

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEVEN H. LAUFENBERG AND LOCAL 127--
INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS,

Complainants,

vs.

CITY OF LA CROSSE,

Respondent.

Case LIII
No. 26291 MP-1114
Decision No. 17903-A

Appearances:

Johns, Flaherty & Gillette, S.C., Attorneys at Law, Suite 616,
Exchange Building, 205 Fifth Avenue South, La Crosse,
Wisconsin, by Mr. James G. Birnbaum, appearing for the
Complainants.

Mr. Patrick J. Houlihan, City Attorney, and Mr. Daniel L. Lange,
Assistant City Attorney, City Hall, 505 North Sixth Street,
La Crosse, Wisconsin.

FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER

Steven H. Laufenberg and Local 127, International Association of Fire Fighters having, on May 30, 1980, filed a complaint with the Wisconsin Employment Relations Commission alleging that the City of La Crosse had committed prohibited practices within the meaning of Section 111.70(3)(a)(1)(3)(4) and (5), Wis. Stats.; and the Commission having appointed Christopher Honeyman, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5), Wis. Stats.; and hearing on said complaint having been held at La Crosse, Wisconsin on November 7, 1980 before the Examiner; and briefs having been filed with the Examiner by both parties by February 16, 1981; the Examiner, having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Steven Laufenberg, is a fire fighter in the employ of City of La Crosse; that Local 127, International Association of Fire Fighters, herein the Union, is a labor organization within the meaning of Section 111.70(1)(j), Wis. Stats.; and that the Union is the recognized exclusive representative of certain fire fighting personnel employed by the City of La Crosse.
2. That the City of La Crosse, herein the City, is a municipality of the State of Wisconsin and is a municipal employer within the meaning of Section 111.70(1)(a), Wis. Stats.
3. That on August 10, 1978, the Common Council of the City enacted a resolution creating a residency requirement which required that fire fighters, among other City employes, become residents of the City within six months of the date of their employment; and that prior to the adoption of said resolution the Union was aware of its consideration and, by its President, James Sciborski, appeared at a public hearing on said resolution and expressed opposition to its passage.

4. That on August 25, 1978 Complainant Laufenberg was hired as a fire fighter by the City; that during his application process he was advised that the City was in the process of changing its residency requirement; that prior to August 10, 1978 the City required that employees live within an eleven-mile radius of the City's City Hall; and that at the time of his hire by the City Laufenberg lived in the City of Onalaska, Wisconsin, within an eleven-mile radius of the City Hall of La Crosse.

5. That at the latest, by September 5, 1978 Complainant Laufenberg was made aware of the residency requirement enacted on August 10, 1978.

6. That on January 11, 1979 the Common Council of the City enacted a new resolution creating a different residency requirement, which required that employees newly hired become residents of the City of La Crosse within six months of the completion of their respective probationary periods; that in January, 1979 Complainant Laufenberg became aware of the existence of said resolution; that about February, 1979 Laufenberg was informed by City Assistant Fire Chief Kahler that the January 11, 1979 residency requirement did not apply to him but that the August 10, 1978 requirement did; and that about February, 1979 Kahler warned Laufenberg and a Union representative that unless Laufenberg obeyed said resolution he would be terminated.

7. That on May 14, 1979 Complainant Laufenberg made an offer to purchase a house located with the City of La Crosse; and that on June 29, 1979 Laufenberg took up residence within the City of La Crosse.

8. That the substantive acts and alleged unfair labor practices complained of herein are the City's enactment of residency requirements on August 10, 1978 and January 11, 1979; and that the complaint herein was filed on May 30, 1980, more than one calendar year after the last of said acts.

Upon the basis of the foregoing Findings of Fact, the Examiner makes and files the following

CONCLUSION OF LAW

That because Section 111.07(14), Wis. Stats., as it affects cases arising under Section 111.70, Wis. Stats., provides that "The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or prohibited practice alleged", Complainants' complaint is barred as out of time.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and renders the following

ORDER

That the complaint in this matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 4th day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Christopher Honeyman, Examiner

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Complaint alleges that the City violated the Municipal Employment Relations Act by unilaterally adopting two successive residency requirements without bargaining with the Union over them. The Complainants argue that the complaint should be considered timely because the sole individual allegedly affected to date, Laufenberg, did not move into the City till within one year of the date the complaint was filed. The Examiner rejects this argument: the substantive acts complained of clearly relate to the enactment of the two residency requirements. Despite evidence that there was some confusion over the meaning of these requirements, even the fact that the City intended to enforce the more stringent of the two requirements was communicated to both Complainants by February, 1979. The date argued for by the Complainants, namely June 29, 1979, is plainly not a date on which the City took any relevant act, but that of an act within Complainant Laufenberg's control - his move into the City - and therefore the operative dates, even construing any doubts favorably to the Complainants, 1/ occurred more than a year prior to the filing of the complaint. The complaint is therefore out of time, and the Examiner does not reach the merits of the case.

Dated at Madison, Wisconsin this 4th day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Christopher Honeyman, Examiner

CS

1/ This includes even an assumption, arguendo, that a complaint filed by Complainant Laufenberg alone with the Commission on April 2, 1980, which was substantially similar to the instant complaint but was not formally docketed at Complainant's request, would have been considered as the initial complaint herein, as Complainants argue.