

**EQUAL OPPORTUNITIES COMMISSION  
CITY OF MADISON  
210 MARTIN LUTHER KING, JR. BOULEVARD  
MADISON, WISCONSIN**

Ulysses C Dinkins  
728 Sherman Road  
Marshall WI 53559

Complainant

vs.

North Central States Regional Council of  
Carpenters Training  
5202 Monument Lane  
Madison WI 53704

Respondent

HEARING EXAMINER'S DECISION AND  
ORDER ON RESPONDENT'S MOTION TO  
DISMISS FOR LACK OF JURISDICTION

CASE NO. 20162002

EEOC CASE NO. 26b201600017

**BACKGROUND**

On January 12, 2016, the Complainant, Ulysses C. Dinkins, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division (EOD). Dinkins charged that the Respondent, North Central States Regional Council of Carpenters Training Fund (Training Fund), discriminated against him on the basis of his race (Black/White), color (Black), and in retaliation in violation of the Madison Equal Opportunities Ordinance Sec. 39.03(8) Mad. Gen. Ord. when he was harassed by staff and his apprenticeship was terminated. The Respondent denies that it discriminated against the Complainant in any manner and further asserts that the EOD is without jurisdiction over the Respondent.

The complaint in this matter was assigned to a Division Investigator/Conciliator for investigation and issuance of an Initial Determination of either probable cause or no probable cause to believe that the Respondent had discriminated against the Complainant. As part of its response to the complaint and the Respondent's initial questionnaire, the Respondent first interposed its claim for a lack of jurisdiction. On February 10, 2016, the Investigator/Conciliator transferred the complaint to the Hearing Examiner to make a determination of jurisdiction.

On February 16, 2016, the Hearing Examiner issued a briefing schedule to the parties giving them the opportunity to address the issue of jurisdiction. The Respondent submitted written argument in furtherance of its position. The Complainant, who is unrepresented, did not submit a brief.

**DECISION**

The Respondent presents three grounds for its contention that the commission is without jurisdiction over this complaint. First, the Respondent asserts that the State of Wisconsin Administrative Code establishes the exclusive avenue for relief for disputes arising out of

apprenticeship actions, and therefore the City of Madison has no authority to grant the Complainant relief. Second, the Respondent asserts that, because the Training Fund is controlled by the State of Wisconsin Department of Workforce Development (DWD), the State of Wisconsin is a necessary party to the action, and that the City of Madison has no jurisdiction over the State. Third, the Respondent asserts that the Training Fund is not a proper party, because it is not and never has been the Complainant's employer.

The Hearing Examiner will first address the argument that the Respondent is not a proper party. If the Respondent is correct with respect to this argument, the Hearing Examiner need not entertain a broader attack on the EOD's jurisdiction.

The record shows that the Training Fund was established for the purpose of providing required training to carpentry apprentices. Apprentices enter into a contract with the DWD Bureau of Apprentice Standards (BAS) and a sponsor. The Complainant's sponsor was the Madison Area Joint Apprenticeship Committee (JAC). Apprentices must also be employed by an employer engaged in carpentry. As part of this system, apprentices must fulfill a certain number of hours of classroom training. The Respondent provided that training to the Complainant. Wis. Stat. Sec. 106.01(6)(d) requires that the Training Fund report apprentice attendance and progress to the JAC and the BAS, which may terminate the apprentice contract should the apprentice fail to satisfactorily complete the required training. The termination procedure is laid out in Wis. Adm. Code DWD Sec. 295.20(4). Based on the organization of the Training Fund, the Respondent argues that it in no way resembles an employer in the meaning of the Ordinance.

In examining the relationship between the Complainant and Respondent in this case, the Hearing Examiner is inclined to agree with the Respondent's argument. In the past, the Hearing Examiner has defined the "essence of the employment relationship" as "work in exchange for compensation." Schenk v. Domestic Abuse Intervention Services, Inc., MEOC Case No. 03384 (Comm. Dec. 8/20/99, Ex. Dec. 3/26/99). The relationship between the Complainant and Respondent in this case much more clearly resembles the relationship between student and school, in that the Complainant received classroom instruction and performed tasks in order to earn credit hours. The Respondent did not pay the Complainant for the work he performed as part of his apprenticeship. That payment came from his employer, under terms set forth by the union and the state.

Furthermore, the Respondent had no control over other factors that might be said to indicate an employment relationship. The Respondent did not determine the Complainant's work hours or work schedule. The Respondent did not "hire" the Complainant, nor did it have any control over whether the Complainant was accepted into the apprenticeship program. Ultimately, the Respondent did not "fire" the Complainant, either. Wis. Stat. Sec. 106.01(5p) gives the DWD sole power to terminate an apprentice contract. The Respondent provided its assessment of the Complainant's progress, as required under statute, and the DWD terminated his contract. Under the circumstances of this claim, the Hearing Examiner must conclude that the Complainant was not an employee of the Respondent, and that the Commission lacks jurisdiction in this case. We need not address the other arguments put forth by the Respondent regarding the Commission's jurisdiction.

The DWD has a process in place for apprentices who wish to file complaints, including complaints related to equal opportunity standards. This procedure is detailed in Wis. Adm. Code DWD Sec. 296.11. Nothing in this decision should prevent the Complainant from following this complaint procedure. To that end, the Hearing Examiner will direct transfer of this complaint to the DWD for further processing.

For the foregoing reasons, the Hearing Examiner dismisses the complaint in this matter for a lack of jurisdiction and transfers this complaint to the State of Wisconsin.

Signed and dated this 26th day of September, 2016.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III  
Hearing Examiner

cc: Sarah Geenen