

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LEAH J. BAEHMAN, Complainant,

vs.

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

Case 504
No. 59102
PP(S)-314

Decision No. 30215-B

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, 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 the State of Wisconsin.

**ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINT**

On September 25, 2001, Examiner Richard B. McLaughlin issued Findings of Fact, Conclusions of Law and Order Dismissing Complaint with Accompanying Memorandum in the above matter.

On October 15, 2001, Complainant Baehman 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.

Written argument in support of and in opposition to the petition was filed -- the last of which was received December 17, 2001.

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

ORDER

The Examiner's Findings of Fact, Conclusions of Law and Order Dismissing Complaint are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Department of Employment Relations

**MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINT**

The Examiner dismissed the complaint based on the following 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.

In his Memorandum, he stated in part:

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 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.

From our review of the record, it is clear that the Examiner directed Baehman to amend her complaint in a manner that "at least arguably complies with ERC Sec. 22.02(2)" and advised her that the complaint would be dismissed if she failed to do so. The Examiner invited Baehman to contact him if she did not understand what he was directing her to do. Baehman elected not to amend her complaint and the Examiner then dismissed the complaint that she had filed.

Complainant Baehman argues that the complaint she filed was sufficient to entitle her to proceed to hearing without amendment and thus that the Examiner should be reversed. She does not claim that she received inadequate notice of what the Examiner directed her to do or of the fact that her complaint would be dismissed if she did not file an amended complaint.

Given the foregoing, the issue for us to consider is not whether Baehman received sufficient notice of the consequences if she failed to amend the complaint but rather whether the Examiner was correct when he concluded that Baehman's complaint required amendment.

Baehman's complaint was filed on our 11/99 complaint form. Her complaint identifies "AFSCME Council 24 Local 0555, 0048 and current 0163" as the Respondent. In response to Section C of the form that asks "What are the facts which constitute the alleged unfair labor or prohibited practices?", Baehman wrote "Nonrepresentation -- unlawful practices emotional abuse, retaliation, wrongful termination harassment, stock piling." In response to Section D of the form that asks "What part or parts of the applicable statute defining unfair labor or prohibited practices are alleged to have been violated?" Baehman wrote "Sec. 111.84". Baehman left blank Section E of the form that asked "What remedy to (sic) you seek?"

The Examiner's demand that Baehman file an amended complaint was triggered by a motion from Respondent AFSCME Council 24 et. al. that asserted "Respondent is unable to defend itself from conclusory allegations unless complainant alleges who specifically did what, where, when, and why to support her claim."

In response to this motion, the Examiner wrote Baehman the following:

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).

Having considered the matter, we are persuaded that Section C of Baehman’s complaint did not provide sufficient information to allow Respondent AFSCME Council 24 to defend itself at hearing. Thus, we conclude that the Examiner’s demand that Baehman provide this information in an amended complaint was appropriate and that Baehman’s refusal to provide that information prior to hearing warranted dismissal of her complaint. Therefore, we affirm the Examiner.

Dated at Madison, Wisconsin, this 16th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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