

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JEFFERY L. DZIEWIT, Complainant,

vs.

DePERE PROFESSIONAL FIREFIGHTERS ASSOCIATION
and CITY OF DePERE, Respondents.

Case 89
No. 66269
MP-4290

Decision No. 32134-B

ORDER TO SHOW CAUSE WHY COMPLAINT SHOULD NOT BE DISMISSED

On August 29, 2006, Jeffrey L. Dziejewit filed a complaint with the Wisconsin Employment Relations Commission alleging that the DePere Fire Fighter's Association and the City of DePere committed prohibited practices within the meaning of Sections 111.70(3)(b)1 and 111.70(3)(a)5, respectively. On June 20, 2007, a hearing notice was issued for a hearing to be held on July 26, 2007. On June 22, 2007, the City of DePere filed a timely motion for the complaint to be made more definite and certain. Determining that the complaint was so indefinite as to hinder the city in its preparation of its answer to the complaint, the Examiner on that date issued an Order to Make More Definite and Certain, to wit:

A clear and concise statement of the facts constituting the alleged prohibited practice, including the date(s) upon which the alleged failure by the City to pay the Complainant occurred and the specific dollar amount the Complaint alleges he is owed, including amounts alleged to be owing from vacation pay, holiday pay, sick leave and compensatory time.

On June 26, 2007, the Complainant provided a statement, as follows:

The dates start as of October 28, 2002 and goes through March 2003. The payment estimated from what I am getting from ETF is 3,950 per month. This comes to a total after five months of 19,750. The city had all the information for me to be off on duty disability, but they chose to keep me working on light duty. This in turn caused me to use up my Comp time, holidays, and vacation pay. The city should have paid employee a lump sum for all time coming like all other retired employees according to the contract.

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On July 12, 2007, the City filed a Motion to Dismiss, stating, *inter alia*:

. . .

4. The dates when Complaint [sic] states the alleged failure of the City to pay occurred (and in fact the only dates alleged in Complaint's [sic] pleadings) are a time span ending in March of 2003.

5. Even in the light most favorable to the Complainant, by the pleadings on their face show that the Complaint in this matter is beyond one year from the date of the specific act or unfair labor practice alleged.

Section 111.07(14), Wis. Stats., provides as follows:

111.07(14): The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

Section 111.70(4)(a), Wis. Stats., provides as follows:

111.70(4)(a): *Prevention of prohibited practices.* Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter except that wherever the term "unfair labor practices" appears in s. 111.07 the term "prohibited practices" shall be substituted.

Accordingly, the Complainant is Ordered to Show Cause why the Complaint should not be dismissed, notwithstanding that more than one year passed between the acts which the Complainant claims constituted the alleged prohibited labor practice and the filing of his Complaint. Complainant shall file his response no later than July 20, 2007, serving copies on the Examiner and the Respondents.

Dated at Madison, Wisconsin, this 13th day of July, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart D. Levitan /s/

Stuart D. Levitan, Examiner

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