

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JANICE STUBLEFIELD,

Complainant,

vs.

CHIPPEWA FALLS AREA SCHOOL DISTRICT,

Respondent.

Case LV
No. 22314 MP-807
Decision No. 16011-C

ORDER DENYING MOTION TO REOPEN HEARING

Complainant filed a complaint with the Wisconsin Employment Relations Commission alleging that Chippewa Falls Area School District, referred to as Respondent, had committed prohibited practices within the meaning of Section 111.70(3)(a)1 of the Municipal Employment Relations Act. The Commission appointed Ellen J. Henningsen, a member of its staff, to act as Examiner. The hearing on the complaint was held in Chippewa Falls, Wisconsin on March 8 and April 12, 1978. On April 25, 1978 Complainant filed a motion to reopen the hearing for the purpose of taking additional testimony. Respondent opposes the motion. The Examiner has considered the matter and issues the following

ORDER

IT IS ORDERED that the motion to reopen the hearing is denied.

Dated at Madison, Wisconsin this 26th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO REOPEN HEARING

The hearing in this matter was held on March 8 and April 12, 1978. As of this date, the Examiner has not issued her Findings of Fact, Conclusions of Law and Order.

On April 25, 1978 Complainant filed a motion to reopen the hearing for the purpose of taking the testimony of Sharmain Stein; Stein did not testify at the hearing. Complainant represents that Stein's testimony would contradict the testimony of Gerald Smith, one of Respondent's witnesses, and would corroborate the testimony of Complainant and Pete Jeffers, two of Complainant's witnesses, concerning a material fact. According to the motion, Smith testified that he had observed a certain meeting between Stein, Complainant, Jeffers and others while Complainant testified that she was not at this meeting and Jeffers testified that he had met with Stein alone. This meeting resulted in disciplinary action (the statutory propriety of which is at issue) being taken by Respondent against Complainant. Stein has now volunteered to Complainant that the meeting testified about by Smith did not occur and Complainant wishes to reopen the hearing so that Stein can testify to the non-occurrence of the meeting.

ERB 10.19 states that a "hearing may be re-opened on good cause shown." The Commission has set forth the standards to be applied when considering a motion to reopen hearings pursuant to ERB 10.19. In City of Milwaukee (13558-A) 8/75, Respondents filed a motion to reopen the hearing after the hearing had been completed but prior to the issuance of the Examiner's Findings of Fact, Conclusions of Law and Order. The Examiner, citing Gehl Company (9474-G) 5/71, denied the motion to reopen because Respondents had not shown:

"(a) That the evidence is newly discovered after the hearing, (b) that there was no negligence in seeking to discover such evidence, (c) that the newly discovered evidence is material to that issue, (d) that the newly discovered evidence is not cumulative, (e) that it is reasonably possible that the newly discovered evidence will affect the disposition of the proceeding and (f) that the newly discovered evidence is not being introduced solely for the purpose of impeaching witnesses."

The Commission agreed with the Examiner's rationale in denying the motion to reopen and therefore affirmed the Examiner's order. (13558-C) 5/76.

After considering Complainant's motion in light of the standards for reopening a hearing which have been established by the Commission, the Examiner must deny the motion for two reasons. First, based on Complainant's representation of the record, Stein's testimony would be cumulative. Second, although perhaps Complainant did not discover until after the hearing that Stein contended that she was not at the meeting described by Smith, Complainant has not offered any reason which would excuse the failure to discover this information prior to the close of the hearing. Complainant should have anticipated that the meeting at issue would have been testified about by one of Respondent's witnesses and thus should have previously interviewed Stein and been prepared to call Stein as a witness either during the presentation of Complainant's case or during rebuttal. Even assuming that Complainant could not have anticipated this testimony prior to the hearing, upon hearing Smith's testimony at the hearing, Complainant could still have made arrangements to call Stein as a rebuttal

witness. If Stein were not available at the time, 1/ Complainant could have asked for an adjournment. For the above reasons, Complainant's motion to reopen the hearing is denied.

Dated at Madison, Wisconsin this 26th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner