

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DRIVERS, SALESMEN, WAREHOUSEMEN,	:	
MILK PROCESSORS, CANNERY, DAIRY	:	
EMPLOYEES AND HELPERS LOCAL 695,	:	
et al.,	:	Case II
	:	No. 25313 MP-1052
Complainant,	:	Decision No. 17447-A
	:	
vs.	:	Case III
	:	No. 25314 MP-1053
WISCONSIN PROFESSIONAL POLICE	:	Decision No. 17448-A
ASSOCIATION,	:	
	:	
Respondent.	:	
	:	

ORDER DENYING MOTIONS AND
EXTENDING TIME IN WHICH TO FILE ANSWER

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local 695, et al., herein referred to as Complainant, filed a complaint of prohibited practices on November 14, 1979 against Wisconsin Professional Police Association, herein referred to as Respondent. The Commission appointed Stanley H. Michelstetter II, a member of its staff, as Examiner to make and issue findings of fact, conclusions of law and order. Thereafter, on February 4, 1980, Complainant filed amended complaints in each of the above-entitled matters to which Respondent replied on February 11, 1980 by filing a motion to dismiss on the basis of improper joinder and by filing a motion by sever the new allegations on essentially the same basis. The Examiner being satisfied that the amendments were proper;

NOW, THEREFORE, it is

ORDERED

1. That Respondent's motions to dismiss on the basis of improper joinder and motions to sever, filed February 11, 1980 in both of the above-entitled actions be, and the same hereby are, denied.

2. That the time in which to file an answer in each of the above-entitled actions be, and the same hereby is, extended until March 7, 1980.

Dated at Milwaukee, Wisconsin this 10th day of March, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTIONS AND
EXTENDING TIME IN WHICH TO FILE ANSWER

On November 14, 1979, Complainant-Teamsters and Complainant-Utecht^{1/} (a City of Oconomowoc police officer) filed complaints, one alleging that Respondent WPPA had filed a petition for election to represent non-supervisory police department employes of the City of Oconomowoc (Case II), and the other alleging that Respondent-WPPA had filed a petition for election to represent employes in the Town of Oconomowoc (Case III). They each went on to allege that the membership of WPPA includes managerial and supervisory personnel of police and sheriff's departments, that the membership of WPPA was governed by a Board of Directors which includes such personnel, and that Respondent-WPPA was causing municipal employers to commit prohibited practices, within the meaning of Section 111.70(3)(c) and (3)(a)2 of the Municipal Employment Relations Act. In each case it requested the following remedy:

1. Dismiss the representation petition filed by the Professional Police Association, or in the alternative,

2. Stay the pending representation election until Respondent has removed all supervisors and management officials from all appointive or elected posts in the organization including but not limited to the position on its Board of Directors, has removed from membership all supervisory and managerial personnel, and has renounced and refused all contributions from management and supervisory personnel.

3. Such other and further relief as the Commission may claim just and proper.

On February 4, 1980, Complainant-Teamsters filed an amended complaint in each case adding Complainant-Zimmerman^{2/} (a Waukesha County deputy sheriff) and adding to the former allegations an allegation that Respondent-WPPA was the certified representative of Waukesha County deputy sheriffs. It revised its requested remedy in each case to read:

^{1/} Named in the body, but not the caption, of the complaint filed in Case II only.

^{2/} Utecht and Zimmerman were both named in the body, but neither was named in the caption.

1. For an order directing WPPA and any program or subsidiary thereto to cease and desist from:

A. Acting as or representing itself as a labor organization;

B. Filing petitions as a labor organization pursuant to § 111.70, Wis. Stats.;

C. Acting as the exclusive bargaining representative of any non-supervisory municipal employers.

2. Such other and further relief as the Commission may find just and proper.

On February 11, 1980, Respondent-WPPA filed two motions in each of the instant two cases, one of which requested that the complaints be dismissed because of improper joinder and one of which requested that the new allegations be severed from the complaints on the basis that the issues and defenses applicable thereto are substantially different and unrelated to the issues presented in the originally filed complaints.

DISCUSSION

Wisconsin Administrative Code Section ERB 12.02(5) states:

(5) AMENDMENT.

(a) Who may amend. Any complainant may amend the complaint upon motion, prior to the hearing by the commission; during the hearing by the commission if it is conducting the hearing, or by the commission member or examiner authorized by the board to conduct the hearing; and at any time prior to the issuance of an order based thereon by the commission, or commission member or examiner authorized to issue and make findings and orders.

(b) Conformance to evidence. At the conclusion of the hearing, the complaint, on motion, may be amended as necessary to conform to the evidence as to minor and immaterial variances which might appear in the record.

Section 111.07(2)(a) of the Wisconsin Employment Peace Act states in relevant part:

(2)(a) Upon the filing with the commission by any party in interest of a complaint in writing, on a form provided by the commission, charging any person with having engaged in any specific unfair labor practice, it shall mail a copy of such complaint to all other parties in interest.

. . .

The latter requires, and the former permits, joinder of different parties with the same cause of action. I am satisfied that the addition to each complaint of the allegation with respect to Waukesha County is essentially evidentiary and does not alter the cause of action involved in these cases. In essence, it tends to support the original allegation that Respondent-WPPA has, at all relevant times, held itself out to be, and acted as, a labor organization. Because there is substantial identity of the cause of action, the addition of another person with the same cause of action at this time is proper. Further, Complainant's modification of its requested remedy is merely to ask for a more general application of the specific remedy earlier requested. Under the circumstances, the broadening of the remedy is appropriate. I have, therefore, denied Respondent's motion to dismiss. I find, as a matter of judicial economy, that the new allegation ought not be severed.

Dated at Milwaukee, Wisconsin this 10th day of March, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II, Examiner