

Dismissal of the Complaint; and the Examiner having denied said Motion to Dismiss in an Order dated September 25, 1974; and the date for hearing having been rescheduled to October 9, 1974, pursuant to a request by Complainant as to which Respondent had no objection; and the matter having come on for hearing before the Examiner on October 9, 1974 at the Racine County Courthouse; and County Supervisor Dennis M. Kornwolf having been present from the outset of the hearing, having been called as a witness by Complainant and having given testimony and having testified that he was in attendance pursuant to a subpoena; and Counsel for Complainant having indicated that Complainant had caused said Kornwolf to be served with such subpoena; and during the early portion of his testimony said Kornwolf having informed the Examiner that he had not been paid or tendered witness fees or witness travel fees in connection with said subpoena; and several other persons attending the hearing having indicated to the Examiner that they were in attendance pursuant to subpoenas, and Counsel for Respondent having indicated that such persons had been subpoenaed by Respondent; and shortly before the close of the hearing, Counsel for Respondent having requested that the Examiner immediately order Complainant to pay to witness Kornwolf such witness and travel fees as Kornwolf is entitled to receive; and Complainant having opposed said request and having requested that the Examiner cause the State to pay any such fees to said Kornwolf, citing, Sec. 111.07 (2)(d) of the Wisconsin Statutes; and Counsel for Respondent having requested that the State pay each of Respondent's witnesses the witness and travel fees to which they are entitled; and Supervisor Kornwolf having requested that the Examiner inform him as to the nature of the rulings on the aforesaid requests; and the Examiner having taken the aforesaid requests under advisement; and the Examiner being satisfied that he is without authority at the present stage of the proceedings to order a party to pay witness and travel fees to a witness; and the Examiner being further satisfied that he is without authority to commit the funds of the State of Wisconsin for purposes of payment of witness fees or witness travel fees;

NOW, THEREFORE, it is

ORDERED

1. That Respondent's request for an order that Complainant pay to witness Kornwolf such witness fees and witness travel fees as he is entitled to receive shall be, and hereby is denied; and

2. That Complainant's request that the Examiner cause witness

by the State for Kornwolf to be paid/such travel and witness fees as he is entitled to receive shall be, and hereby is, denied; and

3. That Respondent's request that the Examiner take action so as to cause the State to pay each of Respondent's witnesses such travel and witness fees as they are entitled to receive shall be, and hereby is, denied.

Dated at Milwaukee, Wisconsin, this 11th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

That Respondent's request that the Examiner take action to us

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTIONS CONCERNING PAYMENT OF FEES TO WITNESSES

It is the Examiner's view that he is without authority to order a party to make payment for witness and travel fees to a witness at least at the present stage of the instant proceeding. Whether such an order could be made a part of the Examiner's findings of fact, conclusions of law and order following the close of the hearing is an issue not presently before the Examiner and not intended to be determined herein.

The aforementioned requests of both Respondent and Complainant concerning State payment of witness fees and witness travel fees have been directed to the Examiner. Such requests have been treated as motions. The parties are apparently requesting that the Examiner issue an order that would cause the State of Wisconsin to pay to specified witnesses such witness and travel fees as such witnesses are entitled to receive. The sole authority cited by the parties in support of said motions is Section 111.07 (2)(d) which reads as follows:

"Each witness who shall appear before the commission by its order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the chairman of the commission and charged to the proper appropriation for the commission."

Nowhere in that language or in any other provision of law known to the Examiner is there a grant of authority to the Examiner to issue an order which would have the effect of committing the State of Wisconsin to pay to witnesses such witness fees and witness travel fees as to which they may be entitled to receive. Therefore the Examiner must deny said motions.

It would, thus, not appear to be the Examiner's responsibility herein to declare precisely what, if anything, Sec. 111.07 (2)(d) requires the State to do and under what circumstances. Nonetheless, in view of the considerable discussion during the hearing concerning subpoenaed witnesses' obligations to appear, the Examiner would note that, in his opinion, Sec. 111.07 (2)(d) does not entail prepayment or tender of payments; instead it refers to payments after-the-fact to persons who have, in fact, honored subpoenas or orders by appearing.

During the hearing, Counsel for Respondent gave notice that in the event that the Examiner's or the Commission's failure to pay witness and travel fees to witnesses subpoenaed by Respondent results in the nonattendance of such witnesses, Respondent would thereafter take the position that the Examiner and/or the Commission was preventing Respondent from properly and rightfully defending itself herein. In that regard, the Examiner would indicate as follows: In the event that a witness subpoenaed by and called by a party fails to appear, the Examiner would, upon request, grant a reasonable adjournment in order to permit such party to enforce the subpoena which it caused to be served upon such nonattending person.

In response to Supervisor Kornwolf's request that he be informed of the Examiner's ruling with respect to the instant matters, a copy of this Order shall be sent to him.

Dated at Milwaukee, Wisconsin, this 11th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner