

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEVENS POINT AREA EDUCATION ASSOCIATION, Complainant,

vs.

STEVENS POINT AREA SCHOOL DISTRICT and ATTILA
WENINGER, Superintendent, Respondents.

Case 102
No. 72219
MP- 4769

DECISION NO. 34705-A

Appearances:

Attorney Randall R. Garczynski, Legal Counsel, Wisconsin Education Association Council, 33 Nob Hill Road, P.O. Box 8003, Madison, Wisconsin, appearing on behalf of the Complainant Stevens Point Area Education Association.

Attorney Shana R. Lewis, Davis & Kuelthau, S.C., Ten East Doty, Suite 401, Madison, Wisconsin, appearing on behalf of Stevens Point Area School District and Superintendent Attila Weninger.

ORDER DENYING MOTION TO DISMISS

On August 13, 2013, the Stevens Point Area Education Association (hereinafter "Complainant" or "Association") filed a prohibited practice complaint with the Wisconsin Employment Relations Commission alleging that the Stevens Point Area School District and Superintendent Attila Weninger (hereinafter "Respondents" or "District") had violated §§ 111.70(3)(a)1 and 4, Stats., by failing to bargain in good faith when it entered into negotiations with Complainant with a predetermined base wage increase. Complainant further asserts Respondents' actions interfered with, restrained, or coerced Complainant in the exercise of Complainant's rights.

On March 10, 2014, the Commission authorized Lauri A. Millot to make and issue Findings of Fact, Conclusions of Law and Order in the matter.

On January 15, 2014, the District filed its answer and motion to dismiss the prohibited practice complaint asserting it failed to state a cause of action, and that the District had bargained in good faith. On January 30, 2014, the Association filed a written response. On February 4, 2014, the District notified the Examiner it did not intend to respond to the Association's arguments.

On the basis of the Complaint and the arguments of the parties, it is hereby

ORDERED

That the motion to dismiss is denied.

Dated at Rhinelander, Wisconsin, this 13th day of March 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS

Respondents' motion to dismiss is governed by Chapters 111 and 227, Stats. Through operation of § 111.70(4)(a), Stats, the procedures by which prohibited practices are addressed are contained in § 111.07, Stats., and Chapter 227 sets forth the administrative rules, actions, and judicial review for state agencies.

The Commission is an "agency" under § 227.01(1), Stats., and sub-section (3) defines a contested case as an "agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order." § 227.01(3), Stats.

Chapter 227 does not provide a summary judgment procedure for dismissing contested cases prior to hearing. The right to a hearing under Chapter 227 is explicit, and the dismissal of a case prior to an evidentiary hearing is not.

ERC § 12.04(2)(f) provides:

(f) To dismiss. A motion to dismiss shall state the basis for the requested dismissal. A motion to dismiss shall not be granted before an evidentiary hearing has been conducted except, when the pleadings, viewed in the light most favorable to the complainant, permit no interpretation of the facts alleged that would make dismissal inappropriate.

The WERC will entertain motions to dismiss, albeit with limitations,

[b]ecause of the drastic consequences of denying an evidentiary hearing, 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, Dec. No. 15915-B (Hoornstra, with final authority for WERC, 12/77) at 3.

Complainant alleged that the District entered into negotiations with a predetermined wage increase of zero percent (0%) and, further, that Respondents had "promised" another bargaining unit that it would not give the teacher unit more than zero percent (0%). Respondents deny having agreed "to refuse to consider a base wage proposal other than a zero percent wage offer" for the teachers and seeks dismissal. This is a material dispute of fact and one which is relevant to the issue of whether Respondents bargained in good faith.

My obligation at this juncture of the litigation is to assume that the facts contained in the complaint are true. After having done so, I conclude Complainant is entitled to a full hearing.

Accordingly, the motion to dismiss is denied.

Dated at Rhinelander, Wisconsin, this 13th day of March 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot, Examiner