

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE BOARD OF
SCHOOL DIRECTORS,

Complainant,

vs.

MILWAUKEE TEACHERS'
EDUCATION ASSOCIATION,

Respondent.

Case 174
No. 36115 MP-1801
Decision No. 23204-A

Appearances:

Mr. Stuart S. Mukamal, Assistant City Attorney, Milwaukee City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202, on behalf of Complainant.
Perry, First, Lerner & Quindel, S.C., by Mr. Richard Perry and Ms. Barbara Zack Quindel, 1219 North Cass Street, Milwaukee, Wisconsin 53202, on behalf of Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Milwaukee Board of School Directors, herein the Board, filed a prohibited practices complaint with the Wisconsin Employment Relations Commission on December 11, 1985 alleging that Milwaukee Teachers' Education Association, herein the Association, has committed a prohibited practice within the meaning of the Municipal Employment Relations Act, herein MERA, by unlawfully advising its members not to participate in a Board survey relating to paperwork. The Commission appointed the undersigned to make and issue Findings of Fact, Conclusion of Law and Order, as provided for in Sec. 111.07(5), Stats. The Association filed an answer on April 11, 1986 and a hearing was subsequently held in Milwaukee, Wisconsin on June 10, 1986. The parties thereafter filed briefs which were received by January 5, 1987.

Having considered the arguments and the record, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Board operates a public school system in Milwaukee, Wisconsin, and is a municipal employer under Section 111.70(1)(j), Stats. Its principle office is located at 5225 W. Vliet Street, P.O. Drawer 10K, Milwaukee, Wisconsin 53201.

2. The Association, a labor organization under 111.70(1)(h), Stats., is the exclusive collective bargaining representative for teachers and other related personnel employed by the Board. Its principle office is 5130 W. Vliet Street, Milwaukee, Wisconsin.

3. The Board and Association were privy to a 1982-1985 collective bargaining agreement containing a "No Strike Clause" which provided:

PART VIII

NO STRIKE CLAUSE

The MTEA and the Board subscribe to the principle that differences shall be resolved by peaceful and appropriate means without interruption of the school program. The MTEA, therefore, agrees that there shall be no strikes, work stoppages, slowdown, or other concerted refusal to perform work by the employees covered by this contract during the life of the contract. Upon notification from

the Board of any unauthorized work stoppage, the MTEA shall make public that it does not endorse such stoppage. Having given such public notice, the MTEA shall be freed from all liability for any breaches of this part.

Said contract also contained a grievance-arbitration procedure which did not allow the Board to grieve.

4. For some time before 1985, individual teachers and Association representatives voiced concerns to the Board regarding the amount of time teachers had to spend on paperwork. In response, the Board on January 30, 1985 1/ formally adopted a resolution calling for a committee to look into the matter and the Committee to Review Teacher Paperwork Tasks was subsequently established, herein Paperwork Committee. Said Committee consisted of four Board administrators with no teacher or Association representatives as members.

5. The Committee in May decided to disseminate a questionnaire to a random sample of about 180 teachers out of the approximately 5,500 teachers in the bargaining unit. Before doing so, Edward R. Neudauer, the Board's Executive Director, Department of Employee Relations, advised Association Executive Director James R. Colter of said fact in a May 24 letter which provided:

. . .

As you are perhaps aware, a committee has been functioning to assess the degree of required paperwork teachers in the system are required to process. As part of the study, the attached survey will be sent to randomly selected teachers. Mr. Don Ernest has had ongoing contact with Mr. Ron Vavrik who is in charge of this endeavor.

This is being sent to (sic) for your information; however, should you have any questions regarding this, please contact me at the earliest possible opportunity.

6. On May 29, Association Assistant Executive Director Donald Deeder and other Association representatives met with Neudauer and other Board representatives, at which time Deeder criticized the survey and proposed an alternative means for gathering said information, a suggestion which Neudauer rejected. Neudauer also said that the survey would go on as planned.

7. On May 31, Paperwork Committee Chair Ronald J. Vavrik in an inter-office memorandum informed all school principals:

The Milwaukee Public Schools has recently requested a review of the paperwork tasks being performed by teachers during the school day. The most important part of the review involves the solicitation of responses from the teachers. A questionnaire form was developed and a random selection of teachers has been chosen to complete the questionnaire.

Attached to said memorandum was a four page survey form which was distributed to teachers on the same day and which in pertinent part provided:

Dear Teacher:

The Board of School Directors for the Milwaukee Public Schools has requested a review of the paperwork tasks being performed by teachers during the school day. Your response to the items listed below is essential for this review.

1/ Unless otherwise noted, all dates hereinafter refer to 1985.

Directions: Under each category listed below, identify those paperwork tasks (by form name or number where possible) that you are required to do during the teaching day. In the next column, label the functions of those tasks as either administrative, instructional, general information/communication, or other. Next, specify the purpose of the paperwork task as you perceive it. Then indicate the number of hours per grading period spent on each of the tasks. Finally, indicate the appropriate position (administrator, teacher, aide, secretary, or other) which you feel should best perform the paperwork task.

Please return your response to your principal no later than June 13. Extra copies of the response sheets are available in your principal's office.

<u>Tasks by Category</u>	<u>Function</u>	<u>Specific Purpose of Task</u>	<u>Hours Per Grading Period</u>	<u>Appropriate Position To Perform Task</u>
I. Absence/Truancy:				
		. . .		
II. Pupil Progress/ Grading Reports:				
		. . .		
III. Home/School Communications:				
		. . .		
IV. Testing Program Materials:				
		. . .		
V. Teacher Preparations:				
		. . .		
VI. Other:				
		. . .		

General Comments: In this space, please comment regarding the modification or elimination of any specific paperwork tasks.

The principals, in turn, that day distributed said form to about 180 teachers.

8. On the same day, the Association distributed to its members the latest issue of the Sharpeners, its own in-house publication, which provided in pertinent part:

WOULD YOU BELIEVE? BACKGROUND INFORMATION

In December, MTEA President Bill Budris raised teacher paperwork concerns in his letter to the school board on the need for more elementary preparation time. In January, the school board directed the MPS administration to establish a committee to study teacher paperwork to identify what can be modified, eliminated, or performed by others, and to report to the board in May. In March, the results of a teacher survey conducted by the Governor's Study Commission on the Quality of Education in Milwaukee Metropolitan Public Schools were released - teachers identified excessive paperwork as the No. 1 problem in the schools.

No Teachers on the Committee to Study Teacher Paperwork

Would you believe that . . .

- * The MPS administration's committee to study teacher paperwork consists of central office administrators - not one teacher was asked to join it.
- * At the bargaining table, the board's negotiating team refuses to discuss the MTEA's proposal to establish a joint committee on paperwork reduction; the board claims it's a permissive subject of bargaining.
- * The MPS administration has not developed the questionnaire that it told the school board it was preparing in April - 'asking (teachers) what their perceptions are in terms of paperwork' and to 'get reactions from the teachers.'
- * Instead, the MPS administrative committee has developed a form which asks teachers to identify the function and specific purpose of required paperwork - in effect asking teachers to justify MPS paperwork.
- * Although the MPS administration told the school board it would 'sit down with the union representatives and review that questionnaire before it is sent out to teachers,' MPS did not contact the MTEA. Instead, in response to MTEA inquiries, MPS told the MTEA that it had developed a form and had identified a random sampling of teachers for distribution before June 1. On May 28, the MTEA finally received a copy of the form from the board's chief negotiator.
- * On May 29, the MTEA explained the objections to the MPS paperwork form and requested that MPS not distribute it; MPS indicated it would distribute the form anyway.

Conclusion

The MPS administration's approach to teacher paperwork concerns is incredible. An administrative committee has designed a form that asks teachers to provide information that justifies paperwork - and is distributing it at the end of the school year when teachers are inundated with paperwork.

The MTEA recommends that you start reducing your paperwork by not completing the MPS form on paperwork.

9. Thereafter, 46 teachers returned the survey and only 29 of those were completed, with some teachers indicating that they were boycotting the survey per the Association's request. Because the response was so low and fell short of the hoped for 95 percent response rate, Board representatives ultimately concluded that the responses did not constitute an adequate representative sample and that the survey results would have to be totally discarded. No teachers were disciplined over their refusal to participate in the survey and none were ever directly ordered to do so since their participation in the survey was entirely voluntary. In addition, teachers in the past on occasion have refused to participate in Board sponsored surveys without ever being disciplined by the Board because they, too, were voluntary.

10. The Association sponsored boycott of the paperwork survey did not violate the contractual no-strike prohibition.

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

CONCLUSION OF LAW

The Association did not violate Section 111.70(3)(b)1 and 4, Section 111.70(1)(n, m), or Section 111.70(4)(L), Stats. by encouraging its members to boycott the Board paperwork survey.

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

ORDER 2/

IT IS ORDERED that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 23rd day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

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- 2/ 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

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Board argues that the Association's sponsored boycott of the paperwork survey violated the contractual no-strike clause and constituted an illegal strike under Section 111.70(1)(n, m) and Section 111.70(4)(L), Stats., arguing that while teacher participation was voluntary "in the sense that discipline would not follow were a teacher not to return a completed questionnaire, there can be no doubt that the (Board) considered completion. . . to be important to its own operations" and that it viewed such completion "as necessary and valuable to its own operation." (Emphasis in original) The Association, on the other hand, defends its actions by pointing out that completion of the survey was entirely voluntary and that the Commission has previously ruled that a labor organization does not act unlawfully when it encourages its members not to perform voluntary tasks.

Both parties cite in support of their respective positions Racine Unified School District 3/ where I ruled that the union violated a contractual no-strike clause by encouraging its members to boycott mandated participation in a school sponsored survey, but that it did not act unlawfully in urging its members to boycott certain other voluntary assignments. The distinction between mandatory and voluntary assignments was based upon State of Wisconsin, III, Decision No. 8892 (3/69), where the Commission ruled:

In order for employees to engage in a strike, there must be a concerted refusal to perform assigned duties and responsibilities required to be performed, rather than duties and responsibilities which the employees may voluntarily choose or not choose to perform."

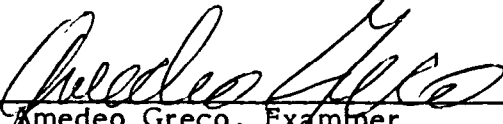
Acknowledging that this is the dispositive case law, the Board argues that it did not expressly order its teachers to participate in the survey because it "had not followed such a practice in the past with respect to the many surveys that it disseminated to its teachers over the years, largely because it felt that such an approach would not facilitate cooperation from its professional staff" and that teacher participation in the survey here was as obligatory as that found in Racine, supra.

I disagree. While it is true that teachers in Racine were not expressly ordered in military-type fashion to complete their questionnaires, the employer there made it very clear that teachers were expected to participate in the survey as part of their regular job duties and it even expressly advised the Union on several occasions that participation in the survey was mandatory and that the Union sponsored boycott of the survey violated the contractual no-strike clause. Here, on the other hand, none of that ever occurred and the Board itself at the hearing acknowledged that teacher participation in the paperwork study was voluntary. Accordingly, and based on the Commission's decision in State of Wisconsin, supra, it must be concluded that the Association's boycott of the survey was not illegal. Hence, the complaint must be dismissed.

Dated at Madison, Wisconsin this 23rd day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

3/ Cases XXXIII, XXXIV, XXV, Decision Nos. 14308-D and G, 14389-D and G, and 14390-D and G, (6/77 and 7/77).