

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-D

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.

Linda S. Vanden Heuvel, Vanden Heuvel & Dineen, S.C., W175 N11086 Stonewood Drive, P.O. Box 550, Germantown, Wisconsin 53022-0550, appearing on behalf of the Labor Association of Wisconsin, Inc.

ORDER MODIFYING JANUARY 4, 2010 ORDER

On January 4, 2010, the Wisconsin Employment Relations Commission (Commissioner Paul Gordon, dissenting) issued an Order Reversing Examiner's Interlocutory Order and Granting Motion to Amend Complaint in the above-captioned matter. On February 16, 2010, the Respondent Labor Association of Wisconsin, Inc. (LAW) filed a Motion to Modify the Memorandum Accompanying the Wisconsin Employment Relation Commission's Order Dated January 4, 2010. LAW's February 16 motion "requests that the Commission remove any statements from its Order that L.A.W. failed to file an Answer to Gribble's Prohibited Practice Complaint."

The Commission's January 4, 2010 Order stated in pertinent part,

Since we have concluded that the original complaint sufficiently and timely alleged a breach of the duty of fair representation claim against the Union such that the Union's Motion to Amend is properly granted, we do not need to rely upon other grounds for permitting that amendment. We note, however, that the Respondent Union itself has twice failed to submit a timely answer to

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the original complaint or otherwise bring forward timely motions based upon alleged defects in that complaint, contrary to directions in the notices of hearing. This undermines the Union's claims of prejudice and delay regarding the Amended Complaint.

DEC. NO. 32435-C (WERC, 1/10) at 5-6 (footnote omitted).

LAW's motion was supported by a sworn affidavit averring that Commission Examiner Raleigh Jones advised LAW on August 26, 2008, at the time and place for the scheduled hearing in the matter but after the Examiner had granted Lisa Gribble's (Gribble's) request to postpone the hearing, that LAW "did not have to respond to Gribble's Prohibited Practice Complaint until the hearing was rescheduled." The affidavit further avers that, on January 7, 2009, a date the Examiner had established for filing an answer, the Examiner conducted a conference call in which he informed LAW "that its January 7, 2009 deadline to file an Answer was suspended" and "did not set a new date by which L.A.W. was required to file an Answer."

The Respondent Florence County (County) has taken the position that it lacks any basis to contest LAW's assertions and that it does not object to LAW's Motion. Gribble has opposed LAW's motion on the ground that the Commission's January 4, 2010 order "is an accurate statement of the record in this case" and further LAW fails to state the specific amendment it seeks." Gribble also contests the assertions in the affidavit because "no such extension is formalized in the record of this case" and Gribble's attorney's notes do not "reflect any such extension."

The Commission's January 4, 2010 order was based upon the materials in the file relating to pleadings, prehearing orders, correspondence, and summaries of communications. It bears observing that extensions of time for filing an answer properly should be reflected in the materials contained in the case file. That said, we note that LAW does not claim in its affidavit to have filed a timely answer prior to the originally scheduled hearing (August 26, 2008) or to have filed an answer on or before January 7, 2009, the date the Examiner established for filing an answer. While LAW avers that the examiner excused these failures to file, LAW's recitation of events indicates that any such excusal or extension occurred only after the time for filing had passed. Thus, even under LAW's rendition, the Commission's statement in its January 4, 2010 Order that LAW "twice failed to submit a timely answer to the original complaint" appears to be accurate.

Nonetheless, as the Commission noted in the above-quoted portion of its memorandum accompanying its January 4 order, that order was not based upon any alleged delinquencies in LAW's filing of an answer in this case. Since the text quoted above is unnecessary to the

Commission's holding, and in order to avoid unnecessary issues in this already protracted matter, we have chosen to modify the January 4 order by redacting that language.

So Ordered.

Given under our hands and seal at Madison, Wisconsin, this 18th of March, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

I dissent.

Paul Gordon /s/

Paul Gordon, Commissioner

FLORENCE COUNTY, WISCONSIN (Lisa Gribble)

DISSENTING OPINION OF COMMISSIONER PAUL GORDON

I do not join the Commission's decision because I continue to believe that the Commission should not have set aside the Examiner's interlocutory order *sua sponte* for the reasons set forth in my dissenting opinion in the Commission's November 24, 2009 order.

Dated at Madison, Wisconsin this 18th day of March, 2010.

Paul Gordon /s/

Paul Gordon, Commissioner