STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 150, SERVICE & HOSPITAL EMPLOYEES INTERNATIONAL UNION,

Complainant,

vs.

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

APPLETON MEMORIAL HOSPITAL,

Respondent.

Appearances:

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.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

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.

FINDINGS OF FACT

- (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.

(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 dealth (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

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.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Marvin L. Schurke, Examine

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint filed on September 17, 1971 the Union alleged that the Employer had failed to comply with the collective bargaining agreement, in that the Employer refused to grant Garland Terrio a third week of vacation. Notice of hearing was issued on September 20, 1971 setting hearing for October 19, 1971 and setting October 12, 1971 as the date for filing of an answer. In its answer, filed on October 12, 1971, the Respondent denied that it had violated Section 2 of Article XIV of the agreement by failing to grant Garland Terrio a third week of vacation. At the hearing held on October 19, 1971, the Complainant called Edward Harbath, the Union Steward, as a witness and called adversely John R. Shepard, the Administrator of the Hospital. The Respondent called John R. Shepard as a witness. At the conclusion of the testimony the Percendent moved to amond its the conclusion of the testimony the Respondent moved to amend its answer adding as follows:

"That the complaint in this matter was not filed within the time limits outlined under Article 19 of the labor agreement and also it was not timely filed on the basis of its occurrence under Chapter 111 of the Wisconsin Statutes."

The amendment to the answer was permitted by the Examiner. The hearing was completed and closed on the same date. The parties agreed to file written closing arguments within two weeks from the date of the hearing. A letter was received from the Respondent on November 3, 1971 stating its closing arguments. No written closing argument or request for extension of time for filing same was received by the Examiner from the Union and the Union is presumed to have waived its opportunity to file a written closing argument.

Section 111.07(14) of the Wisconsin Employment Peace Act provides that "The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged." Section 893.48 of the Wisconsin Statutes provides: "The periods of limitation, unless otherwise specifically

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 employe'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

Maryin I. Schurke, Examiner

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