

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAM GUTHRIE,	:	
	:	
Complainant,	:	
	:	
vs.	:	
	:	
LOCAL 82, MILWAUKEE COUNTY DISTRICT	:	Case XLI
COUNCIL 24, AFSCME, AFL-CIO,	:	No. 16256 PP(S)-14
	:	Decision No. 11457-B
and	:	
	:	
UNIVERSITY OF WISCONSIN-MILWAUKEE,	:	
HOUSING DEPARTMENT,	:	
	:	
Respondents.	:	
	:	

ORDER FOR FURTHER HEARING

The above entitled matter having come on for hearing on January 30, 1973, before Marvin L. Schurke, an Examiner appointed by the Wisconsin Employment Relations Commission; and during the course of said hearing Respondent University of Wisconsin-Milwaukee having stated its position that hearing in the matter should be limited in scope and that a separate determination should be made on the allegations against Respondent Local 82, before proceeding to hearing or making of any determination on the allegations against Respondent University of Wisconsin-Milwaukee; and the Complainant and Respondent Local 82 having stated their opposition to the position taken by Respondent University of Wisconsin-Milwaukee; and the hearing having been adjourned; and the Examiner having considered the positions of the parties, and having concluded that the efficiency of the Commission and the interests of justice would best be served by proceeding to hearing on all issues joined in the pleadings in the captioned matter prior to the determination of any issue;

NOW, THEREFORE, it is

ORDERED

That hearing in the above entitled matter shall be resumed on April 4, 1973, at 10:00 a.m. at the Milwaukee State Office Building, 819 North Sixth Street, Milwaukee, Wisconsin, at which time evidence will be taken and arguments will be heard relating to all issues joined in the pleadings on allegations against both of the Respondents named in the complaint and any defenses thereto.

Dated at Madison, Wisconsin, this 12th day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
 Marvin L. Schurke, Examiner

MEMORANDUM ACCOMPANYING
ORDER FOR FURTHER HEARING

The Complainant has filed a complaint and amended complaint with the Commission alleging that he was discharged by the State Employer in violation of the collective bargaining agreement covering his employment, and that he was denied fair representation by the Union in the processing of his grievance concerning said discharge. The question before the Examiner at this time is whether or not the evidentiary hearings on the two major issues in the case should be severed and a determination made on the fair representation question prior to the taking of evidence and argument on the merits of the discharge claim. The State Employer takes the position that the issues should be so separated. The Complainant and the Union contend that the issues cannot be separated and urge that evidence should be taken on all issues in the case before any determination is made on any issue.

Both Respondents previously filed motions to dismiss. Said motions were denied by the Examiner by Order dated January 19, 1973 ^{1/}, on the basis that the Complainant is entitled, by statute, to a full hearing on the pleadings in a contested case prior to the issuance of an Order dispositive of his rights. Subsequent to January 19, 1973, but prior to the date set for hearing in the matter, Attorney Vernon representing the State Employer twice made contact with the Examiner by telephone. During said telephone calls Counsel for the State Employer stated and restated his position that the matter should not be heard on the merits of the discharge until a separate determination was made on the allegations of denial of fair representation, and that the State Employer was not prepared, and would not be prepared, to go to hearing on the merits of the discharge on January 30, 1973. Counsel was advised by the Examiner at that time that no decision had been made by the Examiner concerning the procedure which would be followed and that such a determination would only be made after the Examiner had further information as to the nature of the case. During the course of the hearing on January 30, 1973 the State Employer objected to the admission of any statement or testimony regarding the merits of the discharge claim until a separate determination was made on the fair representation question. Said objection was overruled by the Examiner. Thereafter the State Employer stated, for the record, its position concerning severance of the proceedings, making specific reference to the telephone conversations indicated above and reciting its interpretation of a portion of the Order issued by the Examiner on January 19, 1973. The State Employer insisted at that time that it was not prepared to proceed or to examine or cross-examine witnesses on the merits of the discharge claim, and requested leave to recall witnesses for cross-examination at a later date.

As to the interpretation of the telephone conversation between Counsel for the State Employer and the Examiner, unquestionably the way in which any ambiguity should have been avoided was that said unilateral telephone contact should not have been made by Counsel in the first place. No assurances were given during said conversation that the Examiner would accede to the position of the State Employer.

^{1/} Decision No. 11457-A.

As to the interpretation of the Order issued by the Examiner on January 19, 1973, said Order was not intended as a statement of or ruling on the procedure which would be followed at hearing. However, said Order is subject to the interpretation claimed by the State Employer, and the State Employer was permitted to reserve its cross-examination of witnesses on the merits of the discharge claim.

The decision of the case is controlled by the State Employment Labor Relations Act, Subchapter V of Chapter 111, Wisconsin Statutes, Section 111.80 et. seq., effective January 1, 1967, superseded by Chapter 270, Laws of 1971, Section 111.80 et. seq. Wisconsin Statutes. Under said statute the State of Wisconsin, as an employer, reserved to itself a dominant posture in collective bargaining with labor organizations representing State employes, particularly as to the subjects of bargaining. There is no indication however that the Legislature placed the State Employer in a similar dominant position with respect to Prohibited Practices proceedings before the Commission. The question of severance of the proceedings is within the discretion of the Commission and of its Examiner, and the State Employer has no right or authority to dictate the procedure to be followed.

In its Answer the Union alleged, inter alia, that any and all action or inaction by it was based on a good faith investigation of the facts presented by any given situation and that at all times material hereto the Union fairly represented the Complainant. Upon review of the pleadings, the evidence adduced during the hearing on January 30, 1973 and the positions of the parties on the question here decided, the Examiner concludes that the issues in the case are so co-mingled that the efficiency of the Commission's processes and the interests of justice would best be served by taking evidence on all issues in the case before making a determination on any of the issues. A new date for hearing has been set in the accompanying Order. So that no ambiguity is possible, all parties are specifically advised that they should be prepared to proceed to full hearing on all issues at the date set, or any adjournment thereof, or to rest their case.

At the close of the hearing on January 30, 1973 both Respondents renewed their motions to dismiss. Subsequently, the State Employer filed a motion for summary judgment and the Union, by letter, renewed its motion to dismiss. No new matters are raised by the motion for summary judgment. In view of the accompanying determination as to the procedure to be followed in the case, said motions are premature. As indicated in the previous Order issued by the Examiner, the Wisconsin Statutes provide the Complainant opportunity for a full and fair hearing prior to the entry of an Order dispositive of his rights.

Dated at Madison, Wisconsin, this 12th day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke
Marvin L. Schurke, Examiner

