

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHARLES J. NEUENS,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 225
	:	No. 37499 MP-1884
MILWAUKEE COUNTY,	:	Decision No. 24195-A
Respondent.	:	
	:	

ORDER DENYING MOTION TO DISMISS

Charles J. Neuens, hereinafter the Complainant, filed a complaint, pro se, with the Wisconsin Employment Relations Commission on August 27, 1986, alleging that Milwaukee County, hereinafter the Respondent, has erroneously interpreted and misapplied certain sections of the Employee Retirement System Pension Plan. On January 15, 1987, the Commission appointed the undersigned to make and hear Findings of Fact, Conclusions of Law, and Order as provided for in Sec. 111.07(5) Stats. Notice of Hearing was sent to the parties on January 12, 1987 scheduling hearing on said matter for April 1, 1987.

On January 20, 1987, Respondent filed a Motion to Dismiss the Complaint alleging that the Commission lacks subject matter jurisdiction over the complaint asserting that the Employee Retirement System of Milwaukee County is created by statute and that said statute creates the Circuit Court as the sole arbiter of the rules and regulations of said System.

Complainant filed an opposition to said Motion claiming that the Commission does have subject matter jurisdiction and arguing that said complaint may not be dismissed unless under no interpretation of the facts alleged would Complainant be entitled to relief.

Having considered the arguments of the parties the Examiner makes and issues the following

ORDER

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

Dated at Madison, Wisconsin this 4th day of March, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner

MEMORANDUM ACCOMPANYING ORDER
DENYING MOTION TO DISMISS

Respondent argues that the Commission lacks subject matter jurisdiction over the instant complaint. Complainant argues that jurisdiction exists for the Commission to consider its claim. Generally speaking, because of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss, the complaint must be liberally construed in favor of the Complainant and the motion should be granted only if under no interpretation of the facts alleged would complainant be entitled to relief. 1/ In the instant case facts which establish the Commission's jurisdiction or the lack thereof do not exist in the record at the present time. No such determination with respect to jurisdiction can be made now because the Complainant arguably could present proof as to the Commission's jurisdiction at an evidentiary hearing. Accordingly, Respondent's Motion to Dismiss based upon lack of subject matter jurisdiction is denied as premature at this time.

Dated at Madison, Wisconsin, this 4th day of March, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner

1/ Unified School District No. 1 of Racine County, Dec. No. 15915-B.
(Hoorstra with final authority for WERC, 12/17). State of Wisconsin,
Dec. No. 23012-C (Jones, 11/86).