

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE ENGINEERS ASSOCIATION,

Complainant,

vs.

STATE OF WISCONSIN,

Respondent.

Case XCIV
No. 21214 PP(S)-40
Decision No. 15183-D

ORDER AFFIRMING EXAMINER'S INTERIM FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER AND SUPPLEMENTAL FINDING OF FACT,
CONCLUSION OF LAW AND ORDER

Examiner Amedeo Greco having, on July 28, 1977, issued his Interim Findings of Fact, Conclusions of Law and Order, and further having, on August 29, 1977, issued his Supplemental Finding of Fact, Conclusion of Law and Order wherein he found that the above-named Respondent had committed an unfair labor practice within the meaning of Section 111.84(1)(e) of the State Employment Labor Relations Act by refusing to comply with the terms of an arbitration award, and wherein he ordered said Respondent, among other things, to comply with said award; and the above-named Respondent having timely filed a petition, pursuant to Section 111.07(5), Wisconsin Statutes, and a brief in support thereof, requesting the Commission to review said decisions of the Examiner; and the Commission having reviewed the entire record, the petition for review, and the brief filed in support thereof, as well as the Complainant's brief, and being fully advised in the premises, and being satisfied that the Examiner's decisions be affirmed;

NOW, THEREFORE, it is

ORDERED

That, pursuant to Section 111.07(5) of the Wisconsin Statutes, the Examiner's Interim Findings of Fact, Conclusions of Law and Order, as well as his Supplemental Finding of Fact, Conclusion of Law and Order, hereby are considered as the Commission's Findings of Fact, Conclusions of Law and Order, and, therefore, the Respondent, State of Wisconsin, shall notify the Wisconsin Employment Relations Commission within ten (10) days of the date of this Order as to what steps it has taken to comply therewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of February, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S INTERIM FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER AND SUPPLEMENTAL FINDING OF FACT,
CONCLUSION OF LAW AND ORDER

On March 17, 1975, Arbitrator Edward B. Krinsky issued an award involving the above-mentioned parties. On August 8, 1975, Complainant filed an unfair labor practice complaint with the Commission alleging that the Respondent had committed an unfair labor practice in violation of Section 111.84(1)(e) of the State Employment Labor Relations Act by refusing to comply with said award. Examiner Byron Yaffe issued a decision in said matter on December 4, 1975, which decision was timely appealed to the Commission by the Respondent. By decision dated June 29, 1976, the Commission concluded that the arbitrator issued his award based on his interpretation and application of the terms of the collective bargaining agreement and that said interpretation and application was within the arbitrator's authority under said agreement. However, the Commission also therein concluded that the arbitrator's remedy was in excess of his powers and remanded the matter to the arbitrator to issue a remedy in conformity with the power and authority granted to him in the collective bargaining agreement.^{1/} Thereafter the arbitrator issued a supplemental award, and the Respondent refused to comply therewith, resulting in a complaint initiating the instant proceeding, wherein the Complainant alleged that the Respondent had committed an unfair labor practice by failing to comply with said award. The Examiner in the instant proceeding found such a violation and ordered the Respondent to comply therewith.^{2/}

In its brief accompanying the petition for review the Respondent attacks the award on many of the same grounds as it did in the original proceeding. In that proceeding the Commission concluded, as noted above, that the award was proper with the exception of the remedy. The Examiner in the instant proceeding also so found, and we agree with him in that regard.

The Complainant did not file a petition for review taking any exception to the Examiner's decision. However, in its "appeal brief" filed in the matter on October 25, 1977, the Complainant supported the Examiner's conclusion that the arbitrator did not exceed his authority in issuing his award after the Commission's remand to the arbitrator but urges the Commission to modify that portion of the Examiner's Order, which limited the backpay to a retroactive period of fourteen days. Complainant advanced the same arguments in support thereof as was argued before Examiner Greco. In short, it is the Complainant's position that Respondent is estopped from raising the retroactive issue because Arbitrator Krinsky on remand only had authority to correct the rate of pay he had provided in his previous award and had no authority to review any other aspect of his previous award including the retroactive provision.

In regard thereto, we affirm the Examiner for the following reasons stated by the Examiner in his decision:

^{1/} Case VII, Decision No. 13864-C.

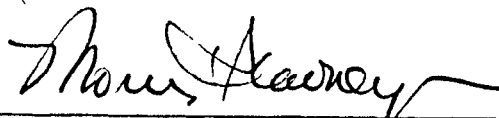
^{2/} During the course of the hearing the parties stipulated that the Examiner could determine the period of retroactivity for which payment was due under the award, and the Examiner did so.

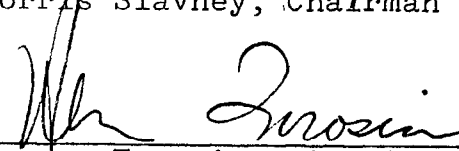
"The Examiner finds that Respondent is not precluded from raising the retroactivity issue. This is so because the commission earlier modified Arbitrator Krinsky's prior Award and remanded the question of a remedy to him. Accordingly, this is the first time that Respondent has been faced with remedy which was otherwise made pursuant to the Arbitrator's authority. Accordingly, and because Respondent at the hearing before the Arbitrator could justifiably expect that the Arbitrator would comply with any contractual time limitations, Respondent can challenge the correctness of the remedial action in the instant proceeding, even though it did not raise this point earlier."

Therefore, we have today issued an Order affirming the Examiner's Interim Findings of Fact, Conclusions of Law and Order as well as his Supplemental Finding of Fact, Conclusion of Law and Order.

Dated at Madison, Wisconsin, this 28th day of February, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner