

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SANDRA BREWER, Complainant,

vs.

**OREGON SCHOOL DISTRICT and OREGON EDUCATION ASSOCIATION
and CAPITAL AREA UNISERV (CAUS) NORTH**, Respondents.

Case 47
No. 70215
MP-4622

Decision No. 33664-C

Appearances:

Sandra Brewer, 4410 Vale Circle, Madison, Wisconsin 53711, appearing on her own behalf.

James Ruhly and Douglas Witte, Attorneys, Melli Law, 10 East Doty Street, Suite 900, P.O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the Respondent Oregon School District.

Randall Garczynski and Joanne Huston, Legal Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of Respondents Oregon Education Association and CAUS North.

ORDER ON REVIEW OF EXAMINER'S DECISION

On September 14, 2012, Examiner Raleigh Jones issued Findings of Fact, Conclusions of Law and Order in the above-captioned matter determining that Respondents Oregon Education Association and Capital Area UniServ (CAUS) North had not violated their duty of fair representation to Complainant Sandra Brewer and thus had not committed a prohibited practice within the meaning of Sec. 111.70(3)(b) 1, Stats. Because Jones determined that no breach of the duty of fair representation had occurred, he did not exercise jurisdiction over Brewer's allegation that the Respondent Oregon School District had violated a collective bargaining agreement by terminating Brewer's employment and thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 5, Stats.

No. 33664-C

On October 2, 2012, Brewer timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.70(4)(a) and 111.07(5), Stats. The parties filed written argument in support of and in opposition to the petition-the last of which was received December 29, 2012.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

The Examiner's Findings of Fact, Conclusions of Law and Order are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of April, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

OREGON SCHOOL DISTRICT (Sandra Brewer)

MEMORANDUM ACCOMPANYING ORDER ON
REVIEW OF EXAMINER'S DECISION

We have reviewed the record and the Examiner's decision and conclude that his Findings of Fact, Conclusions of Law and Order should be affirmed.

With the exception of three of the arguments Brewer makes on review, we further conclude that the Examiner's lengthy Memorandum adequately addresses and correctly rejects Brewer's arguments as to the duty of fair representation issue and thus we need not comment further.

As to the first of the three arguments that warrant specific comment, Brewer cites two decisions by the National Labor Relations Board regarding the scope of "protected concerted activity" under the National Labor Relations Act. Brewer asserts that she engaged in "protected concerted activity" and that the Respondent Union failed to consider that activity when it decided not to arbitrate her termination. Respondents Union and Employer persuasively contend that the Respondent Union had no obligation to consider any "protected concerted activity" by Brewer when deciding whether to arbitrate. Thus, we reject this argument.

Brewer next asserts that the Examiner erred by denying her request to recall a witness. We disagree. As the Respondent Employer aptly notes, Brewer's request was untimely because although Brewer herself asserts that she became aware of her interest in recalling a witness during a Friday May 4, 2012 hearing, she then took no action prior to May 8, 2012- the next and last scheduled day of hearing. In the context of Examiner's statutory authority to regulate the proceedings before him, the timing of Brewer's request, and the reality that granting Brewer's request would have meant scheduling another day of hearing because the witness to be recalled was not present on May 8, the Examiner did not err by denying Brewer's request.

Brewer's third argument contends that the Respondent Union's decision not to arbitrate was procedurally flawed because it occurred before she filed her grievance. We do not find this argument persuasive. Particularly in the context of the highly charged atmosphere that surrounded Brewer's termination, the Respondent Union acted responsibly and fairly by

discussing and deciding the arbitration issue when it did. There was no doubt that Brewer wanted to contest her termination and no legal prohibition against Respondent Union acting when it did.

Dated at Madison, Wisconsin, this 11th day of April, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner