

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAUK PRAIRIE FAIR SHARE MEMBERS :
SAUK PRAIRIE SCHOOLS, WIS. 53583, :

Complainants, :

vs. :

SAUK PRAIRIE SCHOOL BOARD, :
SAUK PRAIRIE EDUCATION :
ASSOCIATION, SOUTH CENTRAL :
UNITED EDUCATORS, WISCONSIN :
EDUCATION ASSOCIATION COUNCIL, :

Respondents. :

Case XXII
No. 29357 MP-1312
Decision No. 19467-B

Appearances:

Mr. Ronald H. Jordi, Representative, 1213 Water Street, Sauk City, Wisconsin 53583, appearing on behalf of the Complainants.

Mr. Bruce Meredith, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of Respondents SPEA, SCUE, and WEAC.

INITIAL FINDINGS OF FACT,
INITIAL CONCLUSIONS OF LAW AND ORDER

The above-named Complainants having, on February 24, 1982, filed a complaint with the Wisconsin Employment Relations Commission, herein Commission, alleging that the above-named Respondents had committed, and were committing prohibited practices within the meaning of the Municipal Employment Relations Act, herein MERA; and the Commission having, on March 19, 1982, appointed Lionel L. Crowley, a member of its 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), Stats.; and hearing on said complaint having been held in Sauk City, Wisconsin, on June 9, 1982; and evidence having been presented on two issues; namely, that Respondents allegedly interfered with the rights of non-member employees by refusing to them certain participation in Union proceedings, and that Respondents allegedly made fair-share deductions which were in excess of the proportionate share of the cost of collective bargaining and contract administration; and the parties having completed the filing of briefs on the first issue by February 21, 1983; and the undersigned, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

INITIAL FINDINGS OF FACT

1. That Complainants are individuals who are employed as teachers by the Sauk Prairie School District and Ronald Jordi, one of said teachers, is their spokesman, and he resides at 1213 Water Street, Sauk City, Wisconsin 53583.

2. That Respondent Sauk Prairie School Board, herein Board, operates a school system for the benefit and education of the inhabitants of the Sauk Prairie School District and it maintains its offices at 213 Maple Street, Sauk City, Wisconsin 53583.

3. That Respondent, Wisconsin Education Association Council, herein WEAC, is a statewide labor organization representing teachers, employed by school districts in Wisconsin, through various local affiliates for the purposes of collective bargaining and its offices are located at 101 West Beltline Highway, Madison, Wisconsin 53708.

4. That Respondent, South Central United Educators, herein SCUE, is a labor organization affiliated with WEAC and is a support group for local affiliates in the south central area of Wisconsin, and its offices are located at 207 West Cook Street, Portage, Wisconsin 53901.

5. That Respondent, Sauk Prairie Education Association, herein SPEA, is a labor organization affiliated with WEAC and SCUE, and is the exclusive bargaining representative for personnel engaged in teaching in the Sauk Prairie School District and its president is Dennis Kahn, whose address is 213 Maple Street, Sauk City, Wisconsin 53583.

6. That SPEA, SCUE, WEAC and the National Education Association, herein NEA, a labor organization representing teachers through state and local affiliates, are all affiliated with each other and are hereinafter collectively referred to as the Union; that as a condition of membership in SPEA, a member must also be a member of SCUE, WEAC, and NEA; that Complainant Jordi applied for membership in SPEA but indicated he did not desire to be a member of the WEAC, NEA and SCUE affiliates; and that his membership in SPEA was denied.

7. That the SPEA and the Board have entered into a series of collective bargaining agreements covering the wages, hours and conditions of employment of employees in a bargaining unit described as all contracted and certificated teachers, head teachers, department heads, special teachers, guidance counselors, librarians, and teachers who are employees of the Sauk Prairie School System.

8. That in 1981, the Board and SPEA entered into negotiations for a successor collective bargaining agreement; that on October 28, 1981, the SPEA held a membership meeting to vote on ratification of a tentative collective bargaining agreement for the 1981-82 school year; that employees who were not members of SPEA were not permitted to participate in said vote; and that the SPEA permits only SPEA members to attend SPEA meetings, to hold elective and appointive offices, to vote in SPEA elections and ratifications of collective bargaining agreements, and to attend bargaining sessions.

9. That some time after the October 28, 1981 ratification vote, the Board discussed filing a prohibited practice complaint on behalf of employees who were not permitted to vote in said ratification proceeding; that by a letter dated February 2, 1982 addressed to the Board, Staff Counsel for WEAC stated, in part, as follows:

Before proceeding with such a complaint, you would be well advised to contact your own attorney or the Wisconsin Employment Relations Commission about this matter. The WERC is a neutral agency with special expertise in such matters.

I believe you will discover that Mr. Jordi's rights were not infringed upon in any way. Of course, should Mr. Jordi decide to become a member of SPEA he would have the right to vote on ratification of the local collective bargaining agreement as well as have input (sic) in other matters that appear to be of concern to him.;

and that the Board took no further action concerning the filing of such prohibited practice.

10. That pursuant to a referendum conducted by the Commission on May 2, 1979, the Commission certified that the required number of employees (more than 66 2/3% of those voting) voted in favor of the implementation of a fair share agreement; that the parties entered into a fair share agreement which was continued in successor agreements including the 1981-82 agreement which provided, in pertinent part, as follows:

Section 3.4 The Association, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees, Association and non-Association, fairly and equally, and all employees in the unit will be required to pay, as provided in this article, their fair share costs of the collective bargaining process and contract administration as certified in a sworn statement by the Association. No

employee shall be required to join the Association, but membership in the Association shall be made available to all employees who apply consistent with the Association constitution and bylaws. No employee shall be denied Association membership because of race, creed, color, sex, handicap or age.

The Employer agrees that effective thirty (30) days after the date of initial employment or thirty (30) days after the opening of school, it will deduct from the earnings of all employees in the collective bargaining unit, in equal installments from each paycheck, the amount of money certified by the Association. Such deductions shall be forwarded to the Association within thirty (30) days of such deductions.

The Employer will provide the Association with a list of employees from whom deductions are made with each remittance to the Association. The Association and the WEAC do hereby indemnify and shall save the Board harmless against any forms of liability that shall arise out of or by reason of action taken or not taken by the Board, which Board action or non-action is in compliance with the provisions of this Agreement, and in reliance on any list or certificates which have been furnished to the (sic) Board pursuant to this article, provided that any such form of liability shall be under the exclusive control of the WEAC and its attorneys. In no way shall this save-harmless provision be read so as to exclude or prevent the Board from tendering its own defense either through its own attorneys at Board expense or WEAC attorneys at WEAC expense.

The Association shall provide employees who are not members of the Association with an internal mechanism within the Association which allows those employees to challenge the fair share amount certified by the Association as the cost of representation and receive, where appropriate, a rebate of any monies determined to have been improperly collected by the Association pursuant to this section.

and that the SPEA certified an amount to be deducted pursuant to Section 3.4 which was equal to the dues required of members.

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

INITIAL CONCLUSIONS OF LAW

1. That the Respondent SPEA's denial of membership to Jordi based on his refusal to become a member of SPEA's affiliates did not interfere with the exercise of his rights under Section 111.70(2) of MERA and does not constitute a violation of Section 111.70(3)(b)1, Wis. Stats.

2. That the Respondent SPEA's refusal to permit non-SPEA members to vote in SPEA elections and ratification proceedings, to hold elective and appointive offices, to attend SPEA meetings and bargaining sessions did not coerce employees in the exercise of their rights under Section 111.70(2) of MERA, and therefore does not constitute a prohibited practice in violation of Section 111.70(3)(b)1 and 4, Wis. Stats.

3. That the Respondent WEAC's letter dated February 7, 1982, to the Board did not coerce or intimidate the Board to interfere with the rights of employees guaranteed under Section 111.70(2) of MERA, and therefore does not constitute a violation of Section 111.70(3)(b)2 and (3)(c), Wis. Stats.

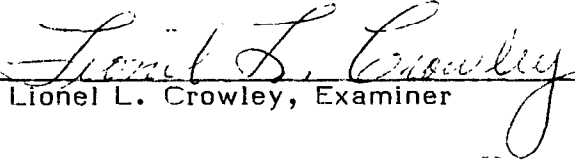
Upon the basis of the above and foregoing Initial Findings of Fact and Initial Conclusions of Law, the Examiner makes the following

IT IS ORDERED that the allegations in the Complainants' complaint with respect to the denial of membership, the denial of non-member participation in SPEA's affairs, and WEAC's intimidation of the Board be, and the same hereby are, dismissed.

Dated at Madison, Wisconsin this 31st day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Lionel L. Crowley, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING
INITIAL FINDINGS OF FACT, INITIAL CONCLUSIONS OF LAW AND ORDER

The complaint raised two issues:

- 1) Whether the amount of fair share payments were proper; and
- 2) Whether the Complainants who are Fair Share Members have the right to membership in the SPEA without joining its affiliates, and to participate in ratification votes and to attend SPEA meetings. The Complainants also alleged the Union intimidated the Board into not filing a complaint on these issues.

The parties agreed to address and brief these issues separately and therefore, only the second issue is discussed herein.

Complainants' Position:

The Complainants contend that they have been denied their representational, informational and local voting rights. They point out that the Union's inter-connecting bylaw language does not specifically deny access to the rights sought by Fair Share Members. They argue that the Union's insistence upon its right to run its internal affairs is based on antiquated and non-applicable private sector case law. The Complainants claim that the Union's representational duties require input from all employees and not just Union members. They maintain that their denial of attendance at Union meetings does not result in fair and equal representation. They contend that the "internal affairs" of the Union cannot completely override the rights of the Fair Share Members.

The Complainants also contend that the Union coerced the Board by sending it a letter for the purposes of stopping it from taking action to enforce the rights of Fair Share Members.

Respondents' Position:

The Union contends that its membership requirements and the rights afforded to Union members but denied non-members are internal affairs of the Union. It points to a strong federal policy against intrusion into a Union's affairs and argues that a similar policy is applicable to the instant case. It asserts that the refusal to allow non-members to vote on ratification of a collective bargaining agreement or to otherwise participate in union affairs does not violate MERA. It acknowledges that a union may not establish discriminating policies for union membership nor may it violate its duty of fair representation, but claims the Complainants made no allegations in this regard.

The Union denies any encouragement or inducement of the Board to commit a prohibited practice. It argues that it was concerned that the Board was attempting to meddle in its internal affairs and informed it that this was inappropriate. It maintains that such action did not constitute any unlawful pressure.

The Union requests that the aspects of complaint set out above be dismissed.

Discussion:

Although the Complainants are referred to as Fair Share Members, they are not members of the Union and they have the same status as non-members. The Complainants argue that their denial of membership is not clearly stated in the SPEA's bylaws and such denial violates their rights under 111.70(2). The Commission has held that membership in a union is a private contractual relationship and the enforcement of terms and conditions of such membership, normally embodied in the union's constitution and bylaws, are for the courts and not the Commission. 2/ For this reason, the Examiner will not examine the bylaws or interpret them except to the extent they may be applicable to any violation of MERA.

2/ AFT Local Union 1714 (12707-A, 12708-A) 2/75.

The Commission has held that a denial of membership is improper where it interferes or coerces employees in the exercise of their rights under MERA, such as expulsion from membership for refusing to participate in an illegal strike. 3/ The Complainants' denial of membership is based solely on their refusal to also join the SPEA's affiliates. Section 111.70(2) provides that employees shall have the right to form, join or assist labor organizations, or to refrain from any or all such activity. The Complainants indicate that this gives them the right to refrain from one affiliate while joining the other. A "labor organization" is defined in Section 111.70 (1)(j) as follows:

(a)ny employe organization in which employes participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment.

It is undisputed that the SPEA and its affiliates meet the above definition and are labor organizations. The Commission has interpreted the term "labor organizations" to include a union and its affiliates. 4/ Applying a common sense approach to interpreting Section 111.70(2), the right to join labor organizations means the right to join a union and its affiliates as a whole or to refrain from joining the union and its affiliates as a whole. Nothing in Section 111.70(2) suggests the right to join a union apart from its affiliates. It follows that Section 111.70(3) does not prohibit a labor organization from requiring membership in its affiliates as such does not violate any right guaranteed under Section 111.70(2). Therefore, the Complainants' denial of membership in SPEA because they refused to join its affiliates was not coercive of Complainants in the exercise of their rights under Section 111.70(2).

The Complainants also refer to Sections 3.1 and 3.4 of the parties' collective bargaining agreement to support its position. Section 3.1 basically restates part of Section 111.70(2) and Section 3.4 provides membership will be in accordance with the Association's bylaws and constitution. This language is consistent with the statutory rights of the parties and the discussion set out above is equally applicable to the contractual provisions. Section 3.4 further provides that membership shall not be denied on the basis of race, creed, color, sex, handicap or age. No evidence was submitted that denial of membership was based on any of the above listed factors. Therefore, it is concluded that the denial of membership for refusing to join SPEA's affiliates is in accordance with the agreement and is not a violation of MERA, and this charge is dismissed.

The Complainants argue that the Union's denial of the right to vote on ratification of collective bargaining agreements and to attend Union meetings violated their rights. This charge is apparently premised on Fair Share Members paying amounts equal to dues and the requirement of the Union to fairly represent all members of the bargaining unit as set forth in Section 3.4 of the collective bargaining agreement. As indicated above, Fair Share Members are not members of the Union. A non-member has no legally enforceable right to insist on the attributes of membership such as attending Union meetings, voting or holding office. 5/ Additionally, the statutory scheme set forth in MERA provides that the majority representative is granted exclusive bargaining representative status. 6/ As the exclusive bargaining representative, the Union members have the right to establish the method for ratification of a collective bargaining agreement. 7/ The mere denial of the Fair Share Members from voting on ratification of a collective bargaining agreement is therefore proper. This incident of membership does not become automatically available to non-members merely because the fair share amounts and dues are the same.

3/ Id; Waukesha County (16515) 8/78.

4/ Village of Pewaukee (17374-C, D) 5/81; For a general discussion of affiliate see Dept. of Administration (15811) 9/77.

5/ AFT Local Union 1714 (12707-A, 12708-A) 2/75.

6/ Section 111.70(4)(d)1, Stats.

7/ Waukesha County (16515) 8/78.

While the exclusive bargaining agent can limit its ratification to Union members only, the agent must act in good faith and fairly represent all the employees in the bargaining unit. 8/ The parties have embodied this duty in Section 3.4 of the agreement which provides that SPEA will represent all employees fairly and equally. The SPEA, pursuant to its duty of fair representation, is required to ascertain the wishes of non-members and to take them into account. 9/ This may be done by a general familiarity with the working environment and there is no requirement of formal procedures for communication access for employees with a divergent view. 10/ The ratification of an agreement cannot be motivated solely by the self interests of SPEA members without regard to the views of non-members. This, however, does not mean that the bargaining representative cannot insist on a fair share agreement which impacts solely on non-members. 11/ Nothing in the record indicates that the Union arbitrarily ignored non-member wishes or that the ratification by members was motivated solely by self interest. The evidence fails to demonstrate that the Union violated its duty of fair representation set forth in Section 3.4 of the agreement. Therefore, the refusal to permit Complainants to attend ratification meetings, Union meetings, and to vote or hold office does not violate the provisions of MERA and have been dismissed.

The Complainants also allege that the Respondent Union intimidated the Board into not filing a complaint espousing Complainants' position. They rely on a letter 12/ sent to the Board by Counsel for the Union which advised the Board to contact the Board's attorney or the Commission about the matter and expressed the belief that SPEA's procedures were proper. 13/

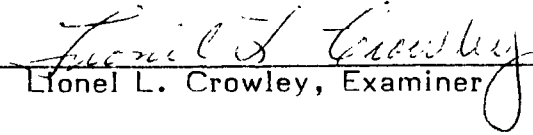
A fair reading of the letter reveals that it is informative and is not threatening or coercive. Moreover, a municipal employer runs a risk of being found to have attempted to subvert the authority and status of the majority representative and to have intruded into its internal affairs and its relationship to its members by insisting that said representative submit the municipal employer's offer to some or all of the employees represented. 14/ However, the filing of a complaint on this issue by an employer on behalf of employees may not be viewed in terms of interference in the internal affairs of the Union. 15/ The Employer could have filed a complaint with little risk of an interference charge being sustained but its decision not to do so in this case on the basis of a threatened complaint by the Union has not been proved. The evidence failed to demonstrate any intimidation pursuant to this letter and this charge has been dismissed.

In accordance with the agreement of the parties, the Examiner will issue additional Findings of Fact, Conclusions of Law and Order, as appropriate, on the issue of fair share amounts after the completion of the briefing schedule on that issue.

Dated at Madison, Wisconsin this 31st day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Lionel L. Crowley, Examiner

-
- 8/ Id; Milwaukee County (18112-A) 1/82.
- 9/ State of Wisconsin (16902-B, 17148-A) 5/80.
- 10/ Id.
- 11/ Waukesha County (16515) 8/78.
- 12/ Complainants also refer to a prior letter dated November 15, 1979 to the Board from Mr. James Yoder, Executive Director of SCUE, as evidence of intimidation. But, because this incident took place more than a year prior to the filing of the complaint, the Examiner has not considered it pursuant to Section 111.07(14), Wis. Stats.
- 13/ Ex-19.
- 14/ Waukesha County (16515) 8/78.
- 15/ State of Wisconsin (16902-B, 17148-A) 5/80.