

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE LABOR ASSOCIATION OF WISCONSIN, INC.
For and on behalf of the
LINCOLN COUNTY SOCIAL SERVICES WORKERS'
ASSOCIATION, LOCAL NO. 601, Complainants,

vs.

LINCOLN COUNTY, Respondent

Case 232
No. 64089
MP-4099

Decision No. 31159-B

EXAMINER'S ORDER DISMISSING PORTIONS OF THE COMPLAINT

On October 19, 2004, the above Complainant filed a complaint alleging that the above Respondent committed prohibited practices within the meaning of the Municipal Employment Relations Act. On February 22, 2005, the Commission issued an order substituting the undersigned to act as Examiner in the matter as provided in Sec. 111.70(4)(a) and 111.07, Stats.

On March 11, 2005, the Respondent submitted an e-mail copy of its Answer to the Complaint, and a paper copy of the Answer received by the Examiner and filed on March 14, 2005. In its Answer, Respondent requested, among other things, that various paragraphs of the Complaint be stricken from the Complaint and dismissed as time-barred either because they are time-barred on their face or because they are indefinite as to the time of the acts alleged.

On March 14, 2005, the Examiner conducted a pre-hearing conference during which the Examiner advised the parties: that Complaint paragraphs 13 and 30 were irrelevant to any prohibited practice alleged in the Complaint and therefore stricken from the Complaint on that basis; that, at Complainant's request, Complaint paragraphs 31-36 were deemed withdrawn from the Complaint; and that the Examiner would, at the outset of the then-scheduled hearing, allow the Complainant to amend the time-indefinite allegations and would then dismiss any of the Complaint allegations that are not timely filed within the Sec. 111.07(14), Stats., one year limitation period.

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On May 18, 2005, the Examiner conducted an additional pre-hearing conference during which the scheduled hearing was postponed indefinitely. During that conference, the Examiner advised the parties that the Complainant would be allowed an opportunity to amend the time-indefinite allegations to make them time-specific, and that the Examiner would then formally dismiss the Complaint as to those portions that were not timely filed. In a summary of the May 18, 2005, conference, the Examiner identified which Complaint paragraphs appeared to the Examiner to be time-barred or and which appeared to be time-indefinite.

By e-mail message on June 23, 2005, the Complainant requested leave to amend the complaint in the following respects: withdrawal of paragraphs 11-36, 42,43,45,46,52,53, 56-58, 63, 65, 66, 120, 121, 129-133, 137, 139 and 141; and amendments, including time specifications, regarding paragraphs 41, 44, 47, 48, 49, 50, 51, 54, 62, 64, 67, 68, 69, 70, 71, and 122.

The Examiner has reviewed the Complainant's June 23, 2005, request to amend the Complaint in the context of other related pleadings and file correspondence, and on that basis makes and issues the following

ORDER

1. The Complainant's June 23, 2005, request to amend the Complaint is granted.
2. Unless otherwise ordered by the Examiner or Commission in the future, the Respondent shall be permitted to amend its answer to respond to the Complainant's June 23, 2005, complaint amendments at any time prior to 21 calendar days before the next scheduled hearing date in this matter, when established.
2. Complaint paragraphs 11-36, 42, 43, 45, 46, 52, 53, 56-58, 63, 65, 66, 120, 121, 129-133, 137, 139 and 141 are stricken from the complaint and dismissed on the basis of their having been withdrawn by Complainant.
3. Complaint paragraphs 13 and 30 are also stricken from the complaint and dismissed on the basis that those paragraphs were previously stricken from the Complaint by the Examiner as irrelevant to any prohibited practice alleged in the Complaint.
4. The following Complaint paragraphs, as amended, are time-barred because they were not timely filed within the one year limitation period set forth in Sec. 111.07 (14), Stats.: paragraphs 41, 44, 47-51, 54-55, 59-62, 64, 67, 68 (to the extent that it relates to portions of the fall of 2004 prior to 10-20-04), 70 and 71.
5. The Complaint, as amended, is dismissed to the extent that it alleges that the Respondent committed prohibited practices by the acts set forth in the Complaint paragraphs listed in 4., above.

6. The parties will be allowed to present evidence in this case about time-barred acts where relevant to the lawfulness or unlawfulness of alleged acts that are not time-barred. SEE, MORAINÉ PARK TECHNICAL COLLEGE, DEC. NO. 25747-C (MCLAUGHLIN, 9/89), AFF'D, DEC. NO. 25747-D (WERC, 1/90), CITING, LOCAL LODGE NO. 1424 V. NATIONAL LABOR RELATIONS BOARD (BRYAN MFG. CO.), 362 U.S. 411 (1960).

Dated at Shorewood, Wisconsin, this 13th day of July, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Marshall L. Gratz /s/

Marshall L. Gratz, Examiner

