

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF WAUKESHA, :
 :
Complainant, :
 :
vs. : Case 69
 : No. 38739 MP-1970
 : Decision No. 24569-A
INTERNATIONAL ASSOCIATION :
OF FIREFIGHTERS, LOCAL 407, :
AFL-CIO, :
 :
Respondent. :
 :

ORDER DENYING REQUEST FOR DISMISSAL,
MOTION TO STRIKE AND MOTION TO HOLD
HEARING IN ABEYANCE

On April 30, 1987, the City of Waukesha, hereinafter the Complainant, filed a complaint with the Wisconsin Employment Relations Commission alleging that International Association of Firefighters, Local 407, AFL-CIO, hereinafter the Respondent, had refused and continued to refuse to execute the 1985-87 collective bargaining agreement following an interest arbitrator's decision. On May 20, 1987, Respondent filed an Answer, Motion to Strike and Motion to Hold Hearing in Abeyance. The Answer included affirmative defenses, a counterclaim against the City and a request for dismissal of the complaint. On June 12, 1987, the Commission appointed the undersigned to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided for in Sec. 111.07(5), Stats. Hearing on the complaint is scheduled for July 21, 1987. The Examiner being advised in the premises and being satisfied that Respondent's requests and motions should be denied, makes and issues the following

ORDER

IT IS ORDERED that Respondent's request for dismissal, Motion to Strike and Motion to Hold Hearing in Abeyance be, and the same hereby are, denied.

Dated at Madison, Wisconsin this 3rd day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ralph J.
Raleigh Jones, Examiner

CITY OF WAUKESHA, (FIRE DEPARTMENT)

MEMORANDUM ACCOMPANYING ORDER DENYING
REQUEST FOR DISMISSAL, MOTION TO STRIKE
AND MOTION TO HOLD HEARING IN ABEYANCE

The Respondents's Answer included, inter alia, a request for dismissal of the complaint. This request is treated herein as a motion to dismiss. The Examiner has denied this request for dismissal, as well as Respondent's Motion to Strike, on the grounds that the complaint presents a contested case 1/ requiring a full hearing on the pleadings. 2/

With respect to Respondent's Motion to Hold Hearing in Abeyance, the Respondent contends that its delay in executing the 1985-87 collective bargaining agreement is founded on its belief that the interest arbitration award issued by Arbitrator Robert M. Mueller on March 3, 1987 includes a provision that contravenes the rights of bargaining unit employees under the Fair Labor Standards Act (FLSA). The Union has raised this issue in a lawsuit pending before the United States District Court, Eastern District of Wisconsin. As a consequence, the Union alleges that any decision of the WERC which precedes the federal court's full and final adjudication of this matter will be premature. While the Commission does have inherent deferral authority, the undersigned is of the opinion that the instant complaint ought not be held in abeyance. This is because on its face the issue pending before the federal district court is separate from and collateral to the issue presented by the instant complaint. As previously noted, the issue pending in the federal lawsuit is whether a term of the new labor agreement violates the FLSA, while the issue raised in the instant complaint is whether the Respondent Union has failed to execute the 1985-87 collective bargaining agreement in violation of MERA. Assuming arguendo that the new labor agreement contains a term that violates the FLSA, there is no showing that executing the 1985-87 collective bargaining agreement will change this result or prevent the Union from proceeding with its lawsuit. Therefore, the Examiner concludes that the hearing should proceed as scheduled and hence has denied the Motion to Hold Hearing in Abeyance.

Dated at Madison, Wisconsin this 3rd day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Raleigh Jones, Examiner

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- 1/ Wisconsin Statutes, Sec. 111.07(2)(a), Sec. 111.07(4), Sec. 227.
- 2/ Mutual Fed. Saving & 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.