

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SANDRA LEA BENEDICT, Complainant,

vs.

WAUSAU INSURANCE COMPANY, Respondent.

Case 58
No. 59329
MP-3694

Decision No. 30018-A

SANDRA LEA BENEDICT, Complainant,

vs.

**WISCONSIN EDUCATION ASSOCIATION COUNCIL (WEAC), EAU CLAIRE ASSOCIATION OF
EDUCATORS (ECAE) and EAU CLAIRE
AREA SCHOOL DISTRICT**, Respondents.

Case 59
No. 59333
MP-3696

Decision No. 30019-A

SANDRA LEA BENEDICT, Complainant,

vs.

**COREGIS INSURANCE COMPANY, HORACE MANN INSURANCE COMPANY, MADISON
NATIONAL LIFE INSURANCE COMPANY, AMERICAN FIDELITY INSURANCE COMPANY,
AMERICAN MERCURY INSURANCE COMPANY, and AMERICAN INSURANCE GROUP (AIG),**
Respondents.

Case 60
No. 59334
MP-3697

Decision No. 30020-A

Dec. Nos. 30018-A
30019-A
30020-A

Appearances:

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

Law Offices of Stilp & Cotton, by **Attorney Mark A. Seifert**, 3430 Oakwood Drive, Suite 400, Eau Claire, Wisconsin 54702-1127, appearing on behalf of Wausau Insurance Company.

Palmer & Finerty, S.C., by **Attorney John D. Finerty**, 20800 Swenson Drive, Suite 425, Waukesha, Wisconsin 53186-4081, appearing on behalf of Wisconsin Education Association Council (WEAC), Eau Claire Association of Educators (ECAE), American Mercury Insurance Company and American Fidelity Insurance Company.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney James M. Ward**, 3624 Oakwood Hills Parkway, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Eau Claire Area School District.

Kravit, Gass, Hovel & Leitner, S.C., by **Attorneys Steven E. Kravit and Melissa L. Greipp**, 825 North Jefferson, Milwaukee, Wisconsin 53202, appearing on behalf of Horace Mann Insurance Company and American International Group.

Mr. Mark E. Colbert, Attorney at Law, 6004 Woodland Drive, Waunakee, Wisconsin 53597, appearing on behalf of Madison National Life Insurance Company.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

**ORDER DENYING MOTION TO COMPEL DISCOVERY AND/OR FOR
PRODUCTION OF DOCUMENTS**

On October 30, 2000, Complainant Sandra Lea Benedict filed three separate complaints, as set forth in the caption above, asserting claims against the listed Respondents all related to her employment with the Eau Claire Area School District. On November 29, 2000, the Commission appointed John R. Emery to act as Examiner with respect to all three cases. Upon consideration of motions filed by several of the Respondents, on December 18, 2000, the Examiner issued Orders in each case requiring the Complainant to amend her complaints in order to make them more definite and certain. On December 26, 2000, the Complainant filed a document entitled Amended Consolidated Retaliatory Complaint, incorporating her claims

against the Respondents in all three cases into one pleading. Subsequently, several of the Respondents filed Motions to Dismiss the complaints against them on various grounds. On February 9, 2001, the Complainant filed a number of documents in response to the Motions to Dismiss, including a Notice of Motion And Motion For Discovery (Civil Rules of Procedure 804) and Notice Of Motion And Motion To Compel Documents (Civil Rules of Procedure 804.12). The Respondents, in turn, filed arguments in opposition to the Complainant's motion. Having reviewed the Motion, the supporting documents and the applicable law, and upon the record as a whole, the Examiner makes and issues the following

ORDER

Complainant's Motion For Discovery and Motion To Compel Documents are denied.

Dated at Eau Claire, Wisconsin, this 4th day of September, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

John R. Emery, Examiner

EAU CLAIRE SCHOOL DISTRICT

**MEMORANDUM ACCOMPANYING ORDER DENYING MOTION FOR
DISCOVERY AND MOTION TO COMPEL DOCUMENTS**

A prohibited practice complaint or unfair labor practice complaint, brought under Chapter 111, Stats., is a class 3 administrative proceeding under Chapter 227, Stats. Section 227.45(7), Stats., provides, in pertinent part:

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 the 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.

The rules regarding unfair labor practice complaints and prohibited practice complaints are contained in Chapters ERC 10 and ERC 12 of the Wisconsin Administrative Code. The Commission has elected not to issue rules regarding the taking and preserving of evidence prior to hearing, beyond the possibility of the taking of depositions “upon application and good cause shown. . . .” ERC Sec.10.15. In fact, in the absence of exceptional circumstances, formal discovery is the exception rather than the rule in administrative proceedings. 1/

1/ D.C. EVEREST SCHOOL DISTRICT, DEC. NO. 29946-E (BURNS, 9/00)

For a variety of reasons this case does not qualify for the discovery relief the Complainant seeks. In the first instance, the rules do not provide for compulsory production of documents prior to hearing. Rather, under ERC Sec. 10.14, the Complainant may apply for a subpoena *duces tecum* commanding the production of documents or other items at a scheduled hearing. Further, it has not been shown that the interests of justice require that an extraordinary discovery order be issued in this case. It appears from the Complainant's Motion that she seeks copies of policies of insurance issued by various of the Respondent insurance companies to the Respondents WEAC, ECAE, or Eau Claire Area School District, in order to determine whether there is potential coverage for her alleged damages. Yet, in an appendix attached to a contemporaneously filed pleading, the Complainant includes copies of the very policies she seeks and from which the coverage questions may be answered. To the extent that additional information is needed it may be subpoenaed at any future scheduled hearing without undue prejudice. In that eventuality, should the Complainant then determine that any such new information required additional preparation, a continuance may be sought. The Complainant's Motion is denied.

Dated at Eau Claire, Wisconsin, this 4th day of September, 2001

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

John R. Emery, Examiner

JRE/ans

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cc: President, Wausau Insurance Company
President, Eau Claire Association of Educators
President, Eau Claire Area School District
President, Wisconsin Education Association Council
President, Coregis Insurance Company
President, Madison National Life Insurance Company
President, American International Group
President, American Fidelity Insurance Company
President, Horace Mann Insurance Company
President, American Mercury Insurance Company