

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BOARD OF EDUCATION - RICHMOND SCHOOL
 JOINT DISTRICT NO. 2, LISBON-PEWAUKEE,

Complainant,

vs.

ESTHER HEIER AND ARROWHEAD DISTRICT
 COUNCIL,

Respondents.

Case IV
 No. 18629 MP-412
 Decision No. 13233-A

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

A Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission by the Board of Education - Richmond School Joint District No. 2, Lisbon-Pewaukee, hereinafter Complainant, alleging that Esther Heier of Arrowhead District Council, hereinafter Respondent, has committed a prohibited practice 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 a hearing having been scheduled in the matter, and prior to said hearing Respondent having filed a Motion to Dismiss or in the alternative a Motion to Make More Definite and Certain and a Motion for a Postponement of Hearing 1/; and the Examiner being satisfied that the Motion to Dismiss and the Motion to Make More Definite and Certain, should be denied.

NOW, THEREFORE, it is

ORDERED

1. That Complainant's Motion to Dismiss is, and the same hereby is, denied;

2. Complainant's Motion to Make More Definite and Certain is, and the same hereby is, denied;

And, furthermore, Respondent is hereby directed to file an answer to Complainant's Complaint in the above matter by February 4, 1975.

Dated at Madison, Wisconsin this 28th day of January, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Sherwood Malamud*
 Sherwood Malamud, Examiner

1/ Said hearing was postponed from January 28 to February 5 and 6, 1975 prior to the issuance of this order.

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

In its Motion to Dismiss, Respondent maintains that Complainant has failed to state a cause of action upon which relief may be granted. Complainant 2/ alleges in pertinent part that:

- "2. J. Christopher Moore filed a grievance for Esther Heier on October 17, 1974 alleging that the terms of the contract had been violated by the Board.
3. That grievance was subsequently arbitrated with Mr. Robert J. Mueller of Madison serving as the arbitration panel chairman and the award was made in favor of the Board. The Arrowhead district Council represented Mrs. Heier's interest throughout the grievance steps.
4. The grievance was again filed on November 1, 1974 by Esther Heier. The grievance as filed is on the identical issue which had been arbitrated and the parties are bound by the identical Master Agreement as no language was changed."

The Wisconsin Administrative Procedure Act provides at Section 227.07 that:

"Prior to the final disposition of any contested case, all parties shall be afforded opportunity for full, fair, public hearing after reasonable notice, but this shall not preclude the informal disposition of controversies by stipulation, agreed settlement, consent orders or default."

Respondent's motion was filed prior to any hearing in the matter. The Examiner is satisfied that the allegations contained in the Complaint set forth matters in the nature of a contested case, therefore, Complainant has the right to a "full, fair, public hearing" as provided in Section 227.07 of the Wisconsin Statutes. For that reason, the Examiner has denied Respondent's motion. However, Respondent is free to renew said motion, if it so desires, at an appropriate point in the proceedings.

Motion to Make More Definite and Certain:

Respondent, in its motion, alleges that "The Complaint gives no specificity, is vague, conclusionary and unsupported by any substantial showing of facts."

ERB 12.02(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 occurrence of particular acts and the sections of the act alleged to have been violated thereby."

The Examiner is satisfied that the Complaint does provide adequate facts, dates, and identification of individuals so that Respondent is apprised of the facts which allegedly form the basis of the Complaint.

2/ In a conference call initiated by the Examiner, Complainant did not indicate any desire to file any response to Respondent's Motion to Dismiss.

Furthermore, Complainant has identified the provision of the act which Respondent is alleged to have violated as Section 111.70(3)(b)4 of the Municipal Employment Relations Act. Complainant has complied with the provisions of ERB 12.02(2)(c) and therefore, the Examiner has denied Respondent's motion to Make More Definite and Certain and has ordered Respondent to file its answer.

Dated at Madison, Wisconsin, this 28th day of January, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner