

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RAYMOND KOVALA and
ASHLAND EDUCATION ASSOCIATION,

Complainants,

vs.

BOARD OF EDUCATION OF UNIFIED SCHOOL
DISTRICT NO. 1, CITY OF ASHLAND AND
TOWNS OF GINGLES, LaPOINTE, SANBORN
AND WHITE RIVER, AND A PORTION OF THE
TOWN OF MARENGO, ASHLAND COUNTY AND
PORTIONS OF THE TOWNS OF EILEEN AND
KELLY, BAYFIELD COUNTY, WISCONSIN; AND
DR. RAYMOND J. HUSEBO, SUPERINTENDENT;
AND ASHLAND FEDERATION OF TEACHERS,
LOCAL 1275, AFL-CIO,

Respondents.

Case II
No. 12390 MP-55
Decision No. 8708-B

ORDER AMENDING EXAMINER'S FINDINGS OF FACT AND
REVERSING EXAMINER'S CONCLUSIONS OF LAW AND ORDER

Examiner Howard S. Bellman having, on April 2, 1969, issued Findings of Fact, Conclusions of Law and Order in the above entitled matter, and the above named Complainants, Raymond Kovala and Ashland Education Association, having, pursuant to Section 111.07, Wisconsin Statutes, timely filed a petition with the Wisconsin Employment Relations Commission for review of the Examiner's Findings of Fact, Conclusions of Law and Order; and the Commission having reviewed said Findings of Fact, Conclusions of Law and Order, the entire record, said Petition for Review, and being fully advised in the premises, makes and files the following Order Amending Examiner's Findings of Fact and Reversing Examiner's Conclusions of Law and Order.

AMENDED FINDINGS OF FACT

1. That Ashland Education Association, referred to herein as the Complainant Association, is a labor organization having offices at Box 116-A, Route #1, Highbridge, Wisconsin, and represents a minority of the members of the bargaining unit represented by the Respondent Local 1275 and specified in Findings No. 5, below.

No. 8708-B

2. That Raymond Kovala, referred to herein as Complainant Kovala, is an individual and, at all times material herein, a teacher employed by the Respondent Board of Education and a member of the Complainant Association, the Wisconsin Education Association and the North Wisconsin Lake Superior Education Association.

3. That the Board of Education of Unified School District No. 1, City of Ashland and Towns of Gingles, LaPointe, Sanborn and White River, and a portion of the Town of Marengo, Ashland County and portions of the Towns of Eileen and Kelly, Bayfield County, Wisconsin, referred to herein as the Respondent Board of Education, is a Municipal Employer having its principal offices at Ellis Avenue, Ashland, Wisconsin.

4. That Dr. Raymond J. Husebo, referred to herein as Respondent Husebo, is an individual and, at all times material herein, the Superintendent of Respondent Board of Education; and that, as such Superintendent, Respondent Husebo has been, at all times material herein, the agent of the Respondent Board of Education.

5. That Ashland Federation of Teachers, Local 1275, AFL-CIO, referred to herein as Respondent Local 1275, is a labor organization and the local affiliate of the state-wide Wisconsin Federation of Teachers, AFL-CIO, having offices at Ashland, Wisconsin, and at all times material herein, the recognized majority bargaining representative of all classroom teachers, teaching principals, supervisor-teachers, special classroom teachers, guidance counselors, librarians and teachers-on-leave employed by the Respondent Board of Education for the purposes of conferences and negotiations with the Respondent Board of Education on questions of wages, hours and conditions of employment.

6. That the North Wisconsin Lake Superior Education Association, referred to hereinafter as the NWLSEA, was organized in 1949 and conducts annual regional conventions for the professional information and benefit of teachers in northern Wisconsin, including the area governed by the Respondent Board of Education; that the Wisconsin Education Association is the state-wide organization to which the Complainant Association and the NWLSEA are local and regional affiliates, respectively.

7. That since 1949 the aforesaid NWLSEA regional conventions have been held on the first Thursday and Friday in October; that until 1968 the Respondent Board of Education and Respondent Husebo have allowed all teachers to attend such conventions without loss of pay, and without regard to their affiliation to any of the aforesaid teachers' organizations.

8. That until 1966 the Wisconsin Federation of Teachers, AFL-CIO, and the Wisconsin Education Association both held their annual state-wide conventions in Milwaukee, Wisconsin, on the first Thursday and Friday in November; that in 1966 and 1967 the Wisconsin Federation of Teachers scheduled and held its state-wide convention on the first Thursday and Friday in October, whereas in 1966 and 1967 the Wisconsin Education Association's state-wide convention was held, as usual, on the first Thursday and Friday in November; that in 1966 and 1967, the days on which the Wisconsin Education Association's state-wide conventions were held were scheduled teaching days for teachers employed by the Respondent Board of Education and such teachers were required to, and did, perform normal teaching assignments on such days, except that Respondent Husebo allowed two teachers who were members and delegates of the Complainant Association to attend said 1966 and 1967 state-wide Wisconsin Education Association conventions.

9. That in 1966 and 1967, teachers employed by the Respondent Board of Education were allowed to attend either the aforesaid NWLSEA convention or the aforesaid Wisconsin Federation of Teachers, AFL-CIO, state-wide convention, without loss of pay.

10. That November 7 and 8, 1968, the scheduled Wisconsin Education Association state-wide convention dates were scheduled teaching days for teachers employed by the Respondent Board of Education; that on May 14, 1968, the Respondent Board of Education and the Respondent Local 1275 entered a comprehensive collective bargaining agreement covering wages, hours and conditions of employment, which provided at Section F. Rule 1, that

"If on October 3, 4 a teacher wishes to go to the State W. F. of T. Convention he or she will be released from inservice activities for that purpose."

and that further provided, as part of the school calendar, that October 3 and 4, 1968, were inservice days; and that teachers who were adherents of the Wisconsin Federation of Teachers, AFL-CIO, were excused from such inservice days to attend the aforesaid state-wide convention of that organization.

11. That Respondent Board of Education and Respondent Local 1275 attempted to inform all members of the aforementioned bargaining unit of the contents of the aforesaid collective bargaining agreement and pursuant to his authority under Section D, Rule 1, thereof, Respondent Husebo distributed the following memorandum to said unit members:

**"EDUCATION ASSOCIATION, CONVENTIONS AND
INSERVICE ACTIVITIES**

Membership in professional associations is a matter

of individual decision in Ashland. Teachers are in no way coerced by the Board of Education or administration to join local, regional or national organizations.

Attendance at conventions during the 1968-69 school year is regulated by the current Union-Board Agreement (See Rule 1, page 11 of Agreement). With the exception therein contained all staff members will be expected to attend inservice activities on August 28, October 3-4, January 22, and March 26. Personal business leave for the purpose of attending conventions outside the scope of the Union-Board Agreement will not be granted."

and that thereafter, the Complainant Association requested of Respondent Board of Education clarification of the aforesaid Section F, Rule 1, of the collective bargaining agreement and the above-quoted memorandum.

12. That, in response to said request for clarification, the Respondent Board of Education and the Respondent Husebo interpreted the questioned provision and memorandum as permitting attendance of the 1968 state-wide Wisconsin Federation of Teachers convention, without loss of pay, but not permitting attendance at the aforesaid NWLSEA conventions on the same days, in lieu thereof, or without loss of pay; and that said Respondents informed Complainant Association and Complainant Kovala that unit members who attended the 1968 NWLSEA convention would suffer the loss of two days' pay for having done so.

13. That members of the aforesaid bargaining unit who attended the 1968 NWLSEA convention despite the aforementioned interpretations by said Respondents were the following, who attended said convention for the number of days indicated and suffered a loss in pay in the amount so noted for such attendance:

John Bloomquist	2 days	54.26
Mrs. Barnes Butterworth	2 days	101.06
Mrs. Gladyce Clark	2 days	91.80
Mrs. Bertha Dunn	2 days	101.06
William Everett	2 days	70.22
Karen Gierzak	2 days	76.38
Miss Margett Gorr	2 days	111.70
Margarett Gort	1 day	50.53
Miss Carmen Griffihs	2 days	101.06
Linnea Jablonickey	2 days	101.06
Thomas Johanik	2 days	101.06
Daisy Johnson	2 days	101.06
Dorothy Kallman	2 days	82.56
Raymond Kovala	2 days	82.56
Miss Doris Leppla	2 days	101.06
Mrs. Ruth Nourse	2 days	101.06
Bruce Orader	2 days	99.90
Patricia O'Sullivan	2 days	76.38
Mrs. Dorothy Sampson	2 days	101.06
Miles Schustedt	2 days	91.80
Dorothy Smith	2 days	101.06

Mrs. Ester Sollie	2 days	101.06
Donald Strau	2 days	111.70
Miss Anita Swanson	2 days	67.14
Marie Van Guilder	2 days	101.06
Richard Westlund	2 days	85.64
Robert A. Zar	2 days	106.28
Miss Rose Ann Zimmer	2 days	111.70

Upon the basis of the above and foregoing Amended Findings of Fact, the Commission makes the following

REVERSED CONCLUSIONS OF LAW

1. That the Respondent Board of Education, its officers and agents, by jointly agreeing with the Ashland Federation of Teachers, Local 1275, AFL-CIO, in their collective bargaining agreement, to permit teachers to be released from in-service activities on October 3 and 4, 1968, to attend the state convention of the Wisconsin Federation of Teachers, without providing a similar release for teachers to attend a convention of their employe organization held on the same dates, unlawfully discriminated, and is discriminating against teachers in their employ and thereby has also unlawfully interfered with, restrained and coerced its employes in the exercise of their rights to affiliate with a labor organization of their own choosing, and by such acts, the Respondent Board of Education, its officers and agents, have committed, and are committing prohibited practices within the meaning of Section 111.70(3)(a)2 and 1 of the Wisconsin Statutes.

2. That the Respondent Board of Education, its officers and agents, by refusing to grant teachers in its employ time off to attend the North Wisconsin Lake Superior Education Association convention on October 3 and 4, 1968, and their refusal to pay teachers for the time they attended such convention, while at the same time paying teachers who attended the convention of the Wisconsin Federation of Teachers on the same dates, unlawfully discriminated, and is discriminating, against teachers in their employ, and thereby has also unlawfully interfered with, restrained and coerced its employes in the exercise of their right to affiliate with a labor organization of their own choosing, and by such acts, the Respondents' Board of Education, its officers and agents, have committed and are committing, prohibited practices within the meaning of Section 111.70(3)(a)2 and 1 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Amended Findings of Fact and Reversed Conclusions of Law, the Commission makes the following:

REVERSED ORDER

IT IS ORDERED that the Respondent Board of Education, its officers and agents, shall immediately:

a. Cease and desist from:

- (1) Giving effect to the provision in the collective bargaining agreement between it and the Ashland Federation of Teachers, Local 1275, AFL-CIO, which permits the release of teachers from inservice activities to attend only the state convention of the Wisconsin Federation of Teachers if said agreement does not contain a similar privilege to teachers to attend conventions of other teacher organizations held on the same dates, or from entering into a collective bargaining agreement with said Local 1275, which contains such a provision without also providing that teachers may also attend conventions scheduled by other teacher organizations to be held on the same dates.
- (2) Deducting sums from the salaries of teachers in the event they attend conventions of teacher organizations other than said Local 1275 on the dates during which the Wisconsin Federation of Teachers holds its annual convention, when sums from the salaries of teachers are not deducted when they attend conventions as a result of their membership or activity in said Local 1275.
- (3) Or in any other manner discriminating against, interfering with, restraining or coercing any of the teachers in the employ of the Respondent Board of Education in the exercise of their rights of self-organization or to affiliate with organizations of their choosing, or in the exercise of their right to refrain from such activity.

b. Take the following affirmative action designed to effectuate the policies of Sec. 111.70, Wisconsin Statutes:

(1) Immediately pay the following sums of money to the following teachers in its employ:

John Bloomquist	54.26
Mrs. Barnes Butterworth	101.06
Mrs. Gladyce Clark	91.80
Mrs. Bertha Dunn	101.06
William Everett	70.22
Karen Gierzak	76.38
Miss Margett Gorr	111.70
Margarett Gort	50.53
Miss Carmen Griffiths	101.06
Linnea Jablonickey	101.06
Thomas Johanik	101.06
Daisy Johnson	101.06
Dorothy Kallman	82.56
Raymond Kovala	82.56

Miss Doris Lepple	101.06
Mrs. Ruth Nourse	101.06
Bruce Orader	99.90
Patricia O'Sullivan	76.38
Mrs. Dorothy Sampson	101.06
Miles Schustedt	91.80
Dorothy Smith	101.06
Mrs. Ester Sollie	101.06
Donald Strau	111.70
Miss Anita Swanson	67.14
Marie Van Guilder	101.06
Richard Westlund	85.64
Robert A. Zar	106.28
Miss Rose Ann Zimmer	111.70

- (2) Notify the Wisconsin Employment Relations Commission within twenty (20) days from the receipt of a copy hereof what steps it has taken to comply herewith.

Given under our hands and seal
at the City of Madison, Wisconsin
this 14th day of May, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thornis Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

I dissent

William R. Wilberg
William R. Wilberg, Commissioner

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MEMORANDUM ACCOMPANYING ORDER AMENDING
EXAMINER'S FINDINGS OF FACT AND REVERSING
EXAMINER'S CONCLUSIONS OF LAW AND ORDER

On April 2, 1969, Examiner Howard S. Bellman issued Findings of Fact, Conclusions of Law and Order in the above entitled matter, finding that the Respondent, Board of Education of Unified District No. 1, City of Ashland, et al., had not committed any prohibited practices within the meaning of Section 111.70(3) of the Wisconsin Statutes (1) by entering into a collective bargaining agreement with the Ashland Federation of Teachers, Local 1275, AFL-CIO, hereinafter referred to as Local 1275, wherein the Respondent would deny teachers in its employ, and whereby subsequently it did so deny said teachers, pay for October 3 and 4, 1968, days on which said teachers absented themselves to attend the annual convention of the North Wisconsin Lake Superior Education Association, hereinafter referred to as NWLSEA, and (2) by refusing to grant teachers leave to attend said NWLSEA convention and by refusing to pay such teachers for the time they did so attend said convention, and in his Order the Examiner dismissed the complaint.

The Amended Findings of Fact

In lieu of a hearing before the Examiner the parties entered into stipulations of fact. We have adopted the Findings of Fact as

determined by the Examiner, but we have supplemented same to reflect the identity of the teachers who were denied pay on the days they attended the NWLSEA convention, as well as the amount of pay denied to each of them.

The Reversed Conclusions of Law

Unlike the Examiner, we find that the Respondent committed prohibited practices (1) in including the following provision in its collective bargaining agreement with Local 1275:

"If on October 3, 4 a teacher wishes to go to the State W. F. T. of T. Convention he or she will be released from inservice activities for that purpose."

(2) in denying teachers the opportunity to attend the NWLSEA convention held on the same dates without loss of pay, and (3) by deducting sums of money from salaries of teachers who attended the NWLSEA convention, while no such deductions were made from the salaries of teachers who attended the WFT convention on said dates.

In the decision in the City of Kenosha Board of Education^{1/} the Commission stated:

"A representative selected by the majority of the employees in a bargaining unit, as a result of such status, enjoys certain privileged acts of employer cooperation which are deemed not to unlawfully interfere with the rights of employees who are either members of a minority organization or who are not affiliated with any organization, and, therefore, certain benefits granted by the municipal employer to the exclusive representative and not to any minority representative would not constitute unlawful interference, restraint, coercion or discrimination within the meaning of Section 111.70.

"The calendar adopted by the School Board and subsequently concurred in the KEA (Kenosha Education Association), constituted a condition of employment affecting the teachers in the employ of the School Board. This condition of employment was announced to the teachers and was taken into consideration by them when they executed their individual teacher contracts. We conclude that the establishment of the calendar, as acquiesced in by the KEA, establishing November 3 and 4 as teacher convention days, and the implementation thereof, which resulted in the closing of the schools on days which permitted teachers to attend the WEA (Wisconsin Education Association) convention, constituted an act of permissive cooperation which the KEA was privileged to receive as a result of its majority status."

^{1/} Decision No. 8120, 8/67.

In the instant matter, as a result of being the majority representative of the teachers, Local 1275 had the privilege of negotiating and reaching an agreement with the Respondent Board of Education with respect to dates on which teachers would be permitted to attend teacher conventions. The agreement so reached permitted such attendance on October 3 and 4, which were scheduled in the calendar as "In Service Days", however, such attendance was limited to the convention of the WFT, with which organization Local 1275 was affiliated. Such limitation exceeds the bounds of the permissive cooperation which Local 1275 was privileged to receive as a result of its majority status, since it did not permit teacher attendance, without loss of pay, to attend meetings or conventions of other teacher organizations. Therefore, we conclude that said provision in the collective bargaining agreement is, per se, a violation of Section 111.70(3)(a)1 and 2 since it discriminates against those teachers who desire to and do attend other similar meetings and conventions held on the same dates and unlawfully encourages membership in Local 1275, thus interfering with the statutory rights of employees.

Furthermore, we do not consider any of the provisions of the Wisconsin Statutes^{2/} relating to teachers and teacher conventions as affecting the action of the Respondent Board of Education since any provisions of the school code are subject to limitations of Section 111.70 at least where such statutes affect municipal employe rights established in the latter statute,^{3/} nor does the fact that members of the Complainant desire to attend a convention other than their state convention makes any difference herein. As indicated in the Findings of Fact the regional teachers convention involved herein was conducted "for the professional information and benefit of teachers." State teachers conventions are concerned "with the educational process and program as a whole."^{4/}

As long as members of the majority organization were excused, without loss of pay, to attend their state convention, in order to avoid an act of prohibited favoritism to the majority organization, members of the minority organization should have been permitted to attend their regional convention on the same dates without loss of pay. Having failed to do so, the Respondent Board of Education and its officers and agents have committed prohibited practices. We

^{2/} Sections 40.40(3), 40.45, 115.01(10) and 118.21(4).

^{3/} Muskego-Norway Consolidated Schools, et al., 35 Wis. (2d) 540.

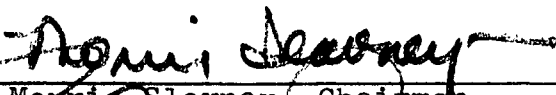
^{4/} West Milwaukee - West Allis Joint School District #1 (7664) 7/66.

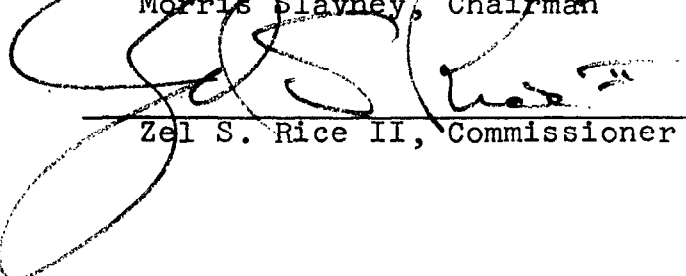
have therefore reversed the Examiner and have ordered said Respondents to cease and desist from such activity and, among other things, have ordered that the employees involved be made whole.^{5/}

Dated at Madison, Wisconsin this 14th day of May, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner

^{5/} Commissioner Rice's concurrence herein is not to be interpreted as abandoning his dissenting opinion in Kenosha Board of Education (8120) 8/67, to the effect that if the school board permitted teachers of the majority organization to attend their convention with pay, it should also afford the same treatment to members of the minority organization, regardless of the days on which their convention is held.

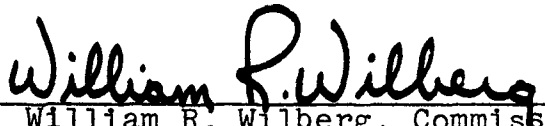
DISSENT OF COMMISSIONER WILBERG

I dissent from the majority opinion herein on the ground that the state and regional conventions in issue were not "similar",^{6/} nor were there, according to the record, any similar conventions held on the pertinent dates. The distinctions between the conventions in issue are apparent and specified in detail in the Examiner's decision, which I would affirm. Particularly, I refer to the Legislature's apparent determination to afford special treatment to certain meetings, as evidenced by the quoted statutory subsections.

This statutory scheme must be determinative and, in view of the record's total lack of evidence as to the events which comprised the state and regional conventions, no conclusions can be drawn as to similarities or distinctions in that regard.

Dated at Madison, Wisconsin this 14th day of May, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



William R. Wilberg, Commissioner

^{6/} As was noted by the Examiner, Sec. 40.45(1), of the Wisconsin Statutes, which did not distinguish between state and county teachers' conventions, was, in 1967, amended so that presently only state teachers' conventions are to be counted as "school days" within the meaning of Chapter 115, Wisconsin Statutes. I believe this statutory distinction is significant and controlling since it occurred subsequent to the enactment of Sec. 111.70, Wisconsin Statutes.