

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOCAL 80, DISTRICT COUNCIL 48,  
AFSCME, AFL-CIO,

Complainant,

vs.

WEST ALLIS-WEST MILWAUKEE  
SCHOOL DISTRICT,

Respondent.  
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Case 52  
No. 36910 MP-1847  
Decision No. 23805-A

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, Suite 315, 207 East Michigan Street, Milwaukee, Wisconsin 53202, by Mr. Alvin R. Ugent, for the Union.

Foley & Lardner, Attorneys at Law, Suite 3800, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, by Mr. Herbert P. Wiedemann, for the District.

ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM

Local 80, District Council 48, AFSCME, AFL-CIO, having, on April 30, 1986 filed a complaint with the Wisconsin Employment Relations Commission alleging West Allis-West Milwaukee School District had committed prohibited practices in violation of Sec. 111.70(3)(a)1, 2, 3, 4, and 5 of the Municipal Employment Relations Act by insisting that an employee give up his position as steward to work in a new position and by individually bargaining with said employee; and hearing having been conducted on August 25, 1986 before Examiner Jane B. Buffett, a member of the Commission's staff; and during said hearing, the Union having made a Motion to Quash Subpoena Duces Tecum through which the District sought to acquire certain information from the Union which the District believed was relevant to its defense; and the hearing having been adjourned to allow the parties to submit briefs in support of and opposition to said Motion, the last of which was received on September 15, 1986; and the Examiner having considered the matter and being satisfied that the Motion to Quash Subpoena Duces Tecum should be denied;

NOW, THEREFORE, it is

ORDERED

That the Motion to Quash Subpoena Duces Tecum be, and the same hereby is, denied.

Dated at Madison, Wisconsin this 19th day of September, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Jane B. Buffett  
Jane B. Buffett, Examiner

WEST ALLIS-WEST MILWAUKEE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION  
TO QUASH SUBPOENA DUCES TECUM

BACKGROUND

The Union alleges that District violated Sec. 111.70(3)(a)1, 2, 3, 4 and 5, Stats., by telling employee Greg Radtke that he would have to relinquish his position as steward if he wanted to be transferred to the storekeeper position, and by subsequently renewing its demand. At the hearing on August 25, 1986, Union witness, Local 80 President Thomas Sutter, refused to comply with the subpoena duces tecum issued at the request of the District. Furthermore, the Union moved to have the subpoena quashed. The hearing was adjourned to allow the parties to submit briefs regarding the motion.

The subpoena requests the following materials:

For 1986 and all prior years:

(1) any and all documents, including but not limited to constitutions, by-laws, resolutions, administrative rules and policy statements, and any amendments thereto, which have from time to time governed the manner in which stewards have been selected by Local 80 to represent employees in the custodial-maintenance bargaining unit at the School District of West Allis-West Milwaukee, et al (hereinafter "Employees").

(2) Copies of all notices to Employees issued by Local 80 advising them of the pendency of steward elections and/or appointments and explaining to them how to become candidates for election and/or appointment and/or advising them of any eligibility requirements.

(3) Copies of all ballots utilized by Local 80 in the election of stewards to represent Employees.

(4) Copies of all notices to the School District of West Allis-West Milwaukee, et al, and/or to Employees advising them of the election and/or appointment of stewards.

The Union supports its motion by asserting that in an administrative hearing, unlike in a discovery process, the information sought must be relevant. It reasons the documents sought cannot be relevant, since only a contractual agreement between the parties, and not internal union documents, could restrict the Union's statutory right to select its stewards. Finally, it states it has no objection to the District's oral examination of Sutter on any relevant material.

The District contends the subpoenaed documents are not privileged. It further argues the motion should be denied if the documents sought "may be" relevant, and the proponent does not have to show the documents are "clearly" relevant. It asserts the documents are relevant to its position, that parties had an understanding that each occupational group would have a steward from its own ranks, and that relevancy is reinforced by the Union's claim that its own rules would forbid the alleged understanding.

The Subpoena

The admission of evidence in proceedings before the Commission is governed by Sec. 111.07(3) Stats., and Sec. 227.08 Stats. Sec. 111.07(3) provides:

A full and complete record shall be kept of all proceedings had before the commission, and all testimony and proceedings shall be taken down by the reporter appointed by the commission. Any such proceeding shall be governed by the rules of evidence prevailing in courts of equity and the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence.

Sec. 227.08 Stats., provides in pertinent part:

(1) Except as provided in s. 19.52(3), an agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The agency or hearing examiner shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

At the hearing, the Union alleged the disputed documents were privileged. Sec. 905.01 Stats., provides:

Privileges recognized only as provided. Except as provided by or inherent or implicit in statute or in rules adopted by the supreme court or required by the constitution of the United States or Wisconsin, no person has a privilege to:


- (1) Refuse to be a witness; or
- (2) Refuse to disclose any matter; or
- (3) Refuse to produce any object or writing; or
- (4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

The Union did not cite any statute, Supreme Court rule or constitutional provision that confers upon the witness the privilege to refuse to produce the disputed documents. (It should be noted in this regard, that at the hearing the District stated the ballots indicated in Item Three were merely blank ballots.) Thus, the Motion to Quash cannot be granted on the basis of any claim of privilege.

Turning to the question of relevancy, the Examiner must determine whether the documents might have reasonable probative value regarding its claim that the parties had an agreement to have stewards represent the department in which they work. In making such a determination, the Examiner is not ruling on the ultimate validity of either the District's position regarding the parties' alleged agreement, on the Union's position that the alleged agreement does not vitiate its statutory right to select its stewards. However, inasmuch as the documents sought may be relevant to the District's position, the subpoena duces tecum cannot be quashed on the grounds they lack relevancy. 1/

Dated at Madison, Wisconsin this 19th day of September, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  \_\_\_\_\_  
Jane B. Buffett, Examiner

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1/ Although early in the proceedings, the Union had asserted an agreement with the District regarding steward selection could not exist because such an agreement would violate internal Union rules, the Union later stated it was not making such an agreement. (TR. 44) In any event, the instant determination of relevancy is not based on a claim that such internal rules exist.