

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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ORDER

On July 23, 1991, Joann Christian (herein Intervenor-Complainant) filed a Motion for the Disqualification of Attorney Matthew R. Robbins From Further Participation In This Matter.

On July 25, 1991, District 10, International Association of Machinists and Aerospace Workers (herein Union) filed a request that no hearing date be scheduled pending resolution of a related complaint before the Board of Attorneys Professional Responsibility.

ORDER

1. The request that no hearing date be scheduled pending resolution of a related complaint before the Board of Attorneys for Professional Responsibility is hereby denied.

Hearing in the matter is hereby set for Tuesday, November 19, 1991 at 9:30 a.m. in the Watertown City Hall, 106 Jones Street, Watertown, Wisconsin.

2. The Motion to Disqualify Attorney Matthew R. Robbins From Further Participation In This Matter is hereby denied.

Dated at Madison, Wisconsin this 30th day of September, 1991.

By Jane B. Buffett /s/  
Jane B. Buffett, Examiner

BRANDT, INC.

MEMORANDUM ACCOMPANYING ORDER

BACKGROUND

On July 22, 1991, Intervenor-Complainant filed a Motion For Disqualification of Attorney Matthew R. Robbins From Further Participation In This Matter. Pursuant to the Examiner's request of July 30, 1991, Intervenor-Complainant filed a letter on August 20, 1991 providing legal authority for the exercise of Commission jurisdiction to disqualify an attorney.

On September 13, 1991, the Examiner notified the parties that she concluded she had authority to rule on the matter and would do so after affording the parties opportunity to submit written argument by September 23, 1991.

POSITIONS OF THE PARTIES

The Intervenor-Complainant argues that Attorney Robbins had a prior attorney-client relationship with Joann Christian and that Robbins' continued representation of the Union in a role adverse to Christian would create a conflict of interest. The asserted conflict, Intervenor-Complainant argues, violates the standards of fundamental fairness.

The Intervenor-Complainant argues her substantial interests of reinstatement and a make-whole remedy caused her to be more than a witness in the grievance proceeding. It asserts she had an attorney-client relationship as measured by the standard of E.F. Hutton v. Brown, 305 F.Supp 371 (S.D. Tex. 1969).

The Intervenor cites two cases in support of this position: Marketti v. Fitzsimmons, 373 F. Supp. 637 (W.D. Wis. 1974) and DeCherco v. Civil Service Employees Association, 94 Misc. 2d 72, 404 NYS 2d 255.

The Union argues that the Examiner lacks authority to exclude any person from representing a party in Commission proceedings. It argues in the alternative that even if the Commission has jurisdiction, under the Doctrine of Primary Jurisdiction, the Examiner should stay her ruling on the motion pending a decision by the Board of Attorneys Professional Responsibility.

As to the merits, the Union states that Attorney Robbins and his firm have never represented Christian and prior to the July 9, 1991 hearing met with her only on January 12, 1988 in a meeting with the Union's Business Representative in order to make a recommendation what, if anything, the Union should do with the grievance. The Union cites Peterson v. Kennedy, 771 F.2d 1244 (9th Cir. 1985) for the proposition that an attorney representing the union in a grievance does not have an attorney-client relationship with the grievant.

Respondent Brandt takes no position on the motion, but requests hearing on the complaint not be scheduled at this time pending exhaustion of review of the instant ruling.

DISCUSSION

Sec. 227.46(1)(e), Stats., provides that:

Subject to the rule of the Agency, examiners presiding at hearings may . . . regulate the course of the hearing.

Pursuant to that responsibility, this Examiner rules on the instant motion.

To date, the record in this matter consists only of the Complaint and Answer and briefs and rulings on several pre-hearing motions. Given that state of the record, the motion to disqualify essentially asserts that as a matter of law a union's attorney should be disqualified from representing the union in a proceeding in which the union and grievant have taken adverse positions. Federal case law does not support this conclusion. In Peterson v. Kennedy, the court found that the union was the client of the attorney even though there may be a particular union member, (as there is in the instant case) who has substantial interest in the matter. Explaining its reasoning, the court said:

The legal theory we describe tracks the practical realities of labor-management relations in the United States today. The union member looks to his union to save his job, gives it credit when a dispute is resolved in his favor, and holds it responsible when his discharge is upheld or he loses other important rights. He views the union attorney as an arm of his union rather than as an individual he has chosen as his lawyer. In fact, it is not uncommon for the union member to be completely unaware, at least prior to the arbitration hearing, of who on the union's staff is actually handling his grievance.

The undersigned has considered the cases cited by the Intervenor. Marketti v. Fitzsimmons was decided on the rationale that the attorney who previously represented the union local was disqualified from representing the international union pursuant to a provision of the federal Labor-Management Reporting and Disclosure Act which allows members of a union local who are in the process of challenging a receivership to invoke the interests of that local. The second case cited by Intervenor-Complainant, DeCherro v. Civil Service Employees Association, involves facts that are not apparently present in this case.

In light of the above discussion, this Examiner concludes Attorney Robbins should not be disqualified from further participation in these proceedings.

Additionally, the undersigned does not find it necessary to further delay proceedings in this matter pending resolution of the closely-related, but not identical, challenge currently before the Board of Attorneys Professional Responsibility. The Examiner hereby sets the date for hearing on all outstanding claims relating to this complaint for November 19, 1991.

Dated at Madison, Wisconsin this 30th day of September, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/  
Jane B. Buffett, Examiner