

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SHRI KRISHAN,

Complainant,

vs.

JOE MITCHELL and STATE OF  
WISCONSIN DEPARTMENT OF  
EMPLOYMENT RELATIONS, and  
STATE OF WISCONSIN EDUCATION  
PROFESSIONALS, LOCAL 3271,  
WISCONSIN FEDERATION OF  
TEACHERS,

Respondents.  
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Case 219  
No. 35004 PP(S)-119  
Decision No. 23012-C

ORDER DENYING MOTIONS TO DISMISS

Shri Krishan, hereinafter the Complainant, filed a complaint, pro se, with the Wisconsin Employment Relations Commission on May 16, 1985, alleging that co-employee Joe Mitchell, hereinafter Respondent Mitchell, had falsely accused him of striking a student, had encouraged a student to file a grievance against him and had lodged a complaint against him. Krishan alleged these were all attempts to get him fired from his job as a teacher at Ethan Allen School. Krishan amended his complaint on October 9, 1985, by alleging that this and additional conduct constituted unfair labor practices within the meaning of the State Employment Labor Relations Act (SELRA). On October 29, 1985, the Commission appointed the undersigned to make and issue Findings of Fact, Conclusions of Law and Order as provided for in Sec. 111.07(5), Stats. Respondent Mitchell filed an answer on November 7, 1985, wherein he denied the charges made against him. On December 5, 1985, the State filed a motion to be joined as a party and on December 9, 1985, the Wisconsin Federation of Teachers (WFT) filed a request to intervene in the case. The State filed an answer and a Motion to Dismiss the Complaint on January 2, 1986. On January 13, 1986, the State's Motion to Join as a Respondent and the WFT's request to intervene were granted 1/ and the State's Motion to Dismiss was denied as premature. 2/ On April 28, 1986, the Complainant added the Department of Health and Social Services and the State of Wisconsin Education Professionals (SWEP), Local 3271, Wisconsin Federation of Teachers (WFT) as Respondents. Complainant alleged that the Union supported Mitchell in his actions against Krishan and denied him the duty of fair representation. The first day of hearing was held in Wales, Wisconsin, on May 7, 1986. No witnesses testified at said hearing; instead the factual allegations and issues involved were clarified. At the hearing the Complainant withdrew the Department of Health and Social Services as a named Respondent. On May 19, 1986, the Complainant amended his complaint again. The State renewed their Motion to Dismiss on June 16, 1986, and the WFT filed a Motion to Dismiss on August 4, 1986. The Complainant filed a response in opposition to the motions on September 15, 1986. Having considered the arguments of the parties the Examiner makes and issues the following


ORDER

That the Motions to Dismiss be, and the same hereby are, denied.

Dated at Madison, Wisconsin this 17th day of November, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Raleigh Jones, Examiner

1/ Decision No. 23012-A.

2/ Decision No. 23012-B.

DEPARTMENT OF EMPLOYMENT RELATIONS (EDUCATION - ETHAN ALLEN SCHOOL)

MEMORANDUM ACCOMPANYING ORDER  
DENYING MOTIONS TO DISMISS

The Union argues that the complaint is untimely, fails to state a claim upon which relief may be granted and that Krishan failed to exhaust contractual and statutory remedies. The State supports the Union's contention that Krishan failed to exhaust contract procedures and has not stated a cause of action. The State also contends the Commission does not have jurisdiction over Complainant's allegation of race discrimination and that the Commission does not have authority to order the relief sought by Krishan. Complainant challenges these arguments and asserts a hearing is necessary to resolve the matter.

Whether the complaint is timely to all the Respondents simply cannot be authoritatively resolved on the present record. It is clear that the complaint against Respondent Mitchell is timely because at least one act constituting an alleged unfair labor practice (namely Mitchell allegedly falsely accusing the Complainant of striking a student on May 25, 1984) occurred within the one year period preceeding the filing of the original complaint on May 16, 1985. It is unclear, however, whether Complainant's allegations against the Union are timely because the complaint, as amended, fails to identify the exact dates on which the Union allegedly supported Mitchell in his actions against Complainant and denied him the duty of fair representation. 3/ While these allegations against the Union may be ultimately found to be untimely, no such determination can be made now because the Complainant could present proof which makes the complaint timely to the Union.

This rationale is also applicable to Respondents' other contentions. Because of the drastic consequences of denying an evidentiary hearing, on 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. 4/ Since the complaint, as amended, presents a contested case which raises questions of fact and law, it cannot be said that the sole interpretation to be drawn from the record is that Respondents are entitled to judgment in their favor. Moreover, the Complainant's allegations that Mitchell falsely accused him of employment misconduct (i.e. striking a student) in retaliation for being a union dissident and union political opponent state a cause of action under SELRA. Therefore, resolution of the complaint's timeliness or merit can be determined only after an evidentiary hearing on the complaint. Accordingly, the Motions to Dismiss have been denied.

Dated at Madison, Wisconsin this 17th day of November, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Raleigh Jones, Examiner

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3/ See Harley-Davidson Motor Company, Dec. No. 7166 (WERC, 6/65) and Local 950, International Union of Operating Engineers, Dec. No. 21050-F (WERC, 11/84) for the applicable timeliness standards.

4/ Unified School District No. 1 of Racine County, Dec. No. 15915-B (Hoorstra with final authority for WERC, 12/77).