

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN FEDERATION OF TEACHERS, STATE :
EMPLOYEES' LOCAL 3271, :

Complainant, :

vs. :

WISCONSIN BOARD OF VOCATIONAL, TECHNICAL: :
AND ADULT EDUCATION, :

Respondent. :

Case I
No. 18452 PP(S)-25
Decision No. 13168-A

Appearances:

Mr. Robert J. Gurian, Staff Representative, appearing on behalf
of the Complainant.

State of Wisconsin, Department of Administration, by Mr. Lionel L.
Crowley, Esq., appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Wisconsin Federation of Teachers, State Employees' Local 3271
having on November 4, 1974, filed a complaint with the Wisconsin Employ-
ment Relations Commission alleging that Wisconsin Board of Vocational,
Technical and Adult Education, committed certain unfair labor practices
in violation of Section 111.84(1)(a) and (c) of the State Employment
Labor Relations Act, and the Commission having set hearing in the
matter for November 25, 1974; and said Respondent on November 19, 1974,
having filed a motion with the Commission wherein it requested that
the Commission dismiss the complaint; and the Commission having denied
said motion on November 20, 1974; and hearing on said complaint having
been held at Madison, Wisconsin, as scheduled, Chairman Morris Slavney
being present; and the Commission having considered the evidence and
arguments, and being fully advised in the premises, makes and issues
the following

FINDINGS OF FACT

1. That Wisconsin Federation of Teachers, Staff Employees' Local
3271, hereinafter referred to as the Complainant, is a labor organization,
having its offices at 1114 Frisch Road, Madison, Wisconsin.

2. That the Wisconsin Board of Vocational, Technical and Adult
Education, hereinafter referred to as the Respondent, is an agency
of the State; and that Jack W. Smythe and Doyle Beyl are employed as
supervisors of the Respondent and that at all times herein they have
acted as Respondent's agents.

3. That at all times relevant herein, the Respondent and Complainant
have been parties to a collective bargaining agreement, covering non-
managerial, non-supervisory and non-confidential teaching personnel in
the employ of the State, wherein Article V, Section 2 provides:

No. 13168-A

"Wage Adjustments

- A. Effective July 1, 1974, the Employer agrees to provide all employees the following general economic adjustments:
1. Employees classified other than teachers 1-6, a general economic adjustment of five and one-half percent (5 1/2%).
 2. Employees classified as Teachers 1-6, a general economic adjustment as follows:
- | | |
|-----------|----------------|
| Teacher 1 | \$41 per month |
| Teacher 2 | 52 per month |
| Teacher 3 | 55 per month |
| Teacher 4 | 58 per month |
| Teacher 5 | 62 per month |
| Teacher 6 | 65 per month |
- B. Except as provided in sub. 2 below, each employee, excluding probationary employees and employees at their pay range maximums, shall be eligible to receive on July 1, 1974, a merit increase in recognition of meritorious service to be applied after the general economic adjustment. The generation of such merit monies shall be as follows:
1. Employees classified other than Teachers 1-6: merit money will be generated on a basis of forty percent (40%) of the amount which would be required if every employee eligible for a merit increase on July 1st were to receive an increase equal to one within range pay step or portions thereof required to reach the maximum of the pay range to which their position classification is assigned. Distribution of merit increases will be in one dollar (\$1.00) increments however, no employee may receive more than two (2) within range pay steps.";

and that Article X, Section 1 states that:

"The parties agree that their respective policies will not violate the rights of any employees covered by this Agreement because of . . . Federation or non-Federation affiliation";

and further that Article IV of said agreement defines and limits a grievance to:

". . . a written complaint involving an alleged violation of a specific provision of the Agreement.";

and goes on to provide for final and binding arbitration of grievance disputes.

4. That in February, 1974, Lawrence E. Allwardt was reclassified from a Vocational Education Consultant I to a Vocational Education Consultant II retroactive to November, 1973 on the basis of a settlement reached during a proceeding before the Personnel Board; that Sherman D. Ansell, at all times relevant herein has been employed as a Vocational Education Consultant I; and that further, Allwardt served as President, and Ansell served as Chief Steward, of the Complainant.

5. That in late February, 1974, Allwardt attended a proceeding before the Personnel Appeals Board; that at the conclusion of that proceeding, at approximately 3:30 p.m., Allwardt attended a negotiation

session between the Complainant and the State, relating to wages, hours and conditions of teaching personnel in the employ of the State; and that upon the direction of Bureau Director Jack Smythe, Allwardt was docked a full day's pay as a result of attending said negotiation session; and that such decision was subsequently reversed by the Division Administrator, Donald Brill.

6. That Ansell also attended the aforementioned negotiation session as of 4:30 p.m., subsequent to his paid attendance of a Board of Regent's meeting; and that subsequently, the Bureau Director requested that Ansell submit a leave slip for being absent from duty to attend negotiations, and that such request was later dropped.

7. That the annual personnel evaluation for Allwardt, prepared by Smythe and dated May 31, 1974, wherein Allwardt met or exceeded all performance criteria, and where Allwardt was given a rating of "12", contained the following explanatory comments:

"The volume and quality of Mr. Allwardt's work has decreased basically for two reasons: 1) His interest has been directed to areas other than Personnel Certification; 2) Assignments previously given him are now assigned to a new staff member in the bureau.

Mr. Allwardt has been able to function effectively in a process that has been and will continue to be a sensitive area: Personnel Certification. His ability to compromise personnel problems at the teaching level contributes to this effectiveness.

Mr. Allwardt continues to differ with his supervisor in several areas considered to be important to the agency and to his function within the agency. It is hoped that the future holds promise for a rebuilding in these crucial areas."

8. That subsequent to the receipt of the aforementioned evaluation, Allwardt met with Smythe regarding same; that Symthe there stated that Allwardt has used his previous merit evaluation against Symthe in a grievance and that, as a result, Allwardt has to expect to pay "some sort of price for Union activity and your victory"; that Smythe also then stated that since Allwardt had used his prior high evaluation to win his grievance, that he, Symthe, was not going to grant Allwardt any further high evaluations; and that prior to said meeting, Symthe had indicated to Allwardt, on a number of occasions, that Allwardt was part of management and that, therefore, Allwardt should not be represented by a collective-bargaining representative.

9. That the annual personnel evaluation for Ansell prepared by his immediate supervisor, Doyle Beyl, and dated March 24, 1974 accorded Ansell an overall very satisfactory performance rating wherein Ansell was given a "12" rating, provided therein that Ansell:

". . . occasionally has priorities listed for him which interfere with his organization of work goals . . . The employee is vulnerable to requests for help which may interfere with personal goals . . . There are times when employee should not attempt an answer or recommendation when the question is out of his field Employee presents firm arguments for a position, however, they do not always 'sell' the position. The work accomplished reflects the position of management, the personal qualities tend to exploit the vulnerability of management The employee should identify a long-range project within the agency and steer toward it rather than dissipating his resources over several more immediate concerns."

10. That Ansell met with Beyl regarding the contents of Ansell's evaluation; that Beyl there stated that Ansell knew why Beyl was unhappy with Ansell's performance; that Beyl and Ansell then discussed, in general terms, Ansell's obligations as a union representative; and that part of Ansell's evaluation which stated that "the personnel qualities tend to exploit the vulnerability of management" referred to the time that Ansell represented certain employees in his union capacity before the Bureau of Personnel.

11. That the aforementioned evaluations were considered in the determination of the 1974-75 merit increases granted Allwardt and Ansell; and that in addition to receiving the overall negotiated wage increase, Allwardt and Ansell were on or about July 1, 1974, extended merit increases which were \$2 and \$4, respectively, less than the maximum amount of money generated by and available for their positions; and that Allwardt and Ansell both received a rating of "12" on their respective evaluations; that, but for Allwardt and Ansell, all other employees within the department who received similar "12" ratings received the full merit increases generated by their positions.

12. That Complainant subsequently processed grievances relating to the merit adjustments given to Allwardt and Ansell through the initial steps of the grievance procedure, where they were denied; and that Complainant at no time requested that said grievances be submitted to arbitration.

13. That Respondent's refusal to grant Allwardt and Ansell maximum merit raises was motivated by their union activities.

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

CONCLUSION OF LAW

That since the Respondent's refusal to grant Allwardt and Ansell their maximum merit increases was motivated by their union activities, the Respondent committed prohibited practices within the meaning of section 111.84(1)(a) and (c) of SELRA in said regard.

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

ORDER

IT IS ORDERED that Wisconsin Board of Vocational, Technical and Adult Education, its officers and agents, shall immediately:

1. Cease and desist from:

Refusing to grant union members maximum merit raises because of the union activities of said employees, or in any other manner discriminating against such employees because of their union activities.

2. Take the following affirmative action which the Commission finds will effectuate the policies of SELRA:

(a) Reimburse Lawrence Allwardt and Sherman Ansell by paying to them the difference between what they received in merit money and the maximum that they were entitled to receive.

(b) Delete from Allwardt's and Ansell's 1974 evaluations all adverse references to their union activities.

- (c) Notify all employees, by posting in conspicuous places in its offices where notices to employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Said notice shall be signed by the Director of the Respondent and shall be posted immediately upon receipt of a copy of this Order 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.
- (d) 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 *27th*
day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, 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 State Employment Labor Relations Act, we hereby notify our employees that:

1. WE WILL reimburse Lawrence Allwardt and Sherman Ansell by paying to them a sum of money which they would have earned had they been granted the maximum amount of merit raises generated by their positions.
2. WE WILL delete from Allwardt and Ansell's 1974 evaluations all adverse references to their union activities.
3. WE WILL not discriminate against Allwardt and Ansell, or any other employees, because of their union activities.
4. WE WILL NOT in any other or related matter interfere with the rights of our employees, pursuant to the provisions of the State Employment Labor Relations Act.

By _____
Director, Wisconsin Board of
Vocational, Technical and Adult
Education

Dated this _____ day of _____, 1976.

THIS NOTICE MUST BE 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,
CONCLUSION OF LAW AND ORDER

The basic issue presented is whether Respondent discriminatorily denied Allwardt and Ansell maximum merit raises because of their union activities, with Complainant contending, and Respondent denying, that such was the case.

Before considering the merits of this issue, it is first necessary to rule on Respondent's claim that the matters herein should be deferred to the contractual arbitration procedure. In this connection it is true, as Respondent points out, that the collective bargaining agreement provides for a grievance-arbitration procedure and that grievances were initially filed on behalf of Allwardt and Ansell, but not pursued through arbitration. Nonetheless, the Commission believes that deferral to arbitration is unwarranted under the facts presented, since Complainant in the instant proceeding is asserting that Respondent's refusal to grant maximum merit raises was violative of the statutory proscriptions set forth in Section 111.84(1)(a) and (c). That being so, it is clear that Complainant's case rests on the theory that Respondent has deprived Allwardt and Ansell of their statutory rights. Since Complainant is not asserting any contractual violation, it would be inappropriate to defer to arbitration matters which basically involve an alleged violation of the statutory scheme. Accordingly, Respondent's claim that the matters herein be so deferred is hereby denied.

Turning to the merits of the Complainant allegations, there is no question but that Allwardt and Ansell were extremely active on behalf of the union and, further, that their activities were well known to Respondent, including supervisors Smythe and Beyl.

Furthermore, as noted in paragraph 8 of the Findings of Fact, it is undisputed that Smythe specifically told Allwardt that he, Allwardt, had to pay "some sort of price for Union activity and your victory", that Allwardt had used his prior high evaluation against Smythe to win Allwardt's prior grievance, and that, as a result, Smythe would not give Allwardt any more high evaluations. 1/ Taken together, these statements clearly and unequivocally demonstrate Smythe's pronounced animus against Allwardt's union activities. Since Smythe then acknowledged that Allwardt's evaluation was based on Smythe's desire to punish Allwardt for his union activities, and because Allwardt thereafter was deprived of a full merit raise on the basis of Smythe's evaluation, the record establishes that Respondent deliberately refused to grant Allwardt the maximum merit raise due him solely because of Allwardt's union activities. It is well established that such discriminatory treatment of a union adherent is violative of Section 111.84 (1)(a) and (c).

Similarly, Respondent also discriminated against Ansell because of Ansell's union activities. Thus, as noted in Paragraph 10 of the Findings of Fact, Beyl bore the same animus against Ansell which Smythe bore

1/ These findings are based on Allwardt's undisputed testimony. Smythe did not testify.

against Allwardt, and Beyl demonstrated that animus when he evaluated Ansell. Such animus is partly reflected by the fact that Beyl discussed Ansell's union activities when they discussed Ansell's evaluation and the fact that part of Ansell's evaluation alluded to Ansell's union activities. 2/ Additionally, it appears that Ansell and Allwardt were the only two employees who received ratings of "12" who did not receive the maximum merit raises generated by their positions. In light of the above mentioned factors, the Commission finds that, like Allwardt, Ansell was denied a maximum merit increase only because of his union activities and that a denial based on such discriminatory considerations violated Section 111.84(1)(a) and (c).

To rectify the aforementioned violations, Respondent is required to take the remedial action set forth in the Order.

Dated at Madison, Wisconsin this 27th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

2/ These findings are based on Ansell's undisputed testimony. Beyl did not testify.