

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

H.M. SLOAN, Complainant,

vs.

**MARTIN BEIL, ALLEN HIGHMAN,
COUNCIL 24, AFSCME**, Respondents.

Case 467
No. 56839
PP(S)-297

Decision No. 29529-A

Appearances:

Mr. H.M. Sloan, P.O. Box 14454, Madison, Wisconsin 53714, on behalf of himself.

Attorney P. Scott Hassett, Lawton & Cates, S.C., Attorneys at Law, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of Respondents.

ORDER DISMISSING COMPLAINT WITH PREJUDICE

The initial Notice Of Hearing On Complaint was issued on January 13, 1999, and set this matter for hearing at 9:00 a.m., March 30, 1999.

Thereafter, Complainant H.M. Sloan ("Sloan"), asked that the March 30, 1999, hearing be rescheduled. Pursuant to a March 30, 1999, Notice Of Postponement Of Hearing, the hearing was rescheduled for November 16, 1999.

Thereafter, Sloan asked that the November 16, 1999, hearing be rescheduled. Pursuant to an October 29, 1999, Notice Of Postponement Of Hearing, the hearing was rescheduled for June 15, 2000.

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Thereafter, Sloan asked that the June 15, 2000, hearing be rescheduled on the ground that he is unsatisfied with the way Council 24 has dealt with his grievances and that he did not want the hearing scheduled for about a year. I denied that request in a June 8, 2000, letter that stated:

. . .

I am in receipt of Mr. Sloan's request that the hearing scheduled in this matter for June 15, 2000, be rescheduled to the Spring of 2001. He is seeking the postponement because he is unsatisfied with the way that Council 24 has dealt with his grievances.

I also am in receipt of Mr. Hassett's June 6, 2000, letter wherein he opposes any such postponement on the ground that Mr. Sloan has already sought and received postponements for the hearing that was originally scheduled for March 30, 1999, and November 16, 1999.

Given the two prior postponements which have been granted pursuant to Mr. Sloan's requests, the absence of any real necessity to again postpone the scheduled June 15, 2000, hearing, and Council 24's right to receive a timely hearing in this matter so that it can properly defend itself, Mr. Sloan's third request for a postponement is hereby denied.

Hence, he will be expected to present his case on June 15, 2000, as the hearing will commence as scheduled.

I left telephone messages with Mr. Sloan on June 7 and 8, 2000, wherein I stated that his request for another postponement is being denied and I also relayed that message in my June 8, 2000 telephone conversation with him.

. . .

Thereafter, Sloan left a telephone message for me again asking that the June 15, 2000, hearing be rescheduled on the ground that he was in the process of determining whether to retain an attorney. I granted that request in a June 14, 2000, letter that stated:

. . .

Mr. Sloan has informed me that he is in the process of determining whether to retain an attorney in this matter and that he therefore is again requesting that the June 15, 2000 hearing be postponed.

Given this latest development, Mr. Sloan's request is hereby granted.

The hearing therefore is rescheduled to **Thursday, August 3, 2000, commencing at 9:00 a.m.** The hearing will be held in the Conference Room of the offices of the Wisconsin Employment Relations Commission, 18 South Thornton Avenue, Madison, Wisconsin. (Emphasis in original).

. . .

Before receiving said letter - which was mailed at the end of the business day on June 14, 2000, Sloan - at 1:17 p.m. on June 14, 2000, faxed me a letter which asked that the June 15, 2000, hearing be rescheduled. Said letter stated:

. . .

GOOD MORNING, MR. GRECKO!

DUE TO A PERSONAL ILLNESS I WILL BE UNABLE TO ATTEND OUR MEETING ON THURSDAY, JUNE 15, 2000.

AS I AM UNDER A PHYSICIANS CARE I WOULD BE HAPPY TO PROVIDE YOU REFERENCE TO THE SAME.

PLEASE FEEL FREE TO PROVIDE OPTIONS FOR A FUTURE RESCHEDULE.

THANK YOU VERY MUCH.

. . .

Said letter was totally silent regarding Sloan's earlier claim that he needed a postponement to contact an attorney.

Thereafter, Sloan on August 2, 2000, faxed me a letter asking that the August 3, 2000, hearing be rescheduled. His letter stated:

. . .

GOOD MORNING MR. GRECKO!

I AM WRITING TO YOU ABOUT EVENTS RELATED TO MY CASE WHICH TOOK PLACE LAST WEEK. AT THE BEGINNING OF LAST WEEK, I RECEIVED AN UNADDRESSED LETTER AT MY POST OFFICE BOX. WHEN I OPENED IT, I FOUND A PHOTOCOPY OF A LETTER COMPOSED WITH LETTERS AND NUMBERS TAKEN INDIVIDUALLY FROM NEWSPRINT. AT FIRST I DID NOT UNDERSTAND THE MEANING OF THE CORRESPONDENCE AND THERE WAS NO AUTHORSHIP ATTACHED. THE LETTER REFERRED TO THE CITY-COUNTY BUILDING IN MADISON AND GAVE SEVERAL NUMBERS AND LETTERS.

AFTER PHONING THE CITY-COUNTY BUILDING, I DISCOVERED THAT THE LETTER REFERRED TO A SPECIFIC CASE LOCATED THERE. I WENT TO THE BUILDING AND DISCOVERED A CASE DIRECTLY RELATED TO THE COMPLAINT I HAVE WITH THE WERC.

HOWEVER, ONE ASPECT OF MY COMPLAINT I HAVE NOT BEEN ABLE TO CONSIDER AND THAT THE COURT TESTIMONY ADDRESSES AND THE LETTER TO ME RELATES TO, IS THAT TESTIMONY IN COURT, UNDER OATH BY ONE OF THE PARTIES IS CONTRADICTED BOTH BY MY TESTIMONY AND THAT OF MY WITNESSES. TO THAT END, I BELIEVE THAT PERJURY UNDER OATH HAS TAKEN PLACE. AS A RESULT, I BELIEVE THAT I MUST CHANGE THE NATURE AND MY APPROACH TO MY COMPLAINT WITH THE WERC. I MUST ALSO CONTACT LAW ENFORCEMENT WITH MY STATEMENT AND WITH THE STATEMENTS OF MY WITNESSES. (Emphasis in original).

TO THAT END, AND WITH YOUR UNDERSTANDING REGARDING THE CHANGED CIRCUMSTANCES, I ASK THAT YOU PLEASE ALLOW ME TO POSTPONE OUR HEARING SCHEDULED FOR AUGUST 3, 2000. MY ARGUMENTS DO NOT TAKE INTO CONSIDERATION ILLEGALITIES AS I BELIEVE I'VE DISCOVERED.

I ASK FOR YOUR UNDERSTANDING IN THIS MATTER AS I KNOW IT HAS BEEN CHALLENGING FOR US TO MEET, BUT I DO NOT BELIEVE, GIVEN NEW INFORMATION RELATING TO MY SITUATION, THAT MEETING UNDER CIRCUMSTANCES WHICH HAVE CHANGED WOULD DO MY CASE JUSTICE.

I WOULD BE HAPPY TO FAX YOU A COPY OF THE CORRESPONDENCE WHICH PRECIPITATED MY PROCESS OF DISCOVERY WHICH LED TO THESE NEW REVELATIONS.

PLEASE UNDERSTAND THAT THIS IS THE VERY EARLIEST I COULD HAVE CONTACTED YOU AS I HAD ONLY RECEIVED THE ANONYMOUS CORRESPONDENCE (AND MY DISCOVERY OF ITS INTENT) LAST WEEK.

THANK YOU VERY MUCH FOR YOUR KIND UNDERSTANDING.

. . .

I granted Sloan's request and left word on his telephone answering machine (608-283-5212) on August 2, 2000, that the hearing was being rescheduled for August 31, 2000, and, if necessary, September 1, 2000. I then also told him that no further postponements would be granted. I followed that up with an August 3, 2000, letter which stated:

. . .

Pursuant to Mr. Sloan's August 2, 2000 request, which the Union does not oppose, the hearing scheduled for August 3, 2000 is hereby postponed.

The hearing therefore is rescheduled to Thursday, August 31, 2000, commencing at 9:00 a.m. and, if necessary, September 1, 2000. The hearing will be held in the Conference Room of the offices of the Wisconsin Employment Relations Commission, 18 South Thornton Avenue, Madison, Wisconsin.

This marks Mr. Sloan's fourth request for a postponement. Hence, no further postponements will be granted. Mr. Sloan therefore will be expected to present his case on August 31, 2000.

. . .

Said letter was addressed to Sloan's P.O. Box No. 14454, Madison, Wisconsin, 53714, and was sent via certified mail, Article No. P271 106 779. Sloan provided that postal box number in his September 24, 1998, complaint and in his June 14, 2000, and August 2, 2000, letters to me referenced above. Hence, all written correspondence addressed to him in this matter has been mailed to his postal box. The outside of the envelope of that letter designated the return address as:

State of Wisconsin
MADISON
53707-7870
Wisconsin Employment Relations
Commission
P.O. Box 7870

The return address also had the official seal of the State of Wisconsin. Hence, anyone looking at the envelope could tell from where the letter came.

Thereafter, said envelope which contained my August 3, 2000, letter was returned to my WERC office on August 28, 2000, with a notation on the envelope stating that it was "unclaimed"; that a first notice of attempted delivery was given on August 8, 2000; that a second notice was given on August 15, 2000; and that it was being returned on August 23, 2000.

Upon receipt of said letter, I on August 28, 2000, left word on Sloan's telephone answering machine that said letter had been returned; that the hearing scheduled for August 31, 2000, (notice of which was first orally communicated to him on August 2, 2000), would commence as scheduled; that he, Sloan, was expected to be there; and that he should contact me immediately.

Not hearing from him, I on August 29, 2000, left word on Sloan's telephone answering machine to the effect that his complaint would be dismissed if he did not personally appear at the scheduled August 31, 2000, hearing and that no further postponements would be granted.

By letter dated August 29, 2000, I informed Sloan via regular mail:

. . .

Enclosed is my August 3, 2000 letter which you earlier refused to accept via certified mail.

As I related to you in my August 28, 2000 and August 29, 2000, telephone messages, the hearing will take place as scheduled on August 31, 2000, and, if necessary, September 1, 2000. If you do not attend the hearing, your complaint will be dismissed.

. . .

Sloan failed to appear at the August 31, 2000, hearing. He also failed to leave any telephone message as to why he did not appear and he similarly failed to provide any written communication as to why he was not present.

Respondents at the hearing moved to dismiss the complaint and asked for an award of attorney's fees.

By letter dated August 31, 2000, I informed Sloan:

. . .

This is to confirm that you did not attend the August 31, 2000, hearing regarding your complaint and that you have not provided any explanation for your absence.

Attorney Scott Hassett, on behalf of the Respondents, moved at the August 31, 2000, hearing that your complaint should be dismissed because you have failed to prosecute it and he there also moved for an award of legal fees to be imposed against you. Mr. Hassett will file a written motion for legal fees by September 15, 2000.

You therefore have until September 22, 2000 to file a **written** response as to why: (1), your complaint should not be dismissed; and (2), legal fees should not be imposed against you.

I am mailing this letter to you via certified mail and regular mail to your post office box, and I also am sending it via regular mail to your work address at Oakhill Correctional Institution, 5212 County Highway "M", P.O. Box 938, Oregon, WI 53575-0938.

Lastly, you must henceforth provide Mr. Hassett with copies of all your written correspondence to me.

. . .

Said letter was sent to Sloan's postal box via certified and regular mail and said letter also was mailed to his work address at Oakhill Correctional Institution, 5212 County Highway "M", P.O. Box 938, Oregon, Wisconsin 53575-0938.

Attorney Hassett by letter dated September 12, 2000, subsequently stated that in light of the Commission's decision in WAGNER V. WISCONSIN STATE EMPLOYEES UNION COUNCIL 24, AFL-CIO, DECISION NO. 29177-C (5/99) - wherein a majority of the Commission stated it would not award attorney's fees and costs to a respondent - Respondents here were dropping their request for an award of attorney's fees and that he therefore would "explore a claim in Circuit Court."

Sloan never responded to my August 31, 2000 letter. In addition, my August 31, 2000 certified letter was returned to me unclaimed, with the envelope stating that Sloan received a first notice on September 1, 2000 and a second notice on September 6, 2000.

Upon the basis of the aforementioned facts, I hereby make and issue the following

ORDER

IT IS ORDERED that the Complainant allegations be, and they hereby are, dismissed with prejudice in their entirety.

Dated at Madison, Wisconsin this 2nd day of October, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Amedeo Greco /s/

Amedeo Greco, Examiner

STATE OF WISCONSIN (DER/DOC/OAKHILL)

MEMORANDUM ACCOMPANYING
ORDER DISMISSING COMPLAINT WITH PREJUDICE

Having chosen not to appear at the August 31, 2000, hearing, and having also chosen not to respond to my August 31, 2000, letter, I have granted Respondents' motion to dismiss the complaint with prejudice.

In this connection, there is no merit to any possible claim by Sloan that he did not know about the hearing merely because he chose not to acknowledge receipt of my August 3, 2000, letter addressed to his post office box, as Sloan knew via my earlier August 2, 2000, telephone message that the hearing was being rescheduled to August 31, 2000, and that no further requests for a postponement would be granted. Hence, he had actual notice that the hearing would be held on August 31, 2000.

In addition, it is immaterial that Sloan chose not to acknowledge receipt of said letter, as ERC 10.10, entitled "**Service of pleadings and other process, proof of service**", states in pertinent part:

. . .

(2) **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. (Emphasis added).

. . .

Here, since my August 3, 2000, letter was "addressed to the last known address of the person served and deposited in the United States mail" (which we know happened because the envelope for said letter states it was "unclaimed" and that two separate notices were provided to Sloan), service was completed irregardless of Sloan's refusal to receive the letter. See *SCHROEDEL CORP. V. STATE HIGHWAY COMM.*, 38 Wis. 2D 424, 428- 429 (1968), wherein the Court stated that service "was complete on the date of mailing" and quoted with approval another case which stated: "service was effective when the papers were properly mailed, regardless of their receipt by the adverse party. The risk of miscarriage is with the party to

whom they are directed.” (citation omitted). See too, *BELOIT CORP. V. ILHR DEPARTMENT*, 63 Wis. 2D 23, 29-30 (1974), wherein the Court stated: “The time at which the postcard provided for admission of service is signed and returned has no effect on the date of service. It is merely sent as a convenient way to prove service.”

It is clear that Sloan has abused the Commission’s process by: (1), not answering my August 28, 2000 and August 29, 2000 telephone messages; (2) not appearing at the August 31, 2000, hearing; (3), not offering any explanation why he was not present at that hearing; (4), not picking up my August 3, 2000, certified letter even though he received two separate notices from the United States Postal Service; (5), not picking up my August 31, 2000 certified letter even though he received two separate notices from the United States Postal Service; and (6), not responding to my August 31, 2000, letter.

If possible, I would have granted Respondents’ original motion to have Sloan pay all of Respondents’ legal fees in this matter, as that is the only meaningful way to prevent someone like Sloan from engaging in the conduct found here. The Commission, however, previously ruled in *WAGNER*, supra, that such legal fees cannot be imposed on a complainant who files a frivolous action. Hence, no legal fees can be ordered here.

I therefore have considered another remedy: the issuance of an order that prohibits Sloan from ever again appearing in any other Commission case unless he is represented by someone who can make sure that Sloan performs such basic functions as appearing at a scheduled hearing; answering telephone calls; answering letters; and picking up certified letters. That is the only way to avoid the kind of abuse of process found here. However, I am not issuing such an order because: (1), Sloan has not been given an opportunity to respond to such a proposed order and (2), I believe the Commission will never support such an order.

Hence, there appears to be no meaningful way to protect the Respondents – or anyone else for that matter – from ever again being subjected to Sloan’s antics. Too bad. Respondents who appear before us – often after having expended considerable time and resources – deserve better.

Dated at Madison, Wisconsin this 2nd day of October, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Amedeo Greco /s/

Amedeo Greco, Examiner

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