

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CARLOS GONZALEZ,		:
		:
Complainant,		:
		:
vs.		:
		:
MILWAUKEE TEACHERS' EDUCATION		:
ASSOCIATION,		:
		:
Respondent.		:
		:
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Case 298
No. 51529 MP-2933
Decision No. 28213-A

Appearances:

Mr. Pedro A. Colon, Attorney at Law, 606 West Wisconsin Avenue, Suite 1400, Milwaukee, Wisconsin 53203, appearing on behalf of Carlos Gonzalez.

Perry, Lerner & Quindel, S.C., Attorneys at Law, by Mr. Richard Perry, 823 North Cass Street, Milwaukee, Wisconsin 53202-3908, appearing on behalf of the Milwaukee Teachers' Education Association

ORDER GRANTING MOTION TO DISMISS

Carlos Gonzalez, hereinafter referred to as the Complainant, filed a complaint on September 12, 1994, and an amended complaint on November 14, 1994, with the Wisconsin Employment Relations Commission alleging that the Milwaukee Teachers' Education Association, hereinafter referred to as the Respondent, had committed prohibited practices contrary to the provisions of Sec. 111.70(3)(b)1, Stats. On November 1, 1994, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. On November 21, 1994, the Respondent filed a Motion to Dismiss Amended Complaint on the grounds that the Commission lacked jurisdiction to proceed because the amended complaint failed to allege any specific act or prohibited practice within one year of the filing of the complaint. The Complainant responded to said Motion to Dismiss on December 14, 1994. The Examiner, having considered the record and the arguments of the parties, concludes that the Motion to Dismiss Amended Complaint be granted.

NOW, THEREFORE, it is

ORDERED

1/

The Motion to Dismiss is granted and the complaint, as amended, is hereby dismissed.

Dated at Madison, Wisconsin, this 19th day of December, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

MILWAUKEE PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO DISMISS

Section 111.07(14), Stats., states:

The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

This section is strictly construed. In City of Madison, Dec. No. 15725-B (WERC, 6/79), aff'd, Dec. No. 79-CV-3326 (CirCt Dane, 6/80), the Commission held that a complaint filed 366 days after the act complained of was not timely. However, the Statute does not begin to run until the Complainant knows, or has a reasonable basis to know of the act alleged to violate the Statute. See Martha Love (President Local 1055), et al., Dec. No. 27437-A (Burns, 3/93), aff'd by operation of law, Dec. No. 27437-B (WERC, 4/93). A review of the complaint and amended complaint reveal that all of the allegations, except one, concern events that occurred more than one year before the complaint was filed. The complaint was filed on September 12, 1994, and relates to Complainant's evaluation of June, 1992, and the Union's representative's alleged statement to the Equal Rights Division which occurred on an unspecified date in the complaint but appears to be have occurred prior to July 19, 1993, the date of the decision in the Complainant's ERD case. The only allegation within the one-year period concerns a letter dated December 7, 1993, to the Complainant from Nancy Costello, the Respondent's Assistant Executive Director, which simply reiterates the Respondent's actions in 1992. The Complainant has argued that he did not become aware that the Union was unfairly representing him until the Respondent gave him unequivocal notice in the December 7, 1993 letter that it would not be representing him nor submitting a grievance on his behalf. The Complainant's argument is not persuasive because in the first paragraph of Exhibit A of the amended complaint, which is Complainant's letter of November 20, 1993, to Nancy Costello, the Complainant states:

After you insisted that there was nothing that the Union could do to help me, you referred me to the ERD. Although I insisted to you that the Union could offer me protection based on the Non Discrimination Clause provided in our contract, I found myself forced to file the complaint with the ERD because I could not-at that time- fight in two different fronts at the same time: The MPS in trying to get equal treatment, and MTEA in trying to get its understanding and protection.

It is clear from this letter that the Complainant knew sometime prior to his letter that the Respondent had insisted that there was nothing the Union could do to help him, even after the Complainant had insisted that the Union use the Non Discrimination Clause of the contract. It is concluded that the Complainant knew or had a reasonable basis to know of the Respondent's actions in regard to his grievance prior to the December 7, 1993 letter, and sometime prior to a year before the filing of the complaint.

The Complainant also argues that he did not become aware that the Union owed him a legal duty to fairly represent him until sometime in June, 1994. Ignorance of the law is not a valid defense and this argument lacks any merit.

Furthermore, the December 7, 1993 letter does not independently constitute a prohibited practice as it simply recounts events that occurred in 1992. In Anderson v. WERC and Moraine Park Technical College, Dec. No. 90-2490 (CtApp III, 6/91), the Court upheld the dismissal of a complaint on the grounds it was untimely where the alleged illegal events occurred more than one year before the complaint was filed. It noted that four events which occurred within the one-year period did not independently constitute prohibited practices, and the alleged prior illegal events did not create a claim that these four events were illegal, so the complaint was barred by the statute of limitations.

Here, the Complainant is attempting to use the December 7, 1993 letter, which simply reiterates prior events, which the Complainant acknowledged he knew, to bootstrap untimely events into a timely complaint. It is concluded that the Complainant's arguments relating to lack of knowledge are without any merit. Inasmuch as there was no specific act or prohibited practice alleged within one year of the filing of the complaint, it has been dismissed in its entirety. 2/

Dated at Madison, Wisconsin, this 19th day of December, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

2/ See Ladysmith-Hawkins School District, Dec. No. 27614-B (Burns, 2/94), aff'd Dec. No. 27614-C (WERC, 6/94); Local 2486 of AFSCME, Dec. No. 27378-A (Engmann, 10/92), aff'd by operation of law, Dec. No. 27378-B (WERC, 11/92).