

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

ORDER DENYING MOTION TO MAKE
MORE DEFINITE AND CERTAIN AND
RESERVING RULING ON MOTION TO DISMISS

ORDER

- WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Christopher Honeyman
Christopher Honeyman, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION TO MAKE MORE DEFINITE AND
CERTAIN AND RESERVING RULING ON MOTION TO DISMISS

Respondent's motions are timely filed. Respondent's Motion to Make More Definite and Certain seeks information as to the number of employees affected and wages and benefits lost by Respondent's alleged mis-assignment of certain work; Complainant in its reply states that it lacks the relevant information and that same is under Respondent's control. It is apparent that the fullest information as to the length of time a particular job is expected to take, and the number of employees necessary, is likely to be more readily available to the employer involved than to the Union, and the applicable wage rates and benefits are known to both, since the existence of a labor agreement is admitted. Accordingly, the undersigned finds the complaint to be adequately definite and certain.

Respondent moves that the complaint be dismissed on three grounds, two of them having to do with deferral to other forums (arbitration or, alternatively, the Impartial Jurisdictional Disputes Board of the AFL-CIO). The third ground, deferral to the National Labor Relations Board's jurisdiction, is without merit since no section of the National Labor Relations Act, as amended, makes violation of a labor agreement an unfair labor practice under that statute, and consequently there is no concurrent jurisdiction for the types of violations alleged here. With respect to Respondent's other alternative grounds for deferral, Complainant's reply indicates that there is a question of fact as to whether Complainant failed to proceed to arbitration or Respondent frustrated Complainant's attempt. These arguments are therefore appropriately addressed after the hearing.

Dated at Madison, Wisconsin this 15th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Christopher Honeyman, Examiner