

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case XXIX
	:	No. 16978 MP-258
KENOSHA EDUCATION ASSOCIATION,	:	Decision No. 12029-B
	:	
Respondent.	:	
	:	

ORDER GRANTING MOTION TO AMEND COMPLAINT,
DENYING MOTION TO MAKE MORE DEFINITE AND CERTAIN,
DEFERRING RULING ON MOTION TO STRIKE AND
SETTING ANSWER DATE AND DATE OF HEARING

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission by Kenosha Unified School District No. 1 wherein the Complainant alleges that the Kenosha Education Association has committed certain prohibited practices within the meaning of the Municipal Employment 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 the Respondent on August 2, 1973, having filed a Motion to Make More Definite and Certain and a Motion to Strike; and the Complainant on August 22, 1973, having filed a Motion to Amend Complaint by way of response to the Respondent's Motion to Make More Definite and Certain; and the Respondent by letter dated October 10, 1973, having indicated its position that while it had no objection to the Complainant's Motion to Amend Complaint it still desired a ruling on the Motion to Make More Definite and Certain as well as its Motion to Strike; and the Examiner having considered the several motions pending and being fully advised in the premises, makes and files the following

ORDER

1. That the Complainant's Motion to Amend paragraph 4 of its complaint be, and hereby is, granted;

2. That the Respondent's Motion to Make More Definite and Certain be, and hereby is, denied;

3. That ruling on the Respondent's Motion to Strike be, and hereby is, deferred until such time as the Complainant has had an opportunity to present evidence and arguments at a public hearing within the meaning of Section 227.07 of the Wisconsin Statutes; and

4. That the Respondent be, and hereby is, required to answer the amended complaint on or before November 6, 1973, and that the hearing on the amended complaint be and hereby is, scheduled to

commence at the Kenosha County Courthouse, at 10:00 a.m. on November 13, 1973, and to continue at 10:00 a.m. on November 14, 1973 if necessary to complete the taking of evidence and arguments.

Dated at Madison, Wisconsin, this 16th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner

MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO AMEND COMPLAINT,
DENYING MOTION TO MAKE MORE DEFINITE AND CERTAIN,
DEFERRING RULING ON MOTION TO STRIKE AND
SETTING ANSWER DATE AND DATE OF HEARING

The Respondent's Motion to Make More Definite and Certain relates to paragraph 4 of the complaint wherein the Complainant alleges that the Respondent has engaged in "sham, frivolous and surface bargaining", adopted "adamant and intransigent positions", blocked negotiations "by taking bargaining positions calculated to prevent agreement", and conditioned further negotiations on the Complainant's willingness to move on the "calendar-salary issue". Basically, the Respondent's Motion seeks a description of the particular acts which the Complainant relies on and the names of all officers or members of the Respondent who engaged in the acts alleged.

The Complainant amended paragraph 4 of its complaint to include subparagraphs (i), (ii), and (iii) which set out particular acts which the Complainant relies on in support of its allegation in addition to the letter dated June 26, 1973 allegedly written by the Respondent's president which was made a part of the original complaint. While amended paragraph 4 does not contain the names of the officers or members of the Respondent who acted as spokesmen for the Respondent on the particular dates in question, the Examiner is satisfied that the Respondent is sufficiently apprised of the particulars of the alleged conduct to determine from its own records who would have been spokesmen on such occasions.

The Respondent's concern for the alleged lack of specificity in the complaint, as amended, apparently stems in part from the Complainant's use of allegations in the form of legal conclusions such as the allegation that the Respondent has engaged in "sham, frivolous and surface bargaining". As the Examiner reads the amended complaint, the Complainant is asking for a finding that the Respondent has engaged in such conduct based on the specifications set out in subparagraphs (i), (ii), and (iii) of the amended complaint and subparagraph (d) of the original complaint. In the Examiner's view the amended complaint is therefore in substantial compliance with the requirements of ERB 12.02(2) of the Commission's rules.

In so construing the pleadings the Examiner does not intend to preclude the possibility that the Complainant may seek to introduce evidence with regard to the course of bargaining. However, if the Complainant attempts to introduce evidence of other specific acts, which allegedly constitute prohibited practices, the Complainant will be required, upon timely objection by the Respondent, to further amend its complaint and the Respondent will be given an opportunity to amend its answer and move for any postponement it deems necessary by reason of surprise.

The Complainant's allegation contained in paragraph 5 of the complaint, that the Respondent has coerced and intimidated municipal employes in the enjoyment of their legal rights in violation of Section 111.70(3)(b)(1) constitutes a separate allegation which in the Examiner's opinion is a "contested case" within the meaning of

Section 227.01 of the Wisconsin Statutes requiring a public hearing pursuant to Section 227.07 of the Wisconsin Statutes. For that reason ruling on the Respondent's Motion to Strike has been deferred.

Dated at Madison, Wisconsin, this 16th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli
George R. Fleischli, Examiner