

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT COUNCIL 24, THE
WISCONSIN STATE EMPLOYEES UNION
(WSEU), AFSCME, AFL-CIO and its
affiliated LOCAL UNION NO. 178;
MELDON G. ELGERSMA and DELVIN D.
KUEHN,

Complainants,

vs.

STATE OF WISCONSIN, DEPARTMENT
OF HEALTH AND SOCIAL SERVICES,
(DHSS), DIVISION OF CORRECTIONS
(DOC), DODGE CORRECTIONAL
INSTITUTION (DCI),

Respondents.

Case 250
No. 39446 PP(S)-141
Decision No. 25369-A

ORDER DENYING MOTION TO DISMISS

Complainants having, on October 1, 1987, filed with the Commission a complaint of unfair labor practices wherein it was alleged that the Respondents, and/or their agents or officers, had violated Secs. 111.84(1)(a) and (c), Stats., by refusing to supply Complainants with certain information; and the Complainants having, on January 20, 1988, filed an amended complaint with the Commission wherein it was further alleged Complainants had filed a grievance on the matters in the original complaint and that Respondents had refused to process said grievance in violation of Sec. 111.84(1)(e), Stats.; and the Respondent having, on May 5, 1988, filed with the Examiner a Motion to Dismiss the complaint; and the parties subsequently having agreed to postpone a hearing set for May 24, 1988; and the Complainants having, on June 17, 1988, withdrawn their amendment of the complaint filed on January 20, 1988, and requested that hearing be set on the original complaint; and Respondents having requested that the Motion to Dismiss be ruled on at this point; and Complainants having, on July 22, 1988, filed written argument in response to the Motion to Dismiss; and the Examiner having considered the Motion and the positions of the parties with respect to said Motion, and being satisfied that the Respondents' Motion should be denied at this time, now makes and issues the following

ORDER

That the Respondents' Motion to Dismiss be, and same hereby is, denied at this time.

Dated at Madison, Wisconsin this 29th day of July, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
By 
David E. Shaw, Examiner

DEPARTMENT OF EMPLOYMENT RELATIONS (SECURITY & PUBLIC SAFETY)

MEMORANDUM ACCOMPANYING ORDER
DENYING MOTION TO DISMISS

The original complaint alleges, in part, that two employees of the Dodge Correctional Institution, Elgersma and Mullin, were involved in an off-duty altercation; that Elgersma, a complainant in this case and a member of the bargaining unit represented by the Complainant Local No. 178, AFSCME, was suspended with pay; that a local police investigation into the matter concluded that Elgersma was not at fault and that no further disciplinary action should be taken against him; that the President of Local 178 twice requested that the Institution provide him with all written records or documents pertaining to the altercation and any correctional or disciplinary measures taken against any individuals; that the request for information was denied; and that the request for information was made in part to ascertain Elgersma's eligibility for Worker Compensation benefits and to enforce the just cause and other related provisions of the collective bargaining agreement between the Respondent State and the Complainant Unions.

The Respondents' Motion asserts that the complaint should be dismissed on two bases. First, that Complainants are estopped from pursuing contractual claims in the complaint forum, as they have not exhausted available contractual procedures. The parties' agreement contains a grievance procedure culminating in final and binding arbitration, and under federal and state labor law policy the dispute should be deferred to arbitration. If the Complainants do not process the issue through the grievance procedure, they are estopped from claiming a violation of SELRA. Secondly, Respondents assert that the complaint does not state a cause of action under Ch. 111, Stats. The complaint alleges that no disciplinary action was taken against Elgersma and that the information requested was to ascertain Elgersma's eligibility for Workers Compensation benefits and to enforce the just cause provision in the collective bargaining agreement. Discovery for purposes of Workers Compensation is subject to Ch. 102, Stats., and the Commission has no jurisdiction in that matter. As the complaint states Elgersma was suspended with pay, there are no issues as to "just cause." In the alternative, an allegation that just cause was violated implicates the agreement and requires that the issue be pursued through the contractual grievance procedure.

Complainants contend that they have withdrawn any breach of contract allegations in withdrawing their amended complaint, and that the original complaint states a cause of action under Commission case law on the duty to supply information. It is asserted that they will prove that the request for the information was made in the course of processing a grievance. Complainants further contend that the Wisconsin Supreme Court has advised the Commission to make a full record before ruling on motions. Citing, State v. WERC, 65 Wis. 2d 624, 632-33 (1974).

DISCUSSION

The amended complaint has been withdrawn and the original complaint does not allege any violations of contract as a subject of the complaint. Therefore, the deferral policy has no application. The alleged violations of SELRA are based on the Respondents' alleged duty, and their refusal, to provide the Unions with information regarding an altercation between an employee in the bargaining unit represented by the Unions, Elgersma, and another employee. The asserted purpose of seeking the information is to discover whether Elgersma is eligible for Workers Compensation benefits and to enforce the just cause and other related provisions in the collective bargaining agreement. The Examiner cannot conclude, especially as to the latter purpose, that there are no facts that could be developed that would support a finding of a violation of SELRA in these circumstances. It is noted that because the suspension was with pay does not necessarily mean that the employee was not disciplined, or that there is no basis for the Unions to inquire in that regard.

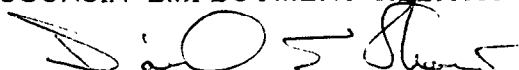
This is a contested case within the meaning of Ch. 227, Stats., and the Complainants have the right to an evidentiary hearing in order to present evidence in support of their claims. As it has been concluded that it cannot be said with

certainty that there are no factual circumstances under which Complainants' claims would state a cause of action under Sec. 111.84(1), Stats., the Motion to Dismiss has been denied.

Dated at Madison, Wisconsin this 29th day of July, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



David E. Shaw, Examiner