

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GEORGE MUDROVICH, Complainant,

vs.

D.C. EVEREST AREA SCHOOL DISTRICT, Respondent.

Case 53
No. 57582
MP-3522

Decision No. 29946-D

Appearances:

Mr. George A. Mudrovich, 826½ Steuben Street, Wausau, Wisconsin 54403, appearing on his own behalf.

Ruder, Ware & Michler, S.C., by **Attorney Ronald J. Rutlin**, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the Respondent.

**ORDER DENYING COMPLAINANT'S MOTION TO COMPEL
RESPONDENT TO DECLARE, PRIOR TO THE HEARING, EXACTLY
WHICH TEACHERS RESPONDENT CLAIMS TO HAVE LAID OFF
UNDER THE PROVISIONS OF ARTICLE 32(I)**

On May 26, 1999, Complainant filed a prohibited practice complaint with the Wisconsin Employment Relations Commission alleging that the Respondent had violated Secs. 111.70(3)(a)1 and 3, Stats., by the administration recommending Complainant's layoff and the school board members approving the same and rejecting Complainant's application for full-time employment, in part, due to Complainant's protected, concerted activity. On August 1, 2000, Coleen A. Burns was appointed by the Commission to act as Examiner in this case. On August 9, 2000, Complainant filed a Motion to Compel Complainant to Declare, Prior to the Hearing, Exactly Which Teachers Respondent Claims to Have Laid Off Under the Provisions of Article 32(I). On August 31, 2000, Respondent filed a Response to this Motion. Having considered the argument of the parties, and the record as a whole, the Examiner makes and issues the following

Dec. No. 29946-D

ORDER

Complainant's Motion to Compel Respondent to Declare, Prior to the Hearing, Exactly Which Teachers Respondent Claims to Have Laid Off Under the Provisions of Article 32(I) is denied.

Dated at Madison, Wisconsin, this 19th day of September, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

D. C. Everest School District

**MEMORANDUM ACCOMPANYING ORDER DENYING COMPLAINANT'S
MOTION TO COMPEL RESPONDENT TO DECLARE, PRIOR TO THE HEARING,
EXACTLY WHICH TEACHERS RESPONDENT CLAIMS TO HAVE LAID OFF
UNDER THE PROVISIONS OF ARTICLE 32(I)**

On August 9, 2000, Complainant filed a Motion to Compel Respondent to Declare, Prior to the Hearing, Exactly Which Teachers Respondent Claims to Have Laid Off Under the Provisions of Article 32(I). On August 31, 2000, Respondent filed a Response requesting that this Motion be denied.

Arguments are not evidence. Notwithstanding Complainant's belief to the contrary, arguments made by Respondent's attorneys in other proceedings are not material to the disposition of this case. Respondent is under no obligation, in this proceeding, to defend or explain arguments that Respondent's counsel has made in the prior arbitration proceeding, or any other proceeding.

Complainant has the right to request the Examiner to issue a subpoena requiring the attendance of witnesses and the production of evidence at hearing, including books, records, correspondence or documents. Complainant has the right to cross-examine witnesses at hearing. If, as Complainant believes, Respondent's past use of Section 32(I) is relevant to the disposition of the instant prohibited practice claim, then Complainant will have an opportunity to introduce such evidence at hearing. The Examiner retains the authority to receive relevant evidence and to exclude irrelevant, immaterial or unduly repetitious evidence.

The present case provides no exception to the general rule that discovery is not available in a prohibited practice proceeding before the Commission. Accordingly, Complainant's Motion to Compel Respondent to Declare, Prior to the Hearing, Exactly Which Teachers Respondent Claims to Have Laid Off Under the Provisions of Article 32(I) is denied.

Dated at Madison, Wisconsin, this 19th day of September, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

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