

**BEFORE THE
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION**

MADISON TEACHERS INC.,

Complainant,

v.

**MADISON METROPOLITAN SCHOOL DISTRICT,
CANDACE TERRELL, and ANNABEL TORRES,**

Respondents.

**CANDACE TERRELL'S ANSWER AND AFFIRMATIVE DEFENSES
TO MTI'S PROHIBITED PRACTICES COMPLAINT**

NOW COMES the Respondent, Candace Terrell, by her undersigned attorneys, and for her Answer to the Prohibited Practices Complaint ("Complaint") alleges as follows:

1. Madison Teachers Inc. ("MTI") is the labor organization duly elected and recognized as the exclusive representative, pursuant to Wis. Stat. § 111.70, of the bargaining units of (a) teachers, (b) educational support staff and (c) substitute teachers employed by the Madison Metropolitan School District. MTI's principal place of business is at 33 Nob Hill Road, Madison, Wisconsin, 53713. MTI's phone number is (608) 257-0491. MTI's Associate Director of Labor and Organizing is Pamela Ferrill, whose email address is PFerrill@madisonteachers.org.

a. Upon information and belief, Admit.

2. Madison Metropolitan School District ("MMSD") is a municipal employer school district organized and existing under Wisconsin law. Its administrative offices are located at 545 W. Dayton Street, Madison, Wisconsin, 53703. The switchboard telephone number for MMSD is (608) 663-1879, and the phone number for the Office of the Superintendent is (608) 663-1607. The Superintendent is Joe M. Gothard. For purposes of this Complaint, MMSD is a "municipal employer" as that term is used in Wis. Stat. § 111.70.

a. Upon information and belief, Admit.

3. Candace Terrell ("Terrell") is employed by MMSD as Principal of Southside Elementary School. For purposes of this Complaint, she is a "person" as that term is used in Wis. Stat. § 111.70.

- a. Admit that Candace Terrell is employed by employed by MMSD as Principal of Southside Elementary School. The remaining allegations contained therein are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Complainant to its proof thereon.
4. Annabel Torres ("Torres") is employed by MMSD as an Assistant Principal of Southside Elementary School. For purposes of this Complaint, she is a "person" as that term is used in Wis. Stat. § 111.70.
 - a. Admit that Annabel Torres is employed by employed by MMSD as Assistant Principal of Southside Elementary School. The remaining allegations contained therein are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Complainant to its proof thereon.
5. It is a prohibited practice for any "person" or "municipal employer" to interfere with, restrain, or coerce municipal employees in the exercise of their rights to engage in lawful, concerted activities for the purpose of mutual aid or protection, including through intimidation, reprisal and threats of reprisal. Wis. Stat. §§ 111.70(2), (3)(a)1., (3)(c).
 - a. The allegations contained in Paragraph 5 of the Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Complainant to its proof thereon.
6. On April 4, 2024, numerous individuals, including current and former MTI members currently or formerly employed by MMSD and currently or previously assigned to work at Southside Elementary School ("Southside Staff"), filed a detailed 39-page Complaint ("Complaint") with MMSD against several MMSD administrators including Terrell and Torres for their roles in cultivating a hostile working and learning environment at Southside wrought with bullying, retaliation, safety issues, and poor communication. This Complaint was a lawful, concerted activity for the purpose of mutual aid or protection-improving the working conditions at Southside.
 - a. Respondent lacks sufficient information to admit or deny the allegation in paragraph 6, and therefore denies the same and puts Complainant to its proof thereon. Respondent affirmatively alleges that such complaint does not constitute a protected act or acts under Wis. Stat. §111.70(2).
7. MMSD retained an attorney from a private practice law firm to serve as an outside investigator of the allegations in the Complaint; that investigation is currently ongoing.
 - a. Respondent Admits, upon information and belief, the allegations contained in Paragraph 7.
8. Many of the Southside Staff also spoke at the May 20, 2024 MMSD School Board meeting about the adverse conditions at Southside wrought by Terrell and Torres, in a further

concerted effort to improve the working conditions at Southside, i.e., as an exercise of their protected rights to engage in concerted activities for mutual aid and protection.

- a. Respondent lacks sufficient information to admit or deny the allegation in paragraph 8, and therefore denies the same and puts Complainant to its proof thereon. Respondent affirmatively alleges that the activities defined in paragraph 8 do not constitute a protected act or act within the scope of Wis. Stat. §111.70(2).

9. Between May 21, 2024 and June 20, 2024, Terrell filed "workplace bullying" and "discrimination" complaints with MMSD against Southside Staff who are current MTI members and spoke at the May 20, 2024 Board meeting about the adverse conditions at Southside wrought by Terrell and Torres, including Burnett Reed (filed 5/21), Tracey Woock (filed 5/27), Elizabeth Oleary (filed 5/27), Michelle Hoeffs-DeBot (filed 5/28) Jennifer Garthwaite (filed 5/29), James Robinson (filed 6/19), and Karen Macdonald (filed 6/20).

- a. Respondent admits that Respondent filed complaints against the named individuals. Respondent denies the complainant's characterization of the complaints and affirmatively alleges that the complaints were proper and filed to address defamatory public statements that are not protected under Wis. Stat. §111.70(2).

10. In sum, in the one month following the May 20, 2024 Board meeting, Terrell filed complaints against all but one of the current MTI members who filed the Complaint and spoke at the May 20 Board meeting.

- a. Respondent lacks sufficient information to admit or deny the allegation in paragraph 10, and therefore denies the same and puts Complainant to its proof thereon.

11. On June 20, 2024, Terrell filed a workplace bullying complaint with MMSD against Southside Staff member Erin Kerwin, who joined the Complaint but did not speak at the May 20, 2024 Board meeting.

- a. Respondent admits filing a workplace bullying complaint against Erin Kerwin, but lacks sufficient information to admit or deny the remaining allegation in paragraph 11, and therefore denies.

12. On June 20, 2024, Terrell filed a workplace bullying complaint with MMSD against MTI member and MMSD teacher Amelia Fritsch, who also spoke at the May 20, 2024 Board meeting about the adverse conditions at Southside wrought by Terrell and Torres.

- a. Respondent admits filing a complaint against Amelia Fritsch and denies all other allegations in paragraph 12.

13. Terrell's above-referenced complaints were made in her capacity as an employee of MMSD, on behalf of or in the interest of MMSD and/ or in connection with or to influence the outcome of an employment relations controversy (i.e., the April 4, 2024 Complaint against her and others).

- a. Admit that Terrell is an employee of MMSD and denies all remaining allegations. Respondent denies the complainant's characterization of the complaints and affirmatively alleges that the complaints were proper and filed to address defamatory public statements that are not protected under Wis. Stat. §111.70(2).

14. On June 8, 2024, Torres filed a workplace bullying complaint with MMSD against Southside Staff member Burnett Reed, who both joined the Complaint and spoke at the May 20, 2024 Board meeting about the adverse conditions at Southside wrought by Terrell and Torres.

- a. Respondent lacks sufficient information to admit or deny the allegation in paragraph 14, and therefore denies the same and puts Complainant to its proof thereon.

15. Torres' s above-referenced complaint was made in her capacity as an employee of MMSD, on behalf of or in the interest of MMSD and/ or in connection with or to influence the outcome of an employment relations controversy (i.e., the April 4, 2024 Complaint against her and others).

- a. Respondent lacks sufficient information to admit or deny the allegation in paragraph 15, and therefore denies the same and puts Complainant to its proof thereon.

16. A finding of a violation of MMSD' s workplace bullying or discrimination policies by an MMSD employee can result in discipline of that employee, up to and including termination.

- a. Admit.

17. The above-referenced workplace bullying and discrimination complaints filed by Terrell and Torres against the above-referenced Southside Staff and MTI members are without merit and brought by Terrell and Torres to intimidate and as reprisal and to threaten further reprisal for the MTI members' protected concerted activity-filing the Complaint and speaking at the May 20 Board meeting-for the purpose of mutual aid and protection (improving the working conditions at Southside).

- a. Deny.

18. Despite the obvious retaliatory nature of the above-referenced workplace bullying and discrimination complaints filed by Terrell and Torres, the District has directed the subjects of those complaints, as MMSD employees, to participate in prosecutorial interrogations about Terrell and Torres's allegations. In doing so, the District is also engaging in intimidation, reprisal, and threats of further reprisal against the above-referenced Southside Staff and MTI members for their protected concerted activity-joining the Complaint and speaking at the May 20 Board meeting for the purpose of mutual aid and protection-to improve working conditions at Southside.

- a. Deny.

19. By the above-described actions, Terrell, Torres and MMSD have engaged and are engaging in prohibited practices, in violation of Wis. Stat. § 111.70(3)(a)1 and (c), including by

engaging in behavior that has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their rights under Wis. Stat. § 111.70(2).

- a. Deny.

20. As the remedy for the prohibited practices described above, the Wisconsin Employment Relations Commission should:

- a. Declare that Terrell, Torres and MMSD have each committed and are committing the prohibited practices alleged above;

- i. Deny.

- b. Order Terrell, Torres and MMSD to cease and desist these and similar actions, including barring Terrell and Torres, and anyone on their behalf or at their request or direction, from pursuing and filing further complaints against Southside Staff and other MTI members who are participating in the Complaint against Terrell and Torres and directing MMSD to discontinue its investigation of the retaliatory complaints filed by Terrell and Torres and purge the records of the subjects of such complaints and investigations of all documentation and references to such investigations and complaints;

- i. Deny.

- c. Notify all staff at MMSD of the Commission's findings and disposition of this Prohibited Practice complaint by circulating by email a notice to each and every staff member, with a copy to MTI, and posting paper notices in conspicuous places in each and every school and other workplace within MMSD, which shall remain in place for at least 30 days;

- i. Deny.

- d. Direct MMSD to advise the Commission and MTI within 20 days of the date of the order as to what steps it has taken to comply with the order;

- i. Deny.

- e. Order Terrell, Torres, and MMSD to take such other and further action as the Commission deems proper.

- i. Deny.

AFFIRMATIVE DEFENSES

Respondent Candace Terrell further answering the Complaint by way of affirmative defenses applicable to all allegations and claims made therein alleges as follows:

1. Terrell did not engage in any prohibited practice made unlawful under Wisconsin law.

2. The complainants fail to state a complaint upon which relief can be granted, as their Complaint asserts that the mere filing of a complaint pursuant to a valid workplace policy, without more, constitutes retaliation per se.

3. Terrell followed a legally prescribed workplace policy by filing workplace bullying/harassment complaints pursuant to MMSD Policy 8013, and such filings in and of themselves made pursuant to a valid and accepted workplace policy cannot constitute a prohibited practice.

4. The Complaint is not ripe for adjudication until MMSD concludes its investigation into Terrell's bullying/harassment complaints. The Complaint constitutes an unlawful attempt to interfere with a workplace investigation being conducted in accord with a valid and accepted workplace policy.

5. The MTI employees and complainants engaged in public, defamatory acts that do not constitute protected activity under Wis. Stat. §111.70(2). *See Wisconsin Emp. Rels. Bd. v. Milk & Ice Cream Drivers & Dairy Emp. Union, Loc. No. 225*, 238 Wis. 379, 299 N.W. 31, 40 (1941) (employees were prohibited from publicly declaring employer was "unfair" when refusing contractual demands that the employer was legally entitled to reject); *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 338, 58 S. Ct. 578, 585, 82 L. Ed. 872 (1938) (finding libelous signs and false accusations made by the union to be part of "a campaign of destruction in order to coerce respondent to deprive its employees of their right of freedom of association, self-organization, and designation of representatives of their own choosing.").

- a. For example, on May 20, 2024, Complainant Burnett Reed made materially false allegations combined with hyperbole for the purpose and intent to defame the Administration in a public forum, as follows:

"These unethical administrators . . . have gone the extra mile to discredit, dehumanize and mistreat people in any way they see fit to pursue their unjust agenda. . . the Southside Administration has committed one violation after another. . . Southside families have zero interactions with the current Administration."

6. The MTI employees and complainants engaged in unfair labor practices when making defamatory statements to the public, thereby resulting in the removal of Wisconsin's statutory labor protections for their unlawful conduct. *Hotel & Rest. Employees' Int'l All., Loc. No. 122 v. Wisconsin Emp. Rels. Bd.*, 236 Wis. 329, 294 N.W. 632, 639 (1940) ("An employee who is

guilty of an unfair labor practice may lose his status as an “employee” as defined in sec. 111.02(3).”).

7. Upon information and belief, Complainant filed this Complaint for the improper purpose to gain an advantage in an ongoing investigation for which its members are the subject of workplace bullying complaints based on defamatory statements and conduct.

WHEREFORE, Respondent Candace Terrell demands dismissal of the Prohibited Practices Complaint, and such other relief the WERC may deem just and equitable.

Dated at Milwaukee, Wisconsin October 8, 2024.

Respectfully submitted,
PADWAY & PADWAY, LTD.
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