

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-B

Appearances:

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

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

**ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER GRANTING MOTION TO DISMISS**

On March 22, 2002, Examiner Raleigh Jones issued Findings of Fact, Conclusions of Law and Order Granting Motion to Dismiss in the above matter based on his conclusion that the Wisconsin Employment Relations Commission lacks jurisdiction over the claims set forth in the complaint.

On April 10, 2002, Complainant filed a petition with the Wisconsin Employment Relations Commission, seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats.

The parties thereafter filed written argument in support of and in opposition to the petition, the last of which was received June 3, 2002.

Dec. No. 30288-B

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

The Examiner's Findings of Fact, Conclusions of Law and Order Granting Motion to Dismiss are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER GRANTING MOTION TO DISMISS

The Examiner's Decision

The Examiner granted the Respondent's pre-hearing motion to dismiss because he concluded that the Wisconsin Employment Relations Commission lacked jurisdiction over the Complainant's claims and therefore that Complainant had failed to state a claim upon which relief could be granted.

The Examiner concluded that Complainant's alleged violations of Sec. 111.70(3)(b)1, Stats., presented two basic legal theories: (1) interference with the right to "engage in lawful, concerted activities for the purposes of collective bargaining;" and (2) interference with "the employee's legal rights" – more particularly Complainant's statutory rights under the federal Labor Management Reporting and Disclosure Act (LMRDA) and Complainant's contractual rights under Respondent's constitution and bylaws.

As to theory (1), the Examiner decided that a valid claim of interference with the right to engage in "lawful concerted activities" requires that the claim involve the employment relationship. The Examiner determined that Complainant's allegations against Respondent did not involve Complainant's relationship with her employer.

As to theory (2), the Examiner decided that the phrase "employee's legal rights" in Sec. 111.70(3)(b)1, Stats., does not encompass Complainant's rights under the LMRDA or the Respondent's constitution and by-laws. He based this determination of his conclusion that LMRDA claims can only be brought in federal court and his understanding of the holdings in MARATHON COUNTY, DEC. NOS. 25757-C, 25908-C (WERC, 3/91) RACINE POLICEMENS' PROFESSIONAL AND BENEVOLENT CORP., DEC. NO. 12637 (FLEISCHLI, 4/74) AFF'D BY OPERATION OF LAW, DEC. NO. 12637-A (WERC, 5/74) and LOCAL 150, SERVICE EMPLOYEES INTERNATIONAL UNION, DEC. NO. 16277-C (HENNINGSEN, 10/80), AFF'D BY OPERATION OF LAW, DEC. NO. 16277-D (WERC, 11/80).

POSITIONS OF THE PARTIES ON REVIEW

Complainant

Complainant asks that the Examiner be reversed and the complaint scheduled for hearing.

Complainant asserts the Examiner applied the RACINE precedent too narrowly to the alleged violations of Sec. 111.70(3)(b)1, Stats. Contrary to the Examiner's determination, Complainant contends that the complaint does allege that Respondent prevented her from taking office as a steward because she engaged in concerted activity such as the filing of

grievances – an activity clearly falling within the scope of Sec. 111.70(2), Stats. In addition, Complainant argues that her internal union activities were an exercise of her Sec. 111.70(2), Stats., right to “assist labor organizations” with which Respondent interfered. Complainant contends the right to “assist labor organizations” does not need to involve the employment relationship.

Complainant alleges the Examiner also erred by concluding that the Wisconsin Employment Relations Commission lacked jurisdiction over Complainant’s LMRDA claims and alleged violations of Respondent’s constitution and bylaws. Where, as here, it is alleged that a union violated the LMRDA and its constitution and by-laws as to the selection of individuals who will represent employees in the grievance procedure, Complainant alleges that there is a sufficient tie to the employment relationship to warrant assertion of Wisconsin Employment Relations Commission’s jurisdiction under Sec. 111.70(3)(b)1, Stats.

Respondent

Respondent urges the Commission to affirm the Examiner’s dismissal of the complaint.

Respondent asserts the Examiner correctly concluded that internal union activities are not “concerted activities” within the meaning of Secs. 111.70(2) and (3)(b)1, Stats. Respondent argues that a contrary conclusion would be at odds with Respondent’s status as the exclusive collective bargaining representative and Respondent’s resultant control over collective bargaining and contract administration.

Even if the Commission were to wrongly conclude that it has jurisdiction over an LMRDA claim, Respondent contends that the LMRDA does not restrict a union’s right to decide who will represent it.

DISCUSSION

Springen argues the Examiner wrongly concluded that none of her complaint allegations fall within the scope of conduct prohibited by Sec. 111.70(3)(b)1, Stats. We begin with a consideration of the scope of that statutory provision.

Section 111.70(3)(b)1, Stats. provides:

(b) It is a prohibited practice for a municipal employee, individually or in concert with others:

1. To coerce or intimidate a municipal employee in the enjoyment of the employee’s legal rights, including those guaranteed in sub. (2).

The reference in Sec. 111.70(3)(b)1, Stats., to “a municipal employee . . . in concert with others” has historically been interpreted to extend the prohibitions in Sec. 111.70(3)(b)1,

Stats., to labor organizations. RACINE UNIFIED SCHOOL DISTRICT, DEC. NOS. 14308-D, 14389-D, 14390-D (WERC, 6/77).

As is evident from the text of Sec. 111.70(3)(b)1, Stats., the “rights” protected by Sec. 111.70(3)(b)1, Stats., include both the rights specified in Section 111.70(2), Stats. 1/ and “the employee’s legal rights.”

1/ Section 111.70(2), Stats., provides in pertinent part:

(2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have 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 purposes of collective bargaining or for other mutual aid or protection, and such employees shall have the right to refrain from any and all such activities . . .

The statutory phrase “employee’s legal rights” has been generally interpreted as being limited to rights that are related to the employer/employee relationship and specifically limited to those rights created by provisions of the Municipal Employment Relations Act (MERA) other than Sec. 111.70(2), Stats., or to situations in which the coercion or interference with a non-MERA right (such as the right to free speech) is motivated by the employee’s exercise of MERA rights. CITY OF RACINE, DEC. NO. 12637 (FLEISCHLI, 4/74), AFF’D BY OPERATION OF LAW, DEC. NO. 12637-A (WERC, 5/74); LOCAL 150, SERVICE EMPLOYEES INTERNATIONAL UNION, DEC. NO. 16277-C, (HENNINGSEN, 10/80) AFF’D BY OPERATION OF LAW, DEC. NO. 16277-D (WERC, 11/80); MONONA GROVE SCHOOL DISTRICT, DEC. NO. 20700-G (WERC, 10/86); MARATHON COUNTY, DEC. NOS. 25757-C, 25908-C (WERC, 3/91). Thus, violations of Sec. 111.70(3)(b)1, Stats., in the context of “employee’s legal rights” have been found where a labor organization takes adverse action against an employee who exercises the MERA right not to engage in an illegal strike (EAU CLAIRE VTAE, DEC. NOS. 12707-B, 12708-B (WERC, 1/76); KENOSHA COUNTY, DEC. NO. 14608-A (DAVIS, 11/76) AFF’D BY OPERATION OF LAW, DEC. NO. 14608-B (WERC, 11/76). Where the alleged coercion does not involve the employer/employee relationship or involve a MERA right or where the labor organization’s alleged coercion as to a non-MERA right is not motivated by the employee’s exercise of a MERA right, violations of “employee’s legal rights” have not been found MONONA GROVE, SUPRA, LOCAL 150, SUPRA.

We proceed to apply the foregoing to the allegations in Springen’s complaint.

Paragraph 13 of the complaint states:

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. (emphasis in original)

Applying the CITY OF RACINE analysis that the Commission explicitly approved of in MONONA GROVE SCHOOLS, Springen has two possible theories by which the allegations in Paragraph 13 create a cause of action under Sec. 111.70(3)(b)1, Stats: (1) Teamsters are coercing Springen as to MERA rights; or (2) Teamsters are coercing Springen as to non-MERA rights because she exercised MERA rights.

Under theory (1), Springen asserts that the conduct alleged in Paragraph 13 falls within the scope of Sec. 111.70(2), Stats., rights because she was thereby exercising her right to “assist labor organizations” and also engaging in “lawful, concerted activities.” We do not agree.

Springen in effect asserts a MERA right to “assist” a labor organization that does not want her assistance. Section 111.70(2), Stats., does not give her that right. By virtue of its status as the collective bargaining representative, MERA gives Teamsters the right to determine how it will represent the employees -- subject only to the duty of fair representation and the explicitly stated obligation under Sec. 111.70(2), Stats., to receive employees as members without regard to “race, color, sexual orientation, creed or sex.” Thus, when determining how it will represent employees, MERA does not dictate to Teamsters who will interact with other employees and the employer as the Teamsters’ representative (in the terms of Paragraph 13 -- who will serve as steward or representative at Division Head or Selection Committee meetings), who has access to the means by which Teamsters communicate with employees (in terms of Paragraph 13 -- access to the bulletin board) or how any employee representatives will be selected (in terms of Paragraph 13 -- whether/how representatives are elected).

Nor can any of the Paragraph 13 activities be viewed as “lawful, concerted activities” within the meaning of Sec. 111.70(2), Stats. 2/ Section 111.70(2), Stats., creates the right to engage in “lawful, concerted activities for the purposes of collective bargaining or other mutual aid and protection, . . .” “Collective bargaining” reflects interaction between the employer and the collective bargaining representative -- not between employee and the

collective bargaining representative. Similarly, “mutual aid and protection” applies to the relationship between employee and employer -- not the employee and the collective bargaining representative.

2/ Although not referenced in Paragraph 13, Paragraph 5 of the amended complaint makes reference to “filing grievances” as one of the “lawful concerted” activities in which Springen engaged. Springen correctly argues that filing grievances with the employer generally falls within the scope of the employee rights created by Sec. 111.70(2), Stats.

The complaint does not specify whether Springen filed grievances in her capacity as steward or as an employee. Given the liberal interpretation of complaints that is appropriate in the context of a pre-hearing motion to dismiss, we must assume that it was in either or both capacities.

If the grievances were filed in her capacity as steward, we have already herein held that MERA does not dictate to Teamsters who will serve as steward. It follows that if Springen has no MERA right to serve as steward, she has no MERA right to perform the functions of a steward -- including the filing of grievances.

If the grievances were filed in her capacity as an employee, the question then becomes whether the Teamsters’ actions alleged in the complaint could have had a reasonable tendency to interfere with Springen’s right to engage in this lawful concerted activity. JEFFERSON COUNTY, DEC. NO. 26845-B (WERC, 7/92), AFF’D JEFFERSON COUNTY V. WERC, 187 WIS.2D 647 (1994). We conclude it could not have had this tendency. Grievances are filed with the employer and contest the legitimacy of the employer’s conduct. In this employee/employer context, we are satisfied that adverse actions allegedly taken by a labor organization within the employee/labor organization context do not have a reasonable tendency to interfere with the filing of employee grievances with the employer.

Thus, theory (1) does not provide Springen with a cause of action under Sec. 111.70(3)(b)1, Stats. We turn to a consideration of theory (2).

Under theory (2), Springen asserts she has rights under the Teamsters’ constitution/bylaws and the federal Labor Management Reporting and Disclosure Act (LMRDA) which Teamsters violated because she engaged in her MERA right to “assist labor organizations” and engage in “lawful, concerted activities.” We disagree.

As discussed in the context of our analysis of theory (1), the activity that Springen asserts caused Teamsters to violate its constitution/bylaws and the LMRDA does not fall within the scope of rights established by Sec. 111.70(2), Stats. Thus, if Teamsters violated its constitution/bylaws or the LMRDA, it was not because Springen had engaged in activity protected by MERA. Therefore, like theory (1), theory (2) does not provide Springen with a cause of action under Sec. 111.70(3)(b)1, Stats.

In her brief on review, Springen acknowledges that the Teamsters' constitution/bylaws are enforceable as a contract in State court and that the LMRDA can be enforced in federal court. However, she asserts that when employees select a collective bargaining representative, they have a Sec. 111.70(3)(b)1, Stats., expectation that the representative will continue to act as it did when selected as to the constitution/LMRDA. We disagree. MERA addresses the "expectation" issue not through Sec. 111.70(3)(b)1, Stats., but through the employees' Sec. 111.70(2), Stats., right to change their collective bargaining representative. If employees believe that a collective bargaining representative has modified how it conducts itself as to matters such as those referenced in Paragraph 13 and conclude that such a change is a basis for seeking to select a different collective bargaining representative, MERA gives them that right.

Given all of the foregoing, we affirm the Examiner's dismissal of the complaint.

Dated at Madison, Wisconsin, this 3rd day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner