

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE COUNTY DEPUTY SHERIFFS' :
ASSOCIATION, :
 :
Complainant, : Case XXIX
 : No. 18236 MP-389
vs. : Decision No. 12973-A
 :
COUNTY OF RACINE, :
 :
Respondent. :
 :

ORDER GRANTING MOTION TO RESCHEDULE HEARING

The above-named Complainant having filed a Complaint of prohibited practices with the Wisconsin Employment Relations Commission on August 21, 1974; and the Commission having appointed Marshall L. Gratz, as Examiner, to make and issue findings of fact, conclusions of law and orders in the matter; and the Examiner, on September 4, 1974, having served the parties with a Notice of Hearing providing for a hearing date of September 19, 1974; and on September 18, 1974 Complainant's Counsel, Mr. Jay Schwartz, by his secretary, Ms. Janet Henrickson, having orally communicated a Motion to Reschedule Hearing to the Examiner and to Respondent's Counsel; and Respondent's Counsel having indicated, in response to the Examiner's phone call to him, that Respondent opposes said Motion for the reasons that it was not presented to the Examiner in writing or by Complainant's Counsel (but only by his secretary), that good cause has not been shown to offset the fact that it was not received by the Examiner at least two days before the date set for hearing, that Respondent would be prejudiced by a rescheduling of the hearing under the foregoing circumstances since it has tendered travel and other fees to witnesses under subpoena and because County officials have arranged their schedules so as to be available to testify on the scheduled date, and that in any event, only the Commission and not the Examiner is empowered to waive the rules of the Commission that would have to be waived in order that the instant Motion be considered and granted; and the Examiner having concluded that a granting of Complainant's Motion would cause Respondent no prejudice if Complainant were to agree to reimburse Respondent for any witness fee or witness travel fee expenses incurred by Respondent as a result of the rescheduling of the hearing pursuant to

said Motion; and the aforesaid Janet Henrickson having agreed on behalf of Complainant to so reimburse Respondent for such expenses and having agreed to reduce its Motion to writing and to serve same upon the Examiner and the Respondent; and under such circumstances, the Examiner being satisfied that Complainant's Motion to Reschedule Hearing should be granted;

NOW, THEREFORE, it is

ORDERED

1. That Complainant's September 18, 1974 telephonic Motion to Reschedule Hearing shall be, and hereby is, granted;

2. That the public hearing in the above-noted matter previously scheduled for September 19, 1974 shall be, and hereby is, rescheduled for Wednesday, October 2, 1974 beginning at 9:30 a.m. at the Racine County Courthouse, Racine, Wisconsin.

Dated at Milwaukee, Wisconsin, this 19th day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO RESCHEDULE HEARING

The secretary to Complainant's Counsel Schwartz, Ms. Janet Henrickson, telephoned the Examiner on the morning of September 18, 1974 and requested, on Mr. Schwartz' behalf, that the hearing scheduled for the following day in the instant matter be rescheduled for a later date. She explained that Mr. Schwartz would be unable to attend the September 19 hearing on account of his unexpected involvement in critical secret negotiations concerning certain employes of the Racine Public Schools. The secretary indicated that Mr. Schwartz would be available on specified alternate dates and that since it only recently had become clear that Mr. Schwartz would be unavailable for the September 19 hearing, it appeared unlikely that qualified substitute counsel could be found.

The Examiner asked Ms. Henrickson to contact Respondent's Counsel and report back to the Examiner Respondent's Counsel's position in the matter. She did so, indicating that Respondent's Counsel opposed the rescheduling of the hearing. Thereafter, the Examiner telephoned Respondent's Counsel, County Corporation Counsel Dennis J. Flynn, and received from Mr. Flynn a detailed statement of the reasons for his opposition to the Motion. Those reasons are set forth in the first paragraph of the foregoing Order.

The Examiner has chosen to consider the aforesaid telephonic request to reschedule the hearing as a Motion to Reschedule Hearing. The Examiner takes official notice of the fact that there exists a labor dispute with respect to certain employes of the Racine Public Schools which dispute has occasioned the closing of such schools, the involvement of a mediator from the Commission's staff and proceedings before both County and Circuit Judges. It would appear from the information presented by telephone to the Examiner that Complainant's Counsel, Jay Schwartz, is directly involved in at least the negotiations attendant to said labor dispute. In that context, the apparent absence of available and qualified substitute counsel, ^{and} the lateness, form and source of the Motion appear reasonably explained. Therefore, pursuant to the powers vested in him by Commission Rule ERB 10.18(7)-(9), the Examiner waives the requirement in 10.11(1) that pre-trial motions be made in writing and provisions of 10.12(1) regarding the contents and time for filing of a motion to reschedule hearing. In the Examiner's view, Respondent's

assertion that only the Commission may waive such requirements of such rules is without merit; instead, the Examiner concludes that the ERB 10.01 authorization that "[t]he commission . . . may waive any requirements of these rules unless a party shows prejudice thereby" is equally applicable to an individual Commissioner or Examiner designated or appointed by the Commission as it is to the Commission acting as a body.

The exigent circumstances here present and noted above would, in any event, appear to be "good cause" (within the meaning of ERB 10.12[1]) for considering a motion to reschedule hearing that has been received less than two days before the date set for hearing.

The Examiner has concluded that the above-noted waiver of certain requirements of the Commission's rules will cause Respondent no prejudice in view of Complainant's assurance that it will make Respondent whole for any witness fee or witness travel fee incurred by Respondent by reason of the rescheduling of the hearing. That certain officers or agents of Respondent will be inconvenienced by the rescheduling is unfortunate but does not amount, in the Examiner's view, to such "prejudice" (within the meaning of ERB 10.01) as would preclude the Examiner from waiving those requirements of the Commission's rules noted above.

At the time the Examiner informed Respondent's Counsel's office of his intent to grant the instant Motion, he further informed that office of his intent to reschedule the hearing for October 1, 1974 unless that time was inconvenient for Respondent's Counsel. Respondent's Counsel's office called the Examiner back, indicating that October 2, 1974 was more convenient for Respondent's Counsel than was October 1 as a hearing date. Therefore, the October 2, 1974 hearing date was chosen by the Examiner.

Dated at Milwaukee, Wisconsin, this 19th day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner