

Salmon responded by filing an amended complaint with the Commission on January 10, 1990. The amended complaint listed, as respondents, the parties captioned above. Under a cover letter dated January 17, 1990, I mailed, by certified mail, a copy of the amended complaint to the following representatives: Gerry M. Miller, Thomas J. Hanahan, Knuth Larson, Ronald Kopp, and Phil Cohrs. In a letter filed with the Commission on January 29, 1990, Miller advised me that his letter contained the original, but not the amended complaint. I supplied him, by certified mail, the amended complaint under a cover letter dated January 30, 1990.

I attempted to informally contact the various representatives by phone after issuing the January, 1990, correspondence. I was unable to contact any person willing to appear as a representative of The United Brotherhood of Carpenters and Joiners. My next formal statement of the status of the matter came in a letter to Miller, Salmon, Larson, Cohrs, Kopp and Hanahan dated March 8, 1990, which reads thus:

I write to summarize the status of the above noted matter, and to establish a procedure to clarify what issues may be posed for hearing.

I have been unable to contact any representative for the United Brotherhood of Carpenters and Joiners (UBC). I have not received a return receipt for the documents mailed by certified mail to Mr. Hanahan. I have been informed that Mr. Larson no longer serves as a representative for the UBC. Thus, I have been unable to locate a representative from the UBC.

The UBC and the Wisconsin River Valley District Council of Carpenters may or may not be necessary parties to this litigation.

To clarify these points, I ask that Mr. Miller and Mr. Cohrs file an answer to the amended complaint by March 26, 1990. If Mr. Cohrs believes he does not represent any interest adverse to Local 95, and thus that he cannot file an answer, I ask that he file a written statement clarifying his interest in this matter. I would also ask Mr. Salmon to consider whether the UBC is a necessary party to the litigation, and if so, how I can reach a UBC representative. If any of you wish to file prehearing motions, please do so by March 26, 1990.

Your compliance with this procedure should serve to clarify what issues are posed for hearing and what parties are necessary for that hearing.

That letter was sent by certified mail.

In a letter to Hanahan dated March 20, 1990, I stated the following:

I received a return "Receipt for Certified Mail" dated March 14, 1990, which I presume is the date you received my March 8, 1990 letter.

I enclose for you a copy of the complaint and amended complaint which initiated the above-captioned case, together with a copy of the March 8, 1990 letter which summarized the then-current status of the case.

Please advise me if you will appear for this case, on behalf of the United Brotherhood of Carpenters and Joiners of America. If you so appear, I will allow you additional time to answer the amended complaint. If you will not so appear, please advise me.

If you have any questions, feel free to call. My direct line is (608) 266-1050.

Salmon filed a letter with the Commission on March 26, 1990, which reads thus:

This is in response to your letter of March 8, 1990, asking me to consider whether the UBC is a necessary party to the litigation. My answer is yes. The Wisconsin River Valley District Council of Carpenters and the Fox River Valley District Council of Carpenters were and are entities under the operational control of the UBC.

Section 6. A. (attached) of the Constitution and laws of the UBC reserves to the UBC the power to "establish and charter subordinate" bodies. Paragraph three of this section also reserves to the UBC or the General President the right to establish, dissolve, merge or consolidate any subordinate bodies.

Additionally, Section 30. A. (attached) requires that, should any chartered subordinate body cease to function as such, all "property, books, charter and funds" be forwarded to the General Secretary of the UBC for disposition.

Clearly, the merger/consolidation of the WRVDC and the FRVDC could not have taken place except under the direction of the UBC.

The new UBC rep is:

Bill Barreau
1409 Emil Street
Madison, WI 53713

If you have any further questions on this matter please feel free to contact me.

On March 27, 1990, Miller filed, on behalf of the Greater Fox River Valley District Council of Carpenters, a series of documents attached to a Motion to Dismiss or for other Relief. Cohrs filed the following letter with the Commission on March 27, 1990:

Please be informed that Knute Larson is and continues to be a representative of the United Brotherhood of Carpenters.

My interest is based on the fact that the contract in question was negotiated in good faith by Mr. Salmon (Local 95) and myself (WRVDC).

It is shameful that any organization claiming to represent working people would refuse to abide by that contract which is a legally binding agreement.

Based on grapevine information it seems a tremendous amount of arguments have been presented and accepted by the commission by various parties having an interest in this matter. All parties: with the exception of the individual who will be the only loser or winner in this matter, namely, Julie Rajek. She, of course, does not have access to unlimited funds to hire a mouthpiece to argue every aspect even before a hearing is established. She, also, has had to deal with a union representative; who is, at best, a most reluctant advocate.

If, in fact, the United Brotherhood of Carpenters, chooses not to appear or take part in the proceedings it would seem proper that the commission issue a finding for Julie Rajek and order immediate payment of the properly owed monies plus appropriate interest.

Yes, I have an interest in this matter.

Yes, I want to be included in any hearing or action which transpires in this matter.

Because informal attempts to contact a representative of The United Brotherhood of Carpenters and Joiners continued to prove fruitless, I issued the following letter, dated March 29, 1990:

I write again to state the status of the above-captioned complaint. I have tried to assemble the parties necessary to this litigation through informal telephone contacts as well as by service of the pleadings. The informal means I have employed work well in the vast majority of Commission cases, and typically assure litigation as free as possible from procedural issues. Those informal means have proven futile in this case.

Sec. 111.07(2)(a), Stats., governs service on out of state parties, and reads, in relevant part, thus:

In case a party in interest is located without the state and has no known post-office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last-known post-office address of such party . . .

With this cover letter, I am serving the United Brotherhood of Carpenters of America (UBC) via Mr. Larson, Mr. Barreau, Mr. Hanahan and the office of the Wisconsin Secretary of State with a copy of the complaint and the amended complaint which have prompted this litigation. When I have received a notice of receipt of this correspondence from the office of the Secretary of State, I will consider the UBC joined as a party to this litigation, whether or not the UBC chooses to respond to my correspondence, or to inform me of the identity of their chosen advocate.

Once the UBC has been made a party to this litigation through the process noted above, I will notify all interested parties of the means by which the various prehearing issues raised by Mr. Miller will be addressed.

Mr. Miller, Mr. Salmon and Mr. Cohrs will not receive a copy of the complaint and amended complaint with this letter, since they have already received these documents. I enclose for Mr. Miller and Mr. Salmon, a copy of a letter filed by Mr. Cohrs with the Commission on March 27, 1990. I enclose for Mr. Miller and Mr. Cohrs a copy of a letter filed by Mr. Salmon with the Commission on March 26, 1990.

If any of you have questions, please let me know.

The Secretary of State confirmed receipt of this letter in a letter filed with the Commission on April 2, 1990.

I wrote to again state the status of the matter in a letter to Salmon, Miller, Larson, Cohrs, Kopp, Hanahan and Barreau dated April 9, 1990, which reads thus:

I write to summarize the status of this matter, and to request further information from Mr. Salmon. I have received a notice of receipt for my March 29, 1990, correspondence from the Office of the Secretary of State. Thus, I consider the United Brotherhood of Carpenters and Joiners of America (UBC) joined as a party to this litigation.

I have also been contacted by Mr. Knute Larson, Mr. William Barreau and Mr. Thomas Hanahan. It is my understanding that neither Mr. Larson nor Mr. Barreau consider themselves to represent the interests of the UBC in this matter. Mr. Hanahan has indicated an attorney will be filing correspondence stating his interest, if any, in this matter. This correspondence may have an impact on the motions presently before me.

While awaiting the correspondence noted above, I would ask Mr. Salmon to address certain points which will assist in clarifying the background to Mr. Miller's motion. First, I would ask Mr. Salmon to specify the statutory sections he alleges the various respondents have violated. Mr. Miller's motion refers to Sec. 111.06(1)(d), Stats., and the amended complaint may point to Sec. 111.06(1)(f), Stats. The nature of the violations alleged should, however, be stated by the OPEIU, and not inferred by others. Clarifying this should assist in addressing the jurisdictional points raised by Mr. Miller. Mr. Salmon should also consider supplying any further clarification he may have concerning the jurisdictional basis for the Commission to determine the allegations of the amended complaint.

Beyond this, Mr. Salmon should consider whether "more cogent pleading" is possible to clarify the factual basis for the asserted successorship of the GFRVDC or the UBC to the bargaining or contractual obligations of

the WRVDC.

I would ask Mr. Salmon to respond to this letter as soon as he can. In the absence of a response, I will have to address Mr. Miller's motions on the basis of the pleadings as they presently exist.

In a letter filed with the Commission on April 16, 1990, Hanahan stated the following:

This will acknowledge receipt of your correspondence dated March 20, 1990 in the above matter.

I am enclosing an original and three copies of my response on behalf of the UBCJA, which states why dismissal of the amended complaint is required with respect to the UBCJA.

In a letter to Salmon dated April 30, 1990, I summarized the status of the matter thus:

Mr. Hanahan filed a motion to dismiss on behalf of the United Brotherhood of Carpenters and Joiners of America on April 16, 1990. You have not yet responded to my letter of April 9, 1990, and I would like to have a response to that letter before addressing the motions. Please respond to my letter of April 9, 1990.

Salmon responded in a letter filed with the Commission on May 8, 1990, which is set out below.

In a letter to Miller, Hanahan and Cohrs dated May 10, 1990, I stated the following:

I enclose a copy of Mr. Salmon's response to my letters of April 9 and 30, 1990. I ask Mr. Salmon to send copies of all material he sends me in the future to Mr. Miller, Mr. Hanahan and Mr. Cohrs. I also enclose a copy of the April 30, 1990 letter for Mr. Cohrs.

I ask that Mr. Miller and Mr. Hanahan advise me as soon as they can whether they wish to enter any response to Mr. Salmon's submission. If not, I will address the pending motions based on the present content of the file.

I received no response to the May 10, 1990, letter and advised the parties as follows, in a letter dated June 19, 1990:

I apologize for the delay in confirming the status of this matter. I have received no indication that any party is interested in filing further argument. Accordingly, I will address the pending motions on the present content of the file.

The Commission formally confirmed my appointment as Examiner in the matter in an Order issued on June 21, 1990.

FINDINGS OF FACT

1. On September 15, 1989, Michael Salmon, Business Agent for Local 95

of the Office and Professional Employees International Union, which is referred to below as Local 95, filed with the Commission the following complaint of unfair labor practices:

1. Michael Salmon, Business Agent, Local 95, Office and Professional Employees International Union, and Julie Rajek, 615 Wisconsin St., Merrill, WI 54452, employee of Wisconsin River Valley District Council of Carpenters, allege:
2. Respondents, The United Brotherhood of Carpenters and Joiners of America and Ronald Kopp, Business Manager, Greater Fox River Valley Council of Carpenters, 2828 N. Ballard Rd. Appleton, WI 54915, have engaged and are continuing to engage in unfair labor practices.
3. On or about March 19, 1989 the UBCJA and Ronald Kopp as their agent, terminated the employment of Julie Rajek, in violation of Articles XV and XVI of the collective bargaining agreement between OPEIU, Local 95 and UBCJA, Wisconsin River Valley District Council and their successors, the Greater Fox River Valley district Council of Carpenters.
4. Further, the GFRVC and Ronald Kopp as their agent, have refused to submit this grievance to the WERC for arbitration as called for in Article XI, Sec. 4 of the agreement.
5. Filing fees as required by Wis. Stat. 111.09(2) are enclosed.

The United Brotherhood of Carpenters and Joiners of America is referred to below as the UBC; the Greater Fox River Valley District Council of Carpenters is referred to below as the GFRVDC; and the Wisconsin River Valley District Council of Carpenters is referred to below as the WRVDC.

2. On January 10, 1990, Salmon filed with the Commission the following amended complaint of unfair labor practice:

1. Michael Salmon, Business Agent, Local 95, OPEIU and Julie Rajek, 615 Wisconsin St., Merrill, WI 54452, an employee of the Wisconsin River Valley District Council of Carpenters, allege:
2. Respondents, The United Brotherhood of Carpenters and Joiners of America, the Greater Fox River Valley District Council of Carpenters, the Wisconsin River Valley District Council of Carpenters and their agents; Thomas J. Hanahan, 101 Constitution Ave., N.W. Washington D.C. 20001 and Knuth Larson, RR 2 Mahocker, Mazomanie, WI 53560, for the UBC&J of A, Ronald Kopp, Business Manager, Greater Fox River Valley District Council of Carpenters, 2828 N. Ballard Rd. Appleton, WI 54915, and Phil Cohrs, W 4237 CTH G, Merrill, WI 54452, former Business Manager of the Wisconsin River Valley District Council of Carpenters, have engaged and are continuing to engage in unfair labor practices.

3. The UBC&JA ordered the consolidation of the GFRVDC and the WRVDC and the dissolution of the latter body. As a result of the consolidation order, on or about March 29, 1989 Mr. Rajek's employment was terminated in violation of Articles XV and XVI of the collective bargaining agreement between OPEIU, Local 95 and the WRVDC and their successors, the Greater Fox River Valley District Council of Carpenters.
4. Local 95, Mr. Rajek's bargaining agent, was never notified of the UBC&JA's intent to merge the GFRVDC & WRVDC, nor were we given the opportunity to negotiate the effects of such a merger on Ms. Rajek.
5. Further, the GFRVDC and their agent Ronald Kopp have refused to submit this grievance to the WERC for arbitration as called for in Article XI, section 4. of the agreement.

3. On March 27, 1990, the GFRVDC filed with the Commission a motion to dismiss or for other relief, and supporting documentation. This documentation included an affidavit indicating that the WRVDC had, through a directive issued by the General President of the UBC, been dissolved and merged with the GFRVDC. On April 16, 1990, the UBC filed with the Commission an answer and a motion to dismiss.

4. On May 8, 1990, Salmon filed the following letter:

This is in response to your letter of April 9, 1990, in which you asked me to respond to several issues raised by the various pleadings in this case.

I. Specify the Statutory Sections the Various Respondents Have Violated.

The union is charging that the United Brotherhood of Carpenters and Joiners of America and the Greater Fox River Valley District Council of Carpenters and their agents, as named in our amended complaint, have violated Wisconsin Statutes, 111.06(1)(f), by violating the terms of the collective bargaining agreement's articles on grievance arbitration (Exhibit A, attached). We are also charging the UBC and the GFRVDC with violating 111.06(1)(d) of the Wisconsin Statutes by their failure to notify Local 95 of their intention to close the Wisconsin River Valley District Council of Carpenters office and bargain the effects of such closure on their employee, Julie Rajek.

II. Clarify Commission's Jurisdiction

The jurisdiction of the WERC in this matter is clearly spelled out in the parties collective bargaining agreement's Article XI (Exhibit A), "A grievance within the meaning of this Agreement shall be any difference of opinion, controversy or dispute arising between the parties hereto relating to any matter of wages, hours and working conditions, or any dispute between the parties involving interpretation or application of this

Agreement.

Additionally, the National Labor Relations Board has declined jurisdiction over this matter as the bargaining unit involved is comprised of less than two (2) people.

In a deposition dated December 16, 1988 (Exhibit B, attached), Mr. Lucassen, President of the UBC, asserts the UBC's control over "subordinate bodies" in paragraphs 2 through 9, clearly laying out the subsidiary status of all local unions and district councils affiliated with the UBC. This includes the WRVDC as well as the GFRVDC. In paragraph 7. of the deposition (Ex. B) Mr. Luccassen asserts control over "all property and funds of" the former WRVDC and orders them "Preserved for future transfer to the Fox River Valley District Council."

In two letters dated June 23, 1987 (Exhibit C, attached), the FRVDC informs Mr. Cohrs he is now an employee of theirs. This is prior to the time Mr. Cohrs negotiated the disputed agreement with Local 95. In the second letter, the FRVDC seems to be terminating the employment of Ms. Rajek. In a third letter (Exhibit D, attached), dated April 10, 1990, the FRVDC requests whomever it may concern to "DISCONTINUE service" to the WRVDC offices. Clearly, by these letters, the FRVDC was asserting control over the office of the WRVDC and they considered Mr. Cohrs to be their representative. In light of the above, Local 95 fails to see how the UBC and FRVDC can maintain their position that they have no responsibility in this matter.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to determine the merit of the alleged violation of Sec. 111.06(1)(d), Stats., if Local 95 can demonstrate the National Labor Relations Board has declined to, or will not, assert its jurisdiction under the National Labor Relations Act.
2. The Commission has jurisdiction to determine the merit of the alleged violation of Sec. 111.06(1)(f), Stats.
3. It cannot be concluded, on the pleadings presently filed in this matter, that no interpretation of the facts alleged in the complaint, as amended, would entitle Local 95 to relief.
4. Local 95, the UBC, the GFRVDC, and the WRVDC through Philipp Cohrs are parties in interest to the complaint, as amended, within the meaning of Sec. 111.07(2)(a), Stats.

ORDER

1. The motions to dismiss, filed by the GFRVDC on March 27, 1990, and by the UBC on April 16, 1990, are denied.
2. Michael Salmon shall make the complaint more definite and certain by filing an amended complaint which clarifies the complaint, as initially amended on January 10, 1990, in the following respects:

- a. Salmon shall allege, in the body of the complaint, facts sufficient to demonstrate the National Labor Relations Board has declined to assert its jurisdiction over the matter, or facts sufficient to establish the bargaining unit represented by Local 95 consists of one employs.
- b. Salmon shall identify the collective bargaining agreement Local 95 alleges has been violated and shall state sufficient facts to indicate the agreement was in effect at the times relevant to the allegations of the complaint.
- c. Salmon shall specify the provisions of the agreement noted in paragraph b above which Local 95 alleges have been violated, either by stating those provisions in the body of the complaint or by including them as an attachment incorporated into the body of the complaint.
- d. Salmon shall state in the body of the complaint the facts Local 95 intends to prove to establish that the GFRVDC is the successor to the WRVDC.

Dated at Madison, Wisconsin, this 11th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Examiner

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

THE PARTIES' POSITIONS

The complaint, amended complaint and supporting argument of Local 95 have been fully set forth in the Findings of Fact. The full text of Cohrs' March 27, 1990, response to the pleadings has been set forth in the prefatory material preceding the Findings of Fact.

The GFRVDC, in its March 27, 1990, motion to dismiss urges initially that the WRVDC "has been legally defunct, dissolved and its charter withdrawn since November 4, 1988". It follows, according to the GFRVDC, that "because they no longer exist the WRVDC and its agents' cannot be parties in interest in this proceeding and should be stricken as respondents in this proceeding." Noting that the amended complaint alleges that Rajek was an employe of the WRVDC, not the UBC or the GFRVDC, the GFRVDC contends that:

Dismissal or more cogent pleading of this claim should be required for several reasons: (1) only the "employer" of the employees in the bargaining unit has a duty to bargain with its representative under Sec. 111.06(1)(D), Wis. Stats.; and further (2) the duty to bargain imposed by state law may not be applied to a private sector employer subject to the jurisdiction of the NLRB under federal law.

Beyond this, the GFRVDC notes that the collective bargaining agreement under which Local 95 seeks to compel arbitration names the WRVDC as the employer, and that "the bare claim" that GFRVDC is a successor to the GFRVDC is legally insufficient to "make the labor agreement signed by one employer binding on another." It follows, according to the GFRVDC, that the complaint must either be dismissed or clarified "so that the issues and proper parties to this proceeding can be determined in an orderly manner."

In its April 16, 1990, Answer and Motion to Dismiss, the UBC asserts that the amended complaint against it must be dismissed. The UBC initially argues that it has been "at no time a statutory 'employer' that had any contractual relationship or legal duty to bargain with OPEIU Local 95." More specifically, the UBC contends that it is "a statutory labor organization within the meaning of Section 2 (5) of the National Labor Relations Act . . . (and) a statutory employer within the scope of 29 U.S.C. Section 152 (2), (6) and (7), to the extent it acts as an employer of employees." Because "(i)n both of its above capacities, the UBC is subject to the preemptive jurisdiction of the National Labor Relations Board under Federal law", it follows, according to the UBC, that it cannot be held subject to the unfair labor practices specified in the Wisconsin Peace Act. Beyond this, the UBC contends that Local 95 contracted with the WRVDC, not the UBC, and that the UBC "did not assume by operation of law the contractual obligations owed by its affiliate." Federal law, the UBC argues, clearly establishes that "the UBC is a legally separate and distinct entity from its affiliated Locals and Councils and is not bound by their actions." It follows, according to the UBC, that "the Commission must, as a matter of law, forthwith enter an order dismissing this case against the UBC as a named Respondent."

DISCUSSION

As clarified by its submission of May 8, 1990, Local 95 alleges that the UBC, WRVDC and the GFRVDC have committed violations of Secs. 111.06(1)(d) and

(f), Stats. Threshold of the issues posed by the motions filed by the GFRVDC and by the UBC is whether the Commission has jurisdiction over the complaint. If so, the next issue posed is whether the complaint states any claim upon which relief can be granted. If either of those issues are answered in the negative, the complaint, as amended, must be dismissed. If both issues are answered in the affirmative, the final prehearing issues posed are to identify the parties in interest for the hearing, and to determine if the complaint must be further clarified before hearing can be conducted.

Both the UBC and the GFRVDC claim that the unfair labor practice jurisdiction of the National Labor Relations Board preempts the Commission's jurisdiction over the matter under the Wisconsin Peace Act. This contention raises distinguishable issues under Sec. 111.06(1)(d) and (f), Stats. More specifically, it can be assumed that the UBC and the GFRVDC, in their capacity as employers, fall within the scope of the National Labor Relations Act, which enforces the duty to bargain in Sec. 8(a)(5). While Sec. 111.06(1)(d), Stats., parallels Sec. 8(a)(5), there is no federal unfair labor practice corresponding to the provisions of Sec. 111.06(1)(f), Stats. Thus, each provision must be separately addressed.

In the May 8, 1990, letter, Local 95 has alleged that the bargaining unit involved here consists of one employes. The Board will not order bargaining for a unit consisting of a single employes.^{1/} The Commission may assert its jurisdiction over complaints of unfair labor practice in disputes over which the Board declines to assert its jurisdiction.^{2/} Thus, the allegations made in the May 8, 1990, letter are sufficient to withstand the motions to dismiss made by the UBC and the GFRVDC.

Because the Board has not been granted the jurisdiction to enforce collective bargaining agreements, the type of preemption analysis applicable to Sec. 111.06(1)(d), Stats., is not applicable to Sec. 111.06(1)(f), Stats. Even if it is assumed that the asserted duty of the GFRVDC to submit the Rajek termination to arbitration also raises potential unfair labor practices falling within the Board's jurisdiction, it does not follow that the Commission lacks jurisdiction over the asserted duty to arbitrate. The Sec. 111.06(1)(f), Stats., claim is a Section 301 type action. The Board's unfair labor practice jurisdiction is not exclusive, and does not destroy judicial jurisdiction of suits under Section 301.^{3/}

Because it has been held that the Commission is "a competent state tribunal having concurrent jurisdiction with the federal courts to enforce bargaining agreements covering employes in industry affecting commerce"^{4/}, it follows that the Board's unfair labor practice jurisdiction does not preempt the Commission's jurisdiction over the alleged violation of Sec. 111.06(1)(f) Stats.

In sum, the assertion by Local 95 that the unit involved here is a one-

1/ Stern Made Dress Co., Inc., 218 NLRB 372 (1975); Sac Construction Company, Inc., 235 NLRB 1211 (1978); and West Roxbury Crushed Stone Division, S.M. Lorusso & Sons, Inc., 297 NLRB 131 (1990).

2/ See Sec. 14(c)(2) of the National Labor Relations Act.

3/ See Smith v. Evening News Association, 371 U.S. 195, 51 LRRM 2646 (1962).

4/ Northwestern Mutual Life Insurance Company, Dec. No. 22366-B (WERC, 7/86) at 6, citing: Textile Workers Union v. Lehigh Mills, 353 U.S. 448 (1957); Local 174, Teamsters v. Lucas Flour, 369 U.S. 95 (1962); Dowd Box v. Courtney, 368 U.S. 52 (1962); Tecumseh Products v. WERB, 23 Wis.2d 118 (1963); and American Motors Corp. v. WERB, 32 Wis.2d 237 (1966). The legal standards applied by the Commission must be consistent with federal law.

person unit is sufficient to withstand the motion to dismiss the Sec. 111.06(1)(d), Stats., violation based on the preemption of the Peace Act by the National Labor Relations Act. The National Labor Relations Act cannot preempt the Sec. 111.06(1)(f), Stats., allegation, since that allegation is a Section 301 type action, and the Commission has concurrent jurisdiction with the courts on such types of issues.

The next issue is whether the complaint, as amended, states any claim requiring hearing. Sec. 111.07, Stats., requires hearing on complaints, and specifies the procedures for hearings. In addition to the procedures of the Peace Act, the case is governed by Chapter 227, Stats. Specifically, the "substantial interest" of Rajek has been "denied or controverted" by both the UBC and the GFRVDC. Because Sec. 111.07(2)(a), Stats., mandates a hearing on the matter and Sec. 111.07(4), Stats., mandates a written decision, the amended complaint meets the elements of Sec. 227.01(3), Stats., which defines a "Contested case". Both the Peace Act and the Administrative Procedure Act are expansive in their statement of the right to a hearing. As a result, the Commission, and its examiners, have been expansive in enforcing a complainant's right to a hearing. 5/

It does not, however, follow that the right of a complainant to a hearing is unlimited. The Commission has, under the Peace Act, granted a pre-hearing motion to dismiss. 6/ In addition, the Commission has, with judicial approval, authorized examiners to determine pre-hearing motions to dismiss. 7/ A pre-hearing motion to dismiss can be granted only if a complaint fails to raise a genuine issue of fact or law. The standard appropriate to determining the merit of a prehearing motion to dismiss has been stated thus:

Because of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief. 8/

Because it can not be said that no interpretation of the facts alleged would entitle Local 95 to relief, the motions to dismiss can not be granted. The assertion of the GFRVDC that only the "now-defunct WRVDC" can be considered under a duty to bargain with Local 95 or to discharge a duty to arbitrate the Rajek grievance raises issues of fact and law regarding whether the GFRVDC can

5/ See, for example: Hennes Erecting Company, Inc., Dec. No. 19675-A (Bernstone, 1/83) and Kenosha Auto Transport Corporation, Dec. No. 19081-A (Bielarczyk, 6/82), aff'd by operation of law, Dec. No. 19081-C (WERC, 1/83).

6/ Local Union No. 849, United Brotherhood of Carpenters and Joiners of America and Fox River Valley District Council of United Brotherhood of Carpenters and Joiners of America, Dec. No. 5502 (WERC, 6/60).

7/ See County of Waukesha, Dec. No. 24110-A (Honeyman, 10/87), aff'd Dec. No. 24110-B (WERC, 3/88); and Moraine Park Technical College et. al., Dec. No. 25747-C (McLaughlin, 9/89), aff'd Dec. No. 25747-D (WERC, 1/90). For judicial approval, see Village of River Hills, Dec. No. 24570 (WERC, 6/87), aff'd Dec. No. 87-CV-3897 (CirCt Dane County, 9/87), aff'd Dec. No. 87-1812 (CtApp, 3/88). The procedural history of the case is summarized in Village of River Hills, Dec. No. 24750-B (Greco, 4/88). All of the above cases arose under the Municipal Employment Relations Act, but that Act incorporates and applies the procedures of Sec. 111.07, see Sec. 111.70(4)(a), Stats.

8/ Unified School District No. 1 of Racine County, Wisconsin, Dec. No. 15915-B (Hoornstra, with final authority for WERC, 12/77) at 3. The standard was approved in Moraine Park, cited at footnote 7/.

be considered its successor, as alleged in the complaint. Local 95 may or may not be able to prove a legal and factual basis for this claim, but is entitled to a hearing to attempt to do so.

Both the UBC and the GFRVDC claim that only the WRVDC can be considered a respondent in this case. UBC claims that it has never been signatory to the WRVDC agreement with Local 95, and can not be bound by the actions of an affiliate. The complaint does not, however, allege that UBC was Rajek's employer or is directly bound by the actions of the WRVDC. Rather, the complaint alleges that the UBC ordered the consolidation/dissolution process by which Rajek lost her job. Local 95 has introduced a document purporting to show that the UBC, by its Constitution, has reserved the power "to establish and charter subordinate" bodies. GFRVDC has submitted documentation purporting to demonstrate that the UBC exercised this power in ordering the dissolution of the WRVDC and its merger into the GFRVDC. The complaint appears to allege that the UBC was obligated to order the GFRVDC to bargain the effects of, or to arbitrate, Rajek's termination as a part of the consolidation/dissolution process. If the UBC can not be so obligated as a matter of fact, this claim can not be proven. However, a potential issue of fact has been joined, and both Local 95 and the UBC have an interest in proof of that fact. Similarly, a potential issue of fact has been joined as to whether the GFRVDC can be considered a successor to the obligations of the WRVDC. Both Local 95 and the GFRVDC have an interest in proof of the facts necessary to establish a successorship. Neither the Peace Act nor the Administrative Procedure Act require more than a "substantial interest" in the matter. Both the UBC and the GFRVDC have such an interest in the complaint.

The final issues to be addressed are to identify the parties in interest and to determine whether the complaint requires further clarification before hearing is scheduled. The discussion above notes the interest of Local 95, the UBC and the GFRVDC. The interest, if any, of the WRVDC can not be readily determined. It would appear from the pleadings that the WRVDC is not a functioning entity at the present time. Nor is Cohrs' interest in the matter immediately apparent. However, his March 27, 1990, letter indicates an interest in the matter. Both the Peace Act and the Administrative Procedure Act point to hearings, not motion practice, and the nature of Cohrs' interest can best be determined at hearing (See. 227.44(2m), Stats.).

The final issue to be addressed is the clarity of the allegations of the complaint. At most, the conclusions reached above establish that the complaint, as amended, can withstand the motions for dismissal. It does not follow from this that the complaint is sufficiently clear that hearing should be scheduled. The jurisdictional allegations of Local 95 have yet to be incorporated into the complaint. If those allegations are contested, Local 95 must submit proof on them. Beyond this, although the complaint does allege GFRVDC is the successor to WRVDC, the facts Local 95 intends to prove to establish that status remain unclear. To permit the respondents to prepare for hearing, the allegation of such facts is desirable.

The Order entered above requires Local 95 to clarify the complaint by making its jurisdictional allegations part of the body of the complaint; by identifying in the body of the complaint the collective bargaining agreement it asserts has been violated; by identifying or by setting forth, in the body of the complaint or as an attachment which has been incorporated into the complaint, the specific provisions of that agreement which Local 95 asserts have been violated; and to specify, in the body of the complaint, the facts it intends to prove to establish that the GFRVDC is a successor to the WRVDC. Such allegations are, at present, either unstated or are scattered throughout various items of correspondence. When Local 95 has complied with the Order, hearing will be scheduled.

Before closing, it is necessary to address a series of considerations.

Initially, it should be noted that the Findings of Fact entered above essentially reiterate the allegations of the complaint and the amended complaint. Those allegations have been assumed to be true, for the purpose of addressing the motions. The entry of those findings does not mean the allegations have been proven, or that different findings may not be entered in the future. Beyond this, it should be noted that the Conclusions of Law state the parties in interest to this litigation. No one from the UBC has entered an appearance except for the purpose of challenging the Commission's jurisdiction over the matter. This does not detract from the fact that the UBC has a potential interest in the litigation of this matter, and will be treated as a party in interest to the litigation of this complaint. It should also be noted that once Local 95 has complied with the Order, the respondents will be permitted to enter any necessary responsive pleadings.

Dated at Madison, Wisconsin, this 11th day of July, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Examiner