STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

*		
WISCONSIN FEDERATION OF TEACHERS, AFL-CIO,	•	
Complainant,	:	Case VIII No. 13085 MP-68 Decision No. 10633
VS.	•	
JOINT CITY SCHOOL DISTRICT NO. 1, WEST ALLIS-WEST MILWAUKEE, ET AL.,	:	
Respondent.	:	
	·	

Appearances:

3.0

107

Goldberg, Previant & Uelmen, Attorneys at Law, by <u>Mr. John S.</u> <u>Williamson, Jr.</u>, appearing on behalf of the Complainant. <u>Mr. William T. Schmid</u>, City Attorney, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on October 3, 1969, the full Commission being present, and the Commission having considered the evidence, arguments and briefs of Counsel, and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Wisconsin Federation of Teachers, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization and has its offices at 7230 West Capitol Drive, Milwaukee, Wisconsin.

2. That Joint City School District No. 1, West Allis-West Milwaukee, et al., hereinafter referred to as the Respondent, is a municipal employer and has its principal offices at 9333 West Lincoln Avenue, West Allis, Wisconsin.

3. That west Milwaukee-West Allis Federation of Teachers, Local 1067, hereinafter referred to as Local 1067, is a labor organization and has its offices at West Allis, Wisconsin; that at all times material herein Local 1067 has been, and is, affiliated with the Complainant; and that various teachers in the employ of the Respondent are members of Local 1067, as well as of the Complainant.

4. That West Allis-West Milwaukee Education Association, hereinafter referred to as the Association, is a labor organization and has its offices at West Allis, Wisconsin; that the Association is affiliated with the Wisconsin Education Association, hereinafter referred to as the WEA, a labor organization having its offices at Madison, Wisconsin; that, at all times material herein, the Association has been, at least prior to December 14, 1965, and is, the exclusive collective bargaining representative of certified teachers in the employ of the Respondent.

No. 10633

5. That on or about December 14, 1967, the Complainant sent the following letter, over the signature of its Executive Director, to the Respondent:

"Gentlemen:

16.

Please be advised that the Wisconsin Federation of Teachers is conducting its State Teachers Convention on October 3-4, 1968.

Pursuant to Section 40.45 (1) (b) Wisconsin Statutes, teachers have the right to attend a state teachers convention and obviously any individual teacher contract includes by reference the right to attend a state teachers convention.

Further, if teachers are paid for attending the convention held by the Wisconsin Education Association in 1968 the WFT will expect the same treatment shown to teachers who attend its 1968 convention.

If you have any questions, please feel free to contact the undersigned."

6. That, following the receipt of the above letter, the Respondent notified the Complainant that the Respondent would not pay its teachers for attending the Complainant's state teachers convention to be held on October 3 and 4, 1968; and that, however, at the same time Respondent indicated that it intended to pay teachers who attended the 1968 state convention of the WEA.

7. That on July 31, 1968, the Association and the Respondent entered into a collective bargaining agreement, in effect from July 1, 1968, to June 30, 1969, covering salaries and other conditions of employment of the certified teachers in the employ of the Respondent; and that said collective bargaining agreement contained among its provisions, the "School Calendar," which, among other things, set forth November 7 and 8, 1968, as "Teacher Convention" dates, as well as the following material provisions:

"ARTICLE VIII CLINICS AND WORKSHOPS

Requests for attendance at clinics and workshops shall be submitted thirty (30) days prior to proposed attendance, or upon first notification by the sponsoring organization if less than 30 days notice is given prior to the proposed attendance. Requests shall be submitted for review to the superintendent and shall give in as complete form as possible the location and duration of the clinic or workshop, its purpose, the proposed program or activities and the approximate costs of registration, travel and other expenses. Where attendance at clinics and workshops is approved by the superintendent the Board shall reimburse the expenses of such attendance, including the teacher's salary."

. . .

No. 10633

. . .

D. Absence for Personal Business. Each teacher will be allowed one day of absence during each school year, deductible from sick leave accumulation, if any, without loss of salary in order to attend to personal business or affairs of a personal nature which cannot be conducted outside the regular school day. Requests for such leave shall be made as far in advance as possible, normally not less than five days. In the event a teacher does not have an unused sick leave accumulation, such absence shall require a deduction from salary."

8. That, pursuant to Article VIII, supra, the Respondent has paid teachers for attending teachers educational conventions, other than conventions of the WEA, as well as for attendance at conferences, institutes and meetings of a professional nature.

9. That on or about September 9, 1968, the Complainant, in writing, again requested the Respondent to permit from two to six teachers, who were delegates to the Complainant's convention to be held on October 3 and 4, 1968, to attend such convention without loss of pay, and that, however, no such permission was granted by the Respondent.

10. That teachers Celia Arnold, Denita Radtke, Rudy Cook and Ken Kaye attended the Complainant's state teachers convention on one day, either October 3 or 4, 1968; that teacher Edward H. Stech attended such convention on both of said dates; that all of said teachers were not paid for their convention attendance, but were required to take a personal leave day and in addition, because of his second day of attendance, a day's pay was deducted from Stech's salary.

11. That the WEA held its state teachers convention on November 7 and 8, 1968, which convention was open only to its members; that membership in the Association does not necessarily entitle a teacher to membership in the WEA; that a number of teachers attended said convention and no deductions were made from their salaries on the days of such attendance, provided that such teachers certified their attendance; and that, however, teachers who did not attend said convention, but who attended "in-service days" conducted at their various schools on said dates, and so certified to such attendance, suffered no deductions from their salaries.

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

CONCLUSIONS OF LAW

1. That the Respondent, Joint City School District No. 1, West Allis-West Milwaukee, et al., by denying the request of the Complainant, Wisconsin Federation of Teachers, AFL-CIO, to permit from two to six teachers to attend, as delegates, the convention of the Complainant, Wisconsin Federation of Teachers, AFL-CIO, on October 3 and 4, 1968, without loss of pay, has not committed, and is not committing, any prohibited practices within the meaning of Section 111.70(3)(a) 1 and 2 of the Wisconsin Statutes. 2. That the Respondent, Joint City School District No. 1, West Allis-West Milwaukee, et al., by denying pay to teachers Celia Arnold, Denita Radtke, Rudy Cook, Ken Kaye and Edward H. Stech for their attendance at said convention of Complainant, Wisconsin Federation of Teachers, AFL-CIO, and requiring said teachers to take a personal leave day, and in further deducting a day's pay from teacher Edward h. Stech for his second day of attendance at such convention, did not commit, and is not committing, any prohibited practices within the meaning of Section 111.70(3)(a)1 and 2 of the 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 the instant matter be, and the same hereby is, dismissed.

> Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of November, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By lavney, balrma Commissioner Rice Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

 \mathcal{L}

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

•	
•	
•	
:	Case VIII No. 13085 MP-68 Decision No. 10633
::	

MEMORANDUM ACCOMPANYING

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint the WFT alleged that the School District committed prohibited acts of discrimination and interference in violation of Sections 111.70(3)(a)1 and 2 of the Wisconsin Statutes by permitting teachers in its employ to attend the convention of the WEA held on November 7 and 8, 1968, without loss of pay while at the same time denying such privileges to its teachers who attended the convention of the WFT held on October 3 and 4, 1968. Further, the WFT alleged that the School District in requiring those teachers who attended the WFT convention to take a personal leave day for their one day attendance at the WFT convention and in the case of one of the teachers, who attended said convention on two dates, to deduct one day's pay from said teachers salary.

In its answer the School District denied that it committed any prohibited practices with respect to the matters involved.

The issue herein, as succinctly stated in the brief of the WFT, is "whether a school board who pays teachers for attendance at the WEA State Convention may deny payment to teachers who attend the WFT State Convention?" The WFT contends that the School District's failure to pay the teachers for attending the WFT convention constitutes discrimination under Section 111.70. The WFT argues, in effect, that the convention of the WEA was related to the functions of the West Allis-West Milwaukee Education Association as the majority representative of the teachers in the employ of the School District, and, therefore, the attendance at the WEA convention is not a privilege which the members of the local association are entitled to exercise because the attendance at the convention is not related to the "normal union activities" of the majority representative, and, therefore, the School District, by paying employes for their attendance at the WEA convention, encouraged membership in said organization as well as membership in the local affiliate thereof.

The School District contends that the Commission's decision in <u>City of Kenosha Board of Education</u> (8120) and its subsequent affirmation by the Dane County Circuit Court in November 1967 supports the conclusion that the activity complained of does not constitute any

No. 10633

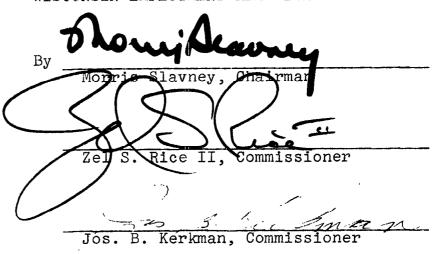
prohibited practices within the meaning of the statute. The rule of the latter case was to the extent that the refusal of the school board to change its calendar so as to grant teachers days off to attend a convention of a minority organization on days other than on which convention days had been established in the school calendar with the acquiescence of the majority organization, and the warning of discriminatory action and determination by the school board not to pay those teachers who attend the convention of the minority organization, did not constitute a prohibited practice.

Prior to the filing of the instant complaint the Commission, in a case involving the Ashland Board of Education, issued an Order Amending Examiner's Findings of Fact and Reversing Examiner's Conclusions of Law and Order (Decision No. 8708-B), wherein the Commission concluded, among other things, that the school board had committed prohibited practices by refusing to grant teachers in its employ time off to attend a regional education association convention on the same days on which said school board had permitted teachers time off to attend the WFT convention on the same dates. The Ashland case was appealed to the Circuit Court and thereafter to the Wisconsin Supreme Court, and the Commission has delayed the issuance of the instant Order until such time as the Supreme Court issued its decision in the Ashland case. On November 5, 1971, the Supreme Court issued its decision in the Ashland School Board matter. Although the issue in the Ashland School Board case was not identical to the issue involved herein, the Court did discuss both attendance at state conventions and regional conventions, and we observe no language in the Court's decision which would overrule the decision of the Dane County Circuit Court in affirming the Commission's decision rendered in the Kenosha School Board case cited above. In the Ashland case the majority opinion concludes with the following language:

"The problems apparent in this case could easily be solved by the unions having their state conventions at the same time. It seems that this is but a small price to pay when contrasted to the problems facing the school board in determining if part of the teachers can be excused with or without compensation on various and different dates. Another alternative, probably less desirable, is that the legislature enact more definitive and undoubtedly more rigid classifications and rules concerning teachers' conventions."

We have, therefore, dismissed the complaint.

Dated at Madison, Wisconsin, this 19th day of November, 1971.



WISCONSIN EMPLOYMENT RELATIONS COMMISSION