

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**MICHAEL W. MELTZ**, Complainant,

vs.

**TEAMSTERS UNION LOCAL 563, REGGIE KONOP, BOB SCHLIEVE  
and JOHN KLUENDER**, Respondent.

Case 406  
No. 60704  
MP-3786

**Decision No. 30637-A**

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**Appearances:**

**Mr. Michael W. Meltz**, N3839 Cummings Road, Hortonville, Wisconsin, appearing on his own behalf.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Mr. Nathan D. Eisenberg**, 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin, appearing on behalf of the Respondent.

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

Michael W. Meltz filed a complaint with the Wisconsin Employment Relations Commission on January 2, 2002, alleging that Teamsters Union Local 563, Reggie Konop, Bob Schlieve and John Kluender had committed prohibited practices within the meaning of Secs. 111.70(3)(a)(1), (a)(3), (7)(b)(2), (7)(g)(c) and 111.70(4)(b), Stats., of the Municipal Employment Relations Act (MERA). The Commission issued an order on June 9, 2003, authorizing Examiner Lauri A. Millot to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats.

Hearing on the Complaint was held on July 21, 2003, at Appleton, Wisconsin. A stenographic transcript of the proceedings was made and received. The Complainant filed his brief in two parts and then Respondent filed its brief, the last of which was received by October 11, 2003, whereupon the record was closed.

Dec. No. 30637-A

The Examiner, having considered the evidence and arguments of the Complainant and Respondent's Counsel, makes and issues the following Findings of Fact, Conclusions of Law and Order.

### FINDINGS OF FACT

1. The Complainant, Michael W. Meltz, is a person who resides at N3839 Cummings Road, Hortonville, Wisconsin. Complainant was employed by the City of Appleton, Public Works Department for 11 years until his resignation effective March 13, 2000.

2. The Respondent, Teamsters Union Local 563 (Teamster's) is the exclusive bargaining representative for, among others, certain employees of the Street, Sanitation, CEA, Traffic and Water Divisions of the Public Works for the City of Appleton. John Kluender is the President of Teamsters. Reggie Konop is the Secretary-Treasurer of Teamsters. Bob Schlieve is employed as a Business Representative for Local 563. Teamsters business address is P.O. Box 174, Appleton, Wisconsin.

3. On January 2, 2002, Complainant filed with the Wisconsin Employment Relations Commission a complaint alleging that Respondent committed prohibited practices within the meaning of Secs.:

(111.70(3)( ) ( ) [sic] conditions of my employment in maintaining 111.70(3)(a)(1), (3)(a)(3), (3)(7)(b)(1), (3)(7)(b)(2), (3)(7)(6)(c) [sic], (4)(b), Lack of help in terms & conditions of my employment, interfered with exercising my rights of lack of help, Intimidated my as to interfere or lack of helping the Complainant of my enjoyment of my legal rights. To have intimidated me or lack of to an outcome of my employment relations of my pending lose of my job. The failure to bargain with my employer (the City of Appleton) when a dispute of job resignation was at hand.

4. In the Fall of 1998, the Complainant tested positive for alcohol use following a City of Appleton testing process and was terminated by the City. Thereafter, the termination was grieved by Respondent, processed through the grievance procedure and was scheduled for an arbitration hearing until the Complainant and his privately-retained attorney entered into a Last Chance Agreement at the Unemployment Compensation hearing. Complainant and his attorney excluded Teamsters during the negotiation and execution of the Last Chance Agreement.

5. On or about February 28, 2000, a female telephoned the City of Appleton Public Works Department leaving a message that Complainant would not be reporting for work due to illness, but in fact, Complainant had been arrested for operating while under the influence and was incarcerated on a probation hold.

6. On March 6, 2000, City of Appleton Human Resource Director Sandy Niesen confronted Complainant and Local 563 Representative George Driessen regarding his failure to report for work. Niesen was aware of the operating while intoxicated arrest and informed Complainant that his actions were in violation of the Last Chance Agreement, placed him on administrative leave and indicated that the City would proceed to termination.

7. On March 17, 2000, Complainant filed a grievance with the City of Appleton alleging:

I believe that I was wrongfully discharged from my employment with the City of Appleton based on paragraph 2 of Last Chance Agreement of Dec 20, 1998. Also refer to Paragraph 3 of the City's Last Chance Agreement. I feel the City failed to comply with this also.

8. Following the filing of Complainant's grievance, on an unknown date but before March 28, 2000, Complainant, Konop, Schlieve, and Driessen, met with City of Appleton Human Resources Director Sandy Niesen. Niesen indicated that the City intended to terminate the Complainant for violating of the terms of the 1998 Last Chance Agreement. Konop and Schlieve negotiated with Niesen the option for Complainant to resign in lieu of termination effective March 13, 2000, receive health insurance benefits for three months and uncontested unemployment compensation. Complainant signed the Agreement of Resignation and Release on April 6, 2000, which memorialized the negotiated terms.

9. On March 28, 2000, Konop sent the following letter to Complainant:

. . .

RE: Grievance No. 4491, Wrongful Discharge

Dear Mr. Meltz:

The Local Union will not proceed to the next step with your grievance. Based on the investigation by the Union and a meeting on March 6, 2000 with your Steward George Driessen you admitted you violated the last change [sic] agreement. It is the Local Union's understanding that the City is offering you a resignation from the City. When this happens please contact the Union to go over this Agreement.

. . .

10. On July 21, 2001 the Complaint sent via certified mail the following letter to Konop:

. . .

Dear Sirs:

As you probably are aware the case between Michael W. Meltz v. City of Appleton ERD Case #CR200001526 still is active.

The initial case never made it to a hearing, as it was taken out the hands of the Administrative Law Judge and given to a review committee. So being the situation, I would like to ask that I may sit down in your office to discuss the ramifications of such issues.

So far many positive actions have happened and as you might be aware this case is still active regarding my employment with the City of Appleton.

May I please ask for a time and a date in which to meet with you before August 1, 2001? You can contact me at my home address above. Home phone (920)757-5219 Work (920)739-5119.

. . .

This correspondence related to a discrimination complaint the Complainant filed against the City of Appleton following his resignation. Teamster's was not a party to the complaint, was not named in the complaint and was not involved in the prosecution of the complaint of discrimination.

11. Schlieve signed the certified mail receipt on July 24, 2001, for the letter referenced in the previous finding. Teamsters did not attempt to contact the Complainant as a result of his letter.

12. Aside from the alleged breach of the duty of fair representation in July, 2001, none of the allegations included in the complaint are acts that in and of themselves constitute prohibited practices that fall within the one-year period prior to the filing of any of the complaint.

13. Respondent failed to file an Answer prior to hearing. Complainant was not prejudiced by Respondent's failure to answer said complaint prior to hearing.

**CONCLUSIONS OF LAW**

1. It is appropriate to waive pursuant to ERC 5.01 Respondent's failure to file an Answer prior to hearing because there has been no showing of prejudice to the Complainant.

2. Aside from the allegations relating to Complainant's July, 2001, letter regarding his discrimination complaint, the prohibited practices alleged in the instant complaint are time-barred by the one-year statute of limitations contained in Sec. 111.07(14), Stats., and Sec. 111.70(4)(a), Stats.

3. Because the duty of fair representation does not extend to representation of Complainant in proceedings initiated by Complainant before the Wisconsin Department of Workforce Development, Equal Rights Division or the Equal Opportunity Commission, the failure of Complainant's collective bargaining representative to respond to his letter of July, 2001, does not state a claim under Sec. 111.70(3)(b)1, Stats.

**ORDER**

IT IS ORDERED that the Complaint is dismissed.

Dated at Rhinelander, Wisconsin, this 18<sup>th</sup> day of December, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot /s/

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Lauri A. Millot, Examiner

CITY OF APPLETON

**MEMORANDUM ACCOMPANYING EXAMINER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
GRANTING RESPONDENT'S MOTION TO DISMISS**

**POSITIONS OF THE PARTIES**

**Complainant**

Complainant argues that Teamsters has failed to represent him as it relates to his termination from his 11 year position with the City of Appleton. Teamsters failed to assist Complainant in 1998 when the City attempted to terminate his employment and again in March of 2000 when he was offered a resignation in lieu of termination.

Complainant argues that on both occasions when the City was attempting to terminate him, Teamsters consistently failed to respond to his telephone calls and written correspondence. Teamsters additionally failed to keep him apprised as to the status of his 1998 grievance.

With regard to his Equal Rights Division and Equal Opportunity Commission cases, Complainant asserts that he was discriminated against by Teamsters. Complainant argues that he was treated in a manner inconsistent with the way that Teamsters treats other members.

Complainant notes that the Respondent has failed to file an Answer as directed on the Notice of Hearing in this case. As to the timeliness issue, Complainant acknowledges that there is a "date issue," but asserts that he was not properly represented and therefore filed the necessary paperwork when he did.

**Respondent**

Respondent asserts that the evidence and testimony presented at hearing fail to establish that Teamster's Local 563 breached its duty of fair representation to Complainant. Furthermore, Respondent asserts that the complaint is statutorily barred by Sec. 111.07(14) since Complainant failed to file his complaint within one year of his resignation from employment with the City of Appleton or within one year of Teamsters letter of March 28, 2000 denial of his grievance.

The Complainant's allegations regarding his two terminations are time barred. Complainant had affirmative knowledge that Teamsters would not be proceeding with his grievance to arbitration in March, 2000. Furthermore, based on his voluntary resignation, he had a reasonable basis to know that there would be no arbitration of his termination.

Complainant's assertions that Teamsters failed to represent him between November, 2000, and July, 2001, relate to an individual employment action with which Teamsters did not have knowledge or involvement. There is no basis to find a continuing violation of the duty of fair representation based on Teamsters lack of involvement in Complainant's personal civil litigation.

Teamsters and its representatives conduct in connection with the Complainant's grievance was not arbitrary, discriminatory or in bad faith and thus Complainant's complaint must be dismissed. Complainant has failed to sustain his burden of proving by a preponderance of the evidence that Teamsters conduct constituted a breach of representation. Teamsters properly processed Complainant's grievance in 2000. Teamsters conducted an unbiased and good faith investigation of the facts surrounding Complainant's pending discipline. As a result of the facts it obtained, it concluded that it would not process the Complainant's grievance which is entirely within its rights citing *GRAY V. MARINETTE COUNTY, ET. AL.* 200 WIS.2D 426 (WIS. CT. APP. 1996). Teamsters continued to represent Complainant and negotiated the best severance package it felt that it could under the circumstances. Teamsters action was neither unreasonable, arbitrary nor in bad faith.

### **DISCUSSION**

This is a case where a former bargaining unit member alleges that he has, for an extended period of time and in more than one forum, been forced to fight to retain his job by himself, without representation and has been discriminated against by his labor organization as it relates to his representation. The labor organization, Teamsters, defends its actions asserting that it has represented the member in an entirely appropriate manner and furthermore, asserts that the Wisconsin Employment Relations Commission is without jurisdiction to address the Complainant's allegations since they exceed the one-year statute of limitations period.

#### **Timeliness**

Section 111.07(14), Stats. provides that:

The right of any person to proceed under this section shall not exceed beyond one year from the date of the specific act or unfair labor practice alleged.

This section is strictly construed by the Commission. In *CITY OF MADISON, DEC. NO. 15725-B (WERC, 6/79)*, *AFF'D, DEC. NO., 79-CV-3327 (CIR.CT. DANE, 6/80)*, the Commission held that a complaint filed 366 days after the act complained of was not timely. The one-year statute of limitation begins to run when "the complainant has knowledge of the act alleged to violate the Statute." *STATE OF WISCONSIN, DEC. NO. 26676-B at 8 (WERC, 4/91)* or in circumstances when the complaint did not learn of the event during the limitations

period, the date upon which the complainant "knew or reasonably should have known," *PREMONTRE HIGH SCHOOL, ET. AL.*, DEC. NO. 27550-B (WERC, 8/93) at 7. When addressing events that fall outside the statutory period, the Commission has adopted the principles enunciated by the United States Supreme Court in *LOCAL LODGE NO. 1424 V. NATIONAL LABOR RELATIONS BOARD (BRYAN MFG. CO.)*, 362 US 411 (1960) at 418. *MILWAUKEE AREA TECHNICAL COLLEGE, ET AL.*, DEC. NO. 28562-B, (CROWLEY, 12/95). The Court articulated that there are two situations wherein further consideration is warranted. Those situations include:

. . .

The first is one where occurrences within the . . . limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose (the statute of limitations) ordinarily does not bar such evidentiary use of anterior events. The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice. There the use of the earlier unfair labor practice is not merely "evidentiary," since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice.

And as further explained by Examiner McLaughlin in *MORAINÉ PARK TECHNICAL COLLEGE*, DEC. NO. 25747-C (MCLAUGHLIN, 8/89):

The *BRYAN* analysis, read in light of the provisions of Secs. 111.70(4)(a) and 111.07(14), Stats., requires two determinations. The first is to isolate the "specific act alleged" to constitute the prohibited practice. The second is to determine whether that act "in and of (itself) may constitute, as a substantive matter" a prohibited practice.

Complainant's resignation agreement was executed on April 6, 2000. As of that date, he knew that Teamsters had negotiated for him the option to resign in lieu of termination, with health insurance benefits and uncontested unemployment compensation. He further knew or should have known on that date of any and all telephone calls, letters, and/or attempts that he made to speak personally with Konop, Schlieve, and Kluender regarding the Resignation Agreement and how they responded to him. Moreover, Complainant acknowledges that his resignation occurred outside of the one-year statute of limitation. Apart from the July 21, 2001 letter, all allegations contained in the complaint occurred outside the one-year statute of limitations period applicable in this case and therefore all are time barred.



The only event alleged in the complaint that occurred during the one-year statute of limitations period is the July, 2001 letter requesting assistance from Teamsters in Complainant's Equal Rights Division discrimination case against the City of Appleton. Teamsters duty of fair representation does not extend to representation of Complainant in proceedings initiated by Complainant in Equal Rights Division and/or Equal Opportunity Commission cases. EAU CLAIRE AREA SCHOOL DISTRICT, DEC. NO. 29691-D (WERC, 4/00) pg. 7. See also BLACKHAWK TECHNICAL COLLEGE, DEC. NOS. 28448-C and 28449-C (WERC, 12/97). This is so because "the duty of fair representation flows from a union's authority to act as an employee's exclusive collective bargaining representative" and that does not extend to independently filed Equal Rights claims. ID. Thus, the failure of Complainant's collective bargaining representative to respond to his July, 2001 letter does not state a claim under Sec. 111.70(3)(b)1, Stats. ID.

Complainant's argument that Respondent failed to file a timely answer to this complaint needs be to addressed. ERC 12.03(6) does states that a Respondent "shall" file an answer and the Notice of Hearing did require such answer, however, ERC 5.01 provides that the rule may be waived provided a party is not prejudiced thereby. The Respondent stated its arguments at the commencement of the hearing and Complainant was aware of the Respondent's position. Respondent's argument that the complaint should be dismissed for lack of timeliness was raised for the first time at hearing and Complainant had sufficient opportunity at hearing and in his written briefs to respond to that issue. There has been no demonstration of prejudice to the Complainant as a result of the Respondent's failure to file an answer. This Examiner finds its permissible and appropriate to waive the requirements of ERC 12.03(6) to better effectuate the purposes of MERA.

In summary, the majority of the complaint challenges Complainant's resignation from the City of Appleton and Teamsters representation of Complainant as it relates to that resignation. In as much as the resignation did not occur within the one-year statute of limitation, the Commission does not have jurisdiction to address Teamsters' conduct. With regard to the Complainant's discrimination complaints, the Commission similarly lacks jurisdiction, and accordingly, the complaint must be dismissed. Having found that the Commission lacks jurisdiction, the merits of the complaint cannot be addressed.

Dated at Rhinelander, Wisconsin, this 18<sup>th</sup> day of December, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lauri A. Millot /s/

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Lauri A. Millot, Examiner

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