

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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HOTEL EMPLOYEES AND RESTAURANT :  
EMPLOYEES, LOCAL 122, AFL-CIO, :  
Complainant, :  
vs. : Case 3  
ALONZO CUDWORTH POST NO. 23, : No. 37523 Ce-2054  
AMERICAN LEGION, : Decision No. 24000-A  
Respondent, :  
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ORDER DENYING MOTION TO DISMISS

Hotel Employees and Restaurant Employees, Local 122, AFL-CIO, hereinafter referred to as the Complainant, having on September 5, 1986, filed a complaint with the Wisconsin Employment Relations Commission, herein the Commission, alleging that Alonzo Cudworth Post No. 23, American Legion, hereinafter referred to as the Respondent, had committed unfair labor practices contrary to the provisions of Section 111.06(1)(f) of the Wisconsin Employment Peace Act by violating the terms of the parties' collective bargaining agreement; and the Commission having, on October 10, 1986, appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Stats.; and on November 4, 1986, Respondent, by counsel, having filed a Motion to Dismiss said complaint; and on November 7, 1986, Complainant, by counsel, having responded to said Motion to Dismiss; and the Examiner being fully advised in the premises, and being satisfied that Respondent's motion should be denied, makes and issues the following

ORDER

IT IS ORDERED that the Respondent's Motion to Dismiss be, and the same hereby is, denied.

Dated at Madison, Wisconsin, this 11th day of November, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley  
Lionel L. Crowley, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS

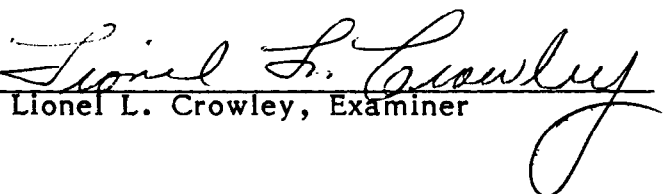
Respondent moved to dismiss the complaint on the grounds that: 1) the Commission lacks jurisdiction to hear the matter because the Complainant had submitted the entire matter to the National Labor Relations Board and the parties reached a settlement agreement which constitutes a new collective bargaining agreement abrogating the old agreement between the parties; 2) the matter has been preempted by the National Labor Relations Board; 3) the Complainant is collaterally estopped by the proceedings before the National Labor Relations Board; 4) the principles of Res Judicata apply to the complaint on the basis of the proceedings before the National Labor Relations Board; 5) the principles of equitable estoppel apply to the complaint on the basis of the proceedings before the National Labor Relations Board.

Section 111.06(1)(f), Stats. provides that it is an unfair labor practice to violate the terms of a collective bargaining agreement, whereas the National Labor Relations Act does not contain such a provision. It has been well established that the Commission has jurisdiction to determine whether such a violation has occurred even though an employer is otherwise subject to the jurisdiction of the National Labor Relations Board. 1/ Thus, there is no pre-emption in this matter by the proceedings before the National Labor Relations Board. 2/

With respect to the allegations that there has been an abrogation of the agreement as well as a settlement agreement covering all issues giving rise to estoppel and res judicata principles, the Examiner concludes that the motion is premature as the complaint presents a contested case, 3/ requiring a full hearing on the pleadings. 4/

Dated at Madison, Wisconsin, this 11th day of November, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Lionel L. Crowley, Examiner

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- 1/ Bay Shipbuilding Corp., Dec. Nos. 19957-B, 19958-B (Shaw, 4/83) affirmed Dec. Nos. 19957-C, 19958-C (WERC, 2/84); Metcalfe, Inc., d/b/a Sentry Foods, Dec. No. 17660-B (WERC, 2/82); Giraffe Electric, Inc., Dec. No. 16513-A, D, E (12/80); Oscar Mayer and Co., Inc., Dec. No. 11591-B (Fleischli, 9/74), aff'd by operation of law Dec. No. 11591-C (WERC, 10/74).
  - 2/ Tecumseh Products Co. v. WERB, 23 Wis. 2d 118 (1984); American Motors Corp. v. WERB, 32 Wis. 2d 237 (1966).
  - 3/ Wisconsin Statutes, Section 111.07(2)(a), Section 111.07(4), Section 227.
  - 4/ Joint School District No. 1, Glidden, Wisc. et al., (15490-A); Mutual Fed. Savings & Loan Assoc. v. Savings & Loan Adv. Comm.; (1968) 38 Wis. 2d 381; State ex rel. City of LaCrosse v. Rothwell, (1964) 25 Wis. 2d 228, rehearing denied; Town of Ashwaubenon v. Public Service Commission (1964) 22 Wis. 2d 38, rehearing denied; State ex rel. Ball v. McPhee (1959) 6 Wis.2d 190; General Electric Co. v. Wisconsin Employment Relations Board (1957) 3 Wis. 2d 227, 241.