



STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN COUNCIL OF COUNTY AND	:	
MUNICIPAL EMPLOYEES and OZAUKEE	:	
COUNTY LAW ENFORCEMENT ASSOCIATION,	:	
	:	Case V
Complainants,	:	No. 23116 MP-865
	:	Decision No. 16416-A
vs.	:	
	:	
COUNTY OF OZAUKEE,	:	
	:	
Respondent.	:	
	:	

ORDERS DENYING COMPLAINANTS' MOTION FOR JUDGMENT and
RESPONDENT'S MOTION TO DISMISS COUNT 3 OF THE COMPLAINT

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter, and the Commission having appointed Stephen Schoenfeld, a member of its staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Stats., and the Examiner having scheduled the first day of hearing for August 8, 1978; and during the course of said hearing the Complainants requested that the matter be held in abeyance; and on September 1, 1978 Complainants' counsel filed a Motion for Judgment with the Examiner requesting that judgment be awarded in their favor pursuant to the ad damnun clause of the complaint, and Respondent having responded to said motion; and on October 11, 1978, Respondent having submitted a motion to dismiss count three of the complaint, or in the alternative, requesting the Examiner to separate count three from the rest of the Complaint and conduct a hearing on any dispute of fact that may exist; and Complainants having responded to said motion; and the Examiner having considered the matter;

NOW, THEREFORE, it is

ORDERED

1. That Complainants' Motion for Judgment is denied;
2. That Respondent's Motion to dismiss count three of the Complaint, or in the alternative, to separate Count three from the rest of the Complaint and conduct a hearing on any dispute of fact that may exist, is denied.

Dated at Madison, Wisconsin this 8th day of December, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner

MEMORANDUM ACCOMPANYING ORDERS DENYING COMPLAINANTS' MOTION FOR JUDGMENT and RESPONDENT'S MOTION TO DISMISS COUNT THREE OF THE COMPLAINT

BACKGROUND:

On August 8, 1978, a hearing was conducted concerning a complaint of prohibited practices filed by Wisconsin Council of County and Municipal Employees (WCCME) and Ozaukee County Law Enforcement Association against Ozaukee County. During the course of the hearing Mr. Allen Goldman, chairperson of the Personnel Committee of the County Board of Ozaukee, was examined adversely by Complainants' Counsel. Respondent's counsel objected to questions asked by Complainants' counsel and the Examiner overruled certain objections which were raised. Respondent's counsel directed Goldman not to answer some of the Complainants' counsel's questions. Complainants' counsel asked the witness whether he was going to accept the advice of Respondent's counsel. The witness indicated that he would follow Respondent's counsel's advice. Complainants' counsel then made a request to certify to the Commission the issue concerning whether the witness' refusal to answer certain questions was appropriate. Complainants' counsel asked that the proceedings be held in abeyance until he could file a motion to compel Goldman to testify before the Commission. The hearing was adjourned so that Complainants' counsel could proceed with his stated objective.

On September 1, 1978, Complainants' filed a Motion for Judgment with the Examiner requesting that judgment be awarded in their favor pursuant to the ad damnun clause of the Complaint on the basis of Goldman's refusal to answer certain questions that had been propounded to him. On October 11, 1978, Respondent submitted a motion of its own in which it requested that the Examiner dismiss count three of the Complaint, or in the alternative, to separate count three from the rest of the Complaint and conduct a hearing on any dispute of fact that may exist. ^{1/} Respondent contends that inasmuch as the matter contained in count three of the Complaint related to a previous representation proceeding before the Commission, and since a stipulation was voluntarily entered into between Ozaukee County, Wisconsin Council of County and Municipal Employees and Ozaukee County Law Enforcement Association which provided that said Association was to appear on the ballot and that office clericals were not to be eligible to vote in the election, and because no objections were filed by Complainants in the representation matter and the Commission issued its certification of election, that, therefore, count three should be dismissed.

DISCUSSION CONCERNING COMPLAINANTS' MOTION

The hearing on August 8, 1978 was adjourned, not closed, and the record is certainly not complete at this particular time. It is inappropriate to grant Complainants' Motion for Judgment. ERB 12.06 provides in material part:

^{1/} The gravamen of count three is that certain municipal employees functioning as office clericals, (Mmes. Schlenvogt, Cullen and Robuck), were unlawfully deprived of the right to participate in a representation election held on August 24, 1977 as the result of a withdrawal of their law enforcement credentials by the Ozaukee County Sheriff; furthermore, said count alleges that the Ozaukee Law Enforcement Association was improperly placed upon the election ballot because of the insistence of the County.

"After the close of the hearing, or upon granting a Motion for Dismissal of a Complaint, the Commission, or single member or Examiner, if authorized to do so, shall make and file Findings of Fact, Conclusions of Law and Order.

Complainants' motion is premature and because the matter is in the nature of a contested case, 2/ a full hearing is required on the pleadings. 3/

The hearing was adjourned on the sole basis that Complainants' counsel would have an opportunity to seek a determination from the Commission concerning Goldman's refusal to answer certain questions after being admonished by his counsel not to answer. Complainants' counsel chose not to seek a Commission determination and so the Examiner has concluded that the matter should be rescheduled for hearing. However, when the hearing is re-convened, Complainants will again be afforded the opportunity to propound questions to Goldman and to any other witness Complainants' counsel selects to examine adversely. If objections are raised to the questions by Respondent's counsel and the Examiner overrules said objections, and if the witness continues to refuse to answer the question(s), then the Examiner will draw a negative inference from the failure of the witness to respond.

Based on the aforesaid, Complainants' Motion for Judgment is denied.

DISCUSSION CONCERNING RESPONDENT'S MOTION

Count three of the Complaint alleges that Respondent has committed certain prohibited practices. The failure to file objections to the representation proceeding does not preclude Complainants from filing charges of prohibited practices concerning alleged unlawful conduct which purportedly arose from said proceedings. It would have been inappropriate for Complainants to have litigated allegations of prohibited practices in any proceeding involving challenges to the election and by filing said Complaint within one year from the date of the specific act or prohibited practice alleged, Complainants can litigate said charges in this particular proceeding. Inasmuch as the Complainants have not rested their case, Respondent's motion is premature since the record is not complete. In its brief, Respondent sets forth certain legal positions and arguments that the Examiner will certainly consider when rendering his ultimate findings and decision disposing of count three.

It is the Examiner's belief that in the interest of the efficiency of the Commission's processes, evidence should be taken on all issues prior to the making of any determination in this case. If a review of the Examiner's decision is necessary, then the Commission will have the benefit of reviewing the Examiner's decision in its entirety. 4/

2/ See Wisconsin Statutes, Sec. 111.07(2) (a); Section 111.07(4); Section 227.

3/ Mutual Fed. Savings & Loan Assoc. v. Savings & Loan Adv. Comm.; (1968) 38 Wis. 2d 381; State ex rel. City of LaCrosse v. Rothwell, (1964) 25 Wis. 2d 228, rehearing denied; Town of Ashwaubenon v. Public Service Commission (1964) 22 Wis. 2d 38, rehearing denied; State ex rel. Ball v. McPhee (1959) 6 Wis. 2d 190, General Electric Co. v. Wisconsin Employment Relations Board (1957) 3 Wis. 2d 227, 241.

4/ See State v. WERC, 65 Wis. 2d 624 (1974).

It would be an inefficient utilization of the Commission's time to require that it review the record in a piecemeal manner.

On the basis of the aforesaid, Respondent's Motion is denied.

Dated at Madison, Wisconsin this 8th day of December, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner