

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE OAKWOOD FACULTY COUNCIL (OFC),
WISCONSIN EDUCATION COUNCIL (WEC), and
THE WISCONSIN EDUCATION ASSOCIATION
COUNCIL (WEAC),

Complainants,

vs.

STATE OF WISCONSIN, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES, DIVISION
OF CORRECTIONS, WISCONSIN SCHOOL FOR
GIRLS - OREGON,

Respondent.

Case XXVI
No. 16881 PP(S)-17
Decision No. 11951-A

ORDER TO MAKE COMPLAINT MORE DEFINITE AND
CERTAIN AND ORDER OF POSTPONEMENT

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission by the Oakwood Faculty Council (OFC), Wisconsin Education Council (WEC), and the Wisconsin Education Association Council (WEAC), wherein the Complainants allege that the State of Wisconsin (Department of Health and Social Services, Division of Corrections, Wisconsin School for Girls - Oregon) has committed certain prohibited practices within the meaning of the State Employment Labor Relations Act; and the Commission having appointed the undersigned as Examiner to make and issue Findings of Fact, Conclusions of Law and Orders in the matter; and a hearing having been scheduled in the matter and prior to said hearing the Respondent having filed a Motion to Make Complaint More Definite and Certain; and the Examiner being satisfied that the complaint should be made more definite and certain and the hearing postponed until such time as Complainants have had an opportunity to make the complaint more definite and certain before the Respondent is required to answer or the hearing is rescheduled.

NOW, THEREFORE, it is

ORDERED

1. That the Complainants are hereby directed to amend Paragraph 6 of the complaint by setting out the exact date or dates on which each of the alleged transactions is said to have occurred and the names of all participants to said transactions. If the exact dates or the names of some participants to the enumerated transactions are not known to the Complainants, approximate dates and number of participants should be provided.

2. That hearing in the above entitled matter is hereby postponed indefinitely until such time as the Complainants have complied with the order herein. Upon receipt of the Complainants' amended Paragraph 6 of the complaint, the matter will be rescheduled for hearing and an appropriate answer date set.

Dated at Madison, Wisconsin, this 7th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

STATE OF WISCONSIN, DEPARTMENT OF HEALTH AND SOCIAL
SERVICES, DIVISION OF CORRECTIONS, WISCONSIN
SCHOOL FOR GIRLS - OREGON, XXVI, Decision No. 11951-A

MEMORANDUM ACCOMPANYING
ORDER TO MAKE COMPLAINT MORE DEFINITE AND
CERTAIN AND ORDER OF POSTPONEMENT

In their complaint the Complainants allege in Paragraph 6 that the Respondent "through its agents, has engaged in a course of conduct which is in violation of Sections 111.84(1)(a), (1)(b) and (1)(c), Wis. Stats. (1971); said conduct is illustrated by, but not limited to, the following: [17 specifications enumerated (a) through (r)]". The Respondent filed a Motion to Make Complaint More Definite and Certain with the Examiner wherein it requested that the Complainants be required to:

"1. Identify what management representatives are involved in the conduct about which Complainant seeks relief.

2. Describe in specific detail by use of clear and concise statements of alleged facts, the exact actions, or inactions, if any, of the individual or individuals identified in Para. No. one (1) immediately preceding, including the dates, locations and nature of the action or inaction if any."

Thereafter the Complainants filed a Response to Motion to Make More Definite and Certain, wherein they stated as follows:

"1. The Management representatives against whom relief is being sought are:

- (a) Superintendent Rex T. Duter;
- (b) Dr. Lawrence M. Douglas, and
- (c) Mr. Bruce Tulpo.

Complainants reserve the right to call and examine further Management representatives should further investigation or the conduct of the forthcoming hearing require. However, at this time the foregoing list is complete.

2. The time of the occurrence of Respondent's conduct about which complaint is made began on or after July 1, 1972.

3. The nature of the action, or inaction, taken by Management representatives is found in Paragraph No. Six (6) of the Complaint.

4. The location of the actions or inactions about which complaint is made is the Wisconsin School for Girls, Oregon, Wisconsin, operated by the Department of Health and Social Services, State of Wisconsin, within the educational unit."

In spite of the Complainants' response set out above, the Respondent still contends that it is still not adequately apprised by the pleadings with regard to the particulars of the 17 specifications of alleged misconduct. The Respondent contends that in all cases the date of the alleged acts should be set out as well as the names of all persons present during the transaction. In some instances the Respondent also seeks further information with regard to the context of the transaction. 1/

1/ Although such information would be helpful, the Examiner is not satisfied that it is required by the Commission's rules with regard to the content of complaints.

ERB 22.02(2)(c) provides that a complaint shall contain a "clear and concise statement of the facts constituting the alleged prohibited practice or practices, including the time and place of the occurrence of particular acts and the section of the statute alleged to have been violated thereby". Disposition of the Respondent's motion must turn on the construction and application of this provision of the Commission's rules, with due regard for the admonition contained in ERB 20.01 that the rules shall be "liberally construed to effectuate the purposes and provisions of subchapter V of Chapter 111, Wisconsin Statutes". In applying the provisions of 22.02(2)(c) in this case, the Examiner has taken into account both to the number and complexity of the allegations contained in the complaint as well as the fact that both parties are represented by counsel.

Some of the allegations involve transactions which occurred more than one year ago. For this reason it may be that the Complainants may not be able to supply specific dates or all the names of persons present during those transactions in the absence of adverse examination of witnesses under oath. However, it is important that the Respondent be given as much information as is known so that it may either admit or deny the allegations and otherwise prepare for the hearing. Therefore, the Examiner has ordered the Complainants to provide a more definite and certain statement of the allegations contained in Paragraph 6 of the complaint by specifically including the date, where known, of the alleged transaction and the names of all participants in the transactions, where known. If the exact date is not known or if the names of some of the participants are unknown, the allegation should give approximate dates and numbers of participants. The requirement that the Complainants provide the information requested does not irrevocably commit the Complainant to a particular version of the facts since the Complainants are free to further amend their complaint in accordance with ERB 22.02(5).

Dated at Madison, Wisconsin, this 7th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner