

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANIEL WADLE, Complainant,

vs.

BROWN COUNTY UNITED WAY INC.

and

GREATER GREEN BAY LABOR COUNCIL, AFL-CIO

Respondents.

Case ID: 650.0000
Case Type: COMP_CE

DECISION NO. 40241-A

Appearances:

Daniel Wadle, 1124 South Clay Street, Green Bay, Wisconsin, appearing on his own behalf.

Daniel D. Barker, Attorney, Jackson Lewis, P.C., 1 South Pinckney Street, Suite 930, Madison, Wisconsin, appearing on behalf of Brown County United Way, Inc.

Steve McFarlane, President, Greater Green Bay Labor Council, 1570 Elizabeth Street, Green Bay, Wisconsin, appearing on behalf of Greater Green Bay Labor Council, AFL-CIO.

ORDER DISMISSING COMPLAINT

On May 11, 2023, Daniel Wadle filed a complaint with the Wisconsin Employment Relations Commission alleging that the Brown County United Way, Inc. and the Greater Green Bay Labor Council, AFL-CIO, herein Respondents, committed certain unfair labor practices within the meaning of the Wisconsin Employment Peace Act. Respondents subsequently filed motions to dismiss. On September 15, 2023, Wadle filed an amended complaint. The parties subsequently filed written argument – the last of which was received September 29, 2023.

Being fully advised in the premises, I conclude that any Commission jurisdiction over the complaint allegations is preempted by the National Labor Relations Act, is barred by the statute of limitations, or fails to state a claim that falls within the scope of Wis. Stat. § 111.06(1)(L).

NOW, THEREFORE, it is

ORDERED

The complaint is dismissed.

Issued at Madison, Wisconsin, this 23rd day of January 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Hearing Examiner

MEMORANDUM ACCOMPANYING ORDER DISMISSING COMPLAINT

As reaffirmed in *Robert Slamka v. General Heating and Air Conditioning, Inc.*, Dec. No. 37777-B (WERC, 4/19) *aff'd* 2020 AP 128 (Ct. App. 3/21), it is well settled that where a complaint filed with the Wisconsin Employment Relations Commission contains allegations as to which the National Labor Relations Board (NLRB) could exercise jurisdiction, the Commission cannot assert any jurisdiction it might otherwise have. *Algoma Plywood v. WERB*, 336 U.S. 301 (1949); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959); *Local 248 v. WERB*, 11 Wis.2d 277 (1960). Here, the NLRB not only could but has in fact asserted jurisdiction over virtually all of Wadle's complaint allegations.

The only allegations not arguably preempted are (1) that the Greater Green Bay Labor Council violated Wis. Stat. § 111.06(1)(L) by committing a "crime or misdemeanor in connection with any controversy as to employment relations" and (2) that both Respondents violated that same statute in their responses to Wadle's complaint. Allegation (1) refers to alleged conduct in 2021 and thus is time barred by the applicable one-year statute of limitations. The facts asserted as to allegation (2) fail to state a claim that falls within the scope of Wis. Stat. § 111.06(1)(L). Thus, there can be no question that virtually all of Wadle's allegations before the Commission are matters as to which the NLRB could assert jurisdiction.

Therefore, the complaint is dismissed.

Issued at the City of Madison, Wisconsin, this 23rd day of January 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Hearing Examiner