

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TECHNICIANS, ENGINEERS AND ARCHITECTS	:	
OF MILWAUKEE COUNTY,	:	
	:	
Complainant,	:	
	:	Case 314
vs.	:	No. 46237 MP-2521
	:	Decision No. 27055-A
MILWAUKEE COUNTY,	:	
	:	
Respondent.	:	
	:	

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ORDER DENYING MOTION TO DISMISS COMPLAINT AND GRANTING  
MOTION TO AMEND COMPLAINT

On September 9, 1991, the Technicians, Engineers and Architects of Milwaukee County, herein Complainant, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that Milwaukee County, herein Respondent, had committed certain unfair labor or prohibited practices contrary to the provisions of Chapter 111.06 of the Wisconsin Statutes. On October 16, 1991, the Wisconsin Employment Relations Commission appointed Coleen A. Burns, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Secs. 111.70(4)(a) and 111.07, Stats. On October 21, 1991, the Examiner advised Complainant that, as a municipal employer, Milwaukee County is subject to Sec. 111.70 Stats., and not Sec. 111.06, Stats. The Examiner provided the Complainant with an opportunity to amend the complaint to cite a violation or violations of the Municipal Employment Relations Act and requested that any such amended complaint be filed by October 31, 1991. On November 6, 1991, Respondent requested that the complaint be dismissed on the basis that the Complainant did not comply with the Examiner's order requiring the amended complaint to be filed with the Wisconsin Employment Relations Commission no later than October 31, 1991 and because the Wisconsin Employment Relations Commission lacks jurisdiction over the County based on the original Complaint. On November 8, 1991, the Examiner advised the Complainant that if it wished to respond to the County's Motion to Dismiss, any such response was to be filed with the Commission on or before November 20, 1991. On November 15, 1991, Complainant filed a response requesting the Examiner to deny the Motion to Dismiss and to accept an amended complaint alleging that Respondent had committed unfair labor practices or prohibited practices in violation of Sec. 111.70, Stats. The Examiner having considered the matter;

NOW, THEREFORE, it is

ORDERED

1. That Respondent's Motion to Dismiss Complaint is hereby denied.
2. That Complainant's Motion to File an Amended Complaint is hereby granted.

Dated at Madison, Wisconsin this 22nd day of November, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Coleen A. Burns, Examiner

Milwaukee County

MEMORANDUM ACCOMPANYING ORDER DENYING  
MOTION TO DISMISS COMPLAINT AND GRANTING MOTION TO AMEND COMPLAINT

As the Respondent argues, the Complainant did not file the amended complaint within the time limits set forth in the Examiner's letter of October 21, 1991. However, Complainant's amendment is consistent with the requirements of the ERB 12.02(5), which provides as follows:

- (5) AMENDMENT. (a) Who may amend. Any complainant may amend the complaint upon motion, prior to the hearing by the commission; during the hearing by the commission if it is conducting the hearing, or by the commission member or examiner authorized by the board to conduct the hearing; and at any time prior to the issuance of an order based thereon by the commission, or commission member or examiner authorized to issue and make findings and orders.

Accordingly, the Examiner has granted Complainant's Motion to File an Amended Complaint.

The complaint, as amended, asserts that Milwaukee County has committed prohibited practices in violation of Sec. 111.70, Stats. The Examiner is persuaded that the complaint, as amended, presents a contested case, 1/ requiring a full hearing on the pleadings. 2/ Accordingly, the Examiner has denied Respondent's Motion to Dismiss Complaint.

Dated at Madison, Wisconsin this 22nd day of November, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Coleen A. Burns, Examiner

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

2/ Mutual Fed. Savings & 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 (1963) 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.