STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRIS DOOLEY and LOCAL 742, AFSCME, AFL-CIO,
Affiliated with Milwaukee District Council 48, Complainants,

vs.

CITY OF CUDAHY, Respondent.

Case 120
No. 72208
MP-4768

DECISION NO. 34698

Appearances:

Attorney Mark A. Sweet, Sweet and Associates LLC, 2510 E. Capitol Drive, Milwaukee, Wisconsin 53211, for the Complainants.

Attorney Nancy L. Pirkey, Buelow Vetter Buikema Olson & Vliet LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53186-1873, for the Respondent.

On August 8, 2013, Chris Dooley and Local 742 AFSCME, AFL-CIO, affiliated with Milwaukee District Council 48, filed a complaint with the Wisconsin Employment Relations Commission asserting that the City of Cudahy had committed prohibited practices within the meaning of § 111.70(3)(a)1, Stats., by interfering with the § 111.70(2), Stats. right of employees to engage in lawful concerted activity.

On August 30, 2013, the City filed a motion to dismiss Local 742 as a party. Local 742 filed a response to the motion on September 11, 2013.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following:

DECISION ON MOTION TO DISMISS

Under the revisions to the Municipal Employment Relations Act resulting from Act 10, labor organizations are required to obtain an annual recertification in order to continue to

represent a particular bargaining unit. The failure to obtain recertification results in this Commission being required to "decertify the current representative" and, as a matter of law, the "employees shall be non-represented." § 11.70(4)(d)3b, Stats.

Here we have Local 742 which previously had functioned as the collective bargaining representative for employees of the City of Cudahy Department of Public Works but which has been decertified since January 30, 2012, as a consequence of its decision not to seek recertification. Section 111.70(1)(h), Stats., defines "labor organization" as any "employee organization in which employees participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment."

In light of the decertification, Local 742 is not a "labor organization" vis-à-vis the employees of the City of Cudahy. It cannot as a matter of law currently represent these employees in collective bargaining nor can it actively be involved in organizing them for the purpose of gaining that ability. Local 742 argues that it is a labor organization as the term is defined in § 111.70(1)(h), Stats., because it has a "purpose to represent employees in collective bargaining" even though it is not "currently" certified as a representative. We find that reasoning illogical. The statutory definition is intended to apply to organizations that have the present ability to engage in collective bargaining on behalf of a group of employees or those that are actively attempting to obtain that organizational right. Local 742 does not have that standing as to the City of Cudahy Department of Public Works' workforce. Regardless of whether the Department of Public Works employees "participate" in Local 742, the organization simply cannot meet the second prong of the definition. The standing to file unfair labor practice or prohibited practice complaints under § 111.07(2) is limited to a "party in interest." The Legislature could have extended the ability to file a complaint to anyone by using the term "person" but it did not.

That brings us to *Teamsters Local 200 v. WERC*, 51 Wis.2d 391, 187 N.W.2d 364 (1971), which is the only authority we are aware of discussing the issue of standing to file a prohibited practice complaint under § 111.07(2), Stats. In *Local 200*, the court upheld a Commission decision that the union lacked standing to file an unfair labor practice complaint. Local 200 had been engaged in picketing at a non-union construction employer and filed a complaint based upon an allegation that the employer was not paying the prevailing wage under § 103.50, Stats. The Commission concluded and the Supreme Court agreed that Local 200 lacked standing to file the complaint because it (1) did not represent the employees for the purpose of collective bargaining nor was it (2) engaged in an effort to represent them. *Id.* at 403. In the Supreme Court's view, the Commission correctly interpreted § 111.07(2)(a), Stats., as a "jurisdictional statute" limiting the definition of "parties in interest":

> [T]o those engaged in controversy as to employment relations, [and] defining such controversies as those involving an employer and his employees or their representational labor organization.

Id. We recognize that Local 742 used to represent the employees of the Department of Public Works in Cudahy and that there are no doubt employees who consider themselves members of Local 742 and who pay membership dues to the organization. As a matter of law, however, Local 742 does not "represent" the employees working for the City of Cudahy Department of Public Works. The employees themselves are free to join any organization and pay dues to it. If those organizations choose to provide various benefits to their members they are equally free to do so. The point is that they do not lawfully represent the employees who by definition are unrepresented. Accordingly, under the applicable case law they are not "parties in interest" as that term is used in § 111.07(2)(a), Stats., and therefore lack standing to pursue a prohibited practice complaint.[1]

Local 742's reliance on *Surfside Manor*, Dec. Nos. 11809, 11810 (WERC 5/1973), is inapposite. That matter involved one labor union challenging the legality of a contractual provision included in a collective bargaining agreement between Surfside and a rival union. In the context of a dispute arising under § 111.05(1), Stats., over representation, we defined "person in interest" to include (1) the authorized collective bargaining representative; (2) a labor organization claiming to be the representative for collective bargaining purposes; and (3) any labor organization authorized to seek legal redress by an employee or employees. We qualified the third category by noting that the authorization was limited to employees or groups of employees within a collective bargaining unit. In no sense can *Surfside* be read as granting standing to any labor organization that an individual or group of individuals "authorize" to take legal action on their behalf. Such an interpretation would effectively allow any labor organization to qualify as a "person in interest" so long as they had one person willing to authorize their taking legal action. That result clearly would be contrary to the result reached in *Teamsters Local 200*, *supra*.

Accordingly, the motion to dismiss is granted and Local 742's claim is hereby dismissed.

Dated at Madison, Wisconsin, this 20th day of February 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

[1] As a practical matter, the claim continues because Complainant Dooley does have standing and, if Local 742 chooses to provide legal representation to Dooley, they are free to do so.