

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAM GUTHRIE,

Complainant,

vs.

LOCAL 82, MILWAUKEE COUNTY DISTRICT
COUNCIL 24, AFSCME, AFL-CIO

and

UNIVERSITY OF WISCONSIN-MILWAUKEE,
HOUSING DEPARTMENT,

Respondents.

Case XLI
No. 16256 PP(S)-14
Decision No. 11457-C

ORDER DENYING PETITION FOR REVIEW

Prior to the close of the hearing conducted by Examiner Marvin L. Schurke in the above entitled matter, the Respondent, State of Wisconsin, University of Wisconsin-Milwaukee, on February 6, 1973, filed a Motion with the Examiner for Summary Judgment; and after considering said Motion, said Examiner, on March 12, 1973, ordered further hearing in the matter to complete the taking of evidence with regard to all issues joined in the pleadings; and while the Examiner did not specifically deny the Motion for Summary Judgment in the Memorandum accompanying said Order, he indicated that the Motion was "premature"; and on March 26, 1973, Respondent, State of Wisconsin, filed, with the Wisconsin Employment Relations Commission, a Petition for Review of the Examiner's Order in accordance with the "Wisconsin Administrative Code, Section ERB 12.09"; and the Commission having reviewed the pleadings filed in the instant proceeding, the Motion for Summary Judgment, the Order of the Examiner, and the Petition for Review, and being satisfied that the Petition for Review is premature and should be denied;

NOW, THEREFORE, it is

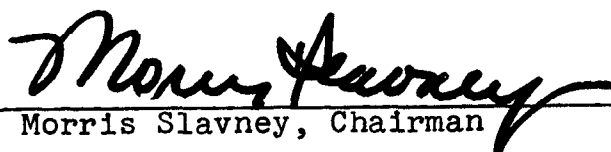
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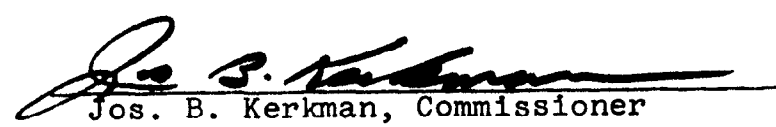
That the Petition for Review of the Examiner's Order issued on March 12, 1973, be, and the same hereby is, denied.

Given under our hands and seal at the
City of Madison, Wisconsin, this 27th
day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

No. 11457-C

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR REVIEW

The State Respondent predicates its Petition for Review on the belief that the Wisconsin Administrative Code, Section ERB 12.09 permits the Commission to review an Order of the Examiner scheduling further hearing in the matter to take additional evidence with regard to the issues raised in the pleadings.

ERB 12.09 contemplates that an Order subject to a Petition for Review by the Commission constitutes an Order resulting from Findings of Fact and Conclusions of Law.

Since the Order issued by the Examiner is not a final determination of any of the issues involved in the instant matter, the Commission will not at this time entertain a Petition for Review of the Examiner's Order setting the matter for further hearing. Under the Respondent State's theory any party who is dissatisfied with a ruling made by an Examiner during the course of a hearing could petition the Commission for a review of the Examiner's ruling. Such a procedure is not contemplated either under Chapter 227 of the Wisconsin Statutes nor under the rules of the Commission.

Dated at Madison, Wisconsin, this 27th day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner