

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT COUNCIL 24, THE	:	
WISCONSIN STATE EMPLOYEES	:	
UNION (WSEU), AFSCME, AFL-CIO;	:	
and its appropriately affiliated	:	
LOCAL UNION NO. 82; and	:	
DARYL RANSOM,	:	
	:	Case 253
Complainants,	:	No. 40153 PP(S)-142
	:	Decision No. 25284-A
vs.	:	
	:	
STATE OF WISCONSIN, DEPARTMENT	:	
OF EMPLOYMENT RELATIONS (DER),	:	
	:	
Respondent.	:	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS IN PART AND DENYING RESPONDENT'S MOTION TO DISMISS IN PART

The Complainants, having filed a Complaint of Unfair Labor Practices with the Wisconsin Employment Relations Commission on February 5, 1988, alleging that the Respondent violated Secs. 111.84(1)(a) and (c), Stats., (1) by laying off Complainant Daryl Ransom on June 30, 1986, partially because of Ransom's activities relating to filing and processing grievances, and (2) by refusing to recall Ransom to work since that date, partially because of his activities relating to filing and processing grievances; and the Respondent, having filed a Motion to Dismiss Complaint as Being Untimely Filed with the Commission on January 6, 1989, alleging that the lay off occurred more than one year prior to the filing of the Complaint and is therefore barred by Sec. 111.07(14), Stats., and requesting that the Commission enter an order dismissing the Complaint; and the Complainants, having responded to said Motion by filing an Affidavit of Daryl Ransom with the Commission on January 26, 1989, wherein the Affiant alleged that from June 1986 through July 1988, Ransom or the Complainant Local Union communicated Ransom's desire to return to work and made attempts to return Ransom to work; and the Examiner having considered the matter;

NOW, THEREFORE, it is

ORDERED

1. That the Motion to Dismiss Complaint as Being Untimely Filed is granted in regard to Complainants' allegations that the Respondent violated Secs. 111.84(1)(a) and (c), Stats., by laying off the Complainant Daryl Ransom on June 30, 1986.

2. That the Motion to Dismiss Complaint as Being Untimely Filed is denied in regard to Complainants' allegation that the Respondent violated Secs. 111.84(1)(a) and (c), Stats., by refusing to recall Complainant Daryl Ransom to his job.

Dated at Madison, Wisconsin this 30th day of January, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James W. Engmann
James W. Engmann, Examiner

DEPARTMENT OF EMPLOYMENT
RELATIONS (PROFESSIONAL-EDUCATION)

MEMORANDUM ACCOMPANYING ORDER GRANTING
RESPONDENT'S MOTION TO DISMISS IN PART AND
DENYING RESPONDENT'S MOTION TO DISMISS IN PART

Section 111.07(14) states:

The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

The statute of limitations is incorporated into SELRA by Sec. 111.84(4), Stats.

In its Complaint at paragraph 7, the Complainants allege that Complainant Daryl Ransom was laid off on June 30, 1986. In its Answer at paragraph 7, the Respondent alleges that Ransom accepted an offer of a voluntary transfer in lieu of lay off effective June 23, 1986. In its Motion the Respondent alleges that Ransom was notified of the lay off by letter dated May 13, 1986, that the lay off of Ransom occurred on June 23, 1986, and that the difference in this date and the Complainants' date of June 30, 1986, is immaterial to this Motion. In the Affidavit, Complainant Ransom alleges he reviewed the Complaint but he makes no other statements regarding the lay off proper.

The record is clear that the Complainants' filed the Complaint in this matter with the Commission on February 5, 1988. Assuming the facts as alleged by the Complainants, the lay off of Ransom occurred June 30, 1986. As to the lay off proper, this is the date as to the specific act or unfair labor practice alleged. The Complainants' rights to proceed extended one year from that date under Sec. 111.70(14), Stats., as incorporated in Sec. 111.84(4), Stats. As the Complainants' did not file the Complaint in this matter until February 5, 1988, and as more than one year had passed since the date of the lay off, the Motion to Dismiss Complaint as Being Untimely Filed is granted as to the allegation that the Respondent's violated Secs. 111.84(1)(a) and (c), Stats., by laying off Ransom, allegedly because, in part, of his activity in filing and processing grievances.

In its Complaint at paragraph 12, the Complainants allege that at various times and occasions since the lay off, Ransom has tried without success to return to his job. In paragraph 13, the Complainants' allege that the refusal by the Respondent to return Ransom to his job was motivated in part by Ransom's activity in filing and processing grievances. In its Answer the Respondent admits that Ransom has expressed an interest and desire to return to his job and on one occasion was interviewed for a position which was not filled due to a lack of funding, but otherwise the Respondent denies the allegations of paragraphs 12 and 13 of the Complaint. In its Motion the Respondent did not specifically refer to the allegation of the Complainants that the refusal by the Respondent to return Ransom to his job is in violation of Sec. 111.84(1)(a) and (c), Stats. In the Affidavit, Ransom alleges that as recently as July 1988, the Complainants' Local Union attempted to return Ransom to his job.

Based on the pleadings before me, this Examiner cannot conclude that the Complaint is untimely filed as to the allegation that the Respondent violated Secs. 111.84(1)(a) and (c), Stats., by refusing to return Ransom to work, allegedly because, in part, of his activity in filing and processing grievances. As to this allegation, the pleadings present a contested case within the meaning of Ch. 227, Stats., requiring a full evidentiary hearing, and therefore, the Motion to Dismiss Complaint as Being Untimely Filed is denied as to this allegation.

Dated at Madison, Wisconsin this 30th day of January, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James W. Engmann
James W. Engmann, Examiner