

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN FEDERATION OF TEACHERS,	:	
AFT, AFL-CIO,	:	
	:	
Complainant,	:	Case L
	:	No. 18305 PP(S)-23
vs.	:	Decision No. 13017-B
	:	
THE STATE OF WISCONSIN,	:	
	:	
Respondent.	:	

ORDER DENYING PETITION FOR REVIEW

The Wisconsin Employment Relations Commission heretofore and on September 16, 1974, appointed Stanley H. Michelstetter II, a member of its staff, as an Examiner to conduct hearing in the above entitled matter and to issue Findings of Fact, Conclusions of Law and Order; and prior to the opening of said hearing, the above named Respondent having, on September 30, 1974, filed a motion with said Examiner to dismiss the complaint; and said Examiner having considered said motion, and on October 2, 1974, having issued an Order denying the Respondent's motion; and thereafter, and on October 11, 1974, said Respondent having filed a petition requesting the Commission to review the Order issued by the Examiner; and the Commission having reviewed the motion to dismiss, 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

ORDERED

That the Petition for Review of the Examiner's Order issued on October 2, 1974, herein be, and the same hereby is, denied, and, further, that the request contained in the Petition for Review that the time for answering the complaint, or for proceeding to hearing in the matter, be indefinitely postponed pending an appeal to the appropriate court be, and the same hereby is, also denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
 Morris Slavney, Chairman

Zel S. Rice II
 Zel S. Rice II, Commissioner

Howard S. Bellman
 Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR REVIEW

Prior to the hearing before the Examiner the Respondent filed a motion with the Examiner to dismiss the complaint on the ground that it was not signed nor sworn to pursuant to Section ERB 22.02(1) of the Wisconsin Administrative Code and further, on the grounds that the Commission lacked jurisdiction because the instant matter involved the interpretation of an existing agreement and that there was no allegation in the complaint that the agreement was breached by the Respondent or any allegation that Complainant had been precluded from proceeding under said agreement. The Examiner issued an Order denying the motion.

In the Memorandum accompanying the Order denying the motion to dismiss, the Examiner set forth that the original complaint contained a verification page which was signed and sworn to before a person authorized to administer oaths. He indicated that, because a copy of the verification page was omitted from additional copies filed with the Commission, the Respondent was unaware of the existence of the verification page. The Examiner concluded that the failure to attach the verification page to the copies of the complaint did not prejudice the Respondent.

With respect to the second ground presented to the Examiner for dismissing the complaint, e.g. that the Commission lacked jurisdiction because the instant complaint required the interpretation of the collective bargaining agreement, the Examiner concluded that the complaint "clearly states a cause of action for refusal to bargain by means of making a unilateral change without notice to the representative of the affected employees. The interpretation of an alleged collective bargaining agreement is not necessary to establish Complainant's cause of action."

In its Petition for Review the Respondent set forth that the complaint did not allege that the Respondent had violated the collective bargaining agreement and further that the complaint did not allege a refusal to bargain in good faith. The Respondent contends that the Examiner's ruling was erroneous as a matter of law and requests the Commission to reverse the Order of the Examiner and to grant the Respondent's motion to dismiss. In its Petition the Respondent requested that in the event the Commission rejects its Petition for Review that the time for answering the complaint, or for proceeding to a hearing in the matter be indefinitely postponed, pending an appeal of the Commission's Order to the appropriate court.

As the Commission stated in University of Wisconsin-Milwaukee, Housing Department XLI,^{a/} Rule ERB 12.09 of the Wisconsin Administrative Code contemplates that an Order subject to a Petition for Review by the Commission is a final determination such as Findings of Fact, Conclusions of Law and Order or an Order of Dismissal issued by an Examiner. The Order of the Examiner herein denying the Respondent's motion to dismiss

^{a/} Decision No. 11457-C, 3/73.

is not a final determination of any of the issues involved in the instant matter, and, therefore, the Commission has denied the Petition for Review. The Commission will not order the Examiner to hold the matter in abeyance, and he is expected to proceed in the matter.

Dated at Madison, Wisconsin, this 16th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

 Zel S. Rice II
Zel S. Rice II, Commissioner

 Howard S. Bellman
Howard S. Bellman, Commissioner