STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MATHEW J. MUSGRAVE, Complainant, vs. MARATHON COUNTY AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2492-A Respondents.	Case 138 No. 41118 MP-2140 Decision No. 25757-A
MATHEW J. MUSGRAVE, Complainant, vs. PATRICIA ACHESON, KATHLEEN CONWAY, ROBERT NICHOLSON, DOUG THOMAS, SANDRA WADZINSKI, JAMES DALLAND, BRAD KRAGER, JOHN SEFERIAN, CONSTANCE BROWN, TOM HENNESSY, HOWARD N. JORGENSON, JEAN LAMBIE, ARTETHA PAYNE, GARY RODRIGUES, NATE SMITH, PHYLLIS ZAMARRIPA, ROBERT LYONS, SAM GILLESPIE, AND PHIL SALAMONE; MARATHON COUNTY, AFSCME LOCAL 2492-A, AFSCME COUNCIL 40 and AFSCME, Respondents.	Case 142 No. 41463 MP-2171 Decision No. 25908-A

ORDER GRANTING MOTION TO QUASH SUBPOENAS AND DENYING MOTION TO DISMISS CERTAIN RESPONDENTS

On September 26, 1988 and December 21, 1988 respectively Mathew J. Musgrave filed two complaints alleging that Marathon County had violated various provisions of MERA by violating its collective bargaining agreement, in turn by suspending the Complainant and by its subsequent handling of his grievance. The Complaints also named American Federation of State, County and Municipal Employees, Local 2492-A and 19 individuals as Respondents, on the ground that they failed and refused to represent Complainant fairly in his grievances against the County. The undersigned was appointed Examiner in these matters and a hearing was twice scheduled, but postponed by mutual agreement of the parties. On March 16, 1989 Respondent AFSCME (including Respondent individuals) indicated by letter and intent to file a motion to quash subpoenas for two individuals; after exchanges of correspondence between the parties clarifying the nature of the subpoena and opposition thereto, Complainant on April 25, 1989 filed a letter in support of the subpoenas, Respondent AFSCME on May 15, 1989 formally

objected to the subpoenas and filed a brief in support of the motion; and Complainant on May 31, 1989 replied to AFSCME'S brief. The Examiner, being fully advised in the premises, hereby makes and issues the following

ORDER QUASHING SUBPOENAS

The subpoenas issued against Respondents John Seferian and Artetha Payne are hereby quashed.

ORDER DENYING MOTION TO DISMISS CO-RESPONDENTS

The motion to dismiss John Seferian and Artetha Payne as Respondents in this matter is hereby denied.

Dated at Madison, Wisconsin this 2nd day of June, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Christopher Honeyman, Examiner

MARATHON COUNTY

MEMORANDUM ACCOMPANYING ORDER GRANTING
MOTION TO QUASH SUBPOENAS
AND DENYING MOTION TO DISMISS
CERTAIN RESPONDENTS

The substance of the complaint against the Union and the 19 named officers thereof is that the Union failed or refused to process Complainant's grievances against the County fairly. As part of the complaint against the Union, Complainant alleges in essence that at least two members of the Union's International Judicial Panel, John Seferian and Artetha Payne, unfairly handled the Complainant's appeal of the local union's refusal to process his grievance further. Respondents contend that the subpoenas served by Complainant on Seferian and Payne lack legal force because Seferian and Payne are not within the State of Wisconsin's jurisdiction, citing State ex rel. McKee v. Breidenbach. 1/ Respondents further contend that the International Judicial Panel has no role pursuant to contract between the local union and County in the processing of grievances and that its members individually or collectively therefore cannot violate the Union's admitted duty of fair representation in grievance handling.

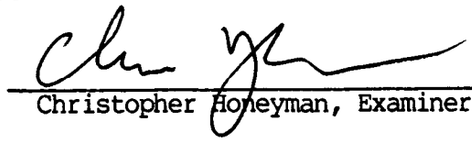
Complainant contends that the subpoenas also request "various documents from the individual's receiving process - documents pertaining to contractual employment relationship between the Plaintiff...(and the County)." I read Complainant's letter in support of his subpoenas and his reply to Respondents' brief as being to the effect that he alleges that the International Judicial Panel, by virtue of the Union's international constitution, has a role in the processing of individuals' grievances, and that that body purposefully violated the International's constitution to prevent fair representation of Complainant in the grievance process.

I find that the Union's objection to extraterritorial affect of a WERC subpoena is merited, and that because of the location of Seferian and Payne, these subpoenas are without force and should be quashed. This applies also to the aspect of said subpoenas which requests the production of documents allegedly in the possession of Seferian and Payne. I note, however, that Complainant has not identified any such document in particular which would be within the possession of Seferian and Payne and not in the possession of other Respondents in this matter.

I further find that the motion for dismissal of Seferian and Payne as Respondents in this matter raises issues of fact which require that Complainant have the opportunity to establish his contentions at a hearing. Accordingly, the motion to dismiss Respondents is denied.

Dated at Madison, Wisconsin this 2nd day of June, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Christopher Honeyman, Examiner

1/ 246 Wis. 513 (1945).