

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WESTERN WISCONSIN TECHNICAL	:	
INSTITUTE FACULTY FEDERATION	:	
AFFILIATED WITH THE WISCONSIN	:	Case II
FEDERATION OF TEACHERS, AFT,	:	No. 17439 MP-306
AFL-CIO,	:	Decision No. 12355-B
	:	
Complainant,	:	
	:	
vs.	:	
	:	
WESTERN WISCONSIN TECHNICAL	:	
INSTITUTE, 1/	:	
	:	
Respondent.	:	
	:	

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Appearances:

Mr. William Kalin, Director of Organization, on behalf of Wisconsin Technical Institute Faculty Federation, affiliated with the Wisconsin Federation of Teachers, AFT, AFL-CIO.

Foley and Lardner, Attorneys at Law, by Mr. F. Roberts Hanning, Jr., for Western Wisconsin Technical Institute.

Mr. Thomas Bina, Field Representative, on behalf of Western Wisconsin Technical Institute Education Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Western Wisconsin Technical Institute Faculty Federation, affiliated with the Wisconsin Federation of Teachers, AFT, AFL-CIO, having filed a complaint and amended complaint, on December 10, 1973 and February 1, 1974, respectively with the Wisconsin Employment Relations Commission, wherein it alleged that Western Wisconsin Technical Institute, LaCrosse, Wisconsin, had committed certain prohibited practices under Section 111.70 of the Municipal Employment Relations Act; and hearing 2/ having been held on February 4, 1974, before Hearing Officer Amedeo Greco, a member of the Commission's staff; and briefs having been received by June 4, 1974; and the Commission having considered the evidence and arguments, 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 Western Wisconsin Technical Institute Faculty Federation, affiliated with the Wisconsin Federation of Teachers, AFT, AFL-CIO, herein referred to as the WFT, is a labor organization having an office at Route 1, Box 49, Poplar, Wisconsin.

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1/ Although the original and amended complaint incorrectly referred to Respondent by another name, Respondent's Answer, as well as the evidence, indicates that the foregoing is Respondent's correct name. Accordingly, Respondent's name has been so amended.

2/ Said hearing also considered objections to the conduct of the election which were filed by the Complainant. Those objections, which are identical to the complaint allegations herein, are discussed in a separate decision issued today.

2. That Western Wisconsin Technical Institute, herein referred to as the Respondent, is a municipal employer and operates an educational facility, having its principle offices at Sixth and Vine Streets, LaCrosse, Wisconsin; and that Charles Richardson and Dale Tessmer are Respondent's District Director and Business Manager respectively.

3. That since approximately 1965 or 1966, Respondent has engaged in collective bargaining negotiations with a faculty committee known as the "Faculty Personnel Policies Committee", herein referred to as the Committee; that such negotiations have culminated in a series of collective bargaining agreements covering the hours, wages and other conditions of employment for certain of Respondent's faculty personnel; that the last agreement entered into by the Respondent and Committee covered the 1973-1974 school year; and that the Committee thereby functioned as a labor organization.

4. That, following earlier contacts with the employes, the WFT filed a petition with the Commission on September 11, 1973, <sup>3/</sup> wherein it requested that an election be conducted among certain of Respondent's faculty personnel; that at about that time, two other organizations, the Western Wisconsin Technical Faculty Education Association, WEAC, NEA, herein referred to as the WWTFEA, and the LaCrosse Independent Teachers' Association, herein referred to as the Independent, also claimed to represent such faculty personnel; and that the Commission on November 12 issued a Direction of Election, and scheduled such an election for December 6 in which the above-noted labor organizations would participate.

5. That following the filing of said petition, the Committee became inactive; that several individuals who had previously served as officers of the Committee became officers of the then newly founded Independent; that in a November 26 letter to faculty personnel, the Independent stated in pertinent part:

"Why the change from the Personnel Policies Committee?"

Federal Law prohibits a company union. There is a possibility that the Personnel Policies Committee could be challenged on this basis. With this albatross around its neck, the PPC cannot hire reputable lawyers or buy insurance. The change to LITA removes this difficulty."

6. That in a December 3 letter to faculty personnel, the Independent stated, in part:

"Charles Richardson in his letter of November 29, 1973 states, 'As a result of this bargaining, the WWTI staff was one of the first in the State VTAE system to have ..... insurance plan with 100 % of the premium paid by by (sic) the district.'

We have bargained in the past It has been successful. Why can't we continue with such a system?

. . .

. . . make the Personnel Policies Committee legit, legal. (sic) Two things, independent of school regulations and voluntary membership. That is what the La Crosse

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<sup>3/</sup> Unless otherwise noted, all dates hereinafter refer to 1973.

Independent Teachers offers you, a legal alternative to the Personnel Policies Committee."

7. That in a December 5 letter, the Independent, in effect, advised faculty personnel that it had been formed in order to erase any questions as to whether the previous Committee had been unlawfully assisted by Respondent.

8. That prior to the conduct of the election, the WFT, the WWTFEA, and the Independent distributed campaign material to the eligible employees; that in response thereto, Respondent, which did not hold any meetings with its employees during the election campaign, also distributed to the eligible employees three pieces of campaign literature dated November 29, December 3, and December 4 over the signature of Director Richardson; that these letters mentioned benefits which employees enjoyed, explained the meaning of a "no" vote in the election, and alluded to the employees' prior bargaining representative, namely the Committee.

9. That, more particularly, with reference to the question of benefits, Respondent, through Richardson, advised employees that:

"Therefore, when you vote on December 6, please consider what you have already gained without the assistance of any labor organization. Then consider what can be further gained through a labor organization that cannot be gained by continuing the situation which has existed in the past."  
(November 29 letter)

"To me, your choice is a simple one. Do you want to be represented by one of the participating labor organizations who have suddenly appeared on the scene with promises and unfounded claims or do you want to reject these labor organizations by a 'no representation' vote so that we will have an opportunity to continue the beneficial and harmonious relationship that has existed in the past between the WWII Board and professional staff." 4/

10. That, as to the effects of a "no" vote, Respondent stated in its December 3 letter:

"First of all, I want to clarify what the 'no representation' option on the ballot means. The words 'no representation' were not chosen by us but by the Wisconsin Employment Relations Commission. In my opinion, this is a poor choice of words because the Board and I consider a 'no representation' vote as meaning that the voter does not want any of the three participating labor organizations to be his or her collective bargaining agent. I feel a better wording selection would have been 'none of the above.' In short, if the 'no representation' option is selected by a majority of the voters, the result would not be interpreted as saying that these voters never want to have a representative for purposes of collective bargaining but rather they do not want to be represented in that manner by any of the three participating labor organizations.

. . . .

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4/ Letter of December 3.

It is understandable why this misleading claim has been made because, if a majority of the voters select the 'no representation' option, the three participating labor organizations will be precluded for a reasonable time period following this election (usually a one-year period) from claiming to represent you or seeking another election. However, these are the only labor organizations which would be so precluded. A 'no representation' outcome would not prohibit any other organization from attempting to submit proof that it represents a majority of the professional staff in an appropriate bargaining unit and presenting such proof to the Board with a request that it be recognized as the bargaining agent for that unit."

11. That in its December 4 letter on this subject, Respondent, through Richardson, stated:

"In my previous letters to you, I have tried to explain the position of the WWTI Board and Administration regarding (sic) election; namely, that a vote for the 'no representation' option would be in the best interest of you and the District. However, because of inquiries that continue to be made to the Administration Office, it appears necessary to provide some further clarification as to the meaning and effect of this option being selected by a majority of the voters. Two of the participating labor organizations have, in effect, propagandized that such a vote would preclude you from legally designating a nonparticipating organization to serve as your bargaining representative during the year following this election. This is not a true and accurate representation of the law.

A majority vote for 'no representation' would prohibit, for some period of time, any of the three participating labor organizations from seeking to be recognized or certified as your bargaining agent. However, any other organization which might wish to serve as such agent is not affected by this election result. Such other organization could present proof that it has been designated by a majority of the employees in an appropriate bargaining unit to be their bargaining representative and, based on that proof, request that the WWTI Board recognize it for that purpose.

. . .

According to our legal counsel, so long as any nonparticipating organization presents proper proof of its majority status in a bargaining unit that is appropriate, e.g., the nonsupervisory full-time professional instructors at WWTI, the Boards' recognition of it as your collective bargaining representative would be legal and proper."

12. That in referring to the prior bargaining representative, Respondent, through Richardson, stated in its November 29 letter:

"Moreover, it is my feeling that you already enjoy most of the benefits and privileges these organizations are promising to secure for you. They were obtained through arms' length bargaining between the Faculty Personnel Policies Committee and the Board.

As a result of this bargaining, the WWTI staff was one of the first in the State VTAE system to have a comprehensive hospitalization and surgical care insurance plan with 100%

of the premium paid by the district. Our staff was one of the first in the state to have available a loss of income insurance plan, and again with 100% of the premium paid by the district. Our staff is one of a few in the state that receives payment above salary schedule for each approved credit earned and each approved year of work experience. Our staff was one of the first in the state to have available a sabbatical leave policy with a stipend up to \$5,000. Our staff was one of the first in the state to have 4.5% of the employees' contribution to the Wisconsin State Teachers' Retirement System up to the Social Security maximum contribution paid by the district. These benefits were negotiated in our district prior to the time that similar benefits were negotiated in many districts affiliated with a labor organization.

. . .

The point of this rather lengthy letter is that your present salary and fringe benefits are among the best in the VTAE districts and were obtained for you before any of the three labor organizations participating in the election began attempting to win your support through promises and/or free food and drink. Furthermore, they were obtained without your having to pay substantial dollars in the form of dues, fees or assessments to an outside labor organization.

. . .

Therefore, when you vote on December 6, please consider what you have already gained without the assistance of any labor organization. Then consider what can be further gained through a labor organization that cannot be gained by continuing the situation which has existed in the past."

13. That in its December 3 letter, Respondent, through Richardson, also stated:

"The charge that the Faculty Personnel Policies Committee with whom the Board has negotiated in the past was a so-called company or 'sweetheart' union is unfounded and ridiculous. The primary motivation of an employer who seeks to deal with a 'sweetheart' union is to obtain a contract with economic benefits and language favorable to him in exchange for his granting mandatory union membership and dues. During the short period of time that we have negotiated with the Faculty Personnel Policies Committee, the salaries and value of the fringe benefits for the WWTI instructional staff have nearly doubled without your having to pay any dues of significance. Your current salary and fringe benefit levels alone belie completely any claim that your Faculty Personnel Policies Committee has not served your best interest because it was allegedly management dominated.

The suggestion that a 'no representation' vote would result in the Board unilaterally reducing your salary and fringe benefits is likewise without merit. As I noted in my last letter, your present economic benefits are an integral part of your individual contract and cannot be changed unilaterally by the Board during the term thereof. Moreover, such a suggestion ignores the fact that in the past the Board has followed a policy of granting WWTI personnel competitive and fair salaries and fringe benefits. The participating labor

organizations cannot offer you any proof that the Board will change its policy. They can only raise unfounded specters of adverse unilateral action in the hope of scaring you into accepting one of them as your bargaining agent.

. . .

To me, your choice is a simple one. Do you want to be represented by one of the participating labor organizations who have suddenly appeared on the scene with promises and unfounded claims or do you want to reject these labor organizations by a 'no representation' vote so that we will have an opportunity to continue the beneficial and harmonious relationship that has existed in the past between the WWTI Board and professional staff."

14. That the Commission conducted the representation election on December 6, wherein, of the 134 employees voting, 16 voted for the WFT, 12 for the WWTFEA, 10 for the Independent, 89 for 'no representation'; and 7 ballots were challenged.

Upon the basis of the above and foregoing Findings of Fact, the Commission renders the following

#### CONCLUSION OF LAW

1. That, while the above-noted letters to the employees from the Respondent, Western Wisconsin Technical Institute, over the signature of its District Director, Richardson, during the pre-election campaign did not contain any promise of benefits or threatened loss of benefits so as to influence the employees in their voting, however, said letters did manifest preference for a particular labor organization which did not appear on the ballot, the Faculty Personnel Policies Committee, and that by voicing such a preference, said Respondent committed a prohibited practice within the meaning of Section 111.70(3)(a)(1) of the Municipal Employment Relations Act.

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

#### ORDER

IT IS ORDERED that Western Wisconsin Technical Institute, its officers and agents, should immediately:

1. Cease and desist from showing any preference for the Faculty Personnel Policies Committee, or any other organization, in any subsequent representation election conducted among its employees.

2. Refrain from bargaining and/or recognizing any formal organization or informal organization of employees for one year following the holding of a newly directed election, 5/ unless such organization has first been certified as the collective bargaining representative for the employees herein in a Commission-directed election.

3. Take the following affirmative action which the Commission finds will effectuate the policies of Section 111.70 of the Municipal Employment Relations Act:

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5/ The Commission today is also, in the election case proceeding, issuing an Order setting aside the election and directing a new election.

- (a) Notify all employes, by posting in conspicuous places where notices to employes are usually posted, copies of the notice attached hereto and marked "Appendix A". Said notice shall be signed by Respondent, and shall be posted at the commencement of the start of the coming school term, and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by other material.
- (b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Given under our hands and seal at the  
City of Madison, Wisconsin, this *2nd*  
day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Howard S. Bellman*  
Howard S. Bellman, Commissioner

Appendix "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employes that:

1. WE WILL NOT express any preference for the Faculty Personnel Policies Committee or any other formal organization or informal organization representing employes in any representation election conducted among our employes.
2. WE WILL NOT recognize and/or bargain with any formal or informal organization representing employes for a one-year period, unless such organization has first been selected as the collective bargaining representative in an election conducted by the Wisconsin Employment Relations Commission.
3. WE WILL NOT in any other or related matter interfere with the rights of our employes, pursuant to the provisions of the Municipal Employment Relations Act.

By \_\_\_\_\_  
Western Wisconsin Technical Institute

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE  
HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.



MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

WFT asserts that Respondent's November 29, December 3, and December 4 letters to employes during the election campaign contained multiple prohibited practices by (1) on the one hand promising benefits to employes if they voted for no representation, while on the other hand threatening loss of benefits if they did vote for representation; (2) deliberately misrepresenting to employes the effects of a "no" vote; and (3) advising employes that it favored a particular labor organization. In its defense, Respondent primarily argues that all the statements in issue constituted lawful, permissible campaign propaganda and further, that WFT failed to establish that employes in fact received the three letters in issue which contained the alleged unlawful statements.

With respect to this latter claim, the record establishes that the author of these letters, Respondent's District Director, Richardson, testified that he approved those letters "before they were sent out" and that Respondent's Business Manager, Tessmer, testified in substance that he mailed the letters to employes. Accordingly, and as the totality of the evidence indicates that employes did receive those letters, the Commission finds no merit in the contention that the contents of the letters were not communicated to the employes.

The specific complaint allegations are discussed seriatim.

1. The alleged promise of benefits and threatened loss of benefits.

WFT argues that Respondent's November 29 and December 3 letters to employes contained promises of benefits if the employes voted for no representation. In support thereof, WFT points to certain language in those letters noted above in paragraph 9 of the Findings of Fact.

In viewing those statements together, the Commission finds, contrary to the contentions of WFT, that they do not constitute unlawful promises of benefit, as nothing contained therein, either explicitly or implicitly, can reasonably be construed to contain any promises to employes to the effect that they would receive certain benefits if they voted against representation. Rather, such statements constitute nothing more than permissible campaign propaganda which an employer can use in voicing its opposition to having its employes represented.

Similarly without merit is WFT's additional assertion that the foregoing excerpts constituted a threatened loss of benefits. It is true that Respondent did stress to its employes that they enjoyed certain benefits, which were obtained without the aid of any of the three participating unions, and further that Respondent spoke of its past "beneficial and harmonious relationship." However, since the continuation of those benefits and the continuation of the past "harmonious relationship" was not made contingent on how the employes voted, the Commission finds that these statements are not prohibited.

Accordingly, based upon the above, this complaint allegation is deemed dismissed in its entirety.

2. The Employer's alleged preference for the Faculty Personnel Policies Committee.

The evidence on this issue establishes that Respondent's November 29 letter to employes mentioned the various benefits which the Faculty Personnel Policies Committee had negotiated on their behalf and pointed out

that such benefits were obtained without the payment of "dues, fees, or assessments to an outside labor organization." In its December 3 letter the Employer reiterated that the Faculty Personnel Policies Committee had secured substantial benefits for employes and that such benefits "believe completely any claim that your Faculty Personnel Policies Committee has not served your best interest because it was allegedly management dominated."

In addition to reaping the praises of the Faculty Personnel Policies Committee in the foregoing manner, Respondent also advised employes in its November 29 letter that:

"Therefore, when you vote on December 6, please consider what you have already gained without the assistance of any labor organization. Then consider what can be further gained by continuing the situation which has existed in the past." (Emphasis added)

Since the Committee was the only organization which had represented the employes in the past, the above statement was an obvious reference to that organization. Indeed, District Director Richardson admitted that was so when he testified in substance that this reference to the past alluded to the Committee "or a similar organization" 6/ and that "I think that we had a bargaining unit as we were and I think I asked them to consider whether they wanted to change that unit." Explaining the meaning of the word "unit", Richardson testified that he meant the Committee. Going on, Richardson also stated that in his opinion employes could form a new Committee to represent them after the election.

Considered together, the foregoing clearly establishes that Respondent told its employes during the election campaign that they should continue to be represented by their former collective bargaining agent, the Faculty Personnel Policies Committee. By expressing such a preference, while at the same time intimating that recognition could be accorded to the Committee, 7/ Respondent interfered with the right of its employes to freely choose their own collective bargaining representative during the election campaign in violation of Section 111.70

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6/ As evidenced in paragraphs 5, 6, and 7 of the above Findings of Fact, the Independent attempted to claim in its letters to employes that it was in effect the alter ego of the Committee and that it had been formed merely to overcome any legal obstacles which may have been present in the structure creating the Committee. Accordingly, and since the record indicates that Respondent knew of these claims by the Independent, it can be inferred that Richardson's reference to "a similar organization" also embraced the Independent and that such a statement indicates that Richardson also favored the Independent over the other two unions which appeared on the ballot.

7/ In light of our disposition of the case, the Commission finds it unnecessary to pass on the merits of the complaint allegation that Respondent misrepresented the legal effects of a no vote, as a resolution of this issue is not needed where, as here, Respondent has elsewhere committed a prohibited practice which to some extent is somewhat related to that complaint allegation, and where, in any event, the WFT had an opportunity to rebut such alleged misrepresentations prior to the December 6 election when it met with employes on December 5.

(3) (a) (1) of the Municipal Employment Relations Act. 8/

To rectify this prohibited conduct, the Commission has ordered Respondent to cease and desist from engaging in similar conduct and to take certain affirmative action with regard thereto. Further, inasmuch as Respondent's prohibited practice interfered with the free choice of the employees to choose their own organizing agent, the Commission today in a separate decision is setting aside the results of that election and had ordered to holding of a new election.

Additionally, the Commission has also directed that Respondent should be precluded from recognizing and/or bargaining with the Faculty Personnel Policies Committee, or any other formal or informal employee organization, for a one-year period following the holding of the new election, unless such organization has first been selected to represent employees in a Commission-directed election. Such a remedy is deemed necessary to dissipate the effects of Respondent's prohibited conduct, and to also to create an atmosphere wherein the employees can cast a free and unfettered ballot in any new election which may be conducted. Based upon the facts herein, the Commission believes that the latter objective can only be achieved if the employees are aware that the Respondent cannot gratuitously recognize and bargain with its own hand-picked organization, notwithstanding the fact that said organization chose not to participate in the representation election.

Dated at Madison, Wisconsin, this *2nd* day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Howard S. Bellman*  
Howard S. Bellman, Commissioner

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8/ See West Allis Jt. School District No. 1 (6544) 11/63; Waunakee Jt. School District No. 1 (6706) 4/64; Milwaukee Board of School Directors (9258) 10/69.