

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH C. GITTENS,

Complainant,

vs.

WISCONSIN ASSOCIATION OF SCHOOL
BOARDS and WISCONSIN EDUCATION
ASSOCIATION COUNCIL,

Respondents.

Case 14

No. 52070 MP-2980

Decision No. 28325-B

ORDER DENYING REQUEST TO INCLUDE WISCONSIN DEPARTMENT
OF PUBLIC INSTRUCTION AS A RESPONDENT

On January 11, 1995, Complainant Joseph C. Gittens filed a complaint of prohibited practices against the Wisconsin Association of School Boards and the Wisconsin Education Association Council with the Wisconsin Employment Relations Commission. On February 21, 1995, 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., On March 17, 1995, Complainant filed a request that the complaint be amended to include the Wisconsin Department of Public Instruction as a Respondent. On April 13, 1995, the Wisconsin Department of Public Instruction, by counsel, filed a Motion for an Order denying the Complainant's request. The Complainant was given until April 28, 1995, to respond to said Motion but did not do so.

The Examiner, being fully advised in the premises, makes and issues the following

ORDER 1/

The Complainant's request to add the Wisconsin Department of Public Instruction is hereby denied.

Dated at Madison, Wisconsin, this 9th day of May, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

1/ See footnote on Page 2.

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

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- 1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

WISCONSIN EDUCATION ASSOCIATION COUNCIL and WISCONSIN ASSOCIATION OF SCHOOL BOARDS

MEMORANDUM ACCOMPANYING
ORDER DENYING REQUEST TO INCLUDE WISCONSIN DEPARTMENT
OF PUBLIC INSTRUCTION AS A RESPONDENT

The Complainant's request of March 17, 1995, merely requests the complaint be amended to include the Wisconsin Department of Public Instruction as a Respondent. A review of the complaint fails to reveal any facts which allege that the Department of Public Instruction had committed any prohibited practice. In other words, the complaint fails to state a claim that the Wisconsin Department of Public Instruction has done anything in violation of Sec. 111.70, Stats., upon which relief could be granted.

The Wisconsin Department of Public Instruction is not a municipal employer under Sec. 111.70(1)(j), Stats., and has not been alleged to be a "person" under Sec. 111.70(1)(k), Stats. There is absolutely nothing in the pleadings that could reasonably be construed to allow inclusion of the Wisconsin Department of Public Instruction as a Respondent. Therefore, the Complainant's request to amend the complaint to include the Wisconsin Department of Public Instruction is denied in all respects.

Dated at Madison, Wisconsin, this 9th day of May, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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