

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOAN GOETZ, :
 :
 Complainant, :
 : Case 15
 vs. : No. 42102 MP-2222
 : Decision No. 26045-A
 GLENDALE-RIVER HILLS SCHOOL DISTRICT, :
 :
 Respondent. :
 :

ORDER DENYING MOTION TO DISMISS

Joan Goetz, hereinafter the Complainant, having, on April 26, 1989, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission wherein it is alleged that the Glendale-River Hills School District, hereinafter the Respondent, has committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2 and 3, Stats.; and the Commission having, on June 8, 1989, appointed David E. Shaw, a member of its staff, to act as the Examiner in the matter; and hearing on the complaint having been set for August 16 and 17, 1989; and the Respondent having on July 21, 1989 filed its answer to the complaint, along with a Motion to Dismiss and supporting argument; and the Complainant having, on August 2, 1989, submitted written argument in opposition to Respondent's Motion to Dismiss; and the Examiner, having considered the Motion to Dismiss and the arguments of the parties, and being satisfied that the Motion should be denied, issues the following

ORDER

The Motion to Dismiss the instant complaint is denied.

Dated at Madison, Wisconsin this 4th day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
David E. Shaw, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION TO DISMISS

The Respondent has filed a Motion to Dismiss the instant complaint on the bases that the complaint was not timely filed as to those claims based on alleged actions occurring more than one year prior to the filing of the complaint and that the allegations regarding actions that occurred within one year of the filing fail to state a claim upon which relief can be granted. Respondent cites Clayton School District, Dec. No. 20477-B (McLaughlin, 10/83) and Village of Hartland, Dec. No. 20369-A (Honeyman, 11/83) in support of its position that Complainant cannot use prior conduct to substantiate her claim in the absence of independent allegations of statutory violations occurring within the one year limit.

The Complainant opposes the Motion to Dismiss and asserts there are "two central allegations" in the complaint: "1) that the Respondent has taken over the secretarial committee such that it constitutes domination of the Support Staff Committee; and, 2) that the Complainant was denied the same pay increase as other secretaries and subjected to other discriminatory conduct at least, in part, because of her concerted activity. As to the former, the employer's conduct continues to this date." Complainant also asserts that the allegation regarding the denial of her pay raise is, standing alone, sufficient to require a hearing on the merits. The conduct occurring outside the one year period was not alleged as independent statutory violations according to the Complainant, rather, evidence as to such conduct is to show her concerted activity which formed the basis of Respondent's retaliatory discrimination against her that occurred within the one year period. Complainant contends that the Clayton School District and Village of Hartland decisions cited by Respondent are distinguishable since in each of those cases the only action that formed the basis of the complaint occurred prior to the one year period and the examiner found there was no continuing violation.

DISCUSSION

The following standard has been applied in deciding a pre-hearing motion to dismiss a complaint of prohibited practices:

Because of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief. 1/

In this case the complaint alleges certain conduct that occurred prior to one year before the filing of the complaint and conduct that allegedly occurred within the one year period. Complainant asserts that in certain respects the alleged misconduct that was initiated prior to the one year period continues to the present, i.e., it constitutes a "continuing violation." In its answer Respondent has disputed a number of those allegations. Thus, there is a factual dispute, as well as a legal dispute, as to whether there is in fact a continuing violation, and a hearing will be necessary to resolve that factual dispute. 2/

1/ Unified School District No. 1 of Racine County, Wisconsin, Dec. No. 15915-B (Hornstra with final authority for the Commission, 12/77) at 3.

2/ It is noted that in the Clayton School District and Village of Hartland cases evidentiary hearings were held prior to the complaints being dismissed.

Paragraph 13 of the complaint alleges violations within the one year period and it may be read, as Complainant asserts, as an allegation that Complainant was discriminated against by the Respondent with regard to her pay raise and evaluation in retaliation for her having engaged in protected concerted activity. If proven, that claim would form the basis for a finding of a violation of the Municipal Employment Relations Act.

It has therefore been concluded that Respondent's Motion to Dismiss must be denied at this time and that a hearing will be necessary to resolve the factual disputes.

Dated at Madison, Wisconsin this 4th day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
David E. Shaw, Examiner