

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**ANNE JUDGE**, Complainant,

vs.

**UNIVERSITY OF WISCONSIN SYSTEM (EXTENSION)**

and

**SUE BUCK**, Respondent.

Case 33  
No. 67218  
PP(S)-386

**Decision No. 32354-B**

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**Appearances:**

**Anne Judge**, 9523 Mizia Road, Amherst Junction, Wisconsin 54407, appearing on her own behalf.

**David J. Vergeront**, Chief Legal Counsel, Office of State Employment Relations, 101 East Wilson Street, Fourth Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the State of Wisconsin and Sue Buck.

**ORDER ON REVIEW OF EXAMINER'S DECISION**

On June 18, 2008, Wisconsin Employment Relations Commission Examiner Lauri Millot issued an Order Granting Respondent's Motion to Dismiss Complaint based on the Examiner's determination that Complainant Anne Judge did not have any rights under the State Employment Labor Relations Act (SELRA) because she was not an "employee" as defined in Sec. 111.81 (7) of SELRA.

On July 7, 2008, Judge filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's Order pursuant to Secs. 111.84 (4) and 111.07 (5), Stats. The parties thereafter filed written argument in support of and in opposition to the petition-the last of which was received September 8, 2008.

No. 32354-B

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

The Examiner's Order Granting Respondent's Motion to Dismiss Complaint is affirmed in part and reversed in part.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of October, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**UNIVERSITY OF WISCONSIN SYSTEM (EXTENSION) and SUE BUCK**

**MEMORANDUM ACCOMPANYING ORDER**  
**ON REVIEW OF EXAMINER'S DECISION**

The Examiner dismissed Judge's complaint without conducting a hearing because she concluded there was no interpretation of the facts alleged therein (or Judge's subsequent clarifications thereof) that could violate rights created by the State Employment Labor Relations Act (SELRA). We agree in part and disagree in part.

We agree with the Examiner that to the extent Judge asserts the State violated her SELRA rights by actions taken while she admits she was employed as academic staff (prior to July 16, 2007), no SELRA violation can be found because Judge was not then an "employee" within the meaning of SELRA and thus had no SELRA rights.<sup>1</sup> Thus, for instance, the allegations that the State retaliated against her for filing grievances and a whistleblower complaint while she was employed as academic staff were properly dismissed.

However, Judge also alleges that effective July 16, 2007, as a result of the State's changing her job duties, she no longer functioned as academic staff and instead began to fill what had become (at least constructively) a position within the classified service of the State. If Judge is correct in her allegation, she became an "employee" within the meaning of SELRA on July 16, 2007 and acquired its protections on that same date. Judge further alleges that as of July 16, 2007 she was barred from having any contact with co-workers. Section 111.82 of SELRA gives SELRA "employees" the right to "engage in lawful, concerted activities for the purposes of collective bargaining or other mutual aid or protection." Prohibiting a SELRA employee from contacting co-workers (at least if those co-workers were also SELRA employees) would prohibit an employee from engaging in "mutual aid or protection" within

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<sup>1</sup> Section 111.81(7), Stats. defines an "employee" in pertinent part as:

Any state employee in the classified service of the state, as defined in s. 230.08, except . . .

Section 230.08 (2), Stats. states in pertinent part:

(2) UNCLASSIFIED SERVICE. The unclassified service comprises positions held by:

. . .

(d) all faculty and academic staff, as defined in s. 36.05 (1) and (8), in the University of Wisconsin System.

Section 36.05 (1), Stats. provides:

(1) "Academic staff" means professional and administrative personnel with duties, and subject to types of appointments, that are primarily associated with higher education institutions or their administration . . .

the meaning of Sec. 111.82 of SELRA and thereby violate Sec. 111.84 (1)(a), Stats. To this extent, the Examiner erred by dismissing the complaint in its entirety.

We emphasize that our decision is based on the same legal standard applied by the Examiner:

Because of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief.

By our decision here, we have only concluded that Judge is entitled to a hearing on a portion of the complaint because it is possible to interpret her pleadings to allege a violation of SELRA. It now becomes Judge's burden to prove that she became a classified employee on or after July 16, 2007 and, if she is successful in so doing, that the State took actions against her that violated her rights under SELRA. The matter is now remanded to the Examiner for further proceedings consistent with this Order.

Dated at Madison, Wisconsin, this 6th day of October, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/  
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Judith Neumann, Chair

Paul Gordon /s/  
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Paul Gordon, Commissioner

Susan J. M. Bauman /s/  
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Susan J. M. Bauman, Commissioner

