

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SANDRA A. ANDERSON,

Complainant,

vs.

MORaine PARK FEDERATION OF
TEACHERS LOCAL 3338 and
MORaine PARK TECHNICAL
INSTITUTE,

Respondents.

Case 26
No. 38586 MP-1953
Decision No. 24474-D

Appearances:

Ms. Sandra A. Anderson, 816 Neufeld Street, Green Bay, Wisconsin 54304,
appearing on her own behalf.

Edgerton, Ondrasek, St. Peter, Petak & Massey, Attorneys at Law, by
Mr. John A. St. Peter, 10 Forest Avenue, P.O. Box 1276, Fond du Lac,
Wisconsin 54936-1276, appearing on behalf of Moraine Park Technical
Institute.

von Briesen & Purtell, S.C., Attorneys at Law, by Mr. Alan S. Brostoff,
Suite 700, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4470,
appearing on behalf of Moraine Park Federation of Teachers Local 3338.

ORDER DENYING MOTIONS TO REOPEN COMPLAINT PROCEEDING

Examiner Lionel L. Crowley having, on September 21, 1987 issued an Order
Dismissing Complaint in the above-matter which recited in pertinent part:

"and hearing having been commenced on September 1, 1987 in
Fond du Lac, Wisconsin during the course of which the parties
resolved the matter giving rise to the complaint, and further
having agreed that the complaint filed herein should be
dismissed with prejudice";

and no appeal of said Order having been filed by the above-noted Complainant or
Respondents; and Complainant Anderson having on April 6, 1988 and September 12,
1988 filed motions with the Commission asking that her complaint be reopened
because of alleged improper and/or lack of legal representation she received from
her attorney when he represented her in the above-captioned matter; and Local 3338
and the Institute having filed argument in opposition to said request, the last of
which was received on October 17, 1988 1/; and the Commission having reviewed the
matter; and the Commission having concluded that the motions should be denied;

NOW, THEREFORE, it is

ORDERED

That the motions to reopen complaint proceeding are denied. 2/

Given under our hands and seal at the City of
Madison, Wisconsin this 21st day of November, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

MORaine PARK FEDERATION OF
TEACHERS LOCAL 3338

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTIONS TO REOPEN COMPLAINT PROCEEDING

As indicated in the preface to our Order, the complaint which Complainant Anderson seeks to have reopened was dismissed with prejudice on September 21, 1987 by Examiner Crowley. Although the time for appeal of the Examiner's Order had expired before we received her April 6, 1988 motion, we think it appropriate to nonetheless address the merits of her motion. In doing so, we must balance the need for finality of administrative proceedings against propriety of denying Anderson an opportunity to establish that her complaint should be reopened because of the manner in which her attorney represented her in this case.

The law provides Complainant Anderson with the opportunity to seek legal redress in circuit court against her attorney for the quality of the representation he provided and, if successful, to receive appropriate monetary relief including lost wages and benefits. Complainant Anderson has filed such an action in Outagamie County Circuit Court. Given the availability of this judicial forum, we are satisfied that the interest of finality warrants denial of her motion.

Dated at Madison, Wisconsin this 21st day of November, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner

Concurrence and Dissent of Commissioner Hempe

It is fair to infer that my fellow Commissioners believe finality of result to be an essential and desirable feature of a contested evidentiary administrative hearing, a proposition with which I am in full accord. It is on that general basis that they have declined to grant complainant's request that her complaint be resurrected.

I concur with the result reached by the majority as to Anderson's April 6, 1988 motion. Yet, while I do not disagree that the "interest of finality" can be properly invoked as a basis for denial of the relief requested in this motion, I find a more legally compelling basis to be that complainant has not made even a prima facie showing that she is entitled to have her case reopened.

Not so, however, with Anderson's motion dated September 12, 1988. In this motion, she has largely corrected the deficiencies which flawed her April 6 effort. She has now made, in my view, a readily inferable prima facie showing that, inter alia, she received dishonest or bad faith representation which caused a result adverse to her interests. That is sufficient to entitle her to a hearing to test that assertion, for it goes to the fundamental integrity of the process. It is a consideration, in my view, which substantially outweighs "the interests of finality."

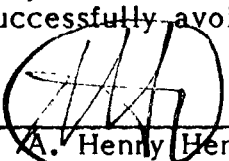
It is not as if Anderson were merely complaining that the result reached at her hearing was erroneous. The interest of finality ". . . has sufficient force to surmount occasional instances of mistake" Hines v. Anchor Motor Freight Co., 424 U.S. 554, 571 (1975).

"But it is quite another matter to suggest erroneous arbitration decisions must stand even though the employee's representation. . . has been dishonest, in bad faith, or discriminatory; for in that event, error and injustice of the grossest sort would result." Hines v. Anchor Motor Freight, supra.

The proceeding in which Anderson received the representation of which she now complains so bitterly was not a grievance arbitration; yet, this ringing declaration of the Court would appear to apply to the Anderson proceeding with at least equal force.

In the final analysis, our desire for "finality" should never result in the elevation of form over substance, expedience over fair play, administrative convenience over procedural integrity. I am not convinced that the result reached by my colleagues in the majority successfully avoids these unhappy consequences.

By



A. Henry Hempe, Commissioner

ENDNOTES

- 1/ On November 4, 1988, Anderson filed a motion to reopen based upon grounds not previously cited. After we received responsive argument, we will rule upon this motion in a separate decision.
- 2/ Having denied said Motions, we need not respond to Anderson's September 12, 1988 Motion for the Commission to Appoint Counsel in this matter to assist her in the presentation of facts and argument in a reopened proceeding.