

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MONONA GROVE EDUCATION
ASSOCIATION and ANNETTE EISMAN,

Complainants,

vs.

MONONA GROVE SCHOOL DISTRICT and
JOHN BOX,

Respondents.

Case 69

No. 53381 MP-3107

Decision No. 28643-A

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Monona Grove School District, hereinafter referred to as the District, filed a complaint on October 27, 1995, with the Wisconsin Employment Relations Commission which alleged that the Monona Grove Education Association and Annette Eisman had breached the parties' collective bargaining agreement and engaged in an unlawful strike by encouraging teachers to not attend an open house. The District alleged that by these actions, the Association and Eisman committed prohibited practices within the meaning of Secs. 111.70(3)(b)1, 3 and 4 and (4)(L), Stats. This complaint was denominated by the Commission as Case 67, No. 53235, MP-3092. On November 15, 1995, the Monona Grove Education Association and Annette Eisman filed an "Answer, Counterclaim and Third Party Complaint" against the Monona Grove School District and John Box. In their "Answer," the Association denied it committed any prohibited practices by its conduct herein. In their "Counterclaim and Third Party Complaint," the Association alleged that the District had bargained in bad faith with the Association in violation of Secs. 111.70(3)(a)1 and 4, Stats. The Association's "Counterclaim and Third Party Complaint" was denominated by the Commission as Case 69, No. 53381, MP-3107. On January 29, 1996, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner on both complaints and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. On February 16, 1996, the Association and Eisman filed a motion to withdraw their "Counterclaim and Third Party Complaint" without prejudice. The District and Box filed a written response to same on February 21, 1996. In said response, they requested that the Association's and Eisman's motion that they be permitted to withdraw their "Counterclaim and Third Party Complaint" without

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prejudice be denied. The Association and

Eisman responded by letter to the District's and Box's response on February 26, 1996. A pre-hearing conference concerning both complaints was held February 28, 1996. At said pre-hearing conference, the Examiner granted the Association's and Eisman's motion to withdraw their complaint (Case 69) without prejudice. Hearing on Case 67 was held on April 22, 1996, and additional hearing is scheduled for May 20 - 22, 1996.

The Examiner has considered the Association's and Eisman's motion to withdraw their complaint without prejudice and is satisfied that it should be granted. Accordingly, the following order is issued:

ORDER 1/

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

The Association's and Eisman's motion to withdraw their complaint in Case 69 without prejudice is granted. The complaint in Case 69 is therefore dismissed without prejudice.

Dated at Madison, Wisconsin, this 6th day of May, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner

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

(footnote continued on Page 3)

1/ (footnote continued from Page 2)

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).

MONONA GROVE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

The Association and Eisman seek to withdraw their "Counterclaim and Third Party Complaint" against the District and Box without prejudice.

Wisconsin Administrative Code ERC 12.02(4) provides as follows:

(4) Withdrawal. Any such complaint may be withdrawn at any time prior to the issuance of a final order based thereon, upon motion granted by the commission.

This Commission rule expressly authorizes withdrawal of complaints. Given its existence, there is no dispute that the Complainants in Case 69 may withdraw their complaint. That said, the above-cited rule does not specify whether a complaint withdrawn pursuant to its terms will be dismissed with or without prejudice. That is precisely the issue here. The Complainants in Case 69 seek to have their complaint dismissed without prejudice; the Respondents oppose same.

The above-cited rule has previously been construed by the Commission to permit withdrawal of a complaint without prejudice. In City of Green Bay, Dec. No. 10687-A (WERC, 12/71), the Commission granted the complainant's motion to withdraw their complaint without prejudice so that the complaint could be replead.

That is also the basis for the Complainants' motion here. The Complainants seek to withdraw their complaint without prejudice so that they can refile it later with expanded and more related claims. In their view, this would allow claims that are more related in terms of facts and witnesses to be tried together more efficiently. The Examiner agrees. As noted in the case history, the District's complaint against the Association (Case 67) involves claims that assert a contractual breach by the Association and allegations that the Association engaged in an unlawful strike by encouraging teachers to not attend an open house. The Association's complaint against the District (Case 69) involves an allegation that the District has bargained in bad faith. The Examiner finds these claims are separate and distinct from a factual standpoint. Additionally, it appears from the record that there are a number of witnesses that are distinct to each claim. If both complaints were heard simultaneously, the witnesses in the District's case would need to be recalled when the Association presents its case.

Given the foregoing, the Examiner is persuaded that separating Case 69 from Case 67 will

make for more efficient proceedings and allow a more coherent presentation of the claims

that will ultimately be heard. As a result, the Examiner has granted the Association's and Eisman's motion to withdraw their complaint without prejudice. Accordingly, the complaint in Case 69 is dismissed without prejudice.

Dated at Madison, Wisconsin, this 6th day of May, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner