

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

No. 13787-F  
No. 16009-C

2. That the motion to quash paragraph 8 of the subpoena directed to Kaye be, and the same hereby is, granted; accordingly, Kaye need not bring to the hearing on the above matter:

"Records showing the budget of PAMPS together with such memoranda, letters and documents which might show whether the Administrators and Supervisors Council is directly or indirectly paying the operating expenses of PAMPS."

3. That the motion to quash paragraph 9 of the subpoena directed to Bauman be, and the same hereby is, granted; accordingly, Bauman need not bring to the hearing in the above matter:

"Records showing the budget of the ASC together with such memoranda, letters and documents which might show whether the ASC is directly or indirectly paying the operating expenses of the Psychologists Association of the Milwaukee Public Schools."

Dated at Madison, Wisconsin this 5th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Sherwood Malamud, Examiner

It seeks this information for the purpose of having easy access to the school psychologists. It cites Board of School Directors of Milwaukee v. WERC, 42 Wis. 2d 637, 655 (1969) for the proposition that such information is public and not confidential, accordingly, it should be provided to the MTEA.

ASC argues that the subpoena should be quashed for several reasons:

- (1) The purpose of the subpoena duces tecum is not to be used as a bill of discovery.
- (2) MTEA has not shown that the information sought is otherwise unavailable.
- (3) MTEA has not demonstrated materiality.
- (4) MTEA has not demonstrated relevance.
- (5) The disclosure of addresses and phone numbers contravenes WERC policy.
- (6) Disclosure of addresses and phone numbers will only expose psychologists to harassment and intimidation from which the psychologists should be insulated.

PAMPS argues that the subpoena will expose school psychologists to harassment. It notes that the MTEA's reliance on the Milwaukee Board of School Director's case is misplaced. In that case, the Wisconsin Supreme Court held that the majority representative was entitled to the addresses and phone numbers of employees in the representative's unit. Here, the MTEA is not the majority representative of employees in the unit of school psychologists; accordingly, it is not entitled to the addresses and phone numbers of the school psychologists.

The Examiner quashed that part of the subpoena which required the production of the addresses and phone numbers of the school psychologists for two reasons.

First, the MTEA does not seek this subpoena duces tecum for the production of the addresses and the phone numbers of the school psychologists as an exhibit at the hearing. By its own statement, it will use the information produced to improve its access to school psychologists so that they may be questioned concerning the methods used by PAMPS in obtaining signatures for its election petition. The MTEA is using the subpoena process exclusively for purposes of discovery. Such use of the subpoena in the midst of the instant representation proceeding is inappropriate. At this stage of the proceeding, the hearing stage, a subpoena should yield information which if offered would be arguably relevant and material to this proceeding. That is not the case here.

The information produced by the subpoena is not relevant here. In election cases, where a question concerning representation exists (a position asserted by PAMPS), the Commission asks the Employer to produce a list of employees in the unit so that eligibility questions may be resolved at the hearing. At no time has the Commission required an employer to bring to the hearing the addresses and phone numbers of the claimed employees, nor has it required the employer to include the addresses and phone numbers of employees in the list provided to the union just prior to the election (the so-called Excelsior list). 2/

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2/ See Marinette General Hospital (7569) 4/66; City of Watertown (12179) 9/73.

MEMORANDUM ACCOMPANYING ORDER GRANTING IN PART  
MOTIONS TO QUASH SUBPOENAS DUCES TECUM

BACKGROUND

The two captioned cases were consolidated by the Examiner for purposes of hearing and decision. To date, in statements of positions and through testimony presented and evidence adduced in the course of two days of conferences among counsel for the parties and the Examiner, and five days of hearing in the matter, several major theories of the case were developed by the parties. Briefly, the MTEA maintains that the psychologists are municipal employees; as such, they should be accreted to the teacher bargaining unit. The Municipal Employer asserts that the school psychologists are supervisory employees within the meaning of the Municipal Employment Relations Act (MERA). ASC and PAMPS support the Municipal Employer's argument. However, ASC argues that if the Commission should find that the psychologists are municipal employees within the meaning of MERA, then the collective bargaining agreement between it and the Municipal Employer concerning the wages, hours and working conditions of psychologists should act as a bar to the MTEA petition. PAMPS filed a petition for an election. It argues that should the Commission reject the arguments of the Municipal Employer, ASC and PAMPS, then the Commission should conduct a representation election in a school psychologist unit and permit the school psychologists to select a bargaining representative or no representation. In addition, PAMPS argues that the teacher bargaining unit contains non-professional employees, and as a result, the psychologists who are professional employees cannot be included in the teacher unit without a vote.

The MTEA argues that ASC and PAMPS are employer dominated organizations, accordingly, the positions of ASC and PAMPS should be rejected and the school psychologists should be accreted to the teacher unit.

The purpose of this brief and assuredly incomplete summary of the positions of the parties is to present the setting and context in which the within Order was issued.

McMurrin Subpoena

In its subpoena to the Superintendent of Schools, the MTEA asked that he bring to the June 7, 1978 hearing a:

"List of all school psychologists, associate school psychologists, and employees employed in positions involving training for and leading to employment as regular school psychologists, together with the addresses and phone numbers of such employees currently employed in the Milwaukee Public School System."

It asserts that the addresses and phone numbers of the psychologists are necessary because:

"PAMPS has asserted that virtually all of the psychologists employed by the Milwaukee Board of School Directors have signed a petition indicating they desire to be represented by PAMPS and do not wish to be represented by the MTEA. Unless the MTEA is able to contact these employees, there is no way it can either verify the signatures contained on the petition, or ascertain what those employees were told at the time they signed such petition."

The MTEA does not seek the addresses and phone numbers of the school psychologists in order to submit same as evidence in this case.

There is no instance under Commission procedures where the addresses and phone numbers must be made available to the union as a matter of right.

Finally, MTEA's argument that this information is public and must be made available to the MTEA misses the point. The public nature of the material sought is not the issue. The relevancy and use of such information in the instant proceeding is the central issue here. Whether or not the Employer is obliged to reveal addresses and phone numbers of school psychologists to the public, that information can play no part in these proceedings. Accordingly, those portions of the subpoena seeking the addresses and phone numbers of the school psychologists are quashed.

Kaye and Bauman Subpoenas

In its subpoena to Kaye and Bauman, the MTEA seeks the:

"Records showing the budget of PAMPS together with such memoranda, letters and documents which might show whether the Administrators and Supervisors Council is directly or indirectly paying the operating expenses of PAMPS."

When viewed in its most favorable light, the MTEA subpoenas may produce information which may be relevant in a prohibited practice proceeding.

The rules of the Commission clearly provide that:

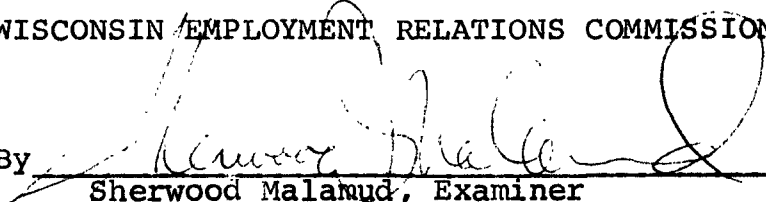
"(2) Scope of hearing. The hearing shall be limited to pertinent matters necessary to determine questions relating to the election case. Allegations of prohibited practices within the meaning of section 111.70, Wis. Stats., may not be litigated therein."

In a recent case, 3/ an employer attempted to interject issues in the nature of an alleged refusal to bargain in an election proceeding. In that case, the Commission reiterated its policy of refraining from adjudicating such charges in an election proceeding. Since the MTEA subpoenas will not produce information relevant to the instant representation proceeding, the motion to quash same was granted.

Dated at Madison, Wisconsin this 5th day of June, 1978.

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