

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48, AMERICAN	:	
FEDERATION OF STATE, COUNTY AND	:	
MUNICIPAL EMPLOYEES, AFL-CIO and	:	
LYNWOOD WALKER,	:	
	:	
Complainants,	:	Case LXXXIII
	:	No. 20716 MP-647
vs.	:	Decision No. 14834-A
	:	
MILWAUKEE COUNTY AND MILWAUKEE COUNTY	:	
CIVIL SERVICE COMMISSION,	:	
	:	
Respondents.	:	
	:	

Appearances:

Podell and Ugent, Attorneys at Law, by Mr. Alvin R. Ugent, Esq.,
and Mr. Harry Donian, Associate Director, District Council 48,
on behalf of Complainants.
Mr. Patrick J. Foster, Esq., Corporation Counsel, on behalf of
Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and Lynwood Walker having filed a prohibited practices complaint with the Wisconsin Employment Relations Commission, herein Commission, alleging that Milwaukee County, Milwaukee County Civil Service Commission and certain named individuals 1/ have committed certain prohibited practices within the meaning of the Municipal Employment Relations Act, herein MERA; and the Commission having appointed Amedeo Greco, a member of the Commission's staff, to act as Examiner to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held in Milwaukee, Wisconsin on September 8, 1976; and the parties having thereafter filed briefs; and the Examiner having considered the evidence and arguments of counsel, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter District 48, is a labor organization with its principal offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin; that District 48 is the exclusive collective bargaining representatives of certain employes employed by Milwaukee County; and that Lynwood Walker, an individual, is employed by Milwaukee County and is represented for collective bargaining purposes by District 48.

1/ For the reasons noted below, the Examiner has dismissed certain named Respondents.

2. That Milwaukee County is a municipal employe within the meaning of Section 111.70(1) (a) and has its principal offices located at 901 North Ninth Street, Milwaukee, Wisconsin.

3. That the Milwaukee Civil Service Commission, hereinafter the Civil Service Commission, is created pursuant to Sections 63.01 of the Wisconsin Statutes; that at all times material herein, Edmund G. Krawczyk, Fred Knox, James Jesinski, Frank Peluso, Kathleen Marsolek have served as members of the Milwaukee Civil Service Commission; that Anthony Romano is the Chief Examiner of the Milwaukee County Civil Service Commission; and that at all times material herein, the Milwaukee Civil Service Commission has acted on behalf of Milwaukee County.

4. That on or about July 9, 1976, Walker was disciplined and given a one day suspension by Milwaukee County for alleged tardiness; that this marked the second time that Walker had been suspended within a six month period; that such a second suspension automatically required a hearing before the Civil Service Commission; that cases involving two suspensions within a six month period cannot be appealed to arbitration and they can only go to the Civil Service Commission; that the Civil Service Commission had the power to uphold such suspensions; that such suspensions are not actually levied until the Civil Service Commission acts; that Walker appeared at a scheduled Civil Service Commission disciplinary hearing on August 2, 1976; that it is unclear as to what members of the Civil Service Commission were then present; that Walker then asked that he be represented by Harry Donian, District 48's Associate Director; that it appears that Donian is not an attorney; that the Civil Service Commission has a rule under which non-attorneys cannot represent individual employes in disciplinary matters; that the Civil Service Commission on August 2, 1976 ruled that Walker could either represent himself or have an attorney represent him, but that he could not be represented by a non-attorney; and that the August 2, 1976 hearing was then held in abeyance pending resolution of that issue.

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

CONCLUSION OF LAW

That Respondents, Milwaukee County and the Milwaukee Civil Service Commission violated Section 111.70(3) (a)1 of MERA by refusing to permit Lynwood Walker to be represented by a non-attorney at a disciplinary hearing before the Milwaukee County Civil Service Commission.

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

ORDER

1. IT IS ORDERED that Respondents Milwaukee County and the Milwaukee County Civil Service Commission, their officers and agents, shall immediately

1. Cease and desist from

a. Refusing to permit non-attorneys to represent bargaining unit employes represented by District 48 at disciplinary hearings before the Milwaukee County Civil Service Commission.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act.
 - a. Permit Lynwood Walker, and any other bargaining unit employes similarly situated, to be represented by non-attorneys, if they so desire, at disciplinary hearings conducted by the Milwaukee County Civil Service Commission.
 - b. Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days following the date of this Order as to what disciplinary steps have been taken to comply herewith.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

MEMORANDUM ACCOMPANYING FINDINGS
OF FACT, CONCLUSION OF LAW AND ORDER

Complainants maintain that Respondents acted unlawfully when they refused to permit Walker to be represented a non-attorney at the August 2, 1976 disciplinary hearing.

Respondents, on the other hand, claim that they did not act unlawfully. In support thereof, Respondents contend that: (1) the Commission lacks jurisdiction over the members of the Civil Service Commission as individuals and Anthony P. Romano, the Chief Examiner of the Civil Service Commission; (2) the Commission lacks jurisdiction over the County Civil Service Commission; and (3) employes have no right to be represented by non-attorneys at Civil Service Commission hearings.

As to point (1), the Examiner finds that the individual members of the Civil Service Commission, as well as Chief Examiner Romano, are not proper parties to this proceeding. This is so because there is no specific evidence that any of these individuals participated in the events herein. Accordingly, they are hereby dismissed as named Respondents.

Turning to point (2), the record establishes that the Civil Service Commission has the effective power to administer disciplinary penalties and that there is no appeal from the kind of disciplinary proceeding herein. The record also shows that while Milwaukee County may initially propose a penalty, no such penalty is actually served until the Civil Service Commission has first had an opportunity to consider the matter. Furthermore, it is clear that all of the members of the Civil Service Commission are appointed to their posts by the chairman of the Milwaukee Board of Supervisors and they are subsequently confirmed by the Milwaukee County Board of Supervisors. 2/ In such circumstances, it must be concluded that the Civil Service Commission acts on behalf of Milwaukee County and that, as such, it is a municipal employer under Section 111.70(1)(a) of MERA. As a result, it follows that the Civil Service Commission is a proper party to the proceeding.

With respect to the substantive merits of the issue presented, the Commission has recently ruled under similar facts that employes are entitled to representation in certain disciplinary matters. 3/ In so finding, the Commission noted that such representation is required because the disciplining of an employe affects the wages, hours and conditions of employment of the employe. The Commission in its ruling gave no indication that an employer could limit the right of representation by insisting that such a representative be an attorney. To the contrary, the facts in City of Milwaukee, supra, indicate that the affected employe wanted to be represented by the president of his union, and not by an attorney. Based upon the Commission's ruling in City of Milwaukee, supra, it must therefore be concluded

2/ Section 63.01(2), Wis. Stats.

3/ City of Milwaukee (Police Department), Decision No. 13558-C.

that Walker had a similar right of representation at his disciplinary hearing before the Civil Service Commission and that Walker had the right to be represented by anyone of his own choosing, irrespective of whether the person selected was an attorney. 4/

In so finding, the Examiner is aware that the Respondents have insisted upon the attorney requirement because of their concern that affected employes be represented by individuals who are competent to do so. That is certainly a laudable goal. However, the fact remains that individual employes, and not Respondents, are in the best position to know as to who can best represent them in disciplinary hearings. Additionally, it may well be that an experienced union representative in many cases can better prepare a case than can an attorney who has no familiarity with a collective bargaining relationship. This is so because a collective bargaining agreement in some cases contains nuances which are not readily seen by one who is inexperienced in such matters. In such circumstances, it is inherently unfair to deny an employe the opportunity to be represented by a more experienced union representative.

Accordingly, based upon the foregoing considerations, it follows that Walker had the right to a representative of his own choosing at the disciplinary hearing in issue, and that Respondents violated Section 111.70(3)a(1) of MERA 5/ when it refused to allow Walker the opportunity to be represented by a non-attorney. To rectify that action, Respondents shall take the remedial action noted above.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

4/ It is well established that the requirements of MERA must be read in conjunction with the requirements of other statutory provisions. Accordingly, municipal employes have the right to such representation at disciplinary hearings before the Civil Service Commission, even though the provisions of Section 63.10 of the Wisconsin Statutes do not provide for such representation.

5/ Complainants' other complaint allegations are hereby dismissed.