

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48,
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO
and its affiliated LOCAL 587,

Complainant,

vs.

MILWAUKEE AREA DISTRICT BOARD OF
VOCATIONAL, TECHNICAL AND ADULT
EDUCATION,

Respondent.

Case LXXXV
No. 25142 MP-1031
Decision No. 17322-A

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, 735 West Wisconsin Avenue, Suite 500, Milwaukee, WI 53233, by Mr. Alvin R. Ugent, appearing on behalf of Complainant.
Quarles & Brady, Attorneys at Law, 780 North Water Street, Milwaukee, WI 53202, by Mr. George K. Whyte, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local No. 587, hereinafter Complainant, filed a complaint of prohibited practices on September 20, 1979 with the Wisconsin Employment Relations Commission against the Milwaukee Area District Board of Vocational, Technical and Adult Education, hereinafter Respondent, alleging that Respondent violated Sections 111.70(3)(a)1, 2, 4 and 5 of the Municipal Employment Relations Act (MERA). The Commission appointed Sherwood Malamud, a member of the Commission's staff to make and issue Findings of Fact, Conclusions of Law and Orders in the matter. Hearing in the above captioned matter was held in Milwaukee, Wisconsin on November 30, 1979. Respondent filed its brief in a timely manner on January 8, 1980, and the Examiner closed the record in the matter on February 8, 1980 without receiving a brief from Complainant. The Examiner considered the evidence presented at the hearing and the arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Orders.

FINDINGS OF FACT

1. District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 587 are labor organizations, and their offices are located at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.
2. Respondent Milwaukee Area District Board of Vocational, Technical and Adult Education is a municipal employer; its offices are located at 1015 North Sixth Street, Milwaukee, Wisconsin.
3. Complainant and Respondent are parties to a collective bargaining agreement which contains a multi-step grievance procedure which terminates with final and binding arbitration.

4. In March, 1979, 1/ the incumbent Student Services Coordinator, Pat Cleavland, died, leaving a permanent vacancy in that position. At the time of her death, the Student Services Coordinator was classified as a clerk IV position.

5. For a period extending from March to on or about July 12, Harold Bessette, the Associate Dean for Career Education, the immediate supervisor of the Student Services Coordinator and the individual responsible for filling the vacancy in this position, believed that the Student Services Coordinator position should be classified and posted at the clerk IV level. Bessette told his immediate supervisor, the Dean of Career Education, Bernard Greeson, and representatives of Complainant of his opinion. However, the office of Employee Services of Respondent advised Bessette to downgrade the Student Services Coordinator position to a clerk III classification.

6. On or about July 12, Bessette changed his mind, and he decided that the position of Student Services Coordinator should be posted as a clerk III rather than as a clerk IV position. Soon after Bessette's change of mind, he had occasion to inform Union representatives O'Halloran and Robison of his decision to downgrade the Student Services Coordinator to a clerk III classification. The Union representatives responded that if the position were downgraded, the Union would grieve. Bessette did not tell Dean Greeson of his decision to downgrade the Student Services Coordinator to the clerk III classification.

7. On July 23 Bessette commenced a two week vacation. On July 24, the Student Services Coordinator position was posted at the clerk III classification.

8. On July 27, Union Steward O'Halloran and Steward trainee Dimenski initiated a grievance at the first or oral step of the grievance procedure. First, they attempted to initiate the grievance at the oral first step with the appropriate supervisor, Bessette. But, he was on vacation. Then, they made an appointment to speak with Dean Greeson, who, as the Dean of Career Education, would be the supervisor to whom the grievance would be appealed from a decision by Bessette. Greeson is vested with the authority to settle grievances and he is an agent of Respondent for the purpose of discussing and resolving grievances under the parties' grievance procedure. O'Halloran and Dimenski informed Greeson that Bessette was on vacation, and it was their intent to initiate their grievance concerning the downgrading of the Student Services Coordinator position at Greeson's step of the grievance procedure. Greeson agreed to receive and discuss the grievance even though he was about to depart on his vacation. During the ensuing discussion Greeson volunteered that Bessette, the Associate Dean of Career Education, wanted the position posted at the clerk IV level, but that the office of Employee Services wanted to downgrade the position. Greeson told the Union representatives that it was his job to support Bessette's decision. The Student Services Coordinator should remain at the clerk IV classification, he told them, and both he and Complainant Union were in agreement. Greeson did not ask O'Halloran if Bessette had informed the Union of his position, and the Union representatives did not tell Greeson of their conversation with Bessette, described in Finding of Fact No. 7 above, approximately two weeks prior to this July 27 grievance meeting.

9. O'Halloran left Greeson's office and drafted a memorandum which she believed to be a fair statement of the agreement resolving the grievance. The memorandum follows:

1/ Unless otherwise stated, all dates refer to calendar year, 1979.

July 27, 1979

On 7-27-1979, a grievance was initiated concerning the clerk III posting for the Career Education Department. Since Mr. Greeson is in agreement with Local 587's position and since he will be gone for the few weeks, it is hereby mutually agreed to waive step 2 of the grievance procedure.

O'Halloran presented the memorandum to Greeson for his signature soon after the meeting described in Finding of Fact No. 8. Greeson signed the above memorandum with the intent of resolving the grievance.

10. On July 27 Complainant and Respondent entered into an agreement under which the Student Services Coordinator was to remain a clerk IV position.

11. Subsequent to July 27, Respondent has refused and it continues to refuse to implement the agreement reached during the meeting between O'Halloran, Dimenski and Greeson on July 27.

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

CONCLUSIONS OF LAW

1. Complainant has failed to prove by a satisfactory preponderance of the evidence that Respondent violated Section 111.70(3)(a) 1, 2 and 4 of the Municipal Employment Relations Act.

2. Bernard Greeson, Dean of Career Education, is an agent of Respondent who is vested with the authority to resolve grievances filed by Complainant under the parties' collective bargaining agreement.

3. That the July 27 grievance settlement is a legally enforceable collective bargaining agreement under Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

4. Respondent, by its refusal to implement the July 27 agreement between Complainant and Respondent to retain the Student Services Coordinator as a clerk IV position, is violating a collective bargaining agreement, and is thereby, violating Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDERS

1. Those portions of the complaint in which Complainant alleges that Respondent violated Sections 111.70(3)(a)1, 2 and 4 of the Municipal Employment Relations Act be, and the same hereby are, dismissed.

2. The Milwaukee Area District Board of Vocational, Technical and Adult Education, Respondent herein, shall immediately cease and desist from refusing to implement the July 27, 1979 agreement settling the grievance filed by Complainant.

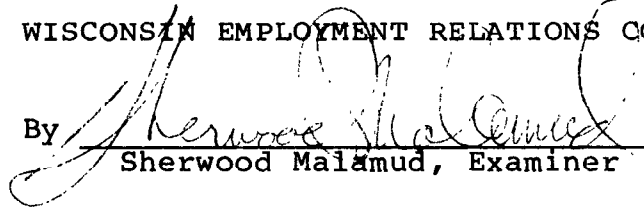
3. Take the following affirmative action which the Examiner finds will effectuate the purposes of the Municipal Employment Relations Act:

- (a) Immediately comply with the terms of the July 27 agreement and restore the Student Services Coordinator position to the clerk IV classification.
- (b) Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply with this Order.

Dated at Madison, Wisconsin this 18th day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDERS

BACKGROUND AND ARGUMENTS OF THE PARTIES:

Complainant alleges that on July 27, 1979 representatives of Complainant and Respondent entered into an agreement which resolved a grievance concerning the downgrading of the Student Services Coordinator position from the clerk IV to the clerk III classification. Under the terms of the alleged grievance settlement, the Student Services Coordinator position was to be restored to the clerk IV classification. Complainant alleges that Respondent has refused to comply with this agreement.

On the other hand, Respondent, in its answer presented orally at the hearing and in its brief, argues that the July 27 grievance settlement should not be given binding effect. Respondent asserts that Dean Greeson signed the July 27 memorandum without full knowledge of the consequences of signing said memorandum. Respondent argues that Greeson's decision was based on a misunderstanding of critical facts; 2/ a misunderstanding of which the Union representatives were well aware, but took no steps to clarify. When Greeson stated that he would support Bessette's position, he was unaware that Bessette wanted to downgrade the position. Respondent argues that Greeson was induced to sign the July 27 memorandum unaware that he was agreeing to a final settlement of the grievance.

The Examiner will first discuss the credibility issues raised in this case. Then, the merits of the dispute will be considered.

CREDIBILITY FINDINGS:

Union representatives O'Halloran and Robison 3/ testified, as to their meeting(s) and conversation(s) with the Associate Dean of Career Education, Bessette. O'Halloran and Dimenski described their meeting with Dean Greeson and the events surrounding his signing of the July 27 memorandum quoted in Finding of Fact. No. 9. The Associate Dean and the Dean of Career Education, Bessette and Greeson, were Respondent's only witnesses.

It appears, at first, that the accounts of Complainant's and Respondent's witnesses of the meeting(s) among Bessette, O'Halloran, Robison and Dimenski differ. O'Halloran and Robison testified to a conversation among themselves and Bessette. These two Union representatives recalled that in this conversation, Bessette stated his belief that the Student Services Coordinator should remain and be posted at the clerk IV classification. Neither O'Halloran nor Robison could precisely state the date of this meeting. Robison recalled that the meeting occurred during the week following July 4, 4/ and O'Halloran testified it took place during the week of July 20. 5/

2/ The Employer cites Tennessee Coal, Iron and Railroad Co. 7 LA 378 (Bd of Arb, Chmn - Blumen, 1974) and Republic Steel Corp. 25 LA 437 (Platt, 1955) in support of its position.

3/ Robison is the correct spelling of this witness's name, although it appears throughout the transcript as Robinson. The transcript is hereby corrected to reflect the proper spelling of her name.

4/ Transcript, p. 45.

5/ Transcript, p. 39.

With regard to the meeting among Bessette and O'Halloran and Robison, Bessette testified that in June, 6/ he told the Union representatives that he thought that the Student Services Coordinator should remain a clerk IV position. But he specifically recalled telling them of his change of mind on July 12. 7/

It appears from the record that Complainant's and Respondent's witnesses are describing different meetings or encounters. None of the witnesses could be precise about the dates of any meeting which occurred prior to July 12. The Examiner put together both accounts of these meetings, with the following result.

In the latter part of June or during the first ten days of July, Bessette tells the Union representatives that it is his desire to maintain the Student Services Coordinator position at the clerk IV level. On July 12, Bessette changes his mind. He tells the Union representatives of his decision to downgrade the Student Services Coordinator position. Bessette admits that the Union representatives stated the matter would be grieved should the position be downgraded. Although Bessette advises the Union of his change of mind, he neglects to tell his supervisor, Dean Greeson, of his decision to downgrade this position. Bessette leaves for his vacation on July 23, and the next day, the Student Coordinator position is posted. On July 27, the Union initiates its grievance. The above sequence of events is reflected in the Examiner's Findings of Fact.

When Greeson, O'Halloran and Dimenski meet on July 27, the Union representatives could anticipate that Greeson would deny the grievance, based on their brief discussion with Bessette on July 12. Then, they could proceed through the grievance procedure without encountering any delay in the processing of the grievance because of either Bessette's or Greeson's vacations. However, Greeson volunteered and told them that Bessette wanted the job posted at the clerk IV level. They did not know that Bessette left on his vacation without telling Greeson of his change in position, and Greeson did not ask them what Bessette had told them.

The above record does not support a finding of fraud or misrepresentation by the Union. Greeson's lack of complete information about Bessette's decision to downgrade the Student Services Coordinator position is attributable to Bessette's failure to inform the Dean of that decision. The above description of the record evidence completes the Examiner's review of his credibility determinations.

Prior to proceeding to a discussion of the merits of this case, it is important to note that the issue here is whether or not the parties reached a settlement agreement. The question as to whether the Student Services Coordinator position is appropriately a clerk III or clerk IV position is not before the Examiner.

Was a Settlement Agreement Reached?

Respondent argues that Greeson did not agree to enter into a final settlement of the grievance:

6/ Transcript, pp. 69-70.

7/ Transcript, pp. 60, 62, 70.

. . . he [Greeson] was led to believe that he was merely being asked to handle one step in a to-be-continued grievance procedure. (Respondent's brief, p. 18)

The evidence leads the Examiner to a different conclusion. At the July 27 meeting, O'Halloran believed that she entered into an agreement settling the grievance. 8/ Greeson testified on cross examination about his understanding of the results of the July 27 meeting, as follows:

Q In any event, you decided that since everybody was in agreement, that the matter would be settled. Isn't that right?

A I assumed so, yes. 9/

The result of the discussion between the Union representative and the Employer's representative in the grievance procedure, was to resolve the grievance.

O'Halloran attempted to reduce that settlement to writing. 10/ Although the substance of the memorandum is unclear, the intent of the parties in their discussions at the grievance meeting is clear. They intended to resolve the grievance by retaining the Student Services Coordinator position in the clerk IV classification.

CONCLUSION:

Greeson and O'Halloran, as representatives of the Respondent and Complainant respectively, reached an agreement. The evidence demonstrates that Greeson's failure to have all the facts was a result of a failure of communications between Respondent's representatives and was not the result of any acts of misrepresentation by the Union. Consequently, the Examiner concluded that the parties' agreement should be given effect. 11/

Dated at Madison, Wisconsin this 18th day of November, 1980.

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By 
Sherwood Malamud, Examiner

8/ Transcript, pp. 24-25.

9/ Transcript, p. 85.

10/ The text of the settlement may be found in Finding of Fact No. 9, supra.

11/ The Employer's citation of Tennessee Coal, Iron and Railroad Co. 7 LA 378 (Bd of Arb, Chmn - Blumen, 1947) and Republic Steel Corp. 25 LA 437 (Platt, 1955) is misplaced. In the former case, the Board of Arbitration permitted the Union to investigate which of two grieving employees was the most senior and eligible for a promotion. The Board did not state what would constitute grievous error which would justify upsetting a settlement favorable to one of the two employees. In Republic Steel Corp., the Umpire refused to disturb a settlement of a grievance.

The above cases support the Examiner's conclusion that opening grievance settlements whenever one side feels it has not fully mastered its information would undermine the grievance process. In that case, parties would feel that grievances were never fully settled.