

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

No. 18053-A
No. 18197

Case LXXXII 3/, and in the alternative, the City objected to the appointment of Mr. Greco as the Examiner therein; and the Commission, on September 10, 1980 and September 19, 1980, having advised the City of Green Bay in writing of its intent to assign both complaints to the same Examiner because they arose out of the same dispute, and having further advised the City of Green Bay that it would not rule on its objections unless and until the City of Green Bay filed an affidavit as provided in Section 227.09 (6) of the Wis. Stats.; and the Commission having, by copy of said letter dated September 10, 1980 advised Local No. 75 that it may, if it so desired, state its position with regard to said objections; and the City of Green Bay having, on October 9, 1980, filed an affidavit, pursuant to Section 227.09 (6) of the Wis. Stats.; and Local No. 75 having filed its statement of position on October 17, 1980; and on October 20, 1980 Examiner Greco having granted an affidavit setting forth matters relating to the facts alleged by the City of Green Bay in the affidavit filed by it on October 9, 1980; and the Commission having reviewed the objections of the City of Green Bay and affidavit in support thereof and the statement of position filed by Local No. 75 and the affidavit of Examiner Greco; and being fully advised in the premises and being satisfied that said objections be denied.

NOW, THEREFORE, it is

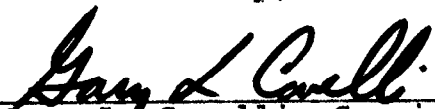
ORDERED

That the objection of the City of Green Bay to further proceedings in Case LXXXII and its objection to the appointment of Amedeo Greco as Examiner in either of these proceedings, or both of them, be, and the same hereby are, denied.

Given under our hands and seal in the
City of Madison, Wisconsin this 29th
day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Gary L. Covelli, Commissioner

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- 3/ The caption of the notice in question reflected that the City of Green Bay was the complaining party and that Local No. 75 was the responding party and in the body made reference to "this case". The Commission assumes that said reference, like the reference to "arbitration" contained in the notice, was in error and that the City intended to object to the Commission's proceeding in Case LXXXII.

MEMORANDUM ACCOMPANYING ORDER DENYING OBJECTION TO
PROCEEDINGS AND OBJECTION TO APPOINTMENT OF EXAMINER

The City of Green Bay, hereinafter referred to as the City, objects to the Commission proceeding in the matter of the complaint of prohibited practices filed by Drivers, Warehouse and Dairy Employees Union, Local No. 75, hereinafter referred to as Local 75 (Case LXXXIV, No. 26784, MP-1151). Case LXXXII has been assigned to Examiner Greco and Case LXXXIV, which arises out of the same subject matter, will be assigned to the same Examiner for purposes of conducting a consolidated hearing. The City advances no reason why we should refuse to proceed on the complaint in Case LXXXII, other than the fact that it has filed a complaint in Case LXXXIV alleging that the Union is committing prohibited practices by pursuing its complaint in Case LXXXII. Both complaints require that the Commission conduct a hearing and render a decision under Section 111.07, Wis. Stats., and we intend to do so, unless they are withdrawn.

The City in the alternative objects to the appointment of Examiner Greco in either case on essentially two grounds:

(1) In a prohibited practice proceeding filed against the City by a different labor organization 4/ which was decided by Examiner Greco on Friday, December 20, 1974, the City did not receive a copy of the decision, which was adverse to its position, until Monday, December 23, 1974. In the meantime the Union had received a copy on Saturday, December 21, 1974 and the City representatives were faced with inquiries from the media, which they were unable to answer. This apparently caused considerable concern and frustration to certain City officials, notably the then Mayor of Green Bay and the City's Labor Negotiator, Donald Vander Kelen.

(2) On Saturday, December 21, 1974, after receiving such inquiries from the press, Mr. Vander Kelen, on the same date, initiated a phone conversation with Examiner Greco, at the latter's home, wherein he inquired about the content of his decision. After providing Vander Kelen with some information concerning the content of the decision Examiner Greco refused to discuss the decision further and ultimately hung up on Vander Kelen.

Based on our review of the affidavits filed by Vander Kelen and Examiner Greco, and the file of the case in question, we are satisfied that there is no evidence of a personal bias or any other disqualifying factor such as to require the appointment of a different Examiner in these cases. The file confirms that copies of the decision were sent on the same date, by certified mail, return receipt requested, to Richard Greenwood, City Attorney, who appeared on behalf of the Respondent City, to its City Clerk, to Edward Durkin, Vice President, International Association of Fire Fighters, who appeared on behalf of the Complainant, and to complainant, Green Bay Fire Fighters Local 141. No copies were mailed to any of the news media. The return receipts from the U.S. Post Office reflect that Durkin and Local 141 both received their mail on Saturday, December 21, 1974 and that City Attorney Greenwood and the City Clerk received their copies on Monday, December 23, 1974.

While it is unfortunate that the City representatives did not receive their copy of the decision on the same day that the Union representatives received their copy there was nothing irregular or

4/ City of Green Bay, Case XLIII, No. 17550, MP-317.

improper in the way Examiner Greco served copies of the decision on the parties. The procedure in mailing copies to all parties on the same date conformed in every respect to the Commission's practices in this regard.

It would certainly have been preferable, if Vander Kelen had not called the Commission's Examiner concerning any aspect of his decision. This is so because the Examiner still had jurisdiction, under section 111.07(5) Wis. Stats., to set aside, reverse or modify his own decision. Any conversation concerning the content of the decision could easily result in an improper discussion of the merits of the case. However it is understandable that Vander Kelen, who had substantial responsibilities for the City's labor relations, had a concern that the media became aware of the decision before he did. Apparently the Union must have notified the media shortly after it received its copy of the decision. The Commission does not doubt the claim that the Mayor and Vander Kelen felt strongly about the need to reply to the media on Saturday.

In our view Examiner Greco acted properly in describing the content of the decision to Vander Kelen and in refusing to be drawn into a discussion of the merits. While it is unfortunate that the conversation apparently became heated and Examiner Greco deemed it appropriate to terminate the conversation by hanging up on Vander Kelen, we cannot fault the Examiner under these circumstances because of the ex parte nature of the conversation.

Finally, we find no reason to suppose that Examiner Greco cannot function in an impartial manner in a case involving the City of Green Bay merely because he had the above described phone conversation with one of its representatives six years ago. The vague claim set out in the City's affidavit to the effect that at some meeting in the summer of 1979 Examiner Greco "made certain by his appearance and comments that he resented the statement of true facts" sent to the Commission and Examiner Greco is disputed by Greco. The "statement of true facts" referred to therein apparently refers to a letter sent to the Commission by Vander Kelen shortly after the phone conversation in question. Since the Commission did not at that time, any more than it does now, deem Examiner Greco's actions to be improper, said letter has had no adverse impact on Examiner Greco's duties with the Commission. Frankly the Commission has considered such letter to be among those which it receives from time to time indicating that the writer had a genuinely felt, but unjustified complaint, concerning the handling of a proceeding before the Commission. Such reactions are endemic to labor disputes and it has been the Commission's experience that they normally dissipate over time.

For the above and foregoing reasons, the Commission has denied the City's objection to further proceedings and its objection to the appointment of Examiner Greco. Since Greco has already been appointed Examiner in Case LXXXII we are today issuing an order appointing him Examiner in Case LXXXIV with instructions to schedule the matters for a consolidated hearing and decision.

Dated at Madison, Wisconsin this 29th day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Gary L. Covelli, Commissioner