
CITY OF MADISON, JOINT SCHOOL DISTRICT
 NO. 8, CITY OF MADISON, VILLAGES OF
 MAPLE BLUFF AND SHOREWOOD HILLS, TOWNS
 OF MADISON, BLOOMING GROVE, FITCHBURG
 AND BURKE AND ITS AGENT, THE BOARD OF
 EDUCATION, CITY OF MADISON JOINT SCHOOL
 DISTRICT NO. 8,

#137-382

Petitioner,

MEMORANDUM DECISION

vs.

WISCONSIN EMPLOYMENT RELATIONS
 COMMISSION,

Decision No. 11271

Respondent,

MADISON TEACHERS INCORPORATED,

Intervenor Respondent.

The petitioner in this action pursuant to Chapter 227, Stats., seeks review of a decision and order of the Wisconsin Employment Relations Commission dated September 13, 1972, which determined that said petitioner had committed unfair practices prohibited by sec. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act.

The petitioner (hereinafter "school board") and Madison Teachers, Inc. (hereinafter "MTI") were parties to a labor agreement covering teachers and other employees, which ran from January 1, 1971, to December 31, 1971. Said agreement contained, inter alia, a provision that the school board would bargain exclusively with MTI.

On January 25, 1971, MTI gave the school board timely notice of its desire to modify the existing agreement for the year 1972. Conferences and negotiations between the parties for a successor agreement continued during the year until October 4, 1971. By November, 1971, two primary issues remained unresolved, viz., a fair share agreement and binding arbitration of teacher nonrenewals and dismissals.

In November, 1971, a Mr. Holmquist and a Mr. Reed, both of whom are teachers employed by the school board and both of whom are not members of MTI, drafted a letter addressed to "Dear Fellow Madisonian Educator." Such letter, headed "E. C. - O. L. O. G. Y," meaning "Educator's Choice - Obligatory Leadership Or Governance by You," asked the addressee to "Save Freedom of Choice" and stated that "A Closed Shop (agency shop) Removes This Freedom." The bottom portion of such letter was in the form of a ballot allowing the addressee to express his opposition to "agency shop." Said letter was mailed on November 14, 1971, to all teachers in the Madison Public School system by Holmquist and Reed. Approximately two hundred replies to such letter were received, the majority of which were favorable to their position on fair share.

On December 2, 1971, a meeting of 14 teachers who wished to work against any fair share agreement resulted in a memorandum entitled "Points of Information" and a petition which were distributed to the teachers employed by the School District.

Prior to the December 6, 1971, school board meeting, Mr. Keith Yelinek, a member of the board, was informed that individuals other than authorized agents of MTI intended to speak at such meeting on fair share. Mr. Yelinek was presented with copies of the court's decision in Board of School Directors of Milwaukee v. W.E.R.C., 42 Wis. 2d 637 (1968), and he indicated he would relate such information to the board.

Mr. Holmquist appeared at the board meeting held on December 6, 1971, and he was permitted to speak to the board. Mr. Holmquist prefaced his remarks to the board by stating:

"My name is Albert Holmquist. I reside at 5626 Crestwood Place. I am another teacher. I represent an informal committee of 72 teachers in 49 schools. I would like to inform the Madison Board of Education, as I already have the Madison Teachers Incorporated, about the results of an informational survey regarding one of the thirteen or so items now on the conference table and one of the main items that will certainly be included in some form in the new package."

He then read to the board the text of a petition he had circulated among bargaining unit teachers dated December 6, 1971. In so doing, he stated as follows:

"To: Madison Board of Education, Madison Teachers Incorporated. We the undersigned ask that the fair-share proposal (agency shop) being negotiated by Madison Teachers Incorporated and the Madison Board of Education be deferred this year. We propose the following: 1) The fair-share concept being negotiated be thoroughly studied by an impartial committee composed of representatives from all concerned groups. 2) The findings of this study be made public. 3) This impartial committee will ballot (written) all persons affected by the contract agreement for their opinion on the fair share proposal. 4) The results of this written ballot be made public.

"We feel this study necessary because neither the board's negotiators who have placed entirely too much emphasis on this one point nor Madison Teachers, Inc. which speaks euphemistically about the 'whole package' and therefore is not issue specific Neither has properly addressed the serious issue of fair share and agency shop. We find much confusion in the proposal as it stands and even more on the part of teachers' interpretations of it. For evidence, 417 teachers from the 31 schools which represents 53% of the total number of these faculties of these schools . . . who have called in to this hour have signed the petition on the first day it was taken into their schools. Due to this confusion, we wish to take no stand on the proposal itself, but ask only that all alternatives be presented clearly to all teachers and more importantly to the general public to whom we are all responsible. We ask simply for communication, not confrontation."

At the end of his remarks, Mrs. Doyle, president of the Board of Education, asked Mr. Holmquist, "Do you intend to communicate these petitions to the Board when you have them all?" Mr. Holmquist replied, "Yes."

After the meeting the board went into executive session. As a result of such discussion, the following resolution was adopted:

"It was moved and seconded to accept the total package as presented including arbitration for dismissal of non-probationary teachers and not including agency shop; if the MTI does not accept this as a total package the offer of arbitration is withdrawn."

In later negotiations the board remained adamant in their position and the parties finally accepted such as the Agreement on December 14, 1971.

On January 5, 1972, MTI filed a complaint with the Wisconsin Employment Relations Commission against the board for alleged violations of sec. 111.70(3)(a)(1) and 111.70(3)(a)(4), Stats. The Commission issued its Findings of Fact, Conclusions of Law and Order on September 13, 1972. The petition seeking review of such Findings, Conclusions, and Order is presently before the court.

The court is of the opinion that denying a representative of a minority of the bargaining unit employees the right to appear at a public meeting of the board and to speak to the board on mandatory subjects of bargaining does not infringe upon the right of freedom of expression or the right to petition one's government, as guaranteed by the Wisconsin and United States Constitutions.

The Wisconsin Supreme Court in Board of School Directors v. W.E.R.C., 42 Wis. 2d 637 (1968), held that a school board could properly deny the representative of a minority union the right to speak at a public meeting of the school board on negotiable matters and that such denial did not infringe upon the right of free speech as guaranteed by the Wisconsin Constitution.

The court held that a minority union had no right to negotiate with the employer and that, if the employer negotiated with the minority union, that in itself would be a prohibited practice. As the court stated in LaCrosse County Institution Employees v. W.E.R.C., 52 Wis. 2d 295, 300 (1971):

"The essence of the Board of School Directors case was merely that, if a municipality sees fit to bargain, it must do so with the certified representative of the employees and cannot negotiate with a minority union."

The crux of this case thus reduces to whether Holmquist's "statement" before the board constituted "negotiation" or was merely the giving of a "position statement." This same issue was extensively discussed in the Board of School Directors case, supra. The court stated at page 652:

"If this case involved solely the giving of a position statement at an ordinary meeting of a public body, we would have some difficulty in labeling the conduct 'negotiating.'"

Even though Holmquist's statement superficially appears to be merely a "position statement," the court deems from the total circumstances that it constituted "negotiating." The court in Board of School Directors, supra, at page 653 stated:

"On the other hand, if the minority union representative is permitted to influence the decision of the school board by his argument, then he is truly 'negotiating.'"

In the case at bar, Holmquist in fact desired to have the fair-share proposal deleted from the agreement. In addition, the school district did not remain passive in relation to this matter. When Reed and Holmquist commenced their anti-fair-share campaign, they showed their anti-fair-share document entitled "E. C. - O. L. O. G. Y." to building principals. They also received permission to circulate the "informational letter" to teachers through the teacher mail boxes. They were also permitted to circulate their anti-fair-share petition to teachers in the school buildings. Such permissiveness was in direct contradiction to Article V, paragraph J, at page 57, and Article V, paragraph K, at page 57, of the negotiated agreement in effect between MTI and the board. Thus, the board's conduct involved more than its permitting Holmquist to speak to it on fair-share. It involved conduct which could only have for its purpose the frustration of the rights of the majority.

The court is also of the opinion that the decision of the Wisconsin Employment Relations Commission is reasonable and is not inconsistent with the requirements of sec. 111.70(3)(a)(3), Stats. Such decision does not require the employer to refuse to meet its statutory obligations under sec. 111.70(4)(d), Stats., nor is it contrary to the intent of sec. 111.70(2), Stats.

Accordingly, the Findings and Order of the Commission are affirmed. Counsel may prepare an appropriate judgment for the court's signature.

Dated: October 2, 1973.

BY THE COURT:

William C. Sachtjen /s/
William C. Sachtjen, Judge