

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON TEACHERS INCORPORATED, Complainant

vs.

MADISON METROPOLITAN SCHOOL DISTRICT, Respondent

Case ID: 88.0045

Case Type: COMP_MP

DECISION NO. 38944-A

Appearances:

Tamara Packard, Attorney, Pines Bach LLC, 122 West Washington Avenue, Suite 900, Madison, Wisconsin, appearing on behalf of Madison Teachers Incorporated.

Jenna Rousseau and Shana Lewis, Attorneys, Renning, Lewis & Lacy, S.C. 660 West Washington Avenue, Suite 303, Madison, Wisconsin, appearing on behalf of the Madison Metropolitan School.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On May 6, 2021, Madison Teachers Incorporated (MTI) filed a complaint with the Wisconsin Employment Relations Commission alleging that the Madison Metropolitan School District (MMSD) had committed prohibited practices within the meaning of Wis. Stats. §§ 111.70 (3)(a) 2. and 4. On May 12, 2021, MTI filed an amended complaint alleging that MMSD had again committed the same prohibited practices by additional conduct.

On May 24, 2021, the Commission appointed Peter G. Davis, a member of its staff, to serve as Hearing Examiner. On June 3, 2021, MMSD filed an answer and affirmative defenses. On June 18, 2021, Examiner Davis conducted a hearing in this matter at the Commission's offices in Madison, Wisconsin. At the conclusion of the hearing, MTI again amended the complaint to add an alleged derivative violation of Wis. Stat. § 111.70 (3)(a) 1. The parties thereafter filed written argument by August 23, 2021.

Having reviewed the record, I make and issue the following:

FINDINGS OF FACT

1. The Madison Metropolitan School District, herein MMSD, is a municipal employer.

2. Madison Teachers Incorporated, herein MTI, is a labor organization that serves as the collective bargaining representative of certain employees of MMSD.

3. Prior to meeting with MTI for the purposes of collective bargaining over base wages, the MMSD twice sent a budget-related survey to full-time MMSD employees including some who were represented for the purposes of collective bargaining by MTI. One of the questions on the survey asked:

Wages and benefits that attract and retain the best talent are essential to our success. The Total Compensation Plan in combination with the staffing plan, comprise the annual personnel budget for MMSD. This budget includes a full step advancement on the employee [sic] compensation schedule (2%) and increases that schedule by 1.23% for all staff (1.23 is max allowable by law). In addition, there is no charge (sic) proposed (sic) to the employee health care plan nor increase in the cost of health care to the employee this year.

How adequate is the proposed 3.23% wage increase for the average employee?

Extremely adequate
Somewhat adequate
Neither adequate nor inadequate
Somewhat inadequate
Extremely inadequate

Based on the above and foregoing Findings of Fact, I make and issue the following:

CONCLUSIONS OF LAW

1. By the actions set forth in Finding of Fact 3, the Madison Metropolitan School District committed prohibited practices within the meaning of Wis. Stats. § 111.70 (3)(a) 4. and derivatively Wis. Stats. § 111.70 (3)(a) 1.

2. By the actions set forth in Finding of Fact 3, the Madison Metropolitan School District did not commit prohibited practices within the meaning of Wis. Stats. § 111.70 (3)(a) 2. and derivatively Wis. Stats. § 111.70 (3)(a) 1.

Based on the above and foregoing Findings of Fact and Conclusions of Law, I make and issue the following:

ORDER

1. To remedy its violations of the Municipal Employment Relations Act, the Madison Metropolitan School District, its officers and agents, shall take the following actions which effectuate the purposes and policies of the Act.

A. Immediately cease and desist from communicating as to base wages with Madison Metropolitan School District (MMSD) employees represented for the purposes of collective bargaining by the Madison Teachers Incorporated (MTI) except if it wishes to convey a base wage offer that has been previously provided to MTI.

B. Convey a copy of this decision to all MMSD employees who are represented by MTI for the purposes of base wage collective bargaining.

C. Convey the Notice attached to this Order to all MMSD employees who are represented by MTI for the purposes of base wage collective bargaining.

D. Within 20 days of the date of this Order, advise the Examiner and MTI of the actions taken to comply herewith.

2. The portion of the complaint alleging a violation of Wis. Stats. § 111.70 (3)(a) 2. and derivatively Wis. Stats. § 111.70 (3)(a) 1. is dismissed.

Issued at the City of Madison, Wisconsin this 4th day of January, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner

NOTICE

Pursuant to an Order of the Wisconsin Employment Relations Commission and in order to effectuate the purposes and policies of the Municipal Employment Relations Act, we hereby notify all employees of the Madison Metropolitan School District who are represented for the purposes of collective bargaining by Madison Teachers Incorporated that:

Madison Metropolitan School District, its officers and agents will not violate its duty to bargain with Madison Teachers Incorporated (MTI) by communicating directly with employees as to base wage issues unless the Madison Metropolitan School District is conveying a base wage offer that has previously been made to MTI.

MADISON METROPOLITAN SCHOOL DISTRICT

By: _____
President, Board of Education

Date: _____

By: _____
Superintendent of Schools

Date: _____

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Alleged Violation of the Duty to Bargain

Wisconsin Stat. § 111.70 (2), provides in pertinent part:

RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees have the right . . . to bargain collectively through representatives of their own choosing

Wisconsin Stat. § 111.70 (1)(a) defines “ collective bargaining” for employees of a school district as:

the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement . . . with respect to wages

Wisconsin Stat. § 111.70 (4)(mb) prohibits a school district from bargaining with respect to:

1. Any factor or condition of employment except wages, which includes only total base wages

Wisconsin Stat. § 111.70 (3)(a) 4. establishes that it is a prohibited practice for a municipal employer:

To refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit.

In the instant matter, Madison Teachers Incorporated (MTI) is the collective bargaining representative chosen by certain employees of the Madison Metropolitan School District (MMSD) to collectively bargain with MMSD over base wages. MTI, contrary to MMSD, contends that MMSD violated its duty to bargain over base wages when it surveyed MTI represented employees as to the “adequacy” of a wage increase that had a specified base wage component.

The Commission has previously held that a survey of union represented employees as to a mandatory subject of bargaining does violate the duty to bargain with the employees’ chosen representative. *See* Madison Metropolitan School District, Dec. No. 31345-D (WERC, 3/07). MMSD seeks to distinguish that holding from its action here.

MMSD contends that because it did not actually engage in bargaining with individuals represented by MTI, it should not be held to have violated its duty to bargain with MTI. This contention is rejected as an unrealistically narrow view of the collective bargaining process. When an employer surveys union-represented employees as to a mandatory subject of bargaining, it is bypassing and undermining the labor organization selected by the employees to collectively

bargain over that subject. It is the labor organization's role to seek any needed employee input on a mandatory subject of bargaining-not the employer's.

MMSD asserts that it had no intent to violate any duty to bargain. This assertion is rejected as irrelevant. Even if the survey in question was undertaken without awareness that it was undermining MTI's role as the collective bargaining representative, MMSD's action still had that impact. Malicious intent is not an element of proof needed to establish a breach of the duty to bargain.

MMSD argues that it did not violate the duty to bargain because it did not utilize the survey responses when formulating its bargaining position. This argument fails to acknowledge that the "damage" had already been done once the survey was sent to employees thereby undermining MTI's status as the collective bargaining representative. For the same reason, the MMSD contention that no violation occurred because it did not know which individuals responded to the survey is also rejected.

MMSD alleges that because the survey sought input as to the budget, had many components, and did not specifically use the phrase "base wage", the survey was not seeking input as to "base wage" bargaining. This contention fails to acknowledge the real-world interrelationship between budget allocations and fund levels available for "base wage" bargaining. While it is true that the question in dispute did not explicitly use the words "base wage", the use of the phrases "wage increase" and "max allowable by law" were more than objectively sufficient to convey the MMSD interest in surveying employee thoughts on the "base wage" component of an overall wage increase. Lastly, the fact that this was only one question among many does not diminish the illegal intrusion into MTI's role as the collective bargaining representative.

MMSD asserts that no violation of its duty to bargain occurred because MTI had not objected to similar surveys in the past. Any past decision by MTI not to object to conduct that might undermine its role does not waive MTI's right to object in this matter.

Given all of the foregoing, it is concluded that MMSD did violate its duty to bargain with MTI and thereby committed prohibited practices within the meaning of Wis. Stat. § 111.70 (3)(a) 4. and derivatively Wis. Stat. § 111.70(3)(a) 1.¹ An appropriate remedy has been ordered.

¹ To the extent that MMSD argues that the amendment of the complaint at hearing should be disallowed, Wis. Admin. Code § ERC 12.04 (a) provides:

Amendment. Any complainant may request permission to amend its complaint at any time prior to the issuance of a final order by the commission or examiner. A motion to amend a complaint shall be granted by the commission or examiner unless the amendment would unduly delay or disrupt the proceeding, or would otherwise result in an injustice to any party.

The amendment request was made prior to issuance of a final order and did not unduly delay the proceedings or result in an injustice to MMSD. Thus, the ruling at hearing that allowed the addition of the derivative interference allegation stands.

Alleged Violation of Wis. Stat. § 111.70 (3)(a) 2.

Wisconsin Stat. § 111.70 (3)(a) 2. makes it a prohibited practice for a municipal employer:

To initiate, create, dominate or interfere with the formation or administration of any labor organization

MTI contends that MMSD's actions reflect an interest in diminishing the role of or need for MTI and thus violate Wis. Stat. § 111.70 (3)(a) 2.

The Commission has held that "[d]omination requires an employer's active involvement in creating or supporting a labor organization which is representing employees." *See* Kewaunee County, Dec. No. 21624-B (WERC, 4/84), at 6. "Interference with the administration" of a union has been held to differ from "domination" only in the degree of control. *See* Western Wisconsin V.T.A.E. District, Dec. No. 17714-B (Pieroni, 6/81), affirmed by operation of law Dec. No. 17714-C (WERC, 7/81) and cited with approval in Kewaunee County, Dec. No. 21624-B at 6, n.10. In either case it must be shown that "the offensive conduct threatened the independence of the union as an entity devoted to the Employees' interests as opposed to the Employer's interest." *Ibid.*, 11.

The MMSD conduct in this matter does not threaten the independence of MTI as an entity devoted to employee interests. Therefore, no violations of Wis. Stats. § 111.70 (3)(a) 2. were committed and that allegation is dismissed.

Issued at the City of Madison, Wisconsin, this 4th day of January, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner