

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**LISA GRIBBLE**, Complainant,

vs.

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

Case 55  
No. 66969  
MP-4344

**Decision No. 32435-B**

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**Appearances:**

**Nicholas Fairweather**, Hawks Quindel, S.C., 222 West Washington Avenue, Suite 450, P.O. Box 2155, Madison, Wisconsin 53701-2155, appearing on behalf of Lisa Gribble.

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

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

**ORDER**

On November 11, 2009, Examiner Raleigh Jones issued an Order Denying Motion to Amend Complaint wherein he concluded that the May 11, 2007 complaint “did not make a duty of fair representation claim against the Association, nor can such claim be assumed or inferred from its contents.” and that it was untimely for Complainant to seek to amend the complaint to add such a claim.

Pursuant to Sec. 111.07 (6), Stats., the Commission hereby sets aside the Examiner’s November 11, 2009 Order for the purpose of determining whether the Examiner erred in said Order. We do so to avoid the risk that the parties will proceed without sufficient guidance as to the matters being litigated and to minimize the potential for unnecessary delay and expense

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should the Commission receive a petition for review after the Examiner issues a final decision on the merits of complaint and subsequently conclude that this Examiner Order was erroneous. Should the parties wish to file argument with the Commission on this matter, said argument should be filed on or before December 14, 2009.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of November, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

I dissent.

Paul Gordon /s/

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Paul Gordon, Commissioner

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

**DISSENTING OPINION OF COMMISSIONER PAUL GORDON**

I do not join in the Commission's sua sponte decision to set aside the Examiners' Order for the purpose of determining whether the Examiner erred in the Order Denying Motion to Amend Complaint. The Commission does have the statutory authority to take this action if it has discovered any mistake in the Order or upon the grounds of newly discovered evidence. Sec. 111.07(6), Stats. However, in this case, any party has the opportunity to seek clarification from the Examiner if that party does not understand the Order or how to present its case on the merits. A party can ask the Examiner to reconsider the Order. A party can seek an interlocutory appeal to the Commission if it feels there has been a mistake made in the Order or in the way it was procedurally handled by the Examiner. None of the parties have taken these steps or any other at this point. I would leave it to the parties to make their own record and take their own procedural steps, if any, as in practically all other cases that come before the Commission.

Dated at Madison, Wisconsin this 24th day of November, 2009.

Paul Gordon /s/

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Paul Gordon, Commissioner