

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 2062, AFSCME, AFL-CIO:
MENOMINEE COUNTY HIGHWAY
EMPLOYEES; MENOMINEE COUNTY
SHERIFF'S DEPARTMENT EMPLOYEES;
MENOMINEE COUNTY COURTHOUSE
and TOWN EMPLOYEES; WISCONSIN
COUNCIL 40, AFSCME, AFL-CIO,

Complainants,

vs.

MENOMINEE COUNTY,

Respondent.

Case 30
No. 35449 MP-1747
Decision No. 22872-A

Appearances :

Lawton & Cates, by Mr. Richard V. Graylow , 110 East Main Street, Madison,
Wisconsin 53703, appearing on behalf of the Complainants.

Lindner and Marsack, S.C., by Mr. Eugene J. Hayman , 700 North Water Street,
Milwaukee, Wisconsin 53202, appearing on behalf of Respondent.

ORDER DENYING MOTION TO DISMISS

On August 7, 1985 the above-named Complainants filed a complaint with the Wisconsin Employment Relations Commission alleging that Menominee County had violated Sec. 111.70, Wis. Stats., by refusing to bargain 1985 collective bargaining agreements and by unilaterally ceasing to make payroll deduction of union dues. On August 22, 1985 Respondent filed a Motion to Dismiss the complaint as untimely filed, and on September 11, 1985 Complainants filed a memorandum in opposition to the motion. The Examiner has carefully considered the parties' arguments and concludes that the complaint is timely. Accordingly, it is

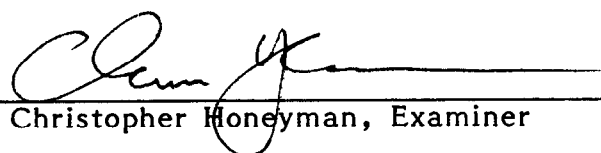
ORDERED

That the Motion to Dismiss the complaint is denied.

Dated at Madison, Wisconsin this 16th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Christopher Honeyman, Examiner

MENOMINEE COUNTY

MEMORANDUM ACCOMPANYING ORDER
DENYING MOTION TO DISMISS

Respondent argues that its alleged refusal to bargain followed the Complainant's missing of the contractually-required reopening date. Respondent states that each contract between the Unions and the County required a party desiring reopening to notify the other by August 1st of the year in which the contract expired if any changes were desired, failing which the contract would be renewed automatically for another year. Respondent contends that the Unions' request to reopen was not received by it until August 6, 1984. Respondent contends that the two possible dates which could trigger the running of the statute of limitations were August 1 (as the date on which reopening was required by the contracts) or August 6 (as the date actual notice was allegedly given to Respondent). In either case, Respondent argues, the complaint was filed out of time because the respective year for filing the complaint would have expired either on August 1, 1985 or on August 6, 1985.

Complainants argue that the Unions made recurring demands to bargain beginning no later than July 30, 1984, and that facts to be adduced at hearing would establish this. Complainants also argue that a complaint was filed with the Commission on or about December 29, 1984, and that the present complaint is a refiling of the original complaint. Complainants further contend that the Respondent's alleged December, 1984 refusal to continue payroll deduction of union dues is clearly within the statutory one-year period for filing complaints.

Both parties' arguments confuse the question of timeliness with affirmative defenses which may be raised by Respondent. The December, 1984 alleged refusal to continue payroll deduction of union dues is clearly timely complained of in this complaint, and the question of timeliness is essentially directed to whether or not the complaint is timely with respect to the alleged refusal to bargain successor agreements to the parties' 1984 labor contracts. An appendix to the complaint is the Unions' written request to reopen negotiations for 1985 contracts, but the date on which this document was sent or received is not material to the question of timeliness of the complaint. That question turns on another appendix to the complaint, a letter from Respondent's Counsel Hayman to Staff Representative Georgia Johnson of AFSCME, in which Respondent refused to meet for purposes of contract negotiations because "you have failed to reopen the contract in a timely fashion (and) all Menominee County contracts have been automatically renewed for a period of one year to expire December 31, 1985." This letter on its face is dated August 6, 1984, and bears a receipt stamp, apparently Johnson's, showing a date of August 7, 1984. Respondent does not offer to prove that its refusal to bargain was communicated in any way prior to Johnson's receipt of Hayman's August 6 letter. As neither party argues that Hayman's letter was not in fact received by Johnson on August 7, 1984, I infer that this is the date on which Respondent's allegedly improper refusal to negotiate was communicated to Complainants.

An integral part of a "refusal" to bargain is the communication of the refusal to the other party. For this purpose, the act of refusing can only be said to have been completed when the other party has reason to know of it. 1/ It is therefore clear that the letter of August 6 is itself the action which gives rise to the initial allegations in the complaint. As the letter on its face indicates that it was made known to Complainants on August 7, and as neither party argues to the contrary, I conclude that that is the date on which the statutory time period began to run.

1/ See C.E.S.A #4 et. al., Decision No. 13100-E, Conclusion of Law No. 3 (Yaffe, 12/77), 13100-G (WERC, 5/79).

The following statutory sections are relevant in this matter:

Section 111.70(4)(a), Stats., provides:

Prevention of prohibited practices. Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter except that wherever the term "unfair labor practices" appears in section 111.07, the term "prohibited practices" shall be substituted.

Section 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.

Section 990.01(49), Stats., provides:

(49) YEAR. "Year" means a calendar year, unless otherwise expressed; "year" alone means "year of our Lord."

Section 990.001(4)(d), Stats., provides:

(d) Regardless of whether the time limited in any statute for the taking of any proceeding or the doing of an act is measured from an event or from the date or day on which such event occurs, the date on which such event took place shall be excluded in the computation of such time.

It is apparent from Section 990.001(4)(d), Stats., that August 7, 1984, the effective date on which the action complained of took place, is excluded from the computation. The "year" involved here, as otherwise defined above, therefore runs from August 8, 1984 through August 7, 1985. The complaint herein was filed on August 7, 1985, the last day of the applicable year, but still within the time limit. For these reasons, I find the complaint timely in all its aspects.

Dated at Madison, Wisconsin this 16th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Christopher Honeyman, Examiner