

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**JENNIFER A. PESHUT**, Complainant,

vs.

**UNIVERSITY OF WISCONSIN-MILWAUKEE;  
NANCY L. ZIMPLER; SHANNON BRADBURY;**

and

**COUNCIL 24, AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, AFL-CIO; WISCONSIN STATE EMPLOYEES  
UNION; MARTIN BEIL; AND JANA WEAVER**, Respondents.

Case 516  
No. 59886  
PP(S)-320

**Decision No. 30125-C**

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**Appearances:**

**Mr. Geoffrey R. Skoll**, P.O. Box 11116, Milwaukee, Wisconsin 53211, appearing on behalf of Jennifer Peshut.

Lawton & Cates, S.C., by **Attorney P. Scott Hassett**, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of Respondents WSEU, et. al.

**Attorney David J. Vergeront**, Chief Legal Counsel, Department of Employment Relations, 345 West Washington Avenue, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of Respondents University of Wisconsin-Milwaukee, et. al.

**ORDER AFFIRMING IN PART AND REVERSING IN PART  
EXAMINER'S FINDINGS OF FACT AND REVERSING EXAMINER'S  
CONCLUSION OF LAW AND ORDER DISMISSING COMPLAINT**

On May 11, 2001, Examiner Daniel J. Nielsen issued Findings of Fact, Conclusion of Law and Order Dismissing Complaint in the above matter.

On May 15, 2001, Complainant filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.84(4), Stats. The parties thereafter filed written argument in support of and in opposition to the petition, the last of which was received July 2, 2001.

Dec. No. 30125-C

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

- A. Examiner Findings of Fact 1-6 are affirmed.
- B. Examiner Finding of Fact 7 is modified and reversed to read:

7. Peshut's complaint of unfair labor practices is premised at least in part on her rights as an employee of the State of Wisconsin.

- C. Examiner Finding of Fact 8 is reversed to read:

8. Peshut's complaint of unfair labor practices does allege actions taken against her as an employee of the State of Wisconsin by Respondents State et. al. and Council 24 et. al.

- D. Examiner's Conclusion of Law is reversed to read:

Complainant Jennifer Peshut is a party in interest within the meaning of Sec. 111.07(2), Stats., when she asserts her rights as an employee of the State of Wisconsin.

- E. Examiner's Order is reversed to read:

The motions to dismiss are denied.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of July, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**DER (University of Wisconsin – Milwaukee)**

**MEMORANDUM ACCOMPANYING ORDER AFFIRMING IN PART AND  
REVERSING IN PART EXAMINER’S FINDINGS OF FACT AND REVERSING  
EXAMINER’S CONCLUSION OF LAW AND ORDER DISMISSING COMPLAINT**

When dismissing Peshut’s complaint, the Examiner stated:

**A. Discussion**

Peshut asserts interference with her right to act on behalf of other employees in her capacity as a steward. The Examiner’s (sic) directed the Complainant to submit a more definite and certain statement of the facts in this and the companion case. One of the questions posed was “What is the source of Ms. Peshut’s asserted right to present grievances on behalf of employees – i.e. Is she a steward, does she hold some other position in the local union?” The answer submitted was “At all times material to the complaint, Ms. Peshut was a steward in AFSCME Local 82.” This echoes her submission in Case Nos. 465 and 466, wherein she describes her involvement in the Pichelmann grievance as arising from “her role as a grievance representative for another employee.”

Certainly a refusal to meet with a steward or interference with a steward’s activities may give rise to a complaint of interference with protected rights. The issue before the Examiner on this Motion is whether that claim can be brought by the Steward in her own name against the wishes of the Union. For the reasons outlined below, I conclude that it cannot, and therefore have dismissed the complaint.

Section 111.07(2)(a), WEPA, requires that a complaint of unfair labor practices be brought by a "party in interest". 2/ A labor organization is a party in interest to a dispute if it enjoys status as the bargaining representative for the affected employees. 3/ An individual employee may also be a party in interest, depending upon the nature of the allegations. In THOMAS, a Steward, acting on behalf of a local union affiliated with WSEU, filed a complaint against the State alleging refusal to bargain and interference with protected rights. WSEU intervened in the case, and moved to dismiss, asserting that the local union lacked standing since WSEU was the sole and exclusive bargaining representative. The Examiner determined that the local union was not a party in interest to the case,

because of WSEU's exclusive status. On appeal, the Commission affirmed that portion of the Examiner's Order.

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*2/ Sec. 111.07 controls the submission of unfair labor practice in State cases. See, Sec. 111.84(4), SELRA. This requirement is mirrored in the Wisconsin Administrative Code provisions concerning State unfair labor practice proceedings. See ERC 22.02(1).*

*3/ See SOUTHERN LAKES UNITED EDUCATORS, DEC. NO. 21092 (NIELSEN, 10/83) at pages 9-10, and the cases cited in footnote 10 of that decision.*

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Peshut's complaint is brought in her own name, and purports to complain of interference with her individual right to represent Pichelmann and others. However, that right flows from her status as a Steward, an agent of the Union. It is derivative of the Union's rights under the negotiated grievance procedure and the duty to bargain. In a case such as this, it (sic) also derivative of Pichelmann's contractual and individual right to representation. Both the Union and Pichelmann would have standing to assert a complaint for interference with Peshut's efforts to process grievances and represent Pichelmann. 4/ Peshut, however, has no free standing commission to represent employees on her own motion. If Pichelmann, UWM and the Union agreed that she should play no role in the processing of this grievance, Peshut would not be able to assert that the decision was an unfair labor practice. That is because these are not Peshut's rights which are in issue here. 5/

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*4/ Indeed, Pichelmann has asserted that complaint in the companion case.*

*5/ There is no allegation that Peshut has suffered any adverse consequence or retaliation from either the Employer or the Union, aside from being frustrated in her desire to represent Pichelmann.*

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Complainant Peshut is correct that dismissal of a complaint without a hearing is not a preferred route. However, assuming every allegation of fact in the complaint to be true, her theory of the case still fails to state anything that constitutes an unfair labor practice with respect to her. As such there is no genuine issue of law to be decided by the Examiner. ERC 22.06 specifically contemplates that unfair labor practice charges involving State entities may be disposed of "upon granting a motion for dismissal of a complaint." Where, as

here, there is no genuine issue of law and a finding in the Complainant's favor on all facts would still lead to judgment in favor of the Respondents, such a motion is an appropriate vehicle for disposing of a fatally deficient complaint. 6/

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6/ See *MORAINÉ PARK TECHNICAL COLLEGE, DEC. NO. 25747-D (WERC, 1/90)*.

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### POSITIONS OF THE PARTIES ON REVIEW

Peshut asks that the Examiner be reversed. She contends that her complaint does in fact assert her rights as a State employee and that the Examiner erred by denying her an evidentiary hearing on her complaint allegations.

Respondents urge that the Examiner be affirmed. They contend that Peshut's complaint only asserts rights as a Local 82 steward -- not an employee -- and that because Local 82 cannot be a party in interest, it follows that the official of Local 82 cannot be such a party.

### DISCUSSION

The Examiner dismissed the complaint because he concluded that Peshut's allegations were premised solely on her status as a Local 82 steward. When we review the pleadings and argument filed with the Examiner prior to his dismissal of the complaint, we are satisfied that Peshut's complaint does at least in part assert rights based on her status as an employee. On that basis, we have reversed the Examiner and remanded the complaint to him for hearing.

Peshut's complaint identifies her as "Program Assistant at UWM" who is alleging that the State, et. al. violated Secs. 111.84(1)(a), (c), and (e), Stats., and that Council 24, et. al. violated Secs. 111.84(2)(a) and (b) and 111.84(3), Stats. The complaint makes no reference to whether she is or is not a steward for Local 82.

To clarify her complaint, the Examiner sought certain information from Peshut and posed the following question to her representative:

What is the source of Ms. Peshut's asserted right to present grievances on behalf of employees -- i.e. Is she a steward, or does she hold some other position in the local union?

Peshut's representative responded as follows:

At all times material to the complaint, Ms. Peshut was a steward in AFSCME Local 82.

This response played a central role in the Examiner's determination that Peshut was not asserting her own rights as an employee.

In their motions to dismiss, both the State and Council 24 asserted that all of Peshut's allegations are based on her activities as a steward. However, in her response to the motions to dismiss, Peshut disagreed and stated:

5. Council 24 misrepresents Ms. Peshut's complaint . . . Ms. Peshut filed her complaint as an employee under SELRA (Subchapter V Chapter 111 Wis. Stats.), not on behalf of Local 82. . . Ms. Peshut's complaint is, in part, that the respondents violated her rights **as an employee** to engage in concerted activities with another employee. (emphasis in original).

Given all of the foregoing, and particularly in light of the obligation to "liberally construe" a complaint in the context of a pre-hearing motion to dismiss, SEE MORAINÉ PARK VTAE, DEC. NO. 25747-D (WERC 1/90), we conclude that Peshut is asserting rights she alleges she has as a State employee. Thus, we have reversed the Examiner's dismissal of the complaint.

By doing so, we stress that we do not preclude the Examiner from reaching post-hearing conclusions that Peshut does not in fact possess the rights she asserts she has or that such rights as she is found to have were not violated. Our Order is premised solely on our disagreement with the premise upon which the Examiner dismissed the complaint.

Dated at Madison, Wisconsin this 19th day of July, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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