

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME,
AFL-CIO,

Complainant,

vs.

GRANT COUNTY,

Respondent.

Case 16
No. 33934 MP-1633
Decision No. 22146-A

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, on behalf of the Complainant.

Melli, Walker, Pease and Ruhly, S.C., Attorneys at Law, by Mr. Jack D. Walker, Suite 600, Insurance Building, 119 Monona Avenue, P. O. Box 1664, Madison, Wisconsin 53701, on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER

AMEDEO GRECO, Hearing Examiner: Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, herein the Union, filed a complaint with the Wisconsin Employment Relations Commission which was dated and received in the Commission's offices in October 11, 1984. It alleged that Grant County, herein, the County, had committed prohibited practices within the meaning of Secs. 111.70 of the Municipal Employment Relations Act, herein MERA, by unilaterally discontinuing wage increases given to certain employees at the end of their probationary period. The Commission on October 15, 1984 mailed said complaint to the County's County Clerk and it subsequently appointed the undersigned to make and issue Findings of Fact, Conclusion of Law and Order, as provided for in Sec. 111.07(5), Stats. Hearing was subsequently held in Lancaster, Wisconsin on December 19, 1984 and the parties thereafter filed briefs which were received by March 18, 1985.

Having considered the arguments and the record, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, is a labor organization which represents certain regular full-time and regular part-time professional employees employed by the County. It maintains its principal offices and places of business at 5 Odana Court, Madison, Wisconsin 53719.

2. Grant County is a municipal employer which maintains its principal offices at the Grant County Courthouse, Lancaster, Wisconsin. At all times material herein, Mary Wirth has acted as the County's agent by serving both as the Chair of the County's Board of Supervisors and the County's Personnel Director.

3. The Union filed a representation petition with the Commission on April 6, 1983, wherein it asked the Commission to conduct a representation election among certain of the County's professional employees. The Commission subsequently conducted said election on November 16, 1983, which the Union won. On November 29, 1983, it certified the Union as the exclusive bargaining representative of "all regular full-time and regular part-time professional employees of Grant County excluding managerial, supervisory, confidential and all other employees."

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4. For a number of years before 1983, the County in some departments--but not all--granted wage increases to newly hired employees after completion of their six (6) month probationary period. In 1982 and 1983 the County's Employee Relations Committee, herein the Committee or ERC, studied some of the County's personnel policies as they affected wages and other benefits with a view to limiting its payroll costs. As part of this review, the Committee also discussed the possibility of abolishing the six (6) month wage increase. The minutes of the Committee's January 20, 1983, meeting therefore provide in pertinent part:

The Committee is going to write a policy concerning pay changes during the probationary period. Also, we will deal with who is a County employee and how many hours will determine which type of employee (full-time, part-time, LTE).

The Committee subsequently discussed this issue throughout the year, including its February 3, 1983 meeting, whose minutes state:

"Motion by Dannenmann, seconded by Stanton, that the ERC recommend to the Grant County Board that no County employee may receive more than two salary raises in any one year carried."

Under the County's then existing policies, it was possible for newly hired employees to receive three separate raises during their first year of employment: on the first of the year, after the end of their six month probationary period, and another increase on the first of the next year. The Committee continued to discuss the six month wage increase throughout the rest of the year without any definite decision being made on the subject.

5. On October 13, 1983, the Committee finally resolved this issue by adopting a resolution which provided: "that the six (6) months probation period raise for all newly hired employees be eliminated for all employees hired after this date." On October 18, 1983, the County's Board of Supervisors formally approved the Committee's recommendation and ever since then the County has discontinued said payment for any employees hired after that date; employees hired before then, and otherwise entitled to receive it, were given a six (6) month raise.

6. The County's decision to abolish the six (6) month increase was totally unrelated to the Union's organizing drive and the County would have made that decision irrespective of whether the Union was on the scene.

Based upon the foregoing Findings of Fact, the Examiner issues the following

CONCLUSION OF LAW

The County did not violate Secs. 111.70(3)(a) 1 of MERA when it decided to discontinue granting salary increases to employees finishing their six month probationary period.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner issues the following

ORDER 1/

It is hereby ordered that the complaint filed herein be, and it hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 1st day of May, 1985.

By  _____
Amedeo Greco, 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.
(Footnote 1 continued on Page 3)

GRANT COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSION OF LAW AND ORDER

The Union charges that the County acted unlawfully when it changed its prior policy of giving a wage increase to new employees upon the successful completion of their six (6) month probationary period. In support of that claim, the Union argues that employers generally are required to maintain the status quo during a representation campaign and that the County here changed the status quo when it eliminated said increase.

The County, in turn, asserts that the complaint must be dismissed because it was filed outside the one year statute of limitation provided for in Sec. 111.07(14), Stats., and that moreover, even if it were timely filed, the complaint lacks merit since the discontinuation of the wage increase was totally unrelated to the Union's organizing drive.

Turning first to the statute of limitations question, the record shows that the complaint was dated and filed with the Commission on October 11, 1983, and that the Commission mailed a copy of the complaint to the County's Clerk on October 15, 1983. 2/ In this connection, Sec. 111.07(14), Stats., provides:

The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

While that statute does not spell out how the one year period is to be computed, ERB 10.08, of the Commission's Rules, entitled "Time for Filing Papers other than Letters", provides:

(4) COMPLETION OF FILING. Papers required by section 111.70 Wis. Stats., these rules, or order of the commission, to be filed with the commission or its agent, or with a fact finder, shall be deemed filed upon actual receipt at the place specified for such receipt and must be received before the

1/ (Footnote Continued)

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 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.

2/ The record does not reveal when the County received its copy of the Complaint.

close of business of the last day of the time allowed for such filing or will not be accepted as timely filed unless good cause be shown warranting waiver, in which case the commission of fact finder, as the case may be, may upon receipt, deem the document filed at the time it was deposited in the United States mail or with a telegraph office.

ERB 10.09, entitled "Form of Documents other than Correspondence," goes on to provide that "All documents and papers filed prior to hearing should be filed with the Commission at its Madison office." It therefore must be concluded that the Union's complaint for purposes of Sec. 111.07(14) was filed on the date received by the Commission--i.e. October 11, 1984, and that as a result, the complaint was timely filed. 3/

As to the merits of that complaint, the record shows that the County's ERC first began to consider discontinuing said increase well before the Union filed its representation petition on April 6, 1983. Thus, ERC's January 20, 1983, minutes reveal that it was "going to write a policy concerning pay changes during the probationary period" and its subsequent February 3, 1983 minutes state that the ERC would "recommend to the Grant County Board that no County employee may receive more than two salary raises in any one year. . . ."

It is true, as the Union correctly points out, that no ERC minutes other than these two expressly refer to this increase before October 13, 1983. However, ERC head Mary Wirth testified that the ERC continued to discuss the matter as part of its ongoing review throughout the year. 4/ In addition, she stated that the ERC's decision was totally unconnected to the Union's organizing drive and that it was part of the ERC's overall review of the County's personnel policies. I credit Wirth's testimony in its entirety since she testified in a highly credible manner and because the record as a whole supports her testimony.

In this connection, it is well established that employer changes affecting wages, hours and conditions of employment made during a representation campaign are not per se violations of Sec. 111.70(3)(a)(1) of MERA; and that the legality of such changes instead will turn on whether they were aimed at affecting the election or whether they would have been done in the employer's normal course of business even if the Union were not on the scene. Since the record here shows that the latter was true, it follows that the County therefore did not act unlawfully when it decided to abolish the disputed six month wage increase. The Complaint therefore is dismissed.

Dated at Madison, Wisconsin this 1st day of May, 1985.

By Amedeo Greco
Amedeo Greco, Examiner

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- 3/ That being so, it is unnecessary to determine whether the ERC's decision to discontinue the six month increase became effective immediately on October 13, 1983, as the County argues, or whether it was not finalized until October 18, 1983 when the County Board adopted it, as the Union claims.
- 4/ In this connection, the Commission in a prior case involving these same two parties, Grant County, Dec. No. 21567-B (1/85) found that the ERC's "minutes are very cryptic and while actions taken on motions are recorded, discussions preceding said actions were not always recorded" and that the "minutes indicate that some discussions on a subject accrued several meetings prior to action on a motion for that subject." The same is true here.