

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondents .

Case XXXIV
No. 14498 MP-93
Decision No. 10242-A

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Complainant. City of Appleton, by Mr. David G. Geenen, City Attorney, appearing on behalf of the Respondent, City of Appleton. Hoeffel, Coughlin and Bayorgeon, Attorneys at Law, by Mr. Patrick F. Coughlin, appearing on behalf of Leona Bodmer, Respondent.

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter, and the Commission having appointed Herman Torosian, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; hearing on said complaint having been held at Appleton, Wisconsin, on May 18, 1971, before the Examiner; and the Examiner having considered the evidence, arguments and briefs of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

3. That Robert Roemer, hereinafter referred to as Respondent Roemer, is a city alderman representing the 8th Ward in the City of Appleton, Wisconsin; and that during the time material herein Roemer

was Chairman of the Committee of Jurisdiction but was not a member of the Negotiating Committee for the City.

4. That Leona Bodmer, hereinafter referred to as Respondent Bodmer, has been employed by the City of Appleton since 1959 as a crossing guard.

5. That Complainant in March 1969 was voluntarily recognized as the exclusive bargaining representative of crossing guards employed by Respondent Employer; that thereafter Complainant and Respondent Employer entered into negotiations covering the wages, hours and conditions of employment of said crossing guards; that Complainant and Respondent Employer having reached an impasse in negotiations submitted unresolved issues to a fact finder who issued his recommendations on October 30, 1970; that said recommendations were received by the parties on or about November 4, 1970; that among recommendations made by the fact finder a wage rate of \$2.20 per hour, which had previously been offered by the City during negotiations, and certain added insurance benefits were recommended.

6. That on or about November 10, 1970, Robert Schlieve, Secretary-Treasurer of Complainant labor organization, spoke to David Geenen, City Attorney for Appleton, Wisconsin, concerning the fact finder's report; that Geenen indicated to Schlieve that said recommendations were not acceptable to the City and that Schlieve should contact the Negotiating Committee for a meeting; that on the same date Schlieve spoke to the mayor of Appleton concerning the fact finder's recommendations, and that the mayor indicated said recommendations were not acceptable to the City; and that in November 1970, Gerald Lang, Personnel Director for the City of Appleton, had two conversations with Jeffrey Curtin, Business Agent, Local #563, concerning the fact finder's recommendations at which time Lang informed Curtin that said recommendations were not acceptable to the City.

7. That thereafter on November 16, 1970, Robert Schlieve, held a meeting with members of Complainant labor organization at which time the fact finder's report was discussed; that present at said meeting was Respondent Bodmer; that Respondent Bodmer, Pat Verhain, and Shirley Treichel were designated members of the Union's Negotiating Committee; and that at said meeting members were urged by Mr. Schlieve to contact their alderman concerning the fact finder's recommendations and the current status of negotiations for the purpose of exerting pressure upon the City to meet and negotiate a collective bargaining agreement.

8. That the City Negotiating Committee consisting of the City Attorney, Director of Personnel, Finance Director, the Department Head, and a member of the Common Council appointed by the mayor met and decided the fact finder's recommendations were not acceptable to the City and that they would take no further action concerning the fact finder's recommendations until a formal request for a meeting was made by the Union; that the unacceptability of the fact finder's recommendations was conveyed to the Union but the City's position that no further action would be taken until a formal request for a meeting was made by the Union was not conveyed to the Union; and that at no time did Respondent City refuse to negotiate with the Union the recommendations made by the fact finder.

9. That on November 18 Schlieve spoke to Robert Roemer concerning the fact finder's report and requested Roemer to use his office as alderman and chairman of the Committee of Jurisdiction to get the parties off dead center; and that Roemer said he would make an attempt to do same but that he never contacted Schlieve thereafter.

10. That on November 30 Bodmer talked to Curtin by telephone and indicated she was disappointed with the Union's progress in bargaining and that she requested the Union to meet with the City in order to reach an agreement; that she called again on December 22 but neither Schlieve nor Curtin was in the office.

11. That the following letter was written by Schlieve to Gerald Lang, Personnel Director:

"Fact Finder Brodie's Report and Recommendations in subject matter was forwarded by him on November 3, 1970. To date, the City has done nothing to implement same. If there are any issues concerning this matter, please advise your availability to meet and resolve same. We will arrange our schedule to accommodate you."

but that said letter was not received by Lang.

12. That on December 23, 1970, Bodmer called Lang to discuss an error made on her paycheck for the pay period ending December 11; during said conversation Bodmer asked Lang why it was taking so long to settle the contract dispute between the Union and the crossing guards; that Lang was sympathetic to her and the other girls and during said conversation Lang told Bodmer that the City had offered the crossing guards \$2.20 per hour, which was already known to Bodmer.

13. That on December 29, Bodmer notified the Union she was withdrawing from the Union.

14. That on January 6, 1971, while on duty, Bodmer had a conversation with Curtin; that among things discussed during said conversation was the reason why Bodmer dropped her membership in the Union and if she would reconsider and return to the Union if the Union could get things going with the City again; and that Bodmer refused, claiming that after two years she had had it; that Curtin admitted that negotiations had been going on a long time.

15. That during the first week of January, Bodmer, while on her way to work saw Roemer, her alderman, outside his home and had a conversation with him concerning certain matters involving the Union; and that in said conversation Bodmer and Roemer did not negotiate the wages, hours and conditions of employment of Bodmer or other crossing guards.

16. That sometime in early January, Bodmer had a conversation with a fellow employe, Dorothy Denil, wherein she informed Denil that she was thinking of getting a petition to get rid of the Union and that Denil stated that she would not sign said petition; and that Respondent Bodmer in her conversations with other crossing guards concerning the petition stated that she was their member in the bargaining committee and that she couldn't get anywhere with the Union so she was getting out.

17. That subsequently on January 19 Bodmer filed a petition for election with the Wisconsin Employment Relations Commission claiming

the crossing guards no longer wanted to be represented by Complainant labor organization.

18. That Respondent City of Appleton at no time material herein refused to recognize and negotiate with Complainant labor organization nor did Respondent City and Respondent Roemer at any time material herein enter into individual negotiations over wages, hours and conditions of employment with Respondent Bodmer.

19. That Respondent City and Respondent Roemer at no time material herein entered into an agreement with Respondent Bodmer whereby she and other crossing guards would receive a pay increase provided that Respondent Bodmer and other crossing guards successfully decertified Complainant labor organization.

20. That Respondent Bodmer did not at any time material herein become an agent of Respondent City of Appleton by entering into an agreement with Respondent City or any of its agents.

21. That Respondent Bodmer at no time material herein informed crossing guards that Respondent City would only grant them certain benefits if they decertified Complainant labor organization.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That Respondent Leona Bodmer was at no time material herein an agent of Respondent City of Appleton.

2. That Respondent City of Appleton did not refuse to recognize and negotiate with Complainant labor organization nor did Respondent City and Respondent Roemer enter into individual negotiations with Respondent Bodmer and therefore did not violate Section 111.70(3)(a)1 1/ of the Wisconsin Statutes.

3. That Respondent City and Respondent Bodmer did not enter into an agreement whereby Respondent Bodmer and other crossing guards would receive a pay increase provided that Respondent Bodmer and other crossing guards successfully decertified Complainant labor organization and, therefore, have not engaged in any unfair labor practice within the meaning of Section 111.70(3)(a)1 or Section 111.70(3)(a)2 of the Wisconsin Statutes.

4. That Respondent Leona Bodmer in contacting and speaking to crossing guards and circulating a petition to decertify Complainant labor organization did not commit a prohibited practice within the meaning of Section 111.70(3)(b)1 of the Wisconsin Statutes.

1/ All references to Section 111.70 of the Wisconsin Statutes are as that section was worded prior to November 11, 1971.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

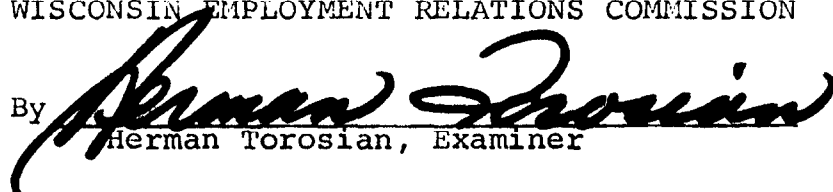
ORDER

IT IS ORDERED that the complaint in this matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 21st day of December, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Examiner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondents.

No. 10242-A

During the course of the hearing and at the conclusion of Complainant's case, Respondent Bodmer moved for the dismissal of Complainant's complaint against Respondent Bodmer on the basis that the Union had not presented sufficient proof to establish that Respondent Bodmer participated in prohibited practices as alleged. The Examiner concludes that the Complainant has made a prima facie case and for said reason Respondent Bodmer's motion is hereby denied. Therefore, a determination on the merits will be made in the instant case by the undersigned.

First Cause of Action Alleging a Violation of
Section 111.70(3)(a)1 by Respondent
City of Appleton and Respondent Robert Roemer

In support of said cause of action Complainant specifically alleges the following:

"6. On or about December 1970, Robert Schlieve, Secretary-Treasurer of Complainant, wrote Respondent requesting the Fact Finder's Recommendations relating to conditions of employment for Crossing Guards be adopted.

7. Respondent City of Appleton did not reply to said letter but at a subsequent meeting refused to adopt the Fact Finder's Recommendations or even negotiate with Local 563 concerning them.

8. On or about the end of December 1970 or early January 1971, Alderman Robert Roemer, acting as an agent for Respondent City entered into individual negotiations with Respondent Leone Bodner by informing her that the Crossing Guards would have to give up certain recommendations to get others and therefore that she should inform him which recommendations Crossing Guards were willing to give up. Said negotiations took place in secret and without the knowledge of Local 563.

9. By the acts set forth above, Respondents City of Appleton and Robert Roemer have violated Section 111.70 (3)(a)(1)."

In regard to the above allegations the record in material part is as follows:

Robert Schlieve, Secretary-Treasurer of Local 563, in a conversation with Roemer on or about November 18, 1970, after the fact finder had issued his recommendations, asked Roemer to use his position as alderman and chairman of the Committee of Jurisdiction to get the parties off dead center in their contract negotiations. Roemer stated he would discuss it with the City and would get back to him later. Roemer never contacted the Union concerning same. Roemer, however, was not a member of the City's Negotiating Committee. The Negotiating Committee during the time material herein consisted of the Director of Personnel, who was chairman of the Committee, the City Attorney, the Finance Director, the Department Head and a member of the Common Council appointed by the mayor. Roemer was chairman of the Public Safety Committee but Alderman George Reynolds represented said Committee on the Negotiating Team. Said Committee met shortly after the issuance of the fact finder's recommendations and decided

the fact finder's recommendations were not acceptable and that they would take no further action concerning said recommendations until a formal request for a meeting was made by the Union. The Union was informed that the fact finder's recommendations were unacceptable but was not informed that no action would be taken until a formal request to meet was received from the Union. At no time, however, did the City refuse to negotiate the fact finder's recommendations with the Union. In fact, Geenen, when contacted by Schlieve about the recommendations, told Schlieve said recommendations were unacceptable but that he should contact the Negotiating Committee for a meeting.

Schlieve wrote a letter to Gerald Lang, Personnel Director, dated December 14, 1970, informing Lang that if there were any issues concerning the acceptability of the fact finder's recommendations that he should advise him of his availability to resolve same. It is not clear from the record who actually mailed the letter or if in fact it was mailed. Said letter, however, was not received by Lang.

Jeffrey Curtin, Business Agent, Local #563, had a conversation with Respondent Bodmer on or about January 6, 1971 at which time he questioned Bodmer why she had withdrawn from the Union and if she would reconsider and return to the Union if the Union could get things going with the City again. Bodmer refused, claiming that after two years she had had it. Curtin admitted that negotiations had been going on a long time. Respondent Bodmer testified that this was the entire conversation between her and Curtin.

Curtin's testimony in this regard, however, is as follows: "She stated that things had just been going too slow and she had talked to her alderman, who I believe was Mr. Roemer and asked him, apparently, what can be done, or what's going to happen and she told me that Mr. Roemer informed her that the girls would have to give up some of the things that were in the fact finder's report and Mrs. Bodmer stated that she felt one of the things the girls should give up was the insurance provision that the fact finder had provided for and stated to me that there were other things that she was sure some of the girls would be willing to give up."

The record establishes that the only conversation between Respondent Bodmer and Respondent Roemer, her alderman, took place sometime in early January. Respondent Bodmer was on her way to work when she saw Roemer in front of his home. Respondent Bodmer testified that she informed Roemer that the girls had withdrawn from the Union and that Roemer responded that the Union was still their legal bargaining representative and that he had nothing to say about it and further mentioned that the City could be charged with unfair labor practices.

In regard to the above conversation it is noted by the Examiner that Complainant relies entirely on hearsay evidence in trying to establish what was said by Respondent Roemer. But even assuming arguendo that Respondent Roemer was acting as agent of the City, as alleged by Complainant, and that Respondent Bodmer did have a conversation with Roemer as testified by Curtin, the evidence, the Examiner finds, is not sufficient to conclude that Respondent City of Appleton and Roemer violated Section 111.70(3)(a)1 of the Wisconsin Statutes.

The Complainant alleges that Roemer entered into individual negotiations with Respondent Bodmer by informing her that the crossing guards would have to give up certain recommendations to get others

and therefore she should inform him which recommendations the crossing guards were willing to give up. Curtin's own testimony is that Respondent Bodmer spoke to her alderman who said that the girls would have to give up some of the things in the fact finder's report to get a settlement. There is no testimony whatsoever that Roemer told Bodmer that she should inform him which recommendations the crossing guards were willing to give up.

The Examiner notes it was the Union, at a meeting held on November 16, 1970, who urged its members to contact their alderman concerning the fact finder's report and contract negotiations. It is also noted by the undersigned that Respondent Bodmer and Roemer, her alderman, met purely by chance at which time Respondent Bodmer, and not Roemer, raised the subject matter of negotiations. There is nothing to indicate that Roemer, who was not a member of the Negotiating Committee, was doing anything other than stating his opinion as to what it would take to settle the dispute between the parties. Furthermore, the same message, i.e., that the fact finder's report was not acceptable as recommended, was conveyed to Robert Schlieve by Mr. Geenen and the mayor. The same was also conveyed to Jeff Curtin by Gerald Lang.

It is also noted that from the time the fact finder's recommendations were received, on or about November 4, the only formal request for a meeting made by the Union was the letter dated December 14 over the signature of Robert Schlieve which was not received by the Personnel Director to whom said letter was directed.

Based on the above the Examiner concludes that the Complainant has not demonstrated by a clear and satisfactory preponderance of the evidence that Respondents City of Appleton and Roemer committed unfair labor practices within the meaning of Section 111.70(3)(a)1.

Second Cause of Action Alleging a Violation of
Sections 111.70(3)(a)1 and (3)(a)2 by Respondent
City of Appleton and Respondent Leona Bodmer
and a Violation of Section 111.70(3)(b)1 by
Respondent Leona Bodmer

In support of said cause of action Complainant in addition to the allegations stated above specifically alleges the following:

"11. On or about early January 1971, Respondent Leone Bodner spoke with an official of the City who informed her that she and the other Crossing Guards would receive a pay increase provided that she and they successfully decertified Local 563.

12. By this inducement, the Respondent City sought to and did make Respondent Leone Bodner its agent to get Local 563 decertified.

13. Respondent Leone Bodner did enter into such an agreement with Respondent City of Appleton.

14. Respondent Leone Bodner thereafter informed the Crossing Guards that the City of Appleton would only grant them certain benefits if they decertified Local 563.

15. By the acts set forth above, Respondents City of Appleton and Leone Bodmer have violated Section 111.70 (3)(a)(1) and 111.70(3)(a)(2)."

At the hearing Complainant amended its complaint further alleging that by the above acts, Respondent Bodmer violated Section 111.70 (3)(b)1 of the Wisconsin Statutes.

In regard to allegation #11, the record establishes that Respondent Bodmer had a conversation with Gerald Lang, Personnel Director, on December 23, 1970, concerning an error made on her paycheck for the pay period ending December 11. During said conversation Respondent Bodmer stated, in regard to contract negotiations, that they had been waiting a long time and that she wished "the City would start to get going and get something done". In response Lang indicated at this point that the City's last offer had been \$2.20. Also there was a discussion concerning the fact finder's report in that he had recommended \$2.20 an hour. Respondent Bodmer was familiar with said figure inasmuch as the fact finder's recommendations were discussed at a union meeting which she attended on November 16 and also in that said report was printed in the Appleton Post Crescent newspaper. Lang testified that he felt sympathetic with Respondent Bodmer but he wasn't positive he conveyed same to Bodmer. Bodmer testified that Lang did not state he was sympathetic to her or the other girls. The only other City official Respondent Bodmer spoke to, material herein, was Respondent Roemer during the first week in January as discussed above. In neither conversation, with Lang or Roemer was Respondent Bodmer informed, as alleged by Complainant that she and other crossing guards would receive a pay increase provided that she and they successfully decertified Local 563. Nor was Respondent Bodmer led to believe by either Respondent that she and other crossing guards would receive a pay increase if Complainant Union was decertified.

The Examiner therefore also concludes that in regard to allegations #12 and #13 set forth above Respondent City did not make Respondent Bodmer its agent to get Local 563 decertified nor did Respondent Bodmer enter into such an agreement with Respondent City of Appleton.

The Complainant further alleges in paragraph #14 that Respondent Bodmer thereafter informed the crossing guards that the City of Appleton would only grant them certain benefits if they decertified Local 563. Respondent Bodmer had a telephone conversation with fellow employe, Dorothy Denil in early January 1971. Denil claims Respondent Bodmer stated that "she had talked to someone down in City Hall and if we would get out of the Union that we would get a raise". Respondent Bodmer denied making such a statement and testified that during said conversation she merely asked Denil if she would sign a petition to get out of the Union. Denil refused. Bodmer in her conversations with other crossing guards, stated that she was their member in the bargaining committee and that she couldn't get anywhere with the Union so she was getting out.

It is noted that neither Lang nor Respondent Roemer informed Respondent Bodmer that they would receive certain benefits if she and other crossing guards decertified Local 563. In considering all of the above and the demeanor of the witnesses the Examiner credits the testimony of Respondent Bodmer.

Based on the above conclusions the Examiner finds no support for Complainant's allegation that Respondent City of Appleton and Respondent Bodmer violated Section 111.70(3)(a)1 and (3)(a)2 or that Respondent Bodmer violated Section (3)(b)1 of the Wisconsin Statutes.

Third Cause of Action Alleging
Respondents City of Appleton and Robert Roemer
Violated Section 111.70(3)(a)1

In addition to the above mentioned allegations contained in Complainant's complaint, Complainant specifically alleges the following:

"17. Since on or about early January, when Respondent City began individual negotiations with Respondent Leone Bodner, it has refused to recognize and negotiate with Local 563 as the exclusive bargaining agent for the Crossing Guards.

18. By the acts set forth above, Respondents City of Appleton and Robert Roemer have violated Section 111.70 (3)(a)1."

The only discussions Respondent Bodmer had with City officials material herein were discussions Bodmer had with Gerald Lang on December 23, 1970 and with Alderman Roemer sometime during the first week in January 1971. The facts surrounding both discussions have been referred to above and discussed by the undersigned. Here, Complainant alleges said discussion constituted negotiations and by engaging in said conduct Respondent City refused to recognize and negotiate with Local 563 as the exclusive bargaining agent for the crossing guards.

Once again assuming arguendo Complainant's version of the conversation between Respondent Bodmer and Respondent Roemer, the Examiner is on the opinion that neither discussion constituted negotiations as alleged by Complainant. Both Lang and Roemer in their conversations with Respondent Bodmer did nothing more than indicate that the status of negotiations were in their opinion. Lang indicated that the City's last offer to the crossing guards was \$2.20 per hour. Roemer in his discussion with Respondent Bodmer, both of whom realized there had been no movement concerning the fact finder's recommendations, stated that the girls would have to give up something in the fact finder's report in order to arrive at a settlement. He, however, did not ask Bodmer to present a new proposal or to indicate which issues the crossing guards were willing to move on. In neither conversation was an attempt made to discuss issues and arrive at an agreement or compromise settlement with Respondent Bodmer. Both discussions were initiated by Bodmer.

It is also noted that the only formal request made by the Union for a meeting to discuss the fact finder's recommendations was a letter dated December 14 sent to Gerald Lang by Mr. Schlieve. Said letter

On January 19, 1971 a petition for election was filed by Respondent Leona Bodmer.

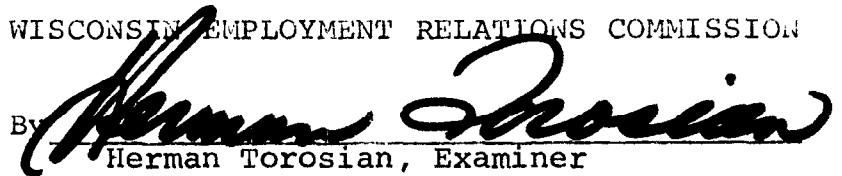
Based on the above the undersigned cannot conclude that Respondent City and Respondent Roemer engaged in individual negotiations with Respondent Leona Bodmer nor can the undersigned conclude that Respondent City has refused to recognize and negotiate with Local 563 as exclusive bargaining agent for the crossing guards during times material prior to January 19, 1971, nor after January 19 when Respondent City was aware that a petition for election had been filed by Leona Bodmer.

Based on the above, the Examiner finds no violation of Section 111.70(3)(a)1 by Respondent City of Appleton or by Respondent Roemer, as alleged.

Dated at Madison, Wisconsin, this 21st day of December, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Examiner