

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARK J. BENZING, Complainant,

vs.

**BLACKHAWK VOCATIONAL, TECHNICAL &
ADULT EDUCATION DISTRICT**, Respondent.

Case 54
No. 50320
MP-2844

Decision No. 28083-D

MARK J. BENZING, Complainant,

vs.

**BLACKHAWK VOCATIONAL, TECHNICAL AND
ADULT EDUCATION DISTRICT**, Respondent.

Case 56
No. 50677
MP-2866

Decision No. 28084-D

Appearances:

Mr. Mark J. Benzing, 2022 Dewey Avenue, Beloit, Wisconsin 53511, on his own behalf.

Godfrey & Kahn, S.C., 131 West Wilson Street, Suite 202, P.O. Box 1110, Madison, Wisconsin 53701-1110, by **Mr. Jon E. Anderson**, on behalf of the Respondent.

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

On October 1, 1996, Examiner Sharon A. Gallagher issued Findings of Fact, Conclusions of Law and Order Dismissing Complaints in the above matters wherein she concluded Respondent Blackhawk Vocational, Technical & Adult Education District had not committed any prohibited

practices within the meaning of the Municipal Employment Relations Act. She therefore dismissed the complaints filed by Complainant Mark J. Benzing.

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On October 16, 1996, Benzing filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. The parties thereafter filed written argument in support of and opposition to the petition, the last of which was received November 20, 1996. Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

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 22nd day of January, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Blackhawk Vocational, Technical and Adult Education District

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

The Examiner's decision can be summarized by her Conclusions of Law which are as follows:

Starting in or around August, 1991, Benzing engaged in protected concerted activities by his involvement in WERC Case 50. Benzing also engaged in such activities by filing grievances in early 1991, early 1993, and in August, 1994 regarding the size of BTC custodial employees' work areas. BTC knew of Benzing's protected concerted activities. BTC's agents, including Catania and Stevenson, did not demonstrate that they had any animosity or hostility against Benzing because he had filed grievances against BTC or because he assisted in filing the Complaint in WERC Case 50 on August 8, 1991. BTC did not discipline Benzing in any part because Benzing had previously engaged in protected concerted activities.

Respondent by its agents' actions and statements had no reasonable tendency to interfere with, restrain or coerce Complainant in of (sic) its rights guaranteed by Sec. 111.70(2), Stats., at any time during the relevant statute of limitations period, in violation of Sec. 111.70(3)(a)1, Stats.

Respondent, by its agents' actions in disciplining Complainant on April 7 and June 7, 1993 did not violate Sec. 111.70(3)(a)3, Stats.

By entering into and executing the October 21, 1994 settlement agreement of the June 7, 1993 discipline of Complainant, Respondent did not violate Sec. 111.70(3)(a)1 or 3, Stats.

Any other violations of Sec. 111.70(3)(a), Stats. alleged by Complainant are dismissed. All allegations that Respondent violated federal labor laws are also dismissed for lack of WERC jurisdiction.

Benzing's Motions to Amend/Correct the Transcript lacked sufficient basis on which to grant those Motions. Benzing's Motions to Reconsider Judgment/Order Dismissing Complaint are premature. Benzing's Motion to Amend Complaint filed May 23, 1996 is untimely.

On review, Benzing argues the Examiner erred when she dismissed the complaint allegation

that Respondent had violated a collective bargaining agreement and thus Sec. 111.70(3)(a)5, Stats. The record reflects that the Examiner dismissed this allegation during the first day of hearing because the alleged violations fell within the jurisdiction of a contractual grievance arbitration procedure and had been processed through that procedure. Because of the presumed exclusivity of the contractual procedure for resolving alleged violations of contract, the Commission generally will not exercise its jurisdiction under Sec. 111.70(3)(a)5, Stats., over

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violation of contract claims. 1/ Therefore, the Examiner's dismissal of the Sec. 111.70(3)(a)5, Stats. allegations by Benzing was appropriate.

Benzing also disputes the Examiner's dismissal of his allegations that Respondent violated Secs. 111.70(3)(a)1 and 3, Stats. The Examiner dismissed these allegations based on her finding that Respondent's conduct was unrelated to Benzing's protected concerted activity. We have reviewed the record and conclude that the Examiner was correct. Thus, we affirm the Examiner's dismissal of these complaint allegations.

Dated at Madison, Wisconsin this 22nd day of January, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

ENDNOTE

1/ See CITY OF MADISON, DEC. NO. 28864-B (WERC, 10/97).

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