

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANGELINE J. JOHNSON,	:	
	:	
Complainant,	:	
	:	Case 19
vs.	:	No. 37447 MP-1879
	:	Decision No. 23929-B
CUMBERLAND SCHOOL DISTRICT,	:	
MAUREEN LEAHY and MERWIN MOEN,	:	
	:	
Respondents.	:	
	:	

Appearances:

Ms. Angeline J. Johnson, Route 3, P.O. Box 138, Cumberland, Wisconsin 54829, appearing pro se.
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Stephen L. Weld, 21 South Barstow, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Respondents.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Examiner Lionel L. Crowley having, on November 28, 1986, issued Findings of Fact, Conclusion of Law and Order in the above-entitled matter, wherein he dismissed a complaint filed by Angeline J. Johnson which alleged that Cumberland School District, Maureen Leahy and Merwin Moen had engaged in prohibited practices within the meaning of Sec. 111.70(3)(a), Stats., by unilaterally altering the status quo regarding work assignments and by constructively discharging her; and Complainant having, on December 10, 1986, timely filed a petition with the Commission pursuant to Sec. 111.07(5), Stats., seeking review of the Examiner's decision; and neither party having filed briefs; and the Commission having reviewed the record, the Examiner's decision, and the Petition for Review, and being satisfied that the Examiner's Findings of Fact, Conclusion of Law and Order should be affirmed;

NOW, THEREFORE it is

ORDERED 1/

That the Examiner's Findings of Fact, Conclusion of Law and Order be, and they hereby are, affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 27th day of March, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
 Stephen Schoenfeld, Chairman

Herman Torosian
 Herman Torosian, Commissioner

Danae Davis Gordon
 Danae Davis Gordon, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for

(Footnote 1 continued on Page 2).

1/ Continued

judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

CUMBERLAND SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The complaint, as clarified at the hearing, alleges in essence that Complainant was led to resign her employment by the Respondents' refusal to continue the status quo regarding work assignments after employes chose to be represented by a labor organization. Respondents' answer, made at the hearing, denied that any prohibited practices were committed.

THE EXAMINER'S DECISION

The Examiner found that while there was evidence that job vacancies had been posted and filled by seniority, the dispute which gave rise to the complaint did not concern a job vacancy, but rather the assignment of a particular duty within a single job classification in which several employes worked. The Examiner found that the substance of Complainant's complaint was that Complainant had been assigned to work in her food service job as attendant at a school salad bar, while less senior employes were given work which Complainant preferred. The Examiner found that such work assignments had been made on a rotating basis, but not by operation of seniority, and that as all of the work involved fell fairly within the scope of the job, the assignment of particular duties was not a mandatory subject of bargaining. The Examiner further found that the proper party to raise an allegation of refusal to bargain was not this individual complainant, but rather was the labor organization, which did not complain. The Examiner concluded, therefore, that Complainant had not demonstrated a violation of the duty to bargain. Finally, the Examiner found that Complainant's resignation over the issue of work assignments was a voluntary act, and that there was no evidence that she was discriminated against because of lawful concerted activity, or indeed that she had engaged in such activity. The Examiner accordingly dismissed the complaint.

THE PETITION FOR REVIEW

The Petition for Review reiterates a number of factual allegations, and states the Complainant's objection to the Examiner's decision essentially as being that Complainant believes that assignment of job duties by seniority was established in the record, and therefore that the Examiner erred by concluding that the District did not change the status quo. The Petition for Review also alleges that if the District had been willing to hold the meeting requested by Complainant prior to her resignation, the resignation would not have occurred. We read Complainant's allegation as essentially being that Respondents caused her to resign by refusing to meet with her concerning her grievance.

DISCUSSION

Upon review of the record, we find no persuasive evidence therein that Complainant had been involved in lawful concerted activity or that the Respondents changed any terms of employment unilaterally, for essentially the same reasons advanced by the Examiner. The record demonstrates that Complainant shared the same job classification as other employes, and fails to demonstrate that assignments within that classification were made in order of seniority. Complainant, on this record, was simply displeased by a particular work assignment which caused her to replace a high school student in a particular lunch room spot; requested a meeting with management over the issue; and was denied the meeting she sought. Complainant then resigned. There is no evidence that Complainant sought, or Respondents denied, access to the collective bargaining representative for purposes of advancing her grievance, or that rights protected by Sec. 111.07(2),

Stats., were in any way involved. We agree with the Examiner, therefore, that the Complainant has not established that she was induced to resign by unlawful conduct of the Respondents or that the Respondents unilaterally altered a term or condition of employment in violation of the duty to bargain.

Dated at Madison, Wisconsin this 27th day of March, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

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Danae Davis Gordon, Commissioner