

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRISTOPHER MOORE AND ESTHER HEIER
AND ARROWHEAD DISTRICT COUNCIL,
RICHMOND SCHOOL TEACHERS,

Complainants,

vs.

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

Respondents.

Case VI
No. 18698 MP-423
Decision No. 13259-A

Appearances:

Mr. Gregory A. Wilson, Staff Counsel, WEAC, appearing on behalf of
the Complainants.

Mr. George Shiroda, Representative, appearing on behalf of the
Respondents.

ORDER GRANTING MOTION TO AMEND COMPLAINT

A complaint of prohibited practices alleging violation of Section 111.70(3)(a)1 and 2 of the Wisconsin Statutes having been filed by Christopher Moore, Esther Heier and Arrowhead District Council, Richmond School Teachers, against Joint School District No. 2, Lisbon-Pewaukee; Board of Education, Richmond Elementary School, Joint School District No. 2, Lisbon-Pewaukee; and the Wisconsin Employment Relations Commission having appointed Sherwood Malamud to act as an Examiner in the matter; and hearing in the matter having been held on February 5, 1975; and on April 4, 1975 Complainant having filed a motion to amend its complaint in order to substitute in its statement of statutory violations Section 111.70(3)(a)3 for Section 111.70(3)(a)2; and Respondent Board having filed its objection to said motion on April 30, 1975; and the Examiner being fully advised in the premises, makes and issues the following

ORDER

IT IS ORDERED that Complainants' motion to amend its complaint is granted so that the complaint now alleges that the Board violated Section 111.70(3)(a)1 and 3 and 5.

Dated at Madison, Wisconsin this 23rd day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Sherwood Malamud
Sherwood Malamud, Examiner

MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO AMEND COMPLAINT

Respondent opposes Complainants' motion to amend its complaint because:

"Such an ammendment (sic) would deny the right of the Board to prepare a proper defense and since the hearing has already been held would deny the Board the opportunity of appropriate examination of witnesses and evidence which might be used as proof of the allegation. The allowance of the ammendment (sic) would thereby constitute a prejudicial procedural error."

However, the Commission's rules at Section ERB 12.02(5)(a) of the Wisconsin Administrative Code provides that:

"Any complainant may amend the complaint upon motion . . . at any time prior to the issuance of an order based thereon by the . . . examiner authorized to issue and make findings and orders.

On the basis of the rule of the Commission permitting amendment to the complaint, the Examiner has granted Complainants' motion to amend its complaint.

The Examiner will permit Respondents to amend their answer 1/ and if in said amendment new material allegations of fact are made by Respondents, the Examiner will provide Respondents with an opportunity to make application to reconvene the hearing. Respondents will be permitted to file said amendment and/or application no later than July 30, 1975.

Furthermore, in light of the fact that Complainants' amendment to the complaint goes to the legal conclusions to be drawn from the allegations contained in the complaint to which no formal pleading is necessary, and on the basis of Respondent's opposition to Complainants' amendment, the Examiner will consider Complainants' amendment to the complaint as denied by Respondents in the event Respondents choose not to file a formal pleading to Complainants' amendment.

Dated at Madison, Wisconsin this 23rd day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Sherwood Malamud, Examiner

1/ See ERB 12.03(5).