

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EDWARD G. POWELL, PRO. SE., Complainant,

vs.

**KAREN MORGAN, BUREAU OF APPRENTICESHIP
STANDARDS, DEPARTMENT OF WORKFORCE
DEVELOPMENT, STATE OF WISCONSIN,** Respondent.

Case 94
No. 54921
MP-3275

Decision No. 29265-B

Appearances:

Mr. Edward G. Powell, 45 Farwell Street and/or c/o Madison Area Technical College Commercial Avenue Campus, 2125 Commercial Avenue, Madison, Wisconsin 53704, appearing on his own behalf.

Mr. Howard Bernstein, Legal Counsel, State of Wisconsin Department of Workforce Development, 201 East Washington Avenue, P.O. Box 7946, Madison, Wisconsin 53707-7946, appearing on behalf of the Respondent.

ORDER DISMISSING COMPLAINT

The procedural posture of this case, as of March 10, 1998, is set forth in Dec. No. 29265-A. On March 11, 1998, Respondent Karen Morgan moved that "Ms. Morgan be dismissed as a party to this proceeding for lack of jurisdiction." I conducted a conference call with the parties on April 17, 1998, and summarized its substance in a letter to the parties dated April 20, 1998. In response to that letter, Powell filed, on July 9, 1998, an amended complaint against "Karen Morgan, Bureau of Apprenticeship Standards, Department of Workforce Development, State of Wisconsin" (DWD). On August 24, 1998, DWD filed an answer to the amended complaint. In a letter to the parties dated November 10, 1998, I stated the status of the complaint thus:

. . .

Mr. Powell informed me by phone that he would like the complaint held in abeyance, pending the outcome of a grievance arbitration.

If this is not accurate, or if you have any comment, please contact me.

DWD, in a letter filed on November 13, 1998, stated it did not object to “having this matter held in abeyance pending the outcome of Mr. Powell’s grievance arbitration.” Counsel for DWD also requested that “if and when the complainant seeks to continue with this complaint, I be given a chance to have my arguments for the dismissal of this matter considered before a hearing is scheduled.” I responded to this letter in a letter to the parties dated November 18, 1998, which states:

. . .

I have no objection to the request made in that letter. If Mr. Powell wishes to comment, he should feel free to do so. In the absence of such comment, I will await further word regarding the grievance arbitration.

Powell did not file any response to this letter.

On May 21, 1999, DWD filed with the Commission a copy of a grievance arbitration award and a cover letter renewing its motion to dismiss. In a letter to Powell, mailed to his last known address and dated May 25, 1999, I stated:

In a letter dated May 20, 1999, Mr. Bernstein notes that a grievance arbitration award has been issued concerning your grievance.

Please state whether you believe your complaint poses issues beyond those addressed in arbitration.

I received no response to this letter. In a letter to Powell mailed to his last known address and dated June 28, 1999, I stated:

I have received no response to my letter of May 25, 1999. The statutes this agency enforces do not authorize it to bring a complaint. If the complaint noted above is to be heard, you must litigate it.

Thus, I ask again whether the complaint poses any issue beyond those addressed in the arbitration.

I received no response to this letter. In a letter to Powell mailed, via certified mail, to his last known address and dated July 27, 1999, I stated:

I have received no response to my letter of May 25, 1999. The statutes this agency enforces do not authorize it to bring a complaint. If the complaint noted above is to be heard, you must litigate it.

Thus, I ask again whether the complaint poses any issue beyond those addressed in the arbitration.

I have sent this letter certified. If I get no response from you, my next letter will state the conditions under which your complaint will be dismissed.

This correspondence was returned to the Commission by the U.S. Postal Service with the notation that it was "unclaimed" by the addressee. I then mailed to Powell in care of the "Madison Area Technical College Commercial Avenue Campus," (MATC) a letter dated August 24, 1999, which states:

I have been unable to reach you by letter or by phone.

Please advise me, as soon as possible, whether you have any objection to my closing the above-noted file.

In a letter to the parties dated August 26, 1999, I stated:

I write this letter to enclose, for Mr. Bernstein, a copy of a letter which he was inadvertently not included as a "cc".

I note, for both of you, that these letters seek to establish a valid mailing address for Mr. Powell. I presume Mr. Powell will be reachable during the school year, and will continue to try to reach him.

The enclosed letter was my letter of August 24. I received no response to the letter of August 26, 1999. In a letter to Powell mailed, via certified mail, in care of MATC, and dated September 22, 1999, I stated:

I write to advise you that I will dismiss your complaint, effective October 15, 1999, unless, prior to that date, you advise me of a valid reason not to.

This correspondence was returned to the Commission by the U.S. Postal Service with the notation that it was "unclaimed" by the addressee.

ORDER DISMISSING COMPLAINT

The complaint, originally filed by Complainant on February 12, 1999, and as amended, is dismissed.

Dated at Madison, Wisconsin this 20th day of October, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Richard B. McLaughlin /s/

Richard B. McLaughlin, Examiner

**MADISON AREA VOCATIONAL, TECHNICAL
AND ADULT EDUCATION DISTRICT**

**MEMORANDUM ACCOMPANYING
ORDER DISMISSING COMPLAINT**

The prefatory “paragraph” to the Order stated above sets forth my attempts to determine if Powell intended to pursue his complaint. The attempts to reach Powell by telephone included leaving messages on his residence and business voice-mail. “Completion of Service” is covered by ERC 10.10(2), which states:

COMPLETION OF SERVICE. Service of any paper or process shall be regarded as completed when

- (a) delivered in person,
- (b) left at the principal office or place of business of the person served,
- (c) addressed to the last known address of the person served and deposited in the United States mail,
- (d) addressed to the last known address of the person served and deposited with a telegraph company, or
- (e) with regard to persons or parties located outside the state in the manner and at the time as provided in s. 111.07 (2) (a), Stats.

Subsections (b) and (c) apply in this case. Consistent with my letter of September 22, 1999, I have dismissed the complaint. A Complainant, not the Commission, must advance complaint litigation. I can see no reason to believe the allegations of the complaint will be pursued by Powell. This may reflect that the allegations of the complaint have been addressed through grievance arbitration. In any event, finality must be brought to this matter, and the Order stated above does so.

Dated at Madison, Wisconsin this 20th day of October, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Richard B. McLaughlin /s/

Richard B. McLaughlin, Examiner