

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RUSSELL AHRENS, Complainant,

vs.

CITY OF БЕЛОIT and AFSCME, AFSCME COUNCIL 32 and AFSCME LOCAL 643,  
Respondents.

Case ID: 304.0011  
Case Type: COMP\_MP

DECISION NO. 38484-A

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**Appearances:**

Russell V. Ahrens, 5645 South County Road D, Beloit, Wisconsin, appearing on his own behalf.

Sean Daley, Business Agent, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of AFSCME, AFSCME Council 32 and AFSCME Local 643.

Susan Love, Attorney, Buelow Vetter Buikema Olson & Vliet, LLC 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of the City of Beloit.

**ORDER DISMISSING COMPLAINT**

On June 15, 2020, Russell V. Ahrens filed a complaint with the Wisconsin Employment Relations Commission alleging that the City of Beloit and AFSCME, AFSCME Council 32 and AFSCME Local 643 had committed prohibited practices within the meaning of the Municipal Employment Relations Act. The complaint was assigned to Peter G. Davis who was subsequently formally appointed to serve as hearing examiner. On July 28, 2020, AFSCME Council 32 filed an answer to the complaint and on July 31, 2020 the City filed its answer and a motion to dismiss. Ahrens filed a response to the answers and the motion on August 16, 2020. The parties waived hearing based on receipt into evidence of the applicable collective bargaining agreement and the AFSCME constitution.

Having considered the matter, I am satisfied that no Respondent has violated any portion of the Municipal Employment Relations Act.

NOW, THEREFORE, it is:

**ORDERED**

The complaint in this matter is dismissed.

Issued at the City of Madison, Wisconsin, this 24<sup>th</sup> day of September, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Examiner

**MEMORANDUM ACCOMPANYING ORDER DISMISSING COMPLAINT**

There is an existing collective bargaining agreement between the City of Beloit and Beloit City Employees, Local Union #643 Transit, American Federation of State, County and Municipal Employees, AFL-CIO, that establishes Complainant Ahrens' wages, hours and conditions of employment. Included in that agreement is a provision that states an "aggrieved employee (after consultation with the Union)" can file a grievance. Ahrens filed a grievance. It is not known if Ahrens consulted with the "Union" prior to filing the grievance but for the purposes of this proceeding it will be assumed that he did. The agreement is silent as to who can withdraw a grievance once filed. After a grievance is filed, the bargaining agreement provides that the "parties" shall meet to discuss the grievance and a City representative is to respond within a specified time period. While the word "parties" can be viewed as ambiguous, it is most reasonably understood to include the grieving employee, the Union and the City.

At some point, AFSCME International assumed control of AFSCME Local 643 pursuant to AFSCME's international constitution and authorized AFSCME Council 32 to act on behalf of Local 643. AFSCME Council 32 advised the City that it was withdrawing Ahrens' grievance and that thereafter only grievances filed by representatives of AFSCME Council 32 should be processed by the City. The City then advised Ahrens that it would not be processing his grievance because it had been withdrawn. Ahrens then asked the City if it would be honoring the AFSCME Council 32's request. The City advised Ahrens that it "will not speculate on future actions the city may or may not take."

Ahrens generally asserts that he has a statutory and contractual right to file and process a grievance and thus that the grievance-related conduct of AFSCME International, AFSCME Council 32, AFSCME Local 643 and the City violates the Municipal Employment Relations Act (MERA). He relies heavily on language in Wis. Stat. § 111.70(4)(d)1. that provides "Any individual employee . . . in any collective bargaining unit, shall have the right to present grievances to the municipal employer in person . . . ."

Ahrens' reliance on this statutory MERA language is certainly understandable. However, the City correctly points to the Commission's decision in *Murillo v. Milwaukee Public Schools*, Dec. No. 30980-C (WERC, 3/09), which concludes that Wis. Stat. § 111.70(4)(d)1. does not create an enforceable employee statutory right to present a grievance but rather allows an employer to voluntarily agree to meet with an employee without concern that it is engaging in prohibited conduct. While Ahrens contends that *Murillo* was wrongly decided, it is the WERC precedent I am obligated to follow. The City also correctly notes that it has not yet refused to meet with Ahrens and thus cannot be found to have engaged in any prohibited conduct even under the law Ahrens contends should be applicable. However, under *Murillo*, it is clear that if the City chooses not to meet with Ahrens at some point in the future, it would not be violating any individual statutory right that Ahrens has under the Municipal Employment Relations Act.

As to Ahrens' contractual claims<sup>1</sup>, the collective bargaining agreement does allow individual employees to file a grievance "after consultation with the union." No Respondent has asserted that this contractual "consultation" language gives the "union" the right to prevent an employee from filing a grievance. Thus, as long as this language remains part of the contract, Ahrens has a contractual right to file a grievance. However, once filed, there is no contractual language that prohibits the collective bargaining representative (now effectively AFSCME Council 32) from thereafter withdrawing the grievance prior to the City taking any further action beyond receipt of the grievance.<sup>2</sup> Since AFSCME Council 32 requested that the City not process any future grievance filed by Ahrens, Ahrens has not filed a grievance. Thus, so far, no Respondent has taken any action to deprive Ahrens of his contractual right to file a grievance and to "meet" with the City and the Union (if the grievance is not first withdrawn). Therefore, no Respondent has committed any contractual violation.

Given the foregoing, the complaint has been dismissed.

Issued at the City of Madison, Wisconsin, this 24<sup>th</sup> day of September, 2020.

#### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Examiner

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<sup>1</sup> Where, as here, there is an existing contractual grievance arbitration provision, that provision is presumed to be the exclusive forum of resolution of contractual claims. Therefore, in such circumstances, the Commission generally will not exercise its violation of contract jurisdiction under Wis. Stats. §§ 111.70(3)(a)5. or 111.70(3)(b)4. However, in the unique circumstances presented here, it is appropriate to address Ahrens' contractual claims.

<sup>2</sup>Thus, to the extent Ahrens' complaint contests the right of AFSCME Council 32 to withdraw the grievance he did file, that claim is rejected.