

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENNETH A. KRAUCUNAS,

Complainant,

vs.

LOCAL 950, INTERNATIONAL
UNION OF OPERATING ENGINEERS,

Respondent.

Case I
No. 32213 Cw-358
Decision No. 21050-D

Appearances:

Mr. Kenneth A. Kraucunas, 831 W. Wisconsin Avenue, #41, Milwaukee,
Wisconsin 53233, appearing on his own behalf.

Mr. Alfred Rozran, Attorney at Law, 710 North Plankinton Avenue, Milwaukee,
Wisconsin 53203, appearing for Respondent Union.

Mr. Stuart S. Mukamal, Assistant City Attorney, City of Milwaukee, Room 800
City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202, appearing
on behalf of the Milwaukee Board of School Directors.

ORDER DENYING REQUEST TO POSTPONE HEARING

The Wisconsin Employment Relations Commission having, on July 13, 1984, issued an Order Setting Aside Examiner's Findings of Fact, Conclusions of Law and Order and Remanding Complaint For Further Examiner Processing and having substituted the undersigned as Examiner in the matter; and the Examiner having, on August 3, 1984, scheduled a hearing for September 20, 1984 for the purposes of developing an evidentiary record concerning pre-complaint correspondence from complainant to the Commission dated August 4 and August 12, 1983, and from the Commission to complainant dated September 12, 1983, and any rebuttal evidence and arguments the Union or Milwaukee Board of School Directors (herein MBSD) may have as regards whether said correspondence constitutes a basis for granting complainant an opportunity to amend his complaint to name MBSD as a respondent and to allege that MBSD's March 1982 discharge of complainant violated Sec. 111.70(3) (a)5, Stats., and for treating such amended complaint as timely filed claims against both the Union and MBSD; and the MBSD having filed a Petition for Review of the Commission's Order of July 13, 1984 and having, by a letter dated August 24, 1984, requested that the hearing scheduled for September 20, 1984 be postponed pending resolution of the Petition for Review; and the Examiner being advised in the premises makes and issues the following

ORDER

That the Milwaukee Board of School Directors' request to postpone hearing be, and the same hereby is, denied.

Dated at Madison, Wisconsin this 24th day of August, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

MEMORANDUM ACCOMPANYING
ORDER DENYING REQUEST TO POSTPONE HEARING

The basis for the MBSD's request for a postponement of the September 20, 1984 hearing is its filing of a Petition for Review of the Commission's Order of July 13, 1984. The Petition for Review does not provide a basis for postponement of the hearing as the MBSD has not yet been included as a party under the complaint. The purpose of the hearing is to give the MBSD and the Union the opportunity to submit rebuttal evidence and arguments as to whether the pre-complaint correspondence between the complainant and the Commission constitutes a basis for granting the complainant the opportunity to amend his complaint to include the MBSD as a respondent. The Commission's Order states:

"5. That unless the Union and/or MBSD present significant rebuttal evidence, said correspondence, in the interest of justice, shall constitute a basis for the examiner to immediately grant Complainant an opportunity to amend his complaint to name MBSD as a respondent and to allege that MBSD's March 1982 discharge of Complainant violated Sec. 111.70(3)(a)5, Stats., and for the examiner to treat such amended complaint as timely filed as to claims that the MBSD's discharge of Complainant violated Sec. 111.70(3)(a)5 and that the Union's processing of Complainant's grievance challenging that discharge involved violations of the Union's Sec. 111.70(3)(b)1 duty of fair representation."

Presumably, if significant rebuttal evidence is presented, then no opportunity to amend the complaint would be granted, and consequently, the MBSD would not be made a party to the complaint. It is in the interest of all parties hereto to have this preliminary procedural issue promptly determined. If after the hearing, the complainant is not granted the opportunity to amend the complaint, it would appear that the Petition for Review would be unnecessary. If the complainant is granted the opportunity to amend the complaint, MBSD would then be subject to the Commission's jurisdiction which is challenged by MBSD's Petition for Review. Therefore, the Examiner concludes that the hearing should proceed as scheduled and hence has denied the request to postpone the hearing scheduled for September 20, 1984.

Dated at Madison, Wisconsin this 24th day of August, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner