STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 1486, AFFILIATED WITH MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO, Complainant, vs. SCHOOL DISTRICT NO. 4, VILLAGE OF SHOREWOOD, Respondent.	Case VII No. 16174 MP-188 Decision No. 11410-C

Appearances:

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

Mulcahy & Wherry, Attorneys at Law, by Mr. John F. Maloney, and Mr. Robert Moberly, on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter and the Commission having appointed Howard S. Bellman, a member of the Commission's staff, to act as Examiner in the matter (Decision No. 11410), and hearing having been held at Milwaukee, Wisconsin on December 7, 1972 and May 24, 1973; and thereafter, the Commission having set aside appointment of said Examiner and transferred the matter to the Commission (Decision No. 11410-B), 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, Local 1486, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as Complainant, is a labor organization having its principal office at 3427 West St. Paul Avenue, Milwaukee, Wisconsin; and that at all times pertinent hereto Earl L. Gregory has been an agent of Complainant.

2. That School District No. 4, Village of Shorewood, hereinafter referred to as Respondent, is a Municipal Employer having its principal offices in Shorewood, Wisconsin.

3. That since January 25, 1972, Complainant has been the certified collective bargaining representative of a unit consisting of certain aides in Respondent's employ; that prior to the filing of the instant complaint the parties conducted negotiations for an initial collective bargaining agreement to cover the employes in said unit on June 22, August 31, September 13, September 28, October 12, October 30, 1972; that after the December 7, 1972 hearing in the instant proceeding, the parties reached agreement on the terms of such a collective bargaining agreement, including an understanding that Complainant would withdraw the instant complaint "with prejudice"; and that Complainant thereafter advised Respondent that it would not so withdraw said complaint; that Respondent on approximately March 16, 1973, refused to ratify the previously agreed-to collective bargaining agreement until Complainant withdrew the instant complaint.

4. That after the parties' first negotiation session concerning the instant bargaining unit, the Complainant requested that the Commission appoint a mediator to assist the negotiations, but Respondent declined to concur in said request on the ground that it was premature.

5. That during the course of the aforesaid negotiations both the Complainant and the Respondent, by their respective spokesmen, evidenced unavailability for meetings on certain dates, but the Respondent's conduct in this regard did not establish a strategy of delay to avoid collective bargaining.

6. That during the course of the aforesaid negotiations, the Respondent, with the knowledge and apparent consent of the Complainant, conditioned its proposals upon mutual agreement to an entire collective bargaining agreement, and in the absence of such an entire agreement the Respondent withdrew various of its proposals at various times.

7. That pursuant to Complainant's request, Respondent furnished to Complainant during the course of said negotiations, information showing, inter alia, employe wage rates; that although such information on one page therein incorrectly listed the rate paid employe Susan Weckesser, other information also so supplied to Complainant contained the correct rate; and that Respondent inadvertently gave Weckesser an eighteen cent per hour pay raise during the course of said negotiations apparently as a result of a clerical error.

8. That Respondent did not rehire two aides, Cynthia Koschnick and Jean Howell, for the 1972-1973 school year; that the Respondent was unaware of the union sympathies of these employes; that Koschnick was offered a job in her former position, but turned it down; that Howell was not rehired because her supervisor so recommended; and that Respondent's failure to rehire these individuals was based on legitimate considerations and was devoid of anti-union considerations.

9. That certain aides represented by Complainant filed a decertification petition with the Commission on March 9, 1973; and that Respondent did not encourage any bargaining unit employes to file such a petition.

Upon the basis of the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That Respondent, by its aforesaid conduct, during the course of negotiations with Complainant for a collective bargaining agreement to cover the bargaining unit consisting of aides in its employ, has not, and is not, engaging in any prohibited practice within the meaning of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

2. That Respondent, by its conduct regarding the filing of a decertification petition respecting the collective bargaining unit consisting of aides in its employ; and by its failure to rehire Cynthia Koschnick and Jean Howell; and by its actions respecting the wages of Sue Weckesser; has not, and is not, engaging in any prohibited practice within the meaning of Sections 111.70(3)(a)(1) or (3) of the Municipal Employment Relations Act.

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

ORDER

It is ordered that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madsion, Wisconsin this 4th day of January, 1974.

WISCONSIN EMPLOYMENT REALTIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The instant complaint was initially filed on November 6, 1972. Hearing was commenced and adjourned on December 7, 1972. The complaint was amended on March 24, 1973 and May 2, 1973, 1/ and hearing was reopened and completed on May 24, 1973. The post-hearing briefing period ended on October 24, 1973.

Complainant became the certified bargaining representative of regular full-time and regular part-time aides employed by the Respondent on January 25, 1972. As found, Complainant met with Respondent in 1972 for the purpose of agreeing to an initial collective bargaining agreement covering these aides. Also, in 1972, the parties met and negotiated concerning three other collective bargaining units represented by the Complainant. The record establishes that the parties consummated agreements for these other three units. Complainant makes no claim herein that Respondent engaged in any improper conduct when it negotiated over these other three units; rather, its complaint allegations are aimed solely at the negotiations surrounding the fourth remaining unit consisting of aides.

The record shows that early in 1972 Complainant requested Respondent to agree to one contract covering all four bargaining units. Respondent, however, replied that there should be separate negotiations for each of the four and this arrangement was accepted. Thereafter, the parties negotiated for a contract covering the school aides, with School Board member Lawrence Hammond and Union Representative Earl Gregory representing the respective parties.

After several meetings, the Complainant filed the instant complaint wherein it alleged, inter alia, that Respondent had not bargained in good faith, and had committed other prohibited practices.

Before the hearing was reconvened on May 24, 1973, the parties tentatively agreed to a contract covering the aides, provided that the Complainant would withdraw the instant complaint. Following this agreement, a decertification petition was filed with the Commission on March 9, 1973. 2/ Shortly thereafter Complainant advised Respondent that it would not withdraw the instant complaint "with prejudice" as it had originally agreed. Respondent in turn replied that it would not ratify the tentative accord unless the Complainant withdrew the instant complaint.

The Union then amended the complaint, alleging that Respondent's refusal to sign the tentative agreement constituted bad faith bargaining and that Respondent unlawfully encouraged the filing of the decertification petition.

RESPONDENT'S ALLEGED REFUSAL TO BARGAIN IN GOOD FAITH DURING THE COLLECTIVE BARGAINING NEGOTIATIONS

In support of this general allegation, Respondent primarily relies on several factors which purportedly evidence Respondent's disinclination to engage in good faith bargaining, i.e., Respondent's

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1/ This amendment was pursuant to the Examiner's Order Granting Motions to Make Complaint More Definite and Certain (Decision No. 11410-A).

2/ Because of the instant complaint, the decertification petition has been held in abeyance pending resolution of the issues herein.

failure to meet at reasonable times, and its dilatory negotiations; Respondent's refusal of mediation; Respondent's withdrawal of previously agreed to contract language; and Respondent's refusal to sign a tentative agreement until Complainant first withdrew the complaint herein "with prejudice".

With respect to the claim that Respondent engaged in dilatory negotiations, the record does establish, as contended by Complainant, that there was some difficulty at the commencement of negotiations in arranging meetings. This difficulty, in part, stemmed from an understanding Hammond had with respect to the Respondent's desire to conduct the negotiations respecting the various units in a certain sequence. The record also establishes that although Hammond did cancel at least one bargaining session, he did so because he was ill that day, and further, that negotiations were delayed for a two-week period while Hammond was on vacation. However, Respondent was not the only party which delayed negotiations. Gregory himself admitted that he was out of town for a five-week period in the summer of 1972 and thus was unavailable for negotiations.

The record also establishes that the parties met on June 22, August 31, September 13, September 28, October 12, and October 30, 1972, and that they were able to agree to many contractual provisions before the complaint herein was filed. In view of the foregoing, the Commission finds that there is insufficient evidence to warrant a finding that Respondent refused to meet and engaged in dilatory tactics at the bargaining table.

Complainant also claims that Respondent engaged in bad faith bargaining by refusing to participate in mediation. The record reflects that the Complainant requested mediation by the Wisconsin Employment Relations Commission after only one bargaining session. Respondent at that point advised the mediator that, in its opinion, mediation was premature because only one negotiation session had been held. (Later, however, after several more bargaining sessions were held, both parties did agree to mediation.) The Commission concludes that there is no merit to the assertion that Respondent's initial rejection of mediation evidenced bad faith bargaining. 3/

Similarly without merit is Complainant's assertion that Respondent engaged in bad faith bargaining when it withdrew from the bargaining table several proposals to which the parties had previously agreed. The record clearly establishes that Hammond advised Gregory at the outset of negotiations that all agreements were tentative until the parties had reached final agreement and, further, that Gregory, at that time, did not voice any objection to such understanding. Such a bargaining tactic, when enunciated at the start of negotiations, is well accepted and does not, standing alone, reflect a rejection of good faith collective bargaining.

As noted above, Complainant also alleges that Respondent engaged in bad faith bargaining when it conditioned its approval of a tentative agreement on Complainant's withdrawal of the instant complaint. On this matter, the Complainant points to a March 19, 1973, letter written by Respondent to Gregory, wherein Respondent advised that it had approved the tentative agreement negotiated by Gregory and Hammond "Contingent upon the issuance and receipt of an order from the Wisconsin Employment Relations Commission upon application of the union representative, dismissing with prejudice the pending unfair labor charges (sic) . . .". The record

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3/ Nor do we imply that the refusal to participate in mediation at any time constitutes a prohibited practice.

establishes that Respondent's insistence upon this contingency was pursuant to an earlier agreement to this effect by both parties.

Thus, during the course of the negotiations which occurred between the hearing dates in the instant matter, Complainant advised Respondent that it would move to dismiss its complaint herein if an agreement were reached. Such an offer was obviously attractive to Respondent and Hammond stated to Gregory that it "would help in reaching the agreement". Later, after Respondent had agreed to a contract with the understanding that the complaint would be dismissed, Complainant refused to withdraw the complaint. (The Respondent interprets this as a response to the decertification petition.) It was at that point that Respondent refused to execute the tentative agreement.

The Commission finds that Respondent's refusal to execute the contract until the complaint herein is dismissed does not constitute bad faith bargaining. This is based on the considerations that (1) it was apparently Complainant, not Respondent, who first suggested that the complaint be dismissed; (2) Respondent never refused to engage in negotiations until the complaint was first dismissed; (3) both parties understood that such a dismissal might facilitate the reaching of an agreement; (4) Respondent thereafter made it most clear that its approval of the agreement was subject to dismissal of the complaint, as had been previously agreed; and (5) it was Complainant, not Respondent, who subse quently reneged on this understanding.

RESPONDENT'S ALLEGED BAD FAITH BARGAINING IN NOT SUPPLYING CORRECT WAGE INFORMAITON AND ITS UNILATERAL WAGE INCREASE TO EMPLOYE SUSAN WECKESSER

The evidence shows, as alleged by Complainant, that during the course of negotiations Respondent provided information to the Complainant, pursuant to its request, in which employe Susan Weckesser's wage rate was incorrectly specified. The record also established Complainant's additional claim that Weckesser was given a wage increase without consultation with the Union during the course of negotiations in question.

There are certain other factors which must be considered in determining whether such actions were prohibited, however. With respect to the admitted error in the information Respondent supplied to Complainant, the record shows that (1) the error was inadvertent; (2) other information supplied to Complainant contained the correct rate; (3) this was the only error in the information supplied; and (4) Complainant failed to establish how the error constituted a material misrepresentation.

Regarding the unilateral increase given to Weckesser, Respondent's Superintendent of Schools, Dr. Douglas Brown, testified, without contradiction, that he turned down Weckesser's request for a raise in the summer of 1972 because of the pending negotiations; that he was the only person authorized to grant such an increase; that he in fact had never authorized it; that upon learning of the increase, he immediately investigated the matter, but was unable to learn how the increase had been given; and that he thereupon rescinded the increase. Furthermore, Respondent's own witness, payroll clerk, Dolores Pawluczek, was unable to state who authorized Ms. Weckesser's raise.

In light of the foregoing factors, the Commission concludes that there is insufficient evidence to support findings that either the wage information error or the wage increase constituted prohibited practices.

RESPONDENT'S ALLEGED DISCRIMINATORY REFUSAL TO REHIRE

Complainant asserts that Respondent refused to rehire two aides for the 1972-1973 academic year because of their union sympathies. 4/ The Commission finds no merit in this allegation.

Complainant was unable to prove at the hearing that Respondent had actual knowledge of the union sympathies of the aides involved. Rather, Complainant asks that such knowledge be inferred from the fact that a supposed anti-union employe who knew of these sympathies is the neighbor of a school board member. Without more, such a fact fails to provide the quantum of proof needed to establish knowledge of union propensities as the Commission is unwilling to assume that the alleged anti-union employe spoke to the board member about such matters.

Further, even if the knowledge hurdle were cleared, the record establishes that Respondent had legitimate reasons for not rehiring the aides in question.

With respect to one of the alleged discriminatees, Cynthia Koschnick, the record establishes that she was offered a position in June 1972 covering her regular duties as an aide in 5th - 6th grades. Koschnick, however, willingly chose not to accept that assignment and, instead, stated she wanted to be either a third grade aide or a substitute. The other alleged discriminatee, Jean Howell, was not rehired because of an unfavorable recommendation of her supervisor.

RESPONDENT'S ALLEGED ENCOURAGEMENT OF BARGAINING UNIT EMPLOYES TO FILE A DECERTIFICATION PETITION

With respect to this allegation, the record discloses that teacher aide Frieda Kelly spoke to Respondent's Superintendent of Schools, Brown, on a number of occasions regarding her dissatisfaction with the Union. On the first occasion in January 1972, Kelly asked Brown what could be done to prevent the then pending representation election covering the aides. Brown replied that nothing could be done. Immediately after that election, Kelly asked Brown what could be done to get rid of the Union, to which Brown again indicated that nothing could be done. Kelly and Brown had another conversation in March 1973 wherein Brown, in response to Kelly's earlier inquiries, stated that a decertification petition could be filed if supported by thirty percent of the aides and that the petition had to be filed within a certain period of time. When Kelly asked for the names of people in the unit, however, Brown replied that he could not provide such information. Moreover, Brown cautioned that he did not want to influence Kelly, and that, if Kelly had any other questions, she should contact either an attorney or the Wisconsin Employment Relations Commission.

The record also establishes that when Kelly circulated the decertification petition on off-duty time, she did not inform any of Respondent's representatives with respect to her activities or seek their approval for such activities.

Inasmuch as the foregoing establishes that Kelly initiated the above conversations and that Brown, in response to her questions, specifically cautioned Kelly that he could not encourage her to initiate a decertification

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4/ Complainant originally asserted that Respondent discriminatorily refused to hire three aides. At the hearing, Complainant amended its complaint to cover the situations of Howell and Koschnick only. (Transcript p. 4).

petition; and since the record fails to establish that Brown did so encourage Kelly, the Commission concludes that this part of the complaint has no merit.

Dated at Madison, Wisconsin this 4th day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Howard S. Bellman, Commissioner