

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**SARAH BELL**, Complainant,

vs.

**MILWAUKEE COUNTY**, Respondent.

Case 695  
No. 69139  
MP-4530

**Decision No. 33004-A**

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**Appearances:**

**Sarah A. Bell**, 3756 North 23<sup>rd</sup> Street, Milwaukee, Wisconsin 53206, appearing on her own behalf.

**Attorney Timothy R. Schoewe**, Deputy Milwaukee County Corporation Counsel, 901 North 9<sup>th</sup> Street, Rom 303, Milwaukee, Wisconsin 53233, appearing on behalf of the Respondent.

**ORDER DISMISSING COMPLAINT**

On August 27, 2009, Sarah A. Bell (herein Bell) filed a prohibited practice complaint against Milwaukee County, Wisconsin (herein the County), alleging that the County had violated Sec. 111.70(3)(a)(5), Wisconsin Statutes by bargaining with employees individually, failing to bargain in good faith with the exclusive representative of Local 1654, District Council 48, AFSCME, the bargaining unit to which she belongs, and by entering into collateral agreements without the appropriate signatures in violation of the parties' collective bargaining agreement. The Commission thereupon appointed John Emery, a member of its staff, as Examiner to issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07 and 111.70(4)(a), Wis. Stats.

On September 9, 2009, the County, by letter, moved to dismiss the complaint, alleging that the complaint failed to state a claim upon which relief might be granted in that 1) Bell had previously failed to file a grievance on her claims although the parties' contract contains a grievance procedure providing for binding arbitration, 2) Local 1654 is an indispensable party to the action, but was not named in the complaint, and 3) the complaint is barred by the statute

No. 33004-A

of limitations. On October 26, 2009, the County, at the Examiner's request, filed a brief in support of its Motion to Dismiss, which was also forwarded to Bell. On February 1, 2010, the Examiner forwarded an additional copy of the County's brief to Bell and set February 26, 2010 as the deadline for any reply. Bell declined to reply to the County's Motion and brief.

The Examiner, having reviewed the record, the applicable law and the arguments of the parties and being advised in the premises, concludes that the complaint fails to allege any prohibited act by the County occurring within one year prior to August 27, 2009 and, therefore, makes and issues the following

**ORDER**

The complaint is hereby dismissed.

Dated at Fond du Lac, Wisconsin, this 17th day of March, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

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John R. Emery, Examiner

MILWAUKEE COUNTY

MEMORANDUM ACCOMPANYING  
ORDER DISMISSING COMPLAINT

Sec. 111.70(4)(a), Wis. Stats. provides that procedure in all cases alleging prohibited labor practices before the Wisconsin Employment Relations Commission shall be governed by the provisions of Sec. 111.07, Wis. Stats. Sec. 111.07(14) states, as follows:

**(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.

Thus, Sec. 111.07(14) creates a one year statute of limitations for bringing complaints of prohibited practices under Sec. 111.70(3)(a), such that the Commission does not have jurisdiction to adjudicate claims for acts or omissions that occurred more than one year prior to the filing of the complaint.

The complaint here was filed on August 27, 2009. The complaint itself sets forth the following allegations which are alleged to violate Sec. 111.70(3)(a)5, Wis. Stats.:

“All collateral agreements shall be executed by appropriate county official and authorized and signed by the director of labor relations and it never was.”

“Bypassing the union bargaining with employees individually failure to bargain in good faith with majority representative.”

The complaint, itself does not indicate the dates on which any of the actions listed above took place. Attached to the complaint, however, are several documents, apparently intended to supplement the complaint and provide some specificity to the allegations. These include:

- a) An excerpt from the collective bargaining agreement between the County and Council 48 concerning collateral agreements.
- b) A letter dated October 3, 2006 from County Human Resources Coordinator Yvonne Makowski to the Local 1654 President and the Council 48 Staff Representative noting changes in work hours for two employees, neither being the Complainant, Sarah Bell.
- c) A note from Bell’s doctor, dated July 16, 2008, indicating that Bell had been released to part-time light duty effective May 1, 2007, that her hours had increased and restrictions had decreased thereafter, and that she was capable of performing secretarial work while the restrictions were in effect.

- d) An undated, unsigned memorandum outlining the background to Bell's concerns regarding a full-time position, combining a part-time Mailroom position and a part-time Office Support Assistant 2 position. According to the memorandum, this position was awarded to Bell in April 2007, but she was unable to perform the duties of the position during the months on May, June and July, 2007 due to work restrictions imposed by her physician. Bell returned to work on August 2, 2007, but objected to certain of the requirements of the position, to wit: working the front desk during third shift two days per week and covering vacation shifts at the front desk and in the mailroom. The memo concludes by stating that if Bell did not want the position she could opt to return to her former position as an Information Desk Office Support Assistant 2. The memo also contains handwritten notes, presumably Bell's, stating her objections to what she considered a violation of her seniority rights, in that employees less senior than she were not required to rotate shifts.
- e) An affidavit by Bell, dated May 16, 2008, in which she states, as follows:
- 1) I am a resident of Milwaukee, Wisconsin, living at 3756 N. 23<sup>rd</sup> Street, Milwaukee Wisconsin.
  - 2) I am employed by Milwaukee County in the capacity of Distribution Assistant. This classification has been in effect since December 14, 2007.
  - 3) I took a leave of absence in February 2007 for the purpose of back surgery.
  - 4) My treating physician doctor, Dr. James Cain, released me [sic] to resume working on May 1, 2007 with a 5 lb. lifting restriction.
  - 5) During the period between the time I left for the medical leave and May 1, 2007, I was offered and I accepted a transfer to Distribution Assistant.
  - 6) At the time I left, my job classification was Office Support II.
  - 7) I was denied unemployment compensation because the employer testified that I had transferred to the new position and I was unable to work at that position because that position called for a 50 lb. lifting requirement.

- 8) At the hearing, the Labor Market Analyst indicated that I could have met the lifting requirements for my old position, which was Office Support II.
  - 9) The supervision [sic], Mary Dunn, also testified that I could have done the work for the old job with my 5 lb. restriction.
  - 10) The total basis for denial was that I was unavailable for the new position because of the restriction.
  - 11) When I returned to work on August 1, 2007, I returned to the exact position I left and not to the new job – namely Office Support II. I had the exact same duties for that month, for September, October, November, and part of December.
  - 12) In summary, I was available for work May 1. The job was the same for that period as it was when I returned. I returned to that job.
  - 13) I should be entitled to a redetermination of my eligibility for unemployment compensation for the months of May, June and July because I was in fact assigned to that job until the date of reassignment on December 14, 2008, and not as was described in testimony as in effect at the unemployment compensation hearing.
  - 14) I was available for the job, and the job was within my restrictions. (5 lbs.)
- f) A copy of Bell's Position Description as a Distribution Assistant, with working title of Clerical Pool Swing, signed by her and her supervisor, Mary Dunn, on August 2, 2007, indicating that she was assigned to all three shifts, seven days pep week.
  - g) Copies of Position Descriptions for Charlotte Jones and Patrick Murray, both designated as Distribution Assistants with working titles of Mailroom Clerk, and both dated August 8, 2007, indicating assignment to first shift.
  - h) An Employee Transaction Change Report, dated August 7, 2007, and signed by Yvonne Makowski, indicating that Bell had been on a leave of absence from February 6, 2007 until August 2, 2007.
  - i) An Employee Transaction Change Report, dated November 9, 2007, and signed by Makowski, indicating that Bell was designated as an Office Support Assistant II, effective November 19, 2007.

- j) An Employee Transaction Change Report, dated December 14, 2007, and signed by Makowski, indicating that Bell was designated as a Distribution Assistant, effective December 16, 2007.

The attached exhibits make it clear that Bell's complaint stems from the circumstances surrounding her leave of absence in 2007, as well as her transfer from the position of Office Support Assistant II to the position of Distribution Assistant during the same approximate time frame. Specifically, she appears to object to the fact that she was denied unemployment compensation while she was on leave of absence recovering from surgery, and she appears also to object to the fact that as a Distribution Assistant she was scheduled to work on all shifts as needed, and to cover vacations for other employees, which she considered a violation of seniority inasmuch as she was not give the option of working first shift only, unlike other Distribution Assistants who were less senior than she. The last action alleged to have been taken by the County in this sequence of events was the transfer of Bell to the position of Distribution Assistant on December 16, 2007. This act occurred more than twenty months prior to the filing of the complaint and is not actionable under Sec. 111.07(14), Wis. Stats. The complaint is, therefore, dismissed.

Dated at Fond du Lac, Wisconsin, this 17th day of March, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

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John R. Emery, Examiner

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