

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 AMALGAMATED MEAT CUTTERS & BUTCHER  
 WORKMEN OF NORTH AMERICA, LOCAL NO.  
 444, AFL-CIO,

Complainant,

vs.

DORANCE J. BENZSCHAWEL & TERRENCE D.  
 SWINGEN, a/b/a PARKWOOD IGA,

Respondent.  
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Case VII  
 No. 15279 Ce-1398  
 Decision No. 10761-A

ORDER DENYING MOTION TO DISMISS, EXTENDING TIME TO ANSWER  
 AND DENYING MOTION TO POSTPONE HEARING

Complaint of unfair labor practice having been filed with the Wisconsin Employment Relations Commission in the above entitled matter and the Commission having appointed George R. Fleischli, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders, as provided in Section 111.07(5) of the Wisconsin Statutes; and the Examiner having set the complaint for hearing on February 20, 1972, at Madison, Wisconsin; and before any further action having been taken on said complaint, the Respondent, by its counsel, having filed with the Examiner a Motion to Dismiss the complaint and a Motion to Extend Time to Answer and to Postpone hearing; and the Complainant having filed an argument in opposition to said motions; and the Examiner having considered said motions and argument and being fully advised in the premises makes and issues the following

ORDER

1. That the Respondent's Motion to Dismiss the complaint in the above entitled matter be, and the same hereby is, denied.

2. That the Respondent's Motion to Extend Time to Answer the complaint in the above entitled matter be, and the same hereby is, granted by extending the date for answering said complaint to February 28, 1972.

3. That the Respondent's Motion to Postpone Hearing on the complaint in the above entitled matter be and the same hereby is denied.

Dated at Madison, Wisconsin, this 18th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

George R. Fleischli  
 George R. Fleischli, Examiner

NO. 10761-A

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

NO. 10761-A

that since the Wisconsin Employment Relations Commission has jurisdiction over one-man collective bargaining units, the Respondent's motion ought to be denied or, in the alternative, that ruling on the motion be deferred until after a hearing has been held to establish the facts.

The Examiner is satisfied that the Respondent's Motion to Dismiss ought to be denied. If the Complainant had alleged that the Respondent was in violation of Sections 111.06(1)(a), 111.06(1)(c) and 111.06(1)(d) of the Wisconsin Statutes, which are substantially similar to Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the National Labor Relations Act, as amended, the Respondent's motion to dismiss for lack of jurisdiction with regard to those alleged violations might be well taken. Unless it can be said that the National Labor Relations Board lacks jurisdiction to determine whether or not the Respondent has committed said violations the Commission would be preempted from entertaining a complaint making those allegations. 2/ However, the complaint herein alleges a violation of Section 111.06(1)(f) of the Wisconsin Statutes, which makes it an unfair labor practice for an employer to violate the terms of a collective bargaining agreement. Federal courts and state tribunals have concurrent jurisdiction for the purpose of enforcing the provisions of collective bargaining agreements and that includes the authority to resolve issues regarding the applicability of the agreement to alleged successors. 3/ The Wisconsin Employment Relations Commission is the appropriate state tribunal authorized by the Wisconsin Legislature to determine whether or not an employer has violated the terms of a collective bargaining agreement and has jurisdiction for such purpose even where the employer is in commerce and covered by the jurisdictional standards of the National Labor Relations Board. 4/

The Respondent filed its Motion to Dismiss on February 14, 1972. The Respondent accompanied its Motion to Dismiss with a Motion to Extend Time to Answer and to Postpone Hearing. This latter motion was apparently in anticipation of the delay that might result pending disposition of the Respondent's Motion to Dismiss. The Complainant filed

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- 2/ The refusal of the National Labor Relations Board to process a charge on the basis that it involves a one-man bargaining unit is based on a lack of jurisdiction and the Wisconsin Employment Relations Commission, which has asserted jurisdiction over one-man collective bargaining units, may entertain complaints involving one-man bargaining units even though the employer is in commerce. Sinclair Refining Company (8526-A) 2/69, affirmed sub nom., Wisconsin Employment Relations Commission v. Atlantic-Richfield 52 Wis. 2d 126 (1971).
- 3/ Section 301, Labor Management Relations Act; Textile Workers Union v. Lincoln Mills 353 U.S. 448, 40 LRRM 2113 (1957); Charles Dowd Box Company v. Courtney 368 U.S. 502, 49 LRRM 2619 (1962); John Wiley and Sons v. Livingston 376 U.S. 543, 55 LRRM 2769 (1964).
- 4/ Seaman-Andwall Corp. (5910) 1/62; Tecumseh Products Company (5936) 4/62, affirmed sub nom. Tecumseh Products Company v. WERB 23 Wis. 2d 118 (1964); American Motors Corporation v. WERB 32 Wis. 2d 237 (1966). Federal substantive law must be applied in such actions. Local 164, Teamsters v. Lucas Flour 369 U.S. 95, 49 LRRM 2917 (1962).

its arguments in opposition to the Respondent's Motion to Dismiss on February 15, 1972, and indicated its opposition to the Respondent's Motion to Extend Time to Answer and to Postpone Hearing. In view of the fact the Examiner has been able to rule on the Respondent's Motion to Dismiss within six days of its receipt, the Respondent's Motion to Postpone the Hearing is denied and the Respondent is hereby provided with six additional days in which to file its answer.

Dated at Madison, Wisconsin, this 18th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli  
George R. Fleischli, Examiner