

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-E

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 MOTION TO COMPEL RESPONDENT TO
FURNISH COPIES OF VARIOUS DOCUMENTS TO COMPLAINANT
AND/OR MAKE THEM AVAILABLE FOR COMPLAINANT'S INSPECTION**

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 8, 2000, Complainant filed a Motion to Compel Respondent to Furnish Copies of Various Documents to Complainant and/or Make Them Available for Complainant's Inspection which Complainant amended on August 9, 2000. 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-E

ORDER

Complainant's Motion to Compel Respondent to Furnish Copies of Various Documents to Complainant and/or Make Them Available for Complainant's Inspection is denied.

Dated at Madison, Wisconsin, this 22nd 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 MOTION
TO COMPEL RESPONDENT TO FURNISH COPIES OF VARIOUS
DOCUMENTS TO COMPLAINANT AND/OR MAKE THEM
AVAILABLE FOR COMPLAINANT'S INSPECTION**

Section 227.45(7), Wis. Stats., provides as follows:

(7) In any class 2 proceeding, each party shall have the right, prior to the date set for hearing, to take and preserve evidence as provided in ch. 804. Upon motion by a party or by the person from whom discovery is sought in any class 2 proceeding, and for good cause shown, the hearing examiner may make any order in accordance with s. 804.01 which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. In any class 1 or class 3 proceeding, an agency may by rule permit the taking and preservation of evidence, but in every such proceeding the taking and preservation of evidence shall be permitted with respect to a witness:

- (a) Who is beyond reach of the subpoena of the agency or hearing examiner;
- (b) Who is about to go out of the state, not intending to return in time for the hearing;
- (c) Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or
- (d) Who is a member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives his or her privilege.

Inasmuch as the instant proceeding is a class 3 proceeding, the provisions of Sec. 804.01, Stats., does not apply, but the Commission may by rule permit the taking and preservation of evidence. A review of the Wisconsin Administrative Code reveals that the Commission does not have such a rule permitting the taking and preserving of documentary evidence.

Wisconsin Admin. Code ERC 10 sets forth the General Provisions related to all proceedings before the Wisconsin Employment Relations Commission. Wisconsin Admin. Code ERC 12 sets out rules related to the prevention of prohibited practices. These provisions do not set forth a rule allowing the discovery of documents. Formal discovery is the exception rather than the rule in administrative proceedings. NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 28909-A (NIELSEN, 11/96).

The instant case is not such an unusual or compelling case such that the exception rather than the rule should apply and therefore pre-hearing discovery of these documents is not warranted. The Complainant may subpoena relevant documents for production at the hearing. 1/ Accordingly, the Complainant's Motion is denied.

1/ Please note the requirements for release of information by the custodian of personnel records set out in MILWAUKEE TEACHERS EDUCATION ASSOCIATION v. MILWAUKEE PUBLIC SCHOOLS, 227 WIS.2D 779 (1999).

Dated at Madison, Wisconsin, this 22nd day of September, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

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29946-E