

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PATRICK FORTUNE, Complainant,

vs.

MILWAUKEE POLICE SUPERVISORS' ORGANIZATION, Respondent.

Case 603
No. 71667
MP-4721

Decision No. 34003-A

Appearances:

William R. Rettko, Rettko Law Offices, S.C., 15460 West Capitol Drive, Brookfield, Wisconsin, for the Complainant.

Sarah E. Hartsfield, Staff Attorney, National Right to Work Legal Defense Foundation, 8801 Braddock Road, Suite 600, Springfield, Virginia, for the Respondents

ORDER HOLDING MOTION TO DISMISS IN ABEYANCE

Patrick Fortune, herein "Complainant," filed a complaint with the Wisconsin Employment Relations Commission on June 29, 2012, alleging that the Milwaukee Police Supervisors' Organization, herein "Respondent," violated Sec. 111.70(3)(b)1, of the Municipal Employment Relations Act (herein "MERA") by breaching its duty of fair representation with respect to the involuntary deduction of the Organization's dues from his wages; and the Commission having appointed Stanley H. Michelstetter II as Examiner and the Examiner on December 7, 2012: and Respondent having filed a motion to dismiss on the basis that Complainant failed to file his detailed objection to the Respondent's *Hudson* notice within the time required to do so by Respondent's rebate procedures and that the complaint is otherwise frivolous. The Examiner being fully advised in the premises,

NOW, THEREFORE, it is

No. 34003-A

ORDERED

The motion filed herein relates to substantive matters and is held in abeyance pending a full hearing on the complaint.

Dated at Madison, Wisconsin, this 11th day of December, 2012.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stanley H. Michelstetter II

Stanley H. Michelstetter II, Examiner

MILWAUKEE POLICE SUPERVISORS' ORGANIZATION (Patrick Fortune)

MEMORANDUM ACCOMPANYING ORDER
TAKING MOTION TO DISMISS UNDER ADVISEMENT

This matter is before the Examiner on Respondent's motion to dismiss because Complainant allegedly failed to comply with Respondent's internal time limit for challenging Respondent's fair share accounting. It also alleges that the complaint is "frivolous" in part because Respondent's accounting showed that its costs of collective bargaining and contract administration exceeded all of the dues it collected.

The motion is essentially a motion for summary judgment. The WERC will not entertain motions for summary judgment in labor relations cases. Under Wis. Admin. Codes Sec. 12.04(1)(f) provides in relevant part:

A motion to dismiss shall not be granted before an evidentiary hearing has been conducted except where the pleadings, viewed in the light most favorable to the complainant, permit no interpretation of the facts alleged that would make dismissal inappropriate.

The motion is partially premised on Complainant's alleged failure to meet a deadline for filing his objections to the Respondent's accounting. The Commission has a long standing policy of deferring to collectively bargained procedures; however, it does not have any policy with respect to deferring to unilaterally imposed fair share procedures.¹ In Browne v. Board of Education, 169 Wis.2d 79, 117-125 (1992), the Wis. Supreme Court affirmed the WERC's right to determine whether internal procedures for objection meet the procedural safeguards required in Chicago Teachers Union v. Hudson, 475, 475 U.S. 292 (1986) without requiring that the objecting employee complete the union's internal procedure. In this matter, Petitioner is challenging the adequacy of the notice and accounting provided to him and, therefore, has raised an argument as to whether he had adequate notice to make a determination whether to seek to use that procedure any further. I conclude that the complaint raises issues which are entitled to a full hearing.

Respondent's second argument is that since its accounting demonstrates that there are no dues which were used for non-chargeable reasons, the complaint should be dismissed. However, the same reasoning applies. Complainant is challenging whether the information provided was adequate enough to challenge the accounting. Complainant is entitled to a full opportunity to establish a record as to whether the accounting procedure complies with applicable law.

¹ Cf, Pulaski Community School District, WERC Dec. No. 33037-B (WERC. 9/10).

Accordingly, that motion to dismiss is temporarily denied pending a full hearing.

Dated at Madison, Wisconsin, this 11th day of December, 2012.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stanley H. Michelstetter II /s/

Stanley H. Michelstetter II, Examiner