

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SARAH A. BELL, Complainant,

vs.

**MILWAUKEE COUNTY MENTAL HEALTH COMPLEX
and MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO**, Respondents.

Case 661
No. 68030
MP-4429

Decision No. 32524-A

Appearances:

Sarah A. Bell, 3756 North 23rd Street, Milwaukee, Wisconsin 53206, on her own behalf.

Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, for Milwaukee County Mental Health Complex.

Law Offices of Mark A. Sweet, LLC, by **Atty. Craig R. Johnson**, 705 East Silver Spring Drive, Milwaukee, Wisconsin 53217, for Milwaukee District Council 48, AFSCME, AFL-CIO, Respondents.

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

On May 28, 2008, Sarah A. Bell filed a Complaint and an Amended Complaint with the Wisconsin Employment Relations Commission, alleging that the Milwaukee County Mental Health Complex and Milwaukee District Council 48, AFSCME, AFL-CIO had violated Secs. 111.70(3)(a)5 and 111.70(3)(b)1, Stats., respectively, by having her work in the mail room and also cover the front desk on weekends and holidays. On August 22, 2008, the Commission appointed Stuart D. Levitan, a member of its staff, to make and issue Findings of Fact, Conclusions of Law and Order in the matter. Hearing in the matter was held in Milwaukee, Wisconsin on October 3, 2008. The parties waived their right to file written arguments. The examiner, being fully informed in the premises, hereby makes and issues the following

No. 32524-A

FINDINGS OF FACT

1. Sarah A. Bell has worked as a Distribution Assistant for the Behavioral Health Division (BHD), Milwaukee County Mental Health Complex, since May 20, 1991. In that capacity, she has been represented for purposes of collective bargaining by Milwaukee District Council 48, AFSCME, AFL-CIO.

2. At all times material hereto, Milwaukee District Council 48, AFSCME, AFL-CIO and Milwaukee County have been parties to a collective bargaining agreement which covers employees at the Milwaukee County Mental Health Complex and which provides for the final and binding arbitration of grievances arising there under. Pursuant to the collective bargaining agreement between the parties, individual employees as well as the union are authorized to file grievances alleging that the employer has violated the terms of the agreement

3. In the late fall/early winter of 2006, the BHD combined a full-time position in the mailroom and a half-time position at the information desk, both of which were vacant, into one position. BHD managers discussed the matter with the applicable District Council 48 chief steward. BHD Human Resources manager Mary Dunn got a certification list for appointment in March, 2007, and on April 2, 2007 offered the position to Jenny Savosta. Shortly thereafter, Dunn was informed that Bell should have been on a transfer list for the position, but was inexplicably omitted. On April 4, Dunn interviewed Bell, explaining the position. Bell verbally agreed to the position. The position was described as a full-time position for the purposes of insurance and other benefits, with Bell being assigned 32 hours per week. Bell went on leave, and formally assumed the position that August. As of the hearing, Bell was performing the duties described in the position description she signed in August, 2007.

4. When she began performing her duties, Bell became dissatisfied with her assignment. She discussed the matter with union steward Ron Hart, who, following inquiry, concluded that the assignment was consistent with what she had agreed to in August, 2007, which conclusion he conveyed to Bell.

5. Prior to May 28, 2008, neither Bell nor District Council 48 ever filed a grievance over the content of the position description Bell worked under or her assignment of 32 hours per week. Bell does not allege that the county violated any provision of the collective bargaining agreement by its actions in this matter. Following her discussion with Hart, Bell did not request the union to file a grievance in the matter.

6. The Union did not act in bad faith, or in an arbitrary, capricious or discriminatory manner toward Complainant.

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

CONCLUSIONS OF LAW

1. Sarah A. Bell is a municipal employee as that term is defined in Sec. 111.70(1)(i), Stats.

2. Milwaukee County is a municipal employer as that term is defined in Sec. 111.70(1)(j), Stats.

3. Milwaukee District Council 48, AFSCME, AFL-CIO is a labor organization as that term is defined in Sec. 111.70(1)(h), Stats.

4. Because Milwaukee District Council 48, AFSCME, AFL-CIO did not act in bad faith, or in an arbitrary, capricious or discriminatory manner toward Complainant, it did not violate Sec. 111.70(3)(b)1, Stats.

5. Because the absence of a proven violation of Sec. 111.70(3)(b)1, Stats., deprives the Commission of a basis to exercise its jurisdiction to interpret the labor agreement noted in Finding of Fact 2, above, there can be no employer violation of Sec. 111.70(3)(a)1 or 5, Stats.

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

ORDER

That the complaint be, and hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin, this 18th day of December, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart D. Levitan /s/

Stuart D. Levitan, Examiner

MILWAUKEE COUNTY MENTAL HEALTH COMPLEX

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

The initial issue presented herein is whether the Union violated its duty to fairly represent Bell. The duty of fair representation obligates a Union to represent the interests of its members without hostility or discrimination, to exercise its discretion with good faith and honesty, and to eschew arbitrary conduct. ¹ The Union's duty to represent its members fairly is only breached when the Union's actions are arbitrary, discriminatory, or taken in bad faith. ²

The record testimony indicates that when Bell took her concerns over her assignment to her union steward, David Hart, he investigated the matter in good faith and determined that the County was complying with the terms to which Bell had agreed. He conveyed that conclusion to Bell.

Under the collective bargaining agreement, Bell had the ability to file a grievance on her own authority. She did not do so. Nor does the preponderance of evidence establish that she asked the union to do so.

In the absence of a grievance to advance, and absent any indication or evidence of bad faith on the part of the union, the complaint against the union must be dismissed. Without a conclusion that the union violated its duty of fair representation, there can be no consideration of whether the employer violated the terms of the collective bargaining agreement.

Accordingly, I have dismissed the complaint in its entirety.

Dated at Madison, Wisconsin, this 18th day of December, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart D. Levitan /s/

Stuart D. Levitan, Examiner

¹ VACA V. SIPES, 386 U.S. 171, 177, 64 LRRM 2369, 2371 (1967); MAHNKE V. WERC, 66 Wis.2d 524 (1974).

² VACA V. SIPES, *supra*; COLEMAN V. OUTBOARD MARINE CORP., 92 Wis.2d 565 (1979).

