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**COURT OF APPEALS
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**Personnel
Commission**

Marilyn L. Graves
Clerk

January 7, 1987

Madison.

To: Richard V. Graylow
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Madison, WI 53703-2594

Clerk of Circuit Court
(L.C. #85-CV-808)

Bruce Olsen
Asst. Atty. General

Hon. John W. Mickiewicz
Fond du Lac County Ctse.

You are hereby notified that the Court entered the following opinion and order:

86-0856 Virginia Bartell v. State Personnel
 Commission and Secretary, Department of
 Health and Social Services

Before Scott, C.J., Brown, P.J., and
Nettesheim, J.

Virginia Bartell appeals from a judgment of the circuit court which affirmed the dismissal by the State Personnel Commission of Bartell's charge of sex discrimination. Based upon our review of the briefs and record, at conference, we conclude that this case is appropriate for summary disposition. See Rule 809.21, Stats. We affirm the judgment of the circuit court.

The sole issue is whether Bartell's present claim of sex discrimination is barred by an October 19, 1983 settlement agreement entered into by Bartell in conjunction with a prior discrimination charge. We agree with the

circuit court and the commission that the plain language of the settlement precludes this action.

A release should be construed in accordance with contract law. See Fleming v. Threshermen's Mut. Ins. Co., 131 Wis.2d 123, 132, 388 N.W.2d 908, 911 (1986). The construction of a written contract is a question of law. Waukesha Concrete Prod. Co. v. Capitol Indem. Corp., 127 Wis.2d 332, 339, 379 N.W.2d 333, 336 (Ct. App. 1985). The court endeavors to ascertain the true intent of the parties as expressed by the contractual language. Id. Where the contract terms are plain and unambiguous, the court must construe the contract as it stands, even though a party may have placed a different construction on it. Id.

Paragraph two of the settlement provided that Bartell would "withdraw or cause to be dismissed, voluntarily and with prejudice, these proceedings ... and further shall not file additional appeals, charges and/or complaints of any nature or type against [the employer] ... based on or arising out of events occurring prior to the execution of this document" That language is not ambiguous.

Bartell has worked at the Kettle Moraine Correctional facility since 1963. Initially, Bartell was a clerical employee. Bartell gradually was regraded upwards. From 1974 until 1981, Bartell filed three sex discrimination charges against the employer on the basis that she was performing the same duties as males who were classified as

correctional officers. Ultimately, Bartell was regraded to Officer 1 status on October 29, 1981 and Officer 2 status on March 26, 1982. For salary purposes, however, Bartell's employment prior to the regrade was considered at the non-officer level, rather than the higher officer status. The reclassification was not retroactively applied to seniority computations. Bartell settled her claims on October 19, 1983 with the execution of the above-quoted release.

It is clear that Bartell's present claim of sex discrimination arises from a salary disparity which is directly attributable to the fact that, for seniority purposes, Bartell's pre-regrade employment has remained at the clerical level. Her claim is based on events which occurred prior to the execution of the release. Therefore, under the clear language of the release, Bartell's complaint is barred.

Bartell's public policy argument is inapposite. The settlement does not foreclose Bartell's right to litigate claims based on future discriminatory acts. Bartell's present claim, however, is based on past conduct and thus falls within the ambit of the settlement.

Finally, Bartell attempts to establish, through an affidavit of counsel, that she did not intend to relinquish the right to pursue this claim. Extrinsic evidence, however, cannot vary the terms of an unambiguous written

contract. See Fed. Deposit Ins. Corp. v. First Mortgage Investors, 76 Wis.2d 151, 156, 250 N.W.2d 362, 365 (1977).

Thus, this final argument is not persuasive.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed.

Marilyn L. Graves
Clerk of Court of Appeals