

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GREEN BAY EMPLOYEES LOCAL 1672B,
AFSCME, AFL-CIO,

Complainant,

vs.

CITY OF GREEN BAY, JOINT SCHOOL DISTRICT
NO. 1, EUGENE SLADKY, DONALD TILKENS,
THOMAS BENO, ROBERT STUART, MRS. D. C.
ANGUS, HARRY BINS, MRS. JOHN ZIEBELL,
and GLENN A. EVJUE, as members of the
Board of Education of Joint School
District No. 1,

Respondents.

Case XVI
No. 15566 MP-132
Decision No. 11021

ORDER HOLDING HEARING DATE IN ABEYANCE

Green Bay Employees Local 1672B, AFSCME, AFL-CIO, having on April 26, 1972, filed a complaint with the Wisconsin Employment Relations Commission in the instant matter, wherein it alleged that City of Green Bay, Joint School District No. 1, Eugene Sladky, Donald Tilkens, Thomas Beno, Robert Stuart, Mrs. D. C. Angus, Harry Bins, Mrs. John Ziebell, and Glenn A. Evjue, as members of the Board of Education of Joint School District No. 1, had committed certain prohibited practices, within the meaning of Section 111.70 of the Municipal Employment Relations Act, by refusing to proceed to arbitration, as required in the collective bargaining agreement existing between the parties, with respect to an alleged violation of said collective bargaining agreement in the subcontracting of custodial services and the resultant layoff of thirteen employes; that prior to the filing of the instant complaint and on January 11, 1972, the instant Complainant and certain individual employes of the City of Green Bay, Joint School District No. 1 filed a complaint alleging that the identical Respondents had, by subcontracting of custodial work and the resultant layoff of the individual named Complainants, committed prohibited acts of interference, restraint and coercion and discrimination, as well as a refusal to bargain in good faith, with respect to said subcontracting, all in violation of Sections 111.70(3)(a)1, 111.70(3)(a)3 and 111.70(3)(a)4 of the Municipal Employment Relations Act; and hearing on said complaint having been conducted at Green Bay, Wisconsin, on February 25 and March 13, 1972; and the period for filing briefs therein having not expired; and the Commission, therefore, having not as yet issued its Findings of Fact, Conclusions of Law and Order in that matter; and since the subject matter of the complaint filed on April 26, 1972, involves the same subject matter involved in the complaint proceeding previously initiated on January 11, 1972, and not as yet determined by the Commission, that the issuance of the notice of hearing on the instant complaint be held in abeyance pending the determination by the Commission of the pending complaint proceeding;

NOW, THEREFORE, it is

ORDERED

That notice of hearing on the complaint filed in the above entitled matter be, and the same hereby is, held in abeyance pending the determination by the Commission of the complaint of prohibited practices filed on January 11, 1972.

Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Stevney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER HOLDING HEARING DATE IN ABEYANCE

The instant complaint was filed on April 26, 1972, wherein the Union alleged that the Green Bay School District and certain members of the School Board had violated the terms of a collective bargaining agreement existing between the Union and the School District by refusing to accept a grievance alleging that the School District and the named School Board members had violated the collective bargaining agreement by subcontracting certain custodial work previously performed by members of the bargaining unit covered by said collective bargaining agreement and by laying off thirteen employes as a result thereof, and further by refusing to proceed to arbitration with respect to said subcontracting and layoffs. In its complaint the Union alleged that such action by the named Respondents interfered, restrained and coerced the employes in violation of Section 111.70(3)(a) of the Municipal Employment Relations Act, and further, that such activity by the named Respondents constituted a violation of the collective bargaining agreement, including the agreement to arbitrate "questions arising as to the meaning or application of the terms" of said collective bargaining agreement, in violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Previously and on January 11, 1972, the Union and certain named employes filed a complaint wherein it alleged that the same Respondents had committed prohibited acts of interference, restraint, coercion and discrimination, as well as a refusal to bargain with the Union, as a result of the action of said Respondents in subcontracting said custodial work, and by laying off certain named employes, to discourage lawful concerted activity of the employes of the School District, in violation of Sections 111.70(3)(a)1, 111.70(3)(a)3 and 111.70(3)(a)4 of the Municipal Employment Relations Act. Hearing on said complaint was completed on March 13, 1972. The Complainants have filed their original briefs in the matter. The Commission has not as yet received the brief to be filed by Counsel for the Respondents and when such briefs are received, the Complainants if they desire, may file a reply brief.

Hearing on the original complaint was commenced on February 25, 1972. In its second complaint the Union alleged that the Respondents' refusal to entertain the grievance and to proceed to arbitration occurred during the period from on or about November 19, 1971, through March 29, 1972, the latter date occurring some 16 days following the close of the hearing on the initial complaint. Under the rules of the Commission the Union could have filed an amended complaint and moved to reopen the hearing at any time prior to the issuance of the Commission's order. 1/ However, for some reason, not disclosed, it filed a second complaint approximately three weeks after the receipt of the transcript on the original complaint.

1/ Rule ERB 12.02(5)(a).

The factual situation involved in the pending complaint proceeding is identical to the factual situation involved in the subsequent complaint filed on April 26, 1972. If the Commission finds that the activity of the Respondents in subcontracting the custodial work and the resultant layoff of certain custodial employes constituted prohibited acts of interference, restraint and coercion and discrimination in violation of Sections 111.70(3)(a)1 and 3, and should the Commission also find that there was a failure to bargain in good faith with regard to said subcontracting in violation of Section 111.70(3)(a)4, the Commission shall issue an order remedying such violations. If the Commission should find that there has been no prohibited practices committed, it will dismiss the complaint.

In its complaint filed on April 26, 1972, the Union alleges the same factual situation, however, bases its complaint on strictly an alleged violation of the collective bargaining agreement, which if proven, would constitute a prohibited practice within the meaning of the Municipal Employment Relations Act.


Should the Commission find prohibited practices to have been committed in the original complaint proceeding, the relief sought by the Union in the subsequently filed complaint will have been granted by the Commission in its order in the original complaint proceeding, except that there was no allegation in the original complaint with reference to an alleged violation of the collective bargaining agreement.

Under such circumstances the Commission will not at this time notice the instant complaint for hearing, but will hold the matter in abeyance pending the disposition of the original complaint proceeding.

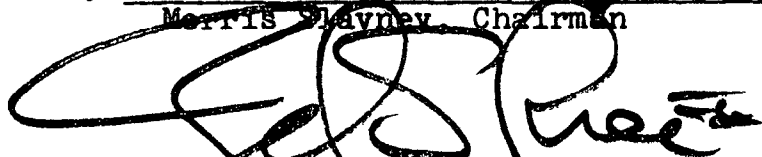
Dated at Madison, Wisconsin, this 22nd day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

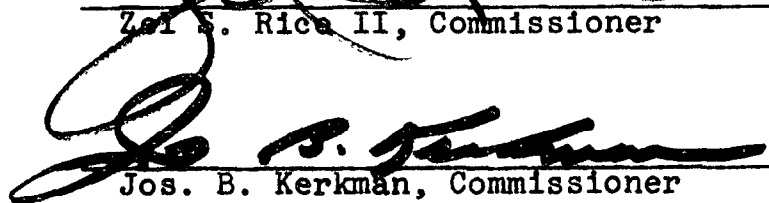
By



Morris Playney, Chairman



Zel S. Rice II, Commissioner



Jos. B. Kerkman, Commissioner