

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHWEST UNITED EDUCATORS,

Complainant,

vs.

CHETEK JOINT SCHOOL DISTRICT #5,

Respondent,

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: Case II
: No. 17540 MP-315
: Decision No. 12418-B
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ORDER SETTING ASIDE EXAMINER'S ORDER AND
SETTING DATES FOR RESPONSE TO MOTION

Northwest United Educators having, on January 9, 1974, filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that Chetek Joint School District #5 had committed prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and the Commission having appointed Marvin L. Schurke, a member of its 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 the Examiner having, on March 28, 1974, issued Findings of Fact, Conclusions of Law and Order in the matter; and Northwest United Educators having filed, on April 10, 1974, a motion to reopen hearing for introduction of newly discovered evidence, a copy of which was served on the Respondent; and no petition for review having been filed with the Commission in the matter; and the Examiner having considered the motion and being satisfied that the Order issued on March 28, 1974 should be set aside pending a determination on said motion;

NOW, THEREFORE, it is

ORDERED

1. That the Order issued by the undersigned Examiner in the captioned matter on March 28, 1974 be, and the same hereby is, set aside.

2. That Chetek Joint School District #5 be, and the same hereby is, allowed fourteen (14) days from the date of this Order within which to file, with the Examiner, its response to the motion of Northwest United Educators to reopen hearing in the captioned matter. Said Respondent shall promptly serve a copy of any such response on counsel for Northwest United Educators, by certified mail.

3. That Northwest United Educators may make rebuttal to any response to said motion made by the Respondent, by filing same with the Examiner within seven (7) days following the filing of such response. Said Complainant shall promptly serve a copy of any such statement in rebuttal on counsel for Chetek Joint School District #5, by certified mail.

4. That Chetek Joint School District #5 may make a response to any statement in rebuttal made by the Complainant, by filing same with the Examiner within seven (7) days following the filing of such statement in rebuttal. Said Respondent shall promptly serve a copy of any such response on counsel for Northwest United Educators, by certified mail.

Dated at Madison, Wisconsin this 11th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Marvin L. Schurke
Marvin L. Schurke, Examiner

MEMORANDUM ACCOMPANYING ORDER SETTING ASIDE
EXAMINER'S ORDER AND SETTING DATES FOR RESPONSE TO MOTION

The complaint filed in the instant case alleged that the Respondent had refused to bargain with the Complainant, in violation of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act. In the Findings of Fact, Conclusions of Law and Order issued on March 28, 1974, the Examiner concluded that the Complainant had failed to give the Respondent sufficient notice to prevent the operation of an automatic renewal clause contained in the existing collective bargaining agreement between the parties, and that the said agreement was automatically renewed through at least June 30, 1975, relieving the Respondent of a duty to bargain on a new agreement to take effect during that period.

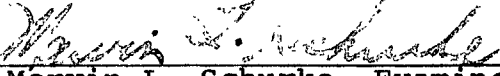
The Complainant filed a motion with the Examiner on April 10, 1974, wherein it requests that the hearing in the matter be reopened for the purpose of taking newly discovered evidence on a matter referred to in the Examiner's findings of fact and accompanying memorandum. Such motion is made under Section ERB 12.08, Wisconsin Administrative Code. No petition for review has been filed in the matter, and the Examiner therefore concludes that he has jurisdiction to make a determination on the motion.

The Complainant also requests that the period provided for the filing of a petition for review be tolled pending determination of the motion. No authority is found for the proposition that the filing of a motion with the Examiner should serve to toll the time limitations for the filing of a petition for review. The period for the filing of a petition for review in this case would expire on April 17, 1974. The Examiner and counsel for the Complainant are located in Madison, while counsel for the Respondent is located in Rice Lake. A distance of more than 200 miles separates the would-be participants in oral argument on the Complainant's motion, and the Examiner will therefore not hear oral arguments on this motion. Since the Respondent must be given an opportunity to respond to the motion, the Examiner has set aside the Order issued on March 28, 1974 pending a determination on the motion, and has thereby removed the case from the "review period". The period for filing of a petition for review in this matter will be a twenty day period following the issuance of a new final order by the Examiner.

Dated at Madison, Wisconsin, this 11th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Marvin L. Schurke, Examiner