

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LEROY S. OBENAUER,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case XXXIV
	:	No. 21000 Ce-1701
ALLIS CHALMERS CORPORATION, JOHN S.	:	Decision No. 15069-A
BOLES, WILLIAM EBELI, U. RAO, J.	:	
HALLIBURTON, AND UNITED AUTOMOBILE,	:	
AEROSPACE AND AGRICULTURAL IMPLEMENT	:	
WORKERS OF AMERICA,	:	
	:	
Respondent.	:	
	:	

ORDER DENYING MOTION TO DISMISS

Ray Obenauer, herein Complainant, having filed an unfair labor practice complaint with the Wisconsin Employment Relations Commission, herein Commission, wherein he alleged that Allis Chalmers Corp., John S. Boles, William Ebli, U. Rao, J. Halliburton and United Automobile, Aerospace and Agricultural Implement Workers of America, herein Respondents, had committed unfair labor practices contrary to the provisions of Section 111.06, Wisconsin Employment Peace Act; and the Commission having appointed Thomas L. Yaeger, a member of the Commission's staff, to act as Examiner in the matter; and, thereafter, Respondents Allis Chalmers, John S. Boles, William Ebli, U. Rao, by counsel, having filed a motion to dismiss the subject complaint; and the Examiner being fully advised in the premises and being satisfied that Respondents' motion should be denied at this time;

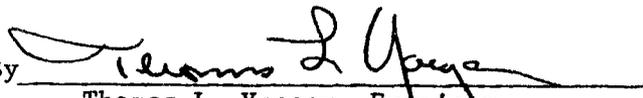
NOW, THEREFORE, it is

ORDERED

That said motion to dismiss the complaint is denied.

Dated at Madison, Wisconsin this 30th day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
 Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS

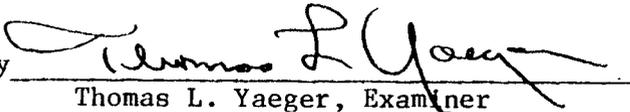
Respondents moved to dismiss the complaint on two grounds: (1) that neither complaint nor notice of hearing thereon "sets forth with specificity any alleged animus harbored by respondents against complainant because he engaged in the exercise of any rights guaranteed him by Section 111.04, Stats."; and (2) that neither the complaint nor notice of hearing thereon "set forth with specificity any alleged unfair labor practices committed by Respondents." The Respondent concludes therefrom that the complaint and notice of hearing "are so nebulous as not to give Respondents notice of the issues complained of and thus fails to state a cause of action for which relief can be granted."

The instant complaint, while not setting forth the specific provisions of the Wisconsin Employment Relations Act allegedly violated, may fairly be read to allege a breach of contract in violation of Section 111.06(1)(f). Further, said complaint alleges that the Respondent Union breached its fiduciary duty of fair representation owed to Complainant. Therefore, the Examiner believes that the complaint presents a contested case, 1/ requiring a full hearing on the pleadings. 2/

In accordance with the above, the Examiner is, today issuing an Order denying Respondents' motion to dismiss the complaint.

Dated at Madison, Wisconsin this 30th day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner

1/ Wisconsin Statutes, Section 111.07(2)(a), Section 111.07(4), Section 227.

2/ Mutual Fed. Savings & Loan Assoc. v. Savings & Loan Adv. Comm.; (1968) 38 Wis. 2d 381; State ex rel. City of LaCrosse v. Rothwell, (1964) 25 Wis. 2d 228, rehearing denied; Town of Ashwaubenon v. Public Service Commission (1964) 22 Wis. 2d 38, rehearing denied; State ex rel. Ball v. McPhee (1959) 6 Wis. 2d 190; General Electric Co. v. Wisconsin Employment Relations Board (1957) 3 Wis. 2d 227, 241.