#### STATE OF WISCONSIN

#### BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DODGE COUNTY FEDERATION OF TEACHERS, LOCAL 5024, AFT,

AFL-CIO,

Complainant,

Joinplainant,

:

Case LXX No. 29703 MP-1332 Decision No. 19642

DODGE COUNTY (COMMUNITY HEALTH NURSING AGENCY)

VS.

Respondent.

## ORDER DENYING MOTION TO DISMISS AND ORDER DEFERRING FURTHER PROCEEDINGS

The above-named Complainant having on May 11, 1982 filed an amended complaint with the Wisconsin Employment Relations Commission alleging that Dodge County, hereinafter the Respondent, has committed prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Dennis P. McGilligan, Examiner, to make and issue Findings of Fact, Conclusions of Law and Order; and Respondent on May 17, 1982, having filed a Motion to Dismiss; and Complainant on May 19, 1982, having filed a Motion to Dismiss Respondent's Motion to Dismiss; and Complainant on May 24, 1982 having filed an Affadavit in support of its aforesaid Motion to Dismiss; and the Examiner being advised in the premises makes and issues the following

### **ORDER**

- 1. That Respondent's Motion to Dismiss be, and the same hereby is, denied.
- 2. That Respondent provide the Examiner with a copy of any appeal, notice, decision, settlement, agreement or arbitration award issued or entered into in connection with the three grievances dated May 7, 1982 pertaining to Judith Mueller now pending under the grievance procedure as contained in the expired collective bargaining agreement between the Complainant and the Respondent.
- 3. That the allegations of the Complainant in this proceeding that the Respondent violated Sections 111.70(3)(a) 1, 3 and 5 of MERA, be and the same hereby are, deferred and held in abeyance without any determination until the undersigned Examiner has the opportunity to review the final resolution of the aforesaid grievances in order to determine whether the allegations of the Complaint should be dismissed or a determination made on the merits thereof.

Dated at Madison, Wisconsin this 3rd day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

# MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS AND DEFERRING FURTHER PROCEEDINGS

Complainant filed a complaint on May 5, 1982 and an amended complaint on May 11, 1982, both with the Wisconsin Employment Relations Commission. In said amended complaint, Complainant alleged that the Respondent has engaged in violations of MERA by unilaterally extending Judith Mueller's probationary period for an additional three months; by threatening Mueller at a grievance meeting on or about April 26, 1982; by suspending Mueller on or about April 28, 1982; and by discharging Mueller on or about May 4, 1982.

Prior to filing the amended complaint with the Wisconsin Employment Relations Commission, the Dodge County Federation of Teachers, Local 5024, AFT, AFL-CIO (Complainant) instituted three grievances dealing with the above matters. Those grievances are presently pending at various steps of the grievance procedure as noted above.

On May 17, 1982 the Respondent filed a Motion to Dismiss based upon the fact that the matters alleged in the complaint were, in fact, substantially congruent with the issues raised in the aforesaid grievances. Respondent further maintained that these were matters which Complainant ultimately may submit to arbitration. Since allegations of the complaint raise issues which may come before an arbitrator for a decision, there is a potential for a duplication of effort, the resolution of which may obviate the need for proceeding in this forum. Thus, the interest of the parties both in judicial economy and in fostering the use of their voluntarily established dispute mechanism would be best served by deferral. The Examiner will, however, retain jurisdiction over the interference, discrimination and contract violation allegations pending issuance of the Arbitrator's Award.

While the Respondent's motion requests the Examiner to dismiss the complaint in the above-entitled matter, the policy of the Commission has been to retain jurisdiction over the issues alleged in the complaint pending the outcome of the arbitration proceedings. 1/ While the Examiner is satisfied that the issues raised in the grievances are substantially identical to the issues raised in the amended complaint filed in this proceeding, and further that the issues may be materially affected through the grievance/arbitration procedure, it is equally possible that said process will leave unanswered the issues raised in the complaint alleging the aforesaid violations of MERA. 2/

Dated at Madison, Wisconsin this 3rd day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan, Examiner

<sup>1/</sup> Milwaukee Board of School Directors and Steven A. Versata, No. 10663-A (3/72); Milwaukee Elks Lodge No. 46, No. 7753 (10/66); Milwaukee Board of School Directors, No. 11330-B (6/73), City of Madison, No. 17299-A (11/79).

This would be especially true if the parties do not voluntarily resolve the matters in dispute or if an Arbitrator does not issue a decision on the merits of the aforesaid grievances.