

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TYPOGRAPHICAL
UNION NO. 23,

Complainant,

vs.

STRAUSS PRINTING COMPANY,
INC.,

Respondent.

Case IV
No. 30555 Ce-1958
Decision No. 20115-A

ORDER GRANTING MOTION TO DISMISS

Milwaukee Typographical Union No. 23, hereinafter referred to as Complainant, having on October 26, 1982 filed an unfair labor practice complaint with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it was alleged that Strauss Printing Company, Inc. had committed unfair labor practices contrary to the provision of Section 111.06, Wisconsin Employment Peace Act (WEPA) by failing to bargain in good faith with Complainant; and the Commission having appointed Stephen Schoenfeld, a member of the Commission's staff, to act as Examiner in the matter to make and issue Findings of Fact, Conclusions of Law and Order; and on November 8, 1982, Respondent, by counsel, having filed a motion to dismiss the subject complaint; and the Examiner having requested the Complainant to respond to said motion no later than December 9, 1982; and the Examiner being fully advised in the premises and being satisfied that Respondent's motion should be granted;

NOW THEREFORE, it is

ORDERED

That the Respondent's motion is granted and that the Complaint in this matter is dismissed. 1/

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

By Stephen Schoenfeld
Stephen Schoenfeld, 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 (Continued on page two)

1/ (Continued)

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 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 ORDER
GRANTING MOTION TO DISMISS

Respondent moved to dismiss the complaint on the grounds that: (1) the Commission is without jurisdiction to hear the complaint because Respondent is an employer engaged in commerce or in an industry affecting commerce and therefore any claims of unfair labor practices must be adjudicated by the National Labor Relations Board; and (2) the claim that Respondent has failed to bargain in good faith with Complainant has already been adjudicated by the National Labor Relations Board, adversely to Complainant. Complainant's counsel, in his reply to Respondent's brief, recognizes that Strauss Printing Co., Inc., is an employer within the meaning of the National Labor Relations Act and admits that "inasmuch as the NLRB has preemptive jurisdiction over the issue of Strauss Printing Company's obligation to recognize and bargain with Milwaukee Typographical Union No. 25, such an issue cannot be addressed by the WERC."

The charges and issues embodied in the complaint filed before the Commission were also filed before the National Labor Relations Board. Complainant's counsel, in his October 4, 1982 letter to the Commission, indicates, inter alia, that:

As a result of the termination of the Strauss composing room and the immediate start up of Earl Fossen House of Type, Inc. at the Strauss location and with Strauss' type-setting equipment, the Union filed an unfair labor practice charge with the National Labor Relations Board. In sum and substance, that charge raised the following issues:

- 1) The responsibility of Strauss and Fossen House of Type to furnish the Union with information concerning the continued exchange of work between the two operations.
- 2) The question of whether or not Strauss Printing had engaged in good faith bargaining.
- 3) Whether Earl Fossen House of Type was a "successor" employer within the meaning of the National Labor Relations Act so as to require continued union recognition. It was also the Union's position that Fossen House of Type selected from the bargaining unit at Strauss Printing Company known anti-unionists in disregard of the "priority" (seniority) of members of the bargaining unit in the continuing composing room operations.

The Regional Director of the NLRB did not find probable cause in the Union's charges and the Union appealed to the Advice Section of the General Counsel of the National Labor Relations Board. On September 29, 1982, we received the General Counsel's decision denying our appeal.

It has long been held that where an act may constitute a violation of both the NLRA and WEPA and if the National Labor Relations Board has jurisdiction, then the jurisdiction of the Commission is pre-empted. In San Diego Building Trades Council v. Garmon, 359 U.S. 236 43 LRRM 2838 (1959), the U.S. Supreme Court held that:

When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by (section) 7 of the National Labor Relations Act, or constitute an unfair labor practice under (section) 8, due regard for the federal enactment requires that state jurisdiction must yield.

. . . (And) (w)hen an activity is arguably subject to (section) 7 or (section) 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of State interference with national policy is to be averted.

Furthermore, inasmuch as George Squillacote, Regional Director for the 30th Region of the NLRB indicated in his July 23, 1982 letter to the parties that the matter had been dutifully investigated and a determination had been made that cause did not exist to issue a complaint in the matter, and because the Acting Director, Office of Appeals of the NLRB General Counsel affirmed the Regional Director's dismissal of the complaint against Strauss Printing Co., Inc., it is clear that the NLRB reviewed the matter and having assumed jurisdiction, it is proper to deny extension of this agency's jurisdiction.

If Complainant is seeking to obtain evidence that Strauss Printing Co., Inc., may possess for use in its action against Earl Fossen House of Type, Inc., there are appropriate avenues available to Complainant to obtain such information.

For the reasons set out above the Respondent's Motion to Dismiss is granted.

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

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner