

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	:	Case 30
and TOWN EMPLOYEES; WISCONSIN	:	No. 35449 MP-1747
COUNCIL 40, AFSCME, AFL-CIO,	:	Decision No. 22872-C
	:	
Complainants,	:	
	:	
vs.	:	
	:	
MENOMINEE COUNTY,	:	
	:	
Respondent,	:	
	:	
LABOR ASSOCIATION OF	:	
WISCONSIN, INC.,	:	
	:	
Party in Interest.	:	
	:	

Appearances:

Lawton & Cates, by Mr. Richard V. Graylow, 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of the Complainants.
Lindner & Marsack, S.C., by Mr. Eugene J. Hayman, 700 North Water Street, Milwaukee, Wisconsin 53202, appearing on behalf of Respondent.
Mr. Patrick J. Coraggio, Labor Consultant, 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222, appearing on behalf of Labor Association of Wisconsin, Inc.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
MODIFYING EXAMINER'S CONCLUSIONS OF LAW
AND AFFIRMING EXAMINER'S ORDER

Examiner Christopher Honeyman having on January 2, 1986 issued Findings of Fact, Conclusions of Law and Order in the above matter wherein he dismissed in its entirety a complaint filed by the above captioned Complainants alleging that the above captioned Respondent had committed certain prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2, 3, and 4, Stats.; and Complainants having on January 22, 1986, timely filed a petition with the Commission pursuant to Sec. 111.07(5) Stats., seeking review of the Examiner's decision; and Complainants having on February 17, 1986, submitted written argument in support of the petition for review; and Intervenor/Party in Interest Labor Association of Wisconsin, Inc. and Menominee County having separately notified the Commission in writing on February 20, 1986, and February 24, 1986, respectively, that they would not be filing any responsive arguments; and the Commission having considered the record, the Examiner's decision, the petition for review and written argument in support thereof and concluded that the Examiner's Conclusions of Law should be modified in certain respects and that the Examiner's Findings of Fact and Order should be affirmed.

NOW, THEREFORE, it is

ORDERED 1/

A. That Examiner's Findings of Fact are affirmed.

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

(Footnote 1 continued from Page 1)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

B. That Examiner's Conclusion of Law 1 is modified as follows:

1. Respondent has not violated Secs. 111.70(3)(a)1 or 4 Stats. as to the employes of the Human Services Board; and Respondent's refusal to bargain with Complainants over wages, hours, and conditions of employment for 1985 which differed from those contained in the expired 1983-1984 agreements did not violate Secs. 111.70(3)(a) 1 or 4 Stats., because Complainants failed to timely reopen negotiations as to the Highway Department, Sheriff's Department, and Courthouse units.

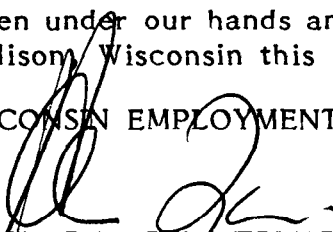
C. That Examiner's Conclusions of Law 2 and 3 are affirmed.

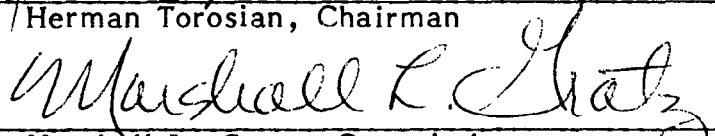
D. That the Examiner's Order is affirmed.

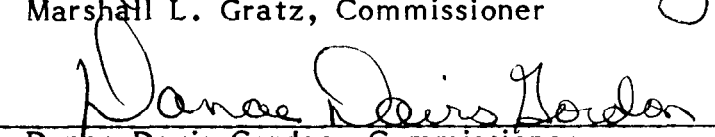
Given under our hands and seal at the City of
Madison, Wisconsin this 10th day of March, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

MENOMINEE COUNTY

MEMORANDUM ACCOMPANYING
ORDER MODIFYING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

BACKGROUND:

The Complainants

On August 7, 1985, Complainants filed a prohibited practice complaint with the Wisconsin Employment Relations Commission alleging that Respondent Menominee County 2/ was improperly refusing to bargain over the terms of 1985 contracts covering three separate bargaining units of Menominee County employes. Complainants amended the complaint at hearing to allege the same allegedly improper conduct as to certain Human Services Board employes.

Complainants also alleged that the Respondent County committed prohibited practices by (1) offering inducements to local union officers to persuade them to execute an incorrect version of the 1984 contract and to disavow attempts to bargain a successor, and by (2) announcing that it intended to cease payroll deduction of union dues when the 1984 contracts expired.

The Examiner's Decision

The Examiner concluded that because Complainants failed to timely notify the County of their intent to reopen negotiations for successor agreements, the 1984 contracts covering the three units referenced in the original complaint were renewed by their own terms for calendar year 1985. The Examiner thus found Respondent County's refusal to bargain 1985 contracts as to these three units not to be violative of Secs. 111.70(3)(a) 1 or 4, Stats. The Examiner also dismissed the refusal to bargain allegation relative to certain employes who had been in a Social Services unit, reasoning that Complainant Local 2062 effectively abandoned any claim to represent employes who had been in the Social Services Department unit following a merger with a larger Human Services Board in late December 1983.

As to the complaint allegation of illegal "inducements", the Examiner found no evidence in the record to support said allegation and thus dismissed same. The Examiner also dismissed the allegation regarding Respondent's expressed intent to end deduction of union dues, noting the deductions never were actually stopped and the absence of any evidence that Respondent's statement regarding cessation rose to the level of a threat.

The Petition for Review

On review, Complainants assert the Examiner erred when he concluded that Complainants failed to timely reopen negotiations for successor agreements. Complainants argue that when notice of intent to reopen was placed in the mail on July 30, 1984, the contractual August 1 deadline was met and the County should be deemed to have constructively received the notice on the date it was mailed. Complainants allege in the alternative that even if the notice was not timely received, said failure should not be fatal because the County has not demonstrated that it was prejudiced by its actual receipt of the notice on August 6, 1984. Citing Ozaukee County, Dec. No. 18384-A (7/81), aff'd by operation of law, Dec. No. 18304-B (WERC, 8/81).

If the contracts were all renewed by their terms for calendar year 1985, Complainants argue that the County has violated said contract by failing to honor the union security provisions contained therein.

Given the foregoing, Complainants ask that the Examiner's decision be reversed.

2/ Although the complaint, as originally filed, also listed Hilary Waukau, County Administrator, in the caption, the body of the complaint and the subsequent positions of the parties make it clear that the Complainants did not intend to name Waukau as a separate individual Respondent.

Both Respondent County and Intervenor/Party in Interest LAW, Inc. urge the Commission to affirm the Examiner.

DISCUSSION:

We affirm the Examiner's Order dismissing the complaint in its entirety. In our view, the Examiner correctly reasoned that when the parties agreed to a duration clause which states:

A. This Agreement shall be effective as of January 1, 1983, and remain in full force and effect until December 31, 1984 and shall automatically renew itself from year to year unless either party notifies the other party in writing by August 1 of the year of contract expiration of its intent to inaugurate changes.

they clearly contemplated that unless notice of an intent to reopen was received on or before the August 1 deadline, automatic renewal would occur. We see nothing in the parties' language which suggests that it is appropriate for us to impose upon the County some burden to show actual prejudice as a result of the August 6 receipt of Complainants' notice. The Ozaukee County Examiner decision cited by Complainants is factually distinguishable ^{3/} from the case at hand, and it was not timely appealed to the Commission.

We also conclude that the Examiner persuasively and appropriately dismissed the refusal to bargain allegation which focused upon the employees in the former Social Services Department unit.

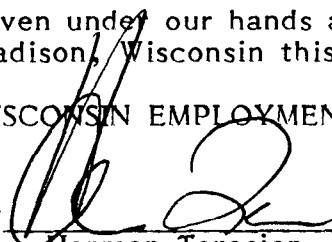
While Complainants claim on review that the record demonstrates the County's termination of dues checkoff, the record clearly demonstrates the contrary. Indeed, Complainants were parties to a stipulation that the deductions continued. We therefore reject Complainants' argument because it is based upon a non-existent factual premise.

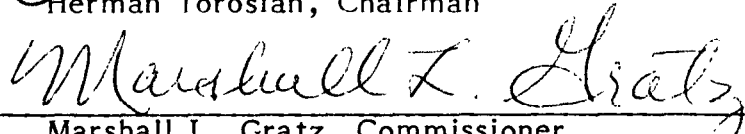
Complainants take no specific issue on review with the Examiner's disposition of the "inducement" allegation, and we find no basis for overturning his dismissal of that allegation.

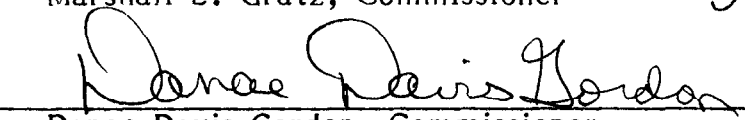
Given under our hands and seal at the City of Madison, Wisconsin this 10th day of March, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

3/ In Ozaukee, the dispute over compliance with a reopener arose while the parties were awaiting an interest arbitration award which would establish the terms of their contract.