

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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-C

Appearances:

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

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

James M. Ward, Weld, Riley, Prenn & Ricci, S.C., Attorney at Law, 3624 Oakwood Hills Parkway, Eau Claire Wisconsin 54702-1030, appearing on behalf of Eau Claire Area School District.

ORDER ON REVIEW OF EXAMINER'S DECISION

On April 15, 2004, Examiner John R. Emery issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter, wherein he dismissed all allegations against certain Respondents (i.e., the Eau Claire Area School Board and Eau Claire Association of Administrators) for lack of jurisdiction and against the other Respondents (i.e., the Wisconsin Education Association Council (WEAC), the Eau Claire Association of Educators (ECAE) and the Eau Claire Area School District (District), for being untimely filed pursuant to Secs. 111.07(14) and 111.70(4)(a), Stats.

Complainant Sandra Lea Benedict timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats. The parties filed written arguments, the last of which was received on July 2, 2004.

Dec. No. 30525-C

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

ORDER

- A. The Examiner's Findings of Fact are affirmed.
- B. The Examiner's Conclusions of Law 1 – 3 and 5 – 6 are affirmed.
- C. The Examiner's Conclusion of Law 4 is modified as follows:
 - 4. For purposes of this proceeding, the Eau Claire Area School Board and its members and the Eau Claire Association of Administrators and its members are persons acting on behalf of or in the interest of a municipal employer, i.e., the Eau Claire Area School District, as set forth in Sec. 111.70(3)(c), Stats.
- D. The Examiner's Order is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of August, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Eau Claire Area School District

MEMORANDUM ACCOMPANYING ORDER

This is the third in a series of complaints that Ms. Benedict has filed against the District and/or its agents, WEAC, and the Eau Claire Association of Educators (ECAE), in which she has alleged (1) that the District violated MERA by issuing individual teaching contracts describing her status as “unpaid medical leave,” and (2) that the ECAE and WEAC violated their duty of fair representation by refusing to process a grievance challenging the District’s issuance of those individual contracts. Both prior complaints were dismissed for having been filed beyond the one year statute of limitations set forth in Secs. 111.70(4)(a) and 111.07(14), Stats. This history is summarized in EAU CLAIRE SCHOOL DISTRICT, DEC. NOS. 30018-C, 30019-C, 30020-C (WERC, 10/03), AFF’D CIRCT EAU CLAIRE 03CV761, APPEAL PENDING.

As noted, Ms. Benedict now advances the identical claims, this time in relation to her 2002-03 individual teaching contract. 1/ The Examiner properly concluded that the Commission’s above-cited decision disposes of the instant case. There we held that the District’s renewal of Ms. Benedict’s annual individual contract that merely continues her previous status is not a new actionable event, but rather a continuation of the District’s alleged 1997 prohibited practice, which was dismissed as untimely in WERC Decision Nos. 29689-D, 29690-D, and 29691-D (WERC, 4/00). By the same token, we held in our 2003 decision that WEAC and the ECAE have no duty of fair representation regarding the renewal of Ms. Benedict’s individual teaching contract under these circumstances. Our rationale is set forth in EAU CLAIRE SCHOOL DISTRICT, WERC DEC. NOS. 30018-C, 30019-C, 30020-C (WERC, 10/03), AFF’D CIRCT EAU CLAIRE 03CV761, APPEAL PENDING, as quoted by the Examiner. We need not repeat it here.

1/ As noted by the Examiner, Ms. Benedict has advanced several claims that are outside of the Commission’s jurisdiction and on that basis were properly dismissed by the Examiner.

In short, the instant complaint (and any future complaints that may be advanced on the same premises) is precluded by Ms. Benedict’s prior litigation. MORAINÉ PARK VTAE, DEC. NO. 22009-B (WERC, 11/85); WISCONSIN EDUCATION ASSOCIATION COUNCIL, DEC.

No. 28543-B (WERC, 12/97); WAUPACA COUNTY, DEC. No. 30882 (WERC, 4/04).
Accordingly, we affirm the Examiner's order dismissing Ms. Benedict's complaint.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of August,
2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner