

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL #1392 KENOSHA COUNTY
INSTITUTIONS EMPLOYEES, WISCONSIN
COUNCIL 40, AFSCME, AFL-CIO,

Complainant,

vs.

KENOSHA COUNTY,

Respondent.

Case XXIII
No. 19066 MP-458
Decision No. 13569-A

Appearances:

Mr. James L. Koch, Business Representative, appearing on behalf
of the Complainant.

Brigden, Petajahn, Lindner & Honzik, S.C., Attorneys at Law, by

Mr. Eugene J. Hayman, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Marshall L. Gratz, a member of its staff, to act as an examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Sec. 111.07(5) of the Wisconsin Employment Peace Act (WEPA) as made applicable to municipal employment by Sec. 111.70(4)(a) of the Municipal Employment Relations Act (MERA); and a hearing on said Complaint having been held at Kenosha, Wisconsin, on June 9, 1975, before the Examiner; and during the course of said hearing, Respondent having moved for dismissal of the Complaint on the grounds that said Complaint, as amended, alleged only a violation of a collective bargaining agreement that was properly the subject of the grievance and final and binding arbitration procedure contained in said agreement; and the Examiner having granted said motion; and during the course of the hearing, the parties having waived the requirements of Sec. 227.12 of the Wisconsin Statutes with respect to the instant proceeding; and the Examiner having considered the evidence and arguments, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Kenosha County, referred to herein as Respondent, is a municipal employer which operates, inter alia, Kenosha County

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Institutions; that Respondent maintains offices at Brookside Care Center, 3506 Washington Road, Kenosha, Wisconsin 53140.

2. That Local #1392, Kenosha County Institutions Employees, Wisconsin Council 40, AFSCME, AFL-CIO, referred to herein as Complainant, is a labor organization; and that the president of Complainant is Louis Sacco, who resides at 2109 21st Street, Kenosha, Wisconsin 53140.

3. That Complainant and Respondent are parties to a collective bargaining agreement and to a two-page addendum thereto, which agreement and addendum have been in effect at all times material hereto; and that said agreement provides for a grievance and final and binding arbitration procedure for the resolution of disputes arising between the parties concerning the construction and application of the terms of said agreement and of said addendum.

4. That the aforesaid addendum provides for "casual day benefits" to employees.

5. That Respondent has established certain procedural conditions precedent to employees' enjoyment of said casual day benefits and Respondent has refused such benefits to employees who have failed to fulfill such procedural conditions precedent.

6. That a dispute has arisen between the parties as to whether the Respondent has violated said agreement and/or said addendum by establishing said procedural conditions precedent and by refusing to grant casual day benefits to employees who fail to fulfill said conditions precedent; and that said dispute falls within the purview of the grievance and final and binding arbitration provisions in said agreement.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That because the dispute referred to in Finding No. 6 above is subject to the grievance and final and binding arbitration procedure contained in the parties' collective bargaining agreement, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining herein whether Respondent Kenosha County, by the conduct noted in Finding No. 5 above, violated a collective bargaining agreement with Complainant Local #1392 Kenosha County Institutions Employees, Wisconsin Council 40, AFSCME, AFL-CIO

in violation of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act.

NOW, THEREFORE, it is

ORDERED

That the Complaint filed in the instant matter, as amended, be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 13th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The initial Complaint in the instant matter was filed on April 17, 1975. In it, Complainant alleged and requested as follows:

- "c. Local #1392 contends that Kenosha County is in violation of Wisconsin Municipal Employment Relations Act 111.70 (3) (a) 4 of the Wisconsin State Statutes when it refused to execute the collective bargaining agreement previously agreed upon.

During the negotiation process, up to and including the time of ratification, the employees were promised a "no catch" casual day program, but in the process of instituting this program, restrictive catches were added by the County.

- d. Local #1392 is requesting the WERC to direct the County of Kenosha to come into compliance with the collective bargaining agreements' application as it was negotiated by the parties."

Respondent in its Answer denied that it had committed any of the unfair labor practices alleged in the Complaint.

At the hearing, the Complainant made clear in its opening statement that the sole unfair labor practice intended to be dealt with in the Complaint is an alleged violation of the terms of the parties' collective bargaining agreement by Respondent. Thereupon a discussion was had off the record. Complainant then moved to amend its Complaint so as to substitute for the above-quoted paragraphs essentially the following allegations and requests: 1) that Complainant and Respondent are parties to a collective bargaining agreement; 2) that said agreement provides, in part, for casual day benefits to employees; 3) that Respondent imposed conditions precedent on the right of employees to casual day benefits which conditions are in violation of the provisions of said agreement; 4) that Respondent has refused to grant casual day benefits to employees on account of such employees' failure to meet said conditions precedent; 5) that by the foregoing refusals, Respondent has violated the terms of a collective bargaining agreement in violation of Sec. 111.70(3)(a)5 of the Wisconsin Statutes; and 6) that the Commission should declare that such unfair labor practices have been committed by Respondent and should order Respondent to cease and desist from said unfair labor practices and to make whole any and all employees adversely affected by same and to order any other affirmative relief deemed appropriate by the Commission.

Respondent then amended its Answer so as to: 1) admit the establishment of procedural steps to be followed by employees in order to entitle such employees to casual day benefits; 2) admit that Respondent has refused to grant casual day benefits to employees who have failed to fulfill said procedural requirements; but 3) deny that either the establishment of such conditions or said refusals constitute an unfair labor practice in violation of Sec. 111.06(3)(a)5 of the Wisconsin Statutes.

Thereupon Respondent moved to dismiss the Complaint on the basis that the alleged violation of the terms of the agreement is subject to the grievance and final and binding arbitration procedure contained in said agreement. 1/ In support of its Motion, Respondent introduced the parties' 1975 collective bargaining agreement and the addendum thereto. The parties stipulated that the grievance and final and binding arbitration provisions governed disputes arising between the parties with respect to the interpretation and application of the terms both of said agreement and of said addendum.

Although Complainant opposed Respondent's Motion to Dismiss, the Examiner granted said Motion, citing the well-established policy of the Commission not ordinarily to assert its jurisdiction to entertain complaints which allege that one party has violated Sec. 111.70(3)(a)5 of MERA where the parties have agreed to final and binding arbitration of disputes which arise over alleged violations of the agreement. 2/

Dated at Milwaukee, Wisconsin, this 13th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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1/ At the same time, Respondent stated on the record that it would waive the contractual time limits for the processing of the then-pending grievances involving employees Hogan and Cassidy so that said grievances may continue to be processed through the grievance procedure set forth in the agreement. Respondent further stated that it would, upon request of Complainant, expedite the processing of a grievance embodying the casual day issue raised in the complaint by dealing with same at the third step of the grievance procedure immediately upon the