

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

- - - - -
EDUCATION ASSOCIATION OF WAUKESHA, :
Complainant, :
vs. : Case 68
SCHOOL DISTRICT OF WAUKESHA, : No. 44866 MP-2415
Respondent. : Decision No. 26718-A
- - - - -

ORDER GRANTING APPLICATION
FOR DEPOSITION

On November 20, 1990, Complainant Education Association of Waukesha filed a complaint with the Wisconsin Employment Relations Commission alleging that Respondent School District of Waukesha committed prohibited practices within the meaning of the Municipal Employment Relations Act. The Commission appointed Karen J. Mawhinney, Examiner, to make and issue Findings of Fact, Conclusions of Law and Order. The Complainant, on December 7, 1990, filed an Application for Deposition and, Alternatively, Motion to Schedule Hearing. The Respondent, on December 12, 1990, replied by letter objecting to the Complainant's Application for Deposition and to the Motion of Schedule Hearing. The Examiner, being fully advised in the premises, and being satisfied that good cause has been shown to take the deposition of Peter J. Williams in this matter pursuant to Wisconsin Administrative Code Section ERB 10.15, makes and issues the following

ORDER

That the Application for Deposition is hereby granted, and that the Complainant and Respondent shall take the testimony of Peter J. Williams by deposition no later than December 20, 1990.

Dated at Madison, Wisconsin, this 13th day of December, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Karen J. Mawhinney, Examiner

WAUKESHA SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER GRANTING
APPLICATION FOR DEPOSITION

The Complainant has indicated that Peter J. Williams is a principal witness concerning certain contested facts and that his live testimony is necessary for the successful prosecution of the above-captioned matter and of an arbitration that is the subject of the above-captioned matter.

The Complainant has further indicated that Williams will leave Wisconsin on December 21, 1990, to return to Australia, which is his permanent residence, and that the costs of round-trip airfare from Australia to Wisconsin range from \$2,100 to \$4,200. The Complainant has asked the Respondent's attorney to agree to depose Williams before December 21, 1990, and Respondent's attorney has refused to agree to such a deposition.

The Respondent has replied by stating that the Complainant's request to schedule an audio and visual deposition of Williams does not appear designed to produce relevant evidence necessary to answer the overriding legal issue presented; i.e., whether Williams is a municipal employee. The Respondent further objects to the Complainant's attempt to schedule an expedited hearing in the case, as the Respondent intends to file a motion to dismiss the prohibited practice complaint, but proper consideration of such a motion cannot be made by the Examiner if the short time lines proposed by the Complainant for a hearing are accepted. The Respondent further submits that a full evidentiary hearing or even a limited deposition should not be held until another matter is resolved, as the Respondent claims that the involvement of the Wisconsin Education Association Council in this case gives rise to a possible conflict of interest.

In accordance with ERB 10.15, Wisconsin Administrative Code, the Examiner has considered the positions of the parties and has determined that good cause has been shown for taking the testimony of Peter J. Williams by deposition, in view of the expense and inconvenience to obtaining Williams' testimony, and hereby grants the Application for Deposition.

Dated at Madison, Wisconsin this 13th day of December, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Karen J. Mawhinney, Examiner

