

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO, Complainant,

vs.

WALWORTH COUNTY, Respondent.

Case 143
No. 55356
MP-3319

Decision No. 29197-C

Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, by **Attorney Bruce F. Ehlke**, P. O. Box 2155, Madison, Wisconsin 53701, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO

von Briesen, Purtell & Roper, S.C., by **Attorney Charles P. Magyera**, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202-4470, appearing on behalf of Walworth County.

**ORDER SETTING ASIDE AND REMANDING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On May 27, 1998, Examiner Raleigh Jones issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein he concluded that Respondent Walworth County had not committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2 or 3, Stats. He therefore dismissed the complaint.

Complainant timely filed a petition for review seeking Commission review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. The parties thereafter filed briefs, the last of which was received July 22, 1998.

Among other matters, Complainant takes issue with the Examiner's refusal to admit into evidence a tape recording of a County Board meeting made and used by the County Clerk to help her prepare the minutes of said meeting. Complainant contends the tape would provide relevant proof of the knowledge and animus of certain County Board members at the time a critical County decision was made. Respondent argues the Examiner's refusal to receive the tape was appropriate.

No. 29197-C

We have reviewed the matter and conclude that the Examiner erred when he refused to admit the tape into evidence. The tape is relevant to the issues raised by Complainant and we are satisfied that there is no evidentiary rule which requires the tape's exclusion.

Given our conclusion, we are satisfied it is appropriate to set aside the Examiner's decision and remand the matter to him for further proceedings. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 26437-C (WERC, 6/91); STATE OF WISCONSIN, DEC. NO. 25978-B (WERC, 7/90); CITY OF EAU CLAIRE, DEC. NO. 22795-B (WERC, 3/86). After receiving the tape into evidence, conducting any supplemental hearing which is appropriate, and receiving any supplemental written argument from the parties, the Examiner will issue whatever decision he deems warranted by the evidence and argument. The parties will then have the period of time established by Sec. 111.07(5), Stats., within which to seek Commission review.

Given all of the foregoing, we make and issue the following

ORDER

1. Pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats., the Examiner's Findings of Fact, Conclusions of Law and Order in the above matter are hereby set aside and the matter is remanded to the Examiner for further proceedings.
2. In light of Conclusion of Law 1, the petition for review filed by Complainant is dismissed, without prejudice to the rights of any party to petition for review of the decision issued by the Examiner following this remand.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of August, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner