

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**SUSAN G. SCHULTE**, Complainant,

vs.

**WAUKESHA COUNTY TECHNICAL COLLEGE**, Respondent.

Case 117  
No. 68879  
MP-4499

**Decision No. 32785-F**

---

**Appearances:**

**Susan G. Schulte**, 9441 South 31<sup>st</sup> Street, Franklin, Wisconsin 53132, appearing on her own behalf.

**Sean M. Scullen**, Quarles & Brady, LLP, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of Waukesha County Technical College.

**Jina L. Jonen**, Wisconsin Education Association Council, 33 Nob Hill Road, Madison, Wisconsin 53708-8003, appearing on behalf of Wisconsin Education Association Council.

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

On November 8, 2010, Wisconsin Employment Relations Commission Examiner Mathew Greer issued Findings of Fact, Conclusions of Law and Order in the above matter wherein he dismissed the complaint filed by Susan G. Schulte against Waukesha County Technical College as being untimely filed. In her complaint, Schulte alleged that the College had committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 5, Stats. by refusing to arbitrate a grievance.

On November 19, 2010, Schulte timely filed a petition with the Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats. The parties thereafter filed written argument in support of and in opposition to the petition-the last of which was received January 11, 2011.

Having reviewed the record and being fully advised in the premises, we conclude that the Examiner' dismissal of the complaint should be affirmed but that said dismissal should be based on a determination that Schulte has no contractual right to arbitrate a grievance against the College.

No. 32785-F

NOW, THEREFORE, it is

**ORDERED**

A. Examiner Findings of Fact 1-8 are affirmed.

B. Examiner Finding of Fact 9 is set aside and the following Finding of Fact is made:

9. By letter dated June 3, 2008, the College advised Schulte as follows:

Re: Arbitration Request for Grievance 2006-2007 #8

Dear Ms. Schulte:

Please be advised that we are in receipt of your request to select arbitrators in the above captioned issue. We do not believe that this grievance is subject to the arbitration provisions of the collective bargaining agreement for the following reasons: The collective bargaining agreement between Waukesha County Technical College, hereinafter WCTC, and the Waukesha County Technical Educators Association, hereinafter WCTEA, recognizes the Association as the exclusive representative of employees in the bargaining unit. To that end, the parties to the collective bargaining agreement have resolved this grievance by entering into a settlement agreement on March 28, 2008. In addition, the collective bargaining agreement does not recognize an individual employee's right to appeal a grievance to arbitration nor does it recognize a probationary employee's right to appeal his/her discharge.

Therefore, for the foregoing reasons, WCTC will not be moving for selection of an arbitrator.

C. Examiner Conclusion of Law is set aside and the following Conclusions of Law are made:

**CONCLUSIONS OF LAW**

1. The 2004-2007 collective bargaining agreement between the Waukesha County Technical College and the Waukesha County Technical Educators Association does not give an employee the individual right to arbitrate a grievance filed pursuant to said agreement.

2. By its June 3, 2008 refusal of Schulte's request to arbitrate her grievance, Waukesha County Technical College did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a) 5, Stats.

D. Examiner Order dismissing the complaint is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of February, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

---

Judith Neumann, Chair

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner

**WAUKESHA COUNTY TECHNICAL COLLEGE (Susan G. Schulte)**

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

In his decision, the Examiner dismissed Schulte's complaint as untimely filed because he concluded that Schulte knew or reasonably should have known no later than the end of March 2008 that the College was refusing Schulte's request to arbitrate her grievance and thus that her May 2009 prohibited practice complaint was not filed with one year of said refusal as required by Secs. 111.07(14) and 111.70 (4) (a), Stats.

The record makes clear that by the end of March 2008, Schulte knew or reasonably should have known that the Waukesha County Technical Educators Association was not going to arbitrate her grievance. However, as we concluded in WAUKESHA COUNTY TECHNICAL COLLEGE, DEC. NO. 32785-B (WERC, 12/09), at least where the applicable contract language is ambiguous as to an individual employee's independent right to arbitrate a grievance, there is a distinction to be made between being aware that your labor organization will not arbitrate a grievance on your behalf and being aware that your employer is refusing to proceed to arbitration with you as an individual employee. Thus, while it can well be argued that Schulte's March 2008 knowledge of the settlement of her grievance reached by the College and Association was the functional equivalent of the College advising her that it would not be arbitrating said grievance, we remain satisfied that in the context of the ambiguous contract language present here, it was not until June 2008 that Schulte knew or reasonably should have known that the College was refusing to arbitrate the grievance. Thus, in that context, Schulte's May, 2009 complaint was timely filed within the applicable one year statute of limitations.

Turning to the question of whether Schulte has an independent contractual right to arbitrate her grievance, in WAUKESHA COUNTY TECHNICAL COLLEGE, *supra.*, we stated the following:

Ms. Schulte's claim is that the collective bargaining agreement requires the College to proceed to arbitration with her, as an individual bargaining unit member and without the Association, over a grievance she filed challenging her termination from employment. It appears to be undisputed that Ms. Schulte and the Association filed a grievance regarding Schulte's termination and that the grievance was pursued through all steps of the applicable contractual grievance procedure prior to arbitration. The collective bargaining agreement contains the following pertinent provisions as to Schulte's alleged right as an individual to compel the College to arbitrate her grievance:

. . .

1. A "Grievance" is defined as an alleged violation or misinterpretation of a contract provision or an allegation of arbitrary or capricious application of a contract provision.
2. Grievances may be initiated:
  - a. By an educator in person in his/her own behalf.
  - b. By an educator accompanied by an Association representative.
  - c. Through an Association representative if the educator so requests.
  - d. By an Association representative in the name of the Association.

...

[Contractual Grievance Procedure:]

...

#### **Step 5 - Impasse and Arbitration**

An impasse shall exist when one of the aggrieved parties in the grievance is not satisfied with the disposition of the grievance at the College President level. The College President shall be notified of the impasse within fifteen (15) working days from the time his/her decision was rendered. The impasse shall be resolved by arbitration as follows:

...

5. Cost of the arbitrator's fees, transcripts when jointly requested, and off-campus meeting rooms when mutually agreed to meet off-campus shall be shared equally by the Association and the Board. Each party is responsible for its own costs of preparing briefs, attorney fees, and non-College employee witness expenses.

...

We agree with the Examiner's analysis of the foregoing contract language as follows:

This language does, as argued by the Complainant, lend itself to a reading that allows individuals to advance grievances. It expressly provides that an individual may file a grievance on his or her own behalf without the intervention of the Association. At

the arbitration level, it speaks of an impasse existing “when one of the aggrieved parties in the grievance is not satisfied with the disposition of the grievance at the College President level.” This reference to “aggrieved parties” suggests that the Association is not the only actor in advancing the grievance. That suggestion is muted, however, by the subsequent language concerning the costs and arrangements for arbitration. Subsection 5 of the provision states that the costs of arbitration are shared by the College and the Association, and goes on to refer to “each party” being responsible for its own costs of presenting the case.

The contract is ambiguous as to who is and is not a “party” at the arbitration step. One portion suggests that an aggrieved employee may be a party, while another portion clearly contemplates that the only parties are the College and the Association. . . .

**We also agree with the Examiner that the intent of the parties as established through extrinsic evidence will ultimately control the interpretation given to this ambiguous contract language. (emphasis added)**

A hearing has now been held. At that hearing, evidence was presented (particularly see the Association’s March 26, 2008 letter to Schulte discussed in Finding of Fact 5 and the College’s June 3, 2008 letter to Schulte contained in Finding of Fact 9) establishing that the parties to the contract (the College and the Association) did not intend their contract to give an individual employee an independent contractual right to arbitrate a grievance. No evidence to the contrary was presented. In light of the evidence, we conclude that Schulte does not have an independent contractual right to arbitrate her grievance and thus that the College did not commit a prohibited practice when it refused Schulte’s request to arbitrate.

Dated at the City of Madison, Wisconsin, this 23rd day of February, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

---

Judith Neumann, Chair

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner

gjc  
32785-F