

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

FREDONIA EDUCATION ASSOCIATION,

Complainant,

vs.

FREDONIA UNIFIED SCHOOL DISTRICT
NO. 1,

Respondent.

Case V

No. 22232 MP-798

Decision No. 15938-A

Appearances:

Mr. Dennis Eisenberg, Executive Director, on behalf of Complainant.
O'Meara, O'Meara and Eckert, Attorneys at Law, by Mr. Stephen
O'Meara, on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Fredonia Education Association, herein referred to as Complainant, having filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, alleging that Fredonia Unified School District No. 1, herein referred to as Respondent, had committed prohibited practices within the meaning of Section 111.70 of the Municipal Employment Relations Act; and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner and to make and issue findings of fact, conclusions of law and orders as provided in Section 111.07, Wis. Stats.; and hearing on said complaint having been held before the examiner at Port Washington, Wisconsin on December 20, 1977; and the examiner having considered the evidence and arguments of the parties, makes and files the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. That Complainant Fredonia Education Association is a labor organization with offices located at Fredonia, Wisconsin.

2. That Respondent Fredonia Unified School District No. 1 is a municipal employer which operates a school district with offices located in Fredonia, Wisconsin.

3. That at all relevant times Respondent recognized Complainant as the exclusive collective bargaining representative of certain of its professional teaching personnel and that in that regard Respondent and Complainant have been party to a series of collective bargaining agreements one of which was in effect for the 1976-77 school year; and

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That Respondent Fredonia Unified School District No. 1, by having unilaterally altered its school board policy with respect to the use of its facilities to prohibit Complainant's use thereof for its

and conditions of employment under the provisions of Wisconsin Statutes 111.70 and 111.71 for the school year 1976-1977 and will remain in effect until a new agreement is accepted,

. . .

ARTICLE X: SAVINGS CLAUSE

- A. This agreement reached as a result of negotiations represents the full and complete agreement between the Board and the Association and supercedes all previous agreements between the parties. The Association recognizes that it may be necessary for the Board to adopt and formulate policies not specifically covered by this agreement or provided for. All existing school policies affecting teachers, unless changed by this agreement, shall remain unaltered until changed by mutual consent. Both parties recognize that any additional policies shall not be in conflict with the agreement.

. . ."

4. That at all relevant times after November 24, 1969, Respondent has maintained a written policy with respect to the use of its facilities by others which in effect authorized their use by nonprofit organizations and prohibited their use by profit making organizations for purposes of private gain,

5. That at all relevant times prior to July 25, 1977, Respondent by its own conduct and that of its agents had, in effect, construed the policy specified in Finding of Fact 4, above, to authorize Complainant to use its facilities for its meetings, usually held immediately before or after school, but occasionally at other times when the facilities were open; that Respondent had, in fact, regularly permitted Complainant to use its facilities at all relevant times prior to July 25, 1977.

6. That prior to July 25, 1977, the parties reached accord with respect to a successor to the agreement specified in Finding of Fact 3, above; that during Respondent's meeting held on July 25, 1977 for the purpose of ratifying same, Respondent unilaterally altered the policy specified in Finding of Fact 4, above, by adopting the view Complainant was a profit making organization engaged in activities for private gain within the meaning of said policy when it engaged in the

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to an order of an examiner appointed by the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. We will permit Fredonia Education Association to use our school buildings in the same manner as we permitted them to do prior to July 25, 1977.
2. We will not make alterations in existing school policies affecting teachers, without mutual consent of the Fredonia Education Association.

FREDONIA UNIFIED SCHOOL DISTRICT NO. 1

By _____
Donald Landrum
Board President

Dated this _____ day of _____, 1978.

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

Complainant, in relevant part, alleges Respondent violated Article X, Section A of the parties' prior and existing agreements when it unilaterally altered its longstanding practice of permitting Complainant to use its facilities for its meetings. It seeks the usual order including an order requiring Respondent to permit it to use Respondent's school buildings for its meetings, and order requiring Respondent to reimburse it for any expense it incurred in obtaining substitute facilities and attorneys' fees for prosecution of the instant matter.

Respondent, in relevant part, denies it made any change in its policy in that it did not alter its written policy and merely corrected its agents' misapplication thereof on July 25, 1977. Alternatively, it asserts that if the agreement does require it to permit Complainant to use its facilities, the agreement is unlawful because it requires Respondent to provide indirect financial aid to Complainant in violation of Section 111.70(3)(a)2, Wis. Stats.

DISCUSSION

Article X, Section A states in relevant part:

" . . . All existing school policies affecting teachers, unless changed by this agreement, shall remain unaltered until changed by mutual consent. . . ."

The instant policy clearly affects teachers by affecting their representative's interests. There can be little doubt that this policy had been knowingly administered in a manner which permitted Complainant to use Respondent's facilities for its meetings on a regular basis. Respondent's agents had regularly permitted Complainant to do so for at least the last ten years, and Respondent, itself, had been fully aware of this activity almost as long. From the teachers' interest this long practice is the essence of the instant policy. For some unexplained reason, Respondent unilaterally changed this policy on July 25, 1977 by changing this interpretation. I am satisfied this change constitutes an alteration of the type proscribed by Article X, Section A.

Section 111.70(3)(a)2 is intended to proscribe conduct which undermines the independence of employees' labor organizations. Respondent's providing Complainant with services like these, which are similar to those provided the general public, is not the conduct to which the