

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS 953,

Complainant,

vs.

MEDFORD ELECTRIC UTILITY,
CITY OF MEDFORD,

Respondent.

Case 26

No. 52399 MP-3013

Decision No. 28440-B

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, by Ms. Marianne Goldstein Robbins, for the Union.

Ruder, Ware & Michler, S.C., 500 Third Street, Suite 700, P. O. Box 8050, Wausau, Wisconsin 54402-8050, by Mr. Jeffrey T. Jones, for the City.

ORDER DENYING MOTION TO QUASH SUBPOENA

International Brotherhood of Electrical Workers 953, (herein, the Union), on March 15, 1995, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission in which it alleged the Medford Electric Utility, City of Medford (herein, the City), had committed prohibited practices within the meaning of Chapter 111, Stats. On June 19, 1995, the Commission appointed James W. Engmann, a member of its staff, to act as Examiner, to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.07(5), Stats. Hearing was set for July 25, 1995. On August 2, 1995, the City filed a Motion to Quash Subpoena. On August 10, 1995, the hearing was rescheduled for September 13 and 14, 1995. On August 31, 1995, Jane B. Buffett, a member of the Commission's staff was substituted for Mr. Engmann who was no longer available to act as Examiner. On August 28, 1995, the Union filed its response to the City's Motion. The Examiner, having considered the arguments of the parties and being fully advised in the premises issues the following

No. 28440-B

ORDER DENYING MOTION TO QUASH SUBPOENA

The Motion to Quash Subpoena is hereby denied.

Dated at Madison, Wisconsin, this 31st day of August, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/
Jane B. Buffett, Examiner

CITY OF MEDFORD (ELECTRIC UTILITY)

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO QUASH SUBPOENA

BACKGROUND

On March 15, 1995, the Union filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission in which it alleged the Medford Electrical Utility, City of Medford (the City), had committed prohibited practices against the Union. The complaint asserted the City had refused to bargain with the Union over its decision to subcontract work and, additionally, to transfer work out of the bargaining unit, decisions which ultimately resulted in the reduction of Cathi Jackson's hours of work. The complaint also asserted that it discriminated against Jackson by transferring work out of the bargaining unit and reassigning it to employees not represented by a union.

In its answer, the City denies that it committed any prohibited practice and asserts that Ms. Jackson's reduction in hours was not the result of work being subcontracted or transferred out of the bargaining unit.

THE SUBPOENA

On July 18, 1995, the Union issued subpoenas to Duane Zombroski of Anderson, Tackman and Company (herein, Tackman), and the Custodian of Records of that firm. Subsequently, in its support of the subpoena, it has stated that Mr. Dombroski's appearance would suffice in place of the custodian of records. 1/ Tackman is the accounting firm which performed consulting services and provided payroll administration services for the City. The Union alleges Tackman's reports proposed removal of work from the bargaining unit and the combining of duties performed by Utility and City employees. The Union also alleges the City subcontracted work to Tackman.

The subpoena addresses four items of documents as quoted below:

- (1) All bills, invoices and other documents referencing services rendered to the City of Medford by Anderson, Tackman and Company from January 1, 1993 to the present.

1/ The City is contesting the production of documents, not the appearance of Mr. Dombroski.

(2) All time records and payroll records or other documents setting forth hours of work and pay of Anderson, Tackman and Company employees who have performed data input, payroll or other non-professional work for the City of Medford from January 1, 1993 to the present.

(3) All reports, correspondence, internal memoranda and all other documents concerning the merging or reorganization of the Medford Electric Utility and city offices of the City of Medford from January 1, 1992 to the present with the exception of the January 15, 1993 Report of Anderson, Tackman and Company to the City of Medford and the February 13, 1995 correspondence to the Mayor and Common Council from Anderson, Tackman and Company.

(4) All notes, internal memoranda, reports or other documents referencing in any way the observation of City of Medford Electric Utility personnel by Duane Zombroski in 1992 or 1993 or any other observations of City of Medford Electric Utility personnel made by employees of Anderson, Tackman and Company.

THE CITY

The City asserts the subpoenaed materials are irrelevant to the issues posed in the complaint. It reasons that it is the City and not Tackman that is alleged to have committed the prohibited practices. Since the City does not control Tackman's employees when they are performing work for the City, the materials at issue are irrelevant. Additionally, the City has previously provided the Union with Tackman's proposal to the City regarding payroll services and Tackman's invoices to the City. Consequently, the materials demanded in item one would only duplicate what the Union previously has received. 2/ In a similar vein, Tackman's payroll records for its employees who performed work for the City cannot be relevant since it is the City, and not Tackman who is alleged to have committed the prohibited practice. The Utility employee whose hours were reduced was not an employee of the City, but of the Utility. The request for notes regarding Tackman's proposal regarding the merger and reorganization of the Utility and the City are irrelevant since that merger never took place.

2/ In its opposition to the City's Motion to Quash, the Union agrees to exclude from the subpoena any documents previously provided to it.

THE UNION

The Union argues that the bills and other documents regarding services provided by Tackman to the City will demonstrate the relationship between work performed by Tackman and the reduction in Jackson's hours. Additionally, those records will demonstrate that the City's justification for the subcontracting is pretextual. It argues that the payroll records sought will provide evidence of the number of hours subcontracted and support the Union's claim that the subcontracting resulted in Jackson's reduction in hours. According to the Union, documents relating to Tackman's proposals on reorganization are sought to provide evidence to support the claim that the transferring of work away from the bargaining unit was not proposed by Tackman and therefore is evidence of discrimination. The last item, Mr. Dombroski's notes, are sought as material underlying Tackman's recommendations on merger and reorganization.

CONCLUSION

A motion to quash subpoena should be denied if the subpoena would yield material that is arguably relevant and material to the proceeding. 3/ In general, the City asserts the documents sought are irrelevant because Tackman does not control the employees or actions of the City. The Union seeks the disputed documents, however, in order to demonstrate the existence of subcontracting and reassignment of work, the extent of such subcontracting and reassignment, and the City's motivation. Such evidence would be probative to the Union's complaint that the City failed to bargain with the Union over the subcontracting and transfer of work out of the bargaining unit, and its anti-union discrimination in that subcontracting and transferring of work. Accordingly, the Motion to Quash must be denied.

By denying the Motion to Quash, the Examiner is not ruling that each and every document embraced in the subpoena is admissible. The Examiner reserves ruling on the admissibility of documents under items 3 and 4 that do not represent communications between the City and Tackman. The Examiner understands that the Union's rationale for subpoena items 3 and 4 is its claim that the reduction in hours resulted from animosity towards the Union and the City's reliance on Tackman's report was pretextual. That understanding was the Examiner's basis for denying the motion to quash as to those two items.

Dated at Madison, Wisconsin, this 31st day of August, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/

3/ Milwaukee Board of School Directors, Dec. No. 13787-F and 16009-C, (Malamud, 6/78).

Jane B. Buffett, Examiner