

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS'	:	
EDUCATION ASSOCIATION	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 176
	:	No. 36468 MP-1815
	:	Decision No. 23572-A
MILWAUKEE BOARD OF	:	
SCHOOL DIRECTORS,	:	
	:	
Respondent	:	
	:	
	:	

Appearances:

Perry, First, Lerner, and Quindel, S.C., by Mr. Richard Perry, 1219 North Cass Street, Milwaukee, WI 53202, appearing on behalf of the Complainant.

Mr. Stuart S. Mukamal, Assistant City Attorney, City of Milwaukee, City Hall, 200 East Wells Street, Milwaukee, WI 53202, appearing on behalf of the Respondent.

Order Denying Motion to Dismiss

On February 3, 1986, the above-named Complainant filed a complaint with the Wisconsin Employment Relations Commission alleging that Milwaukee Board of School Directors, hereinafter Respondent, has committed prohibited practices within the meaning of Secs. 111.70(3)(a) 1, 3, and 4, Stats., by refusing to negotiate in good faith with Complainant concerning the wages, hours and working conditions of the traveling music teachers employed by Respondent. On May 22, 1986, Respondent filed a Motion to Dismiss the complaint arguing that a question concerning representation existed at least with respect to some of the traveling music teachers and that, absent a petition for election or unit clarification, a determination with respect to the alleged prohibited practices cannot be made until the question concerning representation is resolved. Respondent requested that the complaint be dismissed in its entirety. On May 23, 1986, Complainant filed a response in opposition to the Motion to Dismiss the complaint. It argued that a representation proceeding, while being available to both parties, would not afford Complainant a remedy for the breach of the duty to bargain alleged and that Respondent's contentions are based upon incorrect factual assertions, the resolution of which should be determined by the Examiner after a full hearing on the instant complaint. It requests that the Motion to Dismiss be denied and that the hearing proceed as scheduled. The Examiner has carefully considered the parties' arguments. She concludes that Respondent's Motion contains factual contentions which are contested, therefore requiring a full hearing on the complaint. She also finds that she possesses the authority to consider the issues in dispute, notwithstanding that neither a petition for election or unit clarification has been filed. Accordingly, it is

ORDERED

That the Motion to Dismiss be, and the same hereby is denied.

Dated at Madison, Wisconsin, this 27th day of May, 1986.

By Mary Jo Schiavoni
 Mary Jo Schiavoni, Examiner

MILWAUKEE BOARD OF SCHOOL DIRECTORS

Memorandum Accompanying Order
Denying Motion to Dismiss

The Examiner has denied the Respondent's Motion to Dismiss on the ground that the factual assertions raised in said motion are contested and, thereby, require a full hearing on the pleadings. 1/ While an election petition or a unit clarification petition would certainly resolve the underlying issues presented herein, neither party has chosen to file such a petition. Rather, Complainant has opted to file the instant complaint in order to secure a meaningful remedy to the prohibited practice alleged. Contrary to Respondent's assertion, this Examiner clearly has the authority to determine whether or not individuals are employees properly included within a bargaining unit or "casual employees", as argued by the Respondent, in the context of determining whether a duty to bargain violation has occurred in a complaint proceeding. 2/ Accordingly, said Motion to Dismiss is denied.

Dated at Madison, Wisconsin this 27th day of May, 1986.

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner

1/ Racine County, Dec. No. 20327-A (Roberts, 2/83).

2/ Brown County, Dec. No. 19314-B (WERC, 6/83).