

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**DISTRICT NO. 10, INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS**, Complainant,

vs.

MILWAUKEE COUNTY WAR MEMORIAL CENTER, INC., Respondent.

Case 309
No. 56188
MP-3396

Decision No. 29421-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Matthew R. Robbins**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, WI 53212, appearing on behalf of District No. 10, International Association of Machinists and Aerospace Workers.

Michael, Best & Friedrich, LLP, by **Attorney Marshall R. Berkoff**, 100 East Wisconsin Avenue, Milwaukee, WI 53202-4108, appearing on behalf of Milwaukee County War Memorial Center, Inc.

ORDER DENYING MOTION TO DISMISS COMPLAINT

District No. 10, International Association of Machinists and Aerospace Workers, filed a complaint with the Wisconsin Employment Relations Commission on February 20, 1998, alleging that Milwaukee County War Memorial Center, Inc. had committed prohibited practices by refusing to bargain with the Union over the unilateral removal of certain positions and work from the bargaining unit and by refusing to recognize and bargain with the Union since the removal of the aforesaid positions from the bargaining unit. Thereafter, the

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complaint was held in abeyance pending efforts to resolve the dispute. Those efforts were unsuccessful and on October 8, 1998, Milwaukee County War Memorial Center, Inc. filed a Motion to Dismiss the complaint, along with supporting arguments, affidavit and exhibits. Milwaukee County War Memorial Center, Inc., also on October 8, 1998, filed its Answer and Affirmative Defenses. On October 30, 1998, the Union filed its response in opposition to the Motion to Dismiss. On November 30, 1998, the Union filed an amended complaint and Motion to Amend the complaint. On December 30, 1998, the parties completed their briefing schedule regarding the aforesaid Motion to Dismiss.

The Examiner, having considered the record to date and the arguments of the parties, makes and issues the following

ORDER

The prehearing Motion to Dismiss is denied.

Dated at Madison, Wisconsin, this 1st day of February, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

Dennis P. McGilligan, Examiner

MILWAUKEE COUNTY (WAR MEMORIAL CENTER, INC.)

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DISMISS COMPLAINT

On October 8, 1998, Milwaukee County War Memorial Center, Inc., filed a Motion to Dismiss the complaint, along with supporting arguments, affidavit and exhibits. Thereafter, the parties briefed the matter as noted above.

Milwaukee County War Memorial Center, Inc. argues, in material part, that the Commission should dismiss the complaint because it fails to state a claim upon which the Union is entitled to relief and because the Commission lacks jurisdiction over the complaint.

Lack of jurisdiction or failure of the complaint to state a cause of action are grounds to dismiss a contested case prior to hearing. COUNTY OF WAUKESHA, DEC. NO. 29477-A (SHAW, 10/98). The Commission has held:

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.

UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY, WISCONSIN, DEC. NO. 15915-B (HOORNSTRA WITH FINAL AUTHORITY FOR WERC, 12/77), AT 3; RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 27982-B (WERC, 6/94).

The Union argues that the Motion should be denied as premature since the complaint allegations set forth matters in the nature of a contested case requiring a full hearing on the pleadings. The Union claims that the contrasting assertions of the parties make it clear that this is a matter where the facts are in dispute and, therefore, they must be resolved through the normal hearing process. The Union adds "that the issues raised by the motion can only be decided upon a full evidentiary record."

Based on the Union's arguments and upon a review of the record to date, the Examiner agrees with the Union's position noted above. In addition, the Examiner points out that if the Union proves the complaint allegations that Milwaukee County War Memorial Center, Inc. has committed prohibited practices by refusing to bargain collectively with the Union, the Union would clearly be entitled to appropriate relief.

Therefore, the Examiner has denied Milwaukee County War Memorial Center, Inc.'s Motion to Dismiss on the grounds that it is premature, and because the complaint presents a contested case, WISCONSIN STATUTES, SEC. 111.07(2)(A), SEC. 111.07(4), SEC. 227, requiring a full hearing on the pleadings. 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. RE. BALL V. MCPHEE, (1959) 6 WIS.2D 190; GENERAL ELECTRIC CO. V. WISCONSIN EMPLOYMENT RELATIONS BOARD, (1957) 3 WIS.2D 227.

Dated at Madison, Wisconsin, this 1st day of February, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

Dennis P. McGilligan, Examiner