

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WAUTOMA SCHOOL DISTRICT EMPLOYEES'
UNION, LOCAL 2743, AFSCME, AFL-CIO,

Complainant,

vs.

WAUTOMA BOARD OF EDUCATION,

Respondent.

Case V

No. 21267 MP-711

Decision No. 15220-A

ORDER GRANTING MOTION TO AMEND COMPLAINT AND DENYING
MOTION TO DISMISS AMENDED COMPLAINT AND
MOTION TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN

Wautoma School District Employees' Union Local 2743, AFSCME, AFL-CIO, hereinafter Complainant, having on January 20, 1977 filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission alleging that Wautoma Board of Education, hereinafter Respondent, committed prohibited practices under the Municipal Employment Relations Act (MERA) and the Commission having appointed Sherwood Malamud, Examiner to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Employment Peace Act which provision is applicable to municipal employment by Section 111.70(4)(a) of MERA; and hearing on said complaint having been held at Wautoma, Wisconsin on March 24, 1977; and Complainant having moved to amend its complaint at the outset of said hearing and Respondent having opposed said motion and the Examiner having reserved ruling on same; and further, on March 31, 1977 Complainant having filed an amended complaint and Respondent having on April 13, 1977 filed a Motion to Dismiss and in the Alternative Motion to Make Amended Complaint More Definite and Certain; and the Examiner being fully advised in the premises makes and files the following

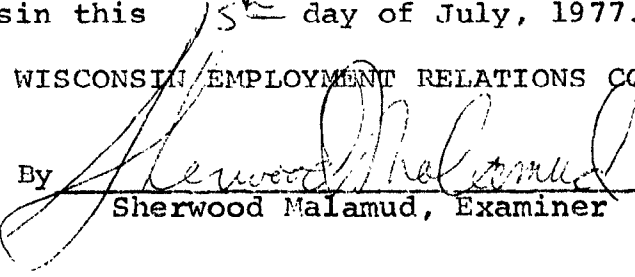
ORDER

That Complainant's motion to amend its complaint is hereby granted; and Respondent's Motion to Dismiss the Amended Complaint is hereby denied, and Respondent's Alternative Motion to Make Amended Complaint More Definite and Certain is denied.

Dated at Madison, Wisconsin this 5th day of July, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner

No. 15220-A

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO AMEND COMPLAINT AND
DENYING MOTION TO DISMISS AMENDED COMPLAINT AND MOTION TO
MAKE COMPLAINT MORE DEFINITE AND CERTAIN

Complainant seeks to amend its complaint to include a charge of interference, a prohibited practice under Section 111.70(3)(a)1 of the Municipal Employment Relations Act to its original charge that Respondent violated Section 111.70(3)(a)5 by violating the parties' collective bargaining agreement. Complainant moved to orally amend its complaint at the hearing which motion was opposed by Respondent and a ruling on same reserved by the Examiner. Similarly, Respondent moved to dismiss Complainant's Amended Complaint.

In its Amended Complaint, Complainant realleged all allegations of fact which it alleged in its original complaint. The amendment to the original complaint was limited to its charge that by violating the parties' collective bargaining agreement Respondent violated section 111.70(3)(a)1 of MERA.

The Examiner granted Complainant's motion to amend its complaint and denied Respondent's motions to Dismiss and its Motion to Make More Definite and Certain for the following reasons. The Wisconsin Administrative Code at ERB 12.02(5)(a) provides that:

"Any complainant may amend the complaint upon motion, prior to the hearing by the commission; during the hearing by the commission if it is conducting the hearing, or by the commission member or examiner authorized by the board to conduct the hearing; and at anytime prior to the issuance of an order based thereon by the commission, or commission member or examiner authorized to issue and make findings and orders."

The above administrative rule provides Complainant with a broad right to amend its complaint any time prior to the issuance of a final order by the Examiner. The breadth of this right is apparent from the rules provision for amendment upon motion. The rule does not require Complainant to show good cause for its amendment as Respondent must do if it desired to amend its answer under ERB 12.03(5). Nonetheless, an amendment may not be permitted which is prejudicial to Respondent's rights. 1/

Here, Complainant amends its complaint to assert that by violating the parties' collective bargaining agreement, Respondent by the very same conduct violated Section 111.70(3)(a)1 of MERA. The conduct alleged in the complaint was fully litigated at the hearing. Furthermore, the additional charge is derivative in nature and there is no assertion by Respondent that such amendment would be prejudicial to its rights. Accordingly, Respondent's Motion to Dismiss the Amended Complaint was denied. Respondent's Motion to Make Complaint More Definite and Certain was denied, as well, because of the derivative nature of the interference charge.

However, if Respondent believes that it must introduce further evidence with respect to the derivative charge of interference, the Examiner will entertain a motion to reconvene the hearing to take further evidence, (said motion must specify the additional evidence which

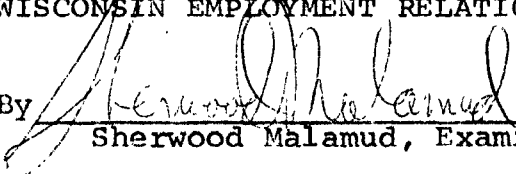
1/ Stanley-Boyd Area Schools (12504-B) 1/76.

Respondent seeks to introduce) provided said motion is filed within seven days of the date of this order.

Dated at Madison, Wisconsin this 15th day of July, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner