

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MICHAEL W. HOPKINS, Complainant,

vs.

**CITY OF KENOSHA and LOCAL 414,
FIRE FIGHTERS UNION OF KENOSHA**, Respondents.

Case 202
No. 62114
MP-3900

Decision No. 30629-A

Appearances:

Mr. Michael W. Hopkins, 33326 – 118th Street Twin Lakes, Wisconsin 53181, appearing on his own behalf.

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 Local 414, Fire Fighters Union of Kenosha.

Davis & Kuelthau, S.C., by **Attorney Daniel G. Vliet**, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the City of Kenosha.

ORDER

On February 13, 2003, Michael W. Hopkins filed a complaint on his own behalf with the Wisconsin Employment Relations Commission alleging that the City of Kenosha and the Kenosha Professional Firefighters Union Local 414 had committed prohibited practices within the meaning of the Municipal Employment Relations Act.

On June 2, 2003, the Commission received the following Stipulation and Order of Dismissal signed by Attorney Vliet on behalf of Respondent City and Attorney Hawks on behalf of Respondent Local 414 and by Attorney Walter Stern who identified himself therein as “Attorney for Complainant.”

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, that all claims by Complainant, Michael W. Hopkins, in the above-entitled matter shall be dismissed with prejudice and without costs or attorney’s fees to any party.

Based on this Stipulation, the Commission issued an Order Dismissing Complaint on June 4, 2003.

Dec. No. 30629-A

On June 10, 2003, Hopkins filed a request with the Commission asking that the Order Dismissing Complaint be set aside because he had not agreed to dismiss the complaint and had not authorized anyone else to do so.

On June 16, 2003, Respondents City and Local 414 filed statements in opposition to Hopkins' June 10, 2003 request which included copies of a Waiver and Release of Claims signed by Hopkins which included the following provision:

5. **Dismissal of WERC Claim.** As further consideration for the promises contained in this Agreement, Plaintiff will dismiss with prejudice and without costs or attorney's fees the claim against the City and the Union now pending before the Wisconsin Employment Relations Commission, Case No. 202 No. 62114 MP-3900.

On June 19, 2003, Hopkins filed a written statement arguing that his complaint should not be dismissed until the Respondents have met their obligation under the parties' settlement agreement.

On June 20, 2003, Attorney Stern filed a statement.

On June 23, 2003, Hopkins filed additional argument.

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

ORDER

Hopkins' request that the Wisconsin Employment Relations Commission set aside its June 4, 2003 Order Dismissing Complaint is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of June, 2003.

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

City of Kenosha

MEMORANDUM ACCOMPANYING ORDER

As reflected in the preface to our Order, Hopkins did sign a settlement agreement that required him to seek dismissal of this case. Thus, we do not find Hopkins' argument to the contrary to be persuasive.

Hopkins also argues that Respondents have not complied with their obligations under the settlement agreement and that his complaint should not have been dismissed until such compliance occurs. However, the settlement agreement does not state any sequence in which the parties' various obligations are to be met. Therefore, even assuming that Respondents have not yet met their obligations under the settlement agreement, Hopkins' argument does not provide a persuasive basis for setting aside the Order Dismissing Complaint.

Should Respondents fail to comply with the settlement agreement, Hopkins can file suit against Respondents in state court to gain their compliance. SEE THOMSEN V. WERC, 234 WIS.2D 494 (CT. APP. 2000).

Given all of the foregoing, we have denied Hopkins' request that the Order Dismissing Complaint be set aside.

Dated at Madison, Wisconsin, this 24th day of June, 2003.

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