NLRB, No. 49) where that agency found that the employer involved interfered with the rights of an employee in violation of the federal statute by denying him the opportunity to have a union representative present at a meeting which "was concerned essentially with (the employee) and his alleged theft, the facts of which were known to management representatives two weeks earlier, and more specifically, with the Company's concluding its 'case' against the employee in order to provide a record to support 'disciplinary action'", which had previously been imposed. The National Labor Relations Board, in that proceeding further commented on the fact that there was no evidence "that either (the employee), assuming he could have done so, or the Union had waived to any extent the right of representation or agreed to channelize disputes concerning such rights into the contractual grievance provision." The circumstances are otherwise in the instant proceeding. The employee involved had

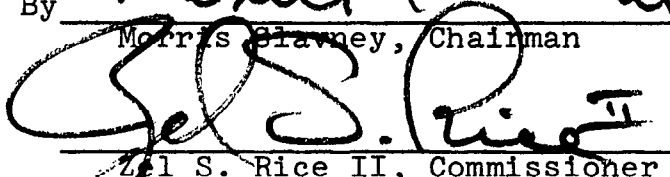
not as yet been disciplined. The Union had been unsuccessful in negotiating a procedure permitting representation in pre-disciplinary hearings, and, in fact, accepted a formalized grievance procedure, which provides for reasonable representation in the processing of grievances and thus satisfying the intended purpose of Section 111.05(1). Therefore, under the circumstances herein, the Municipal Employer's refusal to permit Edmund Koczkowski to have union representation present at his pre-disciplinary hearing does not constitute unlawful interference within the meaning of Section 111.70, and therefore it is unnecessary to rule on the other defenses raised by the Municipal Employer.

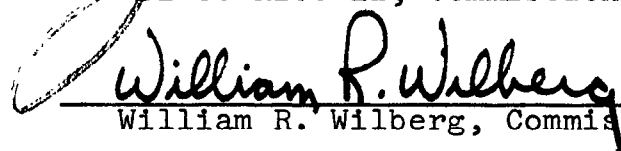
Dated at Madison, Wisconsin this 3rd day of October, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Blawney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner