

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**SANDRA LEE BENEDICT**, Complainant,

vs.

**EAU CLAIRE ASSOCIATION OF EDUCATORS**, Respondent.

Case 1  
No. 57345  
Cw-3669

**Decision No. 29689-D**

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**SANDRA LEE BENEDICT**, Complainant,

vs.

**WISCONSIN EDUCATION ASSOCIATION COUNCIL (WEAC)**, Respondent.

Case 18  
No. 57284  
Cw-3668

**Decision No. 29690-D**

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**SANDRA LEE BENEDICT**, Complainant,

vs.

**EAU CLAIRE AREA SCHOOL DISTRICT**, Respondent.

Case 54  
No. 57283  
MP-3488

**Decision No. 29691-D**

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Appearances:

**Ms. Sandra Lee Benedict**, 3642 Livingston Lane, Eau Claire, Wisconsin 54701, appearing on her own behalf.

Kravit, Gass, Hovel & Leitner, by **Attorney John D. Finerty, Jr.**, 825 North Jefferson Street, Milwaukee, Wisconsin 53202-3737, appearing on behalf of Wisconsin Education Association Council (WEAC), and Eau Claire Area Association of Educators (ECAE).

Weld, Riley, Prenn & Ricci, S.C. by **Attorney James M. Ward**, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Eau Claire Area School District (District).

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29691-D

**ORDER AFFIRMING IN PART AND MODIFYING IN PART**  
**EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**AND AFFIRMING EXAMINER'S ORDER**

On January 20, 2000, Examiner Richard B. McLaughlin issued Findings of Fact, Conclusions of law and Order with Accompanying Memorandum in the above matters wherein he dismissed three complaints filed by Sandra Benedict because the complaints alleged violations of law over which the Wisconsin Employment Relations Commission has no jurisdiction or which were untimely filed.

Complainant Benedict timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. The parties filed written argument in support of and in opposition to the petition, the last of which was received March 15, 2000.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

- A. Examiner Findings of Fact 1-5 are affirmed.
- B. Examiner Finding of Fact 6 is affirmed as modified by the addition of the following underlined words:

6. Aside from the alleged breach of the duty of fair representation in April, 1998, none of the allegations included in the Amended Complaint can be read to allege acts that in and of themselves constitute prohibited practices which fall within the one year period prior to the filing of any of the three consolidated complaints.

- C. Examiner Conclusions of Law 1-4 are affirmed.
- D. Examiner Conclusion of Law 5 is affirmed as modified by the addition of the following underlined words:

5. Aside from the alleged breach of the duty of fair representation in April, 1998, Complainant's right to proceed under MERA, concerning those allegations in the Amended Complaint falling within Subchapter IV of Chapter 111, Stats., is barred by Sec. 111.07(14), Stats., and Sec. 111.70(4)(a), Stats.

E. Conclusion of Law 6 is made as follows:

6. Because the duty of fair representation does not extend to representation of Complainant in proceedings initiated by Complainant before the Wisconsin Department of Workforce Development, the failure of Complainant's collective bargaining representative to represent her during such proceedings in April, 1998 does not state a claim under Sec. 111.70(3)(b)1, Stats.

F. Examiner Order is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 19<sup>th</sup> day of April, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**Eau Claire Association of Educators**  
**Wisconsin Education Association**  
**Eau Claire School District**

**MEMORANDUM ACCOMPANYING ORDER AFFIRMING IN PART**  
**AND MODIFYING IN PART EXAMINER'S FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW AND AFFIRMING EXAMINER'S ORDER**

In his decision, the Examiner stated in part:

**Application Of The Governing Law To The Amended Complaint**

Application of governing law to the Amended Complaint demands a determination whether Complainant has alleged violations enforceable by the Commission under MERA. If she has, it is then necessary to determine whether any such allegations can be considered timely under Sec. 111.07(14), Stats.

Complainant's rights flow from her employment as a municipal employee. Thus, under no view of the governing law can the Commission assert jurisdiction over state or federal statutes beyond MERA. Conduct that can violate non-MERA statutes can also violate MERA, but this addresses allegations of fact, not law. For example, Complainant's contention that WEAC/ECEA breached its duty to fairly represent her based on hostility based on her age or disability could point to fact potentially relevant to MERA. This relevance turns, however, on the existence of fact that can support at least a MERA violation. It fails to grant the Commission independent authority to enforce state or federal legislation proscribing discrimination based on age or disability. Those sections of the complaint alleging violations of non-MERA statutes, but failing to allege specific facts pointing to a MERA violation, must be dismissed on that basis alone. This addresses a significant portion of the Amended Complaint, including the following sections: Sections 24, 136 and 145, which point to various sections of the United States Code; Sections 26, 32 and 41, which concern the liability of insurance companies; Sections 21, 22, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 89, 102, 103, 104, 105, 106, 110, 112, 113, 118, 119, 124, 125, 130, 133, 135, 143, 148, 149, 150 and 155, which concern various common law actions; Sections 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 142, which concern federal antitrust and RICO law; Sections 34 and 35, which allege specific violations of the Fair Employment Act; Sections 37, 38 and 39, which allege District violations of Title I; Sections 141 and 147, which concern Title VII; Section 144, which concerns an amalgam of state and federal law not including MERA; and Sections 19, 20, 28, 29, 30, 31, 45, 140, 142 and 147, which allege violations of federal law proscribing discrimination based on age and handicap.

The listed sections entirely or in significant part allege violations of law not enforceable by the Commission. Some of the sections include factual allegations that could support violations of MERA as well as non-MERA law. The purpose of the conclusion stated above is not to precisely delineate those portions of the Amended Complaint that stray outside MERA. Such an effort is, on the face of the Amended Complaint, doomed to failure. It underscores, however, that those portions of the Amended Complaint that seek to invoke Commission jurisdiction over non-MERA sources of law must be dismissed.

The analysis thus turns to the MERA based violations asserted in the Amended Complaint, and more specifically whether those assertions can be considered timely under Sec. 111.07(14), Stats. The Amended Complaint alleges that the District violated the labor agreement and that WEAC/ECEA violated its duty to fairly represent Complainant by failing to effectively challenge those violations. Complainant filed two of the three complaints on February 5, 1999 and the third on March 1, 1999. To be timely, Complainant must allege a prohibited practice falling within the one-year period preceding these dates.

Isolating the specific prohibited practice alleged by Complainant poses some difficulty. The events woven through the Amended Complaint appear to date from an automobile accident on September 25, 1986 (Section 27). The Amended Complaint traces a series of events constituting the aftermath of that accident. Those events cover “reasonable accommodations, transfers, inservice education and programs, wrongful discharge and constructive discharge” (Section 25). More specifically, the Amended Complaint alleges Complainant was transferred from a one-story school, then denied the reasonable accommodation of teaching in a one-story school for the 1990-91 school year (Section 42). She was involuntarily transferred to a multi-level building for the 1991-92 school year, and again denied a requested transfer to a one-level building (Section 57). This refusal to reasonably accommodate her continued through the 1992-93 school year (Section 58). The refusal to accommodate also extended to a District refusal to provide an “ergonomic armchair” (Sections 60-65). Involuntary transfers continued through the 1994-95 school year (Sections 67-71; 107-109). At the commencement of the 1995-96 school year, Complainant was embarrassed in front of teaching staff during an inservice session (Sections 116-118), and was again subjected to an involuntary transfer (Section 128). Ultimately, Complainant was “on March 21, 1997 . . . constructively discharged from her employment without just cause and in violation of the 1996-97 agreement.” (Section 6).

The constructive discharge is the focal point of the allegations of the Amended Complaint. The failures to accommodate and series of transfers preceding it are inevitably more dated than the discharge. Section 7 of the

Amended Complaint underscores that this act is the specific prohibited practice challenged in the complaint. That action, on the face of the Amended Complaint, falls outside of the one-year period preceding either February 5 or March 1, 1999.

The Amended Complaint asserts that the Commission should assert jurisdiction over the complaint without regard to its apparent untimeliness (Sections 11, 13, 21, 22 and 23) and also points to WEAC/ECEA conduct falling after the discharge (Sections 4, 8, 36, 45 and 88). None of these allegations establish conduct that in and of itself constitutes a prohibited practice. Section 4 points out no more than that the District and WEAC/ECEA are parties to a labor agreement covering the 1997-98 school year. This has no meaning as a prohibited practice outside of a continuation of the just cause provision Complainant wishes to apply to the 1997 discharge. The remaining sections point out that WEAC/ECEA expressly declined, in April of 1998, to represent Complainant in an action initiated by her before the Equal Rights Division of the Department of Workforce Development. This denial, however, has no meaning as a prohibited practice outside of the allegedly discriminatory acts that culminated in the discharge of March, 1997. None of these allegations can survive the BRYAN analysis. The April, 1998 denial of representation has no meaning as a prohibited practice independent of the events culminating in Complainant's constructive discharge.

The Complainant's contention that the Commission can ignore this apparent untimeliness cannot be accepted. Sections 11, 13, 21 and 22 may fall within a court's jurisdiction, but afford no guidance here, since the Commission can act only to the extent of its statutory authority. Section 23 asserts that Complainant was unaware of the prohibited practice procedure until after the one-year time limit. This cannot, however, fall within those Commission cases dating the specific prohibited practice alleged from the time a complainant knew or should have known of the violation. On its face, the Amended Complaint notes that Complainant was involved in litigation over the events complained of here, well before 1998 (Sections 8, 11, 13 and 88). Complainant knew of and challenged the conduct at issue here well before the one-year limitations period mandated by Sec. 111.07(14), Stats.

In sum, a significant portion of the Amended Complaint challenges conduct falling outside the scope of MERA. Those portions must be dismissed because the Commission has no jurisdiction to hear them. To the extent the Amended Complaint challenges conduct within the scope of MERA, Commission consideration of the conduct is barred by Sec. 111.07(14), Stats. Accordingly, each of the consolidated complaints, as amended, has been dismissed.

Pursuant to Complainant's petition for review and her supporting argument, we have reviewed the Examiner's dismissal of the three complaints and his rationale for that action. Based on our review, we conclude that the Examiner's dismissal of the three complaints was correct. We concur with his rationale in support of dismissal in all respects except as to the Eau Claire Association of Educators' April, 1998 refusal to represent Complainant in a Department of Workforce Development, Equal Rights Division hearing.

The Examiner dismissed the April, 1998 allegation as untimely because he did not see it as being an allegation separate from the March, 1997 alleged discharge. We view the April, 1998 allegation as a separate alleged prohibited practice which was timely filed within the one year period preceding the filing of the complaints. However, dismissal of this timely allegation is nonetheless warranted because the Eau Claire Association of Educators' duty to fairly represent Complainant does not extend to representing her in the Equal Rights Division proceeding she commenced.

As noted in BLACKHAWK TECHNICAL COLLEGE, DEC. NOS. 28448-C AND 28449-C (WERC, 12/97), the duty of fair representation flows from a union's authority to act as an employee's exclusive collective bargaining representative. Complainant has not presented any persuasive argument as to why the Eau Claire Association of Educators had any exclusive right to act as her representative in the matter before the Equal Rights Division. Indeed, Complainant was entitled to and did in fact independently file the Equal Rights complaint. Thus, we conclude the Association had no obligation to represent Complainant in the Equal Rights proceeding. Therefore, the Association's failure to represent her in the Equal Rights proceeding does not state a claim under Sec. 111.70(3)(b)1, Stats. It is on that basis that we dismiss this complaint allegation.

Dated at Madison, Wisconsin this 19<sup>th</sup> day of April, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner