

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**VIROQUA EDUCATIONAL SUPPORT  
PERSONNEL ASSOCIATION, Complainant,**

vs.

**VIROQUA SCHOOL DISTRICT, Respondent.**

Case 19  
No. 63906  
MP-4083

**Decision No. 31201-B**

---

Appearances:

**James G. Birnbaum and Kathryn D. Schmidt**, Davis, Birnbaum, Marcou, Seymour & Colgan, LLP, 300 Second Street North, Suite 300, LaCrosse, Wisconsin 54602-1297, on behalf of the Complainant.

**Troy D. Thompson**, Axley Brynerson, LLP, Manchester Place, Suite 200, 2 East Mifflin Street, Madison, WI 53703, on behalf of the Respondent.

**ORDER DENYING MOTION IN LIMINE**

Viroqua Educational Support Personnel Association (Complainant) filed a complaint with the Wisconsin Employment Relations Commission on August 12, 2004, alleging that the Viroqua School District (Respondent) had committed prohibited practices by violating a collective bargaining agreement in violation of Sec. 111.70(3)(a)5, Stats. On January 5, 2005, the Commission assigned Coleen A. Burns, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter of the prohibited practice complaint filed by the Complainant. On February 18, 2005 Respondent filed a Motion in Limine. On February 23, 2005, Complainant filed its Memorandum in Opposition to the Respondent's Motion in Limine. On February 25, 2005, Respondent filed its response. The Examiner, having considered the record to date and the arguments of the parties, makes and issues the following

**ORDER**

The pre-hearing Motion in Limine is denied.

Dated at Madison, Wisconsin, this 1<sup>st</sup> day of March, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

**VIROQUA SCHOOL DISTRICT**

**MEMORANDUM ACCOMPANYING ORDER**  
**DENYING MOTION IN LIMINE**

The essence of the complaint is that Respondent terminated Ole James Lee without just cause in violation of the parties' collective bargaining agreement and that the Commission has jurisdiction to determine whether or not there has been a violation of the collective bargaining agreement because the relevant agreement does not provide for final and binding grievance arbitration. Respondent's Motion in Limine seeks to preclude any testimony or other evidence regarding alleged acts of employment discrimination on the basis of alleged disability and/or alleged failure to accommodate by the Respondent or its agents.

As Respondent argues, and Complainant acknowledges, the Commission does not have independent jurisdiction to hear and decide allegations that the Respondent has violated the Wisconsin Fair Employment Act. Complainant also acknowledges that the Commission does not have independent jurisdiction to hear and decide allegations that Respondent has violated either the Americans With Disabilities Act or the Age Discrimination in Employment Act. Whether or not a collective bargaining agreement incorporates any of these statutes by reference, or otherwise provides a Commission Examiner with authority to decide such allegations as a violation of the collective bargaining agreement is, of course, a matter of fact to be established at hearing.

Complainant asserts that evidence of discriminatory treatment and failure to reasonably accommodate a disability is relevant to Complainant's allegation that Ole James Lee's discharge was without just cause. There may be evidence of discrimination on the basis of disability and/or alleged failure to accommodate by the Respondent or its agents that is relevant to the issue of whether or not Respondent has just cause to discharge. For example, a factor which may be considered under the just cause standard is whether or not the disciplined employee has been the recipient of disparate treatment.

Respondent's Motion in Limine has been denied on the basis that it is overbroad. Respondent may, of course, raise relevancy objections to specific evidence as it is tendered at hearing.

Dated at Madison, Wisconsin, this 1<sup>st</sup> day of March, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

