

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LISA GRIBBLE, Complainant,

vs.

**FLORENCE COUNTY, WISCONSIN and
LABOR ASSOCIATION OF WISCONSIN, INC.**, Respondents.

Case 55
No. 66969
MP-4344

Decision No. 32435-A

Appearances:

Nicholas Fairweather, Attorney at Law, Hawks Quindel, S.C., 222 West Washington Avenue, Suite 450, P.O. Box 2155, Madison, Wisconsin 53701-2155, appearing on behalf of the Complainant.

Jonathan Swain, Attorney at Law, Lindner & Marsack, S.C., 411 East Wisconsin Avenue, Suite 1800, Milwaukee, Wisconsin 53202, appearing on behalf of Respondent Florence County.

Benjamin Barth, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53022, appearing on behalf of Respondent Labor Association of Wisconsin, Inc.

ORDER DENYING MOTION TO AMEND COMPLAINT

On May 11, 2007, Lisa Gribble filed a prohibited practice complaint with the Wisconsin Employment Relations Commission against Florence County and the Labor Association of Wisconsin (LAW). The complaint, which was drafted by counsel, alleged the following: 1) that in November, 2006, the County disciplined Gribble without just cause and that a grievance challenging that discipline was filed by the Association; 2) that in January, 2007, Gribble's supervisor (the County Treasurer) removed Gribble's Deputy Treasurer duties and reduced her work hours, whereupon Gribble filed a grievance challenging that action; and 3) that both Respondents had refused to arbitrate "this" grievance. The complaint contended that these actions, in turn, violated Secs. 111.70(3)(a)3 and (3)(a)5, Stats. After the complaint

was filed, it was held in abeyance for almost a year pending efforts to resolve the dispute. Those efforts were unsuccessful. On May 27, 2008, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided for in Secs. 111.07(5) and 111.70(4)(a), Stats. On August 13, 2008, the County filed an Answer denying the allegations made against it. The hearing convened on August 26, 2008 in Florence, Wisconsin, but no testimony was taken that day because the parties engaged in settlement discussions. Those efforts were ultimately unsuccessful. Hearing was subsequently scheduled and postponed twice. It was postponed the second time at the Complainant's request after the Complainant asked that a mediation session be held. On January 5, 2009, the Complainant filed an amended complaint as well as a motion to amend complaint. The amended complaint was identical to the original complaint in all respects except that it raised one new claim. The new claim, which was listed in paragraph 12, was that "By engaging in the conduct described above, L.A.W. has breached its duty of fair representation to Gribble." Thus, the amended complaint raised a duty of fair representation claim against the Association. This claim (i.e. the duty of fair representation claim) was not pled in the original complaint. After raising that claim in paragraph 12 of the amended complaint, the Complainant then went on to repeat the allegation contained in the original complaint that these actions, in turn, violated Secs. 111.70(3)(a)(3) and (3)(a)5, Stats. No other statutory violation was alleged. After the amended complaint was filed, the Examiner advised the parties that he was deferring a ruling on the Complainant's motion to amend complaint until after the complaint mediation session had occurred. The complaint mediation session just referenced was held in Green Bay, Wisconsin on April 23, 2009. On June 30, 2009, the Complainant notified the Examiner that the parties had not been able to resolve their dispute, and asked that the case be set for hearing. The Examiner responded that before the hearing could be rescheduled, a ruling needed to be made on the Complainant's pending motion to amend complaint. He then set a timetable for the Respondents to file their response. On September 11, 2009, the Association filed its Answer and Affirmative Defenses. Therein, it alleged that the amended complaint was untimely filed. On September 14, 2009, the County filed its response wherein it averred that it had no objection to the amended complaint. Having considered the matter, the Examiner concludes that the amended complaint was untimely filed. Accordingly, I issue the following

ORDER

The Complainant's motion to amend complaint is denied.

Dated at Madison, Wisconsin, this 11th day of November, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner

FLORENCE COUNTY, WISCONSIN and
LABOR ASSOCIATION OF WISCONSIN, INC.

MEMORANDUM ACCOMPANYING ORDER
DENYING MOTION TO AMEND COMPLAINT

BACKGROUND

The following background is relevant to the Examiner's ruling.

In January, 2007, Gribble filed a grievance challenging her removal as Deputy Treasurer. In a letter dated February 27, 2007, the Association indicated, in response to that grievance, that it did not support the grievance and articulated three reasons for its position that no contract violation had occurred as a result of that action. By letter dated March 6, 2007, the County responded to Gribble's grievance. That letter stated in pertinent part:

Please be advised that after deliberation with respect to the grievance presentations of March 1, 2007, the Personnel Committee authorized me to advise that it decided to deny the grievance on the basis that no contractual provision appears to have been violated in the actions taken to date. It would appear the elected official exercised statutory authority as to the deputy treasurer position, and the other part-time position has remained status quo. Enclosed is a copy of a letter setting forth the position of the bargaining unit representative, Tom Bauer of LAW, with respect to this matter. Inasmuch as the Association, which is party to this contract, does not contend a collective bargaining violation exists, the Committee finds no issue which would require Committee action.

It is in that context that on May 11, 2007, the Complainant filed her (original) complaint against both the County and the Association. That complaint raised a Sec. 111.70(3)(a)3 discrimination claim against the County and a Sec. 111.70(3)(a)5 breach of contract/refusal to arbitrate claim against both the County and the Association. No other claims were pled. (Note: As it relates to this ruling, that complaint did not make a duty of fair representation claim against the Association, nor can such a claim be assumed or inferred from its contents).

On January 5, 2009, the Complainant filed an amended complaint. Therein, it raised a duty of fair representation claim against the Association.

DISCUSSION

At issue herein is whether the amended complaint, and specifically the duty of fair representation claim contained herein, was timely filed.

Prohibited practice proceedings under MERA are governed by the procedural provisions of Sec. 111.07, WEPA. Section 111.07(14) establishes a statute of limitations for the bringing of an action. It provides thus:

(14) The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

This provision creates a one-year statute of limitations for filing prohibited practice complaints. In order for a complaint to be timely, the complainant must allege that a prohibited practice occurred within the one-year period preceding the filing of the complaint. However, if the alleged prohibited practice occurred more than one year prior to the filing of the complaint, then the charge is outside the statute of limitations and the charge is untimely.

There is no question that the original complaint was timely filed. Here's why. That complaint, which was filed on May 11, 2007, challenged certain County and Association actions which occurred between November 6, 2006 and early 2007. Since these dates occurred within the one year period preceding the filing of the complaint (i.e. May 11, 2007), the original complaint was not time-barred. Said another way, it was timely filed.

The focus now turns to whether the amended complaint was timely filed. The amended complaint, which was filed January 5, 2009, did not raise any new factual allegations. Instead, it repeated verbatim the same set of factual allegations which were contained in the original complaint. As previously noted, the amended complaint – like the original complaint – referenced actions/conduct that occurred in late 2006 and early 2007. The amended complaint then alleged that the Association had breached its duty of fair representation to the Complainant. While the amended complaint did not specify what act or omission formed the basis for the duty of fair representation claim, it can be surmised that the Association's act or omission that formed the basis for the duty of fair representation claim is that the Association refused to take the Complainant's grievance(s) to arbitration. As was shown in the **BACKGROUND** section, the County sent a copy of the Association's February 27, 2007 letter to the Complainant on March 6, 2007. This letter gave her notice that the Association did not support moving her grievance to arbitration because it felt there had been no violation of the collective bargaining agreement. That was one of the reasons the Complainant filed her complaint against the County and the Association in May, 2007. When the Complainant filed her (original) complaint on May 11, 2007, she could have raised a duty of fair representation claim against the Association. However, she did not do so. Instead, she waited about a year and a half and then raised it in her amended complaint. The problem with that is that the conduct being complained about (i.e. the Association's failure to take her grievance(s) to

arbitration) occurred about two years before the amended complaint was filed. Said another way, the amended complaint was filed about two years after the conduct complained of occurred. Since the alleged prohibited practice referenced in the amended complaint (i.e. the alleged breach of the duty of fair representation) occurred more than one year prior to the filing of the amended complaint, that charge is outside the statute of limitations and therefore is untimely.

While Section 111.07(2)(a) provides that complaints “may be amended in the discretion of the Commission at any time prior to the issuance of a final order based thereon”, the discretion to allow amendments does not extend to writing the statute of limitations out of Chapter 111. Here, the Complainant is attempting to bootstrap a clearly untimely claim (i.e. the duty of fair representation claim) to the timely claims contained in the original complaint so as to have the amended complaint relate back to the date of the filing of the original complaint. In order for that to happen (i.e. for the Examiner to find the amended complaint timely), I would have to overlook the statute of limitations provision referenced above. I simply cannot do that (i.e. ignore the untimeliness of the amended complaint). Consequently, the amended complaint, and specifically the duty of fair representation claim contained therein, is barred by the one-year statutory limitations period referenced in Sec. 111.07(14), Stats.

Dated at Madison, Wisconsin, this 11th day of November, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner