

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SAM GUTHRIE,	:	
	:	
Complainant,	:	
	:	Case XLI
vs.	:	No. 16265 PP(S)-14
	:	Decision No. 11457-A
LOCAL 82, COUNCIL 24, AFSCME, AFL-CIO,	:	
and UNIVERSITY OF WISCONSIN-MILWAUKEE,	:	
(HOUSING DEPARTMENT),	:	
	:	
Respondents.	:	
	:	

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ORDER DENYING MOTIONS TO DISMISS  
AND MOTIONS TO MAKE MORE DEFINITE AND CERTAIN

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission by Sam Guthrie, wherein he alleged that Local 82, Council 24, AFSCME, AFL-CIO, and the University of Wisconsin-Milwaukee (Housing Department) had committed prohibited practices within the meaning of Section 111.84, Wisconsin Statutes; and the Commission having appointed Marvin L. Schurke, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and the matter having been set for hearing January 30, 1973, at Milwaukee, Wisconsin; and the Complainant having, on January 4, 1973, filed an amended complaint in the matter; and Counsel for the State Employer having filed with the Examiner alternative motions to dismiss or to make the complaint more definite and certain; and Counsel for the Respondent Union having filed with the Examiner alternative motions to dismiss or to make the complaint more definite and certain; and the Examiner having considered said motions and being fully advised in the premises, makes and issues the following .

ORDER

1. That the Respondent State Employer's motion to dismiss the complaint and amended complaint filed by Sam Guthrie in the above entitled matter be, and the same hereby is, denied.
2. That the Respondent Union's motion to dismiss the complaint and amended complaint filed by Sam Guthrie in the above entitled matter be, and the same hereby is, denied.
3. That the motions of Respondent State Employer and Respondent Union to make the complaint more definite and certain be, and the same hereby are, denied.

Dated at Madison, Wisconsin, this 19th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke  
Marvin L. Schurke, Examiner

UNIVERSITY OF WISCONSIN (HOUSING DEPARTMENT)  
XLI, Decision No. 11457-A

MEMORANDUM ACCOMPANYING ORDER DENYING MOTIONS TO DISMISS  
AND MOTIONS TO MAKE MORE DEFINITE AND CERTAIN

On November 30, 1972 the Complainant filed his original complaint with the Wisconsin Employment Relations Commission, wherein he alleged that Local 82, Milwaukee District Council 48 (sic), AFSCME, AFL-CIO and the University of Wisconsin - Milwaukee (Housing Department) had engaged in prohibited practices contrary to the provisions of Chapter 111 of the Wisconsin Statutes, in connection with the discharge of the Complainant from employment by the State Employer. Such complaint contained an extensive recitation of facts, including the names of management personnel and union officials involved. The Commission appointed the undersigned as Examiner, pursuant to Section 111.07(5), Wisconsin Statutes, and the matter was set for hearing on January 9, 1973. On December 27, 1972, the law firm of Lawton and Cates entered an appearance on behalf of Local 82, Council 24, AFSCME, AFL-CIO, and at the same time filed alternative motions to dismiss or to make the complaint more definite and certain. On January 2, 1973 notice was issued postponing hearing in the matter to January 30, 1973, and setting January 23, 1973 as the date for filing of an Answer. On January 4, the State Employer filed alternative motions to dismiss or to make the complaint more definite and certain. Also on January 4, 1973, the Complainant filed an amended complaint. Such amended complaint corrects the name of the Union respondent, incorporates by reference the allegations of fact contained in the original complaint, alleges that the Complainant was discharged in violation of a collective bargaining agreement covering his employment and alleges that he was denied fair representation by the Union. The amended complaint was served on the State Employer and Council 24, AFSCME, AFL-CIO, on January 9, 1973, under cover of a letter advising the parties that the motions addressed to the original complaint would not be ruled upon. The hearing date and answer date previously established were preserved.

On January 12, 1973, the State Employer renewed its motion to dismiss the complaint and amended complaint, claiming that they failed to state a cause of action against the State of Wisconsin. On January 18, 1973 the Examiner received correspondence from Council 24, AFSCME, AFL-CIO, wherein that Respondent stated, inter alia,

"Additionally, we call your attention to the fact that the introductory paragraph of said Amended Complaint indicates a violation of Chapter III of Chapter 111 of the Wisconsin Statutes. We call your attention to the fact that this provision of the law applies to "public utilities."

The same letter renewed the Union Respondent's motions to dismiss or to make the complaint more definite and certain.

The Examiner has denied the State Employer's motion to dismiss, in that to do otherwise would be in clear violation of procedural rules established for administrative agencies in Chapter 227, Wisconsin Statutes, and the specific procedures established for the processing of complaints under Section 111.07(2)(a), Wisconsin Statutes. Section 227.01(2), Wisconsin Statutes, defines "contested

case" and Section 227.07, Wisconsin Statutes, assures full hearing prior to a disposition of rights in a contested case. Neither Respondent has filed an answer in the instant case and the date for filing of an answer has not passed. At the present time it must be presumed that the instant case falls within the cited definition and requirement. Further, the Commission has held that if the employe involved, or any party to a collective bargaining agreement, is improperly denied the opportunity to process grievances as contemplated in the agreement, the Commission will disregard the procedure in the agreement and will exercise its jurisdiction to determine the grievance on the merits. 1/ The Complainant must be heard on his allegations concerning denial of fair representation before a ruling can be made as to the applicability in the instant case of the cases cited.

The "facts" called to the attention of the Examiner by the Union on January 18, 1973 mis-state the facts and are not persuasive for any purpose. The introductory paragraph of the Amended Complaint is misquoted by the Respondent Union. It actually reads:

"The complainant above named complains that the respondents have engaged and are engaging in prohibited practices contrary to the provisions of Chapter III (sic) of the Wisconsin Statutes, and in that respect alleges:"

Interestingly, the original complaint contained an almost identical introductory paragraph, and no "facts" concerning that introduction were called to the attention of the Examiner. Subchapter III of Chapter 111 does refer to public utilities, but the Complaint and Amended Complaint filed in this case do not cite that particular Subchapter. The reference to the statutes is a correct, if broad, reference to the statute applicable in this case.

The Examiner has also denied the Respondent Union's motion to dismiss, in that the Union would appear to be a necessary party to the determination of whether there had been a denial of fair representation. Since the right of the Complainant to further proceedings against the State Employer may depend on the determination of the fair representation question, the same considerations for fair hearing and procedural rights apply to the Respondent Union as are indicated above with respect to the Respondent State Employer.

The Complaint and the Amended Complaint, taken together, identify the legal basis upon which the Complainant is proceeding and develop facts concerning the incidents forming the basis for such complaint. Numerous individuals having positions of authority with the State Employer and the Union are identified. The Examiner is not persuaded that the Complainant's pleadings are so lacking in detail as to require that they be made more definite and certain, and the motions to that effect have accordingly been denied.

Dated at Madison, Wisconsin, this 19th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marvin L. Schurke  
Marvin L. Schurke, Examiner

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1/ Blackhawk Mfg. Co. (3714) 4/54; Wonder Rest Corp. (3983) 5/58; (Aff. Wisc. Sup. Ct., 275 Wis. 273); Consolidated Freightways, Inc. (5768-A) 7/62; FWD Corporation (6216) 1/63; Cornell Paperboard Products (7353) 11/65; Northwest General Hospital (10599-B) 1/73; Local 150, S.E.I.U., AFL-CIO (10600-B) 1/73.