

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SAUK COUNTY HEALTH CARE CENTER :  
EMPLOYEES, LOCAL 3148, and :  
SAUK COUNTY HIGHWAY DEPARTMENT :  
EMPLOYEES, LOCAL 360, WISCONSIN :  
COUNCIL 40, AFSCME, AFL-CIO, :

Complainant, :

vs. :

SAUK COUNTY, :

Respondent. :  
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Case LIII  
No. 31538 MP-1472  
Decision No. 21128-A

ORDER DENYING MOTION TO REOPEN EVIDENTIARY HEARING  
FOR RECEIPT OF NEWLY DISCOVERED EVIDENCE

Locals 3148 and 360, Wisconsin Council 40, AFSCME, AFL-CIO (the Complainant), filed a Complaint with the Wisconsin Employment Relations Commission on May 5, 1983, in which the Complainant alleged that Sauk County (the County) had committed certain prohibited practices within the meaning of Section 111.70(3)(a)1, 2, and 5, Wis. Stats., by discontinuing the withholding of union dues and fair share contributions from the employees composing the two bargaining units represented by the Complainant during a period of time subsequent to the expiration of the collective bargaining agreements covering those employees. The Complainant, on December 1, 1983, made a Motion to Amend the Complaint to allege that the County had committed prohibited practices within the meaning of Section 111.70(3)(a)5 and 7, Wis. Stats., by refusing to withhold union dues and fair share contributions from Highway Department employees composing the bargaining unit represented by Local 360 retroactively upon the County's ratification of an Arbitrator's Award in the mediation-arbitration case involving the bargaining unit represented by Local 360. A hearing in the matter was conducted on December 13, 1983, in which the amendment of the Complaint regarding the County's alleged violation of 111.70(3)(a)7 was allowed, while the County's alleged violation of 111.70(3)(a)5 was deferred to the contractual grievance procedure. On February 1, 1984, before the submission of written argument regarding the Complaint and the Amended Complaint, the Complainant made a Motion to Reopen Evidentiary Hearing for Receipt of Newly Discovered Evidence. Memoranda in support of, and in opposition to, this motion were received by the Examiner by February 22, 1984. Having considered the arguments of the parties and the issues raised by the Complainant's Motion, the Examiner issues the following

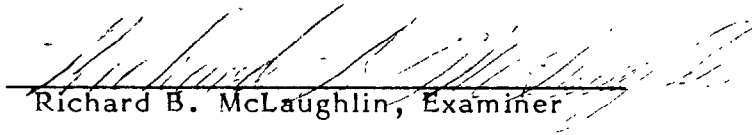
ORDER

The Motion to Reopen Evidentiary Hearing for Receipt of Newly Discovered Evidence is denied.

Dated at Madison, Wisconsin this 12th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Richard B. McLaughlin, Examiner

MEMORANDUM ACCOMPANYING  
ORDER DENYING MOTION TO REOPEN EVIDENTIARY HEARING  
FOR RECEIPT OF NEWLY DISCOVERED EVIDENCE

THE PARTIES' POSITIONS:

The parties each argue that the standard appropriate to a ruling on the Complainant's Motion was set forth in School District of Marinette, which requires the moving party to show:

- (a) That the evidence is newly discovered after the hearing,
- (b) that there was no negligence in seeking to discover such evidence,
- (c) that the newly discovered evidence is material to that issue,
- (d) that the newly discovered evidence is not cumulative,
- (e) that it is reasonably possible that the newly discovered evidence will affect the disposition of the proceeding and
- (f) that the newly discovered evidence is not being introduced solely for the purpose of impeaching witnesses. 1/

The Complainant notes that the evidence it seeks to introduce into the record is a mediation-arbitration decision, dated January 18, 1984, covering the County Health Care Center employees composing the bargaining unit represented by Local 3148, and notes that ". . . a companion Interest Arbitration Award was received and admitted without (sic) objection. . ." at the December 13, 1983 hearing. The Complainant concludes from this that all six criteria set forth in the Marinette case have been met by the Complainant in the present matter.

The County argues that the Complainant has not met the Marinette criteria because the Award it seeks to introduce into the record cannot be considered material to the present case, offers, at best, cumulative evidence, and could not possibly affect the outcome of the present proceeding.

DISCUSSION:

The parties agree on the standard appropriate to the resolution of the Complainant's Motion, but disagree on the application of that standard. An examination of the parties' arguments demonstrates that the dispute in this case turns on whether or not the mediation-arbitration award covering Health Care Center employees is relevant to the present proceeding. Resolution of this issue demands an examination of the pleadings in this case.

The Complaint filed on May 5, 1983 concerns certain County Health Care Center and Highway Department employees represented by Locals 3148 and 360. That document places at issue certain County acts regarding dues deduction and fair share contributions regarding both bargaining units during the "hiatus" following the expiration of the collective bargaining agreements covering each bargaining unit. The question of the County's compliance with a mediation-arbitration award was not raised until Complainant's Amendment of this Complaint. That Amendment concerns a mediation-arbitration award covering County Highway Department employees composing the bargaining unit represented by Local 360. Nothing in the Complaint or the Amended Complaint places a mediation-arbitration award covering County Health Care Center employees composing the bargaining unit represented by Local 3148 at issue.

Against this background, the mediation-arbitration award covering the County Health Care Center employees represented by Local 3148 cannot be considered relevant since the sole issues posed by the pleadings concern the County's compliance with a mediation-arbitration award covering County Highway Department employees represented by Local 360. That the mediation-arbitration award covering Highway Department employees was allowed into the record at the December 13, 1983 hearing was dictated by the fact that the Amended Complaint, as pleaded, placed

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1/ School District of Marinette, 19542-A (5/83) at 2.

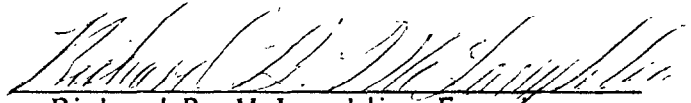
the County's compliance with that award squarely in issue for hearing. The present motion does not seek to amend the pleadings, but the Complainant does argue that "Clearly the Interest Arbitration Award is material in determining whether or not its terms and conditions were violated." This argument ignores the fact that the County's compliance with a mediation-arbitration award covering Health Care Center employees represented by Local 3148 was not, and has not been, pleaded by the Complainant.

Because the mediation-arbitration award covering County Health Care Center employees composing the bargaining unit represented by Local 3148 is not relevant to the issues posed by the Complaint and the Amended Complaint, the Marinette standards have not been met and the Complainant's Motion to Reopen Evidentiary Hearing for Receipt of Newly Discovered Evidence must be denied.

Dated at Madison, Wisconsin this 12th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY

  
Richard B. McLaughlin, Examiner