

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL UNION NO. 695, Complainant,

and

SCHOOL DISTRICT OF LACROSSE, Respondent.

Case 85
No. 72684
MP-4775

DECISION NO. 34685-A

Appearances:

Kyle A. McCoy, Sr., Soldon Law Firm, LLC, 1678 Glenwood Road, Ann Arbor, Michigan, 48104, appearing on behalf of Teamsters Local Union No. 695.

Shana R. Lewis, Davis & Kuelthau, 10 East Doty Street, Suite 401, Madison, Wisconsin, 53703, appearing on behalf of the School District of LaCrosse.

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

On September 26, 2013, Teamsters Local Union No. 695 filed a complaint with the Wisconsin Employment Relations Commission alleging that the School District of LaCrosse had committed prohibited practices within the meaning of Secs. 111.70(3)(a) 2 and 4, Stats. by making the Union as a party to a resignation agreement between an employee and the District. The District filed an answer denying that it had committed any prohibited practices.

Hearing was held in LaCrosse, Wisconsin on January 14, 2014, before Commission Examiner Peter G. Davis. The parties filed written argument on February 11, 2014.

Based on the record evidence and arguments of the parties, I hereby make and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The School District of LaCrosse, herein the District, is a municipal employer.
2. Teamsters Local Union No. 695, herein the Union, is a labor organization serving as the representative of certain District employees (including employee X) for the purposes of bargaining base wages.
3. The District decided it would discharge employee X unless she would resign. On the morning of Friday, September 13, 2013, District representative Salerno met with employee X and discussed the resign or be discharged choice. A Union steward was present at employee X's request. Employee X was given the weekend to consider her options. Later in the morning, after the meeting ended, Salerno e-mailed Union representative Gowey a copy of a draft resignation agreement between the District, employee X and the Union. The e-mail message indicated that Salerno would be meeting with employee X at 8:00 a.m. on Monday, September 16.
4. At 7:48 a.m. on September 16, Gowey e-mailed Salerno and stated that the Union was not a party to any resignation agreement and that Salerno should redraft the agreement to remove the Union as a party. Salerno did not see the e-mail until after he met with employee X and the Union steward. Employee X signed the resignation agreement as did the Union steward.
5. After reviewing Gowey's e-mail, Salerno did not redraft the resignation agreement.

Based on the above and foregoing Findings of Fact, the Examiner makes and issues the following:

CONCLUSIONS OF LAW

1. Bargaining over disciplinary issues is prohibited by the Municipal Employment Relations Act.
2. By seeking to make the Union a party to a resignation agreement, the District bargained over a prohibited subject of bargaining and thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 4, Stats.

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

ORDER

A. The School District of Lacrosse, its officers and agents, shall immediately:

1. Cease and desist from bargaining over prohibited subjects of bargaining.
2. Redact the resignation agreement to delete all references to Teamsters Local Union No. 695 and send the redacted agreement to the Union and to employee X with a copy of this decision.

B. The portion of the complaint alleging a Sec. 111.70(3)(a) 2, Stats. violation is dismissed.

Dated at Madison, Wisconsin, this 17th day of March, 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

2011 Act 10 amended the Municipal Employment Relations Act to prohibit bargaining between employers and unions representing general municipal employee bargaining units as to any subject other than base wages. The District argues that agreements such as this one nonetheless remain permissible and commonplace in the post-Act 10 world even where, as here, base wage is not the subject of the agreement.

If the Union had a claim or right (independent of employee X's) to potentially advance and settle in this situation, such an agreement would be permissible. But here the Union had no claim or right to potentially advance and settle and the District has not cited one. Rather, the facts make it apparent the District continues to have one foot in the pre-Act 10 collective bargaining world. By seeking to make the Union a party to what should have been simply an agreement between employee X and the District, the District bargained ¹ over a prohibited subject of bargaining ² and thereby violated Sec. 111.70(3)(a) 4, Stats. ³ To remedy the violation, I order the District to redact the agreement to remove any reference to the Union and send a copy of the redacted agreement to the Union and to employee X with a copy of this decision.

Dated at Madison, Wisconsin, this 17th day of March, 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner

1 Salerno's testimony that there would have been no resignation agreement without the Union's signature provides additional confirmation (in addition to the terms of the resignation agreement itself) that this was a bargaining process.

2 Because discipline is now a prohibited subject of bargaining, the Union had no duty of fair representation as to employee X in the context of her discharge or resignation. A union representative can advise an employee in such circumstances if the employee seeks such advice and the union chooses to offer same. Had the interaction between the Union steward and the District been restricted to such a voluntary exchange and the Union not been made a party to the resignation agreement, there would have been no bargaining violation.

3 The Union allegation that District also committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 2, Stats. is dismissed. The purpose of this statutory provision is to prevent an employer from seeking to create a "Company union" that it controls. By its conduct, the District did not seek to do so.