STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, AND ITS AFFILIATED LOCAL 1053, Complainant, vs. MILWAUKEE BOARD OF SCHOOL DIRECTORS AND STEPHEN A. VRSATA, Respondents.	Case XXXVI No. 15096 MP-100 Decision No. 10663-B

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Complainant.

Mr. Harry G. Slater, City Attorney, by Mr. Nicholas M. Sigel, appearing on behalf of the Milwaukee Board of School Directors.

Michael, Best & Friedrich, Attorneys at Law, by Mr. Marshall R. Berkoff, appearing on behalf of Respondent Stephen A. Vrsata.

ORDER OF DISMISSAL

The above-named Complainant having, on November 24, 1971, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the above-named Municipal Employer and Stephen A. Vrsata, a supervisory employe of said Municipal Employer, had committed prohibited practices within the meaning of Section 111.70(3)(a) of the Wisconsin Statutes; 1/ and the Commission having appointed Marvin L. Schurke, a member of its staff, to act as Examiner as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and hearing in the matter having been held at Milwaukee, Wisconsin, on January 27, 1972; and the Examiner having subsequently issued an Order Denying Motion to Dismiss and Deferring Further Proceedings 2/ wherein the allegations of the complaint were deferred and held in abeyance without any determination until the Examiner had the opportunity to review the final resolution of a grievance then being processed by the parties through a grievance procedure contained in a collective bargaining agreement subsisting between the Complainant and the Municipal Employer; and said grievance having been submitted to final and binding arbitration before Arbitrator Robert J. Mueller; and a copy of the Award of the Arbitrator having been furnished to the Examiner; and the Examiner having reviewed said Arbitration Award and being satisfied that no further proceedings are warranted on said complaint of prohibited practices;

1/ The complaint was filed under Section 111.70, Wisconsin Statutes, in effect prior to November 11, 1971, the date on which the Municipal Employment Relations Act, Chapter 124, Laws of 1971, became effective.

2/ Decision No. 10663-A

NOW, THEREFORE, it is

ORDERED

That the complaint filed in the above entitled matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 28th day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

On November 24, 1971, Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 1053, filed a complaint with the Commission alleging that the Milwaukee Board of School Directors and Stephen A. Vrsata, had committed acts of interference, restraint and coercion of employes in violation of Section 111.70(3)(a)(1), Wisconsin Statutes.

The facts underlying the allegations of the complaint are as follows: Local 1053 is the exclusive collective bargaining representative for certain clerical employes of the Municipal Employer. Stephen A. Vrsata is the Principal of one of the junior high schools operated by the Municipal Employer. Some time prior to November 4, 1971, a vacancy occurred in a clerical position in the school under Vrsata's supervision. Vrsata filled that vacancy temporarily with a part-time employe rather than hiring a full-time employe. On November 4, 1971, the President of Local 1053 appeared at Vrsata's office and filed with him a written grievance, designated by the parties as Grievance No. 19, alleging that his failure to hire a full-time employe for the indicated vacancy was a violation of the collective bargaining agreement between the Union and the Municipal Employer. The grievance had been signed by a number of the full-time clerical employes in the school. After the President of the Local left the building, Vrsata called a meeting of the grievants and questioned them concerning the grievance. A second similar meeting was held on the following day. In addition to the complaint filed in the instant proceeding, the Union, on November 8, 1971, filed a grievance with Municipal Employer, designated by the parties as Grievance No. 20, alleging that Vrsata's meetings with the employes were in violation of the collective bargaining agreement.

On January 20, 1972, the Respondents filed separate answers. The answer filed by Milwaukee Board of School Directors contains an affirmative defense and a motion for the dismissal of the complaint. Counsel for Stephen A. Vrsata also filed a motion to dismiss, with accompanying affidavit and memorandum. A hearing was held on January 27, 1972 at Milwaukee, Wisconsin, at which time evidence was taken and arguments were heard on the issues raised by the affirmative defense and motions to dismiss. All parties subsequently filed briefs, and on March 27, 1972, the Examiner issued an order 3/ in which the motion to dismiss was denied and the matter was held in abeyance without any determination on the allegations of the complaint, until the Examiner had the opportunity to review the final resolution of Grievance No. 20, in order to determine whether such allegations should be dismissed or a separate determination should be made on the merits thereof.

The Union and the Municipal Employer subsequently processed Grievance No. 20 to arbitration. Robert J. Mueller was selected as the Arbitrator from a panel supplied by the Commission. A hearing was held, and on October 2, 1972, the Arbitrator issued his Award. Following are excerpts from the Arbitrator's discussion:

3/ Decision No. 10663-A

"The undersigned does not find Grievance #19 ambiguous. The matter complained of is clear. It is a clear complaint that the grievants feel that a full time clerical vacancy should be filled by a full time employee. The evidence reveals that the Union president personally presented the written grievance to Principal Vrsata. The evidence further reveals that at such time, the principal could have raised any questions with the Union president and discussed same for purposes of clarifying the matter in his mind. The evidence seems to indicate that there was no attempt to discuss the matter for purposes of understanding the basis of the grievance, but that the only inquiry made by the principal was as to who called in the grievance. The undersigned is unable to envision any relevancy of such inquiry to an understanding of what the grievance is about. Clearly, a much more direct and relevant inquiry designed to obtain an understanding of the basis for the grievance would have been a request for an explanation of the Union president as to why they felt that continuing the vacancy constituted a violation of the specific provisions of the collective bargaining agreement that are referred to in Item 3 of the grievance initiation form. The record is completely devoid of any indication that the principal in any way inquired concerning the basis and reasoning for the grievance and its relationship to any provision of the contract."

. . .

"The principle discussion of the above cited testimony clearly indicates that the principal was more concerned in finding out who of the secretaries had initiated the grievance than of exploring objectively an explanation of the basis for filing such grievance. The testimony clearly indicates that Principal Vrsata continuously returned to the inquiry of who initiated the grievance. There is no explanation in the record that would tend to explain the reason for knowing such fact or why the knowledge of such fact would lead to better understanding of the purpose for filing such grievance. Several references in the testimony are to the fact that the principal regarded the filing of such grievance as a grievance against him on a personal basis. The total context of the specific testimony as to the statements made by Mr. Vrsata clearly indicate that his primary concern throughout the discussions was to find out specifically who had initiated the grievance against him.

At only one point in the testimony does it appear that he came close to inviting an explanation on the merits when in reference to the use of the substitute he stated that 'after all, she was doing a splendid job, and I didn't think it made any difference.' One of the secretaries answered

by stating, 'well, we wanted to know just when you are going to employ a full-time secretary. This position has been open a long time, and it does make a difference.' It would clearly appear that the response of the secretary at that time posed an open invitation for the principal to request an explanation as to what difference they are referring to. The testimony reveals however, that no inquiry of any sort was made toward obtaining an explanation of the basis for filing such grievance. Instead, such apparent invitation to a request for an explanation was responded to by what the Union has referred to as threats and intimidation by Mr. Vrsata wherein he responded to the secretaries by stating that 'the only difference has been that you girls aren't doing what you were supposed to do. I never got you to do, and you've never followed the rules, and I'm going to make you follow the rules.'

In the absence of any direct testimony in the record that would in any way refute the only direct testimony present as to the specifics of the discussion, or that would tend to explain the reasons for the types of questions and statements made by Principal Vrsata, the clear impression gained from the content as testified to leaves one with the impression that the discussions were in for the most part interrogation sessions and not discussions concerning the merits of the grievance. As such the undersigned finds that the actions of Principal Vrsata constituted coercion and discrimination within the meaning of the provisions of the contract as contained in Part II, C-6 of the collective bargaining agreement." (Emphasis supplied.)

In the proceedings before the Arbitrator, the Employer raised, as a defense, the fact that Grievance No. 19, concerning the full-time vacancy, had been initiated improperly by the Union as a written grievance at Step 2 of the grievance procedure contained in the collective bargaining agreement without processing through the oral discussion required in Step 1 of that procedure. The Municipal Employer argued before the Arbitrator that the Union's misconduct in this instance caused Vrsata to be confused, and contributed to his overreaction. In response to that defense, Arbitrator Mueller stated:

"It is logical to presume that the Union officers should be fully aware of the grievance procedure provided in the contract. They should be expected to follow such procedure. The instant deviation was clearly inconsistent with the procedure provided. There would have been no hardship upon the Union or employees to have requested a scheduled oral presentation with the principal at which the grieving employees and the Union president could have engaged in a frank discussion concerning their complaint. The procedure provides that an employee is entitled to have a Union representative present at such oral presentation. The testimony entered into the record by the Employer indicates full approval and cooperation in affording employees the opportunity to have Union representation assist them at any point in processing grievances. In this case there clearly was no first step oral presentation. The contract requires that there be a oral presentation in initiation of a

grievance. There is no evidence in the record that would in any way indicate that deviation from the contract requirements was necessary. The presentation of the grievance in the first instance in written form by the Union president clearly contributed adversely to the total circumstances that ensued. While the undersigned concludes that the method of initiating the grievance adversely contributed to the circumstances that followed, such finding does not justify the conduct of the Employer as hereinbefore described." (Emphasis supplied.)

In arriving at his ultimate conclusion, the Arbitrator took the Union's mishandling of the grievance into account, making the following statements:

"The instant case is clearly one wherein both parties became so emotionally involved that they lost sight of all objectivity. The evidence reveals that Grievance #19 has been resolved to the satisfaction of both parties. No one has suffered any injury as a result of everything that occurred, except the injury of severely bruised personal emotions. Aside from such fact, the total circumstance has most assuredly served as a valuable educational seminar on what not to do in labor relations. The undersigned concludes that the remedies have already been made and received."

. . .

"Courts of equity have long held that to receive equity one must also do equity. Most arbitrators subscribe to such basic rule also. In this case inequity obtained inequity. The rules of equity require that he who asks for equitable relief must come forward with clean hands. I have found that clean hands do not exist on either side in this case. No remedy is warranted.

It therefore follows on the basis of the above facts and discussion thereon that the undersigned renders the following decision and

AWARD

That the grievance be, and the same hereby is, in all respects, dismissed."

The Arbitration Award was subsequently submitted to the Examiner, and Counsel for all parties have been given opportunity to state their position with respect to further proceedings before the Commission. Both of the Respondents have renewed their motions to dismiss. The Union has argued that the Arbitrator erred in his ultimate Award and remedy in this case, wherein equity considerations were taken into account, and that the Award is therefore not completely consistent with the policy of Section 111.70, Wisconsin Statutes.

Dismissal of the complaint in this case without comment on the "equity" argument advanced by the Complainant Union could be interpreted with an inference that the Examiner or the Commission would have applied such equity considerations in a determination on the merits of the complaint. It is clear that the Commission does not apply a "clean

hands" doctrine as a defense to allegations of prohibited practices. See: City of Portage (8378) 1/68; St. Francis Joint School District No. 6 (9546-A, 9546-B) 10/71. No deviation from said rule is intended or implied by the accompanying Order of Dismissal. However, the Examiner is satisfied that further proceedings on the complaint of prohibited practices filed by the Union in this case would be redundant. The purpose of the order issued on March 27, 1972 was to avoid a duplication of effort in the resolution of the dispute then existing between the parties. It was concluded at that time that the Union had a remedy available through the grievance and arbitration forum established in the collective bargaining agreement and, in order to avoid parallel proceedings in two separate forums, the allegations of the complaint were deferred. The excerpts from the Arbitration Award, set forth above, make it abundantly clear that the Arbitrator found that certain conduct on the part of Mr. Vrsata was improper. The Arbitrator's discussion provides guidelines for future conduct, and it does not appear that any additional purpose would be served by further proceedings before the Commission in this case.

Dated at Madison, Wisconsin, this 28th day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner