

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----	:	
GENERAL TEAMSTERS UNION LOCAL 662,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 189
	:	No. 51389 MP-2924
	:	Decision No. 28183-A
CHIPPEWA COUNTY,	:	
	:	
Respondent.	:	
	:	
-----	:	

ORDER HOLDING COMPLAINT IN ABEYANCE  
PENDING FURTHER ORDERS OF CIRCUIT COURT

On August 9, 1994, General Teamsters Union Local 662, hereinafter referred to as the Union, filed a complaint with the Wisconsin Employment Relations Commission alleging that Chippewa County, hereinafter referred to as the County, had committed prohibited practices in violation of Secs. 111.70(3)(a)5 and 1, Stats., by refusing to proceed to arbitration over a grievance relating to the appointment of a part-time Deputy Register in Probate without following the posting provisions of the parties' collective bargaining agreement. On October 3, 1994, 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. Hearing was scheduled in the matter for November 15, 1994. On or about October 12, 1994, the County filed a Complaint for Declaratory Ruling in Chippewa County Circuit Court seeking to declare rights under Sec. 857.71, Stats. On that same date the County filed a Motion with the Examiner for Deferral and Continuance. The Union was given the opportunity to respond to said Motion by October 26, 1994. The Union responded that it did not object to the Motion but suggested that deferral would be only until such time as the Court might order deferral to the Commission. Based on the Motion and supporting documents, it is hereby

ORDERED

That the proceedings in this matter presently before the Examiner are indefinitely stayed pending further orders of the Court in the Declaratory Ruling, Case 94-CV-347 in the Chippewa County Circuit Court.

Dated at Madison, Wisconsin, this 1st day of November, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

CHIPPEWA COUNTY

MEMORANDUM ACCOMPANYING  
ORDER HOLDING COMPLAINT IN ABEYANCE  
PENDING FURTHER ORDERS OF CIRCUIT COURT

The Complaint for Declaratory Ruling filed with the Circuit Court involves the relationship of Sec. 857.71, Stats., and portions of the collective bargaining agreement between the County and the Union. The Circuit Court case involves the same statutory construction issue as the complaint

No. 28183-A

before the Examiner. It is the Commission's policy not to assert its jurisdiction over issues which also have been submitted to a court, even though the Commission may have primary jurisdiction over the issue. It is for the Court to decide to honor the Commission's primary jurisdiction. 1/ Consequently, the Examiner has issued an Order holding the instant proceeding in abeyance pending further orders of the Circuit Court.

Dated at Madison, Wisconsin, this 1st day of November, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

---

1/ When applying the doctrine of primary jurisdiction, the Wisconsin Supreme Court in McEwen v. Pierce County, 90 Wis.2d 256, 271, provided the following guidance to circuit courts:

This court has in numerous cases discussed the doctrine of primary jurisdiction and distinguished those issues best left to the agency from those best left to the court. We have said that where factual issues are significant the better course may be for the court to decline jurisdiction; where statutory interpretation or issues of law are significant, the court may properly choose in its discretion to entertain the proceedings.

However, we have cautioned that the circuit court must exercise its discretion with an understanding that the legislature created the WERC in order to afford a systematic method of factfinding and policymaking and that the WERC's jurisdiction should be given priority in the absence of a valid reason for judicial intervention. Browne v. Milwaukee Board of School Directors, 83 Wis.2d 316, 328, 329, 265 N.W.2d 559 (1978).