STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Arbitration of a Dispute between	• : :	
MARATHON COUNTY FARMERS UNION COOPERATIVE and	•	Case VIII No. 14912 A-1352 Decision No. 10515-A
CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS LOCAL UNION NO. 446, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA	:	
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ORDER OF DISMISSAL

The Wisconsin Employment Relations Commission on September 13, 1971, having appointed John T. Coughlin, a member of its staff as the chairman of a three-man arbitration panel, which was to issue a finaand binding award in the above entitled matter; and a majority of said panel having on May 24, 1972, issued a final and binding award in the matter; and on June 9, 1972, the above named Employer by its Counsel having filed with the Commission a petition for review of said arbitration award; and on June 13, 1972, Counsel for the above named Union having filed a motion to dismiss said petition for review on the grounds that (1) there is presently pending in the United Spates District Court, Western District of Wisconsin, a proceeding to enforce said arbitration award, and (2) that the Wisconsin Employment Peace Act does not provide for a review by the Commission of arbitration. awards; and the Commission being fully advised in the premises and being satisfied that the petition for review filed herein should be dismissed;

NOW, THEREFORE, it is

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ORDERED

That the petition for review of the award of the arbitration panel issued on May 24, 1972, in the above entitled matter be, and the same hereby is, dismissed.

> Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION By Morris Slavney, Chairman Zel S. Rice II, Commissioner Jos. B. Kerkman, Commissioner

MARATHON COUNTY FARMERS UNION COOPERATIVE, VIII, Decision No. 10515-A

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

Following the issuance of the arbitration award, it is apparent that the Employer has not complied therewith since it seeks a review of the arbitration award by the Commission. The Union filed a motion requesting the Commission to dismiss the petition for review on the grounds stated in the Order.

The Union is correct in stating that there is no provision in the Wisconsin Employment Peace Act which permits one of the parties to an arbitration proceeding to petition the Commission for a review of the arbitration award. While Section 111.10 of the Wisconsin Employment Peace Act provides that proceedings in arbitration cases involving awards issued by arbitrators appointed by the Commission shall be as provided in Chapter 298, Wisconsin Statutes, we do not conclude that the Commission has jurisdiction to entertain a petition for review to vacate the award pursuant to Chapter 298.10 of the Wisconsin Statutes, which provides that the court in whose jurisdiction the award was issued may make an order vacating the award upon application of any party to the arbitration when certain factors exist.

We do not mean to say that the Commission has no power to review the validity of the award. However, such review is made where one of the parties seeks an enforcement of the award as an unfair labor practice pursuant to Sections 111.06(1)(f) and (g) or 111.06(2)(c) and (d) of the Wisconsin Employment Peace Act, where the other party involved contends that the award should be vacated on any of the grounds set forth in Section 298.10 of the Wisconsin Statutes.

In the instant matter the award was in favor of the Union. The Union did not seek to enforce the award before the Commission but rather chose to seek such enforcement in the United States District Court for the Western District of Wisconsin. Should said federal court choose not to assert its jurisdiction in the matter and should the Union seek enforcement of the award in an action before the Commission, the Employer then could properly, in the enforcement proceeding, request the Commission to set aside the award. Our rationale herein is in no way intended to imply that the "petition for review" is or is not without merit.

. Dated at Madison, Wisconsin, this 21st day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Bv Morris Slavney, Chairman ź Rice II, Commissioner Zel S. 1 O P. C. S. Jos. B. Kerkman, Commissioner