

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL NO. 48,  
AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, AFL-CIO,

Complainant,

vs.

MILWAUKEE COUNTY, ARTHUR SILVERMAN,  
ANTHONY P. ROMANO, EDMUND J. KRAWCZYK,  
FRED KNOX AND EDMUND A. MUNDY,

Respondents.

Case LXX  
No. 18679 MP-418  
Decision No. 13480-C

ORDER DENYING MOTION

Complaint of prohibited practices having been filed by Milwaukee District Council 48, AFSCME, AFL-CIO, on December 31, 1974, wherein it alleged that the above-named Respondents have committed certain prohibited practices within the meaning of Section 111.70(3)(a) of the Municipal Employment Relations Act (MERA); and the Commission having appointed Marvin L. Schurke, Examiner for the purpose of issuing Findings of Fact, Conclusions of Law and Orders in the instant matter pursuant to Section 111.07(5) of the Wisconsin Statutes; 1/ and after hearing on the matter had been indefinitely postponed for a considerable period of time, the Commission having issued an Order Substituting Examiner wherein it appointed Stanley H. Michelstetter Examiner for the purpose of issuing Findings of Fact, Conclusions of Law and Orders in the matter pursuant to Section 111.07(5) of the Wisconsin Statutes; 2/ and hearing on the matter having been commenced before Examiner Michelstetter at Milwaukee, Wisconsin on March 25, 1976 wherein he made certain rulings on procedural and evidentiary matters; and the Respondents having, on March 31, 1976, filed with the Commission a Motion to Stay Proceedings, to Convene the Commission and to Review Examiner's Rulings; and the Commission being satisfied that said motion should be denied; 3/

NOW, THEREFORE, it is

1/ (13480) 3/75.

2/ (13480-B) 3/76.

3/ See University of Wisconsin - Milwaukee (11457-C) 3/73, aff'd sub. nom. State of Wisconsin v. WERC 65 Wis. 2d 624 (1974).

No. 13480-C

ORDERED

That the Respondents' motion be, and the same hereby is, denied.

Given under our hands and seal at the  
City of Madison, Wisconsin this 9th  
day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney -  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Herman Torosian  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION

In its motion, the Respondents moved that the Commission review the following rulings made by the Examiner during the course of the hearing:

- "1. Overruling respondents' objection to counsel for the complainants amending the complaint to include violations of two collective bargaining agreements after issue was joined and at the time of the hearing.
2. Allowing testimony subject to objection as to conversations, exhibits, events and violations of collective bargaining agreements which occurred more than one year before the filing of the complaint in the instant matter which are both irrelevant and barred by the statute of limitations.
3. Taking under advisement a motion to dismiss the complaint on its merits or in the alternative to strike paragraphs 1 and 2 of the prayer for relief on the grounds the matters contained therein are res judicata."

In addition, the Respondents moved, in effect, that the Commission remove the proceeding before the Examiner, and that the Commission conduct hearing in the matter since there are conflicts involved which can be resolved only by determining the credibility of witnesses.

Prohibited practice proceedings are subject to Section 111.07 of the Wisconsin Statutes and pursuant to that statutory provision either party may file petitions with the Commission requesting a review of an Examiner's decision. Should the Respondents be dissatisfied with the Examiner's decision and with respect to the rulings made during the conduct of the hearing, it may, after the issuance of the Examiner's decision, take exceptions thereto, which exceptions will be considered by the Commission.

Should an issue arise as to the credibility of witnesses during the hearing before the Examiner, the Examiner, in his memorandum accompanying his decision, will set forth the bases of this credibility findings. Furthermore, the Commission should a petition for review be filed, will have the opportunity to review the entire record, as well as the briefs of counsel.

We see no compelling reason to grant any portion of the motion, and, therefore, we are denying same in all respects, and it is expected that the Examiner will proceed with the hearing.

Dated at Madison, Wisconsin this 9th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Herman Torosian  
Herman Torosian, Commissioner