

BOARD OF EDUCATION OF UNIFIED SCHOOL  
DISTRICT NO. 1, City of Ashland and  
Towns of Gingles, La Pointe, 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,

Petitioners,

ASHLAND FEDERATION OF TEACHERS, LOCAL  
1275, AFL-CIO,

Intervenor-Petitioner,

-vs-

WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION, RAYMOND KOVALA AND  
ASHLAND EDUCATION ASSOCIATION,

Respondents.

MEMORANDUM OPINION

The stipulation of facts, entered into between the parties in  
the above matter, establishes:

1. That the Ashland Education Association (A.E.A.) and the  
Ashland Federation of Teachers, Local #1275, A. F. L. - C. I. O.  
(A.F.T.) are teacher's unions, each affiliated with a parental  
state wide organization, the Wisconsin Education Association  
(W.E.A.) and the Wisconsin Federation of Teachers, A. F. L. - C. I. O.  
(W.F.T.), respectively, each of which conducts state-wide educational  
conventions.

2. That a co-affiliate of A.E.A. in W. E. A. is the North  
Wisconsin Lake Superior Education Association (N.W.L.S.E.A.),  
which conducts annual regional educational conventions.

3. That A.F.T. is the majority representative of the faculty  
of the Ashland school system; and the A.E.A. represents the minority.

4. That on May 4, 1968 the Ashland Board of Education and  
A. F. T. entered into a collective bargaining agreement which, inter  
alia, provided:

"If on October 3 and 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."

5. That the state-wide convention of the W. F. T. was scheduled  
to be held in Milwaukee on October 3 and 4, 1968; that the state-  
wide convention of the W. E. A. was scheduled to be held in Milwaukee  
on November 7 and 8, 1968; and the regional convention of the  
N. W. L. S. E. A. was scheduled to be held in Spooner, Wisconsin  
on October 3 and 4, 1968.

6. That the Board of Education and the A. F. T. attempted to inform all members of the aforementioned bargaining unit of the contents of the collective bargaining agreement and pursuant to his authority under Section D, Rule 1, thereof, Mr. Husebo, Superintendent, distributed the following memorandum to said unit members:

"EDUCATION ASSOCIATIONS, 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 A. E. A. requested the Board of Education for clarification of Section F. Rule 1, of the collective bargaining agreement and the above quoted memorandum.

7. That, in response to said request for clarification, the Board of Education and Mr. Husebo interpreted the questioned provision and memorandum as permitting attendance at the 1968 state-wide W. F. T. convention, without loss of pay, but not permitting attendance at the N.W.L.S.E.A. conventions on the same days, in lieu thereof, or without loss of pay; and that A. E. A. members who attended the 1968 N.W.L.S.E.A. convention would suffer the loss of two days' pay for having done so.

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The A. E. A. and a member thereof, Raymond Kovala, complained to the Wisconsin Employment Relations Commission. The examiner for the Commission held that the action of the Board of Education, under the bargaining agreement, in allowing teachers to attend the October 3 and 4, W. F. T. convention in Milwaukee without loss of pay, but not the N. W. L. S. E. A. convention in Spooner, Wisconsin without such loss of pay, was not a prohibited labor practice. On review by the whole commission the decision of the

The Statutes with which we are concerned read as follows:

"Sec. 111.70(3)(a), Municipal Employers, their officers and agents are prohibited from: 1. interfering with, restraining or coercing any municipal employee in the exercise of the rights provided in sub (2). 2. Encouraging or discouraging membership in any labor organization...by discrimination in regard to hiring, tenure, or other terms and conditions of employment."

"Sec. 111.70(2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employer or their representatives on questions of wages, hours and conditions of employment, and such employees shall have the right to refrain from any and all such activities."

"Sec. 118.21 TEACHERS CONTRACTS. (4) School boards may give to any teacher, without deduction from his wages, the whole or part of any time spent by him in attending a teacher's educational convention;..."

"Sec. 115.01 (10) SCHOOL DAY. (a) School days are days on which school is actually taught and the following days on which school is not taught: 2. Days on which state teacher's conventions are held. (previously, days on which state and county teacher's conventions are held).

The Ashland School System is a municipal employer and the members of the faculty of that system are municipal employees within the meaning and intent of Sec. 111.70, Wis. Stats.

It is clear to us that the clause in the bargaining agreement, recited in paragraph 4 of the above stipulation of facts, is discriminatory, Muskego-Norway CSJ/D/9 -vs- WERB, 35 Wis.2d 540, 151 NW2d 84, notwithstanding. In the cited case the teachers contract provided that members of both local unions, that affiliated with W. E. A., and that affiliated with W. F. T., could attend the two day convention of their respective organizations, both to be held in Milwaukee on November 7 and 8, 1963, without loss of pay; but faculty members who belonged to neither union could not take those same two days off without a pay deduction. The Supreme Court said:

"These statutes are not necessarily in conflict. They can all be given effect by construing them together and ruling that teachers cannot be required to attend such conventions under threat of loss of pay, but that teachers who do not attend such conventions can be required to work for the school. In this way teachers can avoid deductions from their salaries while the right to refuse to join a labor organization guaranteed by sec. 111.70(2) is preserved. If the teacher refuses to work, deductions from his salary could be made, but if the school does not offer work to teachers not attending conventions, the school cannot deny pay to such teachers."

Thus, non-members of a union were not under compulsion to join or refrain from joining a union, for, member or not, each was rendering a required service to the district: a union member by attending an educational convention and a non-member by performing "inservice" duties for the school district; and each was fully paid therefor. But the present situation differs greatly. Here, read literally, the Board of Education ruled that, by virtue of the labor contract,

teachers members of the A. F. T. could attend its state-wide convention, but members of the A. E. A. could not attend theirs; nor could they attend their regional convention. Presumably one of the factors inducing teachers to join a union is that he or she will derive educational benefits from attendance at a convention of the parental body. To provide by contract that those who belong to union A may receive those benefits while those who belong to union B may not, is clearly discriminatory; and compels those teachers who wish to further their education by attending an educational convention to join union A and refuse to join union B.

The contract, as we have held, results in a prohibited labor practice, insofar as it prevents on its face the members of A. E. A. from attending any educational convention. But, says counsel for A. F. T., the convention attended by members of A. E. A. on October 3 and 4, 1968, was not a state-wide convention but rather a regional convention. It is further argued that while the Board of Education may not give other than even handed treatment to all union members with respect to state-wide conventions, it is proper for such Board to distinguish between state-wide and regional conventions. It is on this one issue, pivotal to the controversy, that the examiner and the W. E. R. C. differed.

We have just held that permitting the A. F. T. teachers to attend their state convention without loss of pay, while denying that same privilege to A. E. A. teachers, would be a prohibited labor practice under Sec. 111.70, Wis. Stats. We believe this to be true even though, as in 1968, the two state conventions were held on two different dates and would thus result in their being two rather than one suspension of school teaching activities. Whether, in 1968, A. E. A. teachers did attend their W. E. A. convention held on November 7th and 8th, 1968 in Milwaukee and whether, if any did so attend, they were subjected to a pay deduction, we do not know--the interpretation of the contract clause and the Board of Education memorandum was directed at the N. W. L. S. E. A. convention in Spooner on October 3rd and 4th and said nothing about the November 7th and 8th W. E. A. convention in Milwaukee. The examiner in his memorandum opinion tells us:

"The complainant does not allege violations regarding attendance of the W. E. A. convention, 1968, nor do stipulations to the examiner state what practice was followed in that regard."

But, re-reading the quoted portion of the labor agreement, the memorandum issued by the Board and Mr. Husebo, and the interpretation placed upon the memorandum, it is clearly apparent that A. E. A. teachers were instructed that they could attend no educational convention in 1968, state or regional.

The situation facing the Board of Education in the early fall of 1968 was this: there was to be a W. F. T. state convention in Milwaukee on October 3rd and 4th, 1968; a W. E. A. state convention in Milwaukee on November 7th and 8th, 1968; and a N. W. L. S. E. A. convention in Spooner on October 3rd and 4th, 1968. Clearly it would be a prohibited labor practice for the Board of Education to permit A. F. T. teachers to attend only one convention with pay, while permitting A. E. A. teachers to attend two conventions with pay. Thus, their being two W. E. A. conventions, Milwaukee and Spooner, to be held in the fall of 1968, a choice between them, to avoid a prohibited labor practice, had to be made. The question then was this: who was to be the selecting authority. There were

three possibilities. The individual A. E. A. teachers, the A. E. A. itself, and the Board of Education. It would be impractical to allow the choice to be made by the individual teacher, for some would vote for Spooner while others would vote for Milwaukee, and no definitive choice would then have been made. There remained as possible possible selecting authorities the Board of Education and the A. E. A. In view of Sec. 118.21(4), Wis. Stats., which gives power to the Board of Education to allow a teacher, in its discretion, "the whole or any part of any time spent by him in attending a teachers' educational convention," we believe that the authority of choice was and is properly in the school board rather than in the union. It was the school board that had the sole right to decide that, of the two W. E. A. conventions, A. E. A. teachers could attend the one in Milwaukee without loss of pay but could not, without loss of pay, attend the convention in Spooner, and vice versa.

However, as we review the record, the Board of Education did nothing by way of selection--saying only that A. E. A. teachers were prohibited from attending any convention. Had the board said to A. E. A. members, "You can go to Milwaukee on November 7th and 8th, 1968, without loss of pay, but you cannot go to Spooner without a pay deduction", the W. E. R. C., insofar as claims for reimbursement by individual teachers are concerned, should be affirmed. To repeat, the board said neither; and by telling A. E. A. members that they could not attend any convention, a prohibited labor practice was committed. Under these circumstances, A. E. A. members being entitled to attend one of their two conventions, and the board refusing to indicate which one, the members of A. E. A. lawfully made up their own minds and attended the convention at Spooner. For so doing they should not be penalized, the greater fault being that of the board rather than of the members of the A. E. A.

With respect to reimbursement of pay for those teachers who in October of 1968 attended the N. W. L. S. E. A. convention at Spooner, the W. E. R. C. is affirmed. Insofar as its decision may intimate that A. E. A. members had and have an unqualified right to attend either of two educational conventions as they may choose, and ignore the selection made by the Board of Education, the W. E. R. C. is reversed.

The foregoing memorandum opinion will constitute our findings of fact and conclusions of law in the matter. Counsel for A. E. A. may prepare a judgment in conformity with the foregoing memorandum opinion and, after submitteing it to opposing counsel for approval as to form, forward it to us for signature.

Dated this 12th day of February, 1970.

BY THE COURT:

\_\_\_\_ Lewis J. Charles /s/  
Circuit Judge