

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RUTH ANN STODOLA, Complainant,

v.

**CITY OF MADISON (METRO BUS) and LOCAL UNION NO. 695, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**, Respondents.

Case 226
No. 58755
MP-3635

Decision No. 30472-A

Appearances:

Law Offices of Sally A. Stix, by **Sally A. Stix**, 1800 Parmenter Street, Suite 204, Middleton, WI 53562-9172, appearing on behalf of Ruth Ann Stodola.

Assistant City Attorney Larry W. O'Brien, City of Madison, Room 401, City-County Bldg., 210 Martin Luther King Boulevard, Madison, WI 53709, appearing on behalf of the City of Madison.

Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C., by **Scott D. Soldon**, P.O. Box 12993, Milwaukee, WI 53212, appearing on behalf of Teamsters Local No. 695.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING COMPLAINT**

Daniel Nielsen, Examiner: The above-named Complainant, Ruth Ann Stodola, having on April 11, 2000, filed with the Commission a complaint, alleging that the above-named Respondents, Teamsters Local 695 and Madison Metro Bus, violated the provisions of Ch. 111.70, MERA, by cooperating in the blacklisting of Stodola in retaliation for her activities within Local 695; and the matter have been held in abeyance for period of conciliation; and the Commission having thereafter appointed Daniel Nielsen, an Examiner on its staff to conduct a hearing and to make Findings of Fact and Conclusions of Law, and to issue appropriate Orders; and hearings having been held before the Examiner in Madison, Wisconsin, on March 26 and

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July 9, 2003, at which time all parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute; and at the close of the Complainant's case in chief on July 9, the Respondents having moved to dismiss the case; and the Examiner, being fully advised in the premises, having dismissed the case on the record for failure of proof of any nexus between the Complainant's activities within Local 695 and the City's failure to hire her for job openings she had applied for; the Examiner now memorializes that ruling and makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Complainant, Ruth Ann Stodola, hereinafter referred to as either Stodola or the Complainant, resides at 1933 Sheridan Street, Madison, Wisconsin. Stodola was employed by the City of Madison from 1979 to 1987 in the City's Metro Bus operation. On February 15, 1987, she resigned from Madison Metro to accept full-time employment as a Business Agent with Teamsters Local Union No. 695. She was terminated from that employment on October 27, 1998.

2. The Respondent, City of Madison, hereinafter referred to as either the City or Madison Metro, is a municipal employer providing general governmental services to the people of Madison, Wisconsin. The City maintains its principal offices at 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin. Among the services provided is public transportation through Madison Metro Bus.

3. The employees of Metro Bus are represented for purposes of collective bargaining by the Respondent, International Brotherhood of Teamsters, Local Union No. 695, hereinafter referred to as Local 695. Local 695 maintains its principal offices at 1314 North Stoughton Road, Madison, Wisconsin. Mike Spencer is the Secretary-Treasurer of Local 695, and Gene Gowey is a Business Agent for Local 695.

4. Stodola started with Metro Bus in 1979 as a part-time Money Counter and then moved to Parts Room Helper. At the time she started, the bus drivers, mechanics and shop employees were represented by Local 695, but the office employees were not. Stodola organized the unrepresented employees, and Local 695 was certified to represent a bargaining unit of office and technical employees in the early 1980's. Stodola served as a Steward for the new unit.

5. In 1987, Stodola resigned from Madison Metro, and accepted a job as a Business Agent with Local 695. In 1994, she took over responsibility for servicing the Madison Metro bargaining units.

6. In 1998, Stodola ran for the position of Secretary-Treasurer of Local 695 against incumbent Mike Spencer in a bitterly contested election. On October 26, the election results showed that Spencer had defeated Stodola. On October 27, Stodola was terminated from her position with Local 695. In the wake of the election controversy, hostility existed between the Stodola and the incumbent administration of Local 695.

7. Among the positions in the office and technical bargaining unit at Metro Bus are customer service representatives (“CSR’s”). CSR’s field telephone calls from customers, largely complaints about missed buses, poor service and the like. In order to provide information to customers, the CSR’s use a computerized data base, and computer skills are an important element of the job. Metro Bus employs both full-time and part-time CSR’s. The CSR’s are supervised by Michael Rusch.

8. In filling jobs, the City of Madison follows a set procedure. Applicants are required to take a screening examination administered by the Human Resource Department. Candidates who pass the examination by scoring 50% or above are certified for an interview by the Department doing the hiring. Interviews are scheduled with the hiring Department from the list of certified candidates. The list provided to the hiring Department does not include the examination scores or ranks of the candidates.

9. In February of 1999, Metro Bus posted openings for part-time CSR’s and a full-time CSR position. Stodola applied and took the examination for the part-time position. She scored 93% on the examination, which gave her a rank of 1 among those who had taken the examination.

10. At the beginning of April, interviews were conducted for the CSR vacancies. Applicants for the full-time position, including those who said they would be willing to work part-time if necessary, were interviewed by Michael Rusch and Julie Maryott-Walsh, the Marketing and Customer Services Manager. Those, including Stodola, who were only interested in part-time employment were interviewed by Rusch and Operations Supervisor Mary Mielke on April 1st. The interviewers asked a series of pre-determined questions of each candidate, and assigned points to their answers. At the end of the interviews, they prepared a list reflecting the average of their individual scores. That process led to Stodola being the eighth ranked candidate in terms of scores:

	Candidate Name	Score
1.	Kelly Burns	28.5
2.	Valrie Karabis	27.25
3.	Elon Kazda	26.25
4.	Jill Dabbert	26.00
5.	Latanya Richardson	25.00
6.	Sylvia Dennis	25.00
7.	Frank Valez	23.75
8.	Ruth Ann Stodola	23.25
9.	Shannon Kelly	22.00
10.	Jenelle Kennedy	22.00

. . .

The interviewers also discussed the candidates and determined which of them, regardless of score, were the best choices for the jobs based upon their subjective impressions of the interviews.

11. On April 8th, Walsh made job offers to Kelly Burns and Elon Kazda for the part-time CSR vacancies. On that same day, Local 695 Business Agent Gene Gowey, who had replaced Stodola on the Metro Bus contracts, and Transit Manager Paul Larrousse met for a labor-management meeting. Among the issues raised was a grievance filed in 1997 on behalf of Nancy Garity. Garity was a full-time CSR with 18 years of seniority, who had taken a voluntary layoff in 1994 as a part of a general reduction in force. Her five year period of recall rights was drawing to a close, and Gowey sought to have her reinstated to the active workforce. Larrousse and Gowey reached agreement that a full-time CSR position would be filled by Garity, in lieu of filling two part-time CSR jobs, one of which was the subject of the interviews conducted a week earlier. Larrousse then called Walsh to ask if an offer had been made on the second part-time opening. She said it had, and he directed her to rescind it. She rescinded the offer to Kazda. Garity was thereafter recalled to a full-time position.

12. On April 12, 1999, Kelly Burns accepted the offer of the part-time CSR position. In August, she resigned, and Walsh offered the opening to Jenelle Kennedy. Walsh had interviewed Kennedy and believed she had overall strengths beyond her numerical scores. Rusch agreed with her assessment. They did not consider the other candidates who had scored better on the April interviews, including Stodola.

13. On April 11, 2000, the instant complaint was filed, asserting that the City's failure to hire Stodola resulted from pressure brought by Local 695, in retaliation for her campaign against Spencer and other activities within the Union.

14. Mielke and Rusch each started employment with Metro Bus after Stodola left employment with the City. Neither they nor Walsh had any dealings with Stodola when she was the Business Agent for Local 695.

15. No representative of Local 695 was informed of Stodola's application for employment with Metro Bus.

16. No agent of Local 695 contacted any representative of the City to influence the City's handling of Stodola's employment applications, or otherwise interfered with the City's selection process.

17. The City's decision not to hire Stodola for the customer service vacancies was based on the neutral application of the City's hiring protocols, and was not motivated in whole or in part by Stodola's activities on behalf of Local 695, nor by her dispute with the incumbent administration of Local 695.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. The Complainant, Ruth Ann Stodola, is not a “municipal employee” within the meaning of Sec. 111.70(1)i, MERA.

2. The Respondent, City of Madison, is an “employer” within the meaning of Sec. 111.70(1)j, MERA.

3. The Respondent, Teamsters Local 695, is a “labor organization” within the meaning of Sec. 111.70(1)h, MERA.

4. By the acts described in the above and foregoing Findings of Fact, specifically by bypassing the Complainant for the CSR openings, the Respondent Employer did not discriminate against her on the basis, in whole or in part, of her exercise of protected MERA rights.

5. By the acts described in the above and foregoing Findings of Fact, the Respondent Labor Organization did not coerce, intimidate or induce any officer or agent of a municipal employer to interfere with the Complainant’s exercise of protected MERA rights, nor did it 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 MERA.

On the basis of the above and foregoing Conclusions of Law, the Examiner makes and issues the following

ORDER

It is ORDERED that the instant complaint be, and the same hereby is, dismissed.

Dated at Racine, Wisconsin, this 4th day of December, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Daniel Nielsen /s/

Daniel Nielsen, Examiner

CITY OF MADISON (METRO BUS)

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINT**

ARGUMENTS OF THE PARTIES

The Argument of the City that the Complaint Should be Dismissed

The City argues that the complaint against the City should be dismissed because there is no evidence that the decision not to hire the Complainant was based on anything other than the City's independent decision that other candidates were superior. Whether they were superior or not is not an issue for the Examiner – the question here is whether that decision was impermissibly influenced by the Union for illegal reasons. The answer is “no.” There was no testimony from any witness that the Union attempted to dissuade the City from hiring Stodola. Since the mere fact that she was not hired does not constitute a prohibited practice, and since that is all that the record establishes, the complaint should be dismissed.

The Argument of Local 695 that the Complaint Should be Dismissed

Local 695 argues that the complaint against the Union should be dismissed for a variety of reasons, foremost among them the lack of evidence of any involvement by Local 695 in the hiring decisions of Madison Metro. The officials of Madison Metro who testified established that the Union had no input in the screening or selection of candidates for the customer service positions that Stodola sought.

The Union notes that Ms. Stodola lost an election and has attempted repeatedly and unsuccessfully through litigation to challenge that outcome. This case is simply an effort to relitigate all the same claims, in hopes that the WERC will be a more sympathetic or gullible forum. Like her other efforts, this claim is without legal basis, and like her other efforts, it should be unsuccessful. There is no proof of any illegal influence in the City's decision-making. That is the core of her complaint and she has not proved it. Accordingly, the complaint must be dismissed.

The Complainant's Argument That the Complaint Should Not Be Dismissed

The Complainant was clearly qualified for the customer service openings at Madison Metro. She had higher civil service scores than others who were interviewed. She had skills that were equal to or better than those people. She had prior experience as an employee of Madison Metro. Yet she was not hired. Given that it was she who organized the shop and she who represented the employees as a business agent, it is a fair inference that her concerted

activity played a role in the City's decision to bypass her for these jobs. It is a prohibited practice for an adverse employment decision to be based even in part on hostility to concerted activity, and the record suffices to allow the inference that that is precisely what happened here.

As to the Union, it is true that there is no direct evidence of Union involvement in the hiring decision. However, there is overwhelming evidence of animus towards the Complainant by the incumbent administration of Local 695. It logically follows that they would be loathe to have her back in a bargaining unit position, where she might have a forum to continue her opposition to their administration of the Union. Given their very strong motive to block her re-employment, the Examiner can fairly conclude that they would have made their desires known to the Employer. A wink is as good as a nod, and the lack of any direct admission that the Union influenced the City should not lead to the dismissal of the Complainant's case.

DISCUSSION

The complaint in this case is that the City refused to select the Complainant for the open customer service jobs at the behest of the Union, as retaliation for her election campaign against the incumbent administration of the Union – in essence that the Complainant has been blacklisted. 1/ At the close of the Complainant's evidence, the City and the Union moved to dismiss the complaint, and the motion was granted.

1 MERA provides, inter alia:

(3) PROHIBITED PRACTICES AND THEIR PREVENTION.

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

1. To interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

...

3. To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment; but the prohibition shall not apply to a fair-share agreement.

...

(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).

2. To coerce, intimidate or induce any officer or agent of a municipal employer to interfere with any of its employees in the enjoyment of their legal rights, including those guaranteed in sub. (2), or to engage in any practice with regard to its employees which would constitute a prohibited practice if undertaken by the officer or agent on the officer's or agent's own initiative.

...

(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).

There was a sufficient basis to conclude that the incumbent administration of the Union harbored hostility to Stodola (and vice versa) in the aftermath of a bitter election struggle. Assuming for the sake of analysis that personal hostility flowing from an election contest is identical for 111.70 purposes to hostility to protected activity, there is nothing illegal about being hostile to someone. A violation of the Act requires an illegal act as well as an illegal thought, and the Complainant is required to provide clear and convincing evidence of a nexus between the hostility to protected activity and some adverse employment decision. The motion to dismiss was granted in this case because there was no evidence whatsoever that the Union influenced, or even attempted to influence, the City's hiring decisions. The City personnel who made the decisions testified credibly as to their reasons for making the decisions, and those explanations were, on their face, reasonable and non-discriminatory. Those witnesses testified that they made their decisions without any input from the Union, and there was nothing to suggest contact between the Union and the City regarding Stodola, or that the Union was even aware of Stodola's application for work with the City.

Cases such as this often require the drawing of reasonable inferences as to causation, but an inference must be based on facts established elsewhere in the record. The Complainant's cases requires that I infer knowledge of Stodola's applications by the Union, infer that the Union opposed her re-employment by the City, infer contact between the City and the Union about her applications, and infer City acquiescence in the Union's desire that she not be employed. In short, I must infer the existence of a case, whereas the facts establish only that she applied and was not hired.

The complaint alleged that the City was the instrument of the Union's vengeance. The record does not allow any finding that the City acted improperly. As the case against the City fails, so too fails the case against the Union. Accordingly, the complaint is dismissed in its entirety.

Dated at Racine, Wisconsin, this 4th day of December, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Daniel Nielsen /s/

Daniel Nielsen, Examiner

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