

CIRCUIT COURT OF MILWAUKEE COUNTY

CASTELLANI, SHEEDY & McCORMICK

Atty. Michael T. Sheedy  
829 North Marshall Street  
Milwaukee, WI 53202

June 24, 1991

Decision No. 21980-E

RE: Edna C. Johnson v. Wisconsin Employment Relations Commission, AFSCME Council 24,  
Wisconsin State Employees Union

Case No. 90CV016842

Dear Atty. Sheedy:

You have asked me to clarify my decision in the above-mentioned case. You request that I specifically rule on four things:

- 1) A factual error made by the Wisconsin Employment Relations Commission (WERC);
- 2) The doctrine of exhaustion;
- 3) Accrual of a fair representation cause of action; and
- 4) Tolling of the statutory bar.

Review of an administrative agency decision is confined to the record. Sec. 227.57(1), Wis. Stats. The complaint by Edna Johnson consisted of a failure by the union to fairly represent her at an arbitration hearing. You then allege a factual error on the part of WERC, however, the Court defers to the agency's findings of fact if supported by the record, and the agency's action depends on this finding. Sec. 227.56(7), Wis. Stats. WERC clearly did not base its decision on this finding, and therefore, the Court will not set it aside.

You also wish a ruling on the accrual of the cause of action and tolling of the statute of limitations period for the action. Based on the decision in Martin v. Youngstown Sheet & Tube, accrual of a cause of action for fair representation occurs when the employee has notice that the union will take no further action in the employee's grievance. There is no provision for tolling this statute of limitations by filing against the employer. Mrs. Johnson clearly filed her unfair practice claim against the union well after she knew that the union would no longer take action on her behalf, and therefore, she failed to meet the statutory time limitations causing her claim to expire.

The doctrine of exhaustion is not applicable to this action in that it requires exhaustion of grievance procedures prior to bringing an action to court. Mrs. Johnson apparently followed the union grievance procedures by taking her case to arbitration.

Therefore, the decision as drafted will stand. Hopefully, this classification will help.

Sincerely yours,

/s/ Victor Manian

Victor Manian

Circuit Judge

PC:

Asst. Atty. General John D. Niemisto

Atty. Richard V. Graylow