STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SANDRA A. ANDERSON,

Complainant,

vs.

MORAINE PARK TECHNICAL COLLEGE

and

MORAINE PARK FEDERATION OF TEACHERS, LOCAL 3338,

Respondents.

Case 29
No. 41085 MP-2138
Decision No. 25747-D

Appearances:
Ms. Sandra Anderson, 816 Neufeld Street, Green Bay, Wisconsin 54304, appearing on her own behalf.
Mr. John A. St. Peter, Edgarton, Ondrasek, St. Peter, Petak & Massey, Attorneys at Law, 10 Forest Avenue, P.O. Box 1276, Fond du Lac, Wisconsin 54936-1276, appearing on behalf of Moraine Park Technical College.
Mr. Alan S. Brostoff, Attorney at Law, 330 East Kilbourn Avenue, Suite 1275, Milwaukee, Wisconsin 53202, appearing on behalf of Moraine Park Federation of Teachers, Local 3338.

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

Examiner Richard B. McLaughlin having on September 11, 1989, issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein he dismissed the complaint filed by Sandra A. Anderson because he concluded that none of the allegations against Moraine Park Technical College and Moraine Park Federation of Teachers, Local 3338, were timely within the meaning of Secs. 111.70(4)(a) and 111.07(14), Stats.; and Anderson having timely filed a petition seeking Commission review of the Examiner's decision; and the parties thereafter having filed written argument in support of and in opposition to the petition, the last of which was received on November 10, 1989; and the Commission having considered the matter and concluded that the Examiner correctly determined the complaint allegations were untimely;

NOW, THEREFORE, it is

ORDERED 1/

That the Examiner's Findings of Fact, Conclusions of Law and Order are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By ______________________________
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

(See Footnote 1/ on page 2)

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 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 therefore 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.

MORAINE PARK VOCATIONAL, TECHNICAL
& ADULT EDUCATION DISTRICT

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

Anderson's Original Complaint

On September 12, 1988, Sandra A. Anderson filed a complaint with the Wisconsin Employment Relations Commission alleging that Moraine Park Technical College, herein the College, and Moraine Park Federation of Teachers, Local 3338, herein the Union, had committed prohibited practices. On September 29, 1988, the College filed a motion to dismiss which among other things asserted that the complaint was an attempt to re-litigate matters which had already been decided and that the complaint failed to allege conduct by the College which would constitute a prohibited practice under Sec. 111.70(3), Stats. During the course of the filing of written argument in support of its motion, the College moved in the alternative for an order making portions of the complaint more definite and certain.

On March 7, 1989, the Examiner issued Findings of Fact, Conclusions of Law and Order in response to the College's motions. In his decision, the Examiner dismissed the allegation in the complaint regarding violation of Wisconsin's Public Records Law based upon his determination that the Commission does not have independent jurisdiction over that statute. The Examiner denied the College's motion to dismiss the remainder of the complaint because he concluded that on the pleadings presently filed, it was conceivable that an interpretation of the facts alleged by Anderson would entitle her to relief. However, the Examiner further concluded that Anderson's complaint did not clearly allege the existence of a prohibited practice which was timely challenged through her complaint or which had not been fully adjudicated in other litigation. Therefore, the Examiner ordered Anderson to make her complaint more definite and certain.

In his decision, the Examiner noted that much of his Order concerned the timeliness of Anderson's allegations. He concluded that because much of Anderson's complaint concerned events falling outside the one year limitations period established by Sec. 111.07(14), Stats., it was appropriate to apply the principals enunciated by the United States Supreme Court in Local Lodge No. 1424 v. NLRB (Bryan Mfg. Co.) 362 US 411 (1960) and adopted by the Commission in CESA No. 4, Dec. No. 13100-E (Yaffe, 12/77), aff'd Dec. No. 13100-G (WERC, 5/79), aff'd Dec. No. 79 CV 316 (CirCt Barron 3/81). The Examiner quoted from that portion of the Supreme Court's opinion in Bryan Mfg. Co. which contrasted two situations involving use at prior events.

> . . . The first is one where occurrences within the . . . limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose Sec. 10(b) ordinarily does not bar such evidentiary use of anterior events. The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice. There the use of the earlier unfair labor practice is not merely "evidentiary," since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice.

The Examiner then characterized his Order as following the Bryan rule by "requiring Anderson to specify conduct occurring within the one year limitations period which in itself can constitute a prohibited practice regarding those allegations which seem to turn on events falling outside the one year limitations period."

In his decision, the Examiner explained why he believed the existing complaint was able to withstand application of the Bryan principals in the context of the College's motion to dismiss. As to Anderson's allegations against the College, the Examiner concluded that the existing complaint, when viewed in the light most favorable to Anderson, contained an assertion that the College included material in Anderson's personnel file in a manner prohibited by a collective bargaining agreement between the College and the Union. Noting that the complaint alleged that the College had refused to expunge the disputed material from Anderson's personnel file at a time which fell within the one year period prior to the filing of her complaint, and applying existing case law as to the circumstances in which an individual employe can pursue breach of

contract allegations, the Examiner determined that Anderson, as a former college employe, was conceivably asserting her own or the Union's right to police contract provisions which accrue during the active employment relationship but which provide a benefit which succeeds that relationship. If this portion of the complaint stood alone, the Examiner stated that the District's motion to dismiss could be denied and hearing ordered. However, the Examiner concluded that this allegation was linked to other portions of Anderson's complaint which make reference to conduct which occurred more than one year prior to the filing of her complaint and which raised the question of whether Anderson is seeking to reopen matters already addressed in prior litigation. The Examiner viewed his Order as an attempt to provide greater clarity as to Anderson's allegations in the context of these concerns.

Turning to Anderson's allegations against the Union, the Examiner noted that when broadly read, the complaint raises questions related to the Union's alleged failure to process at least one grievance for Anderson. Within the context of the existing complaint and the motion to dismiss, the Examiner concluded that if Anderson's complaint alleges either that a July 2, 1984 grievance is still pending and that the Union has failed to arbitrate same or that the Union has refused an April, 1988 request to help Anderson police her personnel file because of a Union desire to retaliate against her for her use of the grievance procedure, then the complaint would state a timely claim that the Union has failed to fairly represent Anderson in violation of Sec. 111.70(3)(b)1, Stats. However, as with Anderson's allegations against the College, the Examiner was concerned that her allegations may well seek to open issues which cannot timely be challenged or which have already been addressed and adjudicated in other forums. Thus, the Examiner concluded that his Order was appropriate because it was an attempt to clarify:

> "whether Anderson is making a present claim that the Federation has breached its duty to fairly represent her by refusing to help her expunge contractually proscribed material from her file or whether she is using the re-quested expungement as a vehicle to reopen matters already addressed by, or pending before other tribunals. The Order does so by requiring Anderson to clarify how the July 2, 1984, grievance remains pending or by alleging the occurrence of conduct falling within one year of the filing of her complaint which in and of itself would constitute a prohibited practice by the Federation."

Anderson's Amended Complaint

On March 30, 1989, Anderson filed an amended complaint in response to the Examiner's Order. The Examiner conducted a prehearing conference on July 10, 1989 to clarify the status of the pleadings and to discuss the pending pre-hearing motions.

On September 11, 1989, Examiner McLaughlin issued a decision wherein he dismissed Anderson's complaint and amended complaint because he concluded that none of the acts complained of which could independently constitute a prohibited practice occurred within the one year period preceding the filing of the complaint.

As to Anderson's complaint against the College, the Examiner held that none of the allegations could be viewed as an independent and timely filed prohibited practice because the legality of the acts complained of by Anderson was dependent upon an independent review of earlier events related to Anderson's discharge, all of which occurred more than one year prior to the filing of Anderson's complaint. He reasoned:

> The essence of Anderson's allegations against the District are stated in her August 26, 1988, letter. The specific acts complained of in that letter concern the District's failure to supply her with a copy of information the District supplied a potential employer, and the District's placement of certain material in her personnel file. The first paragraph of the letter requests the material under the "State Open Records Law". That allegation has been dismissed, but aspects of that allegation will be further discussed below. The focus of the complaint and the amended complaint is the expungement of certain material from Anderson's personnel file, as detailed in the balance of the August 26, 1988, letter.
>
> Anderson seeks to expunge from her personnel file correspondence and other documentation from the process which culminated in her discharge from District employment. Because the material she seeks to expunge was not apparent in her original complaint an Order was entered requiring her to clarify the complaint. In the amended complaint filed in response to that Order,

> Anderson specified eleven documents she wished expunged from her file. In the pre-hearing conference, she specified four more. The earliest of those documents is dated September 12, 1983. None of the documents is dated any more currently than January 16, 1987. The complaint and amended complaint allege that the presence of each document in Anderson's personnel file violates the collective bargaining agreement.
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> It is apparent that none of the documents, nor the events underlying those documents, fall within the one year limitations period. Anderson seeks to address this difficulty by noting that the District supplied this documentation to a potential employer in April of 1988, and refused her request of August 26, 1988, to expunge the material from her personnel file. Under her view, the September 12, 1988, complaint was timely filed given the District's actions of April and August, 1988.
>
> Her contention can not withstand scrutiny under the Bryan standards. Anderson does not offer, nor can I perceive, how the District's submission of the above noted material to a potential employer can, in and of itself, constitute the prohibited practice alleged. This act, as the District's refusal to expunge the material from her file, can become a prohibited practice only by accepting Anderson's assertion that the material, as created and as used in the period of time culminating in her discharge, violated the then-existing collective bargaining agreement. Under this theory, the District's acts would be the most recent recurrence of a continuing wrong. This theory ignores, however, that the wrong has yet to be established, and can not be established in this case without an independent review of the earlier, pre-limitations period events. Her contention, then, does not constitute an "evidentiary" use of the pre-limitations period conduct, within the meaning of Bryan. Rather, the contention is used "to cloak with illegality that which was otherwise lawful". In sum, Anderson's complaint and amended complaint, as distilled in her August 26, 1988, letter, seek not to challenge the validity of the District's actions of April and August, 1988, but to use those actions as a vehicle to reexamine the events preceding the January 16, 1987, arbitration award which confirmed her discharge. Thus, her allegations against the District can not be considered timely under the provisions of Secs. 111.70(4)(a) and 111.07(14), Stats.

In closing, the Examiner commented further as follows:

> One final point remains to be addressed. It was not apparent from Anderson's complaint whether she sought to independently challenge any action by the District in maintaining more than one personnel file, in refusing to grant her access to her personnel records, or in disclosing those records to a potential employer. The first paragraph of her August 26, 1988, letter as well as the allegations of the complaint link such a concern with the "State Open Records Law". The Order requiring her to make her complaint more definite and certain dismissed her allegations regarding the public records law, and Paragraph 2.a. of that Order required Anderson to clarify if she was alleging the District had improperly limited or denied her access to her personnel records, and, if so, to state the statutory basis for the allegation. She responded in her amended complaint thus:
>
>> I believe it is a prohibited practice to have two separate personnel files, especially if the employee does not have access to the "private" file. Items from the "private" file were entered in the record before Arbitrator Kessler.
>
> The first sentence of this response, if read alone, may indicate a concern with the procedures the District employs to maintain personnel records apart from any concern with the substance of those records. The final sentence, however, links the substance of her own personnel records with the procedures by which the

> District maintains its records. Her responses at the pre-hearing conference underscored the link between the District's maintenance of her personnel file with the circumstances of the processing of the grievances which culminated in the January 16, 1987, award. This link is conclusively established by her letter of April 19, 1988, which does not contain any indication that she wished the Federation to assist her in gaining access to her personnel records or in challenging how they were maintained. Because her allegations regarding the District's maintenance and use of her personnel files are inextricably linked with her allegations regarding the expungement of certain records and the reexamination of the process by which those documents were generated, her allegations in the complaint and the amended complaint regarding the District's maintenance of her personnel records pose no issues separable from those discussed above.

Turning to Anderson's allegation against the Union, the Examiner reasoned:

> The essence of Anderson's allegations against the Federation are distilled in her April 19, 1988, letter. That letter seeks to submit a July 2, 1984, grievance to arbitration. Here too, Anderson seeks to examine events falling outside of the one year limitations period. She seeks to overcome this problem by asserting that the July 2, 1984, grievance remains pending because of a September, 1984, agreement between Anderson, the Federation and the District to postpone action on the July 2, 1984, grievance until the Commission or an Arbitrator finished the processing of a February 3, 1984, grievance. Because that matter has yet to be processed, Anderson asserts the July 2, 1984, grievance is still pending. That grievance challenges an evaluation which, according to Anderson, was crucial to the January 16, 1987, arbitration award which sustained her discharge. The complaint and amended complaint embellish this core of facts and call into question the Federation's handling of the arbitration hearing on her discharge, but her allegations against the Federation all focus on the quality of the representation it afforded her, culminating with the January 16, 1987, arbitration award. The Federation's refusal to respond to her April 19, 1988, letter brings this course of conduct into the one year limitations period, according to Anderson.
>
> Anderson's contentions have aspects which implicate Bryan and aspects which do not. None of the contentions, however, persuasively establish any timely claim against the Federation. As preface to addressing the non-Bryan aspects of her contentions, it must be noted that her April 19, 1988, letter seeks to reopen the representation process which culminated in a January 16, 1987, arbitration sustaining her discharge. The Commission, in Local 950, International Union of Operating Engineers, stated the standard governing the one year limitations period in complaints challenging union conduct and union conduct in conjunction with an alleged employer violation of a collective bargaining agreement. The Commission stated the relevant standards thus:
>
> > . . . (A) complaint naming only the union as respondent and alleging only a (Sec. 111.70(3)(b)1, Stats., violation) would have to be filed within one year after the union's wrongful act or omission to be timely under the applicable statutory limitation on time of filing . . . The Harley-Davidson decision provides for tolling the statutory limitation against a claim of violation of contract only once contractual grievance procedures have been exhausted concerning the contract dispute involved . . . In our opinion, it would be appropriate to extend the Harley-Davidson rule to apply as well to companion claims against the union when, but only when they are included in complaints filed against employers alleging violation of collective bargaining agreement.

Thus, the one year limitations period for challenging the Federation's conduct in processing the grievances culminating in the January 16, 1987, award commenced in January of 1987. Anderson's complaint was not filed until September of 1988, and thus can not be considered timely. Nor can Anderson's assertion that the absence of an expiration date on the September, 1984, agreement postponing the processing of the July 2, 1984, grievance make the September, 12, 1988, complaint timely. Anderson has acknowledged that the processing of those grievances is an essential part of the alleged impropriety underlying the January 16, 1987, award. Against this background, it is impossible to set the limitations period for challenging the grievances at a date subsequent to the arbitration award. If the absence of a clear expiration date for the September, 1984, agreement was taken to mean the July 2, 1984, grievance remained pending forever, the timelines of Secs. 111.70(4)(a) and 111.07(14), Stats., would be rendered meaningless.

Anderson attempts to bring her contentions within the one-year limitations period under Bryan by asserting that the April 19, 1988, letter and the Federation's refusal to respond is the most recent manifestation of a continuing pattern of improper representation. As preface to this contention, it must be noted that the Federation is under no legal to duty to arbitrate every grievance request it receives. Thus, the issue posed here is whether the April 19, 1988, letter and the Federation's refusal to respond can, under any view of the facts, be considered in and of themselves a prohibited practice.

The acts asserted to be timely challenged by Anderson will not withstand scrutiny under the Bryan standards. As of April 19, 1988, Anderson was not a unit employe. Her April 19, 1988, request to arbitrate the July 2, 1984, grievance was, then, a request by a non-unit employe to reopen the process by which she had been discharged from the unit. As noted above, the general issue of whether or not her discharge was proper can not be considered presented here, for it is an untimely claim. Beyond this, however, it is apparent that her April 19, 1988, request for the arbitration of the July 2, 1984, grievance can be considered a prohibited practice only by accepting her contention that she was denied fair representation in the period from September of 1983 through January of 1987. The April 19, 1988, request for arbitration becomes meaningful only with reliance events well outside of the one year limitations period. Here too, her use of the earlier events is not "evidentiary" within the meaning of Bryan, but seeks to "cloak with illegality that which was otherwise lawful".

Anderson's Petition for Review

In her petition, Anderson asserts:

> Arbitrator Kessler's Award is dated January 16, 1987. On March 17, 1987, I requested Moraine Park Technical Institute to remove all references to oral and written absenteeism warnings from my file. MPTC nor the Union responded to my request nor did the Board schedule time on their agenda to discuss the matter.
>
> I was not aware of the Miller Arbitration Award until I requested a copy from Moraine Park after Kessler issued his aware on January 16, 1987.
>
> The correspondence to Attorney Hawks (Union Attorney) dated March 11, 1987 states that certain documents should not have been entered in the record before Arbitrator Kessler and the written reprimands for absence should be removed from my file.
>
> The Union and Attorney Hawks were aware of the Miller Arbitration Award that was issued on August 29, 1987. My hearing before Arbitrator Kessler was June 2, 1986; Arbitrator Kessler did not issue his Judgment and Award until January 16, 1987. The Union and Attorney Hawks could have requested Mr. Kessler to hear more evidence.

On July 30, 1986 and October 17, 1986, I requested Mr. Kessler to receive additional evidence prior to the issuance of his Award on January 16, 1987. The Union Attorney, Mr. Hawks, interceded and requested that Mr. Kessler disregard the documents that I mailed to him.

I believe because of my requests of March 11, 1987 and March 17, 1987 and again on April 19, 1988 and August 26, 1988, the Commission has jurisdiction to determine if certain documents should be included in my personnel file and if those documents should have been allowed to be entered in the Record before Arbitrator Kessler.

In her brief filed in support of her petition, Anderson contends:

I do not know any case law or agency decisions that would apply to my case because other Unions would not have allowed one of its members to be suspended for twenty days without pay without filing for arbitration, and subsequently discharged. It was never determined if I was suspended for "just cause." In addition, I filed a Grievance on August 26, 1985 stating I was not tardy on one of the days for which I was suspended. The grievance was filed prior to the Notice of Contemplated Suspension, dated September 6, 1985. The grievance was not resolved prior to the suspension. The August 26, 1985 Grievance was never resolved as the Discipline of Suspension was imposed without Union support.

The documents that were issued pursuant to the new absenteeism rules should be removed from my personnel file. See Richard Ulric Miller Arbitration Award, dated August 29, 1986. Be aware that the District keeps two personnel files, one at the District Office that can be reviewed, and one that is kept by the Department Chairperson that is not accessible to the individual. It is legally wrong to enter in the record before the arbitrator absence reprimand documents that did not have my signature, and the date of said signature, that were kept in the "private" personnel files that were not accessible to me. Due process is fair process and fair process is fair play.

As a matter of law, the terms of the Collective Bargaining Agreement control where there is a conflict of the definition of "excessive absence" and "chronic absence." At no time in my twelve years of employment at MPTC was my absence chronic. I do not believe an arbitrator can uphold my discharge because I broke my ankle and I was absent from work for twelve weeks as ordered by Dr. Hinckley, Orthopedic Surgeon. I was reprimanded in my 1985 Evaluation Document for "excessive absence" because I broke my ankle. I refused to sign the Evaluation Document because of the unfair, misleading information in that Document.

I believe my 1984 Evaluation Document should be removed from my Personnel Files because there is a pending, unresolved Grievance dated July 2, 1984. It was never determined if I was evaluated fairly by Jean Fleming. The Collective Bargaining Agreement states:

Article IV, Section 3, (a)

If such Grievances arises, there shall be no stoppage or <u>suspension</u> of work because of such Grievance; but such Grievance shall be submitted to the grievance and arbitration procedure hereinafter set forth.

Article IV, Section 7 (b)

(b) All documents, communications, and records dealing with the processing of a Grievance will be filed separately from the personnel files of the participants.

Because of the unresolved July 2, 1984 Grievance regarding my 1984 Evaluation Document, the 1984 Evaluation Document should not be in my personnel file and should have not been entered in the record before

the arbitrator.

> If Local 3338 were truly an honest and supporting union of all of its members, rather than a self-serving, corrupt organization supporting only a certain few of its union officials, Local 3338 would have filed a grievance on behalf of its members who received absence reprimands pursuant to the new absenteeism work rules. Tom Burns and his Committee failed to do so upon the issuance of the absence reprimands. I do not believe an arbitrator can uphold the discharge of an instructor for approved and preapproved absences as provided for in the Bargaining Agreement. Attorney Hawks failed to enter in the record before the arbitrator documentation of the physician's verification of surgery and the time required an individual must be off from work. Attorney Hawks did not object to the Evaluation Documents being entered in the record before the arbitrator. Attorney Hawks did not enter in the record before the arbitrator the unresolved grievances concerning the 1984 Evaluation Document.
>
> I have stated to both the Union and the Moraine Park Technical College that the above stated documents do not belong in my personnel file and should be removed from the arbitration exhibits.
>
> How do I accomplish this if the Union and MPTC do not respond to my requests? MPTC states they are properly in my personnel file and the Union has not taken any action. The collusion of the Union and MPTC prior to my suspension and termination and before the arbitrator has denied me of my due process rights.

The College

The College urges the Commission to affirm the Examiner. It contends that Anderson's petition and supporting brief are merely a summary of previously presented allegations and argument and do not challenge the Examiner's application of Bryan Mfg. nor allege that the Examiner misinterpreted her complaint. The College asserts that as to each act complained of by Anderson which occurred within one year of the filing of her complaint, the Examiner properly concluded that said conduct could only be found to be unlawful if viewed in the context of alleged prohibited practices occurring beyond the one year statute of limitations.

The Union

The Union did not file any written argument as to Anderson's petition.

DISCUSSION

Anderson's complaint can be read as questioning the propriety of several alleged actions which she asserts occurred during the one year period preceding the filing of her September 1988 complaint. These actions are:

1. The College's April 1988 release of certain employment records to a potential employer and the College's refusal to comply with Anderson's August 1988 request that certain material be removed from her personnel file.

2. The College's maintenance of two separate personnel files regarding Anderson's employment.

3. The Federation's refusal to honor Anderson's April 1988 request that a 1984 grievance be arbitrated.

As noted by the Examiner, for the purposes of a pre-hearing Motion to Dismiss, the actions asserted above must be presumed to have occurred on the dates alleged.

The breadth and complexity of Anderson's complaint make it difficult to comfortably conclude that under no interpretation of the facts alleged can any of Anderson's allegation be found in and of themselves to be a prohibited practice. In our view, the portions of the Examiner's decision quoted above reflect his struggle with that reality. However, on balance, we are satisfied that the complaint is, in the Examiner's words, ". . . a vehicle to re-examine the events preceding the January 16, 1987 arbitration award which confirmed her discharge". Thus, while the facts alleged in Anderson's complaint could, in the context of certain allegations, constitute timely filed and independent prohibited practices, the facts as used in the context of Anderson's

allegations inextricably rely on alleged prohibited practices committed by the College more than one year prior to the filing of her complaint. Thus, we have concluded that the Examiner properly applied the Bryan analysis to Anderson's allegations against the College when he concluded this portion of the complaint was time barred.

As was the case with her allegations against the College, the facts asserted by Anderson as to the Union's April 1988 conduct would, in the context of certain allegations, constitute a timely filed and independent prohibited practice which would thus withstand a Bryan challenge. However, as these facts are used by Anderson in the context of the allegations in her complaint, we are satisfied that they are a vehicle by which Anderson seeks to attack the Union's representation of her at times outside the scope of the one year statute of limitations. Such an effort is time barred by Bryan. Thus, we have also affirmed the Examiner's dismissal of the complaint as to the Union.

Dated at Madison, Wisconsin this 16th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By ______________________________
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

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