

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SUZANNE M. WEBER, Appellant,

vs.

DEPARTMENT OF WORKFORCE DEVELOPMENT, Respondent.

Case 28  
No. 72693  
PA(grp)-29

DECISION NO. 34695

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**DECISION ON MOTION TO DISMISS**

On September 27, 2013, Appellant, Suzanne M. Weber, filed an appeal to the Wisconsin Employment Relations Commission following her exhaustion of the grievance procedure. In May 2010, Weber entered into a settlement agreement with her employer, the Wisconsin Department of Workforce Development, resolving six employment discrimination cases she filed with the Equal Rights Division of the Department of Workforce Development.<sup>1</sup> The agreement included a number of different provisions regarding Weber's ongoing terms and conditions of employment with the Department of Workforce Development.

The grievance which Weber filed with the Office of State Employment Relations was dismissed, and she now seeks review by the Commission per §§ 230.44 and 45, Stats. The gist of her claim is that the Department of Workforce Development "used unreasonable and improper exercise of discretion in not following the signed settlement agreement." Her appeal further describes in detail the manner and means by which her employer allegedly welched on the deal.

The Department of Workforce Development has moved to dismiss the complaint based upon its assertion that the Commission lacks jurisdiction over the dispute.

A settlement agreement entered into by the parties to the agreement is a "voluntary contractual agreement." *Klein v. Board of Regents*, 2003 WI App. 118 ¶14, 265 Wis.2d 543,

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<sup>1</sup> Weber works for the Division of Employment and Training of the Department of Workforce Development. That agency also includes the Equal Rights Division which has statutory authority for employment discrimination claims under § 111.31, *et seq.*, Stats. and includes jurisdiction over claims against the Department of Workforce Development itself.

666 N.W.2d 67. Our jurisdiction over state employee disputes is narrow and limited. Clearly, we lack the authority to enforce the terms of a settlement agreement resolving an employment discrimination claim under the Wisconsin Fair Employment Act.<sup>2</sup>

The decision of the Court of Appeals in *Kimberly Area School District v. Zdanavec*, 222 Wis.2d 27, 586 N.W.2d 41 (1998) is instructive. There a school district brought an action to enforce a settlement agreement which provided for a teacher to resign his employment. The employee refused to resign asserting that the circuit court lacked jurisdiction to enforce the agreement and that enforceability should be resolved under the arbitration clause of the labor agreement. The court rejected that argument in concluding that the dispute was not grievable under the collective bargaining agreement.

Simply put, there is nothing in §§ 230.44 and 45, Stats., that permits us to resolve the question of whether the Department of Workforce Development breached its contractual agreement with Weber. Even if the breach occurred (as we assume it did for purpose of this motion), we lack any authority to resolve the issue and, accordingly, dismiss this appeal.

### ORDER

That the appeal is dismissed.

Dated at the City of Madison, Wisconsin, this 11th day of February 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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<sup>2</sup> We note that even the Labor and Industry Review Commission which is the administrative enforcement arm of the Wisconsin Fair Employment Act believes it lacks jurisdiction to address breaches of settlement agreements entered into to resolve employment discrimination disputes. *Gronowski v. Milwaukee County*, LIRC (1995).