

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**SANDRA LEA BENEDICT**, Complainant,

vs.

**WISCONSIN EDUCATION ASSOCIATION COUNCIL, NORTHWEST UNITED  
EDUCATORS ASSOCIATION, EAU CLAIRE ASSOCIATION OF EDUCATORS and  
EAU CLAIRE AREA SCHOOL DISTRICT, EAU CLAIRE AREA SCHOOL BOARD,  
EAU CLAIRE ASSOCIATION OF ADMINISTRATORS**, Respondents.

Case 66  
No. 61466  
MP-3848

**Decision No. 30525-B**

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**Appearances:**

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

**Attorney Anthony L. Sheehan**, Staff Counsel, appearing on behalf of Wisconsin Education Association Council (WEAC) and Eau Claire Association of Educators.

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.

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

**FINDINGS OF FACT**

1. The parties to the consolidated complaints are identified in the “Appearances” section set forth above and are incorporated by reference. The initial complaint was filed on July 30, 2002, listing Wisconsin Education Association Council, the Eau Claire Association of Educators and the Eau Claire Area School District as Respondents. Subsequently, the Respondent, Eau Claire Area School District, filed a motion to make the complaint more definite and certain.

Dec. No. 30525-B

2. On January 2, 2003, this Examiner issued Dec. No. 30525-A containing, in pertinent part, the following Order:

1. That the Complainant amend Paragraph C of her complaint to set forth as to the Respondent, Eau Claire Area School District, clearly and concisely:

a) the specific acts, omissions or course of conduct engaged in by the Respondent, along with the dates on which such acts, omissions or course of conduct occurred, which are alleged to be in violation of the Wisconsin Employment Peace Act, the Municipal Employment Relations Act, or the State Employment Labor Relations Act.

2. That the Complainant amend Paragraph D of her complaint to identify the specific sections or subsections of the Wisconsin Employment Peace Act [Sec. 111.06, Wis. Stats.], the Municipal Employment Relations Act [Sec. 111.70(3), Wis. Stats.], or the State Employment Labor Relations Act [Sec. 111.84, Wis. Stats.] which are alleged to have been violated by the Respondent, Eau Claire Area School District.

3. On June 30, 2003, the Complainant filed an Amended Complaint of 45 pages, now listing as Respondents, in addition to those previously listed, the Eau Claire Area School Board, the Eau Claire Association of Administrators and Northwest United Educators Association. The Amended Complaint was accompanied by several hundred pages of attached documents referencing past litigation with the District and various other parties in a variety of fora, as well as numerous health and disability insurance issues and her history with the District since 1997 of being on unpaid medical leave of absence.

4. Numerous of the allegations of the Amended Complaint, allege violations of federal or state statutes outside of Ch. 111, Wis. Stats., or common law liability actions, or refer to actions of the Respondents occurring before July 31, 2001.

5. The allegations of the Amended Complaint referring to actions of the Respondents Eau Claire Area School District, Eau Claire Association of Educators, Wisconsin Education Association Council and Northwest United Educators falling within the time period July 31, 2001, to June 30, 2003, and constituting alleged violations of Sec. 111.70(3)(a), Wis. Stats., are stated as follows:

. . . Complainant Benedict is basing her newly filed claims as of March 7, 2003 by her recently submitted “**Letter of Intent**” for the 2003-2004 school year, signed by her. (Exhibit A)

Complainant Benedict is still on **“UNPAID MEDICAL LEAVE OF ABSENCE”** from her employer Eau Claire Area School District since March 21, 1997 due to ongoing **“discrimination and retaliation.”** Complainant Benedict has filed every complaint made to WERC in a timely fashion by referencing each year’s timely signing yearly **“Letter of Intent”** for each succeeding year. Every March Complainant Benedict has signed this document entitled **“Letter of Intent”** and sent it to her employer Eau Claire Area School District. Therefore, Benedict’s claims have never been barred by any one-year statute of limitations under Chapter 111, Wis. Stats., and have been timely filed and must not be dismissed. Exhibits B, C, D, E, F, G, H, I, J, K, L, M, N, O.

Each year’s signing of **“Letter of Intent”** signifies a **Separate and Timely Filed Claim with Separate Remedies.**”

Third, Complainant Benedict previously called WEAC for **“representation”** in this timely signing of Benedict’s previous March 2002 signing of her **“Letter of Intent”** for the school year 2002-2003 and her **“Unpaid Medical Leave of Absence”** as well as her **“Unpaid Medical and Dental Insurance Benefits.”** Exhibit P, Q, R. (Amended Complaint, pp. 4-5)

...

Fourth, Complainant Benedict requested a grievance be filed on her behalf by WEAC during her conversation with Attorney Pieroni at which time he denied Benedict representation. Attorney Pieroni stated that Benedict would have to contact her local ECAE union president, Jo Ellen Burke for Benedict’s grievance concerns. Benedict called Jo Ellen Burke several times and left messages on April 25, 2002. A return call was made by Jo Ellen Burke to Benedict at 7:00 p.m. on April 25, 2002 at which time Burke said she would not be able to assist her due to Burke’s already bust [sic] schedule and that she would have her husband, NUE Grievance Attorney Michael Burke get back to Benedict on Friday, April 26, 2002. Benedict requested that Jo Ellen Burke assist Complainant in **“Filing a Grievance”** against Benedict’s employer Eau Claire Area School District. Benedict further requested that a hearing be scheduled for resolution/remedies for Benedict’s claims of **“Unpaid Medical Leave of Absence”** by the signing of her most recent **“Letter of Intent”** in March of 2002 for the school year 2002-2003. (Amended Complaint, pp. 14-15)

...

Complainant Benedict had a previous telephone conversation with NUE Grievance Attorney Michael J. Burke on Friday, April 26, 2002 at which time Benedict requested that Burke assist her in filing a **“FRESH GRIEVANCE”** against Eau Claire Area School District regarding Benedict’s currently signed

“Letter of Intent” as of March, 2002 with Benedict’s employer Eau Claire Area School District. Burke stated that he could not do this and was going to call Bruce Meredith, General Counsel for Wisconsin Education Association Council (WEAC) to handle the matter because he didn’t know what to do. Benedict is claiming **“DISPARATE TREATMENT AT THE HANDS OF WEAC.”** (Amended Complaint, p. 17)

6. The Amended Complaint concludes with the following request for relief:

**WHEREFORE, SANDRA LEA BENEDICT**, demands a “HEARING” before the WERC (Wisconsin Employment Relations Commission) and demands the following relief:

- (a) Judgment against any and all defendants Eau Claire Area School District, Eau Claire Association of Educators, Wisconsin Education Association Council, Northwest United Educators (NUE) as well as any and all of their representing attorneys’ in an amount sufficient to compensate Benedict for the loss of her career, medical and health benefits, attorneys’ fees, liens and judgments against her, as well as her emotional distress from insurer’s for not taking steps to promptly pay the age, discrimination and now retaliation claims resultant from her employment with Eau Claire Area School District and her local and state union Eau Claire Association of Educators, Wisconsin Education Association Council (WEAC) and Northwest United Educators (NUE).
- (b) Pre- and Post-judgment interest; and
- (c) Reasonable attorneys’ fees and costs;
- (d) Any other relief the WERC (Wisconsin Employment Relations Commission) deems just to award for compensatory damages and punitive damages.

7. On August 6, 2003, the Respondents, Eau Claire Association of Educators, Northwest United Educators and Wisconsin Education Association Council filed a letter response to the Amended Complaint, stating in pertinent part:

. . . The Associations cannot adequately respond or address the Amended complaint in any specific fashion as the Amended Complaint is not set forth in any logical or methodical fashion. The Associations deny that it has acted in way [sic] to the legal detriment of Ms. Benedict. The Associations further deny that they failed or refused to represent Ms. Benedict at any time when she was entitled to union representation.

The Associations assert that Ms. Benedict has failed to establish that the WERC has jurisdiction over the matters set forth in the Amended Complaint and further

has failed to state a claim for which the WERC can grant relief. The Associations therefore request that the Amended complaint be dismissed with prejudice.

. . .

8. On August 29, 200, the Respondent, Eau Claire Area School District filed a letter response to the Amended Complaint likewise moving for the dismissal of the Amended Complaint on both procedural and substantive grounds.

9. On October 29, 2003, the District supplemented its answer to the Amended Complaint and reasserted its request for dismissal based on the Commission's decision in EAU CLAIRE AREA SCHOOL DISTRICT, DEC. NOS. 30018-C, 30019-C and 30020-C (WERC, 10/03), involving the same parties.

10. The acts alleged in the Amended complaint do not constitute prohibited practices under Sec.111.70 occurring within one year prior to the filing of the consolidated complaints.

### CONCLUSIONS OF LAW

1. For the purposes of this proceeding, the Complainant constitutes a municipal employee as defined in Sec. 111.70(1)(i), Wis. Stats.

2. For the purposes of this proceeding, the District constitutes a municipal employer as defined in Sec. 111.70(1)(j), Wis. Stats.

3. For the purposes of this proceeding, the ECAE, NUE and WEAC constitute labor organizations as defined in Sec. 111.70(1)(h), Wis. Stats.

4. For the purposes of this proceeding, the Eau Claire Area School Board and Eau Claire Association of Administrators do not constitute municipal employers as defined in Sec. 111.70(1)(j), Wis. Stats., labor organizations as defined in Sec. 111.70(1)(h), Wis. Stats., or persons acting on behalf of or in the interest of a municipal employer as set forth in Sec. 111.70(3)(c), Wis. Stats.

5. The Commission lacks jurisdiction over those allegations of the Amended Complaint citing violations of law other than Sub. ch. IV of Ch. 111, Wis. Stats.

6. Complainant's claims constituting violations falling within Sub. ch. IV of Ch. 111, Wis. Stats., are barred by Secs. 111.07(14) and 111.70(4)(a), Wis. Stats.

**ORDER**

The Amended Complaint is dismissed as to all Respondents and causes of action.

Dated at Fond du Lac, Wisconsin this 15<sup>th</sup> day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

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John R. Emery, Examiner

EAU CLAIRE SCHOOL DISTRICT

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

**BACKGROUND**

The Complainant in this matter has been engaged in litigation with the District and the Unions for several years regarding a number of issues growing out of injuries she received in an auto accident in the late 1980s, which resulted in her being placed on an indefinite medical leave of absence from her employment with the District. These claims have been prosecuted in state court, federal court and in a variety of state administrative agencies, including two prior prohibited practice complaints before the WERC. On October 17, 2003, the Commission upheld this Examiner's dismissal of the Complainant's most recent complaint against the District, the Unions and a variety of insurance carriers in EAU CLAIRE AREA SCHOOL DISTRICT, WERC DEC. NOS. 30018-C, 30019-C and 30020-C.

The Complainant filed this complaint on July 30, 2002, citing the Eau Claire Area School District (herein the District), Eau Claire Association of Educators (herein ECAE) and Wisconsin Education Association Council (herein WEAC). The Complaint form itself made allegations of unfair representation, failure to provide grievance procedure, failure to arbitrate, failure to settle any previous or current unfair labor practices claims, and retaliation. The form also cited alleged violations of a variety of federal and state statutes, including Sec. 111.70(3), which lists a variety of prohibited practices under the Municipal Employment Relations Act (MERA). The form was accompanied by several pages of ostensibly explanatory narrative referring to a number of matters, including an alleged refusal by ECAE and WEAC to file a grievance over the Complainant's most recent Letter of Intent. The narrative also cited complaints regarding certain disability and liability insurance issues and made claims of disparate treatment in light of the Union's settlement of a grievance regarding another teacher.

Subsequently, the District, WEAC and ECAE all filed motions for an Order to Make Complaint More Definite and Certain, which was granted on January 2, 2003. After receiving an extension, the Complainant responded with an Amended Complaint on June 30, 2003. The Amended Complaint was a document of 45 pages accompanied by several hundred pages of exhibits. The Amended Complaint likewise alleges violations of numerous federal and state statutes and administrative rules over which the WERC has no jurisdiction, as well as several common law tort claims, which also lie outside the WERC's jurisdiction. However, the Amended Complaint does also contain certain allegations which arguably fall within the WERC's jurisdiction, to wit, that the District committed violations of MERA in issuing contracts in 2002 and 2003 designating the Complainant as still being on unpaid medical leave and that the Union violated its duty of fair representation to her by refusing to grieve the District's actions on her behalf.

### **Controlling Law**

In EAU CLAIRE AREA SCHOOL DISTRICT, SUPRA, the Commission noted that, “(b)ecause of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief.” EAU CLAIRE AREA SCHOOL DISTRICT, DEC. Nos. 30018-C, 30019-C and 30020-C, (WERC, 10/03) AT 8, citing UNIFIED SCHOOL DISTRICT No. 1 OF RACINE COUNTY, WISCONSIN, DEC. NO. 15915-B (HOORNSTRA, with final authority for WERC, 12/77) AT 3 and MORAINÉ PARK, DEC. NO. 25747-D (WERC, 1/90).

Further, the Commission’s authority is generally limited to “those powers which are expressly or impliedly conferred upon it by statute.” BROWNE V. MILWAUKEE BOARD OF SCHOOL DIRECTORS, 83 WIS.2D 316, 333 (1978). Thus, the allegations of the complaint must fall within the parameters of MERA (111.70 et seq, Wis. Stats.) in order to raise enforceable claims. Claims falling outside the parameters of MERA are, therefore, not enforceable by the Commission unless the acts complained of constitute violations of MERA, as well. Additionally, the parties to the complaint must be subject to MERA in order to be subject to the Commission’s jurisdiction, which is to say they must be municipal employers (Secs. 111.70(1)(j) and 111.70(3)(a), Wis. Stats.), municipal employees (Secs. 111.70(1)(i) and 111.70(3)(b), Wis. Stats.), labor organizations (Sec. 111.70(1)(h), Wis. Stats.) or third parties committing prohibited practices for the benefit or in the interest of municipal employers or employees (Sec. 111.70(3)(c), Wis. Stats. Finally, it is necessary that the acts complained of have been committed within one year prior to the filing of the Complaint, otherwise they are time barred. Sections 111.07(14) and 111.70(4)(a), Wis. Stats.

### **Determination**

The Complainant asserts that the Commission has jurisdiction over the Respondents because they are either employers or labor organizations as defined in Sec. 111.70(1), Wis. Stats. As to the Eau Claire Area School Board, however, this is an elected body responsible for the management of the District, which is the actual employer. To the extent that the Board may be regarded as synonymous with the District, its inclusion is redundant, since the Board is not an employment entity distinct from the District. Thus, it is not an employer, *per se*, and is not properly included as a Respondent. Further, although the Complainant names the Eau Claire Association of Administrators as a Respondent, she does not set forth any jurisdictional facts that further identifies this group or the basis upon which she asserts it is an employer under the statute. Further, no where in the body of the Amended Complaint does she make any direct factual allegations of wrongdoing by either the School Board or the Association of Administrators. Thus, those parties are not properly subject to the jurisdiction of the WERC and are dismissed. 1/



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*1/ The Complainant makes numerous additional allegations against these Respondents and others of violations of a panoply of other federal and state statutes, as well as common law causes of action, which lie outside the WERC's jurisdiction. These claims are, accordingly, dismissed.*

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As with EAU CLAIRE AREA SCHOOL DISTRICT, SUPRA, the allegations against the Respondent Unions here for breach of their duty of fair representation are predicated on the failure of the Unions to pursue grievances against the District on the Complainant's behalf. Specifically, the Amended Complaint alleges that the Complainant sought to grieve the Letters of Intent issued to her by the District in March, 2002, and March, 2003, which indicated the District's intention to offer her a contract in each year maintaining her status of being on unpaid medical leave of absence. At various times, she allegedly contacted representatives of ECAE, NUE and WEAC and requested that grievances be filed, but to no avail. The Amended Complaint also contains numerous assertions regarding several other issues. Among these are various requests for insurance documents and exchanges of correspondence regarding the District's intention to non-renew her contract if she did not obtain re-certification of her teaching license, all within the statutory timeline. In neither case, however, does she make any specific allegation of wrongdoing under MERA by either the District or the Unions, nor does any such readily appear from perusing the Amended Complaint or attached appendices. She also appears to feel aggrieved and discriminated against because the Unions did successfully prosecute a grievance on behalf of another teacher in the District while at the same time refusing to advance her own cause.

The bottom line in this case is that the Complainant believes she was treated wrongfully when she was placed on unpaid medical leave, which she refers to as "constructive discharge," in 1997. She asserts in her Amended Complaint, as well as her brief, that each new Letter of Intent perpetuates the original wrongful act and is, for statute of limitations purposes, a new and separate cause of action. With respect to these respondents, therefore, this complaint is no different in any meaningful respect than that filed in EAU CLAIRE AREA SCHOOL DISTRICT, SUPRA. In that case, the Commission stated:

...

Ms. Benedict's principal contention is that her "constructive discharge" is a continuing violation that is perpetrated anew each time the School District issues her another annual contract mislabeled "medical leave without pay." This argument presupposes that the District's issuance of a new annual contract is a cognizably distinct action in a series or course of unlawful conduct that began outside the limitations period. Since we view the individual contract as a ministerial act that merely perpetuated the longstanding status quo, we do not see it as a distinct incident in itself, much less a recurring incident of unlawful conduct within the scope of the "continuing violation" doctrine. 3/

In short, the relationship between the District and Ms. Benedict has been static since March 1997. As the Commission held in EAU CLAIRE SCHOOL DISTRICT, SUPRA, Ms. Benedict lost her opportunity to challenge the events of March 1997 at the Commission by failing to file a prohibited practice charge within one year of that date. We agree with the Examiner that Ms. Benedict cannot circumvent MERA's limitations period by "alleging, in effect, the occurrence of a new violation each time the District issues a new contract to her under the same terms." (Examiner's Decision at 22).

Because we conclude that the District's letter of intent to issue Ms. Benedict her individual contract for 2000-2001 was not a legally cognizable incident or event regarding her employment status, it follows that there was no grievable event under the collective bargaining agreement. Hence neither the ECAE nor WEAC had a duty to assist Ms. Benedict in grieving the issuance of that individual contract under the circumstances present here. 4/ We therefore dismiss the amended complaint in its entirety.

EAU CLAIRE AREA SCHOOL DISTRICT AT 8, 9, footnotes omitted.

In this complaint the Complainant is stating, in effect, and without any apparent supporting authority, that the Commission "got it wrong" in dismissing her earlier case and is asking for reconsideration. 2/ The reality is, however, that EAU CLAIRE AREA SCHOOL DISTRICT, and the earlier decisions that underscore its rationale, remain good law. Applying that rationale, therefore, I find that there was no grievable event attached to the District's issuance of Letters of Intent on 2002 and 2003 and that, therefore, ECAE, NUE and WEAC had no duty to prosecute grievances on the Complainant's behalf under these circumstances. The complaint is dismissed.

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2/ *Complainant's theory is summed up in her brief, as follows:*

*"Petitioner Benedict is setting forth in a logical and methodical fashion, definite, clear and concise statements of fact to further clarify the factual and legal basis underlying all her claims, and is further providing semblance of a concise statement of relevant facts leading up to and reviving her one-year statute of limitations, predicated on her "theory" that contract renewal constitutes a "continuing violation" in regards to her "constructive discharge" in March of 1997.*

*Petitioner Benedict is challenging that her principal contention of her "construct discharge" was a "continuing violation" that is perpetuated anew each time the Eau Claire Area School District issues her another annual contract labeled "medical leave of absence without pay." The District's issuance of a new annual contract is a cognizably distinct action in a series or course of unlawful conduct that*

*began within the limitations period. Each individual contract perpetuates the longstanding status quo, as a distinct incident itself and is a recurring incident of unlawful conduct within the scope of the "continuing violation" doctrine.*

*Complainant Brief at 4, 5 (quotes in original)*

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Dated at Fond du Lac, Wisconsin, this 15<sup>th</sup> day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

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John R. Emery, Examiner