

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-F

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 AMEND COMPLAINT**

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 September 26, 2000, Complainant filed a Motion to Amend Complaint. On October 6, 2000, Respondent filed a response to this Motion requesting that Complainant's

No. 29946-F

Motion be denied on the basis that the amendment is barred by the statute of limitations. Having considered the argument of the parties, and the record as a whole, the Examiner makes and issues the following

ORDER

Complainant's Motion to Amend Complaint is denied.

Dated at Madison, Wisconsin, this 11th day of October, 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 AMEND COMPLAINT

On May 26, 1999, a complaint of prohibited practices was filed with the Wisconsin Employment Relations Commission alleging that D.C. Everest Area School District had violated Sec. 111.70(3)(a)1 and 3, Stats., when “The administration recommended Complainant’s layoff and the School Board members approved the same and rejected his application for full-time employment, in part, due to his protected, concerted activity described in paragraph 6 herein.” On September 26, 2000, Complainant filed a Motion to Amend Complaint.

In support of his Motion, Complainant cites ERC 12.02(5)(a) and ERC 22.02(5)(a). ERC 22.02(5)(a) refers to complaints filed under SELRA and, thus, is not applicable to this dispute.

ERC 12.02(5), which refers to complaints filed under MERA, states as follows:

(5) AMENDMENT. (a) *Who may amend.* Any complainant may amend the complaint upon motion, prior to the hearing by the commission; during the hearing by the commission if it is conducting the hearing, or by the commission member or examiner authorized by the board to conduct the hearing; and at any time prior to the issuance of an order based thereon by the commission, or commission member or examiner authorized to issue and make findings and orders.

(b) *Conformance to evidence.* At the conclusion of the hearing, the complaint, on motion, may be amended as necessary to conform to the evidence as to minor and immaterial variances which might appear in the record.

ERC 12.02(5), however, does not supersede Sec. 111.07(14), Stats., which states as follows:

The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

Thus, when an amendment to a complaint raises a new cause of action, the statute of limitations runs from the date of the amendment and not from the date of the original complaint. BLACKHAWK TECHNICAL COLLEGE, DEC. NO. 29066-C (GRATZ, 12/97); BLACKHAWK TECHNICAL COLLEGE, DEC. NO. 28598-A (GRATZ, 12/97).

Complainant's Motion to Amend Complaint was filed on September 26, 2000, and alleges as follows:

7. The administration posted the position at 30% FTE, versus the 20% FTE that the French program required, in order to mathematically exclude Complainant from consideration. This was a violation of the contract provisions cited above in paragraph 1 of this motion. The administration was motivated to exclude Complainant from consideration for the one extra French class, in part, due to his protected, concerted activity described in paragraph 6(A) of the original May 25, 1999 complaint. By said conduct, Respondent has violated sec. 111.70(3)(a)1 and 3, Wis. Stats.

The Motion to Amend Complaint alleges that the 30% FTE posting was made on June 1, 1998.

In his Motion to Amend Complaint, Complainant seeks to challenge the legality of the District's conduct in making the 30% FTE posting. Complainant is raising a new cause of action that is based upon facts that occurred more than one year prior to the time that Complainant filed his Motion to Amend Complaint.

The cause of action raised in the amendment sought by Complainant is barred by the one-year statute of limitations. Accordingly, Complainant's Motion to Amend Complaint has been denied.

Dated at Madison, Wisconsin, this day 11th of October, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner