

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WISCONSIN STATE EMPLOYEES UNION :

(WSEU), AFSCME, COUNCIL 24, AFL-CIO, :

:

Complainant, : Case 304

: No. 44716 PP(S)-176

vs. : Decision No. 26739-A

:

THE STATE OF WISCONSIN, :

:

Respondent. :

:

ORDER DENYING MOTION TO DISMISS
AND MOTION TO STRIKE

The Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO, hereinafter the Complainant, filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission on October 19, 1990, alleging that the State of Wisconsin, hereinafter the Respondent, had committed unfair labor practices in violation of Secs. 111.84(1)(a) and (c), Stats., by refusing to allow legal counsel to attend certain investigatory interviews. On January 9, 1991, following an attempt by the parties to resolve this matter through mediation, the Commission appointed James W. Engmann, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. On March 4, 1991, the Respondent filed with the Commission an answer and affirmative defenses to the complaint of unfair labor practices. The Respondent also filed a Motion to Dismiss, alleging that an arbitration award attached to said Motion operates as a full and complete defense to these proceedings. In addition, the Respondent filed a Motion to Strike a certain paragraph of the complaint, alleging that said paragraph seeks an inappropriate form of relief for the alleged claim. Hearing on the complaint is scheduled for March 18, 1991. The Examiner, being satisfied that the Respondent's Motions should be denied at this time, makes and issues the following

ORDER

IT IS ORDERED that the Respondent's Motion to Dismiss and Motion to Strike be, and the same hereby are, denied.

Dated at Madison, Wisconsin this 14th of March, 1991.

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

DEPARTMENT OF EMPLOYMENT RELATIONS

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS
AND MOTION TO STRIKE

The Respondent's Motion to Dismiss alleges that an arbitration award involving these parties and issued by Robert J. Mueller on April 2, 1979, operates as a full and complete defense to these proceedings. Said Award held that a union representative other than the designated grievance representative does not have a contractual right to attend an investigatory interview. On its face, the complaint in this matter does not seek to enforce a contractual right. It does not allege a violation of the collective bargaining agreement nor of Sec. 111.84(1)(e), Stats.; instead, it alleges a violation of Secs. 111.84(1)(a) and (c), Stats.

The Respondent's Motion to Strike alleges that certain relief sought by the Complainant is an inappropriate form of relief for the alleged claim. Therefore, the Respondent seeks the striking of paragraph (d) which states: "Direct the State Employer to rescind the transfers/assignments and to make all affected COs whole." Based on what is before the Examiner at this time, it cannot be stated with certainty that there are no factual circumstances under which the Complainant's remedy would be appropriate.

Therefore, the Examiner has denied both the Motion to Dismiss and the Motion to Strike at this time on the grounds that the complaint, including the remedy sought, presents a contested case 1/ requiring a full hearing on the pleadings. 2/

Dated at Madison, Wisconsin this 14th day of March, 1991.

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

1/ Sections 111.07(2)(a), 111.07(4) and 227.064(1), Stats.

2/ General Electric Co. v. Wisconsin Employment Relations Board, (1957)
3 Wis.2d. 227, 241.