STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GERHARDT STEINKE, Complainant, vs. MILWAUKEE AREA VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT, and LOCAL 212, AMERICAN FEDERATION OF TEACHERS, Respondent.	Case 320 No. 43724 MP-2332 Decision No. 26459-D

Appearances:

Mr. Gerhardt Steinke, 4642 West Bernhard Place, Milwaukee, Wisconsin 53216, appearing for himself.

Shneidman, Myers, Dowling & Blumenfeld, Attorneys at Law, P.O. Box 442, Milwaukee, Wisconsin 53201-0442, by Mr. Timothy E. Hawks, appearing for the Federation.

Davis & Kuelthau, S.C., Attorneys at Law, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-3101, by Mr. Mark Olson, appearing for the Employer.

ORDERS DENYING REQUEST TO HOLD IN ABEYANCE, GRANTING MOTIONS TO QUASH, DENYING MOTIONS TO DISMISS, AND DENYING MOTION TO AMEND IDENTITY OF RESPONDENTS

On February 27, 1990, Complainant Gerhardt Steinke (hereafter, Complainant), filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, in which he alleged Local 212, American Federation of Teachers (hereafter, Federation or Respondent), and the Milwaukee Area Vocational, Technical and Adult Education District (hereafter, MATC or the Respondent), had committed prohibited practices within the meaning of the Municipal Employment Relations Act.

On May 10, 1990, the Commission consolidated the instant complaint with two other cases filed by Complainant against the same Respondents, cases Nos. 315 and 324. Hearing was held on May 25, 1990. Additional hearing was held on September 11, 1990, at which time Complainant withdrew cases Nos. 315 and 324.

ORDERS

1. The Complainant's request to hold proceedings in abeyance is denied.

2. The Federation's motions to quash the subpoenas of Glenn Petrick, Robert Way, James Walsh, Mary Anne Gross and Stephen Turner are hereby granted.

3. MATC's motions to quash the subpoenas of Rus Slicker and Laura Clarke are hereby granted.

4. The Federation's and MATC's motions to dismiss are hereby denied at this time.

5. The Complainant's motion to amend the identity of the respondents is hereby denied.

Dated at Madison, Wisconsin this 20th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Jane B. Buffett, Examiner

MILWAUKEE AREA VOCATIONAL,
TECHNICAL AND ADULT
EDUCATION DISTRICT

MEMORANDUM ACCOMPANYING ORDERS
DENYING REQUEST TO HOLD IN ABEYANCE,
GRANTING MOTIONS TO QUASH,
DENYING MOTIONS TO DISMISS,
AND DENYING MOTION TO AMEND IDENTITY OF RESPONDENTS

I. THE REQUEST TO HOLD PROCEEDINGS IN ABEYANCE

On November 15, 1990, Complainant requested this case be held in abeyance pending the outcome of a related arbitration. In a letter received from MATC on December 3, 1990, and one received from the Federation on December 5, 1990, each of the Respondents opposed such abeyance. Inasmuch as a respondent is entitled to a timely disposition of charges filed against it, this Examiner concludes it is inappropriate to grant a request for abeyance when the request is opposed by the Respondents. Accordingly, proceedings in this case shall go forward and shall not be held in abeyance.

II. THE STATUS OF THE COMPLAINT

In order to rule on the pending motions, this Examiner must determine the gravamen of the complaint. This case poses some difficulty insofar as the exact nature of the complaint is unclear. (See Attachment A, the original complaint, filed February 27, 1990, and Attachment B, the amended complaint of September 11, 1990. The Settlement Agreement, which was attached to the original complaint has not been reproduced as a part of Attachment A.)

At the September 11, 1990 hearing, Complainant offered a five-page document which he proposed should completely replace the earlier complaint. The respondents objected to that portion of the amended complaint that would add allegations concerning MATC's March 15, 1990 nonrenewal of Complainant. This portion of the motion to amend was denied, since the nonrenewal did not relate to the original occurrences and subjects of the original complaint which were the settlement agreement, and certain events surrounding its creation and Complainant's attempts to receive clarification of its interpretation.

Although the remainder of the amended complaint was not denied, confusion as to the allegations of the complaint still remains. In trying to determine the nature of the complaint notwithstanding its imprecise drafting, the Examiner must carefully balance two interests. On the one hand, the Commission is an administrative agency in front of which non-lawyers may represent themselves and others. Any person may file a complaint of prohibited practices and the Municipal Employment Relations Act (hereafter MERA) does not limit the rights of a person to represent himself merely for lack of training in MERA or lack of practice before the Commission. 1/ Therefore, some amount of unsophisticated drafting of complaints which does not precisely identify alleged violations of the statute must be allowed. On the other hand, the dictates of a fair hearing and due process require that a respondent know of what he is being accused and against what allegations of statutory violations he will have to defend himself.

In an attempt to accommodate these two competing interests, this Examiner allowed Complainant to proceed despite the unclear nature of the amended complaint. In an attempt to clarify the complaint, a seven-hour proceeding took place which was in large part devoted to questions directed to the Complainant by the Examiner and the two counsel for the two Respondents, and the Complainant's answers to those questions, and other explanations of his complaint.

Based on the document offered as the amended complaint, the Complainant's statements at the September 11, 1990 hearing, the Examiner's letter of October 18, 1990 and Complainant's response dated October 24, 1990, this Examiner concludes that the issue in dispute is an allegation that after the signing of the Settlement Agreement, MATC and the Association failed to respond to Complainant's inquiries regarding the Settlement Agreement and that said failure to respond violated MERA. Complainant's factual assertion could arguably make out violations of Secs. 111.70(3)(a)1 and 111.70(3)(b)1, Stats. The amended complaint offered at the September 11, 1990 hearing also alleges a violation of Sec. 111.70(3)(a)2. The Complainant is free to argue that the

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1/ See **ERB 2.12 Appearances**. Any party to the proceeding shall have the right to appear at such hearing in person, by counsel or otherwise, to call, examine, and cross examine witnesses, and to introduce into the record documentary or other evidence.

above-noted disputed facts make out such a violation. 2/

This conclusion is drawn primarily from the following analysis of the amended complaint.

After setting aside the nonrenewal references, two major sections remain: the first is essentially a recitation of the Municipal Employment Relations Act, and the second is the final section entitled: "Relief Requested." For lack of any other material, this Examiner is constrained to establish the nature of the complaint by drawing inferences from the requested remedies. Below are the five numbered sentences of the "Relief Requested" section followed by the conclusions reached regarding the violations they might imply.

"1. Declare the 28 February 1989 Settlement Agreement to be valid."

At the hearing, both MATC and the Federation stipulated that the Settlement Agreement was valid. Consequently, there is no controversy on this matter and the Examiner can infer no allegation of a prohibited practice from this request for relief.

"2. MATC should issue Steinke be issued (sic) a 1990-91 teaching contract consistent with the 28 February Settlement agreement."

This remedy would be appropriate to a finding of violations concerning the nonrenewal. Since, as noted above, that portion of the amended complaint was denied at the hearing, this request cannot be the basis for any allegation of a prohibited practice.

"3. Order MATC answer previous letters of inquiry on agreement."

Arguably, this remedy might be appropriate if the Examiner concluded that MATC was not forthcoming in clarifying the settlement agreement for the Complainant and that such a lack of clarification violated MERA. Additionally, this inferred allegation falls within the occurrences which are the subject of the original complaint and as such is more of a reiteration of the original complaint than an amendment to it. Consequently, this Examiner concludes that Complainant is alleging that after the signing of the Settlement Agreement, certain agents of the District failed to respond to Complainant's inquiries regarding what steps were necessary for him to be in compliance with that Agreement.

"4. Order back pay consistent with 111.07(4)"

As with Item No. 2, above, this request for relief relates to the nonrenewal. As with Item No. 2, since the motion to amend the complaint to include allegations regarding the nonrenewal was denied, this request cannot be the basis for any allegation of a prohibited practice in this case.

"5. Implement the letter and the spirit of the faculty coaching system."

The Examiner infers that this relief relates to an alleged nonimplement-ation or faulty implementation of the faculty coaching system and an allegation that such facts make out a violation of MERA. The Examiner denies this portion of proposed amendment as it was not part of the occurrences alleged in the original complaint. 3/

In summary, what remains of the amended complaint document is an implied allegation that after the signing of the Settlement Agreement, MATC and the Federation did not respond to inquiries regarding the Settlement Agreement, and I conclude that proceedings in this matter should go forward on that allegation.

This Examiner reaches the above conclusion notwithstanding the arguments of the Federation that it be dismissed from the complaint. The Federation, in its brief supporting its motion to dismiss, accurately points to quotations from the transcript in which the Complainant made ambiguous statements

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2/ The amended complaint also cites Secs. 111.70(1)(a), Stats and 111.70(2), Stats. Those subsections are, respectively, the definition of collective bargaining, and the recitation of the rights of municipal employes, but are not definitions of prohibited practices.

3/ Additionally, the Examiner notes that at the September 11, 1990 proceeding, when Complainant was repeatedly asked what he believed that respondents did that was wrong, his answers never referred to the faculty coaching system.

regarding whether or not he is alleging wrong-doing by the Federation. 4/ At other points in the hearing, however, Complainant did maintain that the Federation had been remiss in responding to his inquiries regarding the Settlement Agreement after it had been signed. 5/ Given this inconsistency, and the fact that the original complaint made this allegation regarding the Federation, I conclude that it would not be appropriate to infer that portion of the complaint is withdrawn. Complainant is entitled to opportunity to present evidence on that point.

In light of the above analysis and definition of the nature of the complaint, this Examiner denies at this time the respondents' motions to dismiss which were made prior to the definition of the complaint reached in this memorandum.

III. MOTIONS TO QUASH

Prior to the September 11, 1990 hearing, Complainant served several subpoenas on potential witnesses. MATC moved that the subpoenas for Laura Clarke, Rus Slicker and Harry Guzniczak be quashed. The Federation moved that the subpoenas for Glenn Petrick, Robert Way, James Walsh, Stephen Gross and Mary Ann Turner be quashed. At that hearing, Complainant had opportunity to give offers of proof regarding the testimony which the subpoenaed witnesses would be able to give. 6/

A subpoena should yield testimony which, if offered, would be arguably relevant and material to this proceeding. 7/ If there is, at least, an offer of proof that the subpoenaed witness could offer testimony that would tend to prove or disprove Complainant's assertion that after the signing of the Settlement Agreement MATC and the Federation failed to respond to Complainant's inquires regarding the Agreement, the motion to quash the subpoena must be denied. In the section which follows, each subpoenaed witness is listed separately, followed by the general area of testimony which Complainant asserts could be offered by the witness, 8/ a determination whether such testimony would be relevant to the gravamen of the complaint and a ruling on the motion to quash.

1. Glenn Petrick: The asserted testimony regarding the institutional climate at MATC is not relevant and the motion to quash is granted.

2. Robert Way: The asserted testimony regarding the coaching committee is not relevant and the motion to quash is granted.

3. James Walsh: The asserted testimony regarding the coaching committee is not relevant and the motion to quash is granted.

4. Mary Ann Gross: The asserted testimony regarding the purging of Complainant's name from the MATC catalog is not relevant and the motion to quash is granted.

5. Stephen Turner: The asserted testimony on how MATC operates is not, by itself, relevant and the motion to quash is granted.

6. Rus Slicker: Complainant asserted that Slicker failed to respond to Complainant's letter inquiring about the Settlement Agreement. Since Complainant did not have a copy of the purported letter at the hearing. The

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4/ See, for example, Tr. 206

> Mr. Steinke: Now, where does the union fit into this? I frankly don't know.

5/ See, for example, Tr. 270

> Mr. Steinke: The facts are that this agreement was signed; and after the agreement was signed, neither party MATC or the Union was responsive to any inquiries about the agreement.

6/ At the hearing, this Examiner directed Complainant to send her photocopies of those subpoenas as well as affidavits of service. That instruction was repeated by letter on September 14, 1990. To date, Complainant has not complied. In order to avoid further delay of an already protracted proceeding, this Examiner rules on the disputed subpoenas based on the list of witnesses recited by complainant at the hearing.

7/ Milwaukee Board of School Directors, Dec. Nos. 13787-F and 16009-C (Malamud, 6/78).

8/ Tr. pp. 233-249 and pp. 292-299.

Examiner directed him to support the offer of proof by a post-hearing submission of the letter. That direction was repeated in the Examiner's letter of September 14, 1990. Since the purported letter has never been produced, this Examiner has no basis on which to conclude that such a letter was sent and that Slicker could testify to any matter relevant to this proceeding. The motion to quash is granted.

7. Harry Guzniczak: At the hearing, Complainant withdrew the subpoena for Mr. Guzniczak.

8. Laura Clarke: The asserted testimony that Clark was involved in various "behind the scenes" activities is not, by itself, relevant. The motion to quash is granted.

IV. IDENTITY OF RESPONDENTS

On November 9, 1990 Complainant wrote the Examiner to request that the identity of the respondents be changed to include ten additional individuals. Inasmuch as the request to add respondents did not assert any specific allegations regarding these persons, and there is no showing these persons acted in any way outside their capacity as agents of the named respondents, I conclude it is inappropriate that the complaint be amended in this manner.

Dated at Madison, Wisconsin this 20th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Jane B. Buffett, Examiner