

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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THOMAS R. VILMIN,		:
	Complainant,	:
vs.		:
TRANSPORTATION SERVICE OF		:
WATERTOWN,		:
	Respondent.	:
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Case I
No. 29405 Ce-1944
Decision No. 19535-A

ORDER DENYING MOTION TO DISMISS

Thomas R. Vilmin, an individual, having on March 4, 1982 filed a complaint with the Wisconsin Employment Relations Commission, which alleged that Transportation Service of Watertown had committed unfair labor practices within the meaning of Section 111.07, Wis. Stats., by discharging the Complainant and by other conduct; and the Commission having appointed the undersigned as Examiner in this matter; and Respondent having filed a Motion to Dismiss; and Complainant having replied to said Motion; and the Examiner being fully advised in the premises;

NOW, THEREFORE, it is

ORDERED

That Respondent's Motion to Dismiss the complaint in this proceeding be, and the same hereby is, denied.

Dated at Madison, Wisconsin this 17th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Christopher Honeyman, Examiner

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DISMISS

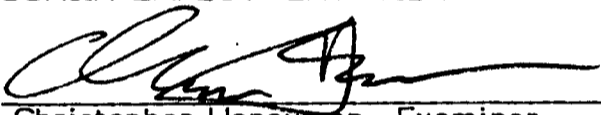
Respondent's Motion to Dismiss argues in essence that a similar case is pending before the National Labor Relations Board, involving the same parties and the same issues, and that the Wisconsin Employment Relations Commission therefore does not have jurisdiction to determine this matter.

The record reveals that the General Counsel of the NLRB has filed a complaint similar to the complaint herein, which asserts that Respondent is engaged in commerce within the meaning of the National Labor Relations Act and consequently that the NLRB has jurisdiction in the matter. Respondent's Answer in that case, however, denies that the NLRB has jurisdiction, and the matter has yet to be heard by the NLRB's administrative law judge.

In view of the probability that the NLRB could not rule on the question of jurisdiction until after the one-year statute of limitations for filing a complaint with the WERC had run, it is clearly inappropriate to dismiss this matter at this time. As the NLRB generally has primary authority under the National Labor Relations Act, as amended, to determine jurisdictional questions, it would be equally inappropriate for the undersigned to proceed to hearing on the jurisdictional question and the merits of this case. Accordingly, the undersigned will hold this matter in abeyance pending ruling by the NLRB as to jurisdiction over the Respondent.

Dated at Madison, Wisconsin this 17th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Christopher Honeyman, Examiner