

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARK BENZING, Complainant

and

BLACKHAWK TECHNICAL COLLEGE, Respondent

Case 61
No. 54276
MP-3190

Decision No. 28846-D

APPEARANCES

Mr. Mark Benzing, 2022 Dewey Avenue, Beloit, Wisconsin, 53511, appearing pro.se.

Godfrey & Kahn, S.C., Attorneys at Law, by **Mr. Peter L. Albrecht**, Suite 202, 131 West Wilson Street, PO Box 1110, Madison, Wisconsin, 53701-1110, appearing on behalf of Blackhawk Technical College.

ORDER

On May 2, 1997, Examiner Lionel L. Crowley issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum, in the above-entitled matter determining that the above-named Respondent had not committed prohibited practices within the meaning of Secs. 111.70(3)(a)3 or 1, Stats. He therefore dismissed the complaint.

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Five days after the expiration of the 20-day statutory period set forth in Sec. 111.07(5), Stats., for the filing of a Petition for Review, the Complainant filed a Petition for Review. On June 3, 1997, Commission issued a Notice of Commission's Findings of Fact, Conclusions of Law and Order Pursuant to Section 111.07(5), Stats., indicating that the Examiner's decision had become Commission's by operation of Sec. 111.07(5), Stats., because no timely petition for review had been filed.

On June 18, 1997, Complainant filed a Petition for Rehearing. On July 8, 1997, Respondent filed a written statement in opposition to the Petition.

The Commission granted the Petition for Rehearing on July 15, 1997, to allow it to determine whether it had made material errors of law or fact. Neither party filed additional argument after the petition was granted and the record was closed September 9, 1997.

Having reviewed the matter, we are persuaded that no material errors of law or fact were made.

NOW, THEREFORE, it is

ORDERED

The Commission's Findings of Fact, Conclusions of Law and Order are reaffirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of December 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
Henry Hempe, Commissioner

Paul A. Hahn /s/

BLACKHAWK TECHNICAL COLLEGE

MEMORANDUM ACCOMPANYING ORDER

In his Petition for Rehearing, Benzing asserts that the Examiner: acted unfairly toward him during the hearing; unfairly characterized Benzing's position in his decision; incorrectly analyzed the law and facts when dismissing the complaint; and improperly denied Benzing's request for a continuance.

We have reviewed the record and reject all of Benzing's contentions. We are satisfied the Examiner acted fairly and appropriately in all respects toward Benzing and properly applied the facts to the applicable law. We think it unnecessary to make further specific comment except as to Benzing's contention that the Examiner denied Benzing the opportunity to present a relevant witness. As to this contention, the record reflects the following exchange between Benzing and the Examiner at pages 109-110 of the hearing transcript:

THE EXAMINER: Okay. Thank you very much. You're excused. Any further witnesses?

MR. BENZING: None that I can call today.

THE EXAMINER: Okay.

MR. ALBRECHT: Does he rest?

THE EXAMINER: You're resting then?

MR. BENZING: Unless I can get motion until a later date. Otherwise, I don't have a choice but to rest my case.

THE EXAMINER: Okay. Who would you be calling, and what was the purpose?
Let's go off the record.
(Discussion off the record)

THE EXAMINER: Okay. Well, let's go back on the record. At this point you're resting your case subject to your right to rebuttal?

MR. BENZING: Right, right.

THE EXAMINER: Okay. Did you need a few minutes before we proceed?

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MR. ALBRECHT: Just a few.

THE EXAMINER: Okay. We'll take about a three, four-minute break.

At page 124, Benzing and the Examiner have the following conversation regarding rebuttal:

MR. BENZING: I might not have rebuttal here. I'm not sure yet.

THE EXAMINER: All right. We'll take a five-minute break.

(A short recess is taken)

THE EXAMINER: Well, let's go back on the record. Okay. Mr. Benzing is calling himself again, and I'll just remind you you're still under oath.

Following Benzing's direct testimony on rebuttal, he advised the Examiner as follows at page 127:

MR. ALBRECHT: Is that it?

MR. BENZING: Yeah, I believe that was the last of my rebuttal testimony.

THE EXAMINER: Any recross?

MR. ALBRECHT: Yeah.

At the conclusion of Benzing's testimony, the parties and the Examiner have the following exchange at page 130:

MR. BENZING: Okay.

THE EXAMINER: Okay. Do you have any further witnesses?

MR. ALBRECHT: No, I sure don't.

THE EXAMINER: And you don't have any, so let's go off the record for a minute.

(Discussion off the record)

The hearing concludes with the following comments at pages 131-132:

THE EXAMINER: Okay. I'm going to at this point deny the motion until I get a chance to study the record and the exhibits. I think most of your arguments are in support of your position of the end result, and --

MR. BENZING: Could I reply to his motion?

THE EXAMINER: Well, I've denied it, so you don't have to reply to it.

MR. BENZING: That's true, but we get to file briefs then?

THE EXAMINER: Right, so I'm denying the motion at this point. Did you want to file a brief?

MR. ALBRECHT: Yeah.

THE EXAMINER: Okay. So you want a copy of the transcript, and how much time will you need to file a brief?

(Discussion off the record)

THE EXAMINER: Okay. Let's go back on the record. During off-the-record discussions the parties have agreed to submit briefs 30 days after receipt of the transcript. The college has ordered a copy of the transcript. Mr. Benzing wants to think about it and at this point hasn't ordered one.

The parties also reserve the right to file reply briefs, and if they decide to, I'd like to have them let me know, say, within five days of receipt of the opposing party's brief. Is there anything further, Mr. Benzing?

MR. BENZING: No.

THE EXAMINER: Okay. Mr. Albrecht?

MR. ALBRECHT: Nothing further.

THE EXAMINER: Okay. Thank you very much. The hearing is adjourned.

The record establishes that Benzing abandoned the request for a continuance he began to make at page 110. No mention of any interest in a continuance is made at the end of the hearing. No mention of the need for a continuance is made in Benzing's brief to the Examiner. Thus, no error was committed by the Examiner.

Given the foregoing, we have reaffirmed our decision.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of December 1997.

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

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