

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CARL MUNSON,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 209
	:	No. 40112 MP-2067
	:	Decision No. 25608-A
MILWAUKEE BOARD OF	:	
SCHOOL DIRECTORS,	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. John D. Uelmen, Attorney at Law, Fair Employment Legal Services, 1863 N. Farwell Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Complainant.

Mr. Stuart S. Mukamal, Assistant City Attorney, Office of City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

ORDER GRANTING MOTION TO DISMISS COMPLAINT

Carl Munson having, on February 1, 1988, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Milwaukee Board of School Directors had committed prohibited practices in violation of Secs. 111.70(3)(a)1, 2 and 3, Stats., by its surveillance of Complainant and coercing his resignation which interfered with the administration of the Administrators' and Supervisors' Council (ASC), by discriminating against him due to his membership in ASC and by refusing to re-employ him in a teaching or any other position due to his membership in ASC; and Respondent Milwaukee Board of School Directors, having, on February 29, 1988 filed a Motion to Dismiss said complaint wherein it was asserted that the Commission lacks jurisdiction over the subject matter of said complaint or statutory authority to adjudicate same within the bounds of its jurisdiction as specified by Chapter 111, Stats.; and thereafter, scheduling of the complaint was held in abeyance to permit the parties to engage in settlement discussions; and Complainant having, on June 7, 1988, filed a brief in response and opposition to Respondent's Motion to Dismiss; and Respondent having, on June 13, 1988, filed a reply brief in response to Complainant's brief; and the Commission having, on August 4, 1988, appointed Raleigh Jones, 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 Sec. 111.07(5), Stats.; and the Examiner having considered the positions and arguments of the parties and being satisfied that said Complainant is not within the coverage of the Municipal Employment Relations Act (MERA);

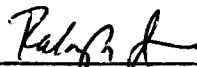
NOW, THEREFORE, it is

ORDERED 1/

That the complaint filed herein be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 19th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
 Raleigh Jones, 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.

(Footnote 1 continued)

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.

MILWAUKEE BOARD OF SCHOOL DIRECTORS

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS COMPLAINT

BACKGROUND

At all times pertinent to the instant matter, Complainant Munson served as the principal of an elementary school in the Milwaukee Public School District. School principals are vested with general supervision and custodianship of the school premises over which they preside. Munson resigned his employment with the District on February 27, 1987.

During his employment with the District, Munson served as president of the Administrators' and Supervisors' Council (ASC), an organization representing District administrators and supervisors.

In his complaint initiating these procedures, the Complainant alleged that Respondent committed prohibited practices by its surveillance of Complainant and coercing his resignation which interfered with the administration of the Administrators' and Supervisors' Council (ASC), by discriminating against him due to his membership in ASC and by refusing to re-employ him in a teaching or any other position due to his membership in ASC. Respondent moved the Commission to dismiss the complaint on the grounds that the Commission lacks jurisdiction over the person of Munson as complainant and ASC as an entity and also lacks jurisdiction over the subject matter of this complaint under MERA or under any other portion of Chapter 111, Stats.

RESPONDENT'S POSITION

It is the Respondent's position that the instant complaint should be dismissed on the basis that Complainant Munson is not a "municipal employe" within the meaning of MERA and that the ASC is not a "labor organization" within the meaning of MERA.

Respondent first contends that although the Complainant opines that the complaint deals with alleged "interference with the administration" of ASC, Respondent notes that ASC is not a party to this proceeding; the only party-plaintiff is Munson. It therefore asserts that Complainant is not empowered to advance causes pertaining to ASC, but may do so only with matters involving himself individually. In this regard, the Respondent notes that the factual matters of the complaint deal exclusively with matters pertaining to Munson individually. The Respondent therefore argues that any attempt to bootstrap claims allegedly inuring to ASC, under the banner of Munson, should be rejected.

Respondent next contends that ASC would have no standing to bring this action even if it was named as a party-plaintiff. It asserts that although Complainant theorizes that the ASC is a "labor organization" within the meaning of MERA, it notes that contention was specifically rejected by the Commission in Milwaukee Board of School Directors, Dec. Nos. 13787-G and 16009-D (WERC, 11/79), wherein the Commission ruled that ASC was not a "labor organization" under MERA. Inasmuch as it has already been determined that ASC is not a "labor organization" within the meaning of MERA, Respondent asserts ASC has no legal standing or authority to assert rights under MERA, nor can individuals purporting to act on its behalf claim the protection of the prohibited practice provisions of MERA, in particular, Secs. 111.70(2) or 111.70(3)(a)1, 2 or 3, Stats. In this regard, Respondent notes that Sec. 111.70(2), Stats., protects the rights of "municipal employes," and Munson was concededly not a "municipal employe" during the period of time relative to the complaint. Similarly, Respondent notes that Sec. 111.70(3)(a)1, Stats., pertains only to "municipal employes" and thus Munson cannot claim any rights under that provision. Finally, the Respondent submits that given that Secs. 111.70(3)(a)2 and 3, Stats., protect only "labor organizations" and individuals working on behalf of "labor organizations" as that term is defined by MERA, it is clear that Munson cannot avail himself of any of the protections afforded by those provisions because the ASC is not a "labor organization" under MERA. Were it not for the foregoing, Respondent asserts there would be no reason for the ASC to have repeatedly (and unsuccessfully) sought through the legislative process to extend MERA coverage to ASC and its members.

Third, with regard to Complainant's assertion that he is a "municipal employe" under MERA because he was a teacher, the Respondent contends this is irrelevant to the determination of this complaint inasmuch as the complaint pertains to activities purportedly engaged in by Munson while serving as an administrator; not as a teacher. The Respondent further asserts that the fact that Munson may be "an applicant for a teaching position" is also irrelevant because even if that is the case, Munson stands in the same position as would any other member of the public holding teacher certification seeking employment as a teacher with the District. For the above noted reasons, the Respondent asks the Commission to dismiss the complaint for want of jurisdiction.

COMPLAINANT'S POSITION

Complainant asserts that Respondent's Motion to Dismiss is based on the assumption that Munson is not a "municipal employe" and that the ASC is not a "labor organization" within the meaning of MERA. According to the Complainant, both assumptions are incorrect. It asserts that Munson is a "municipal employe" and that ASC is a "labor organization" within the meaning of MERA, so Complainant is entitled to the protection of that statute.

Complainant acknowledges that as a school principal, Munson was not a "municipal employe" under MERA because of his supervisory responsibilities. Nevertheless, Complainant asserts that Munson was still an "employe." In this regard, Complainant submits that the protection of Sec. 111.70(3)(a)3, Stats., are available to all "employes," including those in supervision, so even as a principal, Munson was protected. Likewise, Complainant avers that the protections of Sec. 111.70(3)(a)2, Stats., are available to labor organizations formed by all employes, including supervisory employes.

Complainant further contends that Munson was a "municipal employe" as a teacher and an applicant for a teaching position and was therefore entitled to the protections of Sec. 111.70(2) and Secs. 111.70(3)(a)1, 2 and 3, Stats.

Next, with regard to the status of ASC, Complainant argues that ASC is a "labor organization" within the meaning of MERA. Its rationale is as follows. Complainant notes that the term "labor organization" in MERA is not limited to just municipal employe organizations, but includes all employe organizations. Since the word "employe" is not defined in MERA, Complainant looks to the dictionary definition of "employe", that being "a person who works for another in exchange for financial compensation" (Webster's II, 1984). Applying this usage here, the Complainant reasons that the term "labor organization" under MERA includes all employe organizations, whether they be composed of supervisory personnel or not.

Based on the above reasons, the Complainant requests that the Motion to Dismiss be denied and that the matter be scheduled for hearing.

DISCUSSION

The issue presented by the Motion to Dismiss is whether Munson is a "municipal employe" within the meaning of MERA and whether the ASC is a "labor organization" within the meaning of MERA. The undersigned finds, for the reasons set forth herein, that Munson is not a "municipal employe" and that ASC is not a "labor organization" within the meaning of MERA. As a result, Complainant is not within the coverage of MERA and the Motion to Dismiss has been granted on that basis.

MERA (the Municipal Employment Relations Act), Secs. 111.70 - 111.77, Stats., governs the employment relationship between "municipal employers", "municipal employes" and "labor organizations" as those terms are defined therein. The rights section of MERA grants "municipal employes" the right to engage in or refrain from concerted activities. Specifically, Sec. 111.70(2), Stats., gives "municipal employes" the right to form, join or assist labor organizations, to bargain collectively and to engage in or refrain from concerted activities. Sections 111.70(3)(a) and (b), Stats., provide that it is a prohibited practice for a "municipal employer" or "municipal employe" to violate these rights.

It is uncontested that Respondent Milwaukee Board of School Directors (MBSD), is a "municipal employer" within the meaning of Sec. 111.70(1)(j), Stats.

The definition of "municipal employe" under MERA is specified by Sec. 111.70(1)(i), Stats., as follows:

(i) "Municipal employe" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe.

Complainant acknowledges that as a school principal, Munson was not a "municipal employe" within the meaning of the above provision because of his supervisory responsibilities. Complainant contends though that as a teacher and an applicant for a teaching position, he was a "municipal employe" within the meaning of MERA. The undersigned disagrees. Inasmuch as the instant complaint pertains to activities purportedly engaged in by Munson while serving as a principal, that is the only employment history pertinent herein. The fact that Munson may have been a teacher (and therefore a "municipal employe" under MERA) at one time does not mean he somehow became vested as a lifelong "municipal employe" under MERA. Instead, he remained a "municipal employe" under MERA only so long as he met the definition set forth above. Likewise, the fact that Munson may now be an "applicant for a teaching position" with the MBSD is insufficient to convert him into a "municipal employe." At present, there is no employment relationship whatsoever between Munson and the MBSD; Munson severed that relationship when he resigned his position of principal in February, 1987. It is axiomatic that any employment relationship, including that governed by MERA, does not begin until a person is hired or becomes employed. Until that happens, Munson, as an applicant for a teaching position with the MBSD, stands in the same position as would any other member of the public seeking employment as a teacher with the MBSD. Assuming arguendo that under certain circumstances a job applicant could be considered a "municipal employe" under MERA, such is certainly not the case here because, as previously noted, the instant complaint pertains only to activities purportedly engaged in by Munson while serving as a principal. It is therefore concluded that Munson is not a "municipal employe" within the meaning of MERA nor was he during the period of time relative to the complaint.

Although the instant complaint was filed by Complainant as an individual and involves factual matters which pertain to him alone, Complainant alleges that the Respondent's conduct towards him interfered with the administration of ASC, an organization which he once headed as president and which he characterizes as a labor organization. Since Secs. 111.70(3)(a)2 and 3, Stats., protect not only "labor organizations" but also individuals working on their behalf, it must be determined if ASC qualifies as a "labor organization" within the meaning of MERA.

The definition of "labor organization" under MERA is specified by Sec. 111.70(1)(h), Stats., as follows:

(h) "Labor organization" means any 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.

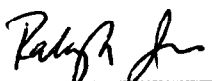
Complainant submits that ASC is a "labor organization" within the meaning of the above because it is an "employe organization." The problem with this contention though is that the Commission has previously found that ASC is not a "labor organization" under MERA. In a decision involving the ASC itself, Milwaukee Board of School Directors, Dec. Nos. 13787-G and 16009-D (WERC, 11/79), the Commission ruled "that inasmuch as the membership of the Administrators' and Supervisors' Council is primarily composed of administrators and supervisors in the employ of the Milwaukee Board of School Directors . . . said organization is not a labor organization within the meaning of . . . MERA." (Conclusion of Law No. 3, pp. 4-5). In light thereof, it has already been determined that ASC is not a "labor organization" within the meaning of MERA. 2/ Accordingly, ASC has no standing to assert claims under MERA, nor can individuals purporting to act on its behalf (i.e. Munson) claim the protection of MERA under Secs. 111.70(3)(a)2 or 3, Stats.

2/ In this regard, it is noted from the record that ASC has repeatedly sought, so far unsuccessfully, to change this outcome through the legislative process so that MERA would apply to ASC and its members.

Having found that Munson is not a "municipal employe" under MERA and that ASC is not a "labor organization" within the meaning of MERA, it follows that Complainant is not within the coverage of MERA. The Commission has previously held that supervisory personnel have no protected rights to engage in concerted activity under Sec. 111.70, Stats. 3/ In accordance therewith, it is held that Complainant is not entitled to the protection of MERA, specifically Secs. 111.70(2) or 111.70(3)(a)1, 2 or 3, Stats. 4/ Therefore, the Motion to Dismiss the complaint has been granted.

Dated at Madison, Wisconsin this 19th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Raleigh Jones, Examiner

3/ Village of West Milwaukee, Dec. No. 9845-D (WERC, 10/71).

4/ This outcome is consistent with Commission decisions arising under the Wisconsin Employment Peace Act (WEPA). In Doyle Lithography and Printing Co., Dec. No. 8126-C (WERC, 5/68), the Commission held that a supervisory employe who was the chief organizer among the employes was not protected, stating:

However, we have found Peterson to be a supervisory employe, and therefore, under the Act, not privileged to be protected in concerted activity, and therefore, Peterson's discharge does not constitute a violation of the Act.

See also West Side Community Center, Inc., Dec. No. 19212-A (Shaw, 4/83), aff'd, Dec. No. 19212-B (WERC, 3/84).