

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**KEITH HARRSCH**, Complainant,

vs.

**WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT**, Respondent.

Case 819  
No. 69623  
PP(S)-400

**Decision No. 32938-A**

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**Appearances:**

**Mr. Phillip Klein**, 201 East Washington Avenue, Room H103, P.O. Box 7972, Madison, Wisconsin, 53707-7972, on behalf of Complainant.

**Mr. David Vergeront**, Chief Legal Counsel, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, on behalf of Respondent.

**ORDER DISMISSING COMPLAINT**

On October 22, 2009, complainant Keith Harrsch submitted a Complaint to the Wisconsin Employment Relations Commission alleging that the State of Wisconsin Department of Employment Relations had violated sec. 111.84(2)(d), Stats., by violating the terms of a written agreement relating to his earlier separation from state service. The Complaint also alleged a violation of sec. 230.13, Stats. Because the Complaint had not been signed, it was not deemed filed with the Commission until a signed copy was received on November 13, 2009. On November 19, 2009, respondent filed a Notice of Motion and Motions to Dismiss, alleging that the action complained of was outside the statutory requirement that complaints be brought within one year; that the complaint could not be brought under sec. 111.84(2)(d); that the WERC had no jurisdiction over the allegations concerning sec. 230.13, Stats.; that the underlying complaint had already been litigated, and that the complaint was missing the required signature. Respondent, claiming the complaint was frivolous, also moved for attorney fees and costs. On December 7, 2009, complainant submitted a response, in which he identified the respondent's third-step denial of his grievance, which he alleged he received on

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October 22, 2008, as the predicate act upon which the complaint was based. Respondent also changed his citation of sec. 111.84(2)(d) to 111.84(1); disagreed with the claim that the issue had already been litigated, and described the absence of a signature on the original complaint as “not a substantive concern,” and one which had been “rectified.” He also opposed the notion of assessing attorney fees and costs. On December 14, 2009, respondent submitted a further written argument, again claiming the action was time-barred; that the complaint did not allege a claim upon which relief could be granted; that the sec. 230.13 claim was also untimely filed, and that attorney fees and costs should be assessed.

ERC 12.02 (1), W.A.C., provides, in part, as follows:

A complaint is not filed unless it contains the required signature or signature facsimile and unless and until the complaint and fee have been actually received by the commission at its Madison office during normal business hours ....

Contrary to complainant’s assertion, the requirement for a signature is thus indeed a significant element to the administrative procedure. As established by our administrative rules, the complaint in this matter was not filed until November 13, 2009.

Sec. 111.07(14), made applicable to this proceeding by sec. 111.84(4), provides as follows:

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.

The complainant has identified the predicate act underlying the complaint as having occurred on October 22, 2008. That date is more than one year prior to November 13, 2009, the date on which the complaint was filed. Accordingly, pursuant to the procedure clearly established by the administrative code and statutes, the complaint is untimely and must be dismissed.

The aspect of the complaint concerning sec. 230.13 has been separated into a new proceeding before a different commission examiner.

Notwithstanding respondent’s fulminations about the “pathetic,” “bogus,” and “frivolous” nature of the complaint, and his demand that complainants “can be given no mercy,” I decline to order complainant to pay attorneys fees.

Accordingly, the Motion to Dismiss the Complaint of Unfair Labor Practices is Granted. The motion for Attorney Fees and Costs is denied.

Dated at Madison, Wisconsin, this 6th day of January, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart D. Levitan /s/

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Stuart D. Levitan, Examiner