

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-F

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

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 Complainant Anderson having on November 4, 1988 filed an Appeal to Order Dismissing Complaint with the Commission asking that the Examiner's Order be set aside and her complaint reopened because the Respondent Union had allegedly failed to comply with the settlement agreement pursuant to which the complaint was dismissed; and the parties having filed written argument in support of and in opposition to the Appeal, the last of which was received on February 10, 1989; and the Commission having reviewed the matter and concluded that it is appropriate to grant Complainant Anderson an opportunity to prove her contention that the Respondent Union breached the settlement agreement;

NOW, THEREFORE, it is

ORDERED

1. That hearing will be conducted at a time, date and location to be established in consultation with the parties.

2. That the scope of said hearing is limited to the issue of whether there has been compliance with the settlement agreement between the parties upon which the Examiner's September 21, 1987 Order was premised.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of February, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By S. H. Schoenfeld
S. H. Schoenfeld, Chairman

Herman Torosjan
Herman Torosjan, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

MEMORANDUM ACCOMPANYING ORDER

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 statutorily established time for appeal of the Examiner's Order had expired before we received her appeal, we think it appropriate to nonetheless address the merits of same. 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 non-compliance with the settlement agreement.

On November 21, 1988, 1/ we denied Complainant Anderson's motion asking that we reopen the complaint because of alleged misconduct by her attorney. We reasoned that:

"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."

Unlike issues of alleged attorney misconduct as to which alternative forums exist, we are satisfied that the issue of compliance with a settlement agreement between an individual employe and a union should most appropriately be litigated before the Commission. We so conclude because the settlement agreement was the underlying premise upon which the Examiner's Order was based, because we are the exclusive source through which the remedy requested (i.e. reopening the case) can be received, and finally, because if there was a failure to comply with the settlement agreement, such a failure erodes the fundamental integrity of the process. Thus we believe that in this instance, the interest of finality of administrative proceedings is not paramount and that hearing should be conducted. We would emphasize that our decision to conduct hearing should not be interpreted as an inclination to depart from our consisted practice of requiring strict compliance with the 20 day period established by Sec. 111.07(5) for review of an Examiner's final Order. 2/ Instead it is an exercise of the inherent equitable power we believe we possess to reopen proceedings where, as here, the alleged acts of non-compliance with a settlement agreement occurred outside the time frame within which the statute normally contemplates appeals should be filed.

Dated at Madison, Wisconsin this 23rd day of February, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By S. H. Schoenfeld
S. H. Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

1/ Dec. No. 24474-D.

2/ If no appeal of the Examiner's Order is filed within this 20 days and the Order is not otherwise set aside or modified by the Commission or Examiner, the Order becomes the Commission's Order by operation of Sec. 111.07(5), Stats. and is thereafter subject to timely judicial review.

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INSTITUTE,		:
	Respondents.	:
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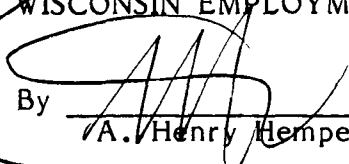
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Concurrence:

I concur with the result reached by the majority in this matter and its reasoning, except for its comments with respect to the attorney misconduct issue. As to that, of course, I would have granted the Complainant a hearing to determine whether her attorney was guilty of professional misconduct in his handling of her case, and, if so, whether such misconduct adversely affected the outcome, for the reasons set forth in my dissent in that matter. (Dec. No. 24474-D.) I continue to believe that Complainant's allegations of attorney misconduct, if true, affect the integrity of the proceeding in as fundamental a manner as we all agree would be the case were there a proven failure to carry out a settlement bargain reached, as alleged herein.

Dated at Madison, Wisconsin this 23rd day of February, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
A. Henry Hempe, Commissioner