

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Appearances:

Mr. Thomas R. Vilmin, 1153 Boughton Street, 10G, Watertown, Wisconsin 53094,
 appearing pro se.
 Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at Law, by Ms.
 Kristin Bergstrom, 700 North Water Street, Milwaukee, Wisconsin 53202,
 appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND
ORDER GRANTING MOTION TO DISMISS

Thomas R. Vilmin, an individual, having on March 4, 1982, filed a complaint with the Wisconsin Employment Relations Commission, alleging that Transportation Service of Watertown had committed unfair labor practices within the meaning of Sec. 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, on April 19, 1982, filed a motion to dismiss the complaint on the basis that a similar case was pending before the National Labor Relations Board involving the same parties and the same issues; and Respondent's answer in the National Labor Relations Board proceeding having denied that the NLRB had jurisdiction over the Employer; and the undersigned Examiner having, accordingly, denied Respondent's motion to dismiss on May 17, 1982; and this proceeding having been held in abeyance since that time pending ruling by the National Labor Relations Board as to whether it asserts jurisdiction over the Employer or not; and Respondent having, on March 13, 1984, renewed its motion to dismiss on the basis that it has abandoned its defense of lack of jurisdiction before the National Labor Relations Board and that the NLRB has asserted jurisdiction in the parallel unfair labor practice case; and Respondent having, on the same date, filed with the Examiner a copy of its amended answer in the proceeding before the National Labor Relations Board and other documents showing that said jurisdictional claim has been abandoned; and the Examiner having, on March 16, 1984, given Complainant 14 days to show cause in writing why the complaint should not be dismissed because of lack of jurisdiction; and no cause having been shown by the Complainant why the complaint should be maintained; the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order Granting Motion to Dismiss.

FINDINGS OF FACT

1. Complainant Thomas R. Vilmin is an individual whose address is 1153 Boughton Avenue, 10G, Watertown, Wisconsin 53094, and was employed from approximately January, 1981 until about September 11, 1981, by Transportation Service of Watertown.

2. Transportation Service of Watertown is an employer within the meaning of Sec. 111.02(2), Wis. Stats., and maintains its principal office at 211 Hiawatha Street, Watertown, Wisconsin 53094.

3. On or about January 12, 1982, Complainant filed at the office of Region 30, National Labor Relations Board a charge against the Respondent to the effect that Respondent had violated Secs. 8(a)(1) and (3) of the National Labor Relations Act by discharging him from his position as a driver. On February 25, 1982 the Regional Director of Region 30, National Labor Relations Board issued a formal

complaint against Respondent alleging that Respondent had violated sections of the National Labor Relations Act by its discharge of Complainant and by other conduct. Respondent answered inter alia that the National Labor Relations Board did not have jurisdiction over its business. On March 4, 1982, Complainant filed with the Wisconsin Employment Relations Commission a complaint alleging substantively the same conduct to be unlawful under Sec. 111.07, Wis. Stats. as was already alleged to be unlawful under the National Labor Relations Act.

4. On or about October 21, 1982, Respondent filed with the National Labor Relations Board's Administrative Law Judge an amended answer to the NLRB complaint, in which it abandoned its defense of lack of jurisdiction and agreed that it was an employer engaged in commerce within the meaning of the National Labor Relations Act. On July 5, 1983 the National Labor Relations Board's Administrative Law Judge, Richard L. Denison, issued his decision in the NLRB proceeding, finding that Respondent was an employer within the meaning of the National Labor Relations Act.

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

CONCLUSION OF LAW

That because the National Labor Relations Board has asserted jurisdiction over the Employer herein, and the Employer does not continue to assert that the NLRB lacks jurisdiction over its business, the Commission is without jurisdiction to determine the merits of the complaint.

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

ORDER GRANTING MOTION TO DISMISS

IT IS ORDERED that the Motion filed by Respondent that the complaint in this matter be dismissed is hereby granted, and the complaint is hereby dismissed. 1/

Dated at Madison, Wisconsin this 16th day of April, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Christopher Honeyman, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or

(Footnote 1 continued on Page 3)

(Footnote 1 continued)

modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

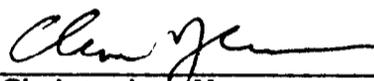
MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER GRANTING MOTION TO DISMISS

In the Memorandum Accompanying the Order to Show Cause which I issued on March 16, 1984 2/ I listed the documents which Respondent had filed together with its renewed motion to dismiss this proceeding. Among those were a letter from Respondent's attorney to the Regional office of the NLRB stating that Respondent was withdrawing its defense of lack of jurisdiction before the NLRB; the amended answer in the NLRB unfair labor practice proceeding admitting that the NLRB had jurisdiction; and a section of the transcript of the NLRB hearing, showing that the amendment was confirmed on the record. Respondent also filed a copy of the Administrative Law Judge's decision finding that the NLRB had jurisdiction over the Employer.

Complainant was given 14 days to show cause why the complaint should not be dismissed, in the order referred to above. Complainant did not respond to the order, 3/ and I therefore take administrative notice of the documents cited above and find that the NLRB has asserted jurisdiction over this Employer. The Commission does not exercise jurisdiction over employers where the NLRB asserts jurisdiction 4/, and the complaint is therefore dismissed.

Dated at Madison, Wisconsin this 16th day of April, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Christopher Honeyman, Examiner

2/ Decision No. 19535-B.

3/ I have received a return of service of this order showing that it was signed for on March 23, 1984 by Glenna Vilmin.

4/ Wigwam Mills, Inc., 12838-A,B, (11/74); Em Cee Trucking Limited, 14094-C,D, (12/76).