

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TODD VERDONE, Complainant,

vs.

LAND O' LAKES, INC. and TEAMSTERS UNION LOCAL NO. 662, Respondents.

Case ID: 554.0000
Case Type: COMP_CE

DECISION NO. 37429-A

Appearances:

Todd Verdone, C3975 Hayes Road, Stratford, Wisconsin, appearing on his own behalf.

Jonathan O. Levine, Adam P. Tuzzo and Casey M. Kaiser, Attorneys, Littler Mendelson, P.C., 111 East Kilbourne Avenue, Suite 1000, Milwaukee, Wisconsin, appearing on behalf of Land O'Lakes, Inc..

Kyle A. McCoy, Attorney, Soldon Law Firm, LLC, 5502 Upland Trail, Middleton, Wisconsin, appearing on behalf of Teamsters Union Local No. 662.

ORDER DISMISSING COMPLAINT

On February 20, 2018, Todd Verdone filed a complaint with the Wisconsin Employment Relations Commission alleging that Land O' Lakes and Teamsters Union Local No. 662 had committed various unfair labor practices within the meaning of the Wisconsin Employment Peace Act. On March 6, 2018, the Commission issued an Order appointing me to serve as hearing examiner.¹ Both Land O' Lakes and Teamsters subsequently filed motions to dismiss. Verdone responded to the motions and the matter became ripe for action on March 27, 2018. On March 28, 2018, the parties were advised by email that I was granting the motions to dismiss. This Order confirms that action.

Verdone's complaint primarily asserts various violations of a collective bargaining agreement between Land O' Lakes and Teamsters. Section 111.06(1)(f), Stats., of the Wisconsin Employment Peace Act provides that it is an unfair labor practice for a private sector employer to "... violate terms of a collective bargaining agreement" Although Land O' Lakes contends as otherwise, it is well settled that when proceeding under § 111.06(1)(f), Stats., the Commission

¹ The Order Appointing Examiner incorrectly had a decision number of 37430. The correct number should have been 37429.

is functioning as a competent state tribunal having concurrent jurisdiction with the federal courts under Section 301 of the Labor Management Relations Act (LMRA). *Tecumseh Products Co. v. WERB*, 23 Wis.2d 118 (1963); *American Motors Corp. v WERB*, 32 Wis.2d 237 (1966). While the Commission loses jurisdiction over the complaint if the matter is subsequently removed as a matter of right to federal court, that has not happened here. *Machinists Local Lodge No. 873/John Deere*, Dec. No. 25776-A (WERC, 1/89).

Verdone has standing to proceed under § 111.06(1)(f), Stats., if he alleges that Land O' Lakes has violated a collective bargaining agreement and further alleges that his efforts to exhaust the contractual grievance arbitration process to enforce that agreement have been thwarted by Teamsters' alleged breach of its duty of fair representation to him. *Mahnke v WERC*, 66 Wis.2d 524 (1975). Viewing the complaint in the light most favorable to Verdone, he has made both allegations. However, it became undisputed that the grievance arbitration procedures have not yet been exhausted. Therefore, the Commission does not currently have jurisdiction over the § 111.06(1)(f), Stats. allegations and that portion of the complaint has been dismissed.

Verdone's complaint also contains allegations as to which the National Labor Relations Board has (or could) assert jurisdiction. It is well settled that in such circumstances, the Commission cannot assert any jurisdiction it might otherwise have. *Algoma Plywood v WERB*, 336 U.S. 301 (1949); *Local 248 v. WERB*, 11 Wis.2d 277 (1960). Therefore, this portion of the complaint has also been dismissed.

Lastly, to the extent the complaint may make allegations beyond those discussed above, Verdone has not linked any such allegations to any specific provisions of the Peace Act and any such allegations have also been dismissed.

NOW, THEREFORE, it is:

ORDERED

The complaint is dismissed in its entirety.

Dated at Madison, Wisconsin, this 25th day of April, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner