

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**FELICIANO YNOCENCIO, JR.**, Complainant,

vs.

**UNITED AUTO WORKERS LOCAL 72**, Respondent.

Case 1  
No. 56679  
Ce-2191

**Decision No. 29431-B**

---

Appearances:

**Mr. Feliciano Ynocencio, Jr.**, 5210 Admiralty Avenue, Racine, WI 53406, *pro se*.

**Mr. George F. Graf**, Attorney at Law, Murphy, Gillick, Wicht & Prachthauer, 300 North Corporate Drive, Suite 260, Brookfield, WI 53045, on behalf of the Respondent.

**ORDER DISMISSING COMPLAINT**

The Complainant, Feliciano Ynocencio, Jr., filed a complaint with the Wisconsin Employment Relations Commission on July 17, 1998, alleging that the Respondent, United Auto Workers Local 72, committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act. On August 27, 1998, the Commission appointed Karen J. Mawhinney, a member of its staff, to serve as Examiner and make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07, Stats. The Respondent filed an answer to the complaint on October 1, 1998. The Examiner's attempts to schedule a hearing in 1998 were unsuccessful and the Examiner continued to write the parties regarding the status of the complaint. On June 30, 2000, the Complainant requested discovery materials from the Respondent and made the same request on April 2, 2001. The Respondent requested on February 3, 2000, and April 9, 2001, that the matter should be dismissed for lack of prosecution. On March 22, 2002, the Complainant filed an Application for Order to Compel Discovery, and on April 26, 2002, the Respondent filed a Motion to Dismiss. The Examiner denied both motions on May 21, 2002. The Examiner then asked the parties to establish a date as well as a location for a hearing. On September 17, 2002, the Examiner notified the parties

Dec. No. 29431-B

that the date of October 11, 2002, was still open for a hearing and that the Union hall site in Kenosha as offered by the Respondent was acceptable to her. The date of October 11, 2002, was then postponed after Attorney Michelle Danielson contacted the Examiner to ask for an extension. On October 16, 2002, Attorney Danielson notified the Examiner that she would be filing a motion, and the Examiner established a time of November 6, 2002, in which to file a new motion. No motion was filed and Attorney Danielson had no further communication with the Examiner. The Examiner notified the parties that the date of February 14, 2003, would be established for a hearing at the UAW office in Kenosha. The Examiner also notified Attorney Danielson and Mr. Ynocencio that the case either goes forward on that date or it would be dismissed. The Complainant appeared at the hearing and objected to the location of the UAW hall as not being a neutral site and asked for a delay in the hearing. The Complainant orally stated the basis for his complaint against the Respondent but offered no witnesses or documents to support his allegations that the Union breached its duty of fair representation by not proceeding to arbitration with his case. The Examiner found no prejudice to the Complainant in the location of the hearing and denied any delay. Due to the fact that the Complainant offered no evidence to support his allegations, the Examiner determined that the Complaint should be dismissed.

IT IS THEREFORE ORDERED that the complaint be dismissed in its entirety.

Dated at Elkhorn, Wisconsin, this 4<sup>th</sup> day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Karen J. Mawhinney /s/

---

Karen J. Mawhinney, Examiner

UNITED AUTO WORKERS LOCAL 72

**MEMORANDUM ACCOMPANING ORDER TO DISMISS COMPLAINT**

This complaint was filed more than four years before the hearing in the matter took place. The Examiner gave the Complainant ample opportunity to get legal representation when he requested such and gave the Complainant sufficient time to prepare for a hearing. At times, the complaint lay dormant until the Examiner wrote the parties to ask for the status of the matter. The file will show that on August 27, 1998, the Commission appointed me as Examiner and I wrote the parties asking for hearing dates in November of 1998. On September 1, 1998, Attorney William Whitnall wrote stating he needed more information regarding the complaint in order to represent the Complainant. On September 23, 1998, the Examiner wrote to the parties and noted to Attorney Whitnall that there were no notes in the file that were available to anyone from any prior mediation efforts.

On October 2, 1998, the Examiner offered a couple of new dates for a hearing in October and November of 1998. The Respondent accepted the October date. On October 21, 1998, the Examiner wrote the parties asked if they would be available on November 24, 1998, for a hearing, and on November 18, 1998, notified them that there was not enough time to send a notice and do the matters necessary for a hearing on November 24, 1998. The Examiner then asked Attorney Whitnall for his available dates for a hearing.

On January 28, 1999, the Examiner wrote to Attorney George Graf, who represented the Respondent at all stages in this proceeding, that the Complainant informed her that Attorney Whitnall was no longer representing him and that he was still looking for an attorney. On April 21, 1999, the Examiner wrote the Complainant and Attorney Graf and enclosed a copy of a booklet about the WERC complaint process. The Examiner also offered the assistance of her supervisor, Marshall Gratz, in order to avoid ex parte communications with the Complainant. The file was inactive from April 21, 1999, until the Examiner wrote the parties on January 31, 2000, asking about the status of the case. Attorney Graft responded on February 3, 2000, asking that the case be dismissed for lack of prosecution. Complainant Ynocencio wrote the Examiner on February 7, 2000, notifying her that he needed an extension until August 7, 2000, because his parole was revoked and he was scheduled for release in July of 2000. On May 8, 2000, the Examiner wrote the parties to notify them that she would hold Attorney Graft's Motion to Dismiss for Lack of Prosecution in abeyance until Complainant Ynocencio was available for a hearing, and then Mr. Ynocencio should advise her after he is released when and if he had arranged for counsel and when he was available for a hearing. On June 6, 2000, the Complainant notified the Examiner that he was able to go forward with his case.

On March 26, 2001, the Examiner wrote the parties asking about the status of the case. On April 2, 2001, the Complainant wrote Attorney Graf asking for discovery materials. On April 9, 2001, Attorney Graf wrote the Examiner that the Respondent still believed the matter should be dismissed for want of prosecution. On April 16, 2001, the Complainant wrote the Examiner asking that the case not be dismissed.

On March 7, 2002, the Examiner wrote the parties asking about the status of the case. On March 22, 2002, the Examiner received an Application for Order to Compel Discovery from the Complainant. On March 25, 2002, the Examiner notified Attorney Graf of such Motion and asking if he wished to file a brief on the Motion. Attorney Graf responded on March 27, 2002, stating that he did not have a copy of the Motion. On March 28, the Examiner wrote the parties noting that the parties would have up to April 26<sup>th</sup> to file any other motions, and the Respondent filed a Motion to Dismiss on April 24, 2002. On May 21, 2002, the Examiner denied both the Complainant's Motion to Compel Discovery and the Respondent's Motion to Dismiss and asked for a hearing date for September of 2002.

On July 12, 2002, the Examiner asked about a hearing date for October 1, 2002, and asked for a hearing location. On that same date, Attorney Graf wrote asking whether the matter had been set for hearing and proposed a location of Kenosha where the UAW has a hall. Attorney Graf then responded on July 22, 2002, stating that most of October would be available for a hearing although October 3<sup>rd</sup> was booked. On August 9, 2002, the Examiner wrote the parties suggesting October 11, 2002, for a hearing and notified them that Kenosha would be a good location if there were an acceptable place available. On August 20, 2002, Attorney Graf wrote that the Respondent would be available on October 11, 2002, in Kenosha. On September 10, 2002, Attorney Graf wrote asked if the hearing was scheduled for October 11, 2002, and advising that the Union Hall could be used if no other site was available in Kenosha. On September 17, 2002, the Examiner wrote the parties asking the Complainant to notify her whether he could make the hearing date of October 11, 2002.

On September 27, 2002, the Examiner wrote Attorney Graf and Complainant Ynocencio advising them that the hearing date of October 11, 2002, would be postponed and that Attorney Michelle Danielson said she was looking over the Complainant's case and making a decision on whether she would represent him in the matter. On October 30, 2002, the Examiner wrote Attorneys Graf and Danielson and the Complainant, confirming her conversation with Ms. Danielson regarding Ms. Danielson's representation of the Complainant, and that Ms. Danielson would be filing a motion in the near future. The Examiner asked that such motion be filed by November 6, 2002. No such motion was filed and the Examiner had no more conversations with Attorney Danielson, despite leaving telephone messages with her. On November 19, 2002, the Examiner wrote Attorneys Graf and Danielson and the Complainant to establish another hearing date of either February 14 or March 7 in 2003. Attorney Graft responded on December 9, 2002, stating that February 14, 2003, was available. On December 12, 2002, the Examiner wrote Attorney Danielson urging her to make herself and her client available for a hearing on February 14, 2003, and giving her some of the history of communications that appears above. The Examiner received no response.

On January 24, 2003, the Examiner sent the Notice of Hearing on the Complaint establishing the date of February 14, 2003, for the hearing with the location at the UAW Union Hall, 3615 Washington Road, Kenosha, Wisconsin. In a letter accompanying the Notice of Hearing, the Examiner cautioned Attorney Danielson and Complainant Ynocencio that the case would either go forward on that date or be dismissed.

Complainant Ynocencio appeared on the hearing on February 14, 2003. He objected to the location of the Union Hall for a hearing site because it was not a neutral site. He asked for the hearing to be delayed and rescheduled. He made the following statement at the hearing:

Yes, my complaint is the Union refused to go through the third step on a grievance procedure, which is against the guidelines and rules of the Union. They've done it many times for other people. They've done it for murderers. They done it for one person specifically twice by the name of Juan Hurta, who has been to prison twice for cocaine dealing. They did it for John Matera, who went to prison for coming off cocaine. They did it for many people.

The excuse they used for me is – the excuse, the board member, I forget his name. Anyways, I will get his name. My lawyer has all the information, but they've used that 1979 memo from the International Union to the Local Union to say that they don't have to go to the third step for me, which they've done on numerous occasions for other people.

So right there is prejudice toward me by the Union, which has no right to be prejudiced for me, because at the time I was working for Local 72, I was a good Union member. I even donated money to Mr. Drew's campaign back in the early '80's when he was fighting the company – him and his fellow workers who took the company to court. I was one of the people that donated money to his cause, and they're in violation of my Union rights.

They have been in violation of my Union rights ever since I come to them for help. They told me that the company said no. They said take it further, take it all the way through the steps.

So my conclusion is that they are in conspiracy with the company for me not to get my job back. They've done it many times. They go through the whole grievance procedure, and they can take it to arbitration, which they refused to go to the third step, which is why I filed the complaint against them.

They have no way to back out of this, because it states in the book that my lawyer has, my Union book, that they have to go through the steps. Yet for me, they refuse.

For one reason, they didn't give me no reason, other than they got a memo from the International in 1979 saying they didn't have to. Now that was the end of it. That's my complaint.

The Examiner then asked the Complainant if he wished to call any witnesses, and he did not. When the Examiner told the Complainant that he needed some evidence to prove his allegation, he stated that his attorney had the evidence, and that if he got a delay, he would prove that the Union has gone to the third step of the grievance procedure for other people but has shown bad faith towards him. The Examiner then notified the parties that she was not going to give the Complainant another delay.

This case is not like MILWAUKEE PUBLIC SCHOOLS, DEC. NO. 29494-A (WERC, 3/99), wherein the Commission found that a verifiable and likely successful effort to obtain legal counsel clearly constitutes a justifiable excuse for seeking a postponement and for failing to appear when the request for postponement is denied. In this case, the Complainant did not seek a postponement before the hearing and appeared at the hearing to ask for a delay. The Complainant has represented himself at times during the lengthy processing of this case. He filed a motion without an attorney and kept the complaint alive by responding to the Examiner at times. It was unclear to the Examiner at the time of the hearing whether Attorney Michelle Danielson was representing the Complainant or not, since Ms. Danielson had not filed a motion as she told the Examiner, had not responded to phone messages, and did not respond when she received the Notice of Hearing. The Complainant left a message on the Examiner's answering machine that he would appear at the hearing – which he did – but that he might not have an attorney present. Ms. Danielson was at least the second attorney that the Examiner dealt with over the years regarding this complaint.

The Complainant has not sought a delay due to his need to obtain legal counsel, but apparently, according to his statement at the hearing, that he needed to get his evidence from his attorney. The Complainant has had ample time to obtain legal counsel if needed, as well as ample time to prepare his case for a hearing.

A complainant has the burden to demonstrate by a clear and satisfactory preponderance of the evidence each element of its contention. WEST ALLIS-WEST MILWAUKEE SCHOOL DISTRICT, DEC. NO. 20922-D (SCHIAVONI, 10/84). Since the Complainant presented no evidence at the hearing, the Examiner is satisfied that the Respondent's Motion to Dismiss should be granted.

Dated at Elkhorn, Wisconsin, this 4<sup>th</sup> day of March, 2003.

Karen J. Mawhinney /s/  

---

Karen J. Mawhinney, Examiner