

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL UNION 579, :
:
Complainant, : Case 37
: No. 39832 MP-2046
vs. : Decision No. 26099-A
:
CITY OF WHITEWATER, :
:
Respondent. :

ORDER DENYING REQUEST TO HOLD HEARING IN ABEYANCE,
SCHEDULING HEARING ON MOTION TO DISMISS
AND CHANGING LOCATION OF HEARING

City of Whitewater, hereinafter Respondent, having filed on August 22, 1989, a notice of motion and motion to dismiss the above matter based upon res judicata; and the Respondent having further requested that the hearing in the above matter scheduled for August 30, 1989, 1/ be held in abeyance pending resolution of the motion to dismiss; and Teamsters Local Union 579, hereinafter Complainant, having opposed said motion in a letter received August 23, 1989; and the Complainant having asserted that the hearing in the above matter scheduled for August 30, 1999, should proceed as scheduled; and the Respondent, having requested in a letter received August 25, 1989, that hearing, if any, in this matter be changed from the Whitewater Library to the Firemen's meeting room, Whitewater City Hall, 312 West Whitewater Street, Whitewater, Wisconsin; and the Complainant, having agreed to said request in a telephone call on August 25, 1989; and the Examiner having considered the matter;

NOW, THEREFORE it is

ORDERED

1. That Respondent's request to hold in abeyance the hearing on the complaint scheduled for August 30, 1989, pending resolution of Respondent's motion to dismiss, is denied.
2. That Respondent's motion to dismiss is taken under advisement pending hearing on said motion.
3. That hearing on said motion will be held in concert with the hearing on the complaint on Wednesday, August 30, 1989, at 10:00 a.m. in the Firemen's meeting room, Whitewater City Hall, 312 West Whitewater Street, Whitewater, Wisconsin.

Dated at Madison, Wisconsin this 25th day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James W. Engmann /s/
James W. Engmann, Examiner

1/ The Respondent, in its motion to dismiss, and the Complainant, in its letter in opposition, state the date of hearing as August 31, 1989. A review of the Notice of Hearing on Complaint shows the date scheduled for hearing as August 30, 1989.

MEMORANDUM ACCOMPANYING
ORDER DENYING REQUEST TO HOLD HEARING IN ABEYANCE,
SCHEDULING HEARING ON MOTION TO DISMISS
AND CHANGING LOCATION OF HEARING

The Respondent moves to dismiss the complaint in this matter on the basis of res judicata and requests that the hearing on the complaint scheduled for August 30, 1989, be held in abeyance pending resolution of the motion to dismiss.

In regard to its motion to dismiss, the Respondent argues that a previous interest-arbitration decision rejected the Complainant's contention that the Respondent had engaged in the prohibited practices alleged in the complaint. In its response the Complainant argues that the issue in the complaint is separate and distinct from any decided in another forum. Thus it is concluded that the motion raises disputed issues of fact and law that require a hearing for resolution.

In regard to its request to hold the hearing on complaint in abeyance pending resolution of its motion to dismiss, Wis. Adm. Code Section ERB. 10.13(2) provides that the Commission may reschedule the date of a hearing upon the showing of proper cause by any of the parties. No proper cause has been shown to reschedule the hearing on the complaint pending resolution of the motion to dismiss since it has not been shown to be necessary to hear the evidence and argument on the motion prior to hearing on the complaint. In addition, notice of the hearing on complaint was sent to all parties on July 26, 1989, after prior consultation with counsel for each party. The decision which the Respondent argues is res judicata as to this complaint was issued on March 31, 1989. The Respondent filed its request to hold the hearing in abeyance on August 22, 1989, eight days prior to hearing, but 27 days after the notice of hearing was sent and 144 days after issuance of the decision which the Respondent argues is res judicata. If the motion is to be decided prior to hearing on the complaint, the practical effect of filing the motion to dismiss so close to the date of hearing is to delay the hearing. Yet no good cause has been shown as to why the motion to dismiss was filed when it was. Absent the showing of such good cause, the hearing will not be rescheduled or held in abeyance. Finally, it is concluded that nothing prevents hearing on the motion at the same time as hearing on the complaint.

For these reasons, the request to hold the hearing in abeyance pending resolution of the motion to dismiss is denied and the hearing on the motion to dismiss is scheduled in concert with the hearing on the complaint. The Respondent's request to change the location of hearing is concurred with by the Complainant so such change is ordered.

Dated at Madison, Wisconsin this 25th day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James W. Engmann /s/
James W. Engmann, Examiner