

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JOHN LESNIK and SERAFINO RUFFOLO,	:	
	:	
Complainants,	:	
	:	
vs.	:	Case 2
	:	No. 45548 Ce-2116
EATON CORPORATION, KENOSHA, WISCONSIN	:	Decision No. 26890-B
and INTERNATIONAL ASSOCIATION OF	:	
MACHINISTS AND AEROSPACE WORKERS,	:	
AFL-CIO, LODGE 34, KENOSHA, WISCONSIN,	:	
	:	
Respondents.	:	
	:	
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ORDER DENYING MOTION TO DISMISS

John Lesnik and Serafino Ruffolo, hereinafter the Complainants, having on March 29, 1991 filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission wherein it is alleged that Eaton Corporation, Kenosha, Wisconsin and International Association of Machinists and Aerospace Workers, AFL-CIO, Lodge 34, Kenosha, Wisconsin, hereinafter the Respondents, have engaged in unfair labor practices contrary to the provisions of Chapter 111 of the Wisconsin Statutes; and the Commission having appointed Coleen A. Burns, a member of its staff, to act as Examiner; and the Examiner having on May 20, 1991, issued an Order Granting Motion to Make Complaint More Definite and Certain; and Complainants having on June 4, 1991, responded to the Motion by amending their complaint; and Respondent Eaton Corporation having advised the Examiner on May 20, 1991, that the Examiner should construe its letter of April 11, 1991 as a Motion to Dismiss on the basis that the complaint was not filed in a timely manner; and the Examiner having considered the Motion to Dismiss and being satisfied that the Motion should be denied, issues the following

ORDER

The Motion to Dismiss the instant complaint is denied.

Dated at Madison, Wisconsin this 11th day of June, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
 Coleen A. Burns, Examiner

MEMORANDUM ACCOMPANYING ORDER
DENYING MOTION TO DISMISS

Section 111.07(1) provides that "any controversy concerning unfair labor practices may be submitted to the commission in the manner and with the effect provided in this subchapter, but nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction." Section 111.07(14) provides that "the right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged." Respondent Eaton Corporation argues that the complaint was not filed in a timely manner.

Given 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 Complainant be entitled to relief. The complaint, as amended on May 29, 1991, alleges that unfair labor practices occurred during the year of 1990 and part of 1991. Inasmuch as the complaint was initially filed on March 29, 1991, it was filed within one year from the date of specific acts or unfair labor practices alleged. Accordingly, the Examiner has denied Respondent Eaton Corporation's Motion to Dismiss. The complaint presents a contested case, 1/ requiring a full hearing on the pleadings. 2/ Respondent Eaton Corporation may reassert the Motion at the hearing.

Dated at Madison, Wisconsin this 11th day of June, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Coleen A. Burns, Examiner

1/ Wisconsin Statutes, Sec. 111.07(2)(a), Sec. 111.07(4), Sec. 227.

2/ Mutual Fed. Saving & Loan Assoc. v. Savings & Loan Adv. Comm., (1968) 38 Wis.2d 381; State ex. rel. City of La Crosse v. Rothwell, (1964) 25 Wis.2d 228, rehearing denied; Town of Ashwaubenon v. Public Service Commission, (1964) 22 Wis.2d 38, rehearing denied; State ex. rel. Ball v. McPhee, (1959) 6 Wis.2d 190; General Electric Co. v. Wisconsin Employment Relations Board, (1957) 3 Wis.2d 227.