

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT V. TEETS,

Complainant,

vs.

AMERICAN FEDERATION OF TEACHERS,
LOCAL UNION 1714 and STEVE KOWALSKY,

Respondents.

Case XXXVIII
No. 17904 MP-356
Decision No. 12707-A

ISSA A. JETHA,

Complainant,

vs.

AMERICAN FEDERATION OF TEACHERS,
LOCAL UNION 1714 and STEVE KOWALSKY,

Respondents.

Case XXXIX
No. 17905 MP-357
Decision No. 12708-A

Appearances:

Mr. Delton J. Thorson, Attorney at Law, appearing on behalf of
the Complainants.

Mr. William Kalin, Director of Organization, Wisconsin Federation
of Teachers, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaints of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matters; and the Commission having consolidated said complaints for purposes of hearing and decision and having appointed George R. Fleischli, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said complaints having been held at Eau Claire, Wisconsin on August 12, 1974 before the Examiner; and the Examiner 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 Complainant Robert V. Teets and Complainant Issa A. Jetha, hereinafter referred to as Complainants Teets and Jetha, are individuals and municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act (MERA) who were, at all times material herein, employed as classroom teachers by the Eau Claire Area Vocational, Technical and Adult Education District No. 1, hereinafter referred to as the District, a municipal employer within the meaning of Section 111.71(1)(a) of the MERA.

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2. That Respondent American Federation of Teachers, Local Union 1714, hereinafter referred to as the Respondent Union or Union, is a labor organization within the meaning of Section 111.70(1)(j) of the MERA and the certified bargaining representative of all certified personnel employed by the District, including classroom teachers and other special teachers but excluding the District Administrator, Assistant Administrators, supervisors, specialists in administrative capacities, clerical and custodial employees; that Respondent Steve Kowalsky, hereinafter referred to as Respondent Kowalsky, is an individual who was, at all times material herein, President of the Respondent Union and a member of its Executive Council. 1/

3. That sometime after beginning his employment as an instructor of Math and Science for the District in August, 1971, Complainant Jetha joined the Respondent Union and remained a member of said organization until he was expelled by action of the Respondent's Executive Council on or about September 24, 1973; that sometime after beginning his employment as an instructor of Police Science in August, 1971, Complainant Teets joined the Respondent Union and remained a member of said organization until he was expelled by action of the Respondent's Executive Council on or about September 24, 1973.

4. That on or about January 3, 1973, the Respondent Union held a membership meeting for the purpose, inter alia, of giving its membership a status report on negotiations then in progress with the District and to take a vote on the question of whether the Respondent's negotiating committee should be authorized to call a strike if it deemed it appropriate to do so; that a strike authorization vote was conducted by written ballot at said meeting and a majority of those in attendance at the meeting authorized the Respondent's negotiating committee to call a strike; that Complainants Jetha and Teets were in attendance at said meeting and voted.

5. That thereafter on the evening of January 9, 1973, Complainants Jetha and Teets were called by another Union member and advised that the negotiating committee had called a strike to begin on the morning of January 10, 1973; that on the morning of January 10, 1973 and thereafter, Complainants Jetha and Teets and approximately three other members of the Respondent Union reported to work and refused to participate in the strike; that in addition, approximately 20 other teachers, included in the collective bargaining unit but not members of the Respondent Union, also reported to work on January 10, 1973 and thereafter and refused to participate in the strike; that, however, approximately 82 of the 87 members of the Respondent Union did not report for work on January 10, 1973 or thereafter until January 18, 1973 because they were on strike; that on January 17, 1973, agreement was reached in the negotiations between the Union and the District and the strike was terminated on January 18, 1973.

6. That on May 15, 1973, at a meeting of its membership, a resolution was adopted by the Respondent Union with regard to the membership status of those members that had refused to participate in the strike; that pursuant to that resolution and acting in his capacity as President of the Respondent Union, Respondent Kowalsky sent Complainants Jetha and Teets and the other members of the Respondent Union who had refused to participate in the strike the following letter:

1/ The Executive Council which is sometimes referred to as the Executive Committee or Executive Board by the Respondent Union, is referred to as the Executive Council herein.

"Since our strike in January, there has been concern regarding the union status of the six persons who did not participate in the strike. At our last meeting on May 15, a decision regarding the matter was made by the membership. We are writing to you at this time because you were one of those six persons who saw fit to cross the picket line.

At the May 15, 1973, union meeting, the following resolution was passed:

In order to remain in good standing with the union, each member who crossed the picket line will be asked to donate at least \$100 to the local treasury before August 15, 1973. If the person does not donate, he will be expelled from the Union by means described in our constitution.

As you make your decision, please consider that those who did strike sacrificed more than \$200 net income. Also, the union incurred more than \$1,000 in expenses. It seems only fair that every union member should share in the financial aspects of the strike.

Please be assured that there is a strong desire to have each of you continue as a union member.

If you wish to discuss this matter further, kindly contact any union officer. We are asking that the \$100 or more donations be sent to Mike Johnson, Treasurer, by August 15, 1973."

7. That neither Jetha nor Teets paid Johnson \$100 prior to August 15, 1973 or at any time thereafter; that, because they were aware that the Union's Executive Council had a meeting scheduled for September 11, 1973, at which the question of what action should be taken against those members who had refused to participate in the strike and had failed to pay Johnson \$100 as requested was to be discussed, both Jetha and Teets were in attendance at said meeting; that, although they were asked if they wanted to say anything to the Executive Council, neither Jetha nor Teets made any statement to the Executive Council at said meeting and the Executive Council voted to expel them from their membership in the Respondent Union forthwith.

8. That sometime later on September 11, 1973, Respondent Jetha had an informal conversation with one or more members of the Executive Council wherein he pointed out that the action of the Executive Council was contrary to Article III, Section 3 of the Union's constitution which reads in relevant part as follows:

"ARTICLE III

Membership

. . . .

Section 3.

A member may be expelled for an act detrimental to the union upon presentation of written charges signed by at least 1/4 the total membership and approved by at least 3/4 the Executive Council. The member shall have the right to appeal the decision to the membership at the following membership meeting and shall be reinstated with full rights if a majority of the members present vote to reinstate."

9. That neither Jetha nor Teets had any further relevant conversations with or communications from anyone acting on behalf of the Respondent Union until on or after September 24, 1973, when a letter from Kowalsky, dated September 24, 1973, and attached "Statement of Charges" was received by them which read in relevant part as follows:

"On September 12, 1973, a statement signed by twenty-seven members of Local 1714 was presented to me. This statement charged you with acts detrimental to the Union.

At a Special Executive meeting on September 19, 1973 at least 3/4 of the Council approved the written charges.

Therefore, as of this date, you have been expelled from Local 1714 and all rights and privileges have been terminated.

Under Article III, Section 3 of the Union Constitution, you have the right to appeal this decision at our membership meeting on October 3. You may appeal in writing, in person, and/or by representative. If you should decide to appeal, please inform me, in writing, by October 2."

"Statement of Charges

We, the undersigned, believe that the strike breaking action and subsequent refusal by Robert Teets, Issa Jetha, and Sandee Christoffersen to comply with the directive issued by a majority of the Union Membership, constitute acts detrimental to the continued effective operation of the Union; and do hereby request their dismissal in accordance with Article III, Section 3, of the Constitution of the District One Vocational-Technical Teachers Federation."

10. That neither Jetha nor Teets took any action to appeal the decision of the Executive Council to the general membership on October 3, 1973 or at any time thereafter; that, however, on March 7, 1974, Complainants Jetha and Teets sent Kowalsky a letter asking the Executive Council to reconsider its action, which letter read in relevant part as follows:

"With reference to your letter dated September 24, 1973, I am hereby requesting a reconsideration by the Executive Committee of the AFT-Local 1714 of their decision made on September 19, 1973 to expel me from the union.

Please reply in writing in fifteen days upon receipt of this letter."

That on April 2, 1974, Kowalsky replied to Jetha and Teets by letter which read in relevant part as follows:

"This letter is to inform you of Executive Board [sic] action on your March 7 request for reconsideration.

The Board [sic] moved that you should be reinstated if the following conditions are met:

1. Payment of back dues, if any.
2. Compliance with the May 15, 1973 resolution adopted by the Union membership and presented to you in my letter of May 21, 1973.

3. Appearance before the Union membership as outlined in my letter of September 24, 1973.

Compliance with these terms by May 15 will bring about your prompt reinstatement as a member of Local 1714 with full privileges."

That thereafter Complainants Jetha and Teets did not comply with the conditions set out in Kowalsky's letter of April 2, 1974.

Based on the above and foregoing Findings of Fact, the Examiner makes and enters the following

CONCLUSIONS OF LAW

1. That the question of whether the procedure followed by the Respondent in expelling the Complainants from membership was proper under the Respondents' constitution and bylaws and the law of Wisconsin, is one involving internal union affairs over which the Wisconsin Employment Relations Commission lacks subject matter jurisdiction in the absence of evidence of a violation of one of the provisions of Section 111.70(3) of MERA.

2. That by threatening to expel and expelling the Complainants from membership because of their refusal to contribute \$100 as financial support for the illegal strike in which they refused to participate, the Respondents coerced and intimidated the Complainants in the exercise of their legal right to refuse to engage in or otherwise support an illegal strike and has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(b)(1) of MERA.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and enters the following

ORDER

IT IS ORDERED that the Respondent, American Federation of Teachers Local Union No. 1714, its officers and agents shall immediately:

1. Cease and desist from threatening to expel or expelling or otherwise refusing membership to Robert V. Teets and Issa A. Jetha or any other municipal employee because of their refusal to participate in or otherwise support any illegal strike prohibited by Section 111.70(4)(1) of MERA.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

- (a) Offer Robert V. Teets and Issa A. Jetha reinstatement to membership on the same terms and under the same conditions that membership is available to other members and expressly state in such offer of reinstatement that they are under no obligation to pay \$100 or to do any other thing because of their refusal to participate in or otherwise support strikes prohibited by Section 111.70(4)(1) of MERA. Because Robert V. Teets and Issa A. Jetha have been wrongfully deprived of their membership in the Respondent Union since on or about September 24, 1973, they shall not be required to pay any portion of the dues attributable to the

period since they were expelled from membership as a condition of reinstatement. 2/

- (b) Notify all of the employes of the Eau Claire Area Vocational, Technical and Adult Education District No. 1 that it represents that it will not coerce or intimidate any of said employes for exercising their legal right to refuse to engage in or otherwise support an illegal strike by posting the notice attached hereto and marked "Appendix A" in its offices and in those places provided by the Eau Claire Area Vocational, Technical and Adult Education District No. 1 for the posting of notices by the Respondent. Said notices shall be signed by the Respondent's President and shall remain posted for sixty (60) days during the regular school term. The Respondent shall take all reasonable steps necessary to ensure that said notices are not altered, defaced or covered by any other material.
- (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order regarding what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 21st day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

2/ The record is devoid of any evidence of whether the Complainants were under an obligation to pay dues pursuant to a lawful fair-share agreement. There is some evidence that at least one of the Complainants continued to tender dues. Nothing herein is intended to excuse the Complainants from compliance with a lawful fair-share agreement.

"APPENDIX A"

NOTICE TO ALL EMPLOYES OF EAU CLAIRE AREA VOCATIONAL, TECHNICAL
& ADULT EDUCATION DISTRICT NO. 1, REPRESENTED BY AMERICAN
FEDERATION OF TEACHERS, LOCAL #1714

Pursuant to an Order of the Wisconsin Employment Relations Commission, all employes of Eau Claire Area Vocational, Technical & Adult Education District No. 1 represented by American Federation of Teachers, Local #1714 are hereby notified that:

1. WE WILL NOT coerce or intimidate any of our members for exercising their legal rights to refuse to engage in or otherwise support a strike prohibited by Section 111.70 (4)(1) of the Wisconsin Statutes by threatening to expel or expelling them unless they participate in such a strike or contribute financial support in lieu thereof or threatening to do any other thing to said members or require any other thing of said members not required of other members;
2. WE WILL offer Robert V. Teets and Issa A. Jetha reinstatement to membership on the same terms and under the same conditions that membership is available to other employes of the District and advise them that they are under no obligation to pay \$100 or to do any other thing because of their refusal to participate in or otherwise support strikes prohibited by Section 111.70(4)(1) of the Wisconsin Statutes; and
3. WE WILL, hereafter, make membership in American Federation of Teachers, Local #1714 available on the same terms and under the same conditions to all applicants or members who otherwise meet the requirements of membership without regard to whether said applicants or members have, in the past, exercised their legal right to refuse to engage in a strike prohibited by Section 111.70(4)(1) of the Wisconsin Statutes or choose to do so in the future.

AMERICAN FEDERATION OF TEACHERS, LOCAL #1714

By _____
President

Dated this _____ day of _____, 1975.

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE
HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER
MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

There is little dispute over any of the relevant facts. The Complainants, who were members of the Respondent Union and participated in the voting on the question as to whether an illegal strike should be authorized, refused to participate in the illegal strike called pursuant to that authorization and were ultimately expelled from the Union because of their refusal to contribute financial support in lieu of participation in that strike. It appears that the Executive Council's initial decision to expell the Complainants on September 11, 1973 was made in a manner that was contrary to the provisions of Article III, Section 3 of the Respondent's constitution and that the Complainants were given no notice or opportunity to be heard regarding the charges that were subsequently signed by one-fourth of the Respondent's membership and approved by three-fourths of the membership of its Executive Council on September 19, 1973. It also is clear that the Complainants were aware of their right to appeal the decision of the Executive Council to the Respondent's membership at its meeting on October 3, 1973 but failed to do so.

COMPLAINANTS' POSITION:

The Complainants contend that as members of the Respondent Union they enjoy certain legal rights and that they have been deprived of those legal rights by reason of their expulsion from membership in the Respondent Union. It is the Complainants' contention that the real reason for their expulsion was their refusal to participate in an illegal strike and that such action, on the part of the Union, constitutes coercion and intimidation in the exercise of their right to remain members of a union of their own choosing under Section 111.70(2) and their legal right, independent of Section 111.70(2), to refuse to engage in an unlawful act.

In a second count, added by way of amendment to the original complaint, the Complainants allege that they were not given proper notice of the charges against them nor opportunity to examine evidence or otherwise be heard. The Complainants contend that this constitutes a failure to afford the Complainants the elements of due process and constitutes an additional independent basis for finding that the Respondents coerced and intimidated them in the exercise of their legal rights.

With regard to the Respondents' contention that Complainants did not exhaust the internal procedures of the Union before filing the complaint herein, the Complainants argue that such failure to exhaust those procedures was justifiable because of the number of members who had already voted to expell them and the Respondents' failure to comply with its own constitution or the elements of due process.

UNION'S POSITION:

The Union contends that the only question properly before the Wisconsin Employment Relations Commission is not whether it has complied with the requirements of its own constitution or whether the procedure it followed complied with the elements of due process, but whether the action it took against the Complainants violated any of the provisions of Section 111.70(3)(b) of the Wisconsin Statutes. The Union contends that the Complainants have not been deprived of any rights since it has no rule in its constitution or bylaws which precludes non-members from enjoying any of the rights enjoyed by

members and there is no evidence that the Complainants were denied any such rights. In this regard, the Union contends that by offering the Complainants the opportunity to pay \$100 it purposely avoided telling the Complainants that they must strike or commit themselves to strike in the future in order to retain their membership.

With regard to the Complainants' claim that they were denied the elements of due process in the manner of their expulsion, the Respondents point out that the Complainants were given an opportunity to speak up or offer evidence on their own behalf at the meeting of the Executive Council on September 11, 1973, but failed to do so. In addition, the Union points out that the Respondents have not exhausted the internal Union procedures available to them.

DISCUSSION:

First of all, the Examiner must agree with the Respondents' contention that the only question properly before the Commission is not whether the Respondent has complied with the requirements of its own constitution or whether the Complainants were deprived of due process in the manner of their expulsion, but whether the action taken against the Complainants, i.e., the threat to expell them if they didn't pay \$100 and their expulsion when they refused to pay the \$100, constitutes a violation of any of the provisions of Section 111.70(3)(b) of MERA. Membership in a Union is a private contractual relationship. The terms and conditions of that membership, usually embodied in the Union's constitution and bylaws, are enforceable, if at all, in the courts and not before the Commission. For this reason, the Examiner deems the evidence regarding the procedures followed by the Respondents in expelling the Complainants irrelevant except to the extent that it may aggravate any violation of the Complainants' rights under MERA. Likewise, the question of whether the Complainants should have exhausted the internal union procedures available to them is irrelevant to the proper disposition of the question before the Commission, which is whether they were coerced and intimidated in the exercise of their legal rights and not whether the express or implied terms of their membership agreement have been violated.

The question presented then is whether a labor organization coerces and intimidates a municipal employe in the enjoyment of his legal rights including those set out in Section 111.70(2) of MERA when it threatens to expel or expels a member for refusing to participate in (or contribute financial support in lieu of participation in) an illegal strike. 3/ In light of the arguments, the question ought to be analyzed from two different aspects; (1) whether the Respondents' action amounts to coercion and intimidation and (2) whether the alleged coercion and intimidation interfered with or was for the purpose of interfering with legal rights intended to be protected under Section 111.70(3)(b)(1) of MERA.

3/ The question herein is quite different than the question of whether is it unlawful coercion for a union to attempt to discipline a member who refuses to participate in a legal strike. See, for example, NLRB v. Allis Chalmers Mfg. Co. 388 U.S. 175, 65 LRRM 2449 (1967). This case is also distinguishable from cases arising under Section 8(b)(1)(A) of the NLRA which contains a proviso to the effect that the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership is unimpaired by the prohibition contained therein.

The Complainants contend that they have been coerced and intimidated by being told to either pay \$100 over and above the dues charged to the other members or face being deprived of the valuable right of membership in the labor organization which has the exclusive right to establish their terms and conditions of employment through collective bargaining. The Respondents contend that deprivation of membership is inconsequential in light of the fact that there is no showing that the Respondent Union excludes non-members from attending meetings, voting or holding office. Even if it is assumed that the Respondent has never attempted to exclude non-members from attending meetings, voting or holding office, 4/ it is clear that a non-member has no legally enforceable right to insist on such attributes of membership.

The right to participate in Union affairs and to have input on questions such as those presented to the membership on January 3, 1973 is a valuable right. The Complainants were deprived of that right because of their refusal to meet the requirement that they pay \$100 over and above the dues otherwise required of members. Such a requirement was clearly coercive and intimidating if the requirement was imposed on them because they were exercising a legal right, intended to be protected by Section 111.70(3)(b)(1) of MERA.

The rights enumerated in Section 111.70(2) includes the right to engage in lawful concerted activities but does not include the right to strike or refrain from striking since Section 111.70(4)(1) prohibits strikes. If the Complainants had a legal right to refuse to engage in an illegal strike, the origin of that right is not the list of rights enumerated in Section 111.70(2) but by implication from the strike prohibition contained in Section 111.70(4)(1) of the Act.

In a decision rendered by the undersigned Examiner and affirmed by the Commission, without comment after the statutory period for filing exceptions had expired, Section 111.70(3)(b)(1) was interpreted to protect the exercise of legal rights arising out of other provisions of MERA other than Section 111.70(2). 5/ That being so, the only question remaining is whether a municipal employe has a legal right to refuse to engage in an illegal strike created by implication from the strike prohibition contained in Section 111.70(4)(1). It would seem self-evident that a municipal employe does have the right to refuse to engage in or otherwise support an illegal strike by virtue of the express prohibition on such activities. 6/ By requiring the Complainants to contribute financial support in lieu of participation in an illegal strike or forfeit their membership, the Respondent Union clearly coerced the Complainants in their exercise of their legal right to refrain from such activity.

4/ The record presents some support for the Union's claim that no effort is made to exclude non-members from meetings but is inadequate to establish that non-members are allowed to vote or hold office.

5/ Racine Policemens' Professional and Benevolent Corp., (12637) 4/74; Affirmed (12637-A) 5/74.

6/ See Kenosha Unified School Dist. No. 1, (12029-E) 12/74 at p. 9; Affirmed (12029-F) 1/75.

For the above and foregoing reasons, the Examiner concludes that the Respondent has committed a prohibited practice in violation of Section 111.70(3)(b)(1) of MERA and has entered an appropriate remedial order.

Dated at Madison, Wisconsin this 21st day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner