

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**VENITA HAMMOND**, Complainant,

vs.

**STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS,  
ETHAN ALLEN SCHOOL**, Respondent.

Case 669  
No. 64649  
PP(S)-353

**Decision No. 31384-A**

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**Appearances:**

**Venita Hammond**, 1838 North Oakland Avenue #1, Milwaukee, WI 53202, appearing on behalf of herself.

**David Vergeront**, Chief Legal Counsel, Office of State Employment Relations, appearing on behalf of the Respondent.

**ORDER DENYING MOTION  
TO DEFER TO ARBITRATION**

Venita Hammond, herein referred as the Complainant or Hammond, filed a complaint on March 30, 2005, with the Wisconsin Employment Relations Commission alleging that the State of Wisconsin, Department of Corrections, Ethan Allen School, herein referred to as the Respondent, had committed unfair labor practices within the meaning of Secs. 111.84, Wis. Stats., by various conduct affecting her. On June 28, 2005, the Commission appointed Karen J. Mawhinney to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Stats. On June 22, 2005, the Respondent filed a Motion to Defer to Arbitration. The Examiner has considered the arguments of the parties and concludes that the Motion to Defer to Arbitration is denied.

NOW, THEREFORE, it is

Dec. No. 31384-A

**ORDERED**

That the Motion to Defer to Arbitration is denied.

Dated at Elkhorn, Wisconsin, this 9<sup>th</sup> day of August, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Karen J. Mawhinney /s/

Karen J. Mawhinney, Examiner

DEPARTMENT OF CORRECTIONS

**MEMORANDUM ACCOMPANYING ORDER**  
**DENYING MOTION TO DEFER TO ARBITRATION**

The Respondent argues that the three elements necessary to defer an unfair labor practice claim to arbitration exist in this case. The parties are willing to arbitrate and have not raised any technical objections. The collective bargaining agreement provides for just cause protection for all discipline, and the dispute does not involve an important issue of law. Also, the WERC has held that it will not assert its statutory jurisdiction over breach of contract claims because of the presumed exclusivity of the complaint procedure and a desire to honor the parties' agreement, and none of the exceptions apply here. The Complainant alleges that the State breached the contract because it disciplined her without just cause. This is a mirror image of subjects to be resolved in arbitration, according to the Respondent. The fact that the arbitration was in recess or adjournment is due to the Complainant herself, who accused the arbitrator of bias so he withdrew and who named the State's advocate as a witness after the proceeding commenced. The Complainant did not make any arguments regarding the merits of this Motion.

The Commission's criteria for deferral to arbitration are:

- (1) The parties must be willing to arbitrate and renounce technical objections which would prevent a decision on the merits by the arbitrator;
- (2) The collective bargaining agreement must clearly address itself to the dispute; and
- (3) The dispute must not involve important issues of law or policy. SCHOOL DISTRICT OF CADOTT COMMUNITY, DEC. NO. 27775-C (WERC, 6/94).

The complaint contends in paragraph 13 that the discharge of the Complainant was motivated, at least in part, by retaliation and anti-union animus for the Complainant's lawful concerted activities on behalf of herself and other employees. While an arbitration decision should resolve the matter of just cause for discipline, it could not address allegations of discrimination for union activity and interference with the right to engage in concerted activity. Those claims are rooted in the statute and not in the contract, and they are important issues of law. Thus, deferral to arbitration is inappropriate.

The complaint may be heard and a hearing will be scheduled in the near future.

Dated at Elkhorn, Wisconsin, this 9<sup>th</sup> day of August, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Karen J. Mawhinney /s/

Karen J. Mawhinney, Examiner