

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 1750A OF AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES
OF SHEBOYGAN, WISCONSIN,

Complainants,

vs.

CITY OF SHEBOYGAN, A MUNICIPAL
CORPORATION,

Respondent.

Case XVIII
No. 17126 MP-276
Decision No. 12134-B

ORDER AMENDING FINDINGS OF FACT,
AFFIRMING CONCLUSIONS OF LAW AND ORDER

Examiner Marvin L. Schurke having on July 24, 1974, issued Findings of Fact, Conclusions of Law and Order in the above entitled matter; and the above named Complainant by its counsel having on August 7, 1974, filed a petition for review of the Examiner's Findings of Fact, Conclusions of Law and Order; and the Commission having reviewed the pleadings, entire record, and the Examiner's Findings of Fact, Conclusions of Law and Order and Memorandum accompanying same, and the petition for review, being satisfied that Paragraph 8 of the Examiner's Findings of Fact be amended, that the Examiner's remaining Findings of Fact, his Conclusions of Law and Order be affirmed;

NOW, THEREFORE, it is

ORDERED


A. That Paragraph 8 of the Findings of Fact made by the Examiner be amended to read as follows:

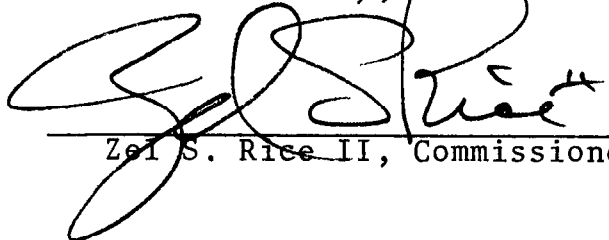
8. That on or about October 12, 1972, a regular meeting of the membership of the Complainant was held; that, during the course of such meeting, the grievance of Schild, Kerwin, Killnas, Jurk and Graf was a subject of discussion; that a vote of the membership of the Complainant was taken on the question of processing said grievance; that the membership of the Complainant voted unanimously against further processing of said grievance; and that, on or about October 31, 1972, Rothwell, acting in his capacity as President of the Complainant, informed the Respondent of the decision of the membership of the Complainant not to process the grievance of Schild, Kerwin, Killnas, Jurk and Graf; that Rothwell, on or about the same date, also informed Wilson of the Complainant's decision not to proceed further on said grievance, and that Wilson thereafter attempted to persuade the Complainant, and especially Rothwell to change the determination with respect to the Complainants' decision not to proceed further on said grievance, but, however, Wilson was unsuccessful in that attempt.

B. That the Examiner's remaining Findings of Fact, Conclusions of Law and Order be, and the same hereby are, affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this *21st* day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AMENDING FINDINGS OF FACT,
AFFIRMING CONCLUSIONS OF LAW AND ORDER

In its petition for review the Complainant contends that the Examiner's Findings of Fact are erroneous, as established by the record, particularly Paragraph 8 and 9 thereof, with respect to such contention and Complainant argues in effect that Complainants' President did not advise the Commission that the Union did not desire to proceed to arbitration, but that such information has been relayed to Commission in writing by the City Attorney without any authorization that the City Attorney speak for the Complainant.

We have reviewed the entire record and especially the testimony of the Complainants' President, Rothwell, which establishes that not only did Rothwell advise the City Attorney of Complainant membership's determination not to proceed to arbitration on the grievance, but further, that Rothwell also so advised Wilson, the Staff Representative of Wisconsin Council, AFSCME, who services the Complainant, and who had previously attempted to initiate the arbitration proceeding. Rothwell further testified, without contradiction, that Wilson attempted to persuade Rothwell that Complainants' membership should change its position not to proceed to arbitration on the grievance. Wilson was unsuccessful in that attempt. The Examiner made no finding with respect to Wilson's attempt in that regard. We have therefore amended Paragraph 8 of the Examiner's Findings of Fact to reflect said additional facts.

We are therefore satisfied that the City Attorney did not unilaterally determine that the Complainant chose not to proceed to arbitration. Such a decision was made by the membership of the Complainant. The City Attorney merely advised the Commission of such fact, as the Respondent's reason for not agreeing to proceed to arbitration as requested by Wilson.

In its petition for review the Complainant further contends that all four paragraphs of the Examiner's Conclusions of Law are "legally improper and incorrect". With respect to paragraph 1 thereof, the Complainant apparently misconstrues the Examiner's conclusion. In its complaint initiating the instant proceeding, the Complainant, in addition to alleging that the City failed to proceed to arbitration in violation of the collective bargaining agreement, also alleged that the termination of the employees involved in the grievance constituted prohibited discrimination and interference. The Examiner succinctly sets forth in this memorandum his rationale supporting his conclusion that the Commission had no jurisdiction to entertain the latter allegations in the complaint, since the termination of said employees occurred on a date more than one year prior to the filing of the complaint, as Section 111.07(4) precludes the Commission from processing those portions of the complaint. Since the refusal to proceed to arbitration occurred within the one year immediately preceding the date on which the complaint was filed, the complaint as to said allegation is timely.

As to paragraphs 2 and 3 of the Conclusions of Law, the Complainant argues that the Examiner's conclusion that Complainants' attorney "filed" the grievance is erroneous. We conclude otherwise. The record establishes, as found in paragraph 6 of the Examiner's Findings of Fact, said attorney was authorized by Wilson, according to Wilson's own testimony

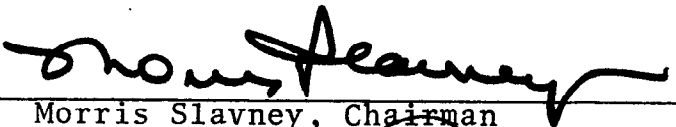
to file the grievance 1/ and further the record established that said attorney submitted said grievance to the City Clerk. 2/

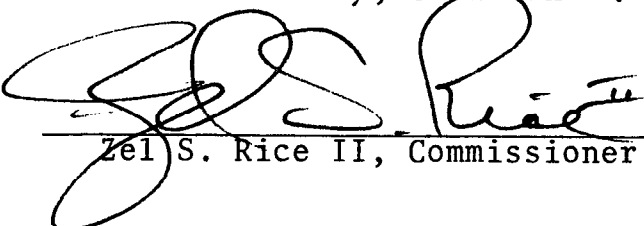
In paragraph 4 of his Conclusions of Law the Examiner concluded that the City did not commit a prohibited practice by refusing to proceed to arbitration, since the Complainant had previously withdrawn the grievance from the grievance procedure by the action of its membership in declining to proceed to arbitration. The evidence supports such a conclusion.

We therefore adopt the Examiner's Conclusions of Law and his Order dismissing the complaint.

Dated at Madison, Wisconsin this 21st day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner

1/ Page 4 of transcript.

2/ Exhibit 1.