

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

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

By


Dennis P. McGilligan, Examiner

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- 1/ 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).
 - 2/ 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.