

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CARMEN J. BERTELSEN, Complainant,

vs.

PIERCE COUNTY NURSES ASSOCIATION, LOCAL 901 OF THE LABOR
ASSOCIATION OF WISCONSIN, INC. and PIERCE COUNTY, Respondents.

Case 155
No. 71700
MP-4728

DECISION NO. 33980-C

Appearances:

Jennifer A. Nodes, 692 Monn Avenue, Saint Paul, Minnesota, 55127-7168, appearing on behalf of Complainant Carmen J. Bertelsen.

Carol Nolan Skinner, Skinner and Associates, 212 Commercial Street, Hudson, Wisconsin, 54016-1557, appearing on behalf of the Labor Association of Wisconsin, Inc. and its affiliate Pierce County Nurses Association, Local 901.

Mindy Kay Dale, Weld, Riley, Prenn & Ricci S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin, 54702-1030, appearing on behalf of Pierce County.

ORDER ON REVIEW OF EXAMINER DECISION

On December 27, 2013, Examiner Lauri A. Millot issued Findings of Fact, Conclusions of Law and Order in the above-matter dismissing a prohibited practice complaint filed by Carmen J. Bertelsen against Pierce County and Pierce County Nurses Association, Local 901 of the Labor Association of Wisconsin, Inc. Dismissal was based on the Examiner's determination that Local 901 had not breached its duty of fair representation to Bertelsen as to her suspension and that Bertelsen had failed to exhaust the contractual grievance arbitration procedure as to her discharge.

On January 15, 2014, Bertelsen filed a petition with Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to §§ 111.70(4)9a) and 111.07(5), Stats. The parties thereafter filed written argument-the last of which was received by March 27, 2014.

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

ORDER

- A. The Examiner's Findings of Fact are affirmed.
- B. The Examiner's Conclusions of Law 1 through 4 are affirmed.
- C. The Examiner's Conclusion of Law 5 is set aside and the following Conclusions of Law are made:

5. As to her discharge, the contractual grievance arbitration procedure referenced in Finding of Fact 4 was the exclusive means by which Bertelsen could seek to enforce the just cause provision in the 2011-2012 contract.

6. It would not have been futile for Bertelsen to utilize the contractual grievance arbitration procedure as to her discharge.

7. Because Bertelsen did not seek to exhaust the contractual grievance procedure as to her discharge, the Wisconsin Employment Relations Commission will not assert its jurisdiction under § 111.70(3)(a)5, Stats., to determine whether Pierce County had just cause to discharge Bertelsen.

- D. The Examiner's Order is affirmed.

Dated at Madison, Wisconsin, this __20th day of May 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

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

We have reviewed the record and Bertelsen's contentions on review. We conclude that the Examiner correctly applied the law to the facts and thus we have affirmed her dismissal of the complaint.

Our Conclusions of Law 5 through 7 more precisely reflect the law and the Examiner's analysis thereof. We also expand upon and clarify portions of the Examiner's Memorandum to acknowledge that:

- A. Bertelsen's claim of futility to exhaust is premised on the assertion that Local 901 breached its duty of fair representation as to her suspension grievance and, thus, that she could expect no better as to any grievance she filed as to her discharge. The Examiner correctly found no breach of duty as to the suspension grievance and, thus, there is no support for Bertelsen's futility theory.

- B. The "Conclusion" section of the Memorandum suggests that Bertelsen's complaint included a § 111.70(3)(b)1, Stats., allegation as to the discharge. The complaint did not do so and the Examiner correctly noted that fact earlier in her Memorandum (see page 13 thereof). In addition, as reflected in our Conclusions of Law 5 through 7 and the Examiner's Memorandum, it is the failure to attempt to exhaust the grievance procedure which warrants no assertion of our § 111.70(3)(a)5, Stats. jurisdiction.

Dated at Madison, Wisconsin, this 20th day of May 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner