

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-K

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 REOPEN HEARING

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. The last day of evidentiary hearing was April 5, 2001. On June 7, 2001, Complainant filed a Motion to Reopen Hearing. On June 8, 2000, Respondent filed a response to this Motion, requesting that the Motion be denied.

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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 Reopen the Hearing is denied.

Dated at Madison, Wisconsin, this 18th day of June, 2001.

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 REOPEN HEARING

On June 7, 2001, Complainant filed a Motion To Reopen The Hearing For The Limited Purpose Of Inquiry Into Why Beth Bouffleur Was Allowed To File A Late Application For The Full-time French Position. On June 8, 2001, Respondent, in writing, strongly objected to this Motion, stating that "Mr. Mudrovich was given ample time to present his case and the record has been closed. All information referenced in the Motion was available to Mr. Mudrovich throughout the many months of hearings in this matter."

Wis. Adm. Code Section ERC 10.19, Close of Hearing provides that

A hearing shall be deemed closed when the evidence is closed and when any period fixed for filing of briefs, presentation of oral argument, if any, or both has expired. The hearing may be re-opened on good cause shown.

On April 5, 2001, both parties indicated that they were finished with the evidentiary portion of the hearing. Thus, the Examiner considers the evidentiary portion of the hearing to be closed.

As the Commission held in MILWAUKEE COUNTY, DEC. NO. 28754-C (1/98), the standards for reopening a hearing are set forth in SCHOOL DISTRICT OF MARINETTE, DEC. NO. 19542-A (Crowley, 5/83), and require the moving party to show:

- (a) That the evidence is newly discovered after the hearing,
- (b) that there was no negligence in seeking to discover such evidence,
- (c) that the newly discovered evidence is material to that issue,
- (d) that the newly discovered evidence is not cumulative,
- (e) that it is reasonably possible that the newly discovered evidence will affect the disposition of the proceeding and
- (f) that the newly discovered evidence is not being introduced solely for the purpose of impeaching witnesses.

The Complainant wishes to reopen the evidentiary record because "The record reflects a discrepancy in the timing of events which must be clarified." The Complainant, however, had sufficient opportunity at hearing to clarify any discrepancy in the record.

The Complainant wishes to create "new evidence" by exploring avenues that could have been explored at hearing. Evidence that could have been obtained at hearing is not "evidence that is newly discovered after the hearing."

Complainant has not shown good cause to reopen the evidentiary portion of the hearing. Accordingly, Complainant's Motion is denied.

Dated at Madison, Wisconsin, this 18th day of June, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner