

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEFANIE RODEN, Complainant,

vs.

AFSCME COUNCIL 24 and UNIVERSITY OF WISCONSIN-MADISON, Respondents.

Case 461
No. 56623
PP(S)-293

Decision No. 31965-B

Appearances:

Stefanie Roden, P.O. Box 693, Daleville, Virginia 24083, appearing on her own behalf.

Kurt C. Kobelt, Lawton & Cates, S.C. P.O. Box 2965, Madison, Wisconsin, 53701-2965, appearing on behalf of AFSCME Council 24.

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, appearing on behalf of the State of Wisconsin.

ORDER

On July 7, 1998, Stefanie Roden filed a complaint with the Wisconsin Employment Relations Commission alleging that the State of Wisconsin had committed an unfair labor practice within the meaning of the State Employment Labor Relations Act (SELRA) by terminating her employment on March 29, 1996. She also alleged in that complaint that AFSCME Council 24 had committed an unfair labor practice within the meaning of SELRA by refusing (in a letter dated July 7, 1997) to pursue her termination grievance to grievance arbitration. By letter dated November 18, 1998, Commission Examiner David Shaw advised the parties that the complaint would be held in “abeyance pending word from Ms. Roden that she is ready to proceed.”

In December 2000 and January 2001, Roden initiated email correspondence with Examiner Shaw and representatives of the State and AFSCME seeking access to documents and a schedule of opportunities for her to observe a complaint hearing before her hearing was scheduled. The last such contact was January 22, 2001.

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On April 4, 2006, the Commission sent a letter to Ms. Roden at her last known address advising her that the complaint would be dismissed unless she requested that it be reactivated within six months of April 6, 2006. That letter was returned undelivered with a notice from the post office stating "NOT DELIVERABLE AS ADDRESSED-UNABLE TO FORWARD. No request to reactivate was received. On December 5, 2006, the Commission emailed a copy of the April 4, 2006 letter to Roden's last known email address. On December 19, 2006, the Commission issued an Order of Dismissal which was mailed to Roden's last known address.

On December 23, 2006, Roden advised the Commission by email that she objected to the dismissal of her complaint and wished to proceed to hearing. Following receipt of argument from all parties, the Commission issued an Order on January 8, 2007 which set aside the December 19, 2006 Order of Dismissal for the limited purpose of allowing and considering further argument as to whether Roden should be allowed to proceed or whether, as argued by the State and AFSCME, the complaint should be dismissed due to lack of prosecution/laches. The last such argument was received on January 21, 2007.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

The complaint is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of July, 2007.

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

AFSCME COUNCIL 24 and UNIVERSITY OF WISCONSIN-MADISON

MEMORANDUM ACCOMPANYING ORDER

Respondents State and AFSCME urge us to reaffirm our prior dismissal of the Roden complaint citing Roden's delay in prosecuting the matter and the resultant prejudice to them in terms of witness recollection. Roden contends that she should be allowed to proceed because: (1) by the terms of Examiner Shaw's November 1998 letter, she was entitled to have the matter held in abeyance until she was ready to proceed; (2) the Commission's April 2006 letter conveyed an intention to allow Roden six months to prepare and proceed to hearing; (3) doctrines of laches/failure to prosecute are affirmative defenses which Respondents never raised while the matter was pending before the Commission; and (4) Roden can establish good cause for her inability to proceed between November 1998 and December 2006. We conclude that dismissal of the complaint is appropriate.

The November 1998 letter from Examiner Shaw stated that the complaint would be held in " . . . abeyance pending word from Ms. Roden that she is ready to proceed. " We reject Roden's view that this letter provided her with an unlimited period of time to prepare and insulated her complaint from dismissal for failure to prosecute. Such a reading of the letter is unreasonable and thus unpersuasive. We further conclude that the eight year period between the issuance of the Examiner's letter and Roden's request to proceed falls far outside the reasonable time frame for preparation contemplated by the letter. Therefore, we conclude that the Examiner's November 1998 letter does not provide a basis for allowing Roden to proceed to hearing at this point in time.

The Commission's April 2006 letter to Roden gave her six months to request that her case proceed. Had she made such a request (as she ultimately did), Respondents would then have been entitled to raise arguments as to why she should not be allowed to proceed (as they ultimately did). Thus, contrary to Roden's view, the April 2006 letter did not give her an unfettered right to proceed, but rather the right to ask that the matter proceed to hearing. The Respondents retained their right to argue that proceeding to hearing would be inappropriate. Therefore, we conclude that the April 2006 letter does not provide a basis in and of itself for allowing Roden to proceed to hearing.

Roden next cites the fact that Respondents did not raise the issue of delay until she asked to proceed and argues that Respondents thereby waived that defense. We reject this argument as well. Respondents had no obligation to raise the issue of delay until Roden asked to proceed. Indeed, given the passage of years, Respondents had no reasonable basis for believing that Roden wanted to proceed and thus had no reasonable basis for affirmatively asking that the matter be dismissed. Therefore, we conclude that the Respondents' silence until Roden asked to proceed does not preclude us from considering Respondents' objections to allowing Roden to now pursue her complaint.

Lastly, Roden contends that she had good cause for her inability to proceed to hearing between November 1998 and the present. In this regard, Roden generally cites the difficulty of assembling relevant documents and witnesses and a specific period between May 2000 and December 2000 when she was involved in stressful stalker litigation. While these circumstances would establish good cause for an inability to proceed for some period of time, that period is far shorter than the almost six years that passed between Roden's last contact with the Commission in January 2001 and her request to proceed in December 2006. Thus, we conclude that Roden does not have good cause for her failure to proceed.

In summary, for the reasons set forth above, we conclude that Roden's complaint should be dismissed for lack of prosecution. There is no good cause for her delay in proceeding and Respondents have been prejudiced by said delay. Thus, dismissal is warranted.

Dated at Madison, Wisconsin, this 19th day of July, 2007.

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

