

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENNETH B. HILL,

Complainant,

vs.

MILWAUKEE COUNTY and AFL-CIO DISTRICT
COUNCIL 48, LOCAL 1055,

Respondents.

Case 419

No. 53937 MP-3153

Decision No. 28754-A

ORDER DENYING MOTION TO DISMISS

On March 14, 1996, Kenneth B. Hill, hereinafter Complainant, filed a complaint with the Wisconsin Employment Relations Commission alleging that Milwaukee County, hereinafter County, withheld certain wages in violation of the collective bargaining agreement and that AFL-CIO District Council 48, Local 1055, hereinafter Union, failed to represent him by failing to process his grievance over same "to the third step of arbitration with the Labor Relations Department." On June 7, 1996, the Commission appointed Dennis P. McGilligan, 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 Sections 111.70(4)(a) and 111.07, Stats. On the same date, hearing in the matter was scheduled for Wednesday, July 31, 1996 in Milwaukee, Wisconsin. On June 14, 1996 Respondent Milwaukee County filed an Answer to the complaint, and a Motion to Dismiss the complaint. By letter dated June 17, 1996, the Examiner advised the parties as follows:

. . . if the parties wish to file written arguments in the matter, please do so on or before June 28, 1996. The Motion will be disposed of after that date, and prior to hearing.

No response to this letter has been filed.

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

ORDER

The Motion to Dismiss is hereby denied.

Dated at Madison, Wisconsin this 1st day of July, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilliant /s/
Dennis P. McGilligan, Examiner

No. 28754-A

MILWAUKEE COUNTY (HOUSE OF CORRECTIONS)

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DISMISS

On June 14, 1996 Milwaukee County submitted a Motion to Dismiss along with a Memorandum in Support of its Motion to Dismiss. In the Memorandum the County put forward several arguments in support of its position.

However, the Examiner has denied Respondent's Motion to Dismiss on the grounds that it is premature, and because the complaint presents a contested case, 1/ requiring a full hearing on the pleadings. 2/ Respondent may reassert the Motion to Dismiss at the hearing.

Dated at Madison, Wisconsin this 1st day of July, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Examiner

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

2/ Mutual Fed. Saving & Loan Assoc. v. Savings & Loan Adv. Comm.; (1968) 38 Wis.2d 381
State ex. rel. City of LaCrosse v. Rothwell, (1964) 25 Wis.2d 228, rehearing denied; Town of Ashwaubenon v. Public Service Commission, (1964) 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.