

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHN PIERPONT, BRENT DAVIS AND MERCER
EDUCATION ASSOCIATION,

Complainants,

vs.

MERCER COMMON SCHOOL DISTRICT NO. 1,

Respondent.

Case IV
No. 20424 MP-612
Decision No. 14597-A

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO MAKE MORE
DEFINITE AND CERTAIN AND ORDER DENYING MOTION TO DISMISS

John Pierpont, Brent Davis and Mercer Education Association, herein Complainants, having filed an amended prohibited practice complaint with the Wisconsin Employment Relations Commission, herein Commission, wherein it alleged that Mercer Common School District No. 1, herein the District, had committed certain prohibited practices; and the Commission thereafter having appointed Amedeo Greco, a member of the Commission's staff, to act as Examiner in the matter; and the District having thereafter filed a motion to make more definite and certain and a motion to dismiss; and Complainants having responded to said motions; and the Examiner having considered the matter;

NOW, THEREFORE, it is

ORDERED

1. That the motion to make the complaint more definite and certain in the above-entitled matter be, and the same hereby is, granted in part, and that therefore said amended complaint specify the exact nature of the information which the District has allegedly refused to supply which is alluded to in paragraph (n) of Article V of the complaint.

2. That this information should be filed by the Complainants with the Commission, with a copy to Respondent, by July 16, 1976.

3. That the Complainants need not furnish any further requested information.

4. That the motion to dismiss is denied at this time.

Dated at Madison, Wisconsin this 8th day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

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

The District has moved that the complaint be made more definite by: (1) specifying the nature of the information referred to in paragraph (n) of Article V of the complaint; and (2) specifying the specific facts noted in Articles VI and VII of the complaint. The District also moves that certain parts of the complaint be dismissed. Complainants oppose the former motion on the grounds that: (1) the District's motion was untimely filed; and (2), in any event, the complaint is sufficiently clear so that no further clarification is needed. The Complainants also oppose the motion to dismiss on the ground that a hearing is needed to adduce the material facts in issue.

As to the timeliness of the District's motion to make more definite and certain, ERB rule 12.03(3) provides that a party "may, within five days after the service of the complaint, by motion request the commission to order the complainant to file a statement supplying specified information to make the complaint more definite and certain." Since the District was thereby accorded five days in which to file its motion, ERB rule 10.08(1) is also applicable as it provides that "when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation." Additionally, ERB rule 10.08 (2) states that when a party has been served by mail "three days shall be added to the prescribed period. . . "

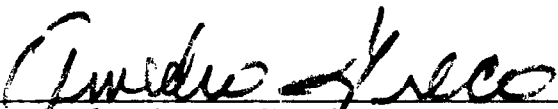
Here, Complainants filed an amended complaint dated June 9, 1976 and on that same day mailed a copy of said complaint to the District. Thereafter, the District by letter dated Friday, June 18, 1976, filed the instant motion, which was received by the Examiner on Monday, June 21, 1976. Since the District was accorded eight days to file its answer by virtue of ERB rule 10.08(2) and (3), and inasmuch as intervening weekends are not to be included within those days, by virtue of ERB rule 10.08(1), the District's answer was due eight work days after June 9, 1976, i.e., June 21, 1976. As the instant motion was filed on June 21, 1976, it was thereby timely.

Turning to the merits of that motion, the Complainants are hereby required to clarify paragraph (n) of Article IV, as the complaint fails to specify with sufficient clarity the information alluded to therein. However, the District's additional request that Articles VI and VII of the complaint be clarified is hereby denied as the information contained therein is sufficiently clear.

The District has also moved that the complaint be dismissed primarily on the ground that no collective bargaining agreement exists between the parties. It also moves to dismiss that part of the complaint which refers to one part of the alleged collective bargaining agreement. Inasmuch as the resolution of these issues involves factual matters and because Complainants are entitled to an evidentiary hearing on such matters, the District's motion to dismiss is denied at this time. 1/

Dated at Madison, Wisconsin this 8th day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Amedeo Greco, Examiner

1/ The District, can of course, renew its motion at the hearing, after evidence has been adduced on this issue.