

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARINETTE EDUCATION ASSOCIATION
and DENNIS KUNTZ,

Complainants,

vs.

SCHOOL DISTRICT OF MARINETTE,

Respondent.

Case XIV
No. 26302 MP-1115
Decision No. 17897-A

ORDER DENYING MOTION TO SCHEDULE DAY OF HEARING

Complainants filed a complaint with the Wisconsin Employment Relations Commission alleging that School District of Marinette, hereinafter referred to as Respondent, had committed prohibited practices within the meaning of the Municipal Employment Relations Act. The Commission appointed Dennis P. McGilligan, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Section 111.07(5) of the Wisconsin Statutes. Hearing on the complaint was held in Marinette, Wisconsin on July 24th and September 10, 1980. Hearing was held open in order that the Complainants have an opportunity to file the following motion in the matter. On November 6, 1980 the Complainants filed a Motion to Schedule Day of Hearing. On November 17, 1980 Respondent filed a statement opposing the motion. The Examiner has considered the matter as well as the entire record and the parties' written briefs and based on same issues the following

ORDER

IT IS ORDERED that the Motion to Schedule Day of Hearing is denied.

Dated at Madison, Wisconsin, this 15th day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

CS

No. 17897-A

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO SCHEDULE DAY OF HEARING

Assuming arguendo that the matter of Mr. Froehlich's hiring practices with respect to Marinette school teachers other than Mr. Kuntz is "relevant, material and important to the present dispute" as alleged by Complainants, their motion still must fail for the reasons noted below.

The record indicates that the issue of Mr. Froehlich's hiring procedures first arose during the July 24th hearing. Following the conclusion of that day of hearing, the Examiner held a conference with Complainants' attorney Priscilla MacDougall, hereinafter MacDougall, and Respondent's attorney, James Morrison, hereinafter Morrison. The parties determined that the matter could not likely be concluded that day and that an additional day (or two, if necessary) of testimony would be needed. Also at the conference MacDougall questioned Morrison whether certain employment information relative to other employees would be made available to her in preparation for the next round of hearing. Morrison told MacDougall to put any request in writing; that the District would review it and that if at all possible the information requested would be forwarded to her voluntarily-without a subpoena. Hearing was subsequently scheduled for September 10 and 11, 1980 at Marinette, Wisconsin.

By letter dated August 15, 1980 MacDougall requested certain information from the Respondent concerning Mr. Froehlich's hiring practices. Thereafter Morrison wrote to MacDougall on August 29, 1980 advising her that the information which she requested would not be provided voluntarily. MacDougall was on vacation during this period and did not reply to said letter immediately.

On or about September 9, 1980 MacDougall asked the Examiner for some subpoenas to obtain the information she requested in her aforementioned letter dated August 15th. Subsequently the information which MacDougall requested was made available to her by the Respondent after the Examiner indicated to Morrison by phone that he would issue a subpoena for same if it were not voluntarily surrendered.

MacDougall was in Marinette on September 9, 1980. As noted above the information she requested was made available to her on or about that time and she in fact reviewed the materials prior to the second day of hearing on September 10, 1980. MacDougall made no request to postpone the hearing prior to the date of hearing. During the course of the hearing on September 10th MacDougall indicated that she wanted more time to review the aforementioned information. The Examiner then explored a compromise with the parties on the matter; offered MacDougall several different alternatives with respect to her review of the contested materials and indicated a willingness to remain the next day in order to give MacDougall an opportunity to review the requested information and complete the hearing. In addition the records were available at said hearing and Morrison indicated that the Respondent would cooperate with Complainants' review of same in order to complete the hearing. MacDougall rejected said proposals. The Complainants thereafter filed the motion noted above.

It should be clear from the above that MacDougall had a reasonable amount of time and opportunity to obtain and review the requested information and prepare her case and through no fault of the Respondent or the Examiner failed to do so. Consequently, in view of all of the

foregoing, and based on the record as a whole as well as a lack of any persuasive arguments or evidence to the contrary, the Examiner, pursuant to his authority under Wisconsin Administrative Code Sections ERB 10.11, 10.13 and ERB 10.18 denies the Complainants' Motion and thereby closes the hearing.

Dated at Madison, Wisconsin, this 15th day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Dennis P. McGilligan
Dennis P. McGilligan, Examiner

CS