

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**EUGENE NICHOLS**, Complainant,

vs.

**STATE OF WISCONSIN (UNIVERSITY OF WISCONSIN-MADISON)**, Respondent.

Case 535  
No. 62217  
PP(S)-333

**Decision No. 31385-B**

---

**Appearances:**

**David J. Vergeront**, Chief Legal Counsel, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855

**Eugene Nichols**, appearing pro se, assisted at hearing by **Kathy Berigan**.

**ORDER ON REVIEW OF EXAMINER'S DECISION**<sup>1</sup>

On August 23, 2006, Examiner Daniel Nielsen issued Findings of Fact, Conclusions of Law and Order Dismissing Complaint in the above matter wherein he concluded that Nichols' termination by Respondent State of Wisconsin (University of Wisconsin-Madison) did not violate any applicable collective bargaining agreement and was not motivated by any effort by Nichols to claim rights or benefits under a collective bargaining agreement or the Family Medical Leave Act. The Examiner further concluded that a decision of the U.S. District Court for the Western District of Wisconsin dismissing Nichols' claim of violations of the Family Medical Leave Act precluded any consideration of alleged violations of said Act, and that, in any event, the Wisconsin Employment Relations Commission does not have jurisdiction over alleged violations of said Act.

Nichols timely filed a petition seeking Commission review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.84(4), Stats. The parties thereafter filed written argument in support of and in opposition to the petition. The record was closed on November 6, 2006, when the time period for Nichols' to file a reply brief expired.

---

<sup>1</sup> Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

Having reviewed the record, we conclude that the Examiner's thoughtful and comprehensive decision should be affirmed. The thrust of Nichols' argument on review is that the justification presented by the State for his termination was pretextual and thus that the Examiner erred when he concluded otherwise. We have carefully reviewed the evidence presented during the four days of hearing and conclude that the Examiner's determination as to the reasons for Nichols' termination is correct.

NOW, THEREFORE, it is

**ORDERED**

The Examiner's Findings of Fact, Conclusions of Law and Order Dismissing Complaint is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 21<sup>st</sup> day of December, 2006.

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