

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE MADISON PROFESSIONAL	:	
POLICE OFFICERS ASSOCIATION,	:	
	:	Case LXV
	:	No. 25111 MP-1022
Complainant,	:	Decision No. 17299-A
	:	
vs.	:	
	:	
CITY OF MADISON (POLICE DEPT.)	:	
	:	
Respondent.	:	
	:	

ORDER DENYING MOTION TO DISMISS, AND ORDER DEFERRING FURTHER PROCEEDINGS, AND ORDER GRANTING MOTION TO AMEND COMPLAINT

The above-named Complainant Association has filed with the Wisconsin Employment Relations Commission a complaint alleging that the City of Madison has committed prohibited practices within the meaning of Section 111.70 Wisconsin Statutes. The Respondent City of Madison has filed a Notice of Motion to Dismiss and has, in addition, requested a continuance; Respondent has also filed a brief in support of the motions to dismiss and for the continuance. Respondent has made said motions based upon its belief that the issues raised by the Complaint are identical to those issues presently being litigated through the parties' grievance proceedings; and that, in fact, said issues are to be heard by Arbitrator Zeidler in the Homan arbitration proceedings prior to the date set for hearing on the above-captioned complaint. Complainant opposes the Respondent's motions and has filed a brief in support of its position. Hearing in the matter is scheduled for November 15, 1979, before the undersigned examiner. In conjunction with the Complainant's brief in opposition to the Respondent's motion to dismiss, the Complainant in addition has filed a Notice of Motion to Amend Complaint. The Motion to Amend Complaint requests that at the commencement of the hearing on November 15, 1979, the Complainant be permitted to move for an Order allowing it to amend the complaint to allege specific violations of Sections 111.70(3)(a)1 and 111.70(3)(a)4 of the Wisconsin Statutes.

The Examiner having considered the arguments of counsel and being fully advised in the premises makes and files the following

ORDER

IT IS ORDERED:


1. That the Motion to Dismiss filed by the Respondent City of Madison be, and the same hereby is, denied.
2. That the Respondent City of Madison provide the Examiner with a copy of any appeal, notice, decision, settlement, agreement or arbitration award issued or entered into in connection with the Homan Grievance now pending under the grievance procedure contained in the collective bargaining agreement between the Complainant and the Respondent, which arbitration hearing was scheduled to be heard on November 7, 1979.

3. That the Complainant's Motion to Amend the Complaint to specifically include references to Section 111.70(3)(a)1 and Section 111.70(3)(a)4 of the Wisconsin Statutes is hereby granted, and the pleadings of the Complainant shall be amended accordingly.
4. That the allegations of the Complainant in this proceeding that the Respondent City of Madison has violated Section 111.70(3)(a)1 and Section 111.70(3)(a)4 of the Wisconsin Statutes be, and hereby are, deferred and held in abeyance without any determination until the undersigned Examiner has the opportunity to review the final resolution of the Homan Grievance in order to determine whether the allegations of the Complaint should be dismissed or a determination made under merits thereof.

Dated at Madison, Wisconsin this 12th day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Michael F. Rothstein, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION
TO DISMISS AND DEFERRING FURTHER PROCEEDINGS,
AND ORDER GRANTING MOTION TO AMEND COMPLAINT

Complainant, Madison Professional Police Association, filed a complaint with the Wisconsin Employment Relations Commission on September 10, 1979, alleging that the Respondent City of Madison (Police Department) has engaged in violations of the Municipal Employment Relations Act by unilaterally changing its practice of paying members of the Association who are assigned by the Employer to fill a position in a higher rank classification and paying them the higher classification salary range while acting in such capacity. The Complainant alleges that the Respondent violated the Municipal Employment Relations Act by failing to bargain with the Association the decision as well as the impact of this unilateral change.

Prior to filing the instant complaint with the Wisconsin Employment Relations Commission, the Madison Professional Police Officers Association (Complainant) instituted a grievance which ultimately resulted in the appointment of an arbitrator to hear the dispute between Richard Homan and the City of Madison. Arbitrator Frank Zeidler was selected to hear this dispute, and a grievance arbitration hearing was set for November 7, 1979.

On October 19, 1979 the Respondent City of Madison filed a Motion to Dismiss and for a Continuance based upon the fact that the matters alleged in the complaint were, in fact, substantially congruent with the issues raised in the Homan Grievance. Since allegations of the Complaint raise the issue of the authority of the Respondent City of Madison to unilaterally change certain conditions of employment between the parties, there is a potential for a duplication of disputed factual determinations concerning the parties' contractual relationship which arbitrators commonly undertake, the resolution of which may obviate the need for proceeding in this forum. Thus, the interest of the parties both in judicial economy and in fostering the use of their voluntarily established dispute mechanism would be best served by deferral. The Examiner will, however, retain jurisdiction over the interference and refusal to bargain allegations pending issuance of the Arbitrator's award.

While the Respondent's motion requests the Examiner to dismiss the Complaint in the above-entitled matter, the policy of the Commission has been to retain jurisdiction over the issues alleged in the complaint pending the outcome of the arbitration proceedings. 1/ While the Examiner is satisfied that the issues raised in the grievance are substantially identical to the issues raised in the complaint filed in this proceeding, and further that the issues may be materially affected through an arbitration procedure, it is equally possible that the arbitration process will leave unanswered the issues raised in the complaint alleging the refusal to bargain as well as the issue of interference (allegations under Section 111.70(3)(a)4 and Section 111.70(3)(a)1 of the Municipal Employment Relations Act).

As to the issue of the Motion by the Complainant to amend its complaint to more clearly reflect the alleged unlawful activities on the part of the municipal employer by specifically alleging violations

1/ Milwaukee Board of School Directors and Steven A. Versata, No. 10663-A (3/72); Milwaukee Elks Lodge No. 46, No. 7753 (10/66); Milwaukee Board of School Directors, No. 11330-B (6/73).

of Section 111.70(3)(a)1 and Section 111.70(3)(a)4 of the Wisconsin Statutes, it is the undersigned Examiner's opinion that said Motion to Amend Complaint will not unduly prejudice the Respondent and will in fact assist the parties in framing the issues for possible future litigation. For this reason the Motion to Amend Complaint is hereby granted.

Dated at Madison, Wisconsin this 12th day of November, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Michael F. Rothstein
Michael F. Rothstein, Examiner