

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT PATTERSON, PETER WASELCHUK,
MICHAEL WASSENBERG, AND STEVEN GIESE,

Complainants,

vs.

GARY DOEREN, PRESIDENT, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS,

Respondent.

Case I
No. 20351 MP-606
Decision No. 14553-C

Appearances:

Mr. Robert Patterson, Complainant, appearing on behalf of Complainants.
Mr. Terry Olstadt, IAFF State Representative, appearing on behalf
of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Thomas L. Yaeger, 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 Statutes; and hearing on said complaint having been held at Green Bay, Wisconsin on July 7, 1976, before the Examiner; and the parties having made final arguments at hearing; 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 Robert Patterson, Peter Waselchuk, Michael Wassenberg and Steven Giese, herein Complainants or Patterson, Waselchuk, Wassenberg or Giese, are employed by the Town of Allouez, herein Town or Allouez, as fire fighters; and that none of said Complainants are members of Local 2477.

2. That Local 2477 of the International Association of Fire Fighters (IAFF), herein Respondent or Union, is a labor organization and the exclusive collective bargaining representative for fire fighters in the employ of the Town; and that Gary Doeren, herein Doeren, is President of Local 2477.

3. That in or about July and August 1975, Doeren and other Allouez fire fighters discussed and explored the possible formulation of a union; and, that Doeren and other Allouez fire fighters attended a Green Bay fire fighters local union meeting where they discussed the formulation of a union of Allouez fire fighters with Edward Durkin, International Representative of the IAFF.

4. That in or about August 1975, subsequent to the aforesaid meeting, Clarence Mutusek, Town Administrator, aware that employes were discussing the formulation of a union, met with all Allouez' fire fighters to discuss the Town's position on unionization; that during said meeting, among other things, the matter of fair share was discussed; and, that during said discussion Patterson strongly objected to employes being required to make payments to a labor organization either in the form of dues or fair share contributions.

5. That in September 1975, a meeting of Allouez fire fighters was called by Doeren for the purpose of convincing said fire fighters to "sign up for the union" and apply to the IAFF for a charter; that six fire fighters did "sign up" at said meeting; and, that subsequent to said meeting Doeren forwarded the charter application to Durkin.

6. That a meeting of the aforesaid six fire fighters was held on October 29, 1975, to elect officers; that the remaining Allouez fire fighters were invited to said meeting in the hope that they would also join the Union but, none attended the meeting; and, that at said meeting local Union officers were elected and Durkin presented the members with a charter from the IAFF.

7. That on December 12, 1975, the Union petitioned the Wisconsin Employment Relations Commission, herein Commission, to conduct an election in the unit of all fire fighters of the Town, excluding the Fire Chief and Fire Captains, to determine whether said employes desired to be represented by Respondent Union for the purpose of collective bargaining; that a hearing on said petition was held by the Commission on January 13, 1976, and, a Direction of Election issued on January 16, 1976; that an election was conducted on February 6, 1976; that of the 12 employes eligible to vote in said election, 6 voted yes and 1 voted no; and, that on February 23, 1976, the Commission certified Respondent Union as the exclusive collective bargaining representative of all employes in the above-described bargaining unit. 1/

8. That all employes, except one, who had not already joined the Union prior to the representation election, either voted yes or did not vote at all in said election because they had agreed to "let them (union) try it"; and therefore Complainants were not coerced or intimidated into acquiescing in exclusive representation by Local 2477.

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

CONCLUSIONS OF LAW

1. That Complainants, Robert Patterson, Peter Waselchuk, Michael Wassenberg and Steven Giese are municipal employes within the meaning of Section 111.70(1)(b), Stats.

2. That Respondents, Local 2477 of the International Association of Fire Fighters and Gary Doeren, did not coerce and intimidate Complainants in the enjoyment of their legal rights and, therefore, have not committed and are not committing a prohibited practice within the meaning of Section 111.70(3)(b)1, Stats.

1/ At hearing, the Examiner advised the parties that he would take administrative notice of Commission files and records concerning the representation proceedings involving Local 2477 and the Town of Allouez.

3. That Respondents, Local 2477 of the International Association of Fire Fighters and Gary Doeren, did not coerce, intimidate or induce any officer or agent of the Town of Allouez to interfere with the enjoyment of any of Complainants' legal rights and, therefore, have not committed and are not committing a prohibited practice within the meaning of Section 111.70(3)(b)2, Stats.

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

ORDER

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

Dated at Madison, Wisconsin this 5th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The complaint herein was filed on April 1, 1976. On April 19, 1976, the Examiner ordered Complainants to amend their complaint by specifying what sections of MERA were allegedly violated, what relief was being sought and, whether Local 2477 was a Respondent. On May 5, 1976, Complainants amended their complaint but, did not specify what sections of MERA were allegedly violated. On May 12, 1976, Respondents filed, with the Examiner, a motion to make said complaint more definite and certain. On May 19, 1976, the Examiner issued an Order Granting in Part and Denying In Part Respondents' Motion. On June 1, 1976, in compliance with the Examiner's aforesaid Order, Complainants amended their complaint by stating what sections of MERA Respondents had allegedly violated. Respondents answered the complaint on June 30, 1976, and a hearing in the matter was held on July 7, 1976, in Green Bay, Wisconsin. The parties argued their case in closing arguments at hearing and did not file post hearing briefs.

The Complainants allege that between October 28, 1975, and February 6, 1976, Respondents made certain misrepresentations and, that had their misrepresentations not been made and the facts been made known to employees the outcome of the representation election would have been different. Complainants contend specifically that (1) they were told that they would have an equal say in contract talks; (2) that they were led to believe that negotiation costs for the first contract would be paid by the international union but, have subsequently discovered this not to be the case; (3) that the date of the original vote for the Union was not posted nor were there any ballots cast; (4) that they were confused as to what they were voting for in the February 6, 1976 representation election; and, (5) that they were misled as to the meaning of fair share. Upon the basis of said allegations, Complainants request that the February 6, 1976 election be set aside and a new election held.

Respondents, on the other hand, contend that non-union members of the bargaining unit were told they would be allowed to attend and have in-put at union meetings to be held for the purpose of formulating contract demands; (2) that such a meeting was held on March 6, 1976, that was open to non-union members wherein their suggestions were heard and considered; (3) that it was never the Union's intent, nor did it suggest or indicate that non-union members would be allowed membership privileges in the Union without joining same; (4) that all employees were made aware of the policy of the International Association of Fire Fighters with respect to the costs normally absorbed by the International Association of Fire Fighters and those borne by the locals; and (5) that to date Local 2477 has incurred no cost for negotiating its first contract. The Respondents' conclude that inasmuch as there presently are six dues paying Union members in the 11 man bargaining unit a new election would have no effect other than discrediting the Union and its officers.

Complainants' allegations herein are akin to objections to the election, notwithstanding that they are raised as prohibited practices. However,

under Commission rules, 2/ as is the case under NLRB rules, 3/ only parties to elections may file objections to the conduct of the election or conduct affecting the results of the election. While Complainants herein were employees eligible to vote in the subject election they were not a party thereto and, therefore, precluded from filing objections to the election. Thus, Complainants only avenue to relief from the alleged irregularities is by way of filing a prohibited practice complaint.

Section 111.70(3)(b)2:

Complainants contend that the Respondents' conduct preceding the election constitutes a prohibited practice in violation of Sections 111.70(3)(b)1 and 2, Stats.

Section 111.70(3)(b)2, Stats. provides:

"(b) It is a prohibited practice for a municipal employe, individually or in concert with others:

. . .

"2. To coerce, intimidate or induce any officer or agent of a municipal employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in sub. (2), or to engage in any practice with regard to its employes which would constitute a prohibited practice if undertaken by him on his own initiative".

The record, however, is devoid of any evidence that Respondents engaged in any conduct calculated to induce, coerce or intimidate officers or agents of the Town of Allouez to interfere with Complainant's enjoyment of their legal rights. Thus, there is no basis for a finding that Section 111.70(3)(b)2, Stats. has been violated and, therefore, that allegation has been dismissed.

Section 111.70(3)(b)1:

Section 111.70(3)(b)1, Stats. provides:

"(b) It is a prohibited practice for a municipal employe, individually or in concert with others:

"1. To coerce or intimidate a municipal employe in the enjoyment of his legal rights, including those guaranteed in sub. (2)".

The complaint, as amended, refers to five (5) different instances of conduct engaged in by Respondents which allegedly coerced and intimidated Complainants in the exercise of rights guaranteed them by Section 111.70(2), Stats. After reviewing the record the undersigned has concluded that two of said allegations can be dismissed as having no basis in fact.

2/ Wis. Adm. Code, Section ERB 11.10.

3/ 29 CFR, Part 102, Section 102.8 and Section 102.69(a) as amended 40 F.R. 6204; Times Square Corp. 79 NLRB No. 50 (1948).

Complainants contend that they were misled (by Respondents) as to the meaning of fair share. The evidence, however, establishes that at a meeting called by the Town administrator and attended by Complainants fair share was discussed extensively and, that one of Complainants was an active participant in said discussion. On the other hand, there was no testimony that any of Complainants were confused on February 6, 1976 as to the meaning of fair share much less that said confusion was attributable to Complainants. Thus, Complainants failed to establish by a clear and satisfactory preponderance of the evidence 4/ that they were misled by Respondents as to the meaning of fair share.

Another of Complainants' allegation is that they were confused as to what they were voting for in the February 6, 1976, election. However, Complainant Waselchuk testified that those employees who had not already joined the Union were agreed to let the Union represent them or in his own words "let them try it". In view of this testimony the inescapable conclusion is that Complainants were not confused as to the purpose of the representation election held on February 7, 1976.

Complainants also contend that notices were never posted nor were ballots cast when the initial decision was made to seek representation. The evidence establishes, however, that this allegation is in reference to a meeting of employees interested in exploring the formation of a union and, not the representation election ultimately conducted by the Commission. While all employees may not have received notice of said meeting and no votes ever taken, these actions do not in any way constitute a violation of MERA. Employees who may be interested in formulating a union or seeking out an established union to represent them obviously need not initially advise all employees of their intentions and/or seek their participation and support.

The testimony relative to the remaining two allegations is conflicting. However, even assuming arguendo that Complainants were misled into believing they would have an equal voice in contract negotiations with union members although they didn't join the union, no prohibited practice occurred. While such statements, if made, would have been clearly misleading, they certainly could not be considered as coercive or intimidating. This is also true of any statements that might have been made concerning costs to be incurred by Local 2477 in negotiating a collective bargaining agreement with the Town.

In accordance with the above, the Examiner is today issuing an Order dismissing the complaint.

Dated at Madison, Wisconsin this 5th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner

4/ Section 111.07(3), Stats.