STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EDNA C. JOHNSON, Complainant, vs. AFSCME, COUNCIL 24, WISCONSIN STATE EMPLOYEES UNION, Respondent.	Case 2 No. 33662 PP(S)-113 Decision No. 21980-B

Appearances:

Castellani, Sheedy & McCormick, by Mr. Michael T. Sheedy, 829 North Marshall Street, Milwaukee, Wisconsin 53202, appearing on behalf of Complainant Edna C. Johnson.

Lawton and Cates, S.C., by Mr. Richard V. Graylow, 214 West Mifflin Street, Madison, Wisconsin 53703, appearing on behalf of Respondent AFSCME, Council 24.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER GRANTING MOTION TO DISMISS

Edna C. Johnson filed a complaint without the accompanying filing fee on July 13, 1984, with the Wisconsin Employment Relations Commission, alleging that AFSCME, Council 24, Wisconsin State Employees Union, hereinafter referred to as Respondent Union or AFSCME, had violated unspecified sections of Sec. 111.84, Wis. Stats. by failing and refusing to fairly represent her in an arbitration proceeding; that she remitted for fee on August 8, 1984; and that on December 10, 1984, Complainant Johnson filed an amended complaint which incorporated her original complaint by reference and alleged that within the last calendar year, Respondent Union refused to pay for the costs of the above-referred to arbitration proceeding, and continued to refuse to and to unfairly represent Complainant in a remand from the arbitrator in violation of Sec. 111.87, Stats.; that the Commission appointed Mary Jo Schiavoni, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5) Wis. Stats.; that hearing was scheduled for December 7, 1984, and rescheduled for January 17, 1985 to offer Respondent the opportunity to respond to the amended complaint; that hearing was held on January 17, 1985 at which time both parties appeared and jointly requested that the matter be held in abeyance and postponed indefinitely pending commencement of an action in the circuit courts, which request was granted by the Examiner; that on March 16, 1987, Complainant notified the Commission that she desired the hearing to be rescheduled; that on April 21, 1987, Complainant filed a Motion to Allow Discovery Depositions which Motion was denied by the Examiner on June 9, 1987 after briefs of both parties were received; that Complainant then attempted to subpoena certain information

fran Respondent Union; that on May 31, 1989, Complainant once again notified the Examiner that voluntary depositions had been completed and requested that said matter be scheduled for hearing; that on June 14, 1989 Respondent Union renewed an outstanding Motion to Dismiss based upon the alleged running of the statute of limitations; that the undersigned bifurcated the proceeding and scheduled hearing solely on Respondent's Motion to Dismiss for want of jurisdiction; that hearing was held on July 20, 1989, in Milwaukee, Wisconsin, at which time all parties were given full opportunity to present their evidence and arguments; that the parties completed their briefing schedule on September 18, 1989; and the Examiner, having considered the evidence and arguments and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and order Granting Motion to Dismiss.

FINDINGS OF FACT

1. That Edna C. Johnson, hereinafter referred to as the Complainant or Johnson, is an individual who resides at 1909 East Kenwood Boulevard, Milwaukee, Wisconsin 53211.

2. That the State of Wisconsin, hereinafter referred to as the State is an employer employing employes in the performance of its various functions; and that a number of classifications of its employes are included in appropriate collective bargaining units and are represented by various labor organizations for purposes of collective bargaining pursuant to the State Employment Labor Relations Act.

3. That AFSCME, Council 24, Wisconsin State Employees Union, is a labor organization within the meaning of Sec. 111.81(12), Wis. Stats., and has as its principal office at Five Odana Court, Madison, Wisconsin 53705.

4. That in September of 1981, Johnson was discharged by the State.

5. That Johnson and Respondent Union contested her discharge by filing a grievance over said dispute.

6. That said grievance was appealed through the initial three steps of the arbitration procedure and to arbitration in February of 1982.

7. That on February 18, 1982, Tom King, an agent of Respondent Union, sent Johnson the following letter which she received sometime in February of 1982:

> Dear Sister Johnson:
>
> I have reviewed, along with other members of the Wisconsin State Employees Union staff, your grievance relating to Article IV, Section 9 -- discharge -- which has been appealed to arbitration.
>
> After reviewing your case with our staff, it is our opinion that, based on your previous work record, we could not prevail at arbitration in this case. Therefore, Council 24 will no longer pursue your case

to arbitration.

Please be advised that you may continue with your grievance either through your local union or, if this is not possible, you have the right to pursue your grievance yourself or with the aid of an attorney of your choice.

For any further information or help regarding your case,
please contact your local union and/or field representative Emil Muelver at 414-327-7080.

8. That Johnson also requested Local 82, AFSCME, Wisconsin State Employees Union, to represent her with respect to her discharge; and that on or around march 12, 1982, she received the following letter from John Michaelis, Secretary of the Local:

> Upon your requests for Local 82 to undertake the responsibilities of representing you in arbitration, regarding your discharge, the Local has decided not to take your discharge case to arbitration.
>
> If there is any other way in which we may be able to help as in advise or testimony please feel free to contact me.

9. That on March 27, 1982, Johnson sent the following letter to Tom King, Executive Director of Respondent Union and sent a carbon copy to other union officials:

Dear Mr. King RE: Johnson, Edna C.
S.S. 395 18 3546
Your denial of
arbitration 2/18/82

Will you kindly send me a written reply to the following question at your earliest convenience?

> Does the State Council's refusal to take my discharge to arbitration mean that my mandatory remedies under the contract have been exhausted and I am free to go to the courts?

Thank you for the courtesy of a prompt reply;

and that Johnson received no reply to her inquiry.

10. That on July 13, 1984, Johnson filed the initial complaint without an accompanying filing fee; that she remitted the fee on August 8, 1984; and that said initial complaint alleged in pertinent part, as follows:

On September 17, 1981, I was fired from my job at University of Wisconsin-Milwaukee, where I worked at Payroll and Benefits Specialist IV. I had worked for the University for 16 years, with excellent and outstanding annual evaluations.

12-31-81 I wrote to Tom King, President of Wis. State Employees Union asking him when I can expect action to recover 30 hours pay of which I believe I was defrauded - appealed to on or about arbitration on 9-17081(?)

(2)Pls. cite section of Labor Contract where Union negotiated to deny me retroactive pay increase from July thru my 9-17-81 termination (never received).

9- -81Discharge/grievance filed over discharge.

11-3-81 I had hearing re 3rd step of Aug. 12 reprimand on October 28 wherein the termination was validated by a subordinate of the individuals who terminated me.

2-18-82 Mr. Tom King wrote me denying my request that the Union represent me in Arbitration over my discharge, saying "based on your previous work

record we could not prevail at arbitration in this case.' (copy attached hereto) I was further advised I could pursue the grievance thru my local union or by myself, poss. with aid of an attorney of my choice. I was further referred to my local union rep. or Mr. Emil Muelver, a Field Representative for the Union.

I contacted my union rep, Mr. Tom Taubel, as I was confused about the conclusion as to why I could not 'Prevail at arbitration." Tom Taubel told me Emil Muelver had told him he's be over to look at my file, but he never came, and Mr. Taubel had released my file to no one else.

2-25-82 I wrote to Hattush Alexander, President of Local 82, asking that the Local represent me in Arbitration over my discharge.

3-09-82 Mr. Tom King wrote me denying help from their/my Union in the matter of the letter of reprimand and 3-day suspension which I had appealed to arbitration.

3-09-82 This 3-day suspension cost me more than (cont) $200.00. The suspension came from baseless charges devolved from a meeting called by Clyde Jaworski. When Union representative, Tom Taubel, and I left the meeting of over 45 minutes, we each had the same question for one another: 'What was the purpose of this meeting?' Yet management used it as a base for an over $200.00 fine, and the Union refused to arbitrate for recovery.

3-12-82 Mr. John Michaelis, Secretary, Local 82, wrote me denying help of my local in taking my discharge to arbitration. "The Local has decided not take your discharge case to arbitration.'

*See paragraph below.

Subsequent to above events, I did engage an attorney and went forward to prosecute and to prevail in the Arbitration, the result of which was reinstatement at UWM in my same position. This action caused me great mental stress, great expense, and raised the question, "Why have a Union, what good is the Union?' if it won't assist aggrieved individuals. I believe the Union was

remiss in its duty in this matter, and that the Union owes me, at very least, the costs, expenses and disbursements including the charges for the Arbitrator, Court Reporter and Attorney fees. This does not address my trauma in having to furnish my attorney all those materials of which the Union was cognizant regarding my rights and the violation thereof. In addition I later learned that the Union in negotiation with the employer agreed to drop outstanding grievances (copy of contract attached hereto).

*My Union steward knew Management was setting me up. He testified he wrote on his calendar the date he predicted I'd be fired, and I was fired ahead of that date. Why wouldn't the Union defend me?

WHEREFORE, the Complainant prays for an order directing Respondent(s) to (specify the relief desired):

A. Reimbursement for the cost of arbitration;

B. Reimbursement for attorneys fees; and

C. Reimbursement for failure to fairly represent Complainant.

11. That on December 10, 1984, Complainant amended her complaint in the following manner:

By way of amendment to the original complaint of prohibited practices in state employment the complainant hereby incorporates by reference her original complaint as if set forth more fully herein and alleges that within the last calendar year the union, AFSCME, has refused to pay for the costs of arbitration to date and in addition continues to unfairly represent Mrs. Johnson. At present the arbitration continues upon a remand from the Wisconsin Court of Appeals to the arbitrator, Mr. Jay Grenig, for a determination of the appropriate amount of back pay and deductions therefrom. The union, in addition to failing to properly represent the complainant in the arbitration concerning just cause has also, on October 10, 1984, informed the State of Wisconsin, Collective Bargaining Division, that it has also withdrawn support in Greivance (sic) Arbitration Case 4053. That these actions have occurred since the filing of the original complaint against prohibited practices under Wis. Stats. 111.84 and are evidence of the continuing refusal of the union to properly represent Mrs. Edna Johnson. Upon information and belief there is no basis

for this failure. This document is filed as an addition and amendment to the complaint attached hereto.

12. That the date of the specific actions or unfair labor practices by which Respondent Union is alleged to have violated Sec. 111.84, Stats. was February 19 or 20, 1982, the day that Johnson received King's letter informing her that the Respondent Union would not take her discharge grievance to arbitration; that at the latest this date could be extended to on or about March 12, 1982, the date upon which she received a letter from Respondent Union's Local 82, AFSCME, an agent of Respondent Union informing her that it would not take her discharge or suspension/reprimand grievances to arbitration.

13. That the Respondent Union's failure to reply to Johnson's March 27, 1982 letter, did not toll the statutory time period for filing the complaint herein because Johnson could reasonably assume by July of 1982, at the latest, that she had exhausted any internal union appeals procedures which may have been available to her; and that she continued to have access to the contractual grievance arbitration procedures which she continued to utilize.

14. That the date of the first filing of the initial complaint July 13, 1984, is more than one year from July of 1982.

15. That the complaint and amended complaint insofar as they contain allegations relating to the Union's failure to represent Johnson during the discharge arbitration and with respect to her letter of reprimand and suspension are untimely.

Upon the basis of the foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSION OF LAW

That because the complaint and amended complaint are filed out of time within the meaning of Sec. 111.84(4) and Sec. 111.07(14), Wis. Stats., the Commission is without jurisdiction to determine the merits of the complaint and amended complaint.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and renders the following

ORDER GRANTING MOTION TO DISMISS

That the Motion filed by Respondent Union that the complaint and amended complaint in this matter be dismissed is hereby granted, and the complaint and &mended complaint are hereby dismissed in their entirety. 1/

1/ Any party may file a petition for review with the commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

Dated at Madison, Wisconsin this 1st day of November, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni /s/

Mary Jo Schiavoni, Examiner

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(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days fran the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

WISCONSIN STATE EMPLOYEES UNION,
COUNCIL 24, AFSCME, AFL-CIO

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER GRANTING MOTION TO DISMISS

Complainant filed the initial complaint without an accompanying filing fee on July 13, 1984. She remitted the fee on August 8, 1984. In her initial complaint, Johnson essentially alleged that Respondent Union had failed to fairly represent her in both a grievance with respect to her discharge and a second grievance concerning a letter of reprimand and a three-day suspension wherein she requested reimbursement for the cost of arbitration, attorneys fees, and damages for unfair representation. On December 10, 1984, Complainant filed an amended complaint in which she incorporated all references in the initial complaint and alleged that within the past calendar year the Respondent Union refused to pay for the cost of arbitration and continues to unfairly represent the Complainant. Johnson alleged that AFSCME, on October 10, 1984, informed the State that it had withdrawn support in Grievance Arbitration Case 4053.

Respondent Union filed a motion to Dismiss based upon the untimeliness of the complaint and amended complaint.

POSITIONS OF THE PARTIES:

Complainant

The Complainant points to case law which requires that an employe must exhaust both union and contractual remedies prior to commencing a court action. According to Complainant, the statute of limitations is tolled until that time. Citing Wis. Stats. 893.13(2), and Wisconsin case law on tort claims, Complainant maintains that a cause of action accrues where there exists a claim capable of present enforcement, a suable party against whom it may be enforced, and a party who has a present right to enforce it. A tort claim is not capable of enforcement until both a negligent act and accompanying injury have occurred.

The Complainant further notes that the Wisconsin Employment Relations Commission has held that failure to exhaust contractual procedures precludes Wisconsin Employment Relations Commission jurisdiction. She stresses that the date of March, 1982, the time that Representative Union chose to withdraw its support, is not the benchmark date. This is the case, she asserts, because she had not exhausted her contractual remedy at that time and any complaint filed then would have been defective on this basis. More importantly, however, Complainant maintains that although she disagreed with the Union's failure to pursue her grievance, she had no proof of arbitrary or perfunctory treatment until much later throughout the arbitration hearing and thereafter.

In sum, Complainant argues that she filed her initial complaint subsequent to the Wisconsin Court of Appeals majority decision dated August 20,

1984 confirming her arbitration award. She further states that the amended complaint was filed on December 10, 1984 and that her claim had not accrued in 1982 nor had she discovered evidence which would establish a breach of such a duty until a much later date.

Respondent

Respondent points to the February 18, 1982 letter as the conduct about which Johnson complains in her two complaints. Noting that the Commission has strictly construed the phrase ". . . one year from the date of the specific act . . .", it maintains that July 13, 1984, the original filing date of the initial complaint is more than one (1) year from February 18, 1982.

According to Respondent, if Johnson is claiming that the Union failed in its duty of fair representation (DFR) when it refused to take the case to arbitration, her claim is barred. She knew as early as February 18, 19??82 that the Union would not proceed because she received a letter from then union Executive Director Tom King to that effect. She understood the letter and its ramifications in that she correctly referred to same in her original complaint. If she is claiming that Council 24 did not confer with the Local Union No. 82, it, too, is time barred. The original complaint contains the following allegations/statements all referenced to the February 18, 1982 date:

> I contacted my union rep, Mr. Tom Taubel, as I was confused about the conclusion as to why I could not "prevail at arbitration." Tom Taubel told me Emil Muelver had told him he's (sic) be over to look at my file,, but he never came and Mr. Taubel had released my file to no one else.

As such she knew and should have known that no later than February 18, 1982, Council 24 supposedly had no contact with the Local Union. Although this conclusion will be challenged and refuted should a formal hearing on the merits be necessary, suffice it here to say that approximately twenty-nine (29) months elapsed from the time Ms. Johnson had this knowledge to the filing of the original complaint.

AFSCME argues that both the original and the amended complaint can be fairly read to state one (1) and only one (1) legal conclusion: that the Union's refusal to take the grievance to arbitration, violated its duty of fair representation. In as much as she knew the Union's position on this point, approximately two (2) years and five (5) months before she instituted this proceeding, it is now time barred.

In response to Complainant's arguments that the statute of limitations is tolled until she completed the arbitration proceedings, respondent Union stresses that practically and legally this argument makes no sense because the outcome of the arbitration would have no bearing on the validity of a duty of fair representation violation. It cites Local 950, International Union of operating Engineers, (21050-C) WERC, 7/84, in support of its contention and requests that the complaints be dismissed as time-barred.

DISCUSSION:

Both the initial and amended complaints contain allegations of breach of the duty of fair representation on the Respondent Union's part exclusively. There is no accompanying breach of contract component either express or implicit in either complaint. Johnson's allegations primarily involve a breach of the Union's duty of fair representation when it failed and refused to take her discharge grievance beyond the third step in the grievance procedure to arbitration and secondarily the Union's refusal to process a grievance to arbitration relating to a letter of reprimand and three day suspension which she received.

It is really these refusals on the part of the Respondent Union which constitute the conduct or wrongful act or omission to which Complainant objects. Because no claim of employer breach of contract is present nor is Johnson alleging that Respondent Union breached its duty by any behavior on its part during the arbitration proceeding over her discharge, the cases upon which she relies to support her contention that exhaustion of the grievance arbitration process tolls the statute of limitations do not apply. 2/

Rather, the instant complaints make it clear that Johnson is complaining about AFSCME's refusal to represent her in arbitration on either the discharge or reprimand/three day suspension grievances. Record evidence makes it clear that she had notice with respect to both grievances from respondent Union and its Local 82 by March 12, 1982, at the latest as Finding of Fact 10 amply demonstrates. Moreover, the allegations contained in the amended complaint, namely, the Respondent Union's refusal to pay for the costs of the arbitration and its informing the state employer that it had withdrawn support for her reprimand/suspension grievance (Grievance 4053), both stem from AFSCME's

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2/ In Wood County, Dec. No. 24799-A (Engmann, 1988), upon which the Complainant relies, there was an accompanying Sec. 111.70(3)(a)5 allegation against the municipal employer so that resort to and exhaustion of the grievance-arbitration procedure was necessary. Similarly in International Union of Operating Engineers Local 950, Dec. No. 21050-C (WERC, 7/84), the Commission adopted the exhaustion rationale only because it intended to permit the Complainant to join the municipal employer as a party because a breach of contract had not been plead due to unique factual circumstances. Moreover, after a circuit court refused to permit the municipal employer to be joined to the action, Milwaukee Board of School Directors v. WERC, Dec. No. 21050-D (Cir.Ct. Milwaukee 10/84), in a subsequent decision, International Union of Operating Engineers Local 950, Dec. No. 21050-F, the commission held that the statute was not tolled because there was no companion breach of contract case. Rather, it analyzed the conduct complained of by the Complainant in that case concluding that the appropriate date for triggering the running of the statute of limitations was the date of the arbitration hearing because the allegation was premised upon the failure to represent Complainant properly at his arbitration case. (Ibid at 6.)

refusals to represent Johnson beyond the third step in the grievance procedure which it clearly communicated to her in February and March of 1982.

In any event, AFSCME opted out of representing Johnson in the grievance/ arbitration procedures in February and March of 1982. It is this conduct to which Johnson is really objecting and these are the dates which trigger the running of the one year statute of limitations. Such a tort claim, if it existed, commenced upon the date of AFSCME's refusal to continue its representation with respect to both grievances. Johnson could after a few months, reasonably conclude when she received no response to her letter of March 27, 1982, that she had exhausted any internal union appeals procedures.

Within a month, it was also apparent that Johnson continued to enjoy access to the grievance-arbitration procedure, albeit without union assistance, because she hired a lawyer and went forward with her arbitration case.

Complainant strenuously alleges that her claim did not ripen until much later than 1982 because she did not discover sufficient evidence of bad faith until after August of 1984. Interestingly, although she disputes the February and March of 1982 dates for triggering the statute of limitations, she does not point to any other alternate date as the appropriate date from which to calculate.

Section 111.07(14), Stats., which is made applicable by Sec. 111.84(4), Stats., states unequivocally:

> 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.

Wisconsin law generally provides for the tolling of an applicable statute of limitations only where there is fraud involved. 3/ Complainant makes no case for fraud on Respondent Union's part. Moreover ignorance of one's rights does not suspend the operation of the statute of limitations. 4/

The Complainant, in essence, is arguing that although she was aware in February or March of 1982 that Respondent was refusing to process her grievances further, she really had no reason to believe or suspect bad faith on the Union's part until 1984. It is the discovery in late 1984 of Respondent Union's arbitrary treatment in making its decision to withdraw from representation on the grievances which, she alleges, triggers the statute of limitations. The issue of when the statute of limitations is triggered in a duty of fair representation case has never been directly presented to the Commission for consideration under the statutory language set forth in Sec. 111.07(14). The federal courts, however, in deciding the many cases which arose

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3/ Peppas v. Marshall & Ilsey Bank, 2 Wis.2d 144, 86 N.W.2d 27 (1957).

4/ Hilmes v. Department of Industry, Labor and Human Relations, 147 Wis.2d 48, 433 N.W.2d 251 (Wis. Ct. of App., 1988); see also Larson v. Industrial Commission, 224 Wis. 294, 298 271 N.W. 835, 826 (1937).

as a result of the Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), ruling applying a six-month statute of limitations in federal suits, have had ample opportunity to ascertain when a cause of action arises pursuant to Section 10(b) of the Nation Labor Relations Act, 29 U.S.C. ss. 160(b). 5/ They have held that hybrid Section 301/fair representation suits accrue when the claimant discovers or in the exercise of due diligence should have discovered the acts constituting the alleged violation. 6/ The majority would peg the cause of action as accruing from the date the Union informs the grievant that it will no longer process the grievance or from the date when the grievant should have discovered using due diligence that the Union would no longer process the grievance or represent the grievant further in the process. One federal district court directly addressed the issue presented to the Commission. 7/ It held that a discharged employes recent uncovering of alleged motivation for the Union's failure to process the grievance was insufficient to warrant tolling of the six month statute of limitations. In the Harris case, the grievant was informed of the denial of his claim by the employer and the withdrawal of his grievance by the union in July of 1981. He did not file a complaint until March of 1985 presenting as reason for the delay the explanation that he discovered in November of 1984 that one of the employer I s employes and an ex-union official had personal financial dealings which the grievant alleged indicated collusion between the employer and the union to deprive him of his rightful position. 8/ The court expressly found that the statute of limitations was not tolled. It held that even if the grievant did not fully know why his grievance had been denied, he knew as of July 1981 that it had been denied. The court concluded:

> Even assuming that Harris could prove his allegations of conspiracy, the mere fact that he recently uncovered the alleged motivation underlying the denial of his grievance is insufficient to toll the

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5/ That section provides in pertinent part:

> Provided . . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board . . .

6/ Del Costello v. International Brotherhood of Teamsters, 588 F.Supp. 902, 908, 116 LRRM 275 984, (on remand from 4th Cir.Ct. of Appeals following the Supreme Court decision cited above; Benson v. General Motors Corp., 716 F.2d 862, 864, 114 LRRM 2919 (11th Cir. 1983); see also, Wennesheimer v. Fore Way Exp. Inc., 624 F. Supp. 502, 1224 LRRM 2362 (1986) holding a cause of action commences to run when an employe is unequivocally informed that his grievance will not be processed further; also Metz v. Tootsie Roll Industries, Inc., 715 F.2d 299, 304, 114 LRRM 2309 (7th Cir. 1985).

7/ Harris v. Victor Division - Dana Corp., 121 LRRM 3524 (N.D.Ill. 1986).

8/ Ibid at 3525.

> statue of limitations. The public interest in industrial peace is strong, and cannot be sacrificed each time an individual employee believes he has discovered sane new shred of evidence bearing on the disposition of one of his grievances. To allow Harris to resurrect his cause of action at this late date would be to subject final grievance resolutions to attack indefinitely, and would undermine the federal policy of encouraging rapid and final resolution of labor disputes. This we are unwilling to do. 9/

The Harris court's rationale is equally applicable to the instant case. The statutory language of Sec. 111.07(14), which speaks in terms of "specific act or unfair labor practice alleged" (emphasis added), does not permit a tolling of this statute for discovery of new or additional evidence, but rather limits parties to filing within one year of the acts or omissions alleged to have affected them. This argument is accordingly rejected.

In any event, review of the testimony convinces this Examiner that Johnson with due diligence could have discovered much of the claimed new "evidence of bad faith' to which she points within a one year period from the date of her notification by the Union that it was refusing to proceed further with her grievances.

Accordingly, because the complaint and amended complaint were filed more than one year after March 12, 1982, they are untimely and must be dismissed on that basis.

Dated at Madison, Wisconsin this 1st day of November, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni /s/

Mary Jo Schiavoni, Examiner

9/ Supra at 3525.