

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GERHARDT J. STEINKE, Complainant,

vs.

**PAUL VANCE, FRANKLIN SHANSKY, HARRY GUZNICZAK, ERNST
SCHNOOK, RUS SLICKERM, MILWAUKEE AREA TECHNICAL COLLEGE
BOARD AND WISCONSIN FEDERATION OF TEACHERS LOCAL 212**, Respondents.

Case 463
No. 54767
MP-3258

Decision No. 30254

Appearances:

Mr. Gerhardt J. Steinke, 6415 Bridge Road, Madison, Wisconsin 53713, appearing on his own behalf.

Michael, Best & Friedrich, by **Attorney John Busch**, Suite 3300, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, appearing on behalf of certain named Respondents.

Shneidman, Hawks & Ehlke, S.C., by **Attorney Timothy E. Hawks**, 700 West Michigan, Suite 500, P. O. Box 442, Milwaukee, Wisconsin 53201-0442 appearing on behalf of certain named Respondents.

**ORDER GRANTING MOTIONS TO DISMISS AND
DENYING MOTIONS FOR COSTS AND ATTORNEYS' FEES**

On January 6 and 7, 1997, Gerhardt J. Steinke filed a complaint and amended complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondents had committed certain prohibited practices.

On January 31, 1997 and February 13, 1997, Respondents filed motions to dismiss the complaint and to award Respondents their costs and attorneys' fees. Written argument in support of and opposition to the motions was filed until March 31, 1997.

Dec. No. 30254

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.

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

ORDER

The complaint and amended complaint are dismissed. Respondents' motions for costs and attorneys' fees are denied.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commissioner A. Henry Hempe did not participate.

Milwaukee Area Vocational, Technical and Adult Education District

**MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTIONS TO DISMISS AND
DENYING MOTIONS FOR COSTS AND ATTORNEYS' FEES**

When deciding whether to grant a pre-hearing motion to dismiss, we liberally construe the complaint in favor of the complainant and presume the existence of the facts alleged. We grant a pre-hearing motion to dismiss only where we find that the facts alleged do not establish a violation of the statute allegedly violated. STATE OF WISCONSIN, DEC. NO. 30125-C (WERC, 7/2001).

In his complaint and amended complaint, Complainant asserts that named Respondents violated a collective bargaining agreement and breached the duty of fair representation. Complainant contends that he has ongoing rights under a collective bargaining agreement to the extent that Arbitrator Miller's January 1996 award did not resolve issues raised in Complainant's March 29, 1990 grievance. He argues that the receipt of the Miller award did not end Respondent Local 212's duty of fair representation toward him as to other contractual violations.

Respondents argue all complaint allegations are untimely because Complainant was not a "municipal employee" within the one year period preceding the filing of the complaint. Respondents ask that they receive costs and attorneys' fees because the complaint allegations are frivolous.

We have considered the matter and conclude the motion to dismiss should be granted.

As to the violations of a collective bargaining agreement, violations independent of those alleged in the March, 1990 grievance are untimely given Complainant's 1990 non-renewal as upheld by Arbitrator Miller. As to those violation of contract allegations that Complainant asserts were part of his March, 1990 grievance and should have been addressed by Miller, we conclude that the Miller arbitration proceeding was Complainant's exclusive forum for litigation of said allegations because the contractual grievance arbitration procedure is presumed to be the exclusive forum for resolution of alleged contractual violations. 1/ Thus, we will not assert our jurisdiction over them. To the extent Complainant asserts that Miller

should have but did not address such issues, his effort to vacate the Miller award through Chapter 788, Wis. Stats., provided Complainant with the exclusive forum in which to have that issue resolved.

1/ MAHNKE V. WERC, 66 WIS.2D 524 (1974); CITY OF MENASHA, DEC. NO. 13283-A (WERC, 2/77).

As to the alleged violations of the duty of fair representation, Complainant's 1990 non-renewal extinguished Respondent Union's duty toward Complainant except as to matters arising out of the March 1990 non-renewal grievance itself. Thus, to the extent Complainant's allegations relate to matters that are independent of the March 1990 grievance, Complainant has no cause of action. As to matters arising out of the March 1990 non-renewal grievance, Complainant himself litigated that grievance before Arbitrator Miller and thus cannot now claim a breach of the duty of fair representation. Therefore, we dismiss these complaint allegations.

We deny the Respondents' request for costs and attorneys' fees because we do not have the statutory authority to grant same in complaint proceedings to responding parties. STATE OF WISCONSIN, DEC. NO. 29177-C (WERC 5/99).

Dated at Madison, Wisconsin this 4th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Commissioner A. Henry Hempe did not participate.

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