

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE COUNTY FIREFIGHTERS
ASSOCIATION,

Complainant,

vs.

MILWAUKEE COUNTY,

Respondent.

Case CXLVII
No. 26976 MP-1166
Decision No. 18216-A

ORDER DENYING REQUEST FOR
INTERLOCUTORY ORDER

The above named Complainant having filed a complaint with the Wisconsin Employment Relations Commission alleging that the above named Respondent had committed and was committing certain prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Peter G. Davis, a member of its staff, as Examiner in said matter; and hearing having been held before the Examiner in Milwaukee, Wisconsin on December 8, 1980; and at the conclusion of said hearing Complainant having made a request for interlocutory relief; and Respondent having opposed said request; and the Examiner having considered the matter and concluded that the request for interlocutory relief should be denied;

NOW, THEREFORE, it is

ORDERED

That the request for interlocutory relief be, and the same hereby is, denied.

Dated at Madison, Wisconsin this 17th day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING
REQUEST FOR INTERLOCUTORY ORDER

During hearing on the instant complaint, Complainant alleged that Respondent was improperly refusing to bargain over Respondent's decision to subcontract certain fire protection services currently provided by Respondent's employees. Complainant further asserted that the subcontracting was going to take place on or about January 1, 1981. Given the foregoing, the Complainant has asked the Examiner for an interlocutory order directing Respondent to maintain the present fire protection services until Respondent meets its duty to bargain. Respondent opposes said request.

Sec. 111.07(4), Stats., which is made applicable to the instant dispute by Sec. 111.70(4)(a), Stats., provides that:

"Pending the final determination by it of any controversy before it the commission may after hearing, make interlocutory findings and orders which may be enforced in the same manner as final orders." (emphasis added)


Wis. Admin. Code, Chapter ERB 12.07 states that:

"The commission may after the close of hearing and pending the final determination by it of any controversy, make and issue interlocutory findings of fact, conclusions of law and order, when it deems that such will effectuate the policies of section 111.70, Wis. Stats., which may be enforced in the same manner as final orders." (emphasis added)

Given the foregoing references to the commission as opposed to an Examiner appointed by it, there would appear to be real doubt as to whether the undersigned examiner has authority to grant interlocutory relief. Even assuming arguendo that such authority exists, the undersigned is not persuaded that such relief is warranted in the instant matter if for no other reason than that adequate remedies exist should Complainant ultimately prevail. Therefore Complainant's request has been denied.

Dated at Madison, Wisconsin this 17th day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Peter G. Davis, Examiner