

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ANDREW SERNATINGER, Complainant,

vs.

CITY OF MADISON, Respondent.

Case ID: 256.0025

Case Type: COMP\_MP

DECISION NO. 40357-A

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**Appearances:**

Andrew Sernatinger, 2602 Dahle Street, Madison, Wisconsin appearing on his own behalf.

Patricia Lauten, Deputy City Attorney, Office of the City Attorney, City-County Building Room 401, 210 Martin Luther King Jr. Blvd., Madison, Wisconsin appearing on behalf of the City of Madison.

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

On November 8, 2023, Andrew Sernatinger filed a complaint with the Wisconsin Employment Relations Commission alleging that the City of Madison had committed certain prohibited practices within the meaning of the Municipal Employment Relations Act (MERA). On December 18, 2023, the City filed an Answer denying that it had committed any prohibited practices.

A hearing on the complaint was held in Madison, Wisconsin on December 19, 2023, and January 24, 2024, by Commission Examiner Peter G. Davis. A transcript of the hearing was prepared, and the parties thereafter filed initial briefs and reply briefs by March 4, 2024.

Examiner Davis was formally appointed to serve in this matter on April 4, 2024.

Having reviewed the evidence and the arguments of the parties, I make and issue the following:

**FINDINGS OF FACT**

1. The City of Madison, hereinafter referred to as the City or Respondent, is a municipal employer that operates a transit system.

2. Certain of City's transit system employees are represented for the purposes of collective bargaining by Teamsters Union Local No. 695, hereinafter referred to as Teamsters or the Union.

3. Andrew Sernatinger, hereinafter referred to as Sernatinger or Complainant, is employed by the City in its transit system and serves as a Teamsters' steward in the workplace. The City is aware of Sernatinger's activities as a steward.

4. In his November 8, 2023 complaint, Sernatinger asserted:

Synopsis: In response to lawful concerted activities, City of Madison retaliated against Andrew Sernatinger, an employee in the bargaining unit at Metro Transit represented by Teamsters Local 695. Included in these activities were investigation of improper application of arbitration award #394 76. City of Madison retaliated by 1) removing bargaining unit work performed by Sernatinger immediately following questioning of Sernatinger by Chief Administrative Officer Rachel Johnson; 2) ordering Sernatinger to only discuss workplace issues with Johnson immediately following investigation of a grievance in order to restrain union activities as a steward for the bargaining unit; 3) threatening reprisal for Sernatinger's activities as union steward; 4) ordering Sernatinger to vacate offices immediately following #3 in violation of the 2022-2024 bargaining agreement and past practice; 5) refusing the union's request to convene its full committee at grievance panels as provided by the collective bargaining agreement, past practice, and rights of employees to representatives of their choosing.

In retaliating against Sernatinger, City of Madison interfered in the administration of a labor organization by questioning Sernatinger's role as steward and raising disputes within the union; City of Madison subsequently refused to convene meetings with representatives of employees' choosing, at least in part to prevent Sernatinger from attending.

City of Madison committed prohibited practices in violation of 111. 70(3)(a)(1) by retaliating against Sernatinger by attempting to restrain and coerce employee exercising rights [111. 70(2)] City of Madison violated 111. 70(3)(a)(2) by interfering in the administration of the Teamsters labor organization by inserting the employer into a dispute between union members and union, and refusing to meet with representatives of employees' choosing by limiting grievance panels in violation of collective bargaining agreement and MERA City of Madison violated 111. 70(3)(a)(5) by refusing to apply arbitration award 39476 in placement of a bargaining unit position outside of the bargaining unit. City of Madison violated 111.70(3)(a)(3) in discriminating against union-represented activities in its conditions of employment when it used representation status as the basis from which to determine working conditions (office space).

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

**CONCLUSIONS OF LAW**

1. Sernatinger does not have standing to litigate the alleged removal of bargaining unit work.
2. Sernatinger does not have standing to litigate the alleged failure to comply with a unit clarification decision issued by the Wisconsin Employment Relations Commission on August 25, 2022.
3. Sernatinger does not have standing to litigate any alleged violation of the collective bargaining agreement between the City of Madison and Teamsters Union Local No. 695.
4. Sernatinger does not have standing to litigate any alleged interference by the City of Madison with the administration of Teamsters Union Local No. 695.
5. Sernatinger does have standing to litigate alleged retaliation against him by the City of Madison based on alleged hostility toward his lawful concerted activity.
6. Sernatinger does have standing to litigate alleged interference by the City of Madison with his right to engage in lawful concerted activity.
7. Sernatinger engaged in lawful concerted activity in his role as steward.
8. The City of Madison was hostile toward Sernatinger's lawful concerted activity.
9. The City of Madison has not taken action toward Sernatinger in whole or in part out of its hostility toward his lawful concerted activity.
10. The City of Madison has not illegally interfered with Sernatinger's right to engage in lawful concerted activity.
11. The City of Madison did not any commit prohibited practices within the meaning of the Municipal Employment Relations Act.

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

**ORDER**

The complaint is dismissed.

Issued at the City of Madison, Wisconsin, this 3<sup>rd</sup> day of May 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Hearing Examiner

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

The complaint raises a series of allegations. As reflected in Conclusions of Law 1-4, Sernatinger lacks standing to litigate a majority of them. Some brief comment on those matters he lacks standing to litigate is warranted.

**Alleged Removal of Bargaining Unit Work**

Whether viewed as a violation of a bargaining agreement or a refusal to bargain, only the collective bargaining representative of the transit bargaining unit has standing to raise and litigate allegations that the City committed a prohibited practice by removing work from the bargaining unit. Teamsters Union Local No. 695 serves as the collective bargaining representative of the transit unit, is not a party to this proceeding, and thus has not raised or litigated that issue. Sernatinger does not have standing to litigate this issue.

**Alleged Failure to Comply with WERC Unit Clarification Decision**

The City and the Teamsters were the parties to the unit clarification decision Sernatinger claims the City has not honored. Only Teamsters Union Local No. 695 has standing to raise and litigate any contention that the City has not complied with the WERC decision. The Union is not a party to this proceeding and thus has not raised or litigated that issue. Sernatinger does not have standing to litigate this issue.<sup>1</sup>

**Alleged Violation of a Collective Bargaining Agreement**

In his role as a Union steward, Sernatinger can, if authorized by the bargaining agreement, file a grievance alleging a violation of the agreement. However, the decision to seek a determination (in any event typically only through use of a contractual grievance arbitration process) on the merits of an alleged violation rests with the union that is party to the collective bargaining agreement. Here, the collective bargaining agreement is between the City and Teamsters. Teamsters Local Union No. 695 is not a party to this proceeding and thus has not raised or sought to litigate any contractual issues including how many stewards will be present during grievance discussions with the City or any other alleged violation of a bargaining agreement Sernatinger has raised in this proceeding. Sernatinger does not have standing to litigate these issues.

**Alleged Interference with Teamsters Union Local No. 695**

Section 111.70(3)(a) 2. of the Municipal Employment Relations Act makes it a prohibited practice for a municipal employer to:

- (2) To initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it . . . .

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<sup>1</sup> While Sernatinger cites this alleged refusal as a violation of Sec. 111.70(3)(a) 7, Stats., that statutory provision refers to a refusal to comply with an interest arbitration award.

Sernatinger's allegation is that the City is interfering with the administration of Teamsters Union Local No. 695 in various ways. Sernatinger does not have standing to litigate this issue. Only Teamsters has standing to raise and litigate that issue as it is the "labor organization." Teamsters Local Union No. 695 is not a party to this proceeding and thus has not raised or sought to litigate any of the alleged interference allegations Sernatinger has raised that fall within the scope of Sec. 111.70(3)(a) 2, Stats.

### **Alleged Discrimination Based on Sernatinger's Lawful Concerted Activity**

It is undisputed that Sernatinger has standing to litigate his allegation that the City committed prohibited practices within the meaning of Section 111.70(3)(a) 3. of the Municipal Employment Relations Act in response to his lawful concerted activity as a Teamsters steward.

A successful claim of discrimination under Section (3)(a)3 has four elements: that the employee was engaged in lawful concerted activities; that the employer was aware of those activities; that the employer was hostile to those activities; and that the employer took adverse action against the employee at least in part out of hostility toward those activities. *Muskego-Norway C.S.J.S.D. No. 9 v. WERB*, 35 Wis.2d 540 (1961); *Employment Relations Department v. WERC*, 122 Wis.2d 132 (1985).

The City correctly concedes that Sernatinger engaged in lawful concerted activity as a steward and that the City was aware of that activity. The City, contrary to Sernatinger, asserts that it was not hostile toward his lawful concerted activity.

To some extent, Sernatinger's claim of hostility rests on his testimony regarding the irritation/annoyance a former City human resource representative historically exhibited toward him at the bargaining table or other union/employer meetings. While such irritation/annoyance can be commonplace or even understandable in the workplace, it nonetheless qualifies as hostility toward lawful concerted activity. However, the strength of the inference that such historical hostility would motivate the City to act adversely toward Sernatinger is not as strong as would be more contemporaneous evidence of hostility by a current City transit manager. Indeed, if the evidence of hostility were limited to the irritation expressed by a former City human resource manager, I think it would be clear that said hostility did not motivate the City to act illegally. However, there is un rebutted evidence that the current City transit manager commented that it was too bad Sernatinger is such a good employee because it prevented her from otherwise taking action against him based on his conduct as a union steward. But for this evidence, I would not find there to be ongoing illegal contemporaneous hostility as the record as whole demonstrates that the manager in question exhibits an aggressive and at times profane management style from time to time toward all subordinates. However, the existing evidence of contemporaneous hostility warrants a closer look as to the City's motivation.

Sernatinger alleges that his loss of a private office was motivated in whole or in part out of hostility toward his lawful concerted activity as union steward. I conclude it was not. The preponderance of the evidence persuades me that the plan to remodel certain transit space to accommodate changes in staffing needs had been in the works long before the arrival of the transit manager who implemented the remodel.

It is difficult to identify other tangible adverse action allegedly taken against Sernatinger out of hostility toward his lawful concerned activity as union steward. To the extent such adverse actions exist, I find that they were not motivated by illegal hostility.

In summary, I conclude the City did not commit any prohibited practices within the meaning of Secs. 111.70(3)(a) 3. or derivatively 111.70(3)(a) 1., Stats.

### **Alleged Interference with Sernatinger's Lawful Concerted Activity**

Sernatinger certainly has standing to raise and litigate allegations that the City committed prohibited practices with the meaning of Sec. 111.70(3)(a) 1, Stats. by interfering with his rights as an employee to engage in lawful concerted activity identified in Sec. 111.70(2), Stats.

Section 111.70(3)(a)1, Stats. makes it a prohibited practice for a municipal employer:

1. To interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

Section 111.70(2), Stats. describes the rights protected by Sec. 111.70(3)(a)1, Stats. as being:

(2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. . .

Violations of Sec. 111.70(3)(a)1, Stats. occur when employer conduct has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Sec. 111.70(2) rights.<sup>2</sup> If after evaluating the conduct in question under all the circumstances, it is concluded that the conduct had a reasonable tendency to interfere with the exercise of Sec. 111.70(2) rights, a violation will be found even if the employer did not intend to interfere and even if the employee(s) did not feel coerced or was not in fact deterred from exercising Sec. 111.70(2) rights.<sup>3</sup> However, in recognition of the employer's free speech rights and of the general benefits of "uninhibited" and "robust" debate in labor disputes, employer remarks which inaccurately or critically portray the employee's labor organization and thus may well have a reasonable tendency to "restrain" employees from exercising the Sec. 111.70(2) right of supporting their labor organization generally are not violative of Sec. 111.70(3)(a)1, Stats. unless the remarks contain implicit or express threats or promises of benefit.<sup>4</sup> Similarly, employer conduct which may well have a

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<sup>2</sup> *WERC v. Evansville*, 69 Wis. 2d 140 (1975).

<sup>3</sup> *Beaver Dam Unified School District*, Dec. No. 20283-B (WERC, 5/84); *City of Brookfield*, Dec. No. 20691-A (WERC, 2/84); *Juneau County*, Dec. No. 12593-B (WERC, 1/77).

<sup>4</sup> *Ashwaubenon Joint School District No. 1*, Dec. No. 14474-A (WERC, 10/77); *Janesville Board of Education*, Dec. No. 8791 (WERC, 3/69).

reasonable tendency to interfere with employee exercise of Sec. 111.70(2) rights will not be found violative of Sec. 111.70(3)(a)1, Stats. if the employer had valid business reasons for its actions.<sup>5</sup>

Included in the “interference” matters that only the Union has standing to litigate is the issue of whether the City acts illegally by limiting which City supervisors/managers Sernatinger can approach with workplace issues or limiting Sernatinger’s ability to leave his work location when acting as a steward. While these are issues that only the Union has standing to litigate, I note that it is generally well within an employer’s legitimate discretion to identify who has the authority to speak on its behalf when interacting with a union representative.

Having reviewed the record, I conclude that any City action attacked by Sernatinger which may have had a tendency to interfere with his exercise of Sec. 111.70(2) rights was based on valid business reasons. Therefore, no Sec. 111.70(3)(a) 1, Stats. violations are found.

### **Summary**

Given the foregoing, the complaint is dismissed.

Issued at the City of Madison, Wisconsin, this 3<sup>rd</sup> day of May 2024.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Hearing Examiner

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<sup>5</sup>*City of Brookfield*, supra, footnote 3.