

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**MICHAEL W. HOPKINS**, Complainant,

vs.

**CITY OF KENOSHA (FIRE DEPARTMENT) AND KENOSHA  
FIREFIGHTERS, LOCAL 414, IAFF, AFL-CIO**, Respondents.

Case 187  
No. 57812  
MP-3538

**Decision No. 29715-C**

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**Appearances:**

**Mr. Michael W. Hopkins**, 33326 118<sup>th</sup> Street, Twin Lakes, Wisconsin 53181, appearing on his own behalf.

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, by **Attorney Timothy E. Hawks**, P.O. Box 442, Milwaukee, Wisconsin 53201-0442, appearing on behalf of Kenosha Fire Fighters, Local 414, IAFF, AFL-CIO.

Davis & Kuelthau, S.C., by **Attorney Roger E. Walsh**, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the City of Kenosha.

**ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

On May 15, 2000, Examiner Daniel J. Nielsen issued Findings of Fact, Conclusions of Law and Order Dismissing Complaint with Accompanying Memorandum in the above-entitled matter.

On June 2, 2000, Complainant Hopkins filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats.

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Complainant Hopkins did not file any written argument in support of his petition for review and by July 20, 2000, Respondents advised the Commission that they would not be filing any written argument in the matter.

Having reviewed the record and being fully advised in the premises, we make and issue the following

**ORDER**

The Examiner's Findings of Fact, Conclusions of Law and Order Dismissing Complaint are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 14th day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Chairperson James R. Meier did not participate.

**City of Kenosha (Fire Department)**

**MEMORANDUM ACCOMPANYING ORDER AFFIRMING  
EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER DISMISSING COMPLAINT**

Before us on review are the Examiner's January 24, 2000 Order Denying Complainant Hopkin's motion to disqualify counsel for Respondent Kenosha Firefighters, Local 414, IAFF, AFL-CIO and his May 15, 2000 decision dismissing Hopkins' complaint.

In his January 24, 2000 Order, the Examiner concluded that in order to insure that the parties appearing before him received due process of law, it was appropriate to consider and resolve Complainant's contention that counsel for Respondent Local 414 should not be allowed to represent Local 414 due to prior representation of Hopkins. On the merits, the Examiner concluded that counsel's representation of Local 414 in this matter did not impair Hopkins' right to due process.

In his May 15, 2000 decision, the Examiner resolved the issues before him as follows:

**CONCLUSIONS OF LAW**

1. That the Wisconsin Employment Relations Commission lacks subject matter jurisdiction over allegations of a breach of a collective bargaining agreement under Sec. 111.70(3)(a)5, MERA, with respect to the disciplinary decisions of a Board of Police and Fire Commissioners constituted under Chapter 62, Stats.

2. That the Wisconsin Employment Relations Commission lacks subject matter jurisdiction over allegations of violations of Sec. 111.325, the Wisconsin Fair Employment Act.

3. That the provision of legal counsel to a firefighter in a disciplinary proceeding before a Board of Police and Fire Commissioners is not a duty required by a Union's status as the exclusive bargaining representative of fire fighters.

4. That the Complainant has failed to exhaust his contractual remedies with respect to the allegation that the City violated the collective bargaining agreement by including improper and/or stale information in his personnel file, and that that matter should be deferred to arbitration.

5. That the Complainant has failed to exhaust his contractual remedies with respect to the allegation that the Fire Chief violated departmental rules by interviewing witnesses outside of his presence, and that the events complained of occurred more than one year prior to the filing of this complaint and are, therefore, barred by the statute of limitations set forth in Sec. 111.07(14), WEPA.

6. That the events complained of in the Complainant's April 28, 2000 attempt to amend his complaint to allege that the Union acted in concert with the City to violate the collective bargaining agreement in connection with the Fire Chief's interview with the Keckler's outside of his presence, took place more than one year prior to the filing of the amendment and are, therefore, barred by the statute of limitations set forth in Sec. 111.07(14), WEPA.

7. That the events complained of in the Complainant's April 28, 2000, attempt to amend his complaint to allege that the Union acted in concert with the City to violate the collective bargaining agreement in connection with the inclusion of improper and/or stale information in his personnel file are pending in arbitration. The Complainant's contractual remedies have not been exhausted and this allegation is not ripe for a charge of prohibited practices.

8. The complaint fails to state any claim upon which relief can be granted.

We have reviewed the record and considered the Examiner's analysis of the issues decided in his January 24, 2000 and May 15, 2000 decisions. Based on that review and consideration, we conclude that the Examiner should be affirmed in all respects.

Dated at Madison, Wisconsin this 14th day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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