

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:
DISTRICT 10, INTERNATIONAL ASSOCIATION :
OF MACHINISTS AND AEROSPACE WORKERS, :
:
Complainant, : Case 13
: No. 40785 Ce-2071
vs. : Decision No. 26144-A
:
BRANDT, INC., :
Respondent. :
:

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. Matthew R. Robbins, 788 North Jefferson Street, Milwaukee, Wisconsin 53202, for the Complainant.
Quarles and Brady, Attorneys at Law, by Messrs. David B. Kern and Donald L. Schriefer, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, for the Respondent.
Kelly and Haus, Attorneys at Law, by Mr. William Haus, 121 East Wilson Street, Madison, Wisconsin 53703-3422, for Joann Christian.

ORDER

Complainant having on June 24, 1988 filed a complaint with the Wisconsin Employment Relations Commission alleging that Respondent had discharged Joann Christian without just cause and had thereby committed unfair labor practices within the meaning of Secs. 111.06(1)(a)(d) and (f), Stats.; and hearing having been held in abeyance by Examiner Jane B. Buffett pending settlement discussions between the parties; and Complainant having on August 30, 1989, advised Examiner Buffett in writing that "we hereby request withdrawal with prejudice of the unfair labor practice charge filed in the above matter. This request is submitted pursuant to a private settlement agreement entered into between the parties"; and on August 31, 1989, the Examiner having received a Motion for Intervention filed on behalf of Joann Christian which asserted inter alia that Christian had an interest in the above matter which was divergent from the existing parties; and Examiner Buffett having on September 6, 1989, issued an order Dismissing Complaint based upon her conclusion that "the prior withdrawal of the complaint eliminated the controversy within the meaning of Sec. 111.07, Stats., and precluded any ruling on said motion (to intervene)"; and Joann Christian having, on September 12, 1989, filed a petition with the Commission seeking review of the Examiner's Order pursuant to Sec. 111.07(4)(a), Stats.; and the parties and Joann Christian thereafter having filed written argument in support of and in opposition to the petition, the last of which was received on October 31, 1989; and the Commission having considered the matter and being fully advised in the premises, makes and issues the following

ORDER

1. That the Order Dismissing Complaint is set aside.

2. That the matter is remanded to the Examiner for a ruling on the merits of the Motion For Intervention and, if appropriate, further proceedings.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of December, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

BRANDT, INC.

MEMORANDUM ACCOMPANYING ORDER

POSITIONS OF THE PARTIES

Joann Christian

Christian asserts that the Examiner erred when she refused to consider the Complainant's Motion For Intervention because it was filed one day after she received Complainant's request that the complaint be dismissed. Christian argues that such requests are not "self-operational", and contends that the Examiner's own Order is rendered superfluous if the Examiner is correct as to the applicable law. Christian alleges that the complaint continues to exist until dismissed by an order. Christian further asserts that other parties in interest should be given notice of a request for dismissal and an opportunity to respond before any order is issued by an Examiner or the Commission.

Citing Sec. 111.07(2)(a), Stats., Christian argues that a complaint can be amended by the addition of a party "at any time prior to the issuance of a final order based thereon." Thus, Christian contends that until a final order was issued, a Motion For Intervention would be timely even though it was filed after receipt of a request that a complaint be dismissed. Therefore, Christian urges that the Motion For Intervention was timely filed because the Examiner had not issued an order based upon the Complainant's withdrawal request.

Given the foregoing, Christian asks that the Commission vacate the Examiner's Order.

Respondent and Complainant

Respondent urges the Commission to affirm the Examiner. It argues that Christian's position rests on the proposition that the Commission may refuse to dismiss a complaint once the party filing same has requested that it be withdrawn. Respondent asserts that there is no authority for this proposition. Respondent contends that Christian's remedy, if any, is limited to the filing of a complaint alleging that the Complainant breached its duty of fair representation when it negotiated a settlement agreement with Respondent which included the obligation to seek dismissal of the complaint.

Complainant asserts that absent a claim that it has breached its duty of fair representation, Christian should not be allowed to seek to overturn the settlement agreement which Complainant, as Christian's exclusive representative, reached with Respondent.

DISCUSSION

The issue before us is limited to a determination whether Christian's Motion For Intervention was timely filed. The Examiner concluded that the Motion was not timely because the Sec. 111.07 "controversy" ended when she

received Complainant's request for "withdrawal with prejudice" of the unfair labor practice complaint.

The instant complaint was filed under Section 111.07 of the Wisconsin Employment Peace Act (WEPA), which states in pertinent part:

(1) Any controversy concerning unfair labor practices may be submitted to the commission in the manner and with the effect provided in this subchapter, but nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction.

(2)(a) Upon the filing with the commission by any party in interest of a complaint in writing, on a form provided by the commission, charging any person with having engaged in any specific unfair labor practice, it shall mail a copy of such complaint to all other parties in interest. Any other person claiming interest in the dispute or controversy, as an employer, an employee, or their representative, shall be made a party upon application. The commission may bring in additional parties by service of a copy of the complaint. Only one such complaint shall issue against a person with respect to a single controversy, but any such complaint may be amended in the discretion of the commission at any time prior to the issuance of a final order based thereon.

While neither Sec. 111.07, Stats. nor the administrative code applicable to WEPA address the issue of withdrawal, the administrative code provisions applicable to the Municipal Employment Relations Act (MERA) and the State Employment Relations Act (SELRA) are instructive. ERB. 12.02(4) which is applicable to prohibited practice complaints filed under MERA and ERB. 22.02(4) which is applicable to unfair labor practice complaints filed under SELRA both provide as follows:

(4) WITHDRAWAL. Any such complaint may be withdrawn at any time prior to the issuance of a final order based thereon, upon motion granted by the Commission. (Emphasis added.)

Under these administrative code provisions, it is our view that the complaint proceeding continues to exist unless and until the Commission or its appointed examiner issues an order granting a withdrawal request. 1/ As we find no basis for concluding that withdrawal requests under the WEPA should be dealt with differently than those under MERA or SELRA, 2/ we conclude that until an examiner or the Commission acts upon a withdrawal request, the dispute or controversy continues to exist and a motion to intervene may timely be filed. Thus, we have set aside the Examiner's Order and remanded the matter to her for a ruling on the merits of the motion. Our order should not be read as expressing any view as to the merits of the Motion.

Dated at Madison, Wisconsin this 21st day of December, 1989.

1/ See City of Green Bay, Dec. No. 10697-A (WERC, 12/71); City of Superior, Dec. Nos. 10681-A, B (Fleischli, 12/71); City of Wisconsin Rapids, Dec. No. 14095-B (WERC, 8/76).

2/ As both MERA and SELRA complaints are procedurally governed by Sec. 111.07 (see Secs. 111.70(4)(a) and 111.84(4), Stats., respectively), the administrative code provisions as to MERA and SELRA complaints must be consistent with Sec. 111.07, Stats.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
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