

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GERHARDT J. STEINKE, Complainant,

vs.

RICHARD ULRIC MILLER, Respondent.

Case 466
No. 55287
MP-3313

Decision No. 30255

Appearances:

Mr. Gerhardt J. Steinke, 6415 Bridge Road, Madison, Wisconsin 53713, appearing on his own behalf.

Mr. Richard U. Miller, Arbitrator, 3330 Valley Creek Circle, Middleton, Wisconsin 53562, appearing on his own behalf.

ORDER GRANTING MOTION TO DISMISS

On June 12, 1997, Gerhardt J. Steinke filed a complaint with the Wisconsin Employment Relations Commission against Arbitrator Richard Ulric Miller. On June 20, 1997, Miller filed a motion to make the complaint more definite and certain.

On July 21, 1997, Steinke responded to the Miller motion by asserting that Miller had committed a prohibited practice within the meaning of Sec. 111.70(3)(c), Stats. On August 25, 1997, Miller filed a motion to dismiss the complaint. On December 8, 1997, Steinke filed a response to the motion to dismiss.

Dec. No. 30255

Having considered the pleadings and being fully advised in the premises, the Commission makes and issues the following

ORDER

The motion to dismiss is granted.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commissioner A. Henry Hempe did not participate.

Milwaukee Area Technical College

MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO DISMISS

When deciding whether to grant a pre-hearing motion to dismiss, we liberally construe the complaint in favor of the complainant and presume the existence of the facts alleged. We grant a pre-hearing motion to dismiss only where we find that the facts alleged do not establish a violation of the statute allegedly violated. STATE OF WISCONSIN, DEC. NO. 30125-C (WERC, 7/2001). Applying the foregoing to the instant complaint, we conclude the motion to dismiss should be granted.

In January, 1996, following more than 40 days of hearing, Arbitrator Miller issued an award concluding that Steinke's March 15, 1990 non-renewal did not violate a collective bargaining agreement between Milwaukee Area Technical College and Local 212, American Federation of Teachers, WFT, AFL-CIO. Steinke thereafter sought to vacate Arbitrator Miller's award.

In his complaint against Arbitrator Miller, as clarified in his response to Miller's motion to make more definite and certain, Steinke asserts that Miller has violated Sec. 111.70(3)(c), Stats., by refusing to give him certain records related to the arbitration proceeding and that this failure interferes with Steinke's right under a collective bargaining agreement to an award that is

. . . in writing with reasons given for the ruling of the arbitrator. Only by examining the Record (in Miller's hands) can such CBA language be monitored for claimed violations.

Section 111.70(3)(c), Stats., provides:

(c) It is a prohibited practice for any person to do or cause to be done on behalf of or in the interest of municipal employers or municipal employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by par. (a) or (b).

Section 111.70(1)(k), Stats., defines a “Person” as “one or more individuals, labor organizations, associations, corporations or legal representatives.” Miller is an “individual” and thus is a “person” within the meaning of Sec. 111.70(3)(c), Stats. Liberally construing the pleadings and presuming the facts alleged to be true, Miller’s alleged refusal to provide information is an act “in connection with or to influence the outcome of” a “controversy as to employment relations.” However, liberally construing the pleadings, we are unable to conclude that the alleged refusal to provide documents to Complainant would be a prohibited practice under Secs. 111.70(3)(a) or 111.70(3)(b), Stats. Therefore, we have granted the motion to dismiss.

Dated at Madison, Wisconsin this 4th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commissioner A. Henry Hempe did not participate.