

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DISTRICT 10, INTERNATIONAL ASSOCIATION	:	
OF MACHINISTS AND AEROSPACE WORKERS,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 13
	:	No. 40785 Ce-2071
BRANDT, INC.,	:	Decision No. 26144-C
	:	
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 GRANTING MOTION FOR INTERVENTION

On December 21, 1989, the Wisconsin Employment Relations Commission set aside the Order of Examiner Jane B. Buffett in which she dismissed the Complaint in the above-captioned matter. The Commission remanded the matter to the Examiner for a ruling of the merits of the Motion for Intervention, and, if appropriate, further proceedings. The Examiner, having considered the matter and being fully advised in the premises, makes and issues the following

ORDER

The Motion for Intervention of Joann Christian is hereby granted.

Dated at Madison, Wisconsin this 30th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Jane B. Buffett, Examiner

BRANDT, INC.

MEMORANDUM ACCOMPANYING ORDER

BACKGROUND

District 10, International Association of Machinists and Aerospace Workers, (hereinafter, Union), on June 24, 1988, filed a complaint with the Wisconsin Employment Relations Commission alleging that Brandt, Inc. (hereinafter, Brandt), had discharged Joann Christian without just cause and

had thereby committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act. The Commission appointed Examiner Jane B. Buffett, a member of its staff to act as Examiner, to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.07, Stats. Hearing was held in abeyance pending settlement discussion between the parties. On August 30, 1989, the Examiner received the following letter from Complainant:

On behalf of District No. 10, I.A.M.A.W., and JoAnn Christian, 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.

On August 31, 1989, the Examiner received a Motion for Intervention on behalf of Joann Christian. On September 6, 1989, the Examiner issued an Order Dismissing Complaint which included the following footnote:

On August 31, 1989 a motion for intervention was filed on behalf of Grievant Joann Christian. The prior withdrawal of the complaint eliminated the controversy within the meaning of Sec. 111.07, Stats., and precluded any ruling on said motion.

Christian appealed the Order to the Commission. On December 21, 1989, the Commission concluded a Motion for Intervention may be timely filed until the Examiner or the Commission acts upon a withdrawal request. Accordingly, the Commission set aside the Order Dismissing Complaint and remanded the matter to the Examiner for a ruling on the merits of the Motion.

#### POSITIONS OF THE PARTIES

Complainant Union requests that the Examiner enter an order granting its request for withdrawal and denying the Motion for Intervention. It contends that an individual grievant may not pursue a breach of contract action where the bargaining representative has settled the grievance unless the grievant claims that the Union has breached its duty of fair representation.

Respondent Brandt opposes the Motion for Intervention on the grounds that Christian should not be allowed, by way of intervention, to undo the settlement she has authorized the bargaining representative to make on her behalf. Brandt agrees with the Union that Christian's only remedy would be to allege the Union breached its duty of fair representation, which she has not done.

Christian, the proposed intervenor, argues that any employe has the right to file a complaint of unfair labor practices with the Commission. She argues that the Union cannot block an individual employe's access to the Commission. She concedes that an individual employe cannot successfully pursue a breach of contract claim against an employer when the grievance has been settled within the contractual grievance procedure, but she contends that such law does not govern this case since the Union and the Employer did not resolve the grievance within the framework of the grievance procedure, but rather resolved it after a complaint was brought pursuant to Chapter 111, Stats.

#### DISCUSSION

Regarding intervention, Sec. 111.07(2)(a), Stats., provides:

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 employe, or their representative, shall be made a party upon application. (emphasis added).

Under the statute, then, intervenor status must be granted to an applicant who: one, is an employer, an employe, or their representative; and, two, claims interest in the dispute. Neither the Union nor Brandt dispute Christian's employe status nor her claim of interest in the dispute, and the Examiner is satisfied that Christian meets the statutory requirements for intervention.

Both the Union and Brandt oppose intervention on the grounds that, under the substantive law, Christian cannot prevail on such facts as are alleged. The Examiner notes that intervention must be granted to qualified applicants, and the statute makes no reference to the applicant's likelihood of success under the substantive law.

Accordingly, the Examiner has issued an Order Granting Intervention.

Dated at Madison, Wisconsin this 30th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Jane B. Buffett, Examiner