STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GEORGIAN SPRINGEN, Complainant,

vs.

TEAMSTERS LOCAL UNION NO. 695, Respondent.

Case 223
No. 58516
MP-3604

Decision No. 30288-A

Appearances:

Ms. Sally Stix, Attorney at Law, 1800 Parmenter Street, Suite 204, Middleton, Wisconsin 53562, appearing on behalf of Complainant Springen.

Mr. Nathan Eisenberg and **Mr. Scott Soldon**, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Respondent Teamsters Local Union No. 695.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING MOTION TO DISMISS

Georgian Springen filed a complaint with the Wisconsin Employment Relations Commission (WERC) on February 2, 2000, *pro se*, against Teamsters Local Union No. 695. The Complainant alleged that in February 1999, the Union, by failing to seat her in a steward position, committed a prohibited practice in violation of the Municipal Employment Relations Act (MERA), Sec. 111.70(3)(b)(1), Stats. Thereafter, the complaint was held in abeyance pending efforts to resolve the dispute. Those efforts were unsuccessful. On September 25, 2001, Springen amended her complaint to further allege that in February 2001, Local 695 "manipulated" a steward election in violation of MERA. Springen subsequently became represented by Attorney Sally Stix.

On November 9, 2001, Examiner Raleigh Jones sent the following letter to Attorneys Stix and Scott Soldon:

> On November 7, Mr. Soldon left me a two-part phone message regarding the above-captioned matter. The first part was that the dates I proposed for a hearing (namely, the week of December 17) would not work for him. The second part was that he intended to file a pre-hearing motion in the matter.
>
> If a pre-hearing motion is filed, that motion will have to be briefed and decided prior to hearing. In my view, it makes little sense to set a hearing date until after the pre-hearing motion has been briefed and decided. Consequently, the scheduling of a hearing in this case will be deferred until after the pre-hearing motion has been addressed.
>
> I propose that Mr. Soldon file his pre-hearing motion with me by December 21, 2001. If that date is unacceptable, please advise me of a date that is. After the motion is filed, I will then set a timetable for the parties to brief the matter.

The parties subsequently agreed on a different timetable. Pursuant to that timetable, the Respondent filed a Motion to Dismiss along with a supporting brief and an affidavit on January 7, 2002. The Complainant filed a brief in opposition to Respondent's Motion to Dismiss on February 4, 2002. The Respondent filed a reply brief on February 19, 2002. The Complainant filed a reply brief and four affidavits on March 5, 2002.

On March 8, 2002, the Commission formally appointed me to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. No evidentiary hearing has yet been conducted in this matter. Additionally, the Union has not yet filed an Answer. Having considered the pleadings and submissions, as well as the arguments of the parties, I am satisfied that Respondent's Motion to Dismiss should be granted. Accordingly, I hereby make and issue the following Findings of Fact, Conclusions of Law and Order Granting Motion to Dismiss.

FINDINGS OF FACT

1. On February 2, 2000, Complainant Georgian Springen filed the following complaint with the WERC against Teamsters Local Union No. 695:

Georgian Springen, Complainant

vs. COMPLAINT

Teamsters Local Union 695,
affiliated w/the IBT, AFL-CIO, Respondent

1. Georgian Springen is an individual residing at 6211 Bridge Road, Monona, Wisconsin 53716. Georgian Springen's telephone number is (608) 345-0695.

2. Teamsters Local Union 695 is a labor organization with offices at 1314 N. Stoughton Road, Madison, Wisconsin 53714 and the telephone number is (608) 244-6207. Michael Spencer is the secretary-treasurer and principal officer of Teamsters Local Union 695. Gene Gowey is a business agent of the Union.

3. For many years prior to February 3, 1999, Teamsters Local Union 695 has represented a bargaining unit of non-supervisory workers at the Madison Metro Transit System formerly d/b/a Madison Bus Company, Madison Service Corporation and Metro Service Corporation. The City of Madison and the Union are parties to a series of Madison Metro collective bargaining agreements including the latest one covering calendar years 1998 and 1999. Throughout the years and continuing to the present, the collective bargaining agreement permits postings on the Union bulletin boards by elected or appointed officials of the Union.

4. For many years prior to February 3, 1999, and continuing to the present, Georgian Springen has been employed by Madison Metro as a bus driver in the bargaining unit represented by Teamsters Local Union 695. Throughout her employment, Springen has represented the Union on various labor-management committees, has served several terms as a steward, most recently as an appointed alternate affirmed by election in July 1998.

5. For several months preceding February 3, 1999, Georgian Springen engaged in lawful concerted activities and continues to do so. These activities include, but are not limited to, accepting a nomination on September 15, 1998 to run for Union office; encouraging Union members to vote for a slate of candidates on which she was running for a full-time business agent position and the office of Recording Secretary in the election on October 26, 1998; protesting the conduct of that election; introducing amendments to the Local Union 695 Bylaws on January 19, 1999, circulating petitions among the Union's membership in support of the amendments, and campaigning among the membership for adoption of the same; organizing Union meetings; filing grievances; debating the affairs of the Union at monthly general membership meetings; reviewing the minutes of meetings of the Union; and assisting or representing members against whom the Union has taken disciplinary action.

6. On February 3, 1999, Gene Gowey failed and refused to seat Georgian Springen to a regular steward position at Madison Metro vacant since about December 1998 because of Springen's having engaged in lawful concerted activities on behalf of herself and other Union members.

7. By its removal of Georgian Springen from her steward role, Teamsters Local Union 695 committed a prohibited practice in violation of Sec. 111.70(3)(b)(1) of the Wisconsin Statutes.

8. Since February 3, 1999, and continuing to the present, the Union has interfered with Georgian Springen's right to engage in concerted activities by removing her as a Union representative to the City of Madison Department/Division Head meetings on February 8, 1998; removing her as a Union representative on the Madison Metro Trainer Selection Committee; and by changing the locks on the Madison Metro Union bulletin board and other conduct in violation of ss. 111.70(3)(b)(1) of the Wisconsin Statutes.

9. As the remedy for the prohibited practices noted above, the Wisconsin Employment Relations Commission should declare that Teamsters Local Union 695 has committed the prohibited practices alleged above and order the Union to: cease and desist from such violations in the future; post a notice to that effect in all workplaces employing members of Local Union 695 and at the Union offices which shall remain posted until the next election; publish the notice in its newsletter; offer to reinstate Georgian Springen to all positions from which she was removed; provide

her with a replacement key to the Union bulletin board at Madison Metro; and make Georgian Springen whole for all losses experienced by reason of the removal from her Union positions.

10. The required $40.00 filing fee accompanies this complaint.

I swear the allegations above are true.

Georgian Springen /s/, Complainant

Date: 2-2-2000

2. On September 25, 2001, the complaint referenced in Finding No. 1 above was amended. The amended complaint, which has the changes from the original complaint shown in italics, is as follows:

Georgian Springen, Complainant

vs. COMPLAINT

Teamsters Local Union 695,
affiliated w/the IBT, AFL-CIO, Respondent

1. Georgian Springen is an individual residing at 6211 Bridge Road, Monona, Wisconsin 53716. Georgian Springen's telephone number is (608) 345-0695.

2. Teamsters Local Union 695 is a labor organization with offices at 1314 N. Stoughton Road, Madison, Wisconsin 53714 and the telephone number is (608) 244-6207. Michael Spencer is the secretary-treasurer and principal officer of Teamsters Local Union 695. Gene Gowey is a business agent of the Union.

3. For many years prior to February 3, 1999, Teamsters Local Union 695 has represented a bargaining unit of non-supervisory workers at the Madison Metro Transit System formerly d/b/a Madison Bus Company, Madison Service Corporation and Metro Service Corporation. The City of Madison and the Union are parties to a series of Madison Metro collective bargaining agreements including the latest one covering calendar years 1998 and 1999. Throughout the years and continuing to the present, the collective bargaining agreement permits postings on the Union bulletin boards by elected or appointed officials of the Union.

4. For many years prior to February 3, 1999, and continuing to the present, Georgian Springen has been employed by Madison Metro as a bus driver in the bargaining unit represented by Teamsters Local Union 695. Throughout her employment, Springen has represented the Union on various labor-management committees, has served several terms as a steward, most recently as an appointed alternate affirmed by election in July 1998.

5. For several months preceding February 3, 1999, Georgian Springen engaged in lawful concerted activities and continues to do so. These activities include, but are not limited to, accepting a nomination on September 15, 1998 to run for Union office; encouraging Union members to vote for a slate of candidates on which she was running for a full-time business agent position and the office of Recording Secretary in the election on October 26, 1998; protesting the conduct of that election; introducing amendments to the Local Union 695 Bylaws on January 19, 1999, circulating petitions among the Union's membership in support of the amendments, and campaigning among the membership for adoption of the same; organizing Union meetings; filing grievances; debating the affairs of the Union at monthly general membership meetings; reviewing the minutes of meetings of the Union; and assisting or representing members against whom the Union has taken disciplinary action.

6. On February 3, 1999, Gene Gowey failed and refused to seat Georgian Springen to a regular steward position at Madison Metro vacant since about December 1998 because of Springen's having engaged in lawful concerted activities on behalf of herself and other Union members.

7. On January 1, 1999, Madison Metro Transit and Teamsters Local 695 commenced bargaining for a successor Labor Agreement. Consensus bargaining was the method agreed and voted on by the represented members at Madison Metro. After a year of unsuccessful bargaining, the Teamsters Union and Madison Metro switched to traditional bargaining without informing the members. Georgian Springen filed a grievance in December of 1999 stating that this violated the agreement that had been voted on. That grievance was withdrawn by the Teamsters in February of 2001. Then, when the parties were unable to reach agreement in bargaining using traditional bargaining, they sent final offers to an arbitrator again without coming back to the members. Georgian Springen circulated a petition, signed by a majority of Teamster members at Madison Metro, demanding to vote on the tentative agreements. This petition was presented to the Teamster Local 695 executive board and never acted upon. When members became angry because they weren't allowed to vote on their Labor Agreement, they were told that they should trust their elected stewards. The members pointed out that not only were three stewards appointed, but that Teamster business agent Gene Gowey had stated that we would no longer be electing stewards at Madison Metro.

8. In response, Teamsters 695 posted notice of a stewards election. This was in October of 2000. January 31, 2001, ballots were sent out to the drivers. There were four driver steward positions. Instead of being allowed to vote for up to four candidates (regular or extra board), as had been the election practice since approximately 1986, it is noteworthy that now members were instructed they could vote for only one extra board steward and up to three regular board stewards. Georgian Springen was an extraboard candidate. Ballots had to be received by February 14, 2001. No date, time or place was given for ballots to be counted. Our stewards, when questioned, did not know when or where ballots would be counted. Steward Edge said ballots would be counted by three neutral business agents and we would be informed of the results at a later time.

9. On February 14, Georgian Springen protested this to the principal officer of Teamsters 695, Michael Spencer. Subsequently, a time and place was set for the ballot count.

10. Ballots were counted on February 16 with the following results:

REGULAR OPERATORS
OPERATORS

Gary French 108
Gary Edge 74
William Becker 59
Elvis Green 55
William Hinrichs 51
Ryan McGraw 49
James North 41
Tyree Phillips 9
Alvin Byrd 5

EXTRA BOARD

Bill Roeth 70
Georgian Springen 62
Bob Helwig 14
John Annen 9
Dennis Harnish 1

11. The successful candidates were posted as:

Gary French
Gary Edge
William Becker
Bill Roeth

12. On February 20, Bill Roeth chose to become a regular driver. This disqualified Bill as an extraboard steward and Georgian Springen should have become the extraboard steward. However, instead of disqualifying Bill Roeth, Teamsters 695 sent Madison Metro a letter informing them of the appointment of Bill Roeth, Gary Edge, Gary French and William Becker to the position of union steward effective March 1, 2001.

13. Since February 3, 1999, and continuing to the present, the Union has interfered with Georgian Springen's right to engage in concerted activities by removing her as a Union representative to the City of Madison Department/Division Head meetings on February 8, *1999;* removing her as a representative on the Madison Metro Trainer Selection Committee; *removal from her steward role in February, 1999*; changing the locks on the Union bulletin board; *holding a sham steward election in February 2001 that was shamelessly manipulated to control the results* and other conduct in violation of 111.70(3)(b)(1) of the Wisconsin Statutes.

14. As the remedy for the prohibited practices noted above, the Wisconsin Employment Relations Commission should declare that Teamsters Local Union 695 has committed the prohibitive practices alleged above and order the Union to cease and desist from such violations in the future; post a notice to that effect at the Union offices for *30 days*; offer to reinstate Georgian Springen to all positions from which she was removed; provide her with a replacement key to the Union bulletin board at Madison Metro; *re-run the sham February, 2001 stewards election, this time setting a time and place to count ballots and allowing drivers to vote for any eligible combination of four extraboard or regularboard candidates that they feel will best represent them in bargaining and grievance resolution*. Make Georgian Springen whole for all losses experienced by reason of the removal from her Union positions.

15. The required $40.00 filing fee *accompanied the original* complaint.

I swear the allegations above are true.

Georgian Springen /s/, Complainant

Date Amended: September 24, 2001

3. On January 7, 2002, Respondent Teamsters Local Union No. 695 filed a Motion to Dismiss the complaint and amended complaint. In its brief, the Union argued that the complaint, as amended, did not allege conduct which violates MERA, but instead involves steward selection, which it characterizes as a "matter at the core of internal union governance" and thus, outside the Commission's jurisdiction. On February 4, 2002, the Complainant, by Counsel, filed a brief in opposition to the Motion to Dismiss. In that brief, it was argued that the Union's conduct violated Springen's legal rights under the Labor Management Reporting and Disclosure Act (LMRDA) and the Union's Constitution and Bylaws. Both sides subsequently filed reply briefs which elaborated on these arguments.

Based on the foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. In the complaint and amended complaint, WERC jurisdiction is predicated on the claim that the Union's conduct interfered with the Complainant's right to engage in concerted activities. Concerted activity involves the employment relationship, and in this case,

the Complainant's relationship with her municipal employer, Madison Metro, is not involved. The WERC therefore lacks jurisdiction under MERA to decide the claims set forth in the complaint and amended complaint.

2. The WERC lacks jurisdiction over allegations of violations of the Labor Management Reporting and Disclosure Act (LMRDA).

3. The WERC lacks jurisdiction over allegations of violations of the Union's Constitution and Bylaws in this case because the Complainant's employment relationship with her municipal employer, Madison Metro, is not involved.

4. The complaint and amended complaint therefore fail to state a claim upon which relief can be granted.

Based on the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

The Respondent's Motion to Dismiss is hereby granted. The complaint and amended complaint are therefore dismissed in their entirety.

Dated at Madison, Wisconsin, this 22nd day of March, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/
Raleigh Jones, Examiner

CITY OF MADISON (TRANSIT)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING MOTION TO DISMISS

As noted in this decision's second prefatory paragraph, the Union filed a Motion to Dismiss the instant complaint and amended complaint. The basis for the Respondent's motion is this: it avers that the complaint fails to state a claim upon which relief could be granted because the Commission lacks jurisdiction to regulate the internal union matters referenced therein. The Complainant disagrees.

POSITIONS OF THE PARTIES

Complainant Springen

The Complainant contends that the Union's Motion to Dismiss should be denied on the grounds that "dismissal is inappropriate." In her view, she has stated a claim upon which relief can be granted so the matter should proceed to hearing. She elaborates on this contention as follows.

The Complainant begins with an overview of the case. She asserts that the Union violated Sec. 111.70(3)(b)1 of MERA "by failing to implement the results of [two] stewards' elections" thereby "infringing upon Springen's legal rights." In her view, she should have been made a steward by virtue of the February, 1999 election. Additionally, she contends that when the Union "implemented the results" of the February, 2001 steward election, it "gave no effect to the Union's established procedures and/or in such a manner as to not seat the candidates who received the most votes."

The Complainant implicitly acknowledges that the subject matter just referenced (i.e. the election of union stewards) involves an internal union matter. She further acknowledges that as a voluntary association, a union is generally immune from having its internal affairs scrutinized. Be that as it may, the Complainant contends that a union's internal affairs are not automatically outside the reach of the state. The Complainant argues that in this particular case, the WERC has jurisdiction under MERA to regulate and remedy the interference complained of, even though it involves an internal union matter. As the Complainant puts it in her reply brief, "both statutory and state common law authority exists for the WERC to hear Springen's claim."

First, the Complainant relies on a federal labor law, namely the Labor Management Reporting and Disclosure Act (LMRDA). Springen maintains that "the procedural safeguards of the LMRDA are triggered in this instance." The Complainant avers that she has rights under that Act for two reasons: she was a candidate for steward and also a voter in the steward elections. Springen argues that the Union interfered with her legal rights under that Act when it (the Union) did not properly implement the results of the two aforementioned steward elections. Specifically, she asserts that the Union twice failed to take the steward votes properly. She maintains that union members have the right to have their steward votes implemented properly, and she believes that did not happen here after either election. The Complainant then cites several federal court decisions for the proposition that the election of stewards states a claim under the LMRDA. She also avers that all of her disagreements with the Local's leadership concerning their negotiating posture and strategy with Madison Metro were protected by the LMRDA.

In addition to relying on the LMRDA contention noted above, the Complainant also relies on the Union's Constitution and Bylaws. According to the Complainant, they also give the WERC a basis for asserting jurisdiction over this case. This argument is premised on the notion that a union's constitution and bylaws are a binding contract between unions and their members which are enforceable in state courts (and, by inference, in state administrative agencies). Building on the premise that the WERC can use the Union's Constitution and Bylaws as a basis to establish jurisdiction, the Complainant argues that the Union interfered with her contract rights under those documents. The Complainant acknowledges in this regard that the Union's Constitution and Bylaws do not provide for the election of union stewards, using instead the term "appoint". Be that as it may, the Complainant maintains that since the Bylaws are vague as to the procedure to be used for selecting stewards, the Union could use elections as the method to "appoint" stewards. The Complainant avers that by choosing election as the process/method for making steward appointments, the Union had to give meaning to its results. The Complainant argues that did not happen. In making this argument, the Complainant acknowledges that in both of the steward elections, Springen "did not get enough votes to immediately become a steward." According to her though, "the events which took place after the elections, however, required her to be placed in a steward position . . . [because] she was designated as next in line to fill the vacancy." The Complainant alleges that the February, 2001 elections are most suspect for the following reason. It notes that despite a history of electing stewards as a group, regardless of regular or extra-board status, the Union's executive board chose in that election to elect three regular drivers and one extra-board driver as stewards. Springen acknowledges that she received 62 votes to Bill Roeth's 70 votes, but she emphasizes that she received more votes than the third place regular driver (William Becker) did, who received 59 votes. She further notes that later, Roeth chose to become a regular driver, which resulted in the bargaining unit having no extra-board drivers as stewards. According to Springen, she should have been placed in the extra-board steward's position, because she was the next highest vote getter after Roeth. The Complainant asserts that by

seating no extra-board drivers, the Union made meaningless the election for extra-board steward and, at the same time, did not even appoint the four highest vote getters. The Complainant believes these facts prove that the Union manipulated the election procedures it established, and failed to implement a membership vote in a manner which would have given effect to those democratic procedures.

Next, the Complainant responds as follows to the Union's contention that it has the right to select and appoint its own stewards. The Complainant avers that "the decision to hold elections changed everything." It asserts that in this particular instance, the Union's authority to "appoint" stewards was given by the Union to the membership in the form of an election. It argues that by choosing to hold an election, this shifted the discretion to choose stewards to the membership and thereby limited the discretion of the Local's Executive Board. The Complainant cites the four affidavits which it attached to its reply brief for the proposition that at no time was the membership notified that the steward elections were only advisory, or that the results of the vote could be disregarded as the Executive Board saw fit. According to the Complainant, once the Union decided to hold a steward election, its authority was limited to setting qualification criteria for candidates. The Complainant notes in this regard that she was never found by the Union to be ineligible for office. It submits that for the Union to now say that she was ineligible for election because of disloyalty without notifying her of same denies her due process.

Next, the Complainant responds to the Union's argument that it was within its rights to not seat Springen because of disloyalty. According to Springen, that is a factual question to be determined by a hearing. Springen maintains that if her loyalty was a real issue, the Union could have found her ineligible to be a steward and refused to allow her to stand for election. It notes that that did not happen. The Complainant asserts that deciding she was eligible to run for steward but not take office is bizarre and illogical. The Complainant argues that the Union's claim of Springen's disloyalty is a disingenuous defense to the wrongful action taken toward her and the Union's other voting members. In the Complainant's view, the Union's argument regarding loyalty (i.e. that it can remove or choose not to seat whomever it wants) is equivalent to admitting it had no intent to follow the results of its membership's election.

Finally, the Complainant contends that the Union has waived its argument concerning the exhaustion of internal remedies. This contention is based on the fact that the Union did not specifically mention this issue in their Motion to Dismiss.

In conclusion, the Complainant asks the Examiner to deny the Union's Motion to Dismiss and schedule the matter for hearing.

Respondent Union

The Union contends that the complaint and amended complaint should be dismissed without a hearing because both fail to state a claim for relief under Sec. 111.70(3). In the Union's view, all of Springen's allegations fall outside of the scope of the rights protected by MERA. It elaborates on that contention as follows.

The Union notes at the outset that neither the complaint nor the amended complaint allege that the dispute that Springen had with the Union had an impact or effect on her employment with her municipal employer (Madison Metro). The Union maintains that since there are no factual allegations that Springen was coerced or intimidated in her exercise of her protected MERA rights, she has failed to state a claim upon which relief could be granted.

As the Union sees it, the crux of this case is that Springen demands to be appointed to a steward position for the Madison Metro bargaining unit. According to the Union, it has the right to appoint as steward individuals of its own choosing, and Springen does not have a statutory right to be placed in a steward position. To support that premise, it avers that unions may select stewards in a manner of their choosing and may lawfully consider the union's legitimate interest in ensuring the loyalty of stewards who represent them in dealing with employers about working conditions.

The Union asserts that it is well-settled law that the selection of union stewards is an internal union matter. It cites the decisions in LOCAL 254, SERVICE EMPLOYEES (BRANDEIS UNIVERSITY) 332 NLRB No. 103, 165 LRRM 1321 (2000) and TEAMSTERS LOCAL 282 (GENERAL CONTRACTORS), 280 NLRB 733 (1986) to support this contention. In the BRANDEIS case, the union removed a member from a steward position after he submitted a petition protesting the union's handling of a grievance concerning overtime pay and seeking to become Chief Steward for the bargaining unit. The employee alleged that his removal as steward violated Section 8(b)(1)(A) of the National Labor Relations Act. The Board held otherwise. It found that a union does not violate Section 8(b)(1)(A) if it removes from positions with representational responsibility employees who are in disagreement with the policies of the current union leadership. In the GENERAL CONTRACTORS case, the union had collective bargaining agreements with certain contractor associations that provided for the appointment by the union of Working Teamster Foremen (WTF's). Two long-time union members who had headed a dissident movement within the local alleged that the union had violated Section 8(b)(1)(A) of the Act when it did not appoint them to be WTF's. The Board first found the WTF's to be the equivalent of shop stewards. The Board then noted that unions generally have the right to select their own collective bargaining representatives, and that they may select their own criteria for the appointment of stewards. The Board then held that the union had a valid interest in placing in certain offices individuals it determined could best serve the union and its membership because "[t]he union is legitimately entitled to hostility or

displeasure toward dissidence in such positions where teamwork, loyalty, and cooperation are necessary to enable the union to administer the contract and carry out its side of the relationship with the employer." Id. The Union submits that these cases establish the proposition that a union has the right to appoint as union stewards persons whom it trusts to act with an undivided loyalty with regards to its policies.

As the Union sees it, Springen's complaint is indistinguishable from the cases just noted which have stated that unions have no obligation to appoint dissident union members as stewards. For comparison purposes, the Union notes that like the complainants in both the BRANDEIS UNIVERSITY and GENERAL CONTRACTOR cases, Springen specifically alleges that the protected rights which are being inhibited are her dissident union activities. She alleges in this regard that her non-appointment as steward stems from disagreements with the Union's incumbent leadership over its policies. The Union contends that Springen's allegations concerning the Union's refusal to appoint her to a steward position in 1999, her complaints about the February 2001 steward election, and her allegations about the Union's failure to appoint her to miscellaneous committees all directly relate to the Union's autonomous authority over matters of internal union structure and governance. The Union avers that the Commission lacks authority to regulate or to intrude on such internal union affairs. In its view: "neither MERA nor any other body of labor law permits such unprecedented intrusion into a union's internal self-governance."

Having addressed Springen's asserted statutory right to be placed in a steward position, the Union next maintains that Springen has not asserted a contractual right either to be placed in a steward position. The Union avers in this regard that there are no provisions in its Constitution or Bylaws which require that stewards be elected. Building on that premise, the Union asserts that it has no obligation to elect stewards. According to the Union, the steward elections which it held at Madison Metro were advisory. The Union submits that none of the federal cases cited by Springen stand for the proposition that an advisory election is binding simply because it is an "election". Additionally, the Union points out that in each of the cases cited by Springen, the basis of the rights asserted were specifically mentioned in the union constitution, and that is not the case here. The Union therefore claims that all of the cases which Springen relies on are distinguishable.

Next, the Union responds to the Complainant's argument that dismissal is inappropriate due to her rights under the Labor Management Reporting and Disclosure Act (LMRDA). First, the Union argues that Springen cannot assert a claim under the LMRDA in this forum since the WERC does not have jurisdiction to decide such claims. To support this premise, it cites Sec. 102 of that Act wherein it provides that LMRDA claims may only be asserted in a "district court of the United States." It avers that numerous jurisdictions have ruled that state courts and state administrative agencies have no jurisdiction over LMRDA claims, since the federal courts' jurisdiction is exclusive. The Union submits that in the context of this

particular case, the Commission's jurisdiction is limited to determining cases involving prohibited practice complaints as defined in MERA. According to the Union, MERA contains no provisions which govern voting rights or internal union functions, nor does MERA grant the Commission authority to determine claims under the LMRDA. Additionally, the Union maintains that no Commission decision has ever applied the LMRDA to a claim asserted under MERA. Absent statutory authority to determine such claims, the Union believes the Commission cannot use the LMRDA as a basis for addressing Springen's claims. Second, the Union argues in the alternative that even if the Commission did have jurisdiction to apply the LMRDA, that Act does not apply to claims concerning a union's right to appoint stewards of its own choosing. To support that premise, the Union cites the case of FINNEGAN V. LEU, 456 U.S. 431, 437 (1982), for the proposition that the procedural safeguards of the LMRDA apply only to actions that affect a union member's right or status "as a member of the union." According to the Union, the LMRDA does not restrict the right of union leaders to choose representatives whose views are compatible with their own. Building on this premise, the Union avers that the ability of union leaders to choose representatives who will implement their policies extends to shop stewards and union delegates. The Union argues that it therefore had no obligation to appoint Springen to a steward position when one became available. For background purposes, the Union points out that in her complaint, Springen acknowledged having had numerous disagreements with the elected leadership of Local 695. In the Union's view, the instant complaint directly stems from those disagreements. The Union submits that it was both reasonable and understandable that it had concerns about appointing her to a position which required her to implement the Union's policies when she disagreed with its policies. The Union asserts that Springen's loyalty to the policies of the existing leadership is not a question of fact, but rather is a subjective determination to be made by the Local's elected leadership.

Finally, the Union responds to Springen's contention that it has waived its argument concerning the exhaustion of internal remedies. The Union disputes that assertion and contends, to the contrary, that it has not waived any affirmative defenses, including the exhaustion of internal remedies. It notes in this regard that it has not even filed an Answer in this case, or raised any affirmative defenses to her claims.

The Union therefore asks that the Examiner dismiss the complaint and amended complaint, and award the Union its reasonable costs and attorney fees in this proceeding.

DISCUSSION

A. The Pleadings

The complaint alleges that the Union committed a prohibited practice in violation of Sec. 111.70(3)(b)(1) of the Municipal Employment Relations Act (MERA) when it "failed and refused to seat Georgian Springen to a regular steward position at Madison Metro" in February, 1999. (Original complaint, paragraph 6). She alleges that she was not appointed steward because she disagreed with the Local's leadership. The amended complaint alleges that the Union committed another prohibited practice by "holding a sham steward election in February, 2001 that was shamelessly manipulated to control the results." (Amended complaint, paragraph 13). She again alleges that she should have been appointed as a steward following that election, but was not appointed steward because of past disagreements with the Local's leadership. She also alleges that the Union removed her from several committees she was on. (Original complaint, paragraph 8).

B. The Legal Standards

Section 111.70(3)(b)1 makes it a prohibited practice for a "municipal employee" to "coerce or intimidate a municipal employee in the enjoyment of the employee's legal rights, including those guaranteed in sub. (2)." The phrase "municipal employee", which is used in this sentence, has historically been interpreted as applying to labor unions. 1/ The reference to "sub. (2)" in this sentence refers to Section 2 of MERA. That section grants municipal employees the following rights: "the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and. . .the right to refrain from any and all such activities. . ."

1/ See, for example, RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 14308-D, 14389-D and 14390-D (WERC, 6/77), aff'd Dane County Cir. Ct., Case No. 158-408 (5/78).

The Union has moved to dismiss the complaint and amended complaint on the grounds that both fail to state a claim upon which relief could be granted. According to the Union, all of Springen's allegations fall outside the scope of the rights protected by MERA.

The Union's Motion to Dismiss is governed by Chapters 111 and 227 of the Wisconsin Statutes. Through the operation of Sec. 111.70(4)(a), Stats., Sec. 111.07, Stats., governs the procedures by which prohibited practice complaints are heard. Chapter 227 of the Wisconsin Statutes states the framework for administrative agency proceedings. Chapter 227 does not

provide a summary judgement procedure. The right to hearing is explicit, and the dismissal of a contested case prior to evidentiary hearing is not. Pre-hearing dismissal of a contested case is, then, an uncommon result:

> Dismissal prior to evidentiary hearing would be proper if based on lack of jurisdiction, lack of timeliness and in certain other cases. . .(I)t would be a rare case where circumstances would permit dismissal of the proceedings prior to the conclusion of a meaningful evidentiary hearing on other than jurisdictional grounds or failure of the complaint to state a cause of action. 2/

The Commission has reflected this reluctance to deny hearing in its own case law:

> Because of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief. 3/

That said, a complainant's right to a hearing is not unlimited. If a complaint fails to raise a genuine issue of fact or law, Commission examiners have granted pre-hearing motions to dismiss. 4/

2/ 68 OAG 31, 34 (1979). The opinion letter was requested by the Wisconsin Real Estate Examining Board and concerned the "denial, limitation, suspension or revocation of licenses."

3/ UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY, WISCONSIN, DEC. NO. 15915-B (Hoornstra, with final authority for WERC, 12/77), at 3.

4/ See COUNTY OF WAUKESHA, DEC. NO. 24110-A (Honeyman, 10/87), aff'd DEC. NO. 24110-A (WERC, 3/88); and MORAINE PARK TECHNICAL COLLEGE ET AL., DEC. NO. 25747-C (McLaughlin, 9/89), aff'd DEC. NO. 25747-D (WERC, 1/90). For judicial approval, see VILLAGE OF RIVER HILLS, DEC. NO. 24570 (WERC, 6/87), aff'd DEC. NO. 87-CV-3897 (Dane County Cir. Ct. 9/87), aff'd DEC. NO. 87-1812 (CtApp, 3/88). The procedural history of the case is summarized in VILLAGE OF RIVER HILLS, DEC. NO. 24570-B (Greco, 4/88). All these cases arose under MERA.

C. The Facts

For the purpose of ruling on the prehearing Motion to Dismiss, the Examiner has adopted the facts pled by the Complainant. What follows is a summary of those facts. The facts pertaining to the Local's Bylaws were taken from the affidavit of Local 695 Secretary-Treasurer Michael Spencer with dealt with same.

Springen is an employee of Madison Metro Transit System (hereinafter Madison Metro). Teamsters Local 695 is the exclusive collective bargaining representative for the non-supervisory employees of Madison Metro. Springen, who is a bus driver, is a member of that bargaining unit. Over the years, she has been active in the Union's internal politics. Specifically, she has served on various labor/management committees, run for union office, campaigned for local union candidates, filed internal union protests, introduced amendments to Local 695's Bylaws, circulated petitions among the Union's membership in support of those amendments, campaigned for the adoption of those amendments, organized union meetings, filed grievances, debated union affairs at monthly membership meetings, reviewed the minutes of union meetings, and assisted or represented union dissidents. In October, 1998, she ran for the position of Union business agent and the office of Recording Secretary. She was not elected to either. Afterwards, she protested the conduct of that election. Springen has long sought to become a steward in the Madison Metro bargaining unit.

The Union's Bylaws contain a section dealing with the position of steward. Section 13(B) of the Bylaws is entitled "Stewards, Committee Persons and Their Alternates", and provides thus:

> Stewards, committee persons and their alternates are not officers or agents of the Local Union. They shall be selected and removed in such manner as the Local Union Executive Board may direct, and shall have such duties as the Local Union Executive Board or the principal executive officer may assign them from time to time. The performance of steward duties and the method of compensation for such duties shall be determined by the principal executive officer, with the approval of the Local Union Executive Board.

This provision does not say how stewards are selected. Specifically, it does not say whether they are appointed or elected. By its express terms, that determination is left to the Union's Executive Board.

At least twice, the Union has held steward elections at Madison Metro. It is unclear from the record facts whether those election results were considered binding, or merely advisory.

There was a steward election at Madison Metro in July, 1998. The Union decided there would be four driver stewards at Madison Metro. Springen was one of the employees who ran for steward. The top four vote getters in that election were certified by the Union as being elected. Springen was the fifth highest vote getter in that election. She was not one of the four people certified as being elected steward. Springen claims that following the election, she became an "appointed alternate affirmed by election." The Union disputes that claim. In their view, Springen was never "appointed" as a union steward in any capacity.

In 1999, Madison Metro and the Union commenced bargaining for a successor collective bargaining agreement. The method of bargaining which the parties initially utilized was consensus bargaining. At some point, the parties switched to traditional bargaining. Springen filed a grievance contending this switch violated the collective bargaining agreement. That grievance was later withdrawn by the Union. Springen disagreed with the way Union Business Agent Gene Gowey conducted contract negotiations with Madison Metro, and circulated a petition among bargaining unit employees demanding a vote on certain bargaining proposals prior to the completion of bargaining. Her petition was subsequently presented to the Union's executive board, which took no action on it.

In January-February, 2001, the Union held another steward election at Madison Metro. The Union determined that, in this election, three steward positions were reserved for drivers with regular routes (known as the regular drivers) and one steward position was reserved for drivers who drove extra routes (known as the extraboard drivers). Nine employees ran for the steward position among the regular drivers, and five employees ran for steward among the extraboard drivers. Springen was one of the candidates who ran for steward among the extraboard drivers. On February 16, 2001, the election ballots were counted. The top three vote getters among the regular drivers were Gary French, Gary Edge and William Becker. The top vote getter among the extraboard drivers was Bill Roeth. Springen was the second highest vote getter among the extraboard drivers. The Union subsequently appointed French, Edge, Becker and Roeth as stewards at Madison Metro. Springen was not appointed steward. Following the steward election, Roeth chose to become a regular driver.

D. Application of the Legal Standards to the Facts

The section of MERA which Springen claims the Union violated is Sec. 111.70(3)(b)(1). While that section was quoted at the beginning of Section B of the Discussion, it will be repeated here for purposes of analysis. Once again, that section makes it a prohibited practice for a union that represents municipal employees "to coerce or intimidate a municipal employee in the enjoyment of the employee's legal rights, including those guaranteed in sub. (2)." The sub. (2) just referenced is Section 2 of Sec. 111.70, which is entitled "Rights of Municipal Employees." The first sentence of that section lists the following rights which municipal employees are granted by MERA: 1) the right of self-organization; 2) the right to form, join or assist labor organizations; 3) the right to bargain collectively through their representatives; 4) the right to engage in lawful, concerted activities for the purpose of collective bargaining; and 5) the right to refrain from any and all of these activities.

In her complaint and amended complaint, the Complainant specifically references the fourth right referenced above (i.e. the right to engage in concerted activities) and contends that was the right which the Union's conduct interfered with. (Original Complaint, paragraphs 6 and 8 and Amended Complaint, paragraphs 6 and 13). There is a fundamental problem with

raising that contention in the context of this case. The problem is this. The "concerted activities" that are referenced in the fourth right must involve the Employer in some way because the phrase "concerted activities" is followed with a specific reference to collective bargaining. Collective bargaining, by its very nature, involves two parties: the Union and the Employer. If just one side is involved, say the Union, the activity involved (and complained of) cannot accurately be characterized as "concerted activity". In this case, the Employer is not involved. Specifically, Springen does not allege that the Union's conduct had any impact or effect on her employment with Madison Metro. This means that the employment relationship is not involved here. The only relationship that is involved in this case is the one between the Union and one of its members (Springen). Based on the complaint alone, Springen can fairly be characterized as a union dissident. What she alleges the Union has interfered with are her union dissident activities. That is not the same thing, however, as "concerted activities for the purpose of collective bargaining" (as that phrase is used in Section 2). Insofar as the Examiner has been able to determine, no Commission decision has ever held that the phrase "concerted activities" applies to intra-union activities, also known as internal union politics.

A review of other Section 2 rights granted to municipal employees (besides their "right to engage in lawful, concerted activities for the purposes of collective bargaining") reveals that none of those rights explicitly deal with purely internal union matters such as the selection of union stewards. Additionally, a review of the rest of MERA reveals that it does not contain any provisions governing the selection of stewards, internal voting rights and procedures, or internal union functions. Finally, the Examiner has reviewed the Commission case law dealing with Sec. 111.70(3)(b)1, and the duty of fair representation, and cannot find a single case wherein the Commission injected itself into the types of purely internal union matters that are raised here.

No doubt aware that WERC jurisdiction is problematic, the Complainant makes a different jurisdictional claim in the briefs than was made in the complaints. Once again, in the complaint and amended complaint, WERC jurisdiction is predicated on the claim that the Union's conduct interfered with the Complainant's right to engage in concerted activities. It has already been held, though, that concerted activity must, by definition, involve the employment relationship. That is not the case here. Recognizing that, in their briefs, the Complainant takes a different jurisdictional approach which essentially tries to end-run Section 2 of MERA. The Complainant does this by relying on certain rights which Springen has outside of MERA, which it bootstraps to Section 2 of MERA. It is these rights which the Complainant contends the Union interfered with. The Complainant characterizes one as a statutory right and the other as a contractual right. They will be addressed in the order just listed.

The Complainant first relies on a federal labor law, namely the Labor Management Reporting and Disclosure Act (LMRDA). Springen argues that she has rights under that Act because she was a candidate for steward and also a voter in the steward elections. She further argues that the Union interfered with her rights under that Act when it (the Union) did not properly implement the results of the 1999 and 2001 steward elections at Madison Metro. That may be. However, that is not my call to make. The reason is this. The WERC does not have the authority to decide all labor cases that arise in the public sector in the State of Wisconsin. The Commission has to have jurisdiction before it can act. While the Commission obviously has jurisdiction to decide claims arising under MERA, we do not have jurisdiction to decide claims arising under the LMRDA. That Act is a federal statute, and the federal government has not granted us authority to decide claims arising thereunder. Under Sec. 102 of that Act, LMRDA claims may only be brought in the United States district courts. This means the WERC does not have the statutory authority to determine LMRDA claims. Additionally, insofar as I have been able to determine, no Commission decision has ever ruled on an LMRDA claim or bootstrapped the LMRDA to a MERA claim. Consequently, the Complainant's attempt to bootstrap LMRDA rights into MERA via the phrase "the employee's legal rights" contained in Sec. 111.70(3)(b)(1) is unsuccessful. Since the WERC does not have jurisdiction over LMRDA claims, the Examiner is not empowered to use the LMRDA as a basis for addressing Springen's claims. Consequently, the Examiner will not decide whether the Union's conduct in the two steward elections violated the LMRDA.

The Commission held long ago that the "employee's legal rights" which are protected by Sec. 111.70(3)(b)1 do not include the exercise of legal rights other than those specifically set out in the rights section, unless the rights sought to be protected are rights established by other provisions of the statute or the persons allegedly interfering with the employee's other legal rights are motivated by the employee's exercise of his/her rights under the statute. This principle was first set out in RACINE POLICEMEN'S PROFESSIONAL AND BENEVOLENT CORPORATION, DEC. NO. 12637 (Fleischli, 4/74), *aff'd by operation of law*, DEC. NO. 12637-A (WERC, 5/74). In that case, the Commission held that the Legislature did not intend any of the statutes which it administers (i.e. MERA, SELRA and WEPA) to protect the exercise of legal rights other than the rights specified in the rights section of the respective statutes, unless the persons allegedly interfering with the employee's other legal rights are motivated by the employee's exercise of his/her rights under the pertinent statute. In this case, none of those circumstances are alleged by the Complainant in either the complaint or amended complaint.

Next, the Complainant relies on the Union's own Constitution and Bylaws. Once again, Springen argues that she has rights under those documents because she is a union member and was a candidate for steward. She further argues that the Union interfered with her rights under those documents when it (the Union) did not properly implement the results of the 1999 and 2001 steward elections at Madison Metro.

According to the Complainant, these documents give the WERC a basis for asserting jurisdiction over this case. This argument is premised on the notion that a union's constitution and bylaws can create a binding contract which is enforceable in State courts.

This is not an issue of first impression with the WERC. The Commission addressed this very question in the case of MUSGRAVE V. MARATHON COUNTY AND AFSCME, LOCAL 2492-A, ET AL., DEC. NOS. 25757-C and 25908-C. Therein, it held:

> As a general matter, we initially note that a union's constitution and bylaws are a contract between the union member and the union and, as such, can be enforced by either party in State court. 5/
>
> p. 54.

5/ See ATTOE V. MADISON PROFESSIONAL POLICEMEN'S ASS'N; 79 WIS.2D 199 (1977); WHITE V. RUDITYS, 117 WIS. 2D 130 (Ct.App. 1983); WELLS V. WAUKESHA MARINE BANK, 135 WIS.2D 519 (Ct.App. 1986).

In MUSGRAVE, the complainant sought to use the duty of fair representation as a means to litigate his belief that the union had breached its constitution and bylaws. Historically speaking, Section 111.70(3)(b)1 has been interpreted as the section of MERA which makes it a prohibited practice for a union to violate its duty of fair representation to its members or the employees which it represents for purposes of collective bargaining. 6/ In MUSGRAVE, the Commission held thus:

> We are persuaded that the duty of fair representation cannot be invoked to resolve disputes between a union member and a union which do not involve the union's representational function vis-a-vis an employment relationship. 7/ Thus, for instance, disputes over membership rights and privileges typically will not be able to be litigated as duty of fair representation claims. However, where a dispute in the relationship between a union member and the union involves matters related to the union's function as the collective bargaining representative in the context of the member's employment, the duty of fair representative can properly be invoked. 8/
>
> p.55

6/ See, for example, CITY OF WEST MILWAUKEE (POLICE DEPT.) (SELERSKI V. WPPA/LEER DIVISION), DEC. NO. 28075-A (Jones, 4/98), aff'd by operation of law, DEC. NO. 28075-B (WERC, 5/98).

7/ See BASS V. BOILERMAKERS, 630 F.2D 1058 (CA 5, 1980); HOVAN V. CARPENTERS, 704 F.2D 641 (CA 1, 1983).

8/ See AFSCME LOCAL 1714, DEC. NOS. 12707-B, 12708-B (WERC, 1/76); AFSCME LOCAL 990, DEC. NO. 14608-A (Davis, 11/76) aff'd by operation of law (WERC, 11/76); RETANA V. APARTMENT WORKERS, 453 F.2D 1018 (CA 9, 1972).

After establishing this standard, the Commission then examined the record facts to determine whether Musgrave's employment relationship with the County was involved. The Commission found that the employment relationship was involved in that case because Musgrave had been disciplined by the Employer and he had filed grievances challenging that discipline.

That is not the situation here. It has already been established that in this case, Springen's employment relationship with Madison Metro is not involved. She admits as much. That being so, the following sentence from the above quote is dispositive of this contention:

> We are persuaded that the duty of fair representation cannot be invoked to resolve disputes between a union member and a union which do not involve the union's representational function vis-a-vis an employment relationship.
>
> Id.

Since the employment relationship is not involved here, the Examiner cannot use the Union's Constitution and Bylaws as a basis for asserting jurisdiction over this case.

In sum, what the Complainant is trying to do here is use the LMRDA and the Union's Constitution and Bylaws to create a claim under MERA. However, no such claim exists. While she no doubt has rights under the LMRDA and the Union's Constitution and Bylaws, those rights are different from the rights conferred to her by Section 2 of MERA. The only rights which MERA protects are the rights specified in Section 2. Springen's allegations concerning the Union's refusal to appoint her to a steward position in 1999 and 2001, her complaints about the February, 2001 steward election, and her complaints about being removed from several committees all directly relate to matters involving internal union structure and governance. MERA does not contain any provisions governing or regulating such internal union matters. That being so, all Springen's allegations fall outside the scope of the rights protected by Section 2 of MERA.

This conclusion is consistent with the one reached in LOCAL 150, SERVICE EMPLOYEES INTERNATIONAL UNION, DEC. NO. 16277-C (Henningson, 10/80), aff'd by operation of law, DEC. NO. 16277-D (WERC, 11/80). In that case, municipal employee Arthur Burdick alleged that the Union had infringed his rights under Sec. 111.70(3)(b)(1) by disqualifying him, on the basis of dual unionism, as a candidate for president in an election of union officers. Burdick alleged that the disqualification "chilled" his rights to join or assist labor organizations. In addressing Burdick's allegations, the Examiner found that the conduct which he complained of related to his relationship with his bargaining representative (i.e. his union), but not to his relationship with his municipal employer. She then opined as follows:

> MERA is quite clearly directed toward regulating the conduct of municipal employers, municipal employes and labor organizations representing municipal employes in the context of municipal employes' employment by municipal employers. Nothing contained in the statute indicates to the Examiner

> a contrary intent. Therefore, because the instant dispute has no impact on Complainant's employment with his municipal employer, the Examiner concludes that Complainant has failed to state a claim upon which relief can be granted against Respondent SEIU Local 150 under section 111.70(3)(b)(1) of MERA. (Emphasis in original).
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> p. 23.

She therefore dismissed the complaint without a hearing.

This Examiner does likewise.

As to the Union's request for attorney's fees, the Commission currently reads its statutory authority to preclude awarding attorney's fees to a respondent. 9/ In this case, the Union appears as a respondent, so its request for attorney's fees is denied.

9/ See, WISCONSIN STATE EMPLOYEES UNION, DEC. NO. 29177-C (WERC, 5/99).

Dated at Madison, Wisconsin, this 22nd day of March, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/
Raleigh Jones, Examiner

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