

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH EDWARD BUCK,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 3
	:	No. 39168 Ce-2063
	:	Decision No. 25074-A
RUAN TRANSPORTATION	:	
MANAGEMENT SYSTEMS and	:	
TEAMSTERS UNION LOCAL NO. 346,	:	
	:	
Respondents.	:	
	:	

ORDER DENYING UNION'S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Joseph Edward Buck, hereinafter the Complainant, filed a complaint with the Wisconsin Employment Relations Commission on July 28, 1987, alleging that Ruan Transportation Management Systems had committed an unfair labor practice within the meaning of the Wisconsin Employment Peace Act (WEPA). On November 30, 1987, Complainant amended his complaint by naming Teamsters Local 346, hereinafter the Union, as a party to the complaint. On December 10, 1987, the Union filed an Answer which included various affirmative defenses. On January 8, 1988, 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 February 3, 1988. On January 14, 1988, the Union filed a Motion to Dismiss or, in the alternative, for Summary Judgment. The Examiner being advised in the premises and being satisfied that the Union's motion should be denied, makes and issues the following

ORDER

IT IS ORDERED that the Union's Motion to Dismiss or, in the alternative, for Summary Judgment be, and the same hereby is, denied.

Dated at Madison, Wisconsin this 27th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones
Raleigh Jones, Examiner

RUAN TRANSPORTATION MANAGEMENT SYSTEMS

MEMORANDUM ACCOMPANYING ORDER
DENYING UNION'S MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT

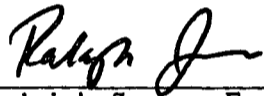
The complaint in this proceeding apparently attempts to raise a cause of action against the Company for an alleged breach of the collective bargaining agreement and the Union for an alleged breach of the Union's duty of fair representation. The Union argues, inter alia, that the complaint is untimely and fails to state a claim against the Union upon which relief can be granted.

Section 111.07(14), Stats., specifies that "the right of any person to proceed under this Section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged." Under this statute of limitations, the Commission is without jurisdiction to determine the merits of a complaint filed more than one year after the act or unfair labor practice alleged. Here, it is unclear whether the Complainant's allegation against the Union is timely because the complaint, as amended, does not identify the date on which the Union allegedly denied him the duty of fair representation. Consequently, whether the complaint is timely to the Union simply cannot be authoritatively resolved on the present record. While this allegation against the Union may ultimately be found to be untimely, no such determination can be made now because the Complainant could present proof which makes the complaint timely to the Union.

With respect to the Union's contention that the complaint fails to state a claim against the Union, the Examiner concludes that the motion is premature as the complaint presents a contested case, 1/ requiring a full hearing on the pleadings. 2/

Dated at Madison, Wisconsin this 27th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Raleigh Jones, Examiner

1/ Wisconsin Statutes, Section 111.07(2)(a), Section 111.07(4), Section 227.

2/ 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.