

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GENERAL TEAMSTERS UNION LOCAL	:		
NO. 662, a/w INTERNATIONAL	:		
BROTHERHOOD OF TEAMSTERS,	:		
	:	Case 26	
Complainant,	:	No. 49251 MP-2736	
	:	Decision	No.
27766-A	:		
vs.	:		
TOWN OF WESTON,	:		
	:		
Respondent.	:		
	:		

ORDER DENYING MOTION
FOR SUMMARY JUDGEMENT

On May 12, 1993, General Teamsters Union Local No. 662, hereinafter the Complainant, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission wherein it alleged that the Town of Weston, hereinafter the Respondent, had committed violations of Secs. 111.06(1)(f) and (g) of the Wisconsin Employment Peace Act by failing to comply with an arbitration award. On August 2, 1993, the Complainant filed a Motion for Summary Judgement along with an affidavit and brief in support of said motion. The Commission appointed a member of its staff, David E. Shaw, to act as Examiner in this case on August 13, 1993, and on that same date, the Examiner directed Respondent to file its answer in this matter and any response it wished to make to Complainant's motion. On August 30, 1993, Respondent filed its answer wherein it admitted the factual allegations in the complaint, but denied it had committed a prohibited practice and also raised certain affirmative defenses which included factual allegations. Along with its answer, Respondent also filed a brief and affidavit in opposition to the Motion for Summary Judgement.

On September 13, 1993, Complainant filed an amended complaint alleging a violation of Sec. 111.70(3)(a)5, of the Municipal Employment Relations Act. On September 22, 1993, the Respondent filed an amended answer wherein it admitted certain of the factual allegations, but denied it has failed to comply with an arbitrator's award and denied it has committed any prohibited practices, and raised certain affirmative defenses.

The Examiner has considered the Motion for Summary Judgement, the pleadings and the arguments of the parties, and being satisfied that the Motion for Summary Judgement should be denied, and that the matter should be set for hearing, now issues the following

No. 27766-A

ORDER

The Motion for Summary Judgement in this matter is denied.

Dated at Madison, Wisconsin this 24th day of September, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw /s/
David E. Shaw, Examiner

TOWN OF WESTON

MEMORANDUM ACCOMPANYING ORDER
DENYING MOTION FOR SUMMARY JUDGEMENT

Complainant originally filed its Motion for Summary Judgement in support of its alleged violations of the Wisconsin Employment Peace Act by the Respondent. Part of the basis for the motion was the application of case law which would preclude a private sector employer from raising affirmative defenses to an alleged unfair labor practice for refusing to comply with an arbitration award. Citing, Teamsters Local 135 v. Jefferson Trucking, 628 F.2d 1023 (7th Cir., 1980). Since the Complainant has appropriately amended its complaint to allege a violation of the Municipal Employment Relations Act (MERA), that case law is not applicable. Respondent may raise affirmative defenses to its alleged failure to comply with an arbitration award, even though it failed to timely move to vacate the award under Sec. 788.13, Stats. Milwaukee Police Association v. City of Milwaukee, 92 Wis. 2d 145 (1979). Complainant now concedes that point.

The Respondent, by its answer and certain of its affirmative defenses, raises certain material issues of fact. Thus, a hearing will be necessary in order to resolve those issues, and the motion for summary judgement cannot be appropriately granted.

Dated at Madison, Wisconsin this 24th day of September, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By David E. Shaw /s/
David E. Shaw, Examiner