

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS UNION LOCAL 252,

Complainant,

vs.

MILWAUKEE BOARD OF SCHOOL DIRECTORS,

Respondent.

Case XXVIII

No. 13119 MP-72

Decision No. 9258-A

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter, and hearing on such complaint having been held at Milwaukee, Wisconsin, on October 2, 1969, the full Commission being present, and the Commission having considered the evidence and arguments and being fully advised in the premises, made and filed Interlocutory Findings of Fact, Conclusion of Law and Order; 1/ and the Commission having considered further evidence and arguments and being fully advised in the premises, cognizant of the fact that such interlocutory decision did not make permanent determination of the issues, now makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Milwaukee Federation of Teachers, Local 252, affiliated with the American Federation of Teachers, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization having its principal place of business at 7230 West Capitol Drive, Milwaukee, Wisconsin.

2. That the Respondent, Board of School Directors of the City of Milwaukee, hereinafter referred to as the School Board, is a municipal employer having its offices at 5225 West Vliet Street, Milwaukee, Wisconsin.

3. That the Milwaukee Teachers Education Association, hereinafter referred to as the MTEA, affiliated with the Wisconsin Education Association, is a labor organization having its offices at 4011 West Capitol Drive, Milwaukee, Wisconsin; that, at the hearing in the instant matter, the MTEA moved to intervene and said motion was granted.

4. That following an election conducted by it, the Wisconsin Employment Relations Commission, then known as the Wisconsin Employment Relations Board, certified the MTEA as the exclusive collective bargaining representative of all regular teaching personnel teaching at least fifty per cent of a full teaching schedule (including Recreation

1/ Case XXVIII, No. 13119, MP-72, Decision No. 9258

Instructors V and Vice Principals teaching a full schedule) employed by the School Board, excluding substitute per diem teachers, office and clerical employes, and all other employes, supervisors and executives; that in said relationship, the School Board and the MTEA, on November 17, 1968, executed a collective bargaining agreement, covering salaries and conditions of employment of the employes in the aforementioned collective bargaining unit, for a term from January 1, 1969, to at least December 31, 1970, and that said agreement contained among its provisions an article, identified as Paragraph E, Part II, relating to bulletin boards, which provided certain conditions under which the MTEA could use the school mailboxes and bulletin boards.

5. That following the effective date of said collective bargaining agreement, agents of the School Board permitted representatives of the MTEA to post printed matters on bulletin boards located in various schools operated by the School Board and also permitted the MTEA the use of school mailboxes for distribution of printed matters to the teachers employed in the various schools.

6. That said Interlocutory Decision found that the materials posted and distributed by the MTEA, entered into evidence at said hearing did not pertain to its function as the exclusive bargaining representative of the teachers employed in the bargaining unit set forth above but, rather, related to organizational and internal affairs of the MTEA; and that by permitting the MTEA to post said materials on the bulletin boards and to distribute said materials to the teachers through the use of teacher mailboxes, while denying to the Complainant the same opportunity to post and distribute printed matter dealing with similar subjects, the Respondent, by its agents, aided and assisted the MTEA and thus interfered with the rights of its teachers to engage in concerted activity and membership, in and on behalf of the Complainant.

7. That said Interlocutory Order granted temporary relief with respect to the distribution of materials on certain subjects for a specific period of time; that the Respondent does not have a permanent policy regarding the posting on bulletin boards and distribution of materials through school mailboxes by the exclusive bargaining representative and all other labor organizations.

On the basis of the foregoing Findings of Fact, the Commission reiterates, as stated in the Interlocutory decision, the following

CONCLUSION OF LAW

That the Respondent, Board of School Directors of the City of Milwaukee, by granting the Milwaukee Teachers Education Association the exclusive use of bulletin boards and teacher mailboxes for the posting and distribution of printed matters relating to the internal and organizational activity of said organization, while at the same time denying such privileges to the Milwaukee Federation of Teachers, Local 252, has interfered with, restrained and coerced teachers in its employ in the exercise of their rights guaranteed them in Section 111.70(2); and, therefore, in that regard said Respondent has committed a prohibited practice within the meaning of Section 111.70(3)(a)1 of the Wisconsin Statutes.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

No. 9258-A

ORDER

IT IS ORDERED that the Respondent, Board of School Directors of the City of Milwaukee, its officers and agents, shall continue to

1. Cease and desist from:

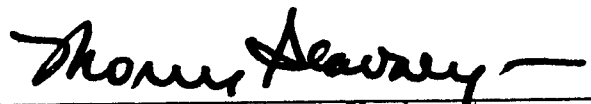
- a. Interfering with the rights of teachers in its employ by granting exclusive use of its bulletin boards and teacher mailboxes to the Milwaukee Teachers Education Association for the posting and distribution of printed matters related to internal and organization affairs ~~of the Respondent while at the same time denying such privileges to the Milwaukee Federation of Teachers, Local 252.~~
- b. Giving effect to the provision in its collective bargaining agreement, identified as Paragraph E, Part II, 2/ relating to the use of teacher mailboxes and bulletin boards exclusively to the Milwaukee Teachers Education Association where the use of such bulletin boards and mailboxes are for the posting and distribution of printed matter relating to the internal and organizational activity of the Milwaukee Teachers Education Association, when it denies such use to the Milwaukee Federation of Teachers for the distribution and posting of printed matter relating to the latter's internal affairs and organization.

2. Adopt such policy regulating the posting and distribution of material on bulletin boards and through school mailboxes which will grant equal use of such facilities to all labor organizations representing employees in the unit, except that the exclusive bargaining representative may be granted exclusive use of said facilities if the materials to be distributed relate only to its function as exclusive bargaining representative.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

2/ The clause is identified in the agreement expiring December 31, 1970. This order shall pertain to any similar clause in the present agreement.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Prior to the close of the hearing held on October 2, 1969, Chairman Slavney, with the full concurrence of Commissioners Rice and Wilberg, on the record, orally announced Interlocutory Findings of ~~fact, Conclusion of Law and Order~~. A document was prepared later to reflect such Findings of Fact, Conclusion of Law and Order, with certain corrections with respect to form and grammar.

The Interlocutory Order granted relief with respect to the distribution of materials on certain subjects, for a specified period of time. The parties still require guidance regarding the posting of materials on bulletin boards and distribution of materials through mailboxes.

DISCUSSION:

The law regarding the distribution and posting of union materials was settled previously in a case involving these same parties. In affirming a WERB decision, Circuit Judge Morris Maloney noted that

"The WERB was exactly correct in its ruling respecting (4) that the School Board could grant exclusive use of the teachers' mailboxes and other physical facilities to the Association 'when necessary to perform its function as the exclusive bargaining representative * * *', but that the use of such facilities for 'normal union activities could be granted only if granted to all labor organizations'."

The Complainant brought this action when Respondent refused a request made by the Complainant to distribute certain materials through the school mailboxes, while at the same time, it allowed the Association to distribute materials in that manner on subjects which allegedly were not necessary to perform its function as the exclusive bargaining representative. Therefore, the parties seek a determination as to what materials are "necessary to perform its function as the exclusive bargaining representative." The Interlocutory Order resolved certain problems relating to Respondent's decision to allow distribution and posting of certain MTEA materials through mailboxes and bulletin boards and to refuse to allow same to the Complainant. That decision was limited to the materials put forth in the exhibits at the hearing.

In the briefs filed by the parties following the Interlocutory Order, each asked the Commission to set out certain guidelines under which the Respondent shall be able to determine which materials should be distributed by the MTEA only, by the MTEA and the Complainant, or by neither.

It is not our function to specify what materials should or should not be distributed by a majority or minority organization. Neither is it our function to specify the contract language that should be used to implement the policy ultimately adopted. However, in order to avoid similar litigation in this area, the Commission has determined that the adoption of one of the policies outlined below would be permissible under the guidelines quoted above.

It should be very clear that the adoption of any one of the following policies should be the result of collective bargaining between the Respondent and the exclusive bargaining representative. It is possible for them to negotiate the adoption of one of the following policies:

1. Allow the exclusive bargaining representative the right to post on bulletin boards and distribute through mailboxes materials pertaining only to functions of the exclusive bargaining representative, i.e., the status of negotiations, including positions of the parties as relating to wages, hours and working conditions and the status of grievances being processed through the negotiated grievance procedure. No other material on any other subject may be distributed by any labor organization if such policy is adopted. Furthermore, if the material to be distributed in the above manner by the exclusive bargaining representative should also contain information regarding subjects not pertaining to the functions of the exclusive bargaining representative, such as increased dues or an improved union insurance plan, such matter may not be posted on bulletin boards or distributed by the school mailboxes.

2. Allow the exclusive bargaining representative and any other labor organization representing employees in the unit the right to post on bulletin boards and distribute through school mailboxes any materials relating to internal union activity and organizing campaigns. It is understood the exclusive bargaining representative would have the right to continue to distribute materials relating to its exclusive functions. It is further understood that the Respondent shall have the right to prohibit the posting and distribution of certain materials, if the reasons for such prohibitions are clearly defined and are applied equally to all labor organizations.

3. Refuse to allow the exclusive bargaining representative, or any other labor organization, the right to post or distribute any materials on any subject, including those pertaining to the exclusive bargaining representative, on bulletin boards or through mailboxes.

As mentioned above, the policy ultimately adopted is a matter for collective bargaining. It is strongly urged that any agreement arrived at be contained in the collective agreement and that disputes over interpretation of such clause be resolved through the grievance procedure. This would avoid much of the lengthy litigation that has been involved in the instant case.

Dated at Madison, Wisconsin, this 20th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slayney
Morris Slayney, Chairman

Del S. Rice II
Del S. Rice II, Commissioner

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