

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION,

Complainant,

vs.

VILLAGE OF KIMBERLY,

Respondent.

Case 17

No. 54070 MP-3169

Decision No. 28759-B

Appearances:

Mr. Richard J. Daley, Business Agent, Wisconsin Professional Police Association/LEER Division, 3301 South Clay Street, Green Bay, Wisconsin, 54301-1548, for the Complainant.

Godfrey & Kahn, S.C., Attorneys at Law, by Mr. James R. Macy, 100 West Lawrence Street, P. O. Box 2728, Appleton, Wisconsin, 54913-2728, for the Respondent.

ORDER DISMISSING PETITION FOR REVIEW

On May 1, 1996, Wisconsin Professional Police Association/LEER Division filed a complaint against the Village of Kimberly alleging the Village had committed a prohibited practice with the meaning of Sec. 111.70(3)(a)5, Stats., by violating an oral collective bargaining agreement between the parties. On May 29, 1996, the Village filed a pre-hearing Motion to Dismiss the complaint.

On July 18, 1996, Examiner Coleen A. Burns issued an Order denying the Motion to Dismiss. In her decision accompanying the Order, the Examiner stated that: ". . . the complaint, on its face, states a cause of action under the Municipal Employment Relations Act." and that:

"Liberally construed, the complaint states a timely claim of prohibited practice which, if proved, would entitle Complainant to relief under the Municipal Employment Relations Act. The Examiner is satisfied that this a contested case requiring a full hearing on the pleadings. Accordingly, the Examiner has denied Respondent's pre-hearing Motion to Dismiss the complaint."

On July 29, 1996, the Village filed a Petition with the Wisconsin Employment Relations Commission asking that the Commission review the Examiner's Order. The parties thereafter filed written argument in support of and opposition to the Petition, the last of which was received October 4, 1996.

The Commission has considered the matter and concluded that it will not exercise its discretionary authority to review the Examiner's decision.

NOW, THEREFORE, it is

ORDERED

The Petition for Review is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin,
this 19th day of December 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

No. 28759-B

VILLAGE OF KIMBERLEY

MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITION FOR REVIEW

The Examiner's decision is not a "final" disposition of the parties' dispute as to which a non-discretionary right to Commission review exists. 1/ At this juncture, the Examiner has neither dismissed the complaint nor concluded that it has merit. She has only determined that "liberally construed," the complaint should proceed to hearing. 2/ Under these circumstances, we do not find it appropriate to exercise our discretionary power 3/ to entertain the Petition for Review of the Examiner's interlocutory decision. 4/ Therefore, we have dismissed the Petition.

If the case is ultimately decided in a final manner which either party believes to be incorrect, either party is free to file a Petition for Review at that time raising whatever issues that party deems appropriate.

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- 1/ G & H Products, Inc., Dec. No. 17630-B (WERC, 1/82); Jefferson Board of Education, Dec. No. 13648-B (WERC, 1/76)
- 2/ The standard for determining the merit of a pre-hearing motion to dismiss is strict and is summarized in Unified School District No. 1 of Racine County, Wisconsin, Dec. No. 15915-B (Hornstra with final authority for WERC, 12/77), at 3. as follows:

Because of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief.

We note both parties' briefs are filled with factual assertions which have yet to be tested by an evidentiary hearing.

- 3/ In State of Wisconsin, Dec. No. 24109 (WERC, 12/86), we noted:

The Commission is not well equipped under Chapters 227 or 111, Stats. or with the administrative resources to entertain or to encourage extensive pre-hearing motion practice

- 4/ State of Wisconsin, Dec. No. 11457-C, D (WERC, 3/73), aff'd State of Wisconsin v. WERC, 65 Wis.2d 624 (1974); Milwaukee County, Dec. No. 19545-D (WERC, 3/85); Wisconsin Dells School District, Dec. No. 25997-A (WERC, 6/89); City of Beloit, Dec. No. 25917 (WERC, 10/89). No. 28759-B

Given under our hands and seal at the City of Madison, Wisconsin,
this 19th day of December 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner