

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OAK CREEK PROFESSIONAL POLICEMEN'S ASSOCIATION,	:	
	:	
	:	
Complainant,	:	Case 91
	:	No. 46112 MP-2512
vs.	:	Decision No. 27074-A
	:	
CITY OF OAK CREEK,	:	
	:	
Respondent.	:	
	:	

Appearances:

Gimbel, Reilly, Guerin & Brown, Attorneys at Law, by Ms. Marna M. Tess-Mattner, 2400 Milwaukee Center, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Complainant.
 Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Robert H. Buikema, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-3101, appearing on behalf of the Respondent.

ORDER DENYING MOTION TO DISMISS

Oak Creek Professional Policemen's Association hereinafter referred to as Complainant, filed a complaint on August 12, 1991 with the Wisconsin Employment Relations Commission alleging that the City of Oak Creek, hereinafter referred to as the Respondent, had violated Secs. 111.70(3)(a)4 and 5, Stats., by unilaterally implementing an investigator position. On October 31, 1991, the Commission appointed Lionel L. Crowley, 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. A hearing was scheduled on the complaint for December 18, 1991. On November 29, 1991, the Respondent filed its Answer and a Motion to Dismiss the complaint, together with supporting documents. Upon careful consideration of the complaint and the Motion to Dismiss and supporting documents, the Examiner finds that substantial issues of fact remain which can best be resolved by a hearing.

NOW, THEREFORE, it is

ORDERED

That the Motion to Dismiss the complaint is denied.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
 Lionel L. Crowley, Examiner

CITY OF OAK CREEK

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS

Respondent argued in its Motion to Dismiss that the establishment and implementation of the investigator position is covered by the terms of the parties' collective bargaining agreement and that the Complainant failed to exhaust its exclusive contractual remedies, and therefore, the Commission should not exercise jurisdiction over the complaint. Paragraph 8 of the complaint alleges that the Association filed a request to arbitrate various

aspects of the new position and Respondent admits that a petition for interest-arbitration was filed, hence a factual dispute may be in issue.

Additionally, the Commission has jurisdiction to hear and decide cases which allege prohibited practices but could also be resolved through the grievance arbitration procedure of the parties' existing collective bargaining agreement. The exercise of jurisdiction is discretionary with the Commission and the Commission will defer to the contractual grievance procedure under the following circumstances:

1. The parties must be willing to arbitrate and renounce technical objections which would prevent a decision on the merits by the arbitrator;
2. The collective bargaining agreement must clearly address itself to the dispute; and
3. The dispute must not involve important issues of law or policy. 1/

In the instant case, there is nothing to indicate that the Respondent has agreed to renounce any technical/procedural objections. Additionally, it is not clear that the parties are in agreement that the contract specifically addresses itself to the dispute underlying the complaint.

Therefore, the undersigned finds that, at the present time, there are sufficient disputed facts and allegations that are best resolved by a hearing on the complaint. Accordingly, the Motion to Dismiss has been denied.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

1/ Racine Unified School District, Dec. No. 18443-B (Houlihan, 3/81).