

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

satisfied that Complainant's Motion to set an early hearing date on the amendments to its complaint should be denied;

NOW, THEREFORE, it is

ORDERED

That the Motion to amend the complaint should be and the same hereby is granted;

That the Motion to set early hearing solely on the issues presented by said amendments at this time be, and the same hereby is, denied; and,

IT IS FURTHER ORDERED that the instant proceeding be, and the same hereby is, held in abeyance until the Commission is notified that there has been a final adjudication by the Jefferson County Circuit Court of the State of Wisconsin of the issues now pending before it which issues are in common with those raised by Complainant's amendments.

Dated at Madison, Wisconsin this 13th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas L. Yaeger
Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO
AMEND COMPLAINT DENYING MOTION TO SET HEARING SOLELY
ON AMENDMENT AND HOLDING PROCEEDING IN ABEYANCE

The Complaint herein alleges, inter alia, that Respondent harassed and took retaliatory action against Complainant including non-renewal of his contract for previously filing a grievance pursuant to the parties' collective bargaining agreement and, furthermore, that Respondent has refused to process Complainant's grievance contesting his non-renewal. At the hearing on said complaint, the parties agreed to adjourn the proceedings indefinitely on the basis that Respondent would proceed with processing said grievance including arbitration, if necessary, and that subsequent to the conclusion of the grievance proceedings the undersigned would be advised by Complainant what action it desired be taken on the complaint.

The parties subsequently proceeded to implement their agreement reached at the hearing and an arbitration decision was received on or about December 1, 1975. Subsequent to receipt of said decision, Respondent filed a complaint in Jefferson County Circuit Court pursuant to Section 269.56 of the Wisconsin Statutes to set aside said award. The Complainant herein filed a demurrer to said complaint contending the Circuit Court lacks jurisdiction to entertain Respondent's complaint and that an action is already pending before the Commission. Thereafter, and on December 26, 1975, Complainant filed the instant Motion (1) to amend the instant complaint seeking enforcement of the aforesaid arbitration award (2) requesting the Commission to set an early hearing solely on the issues presented by the amendment and (3) seeking the Commission to direct Respondent to comply with said award during the pendency of proceedings.

The undersigned is persuaded that the principal concern of this Commission in dealing with Complainant's Motion is one of jurisdiction. Complainant's motion to amend its complaint seeks enforcement of an arbitration award pursuant to the provisions of Section 111.70(3)(a)5, an action over which this Commission has concurrent and not plenary jurisdiction. 2/ On the other hand, Respondent herein has brought an action in Jefferson County Circuit Court to vacate said award, an action that Respondent could not have initiated before this agency. 3/

It has been the Commission's position that in reviewing awards it will apply the standards set forth in Section 298.10, Wisconsin Statutes, and will not enforce awards that are repugnant to those standards. 4/

2/ City of Neenah (10716-C) 10/73.

3/ Section 111.70(3)(a)5 makes it a prohibited practice for a municipal employer not to accept the terms of an arbitration award after having previously agreed to accept such award as final and binding. This provision does not nor does any other provision of MERA give this Commission jurisdiction to entertain a complaint by a municipal employer challenging an arbitration award. The only review provided for in MERA is by means of a complaint charging a municipal employer with refusing to comply with an award wherein, by way of affirmative defenses, said employer could challenge said award.

4/ City of Neenah (10716-C) 10/73; Research Prod. Corp. (10223-A) 12/71; H. Froebel & Son (7804) 11/66.

Presumably, it is also these same standards that will be applied by the Circuit Court in reviewing the award pursuant to the action before it to vacate same. Inasmuch as the issues and presumably the standards for review of the award are the same, whether the proceedings are held before the Commission or the Circuit Court and because the action in Circuit Court antedates any formal proceedings before this Commission with respect to the award, the undersigned is persuaded that primary jurisdiction lies with the Circuit Court. 5/ Therefore, the undersigned believes justice will be served by the Commission declining jurisdiction and holding in abeyance any proceedings on Complainant's amendment pending final adjudication of Respondent's complaint by the Circuit Court.

It should also be understood, that while not specifically dealt with in the Order herein, Complainant's Motion seeking the Commission to order Respondent, during the pendency of the requested proceedings, to comply with the arbitration award is denied.

Dated at Madison, Wisconsin this 12th day of January, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner

5/ Wisconsin Collectors Assn. v. Thorp Finance Corp. 32 Wis 2d 36 (1966);
State of Wisconsin v. WERC, 65 Wis. 2d 624 (1974).