

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GERHARDT J. STEINKE, Complainant,

vs.

MILWAUKEE AREA TECHNICAL COLLEGE, ET AL., Respondents.

Case 456
No. 53078
MP-3067

Decision No. 28562-D

Appearances:

Mr. Gerhardt J. Steinke, 6415 Bridge Road, Madison, Wisconsin 53713, appearing on his own behalf.

Michael, Best & Friedrich, by **Attorney John A. Busch**, Suite 3300, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, appearing on behalf of certain named Respondents.

Shneidman, Hawks & Ehlke, S.C., by **Attorney Timothy E. Hawks**, 700 West Michigan, Suite 500, P. O. Box 442, Milwaukee, Wisconsin 53201-0442, appearing on behalf of certain named Respondents.

Davis & Kuelthau, S.C., by **Attorney Robert W. Burns**, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-6613, appearing on behalf of certain named Respondents.

von Briesen, Purtell & Roper, S.C., by **Attorney Steven B. Rynecki**, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202-4470, appearing on behalf of certain named Respondents.

**ORDER AFFIRMING AND MODIFYING EXAMINER'S ORDER
DISMISSING COMPLAINT AND DENYING MOTIONS TO REOPEN,
TAKE JUDICIAL NOTICE AND REOPEN BRIEFING SCHEDULE**

On December 8, 1995, Examiner Lionel L. Crowley issued an Order Granting Motions to Dismiss in the above matter.

Complainant timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's Order pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats.

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On January 6, 1996, Complainant filed a motion to expand the record. On February 9, 1996, MATC Respondents filed a statement in opposition to the motion.

On December 6, 1996, Complainant filed a motion to take judicial notice.

The parties filed written argument in support of and opposition to the petition for review, the last of which was received January 10, 1997.

On February 4, 1997, Complainant filed a motion to reopen the briefing schedule.

Having considered the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

1. The Examiner's Order Granting Motions to Dismiss is affirmed as modified to delete that portion which ordered Complainant to pay the cost incurred by the Commission to serve the complaint on Respondents.
2. The motion to reopen the record is denied.
3. The motion to take judicial notice is denied.
4. The motion to reopen briefing schedule is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commissioner A. Henry Hempe did not participate.

Milwaukee Area Technical College

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING AND MODIFYING EXAMINER'S ORDER
DISMISSING COMPLAINT AND DENYING MOTIONS TO REOPEN,
TAKE JUDICIAL NOTICE AND REOPEN BRIEFING SCHEDULE

The Examiner's Decision

The complaint dismissed by the Examiner consists of the document filed August 11, 1995 and later amended by a document filed October 13, 1995.

The Examiner concluded that the complaints were untimely filed because they did not allege any "specific act" within the meaning of Sec. 111.07(14), Stats., that constituted a prohibited practice within the one year preceding the filing of the complaints. He further determined that even if timely filed, the Commission lacked jurisdiction over certain complaint allegations. With limited exceptions discussed below, we concur with the Examiner.

Complainant protests that because in some instances he alleged ongoing prohibited practices, these allegations are timely. We disagree. For instance, the contention in the August 13, 2001 complaint that "Under 111.70(3)(a)(2), **MATC DOMINATED AND INTERFERED WITH THE UNION** ever since Vance and Shansky arrived at MATC in 1985." (emphasis in original), is not sufficient to assert a "specific act or unfair labor practice" that occurred within the one year prior to August 13, 1995. The same flaw exists as to the allegation of violations of collective bargaining agreements. Thus, while Complainant is correct that all of the alleged violations of contract were not before Arbitrator Miller, those not before Miller have not been raised in a timely and sufficiently specific manner. We further note that Steinke's 1990 non-renewal ended his status as a "municipal employee" as to the alleged violations not before Miller.

One exception to the general untimeliness of the complaints is the allegation that the "TRO" issued against Complainant by Milwaukee County circuit court constituted several prohibited practices. Complainant asserts that:

An objective analysis of the claims presented by Steinke by a competent, impartial, disinterested Examiner should yield two very specific causes of action starting with 111.70 (3) (1) (sic) in that Steinke is prepared to prove with a preponderance of evidence that the Olson/Roden/Myers "MATC" T.R.O. restrains and coerces Steinke from exercising his rights to self-organization, and to engage in rational activities for the purposes of mutual aid and protection.

We do not agree. Citizens and entities have the right to seek remedies from the judicial system. Courts have the right to grant relief to citizens and entities when the court finds such relief appropriate. Given the foregoing, there is no construction of the complaint allegations related to the specific "TRO" the court imposed that could constitute a prohibited practice and thus this allegation is properly dismissed.

Another complaint contention that merits specific comment is that we had a responsibility to monitor the grievance arbitration proceedings before Arbitrator Miller -- some of which allegedly occurred within the one year prior to the filing of the complaints. First, it should be noted that this asserted obligation needs to be but was not rooted in a specific prohibited practice allegation against a named respondent. Second, while we have a general obligation under Secs. 111.70 (4)(c) 2 and (4)(cm) 4, Stats., to insure that the arbitrators on our ad hoc arbitrator roster are "competent, impartial and disinterested", we concur with the Examiner's view that Chapter 788, Wis. Stats., (which Complainant utilized when seeking to vacate Arbitrator Miller's award) generally provides the exclusive statutory mechanism under Wisconsin law for attacking/monitoring a specific arbitration proceeding. Thus, this complaint contention is properly dismissed.

Given all of the foregoing, we affirm the Examiner's dismissal of the complaints. We have modified his Order to eliminate Complainant's obligation to pay the Commission's costs of serving the complaint -- a cost we conclude it is appropriate for the agency to bear.

Miscellaneous Motions

After filing the petition for review, Complainant sought to expand the record before us through a motion to reopen and motion to take judicial notice. We deny those motions. As a general matter, review proceedings are limited to the record before the examiner and we find no specific basis here for expanding the record before us in this proceeding.

Complainant also moved to reopen the briefing schedule. We think it clear that the existing briefing schedule gave Complainant ample opportunity to place his arguments before us and therefore we deny the motion.

Dated at Madison, Wisconsin this 4th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commissioner A. Henry Hempe did not participate.

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