

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LEAH J. BAEHMAN, Complainant,

vs.

**AFSCME COUNCIL 24,
LOCAL 0555, 0048 & CURRENT 0163**, Respondent.

Case 504
No. 59102
PP(S)-314

Decision No. 30215-A

Appearances:

Ms. Leah J. Baehman, 612 Waupaca Street, Waupaca, Wisconsin 54981, appearing on her own behalf.

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 AFSCME Council 24, Local 0555, 0048 & current 0163.

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 the Department of Employment Relations.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING COMPLAINT**

On August 3, 2000, Leah J. Baehman filed a complaint of unfair labor practice with the Wisconsin Employment Relations Commission. The balance of the procedural background is set forth in the Findings of Fact.

No. 30215-A

FINDINGS OF FACT

1. On August 3, 2000, Leah J. Baehman, referred to below as Complainant, filed a complaint with the Commission, alleging that AFSCME Council 24, Local 0555, 0048 and 0163, referred to below as the Union, had committed unfair labor practices in violation of "Sec. 111.84." Paragraph C of the complaint form states: "What are the facts which constitute the alleged unfair labor or prohibited practices?". Complainant's complete response reads thus: "Nonrepresentation – unlawful practices emotional abuse, retaliation, wrongful termination harassment, stock piling."

2. With a letter dated August 7, 2000, Peter G. Davis, the Commission's General Counsel, mailed a copy of the complaint to the Secretary of the Department of Employment Relations (DER), the Executive Director of AFSCME Council 24, and the Presidents of Locals 163, 555 and 48. The cover letter states:

. . .

Thomas L. Yaeger, a member of the Commission's staff, will contact you or your representative and the Complainant in the near future to ask whether the parties are willing to participate in settlement discussions. Any settlement discussions will be held in strict confidence and thus will not be communicated to the Examiner who would be assigned to hear and decide the case if settlement does not occur or to the Commissioners who review any Examiner decision.

The parties have a right to a hearing within 40 days of the filing of the complaint. If you or the Complainant do not wish to have settlement discussions delay the scheduling of a hearing, you or the Complainant should write me and ask that a hearing be scheduled. If I do not receive such a written request, it will be assumed that all parties agree that a hearing should not be scheduled until settlement efforts have ended.

Included in the "cc" section of the cover letter were the individuals listed in the "Appearances" section above.

3. In a letter to Complainant dated September 7, 2000, Yaeger stated:

I received your phone message today from when I was out of the office on Tuesday and Wednesday this week. I immediately attempted to call you, but, as in my prior attempts to reach you by phone, I was unable to do so. You have a caller identification system that seems to be getting in the way.

I have talked with the attorney for the Department of Employment Relations and the attorney for the Union. Both have informed me that you took a promotion or other form of movement from your prior job, and, as a consequence, were placed in probationary status. The Union attorney indicates they are contractually barred from filing a grievance on your behalf if those are the facts, and the DER attorney indicates you do not have a contractual right to grieve a termination during probation.

Since we are having difficulty connecting by phone, you can write to me and outline your understanding of the facts or you can continue to pursue telephone contact. In the alternative, I can have the case assigned and set for hearing.

Yaeger received no written response to this letter.

4. On or about September 20, 2000, the Commission informally assigned me to act as Examiner. In a letter to Complainant dated October 6, 2000, I stated:

I have received the file captioned above. I need to determine whether hearing should be set and, if so, when to set it. The file does not contain a phone number for you, so I write this letter.

Please contact me at the address listed above or by phone. My direct line is (608) 266-1050.

I received no response to this letter.

5. In a letter to Complainant dated November 8, 2000, I stated:

I send this letter to you by certified mail. If you have a complaint to litigate, you must contact me.

My mailing address is stated above. My direct phone line is (608) 266-1050. If I do not hear from you by November 27, 2000, I will dismiss the complaint.

In a letter to Complainant, Vergeront and Hassett dated November 14, 2000, I stated:

On November 8, 2000, I issued a letter, via certified mail, indicating I would dismiss the above-noted complaint unless I heard from Ms. Baehman prior to November 27, 2000. On Monday, November 13, 2000, while I was away from my desk, I received a voice-mail message from Ms. Baehman. I understood her message to be that she was waiting to hear from Thomas L. Yaeger, and did not understand the purpose of my letter of November 8. I write to attempt to clarify the status of this matter.

The file I received includes a letter, dated August 7, 2000, issued by our General Counsel, Peter Davis. That letter states that Thomas L. Yaeger would contact the parties to the complaint to determine if the complaint could be settled voluntarily. Mr. Yaeger, in that capacity, acts as a conciliator. He has no formal authority to act concerning the file, beyond whatever persuasive authority he can employ to bring about a voluntary resolution of the matter. When I receive a file, I am to act as an examiner. As examiner, I am to determine what, if any, issues require evidentiary hearing. If the complaint poses issues demanding hearing, it is my duty to conduct that hearing and issue written findings of fact, conclusions of law and order resolving the issues posed by the complaint. My role as examiner and Mr. Yaeger's role as conciliator are different functions. We do not contact each other to determine any action we separately take to process the file.

More practically speaking, I do not know and do not seek to find out anything Mr. Yaeger may have said to any of you. In a letter dated October 6, 2000, I attempted to determine if Ms. Baehman wished to formally process the complaint. I received no answer to that letter. Thus, I wrote the letter of November 8, to determine if the file was active. Ms. Baehman's phone message would indicate that it is.

The purpose of this letter is to determine in what sense Ms. Baehman believes the file is active. If she wishes to see if her complaint can be resolved informally and voluntarily, she should contact Mr. Yaeger at (608) 266-3299. If she wishes to push the complaint to hearing, she should contact me at (608) 266-1050. I still have no phone number for Ms. Baehman, and thus write this letter.

I have mailed this letter to Ms. Baehman, Mr. Vergeront and Mr. Hassett. I am not yet sure if this properly identifies the parties to the above-noted complaint, but I will note that if any of you has any questions, you should feel free to contact Mr. Yaeger or me, as outlined above.

In a letter to the Complainant, Vergeront and Hassett dated November 22, 2000, I stated:

I write to confirm that Ms. Baehman telephoned me to inform me that her complaint is active. I discussed with her the content of my letter of November 14, 2000, which had yet to reach her at the time of our conversation. It is my understanding that Ms. Baehman is contacting an attorney, and her attorney will contact Mr. Yaeger or me, depending on whether the matter should be processed informally or formally.

I received no response to this letter.

6. On December 11, 2000, the Union filed an answer to the complaint and two motions. The answer stated:

Respondents set forth a general denial of the allegations set forth in paragraph C of the complaint. Said allegations are conclusory, and too vague to address with any specificity.

The first motion was a motion to dismiss because the complaint failed to state a cause of action over which the Commission has jurisdiction. The second motion was a motion for more definite pleadings. In that motion, the Union asserted that if “the Examiner declines to dismiss the Complaint”, then the Examiner should require “a specific pleading by the complainant.” The Union concluded the second motion thus: “Respondent is unable to defend itself from conclusory allegations unless complainant alleges who specifically did what, where, when, and why in support of her claim.” In a letter to Complainant dated January 4, 2001, I stated:

The Union filed a Motion to Dismiss, and an alternative Motion for More Definite Pleadings on December 11, 2000. I have received no response, and I write now to clarify the status of this matter.

Section ERC 22.02(2) governs the contents required of a complaint, and reads thus:

(2) CONTENTS. Such complaint shall contain the following:

- (a) The name, address, and affiliation, if any, of the complainant, and of any representative thereof.
- (b) The name and address of the respondent or respondents, and any other party named therein.
- (c) A clear and concise statement of the facts constituting the alleged prohibited practice or practices, including the time and place of occurrence of particular acts and the sections of the statute alleged to have been violated thereby.
- (d) A prayer for specific and general relief.
- (e) A statement that the filing fee established by s. 111.94(2), Stats., accompanies the complaint.

The complaint filed on August 3, 2000 does not, on its face, comply with the requirements of Subsections (b), (c) and (d) of ERC 22.02(2). Section E of the form filed on August 3 asks "What remedy to (sic) you seek?". There is no response on the complaint you filed.

The complaint alleges at Section C "wrongful termination," and "Nonrepresentation". It names AFSCME Council 24 and a Local as a respondent. It is not apparent from this if the Union employed you, and thus terminated you, or if the Union represented you before another employer. This must be clarified. If you allege a party other than the Union acted against you, then that party's role in the termination must be stated as well as whether you seek to name that party as a Respondent to the complaint.

Beyond this, the complaint does not, on its face, comply with the requirements of ERC 22.02(2)(c). The complaint must state "the time and place of occurrence of particular acts and the sections of the statute alleged to have been violated thereby." Sec. 111.84(1), Stats., states the unfair labor practices that an employer can commit, and Sec. 111.84(2), Stats., states the unfair labor practices that an employee or a labor organization can commit.

If you wish to litigate this complaint, you must file an amended complaint with the Commission that complies with the requirements of ERC Sec. 22.02(2). If you do not feel this letter highlights what you must do to file such a document, either you or your representative should so advise me. If you have no questions, you or your representative should file an amended complaint as soon as possible. I will take no action to process the complaint until you

have filed an amended complaint that at least arguably complies with ERC Sec. 22.02(2).

Complainant responded by phone. In a letter to Complainant, Hassett and Vergeront dated January 16, 2001, I stated the status of the matter thus:

Ms. Baehman asked, by phone on January 16, 2001, what was the status of the above-noted matter. She informed me during this call that she had not received a copy of my letter of January 4, 2001. I enclose a copy of that letter for each of you.

If any of you have any question, please advise me.

I received no response to this letter.

7. In a letter to Complainant dated March 6, 2001, I stated:

Please inform me regarding the status of the above-noted matter. If the matter is to be heard, I need to receive an amended complaint complying with my letter of January 4, 2001.

I received no response to this letter, and reissued it on May 8, 2001. I received no response to that letter.

8. In a letter to Complainant dated July 2, 2001, I stated:

Please advise me if you intend to file an amended complaint in the above-noted matter. If you intend to file an amended complaint, it should comply with my letter of January 4, 2001.

If I do not hear from you by July 27, 2001, I will dismiss the complaint.

I summarized Complainant's response to this letter in a letter to Complainant, Hassett and Vergeront dated July 31, 2001. That letter states:

I write to state the status of the above-noted matter.

On July 27, 2001, I received a voice mail from Ms. Baehman indicating I should not dismiss the complaint.

On July 30, 2001, I phoned Ms. Baehman and advised her that if the complaint is to be processed, I must receive an amended complaint that complies with my letter of January 4, 2001.

I summarized the response I received to this letter in a letter to Complainant dated August 7, 2001, which states:

On August 2, 2001, Mr. Vergeront's office asked, by an e-mail, whether I had imposed a timeframe for the filing of an amended complaint.

I have, to this point, not established any timeframe. However, the inquiry raises a valid concern.

As we have discussed, this agency cannot investigate complaints or act on behalf of any party wishing to litigate a complaint. Thus, your filing of an amended complaint is essential to the litigation of your concerns.

Please file an amended complaint complying with my letter of January 4, 2001. The amended complaint should be postmarked on or before September 7, 2001.

I received no response to this letter.

9. The Commission formally appointed me Examiner on September 19, 2001.

CONCLUSIONS OF LAW

1. The complaint filed on August 3, 2000, does not comply with ERC 22.02(2), and thus does not pose any genuine issue of fact or law within the meaning of ERC 22.04(1), Chapter 227, Stats., or Subchapter V of Chapter 111, Stats.

2. Complainant has failed to prosecute the complaint filed on August 3, 2000, and the complaint thus fails to pose any genuine issue of fact or law within the meaning of ERC. 22.04(1), Chapter 227 Stats., and Subchapter V of Chapter 111, Stats.

ORDER

The complaint, filed on August 3, 2000, is dismissed.

Dated at Madison, Wisconsin, this 25th day of September, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Richard B. McLaughlin /s/

Richard B. McLaughlin, Examiner

DEPARTMENT OF EMPLOYMENT RELATIONS

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINT**

The Commission has authorized the dismissal of complaints without an evidentiary hearing. For a discussion of the governing law, see EAU CLAIRE AREA SCHOOL DISTRICT, DECS. NO. 29689-C, 29690-C & 29691-C (McLAUGHLIN, 1/00) AT 17-18; AFF'D IN RELEVANT PART, DECS. NO. 29689-D, 29690-D & 29691-D (WERC, 4/00). Such a dismissal impacts Subchapter V of Chapter 111 and Chapter 227, Stats., but threshold to evidentiary hearing is a genuine issue of fact or law. ERC 22.04(1), underscores this point thus:

Hearings shall be limited by the commission, commission member, or examiner, as the case might be, to the litigation of and oral argument on genuine issues of fact or law raised by the parties and remaining for disposition.

The pleading process establishes what, if any, genuine issues of fact and law demand evidentiary hearing. ERC 22.02(2) states the minimum requirements for a complaint, and underscores the significance of the requirements by noting in subsections (a) through (e) what a "complaint shall contain" (emphasis added).

Complainant never filed a complaint meeting ERC 22.02(2). The August 3, 2000 complaint form is insufficient to establish Commission jurisdiction, the necessary parties or the necessary facts to establish, or to defend against, the alleged violations. Beyond this, Complainant failed to respond to numerous requests to file an amended complaint complying with ERC 22.02(2). Complainant has taken no effective action to advance the complaint form filed on August 3, 2000. Commission case law contemplates the dismissal of a complaint for "lack of prosecution", see PRAIRIE HOME CEMETERY, DEC. NO. 22316-B (WERC, 10/85) AT 3.

In sum, Complainant has failed to file a complaint or amended complaint complying with ERC 22.02(2). This failure spans a considerable period of time. Complainant has been advised numerous times of the need to comply with ERC 22.02(2), and of the consequences of not doing so. Dismissal is the sole viable option at this point. Complainant's conduct can be characterized as a lack of prosecution or as a failure to meet established pleading requirements. In any event, further correspondence on my part serves no purpose. No action I have taken while informally assigned as Examiner prompted a pleading sufficient to warrant hearing. If such action can or should exist, Complainant must establish it through the appellate process.

Dated at Madison, Wisconsin, this 25th day of September, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Richard B. McLaughlin /s/

Richard B. McLaughlin, Examiner

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