

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

Case VI  
No. 14964 Ce-1368  
Decision No. 10535-A

Mr. Roger Jacobson, Business Representative, appearing on behalf of the Complainant.  
Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law, by Mr. Laurence E. Gooding, Jr., appearing on behalf of the Respondent.

Local 150, Service & Hospital Employees International Union having on September 17, 1971 filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that Appleton Memorial Hospital had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act, by refusing to honor a collective bargaining agreement existing between the Complainant and the Respondent; and the Commission having appointed Marvin L. Schurke, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and pursuant to Notice issued by the Examiner on September 20, 1971, hearing on said complaint having been held at Appleton, Wisconsin, on October 19, 1971, before the Examiner; and the Examiner having considered the evidence, arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Order.

(1) That Local 150, Service & Hospital Employees International Union, hereinafter referred to as the Complainant, is a labor organization having its principal offices at 135 W. Wells Street, Milwaukee, Wisconsin.

(2) That Appleton Memorial Hospital, hereinafter referred to as the Respondent, operates a hospital and maintains its principal offices at Appleton, Wisconsin.

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(3) That the Complainant and Respondent are parties to a collective bargaining agreement dated October 15, 1969, which contains the following pertinent language:

"ARTICLE XIV  
Vacations

. . .

Section 2. All full-time employees who have been in the service of the Hospital for a period of seven (7) years of continuous service, shall receive three weeks vacation with pay in accordance with their normal schedule of hours.

. . .

Section 7. Vacation period shall be from employee's anniversary date to anniversary date.

Section 8. Vacations earned must be taken during the following vacation period. There shall be no pay in lieu of vacation.

. . .

ARTICLE XIX  
Grievance Procedure

Section 1. The Hospital agrees to meet with duly accredited officers and committees of the Union upon grievance matters pertaining to the meaning or application of this contract. Grievances shall be dealt (sic) with first through the immediate supervisor, then through the head of the department, and in case of failure to resolve the grievance within five (5) working days thereafter, then the grievance shall, within the next succeeding three (3) working days be put in writing and promptly submitted to the Administrator or, in her absence, the Assistant Administrator. If the matter is not satisfactorily adjusted at this level within seven (7) days from the time it is presented to the Administrator or Assistant Administrator, then the party wishing to carry the matter further may present the matter to the Wisconsin Employment Relations Board as an unfair labor practice for violating the terms of a collective bargaining agreement pursuant to the provisions of Chapter 111 of the Wisconsin Statutes, and this shall be the sole and final remedy of the aggrieved party."

(4) That on August 14, 1970 Garland Terrio, an employe within the bargaining unit covered by the collective bargaining agreement, filed a grievance stating as follows:

"Violation of contract between Local 150 AFL-CIO and Appleton  
... .. Article 14 Section 2

The Article and section states that an employee after seven (7) years of continuous service shall receive three weeks paid vacation. The hospital has granted me only two weeks vacation, which is a violation of the contract. I have been employed for a period of ten years as of the 18th of August 1970."

(5) That on August 19, 1970 the Respondent answered the grievance of Garland Terrio in writing and denied such grievance; that on August 21, 1970 the grievance was handed to the Hospital Administrator; that on August 26, 1970 the Hospital Administrator answered the grievance in writing and denied the grievance; and that on September 17, 1971, the Complainant filed its complaint alleging violation of Chapter 111, Wisconsin Statutes.

On the basis of the above and foregoing Findings of Fact the Examiner makes the following

CONCLUSION OF LAW

That the Complaint initiating the instant unfair labor practice proceeding before the Wisconsin Employment Relations Commission was not timely filed within the meaning of Section 111.07(14) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law the Examiner makes the following

ORDER

It is ordered that the complaint of unfair labor practices filed herein be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 23rd day of November, 1971.

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By



Marvin L. Schurke, Examiner

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prescribed by law, must be computed from the time of the accruing of the right by action, special proceedings, defense or otherwise, as the case requires, to the time when the claim to relief is actually interposed by the party as a plaintiff. . . ." In effectuating the policies of the Wisconsin Employment Peace Act, the Commission has concluded 1/ that where a collective bargaining agreement contains procedures for the voluntary settlement of disputes arising thereunder and where the parties thereto have attempted to resolve such disputes with such procedures, the cause of action before the Commission cannot be said to arise until the grievance procedure has been exhausted. The policy of the Commission has been to compute the one year period of limitation for the filing of complaints of unfair labor practices from the date on which the grievance procedures have been exhausted by the parties to the agreement, provided that the complaining party has not unduly delayed the grievance procedure.

The complaint filed herein gives no indication as to the date of the alleged violation of the agreement. Article XIV, Section 2 of the agreement provides for three weeks paid vacation after seven years of employment and the evidence supports the Union's contention that Garland Terrio had more than seven years of service with the Employer at the time the grievance was filed. The grievance was apparently filed shortly before the employee's anniversary date to preserve his claim to vacation time for the previous year, and it is clear that evidence adduced during the course of the hearing refers only to a claim for vacation in an October 15, 1969 to August 18, 1970 period. The Respondent's final answer in the grievance procedure was given on August 26, 1970. The complaint was filed with the Commission on September 17, 1971. Such filing is not within the one year limitation contemplated in Section 111.07(14) of the Act, and no explanation has been offered by the Union to justify such untimely filing. The Commission is without jurisdiction to hear or determine the case on its merits.

Dated at Madison, Wisconsin, this 23rd day of November, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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1/ Harley-Davidson Motor Co., (7166) 6/65.