



MEMORANDUM ACCOMPANYING ORDERS STRIKING PARAGRAPH OF AMENDED COMPLAINT,  
STAYING PROCEEDINGS AND SETTING TIME FOR ANSWER OR PLEADING

Discussion of order striking paragraph eight of the amended complaint

On December 15, 1977, the examiner granted complainant's motion to amend its complaint and further ordered that the amended complaint be made more definite and certain.

On December 19, 1977, in a prehearing conference in Racine, Wisconsin, complainant responded to the order to make more definite and certain. Paragraph eight of the amended complaint alleges:

"8. Principals and other supervisory agents of the Employer, in accordance with the instructions of the Director of Employee Relations, did induce and encourage employees not to sign union dues check off authorizations."

Complainant stated at the prehearing conference that it had no additional matter to add to paragraph eight and that it could not cite an example of a principal or supervisory agent, other than the elsewhere alleged conduct of said director of employee relations, who did so induce or encourage.

The merits of the allegation in paragraph eight do not hinge on disposition of the allegations in the remainder of the amended complaint. Although the truth or falsity of the allegations in paragraph eight might affect disposition of the other allegations in the amended complaint, the absence of any evidence supporting the allegation in paragraph eight requires that it be stricken from the amended complaint, and an order doing so has been made.

Discussion of stay order

Paragraph seven of the amended complaint alleges:

"7. The conduct of W. Thatcher Peterson referred to in Paragraph No. 6 hereof was part of a course of conduct, both oral and written, by which the Employer has sought to interfere with the right of employees to self-organization guaranteed in sec. 111.70(2), Stats. by both demonstrating hostility to the Racine Education Association, and at the same time authorizing 'all principals and administrators' of the School District to intrude into areas of internal union membership and to discourage employees from signing dues payroll deduction forms or 'the District will be obligated to deduct dues!'"

At the prehearing conference on December 19, 1977, complainant made this paragraph more definite and certain by referring to the following:

1. The forty-two areas in Case XLIV in which allegedly respondent refused to implement, which allegations are subject to respondent's pending motion in Case XLIV to dismiss or defer.

2. The course of conduct by Mr. Peterson in the fall of 1975 where he withheld dues in connection with a checkoff dispute and then refunded them to employees, which dispute is presently pending in arbitration proceedings.

3. The series of prohibited practices presently pending before commission examiner George Fleischli and in judicial review before the Dane County Circuit Court regarding a decision of commission examiner Amedeo Greco.

4. Conduct identified as the "Slavney-Hoornstra matter," which refers to a hearing conducted by Chairman Slavney and Commissioner Hoornstra on another complaint of the complainant, which complaint has been dismissed, allegedly as part of a settlement agreement.

In his decision on December 15, 1977, the examiner temporarily stayed exercise of jurisdiction over paragraph nine of the amended complaint on the basis of information that essentially the same matter, involving breach of the collective bargaining agreement respecting fair share, was pending before the Racine County Circuit Court. At the prehearing conference on December 19, 1977, there was some dispute as to whether that case yet had been commenced pursuant to the statutory procedures, but complainant asserted it would not withhold its court action, and there was no dispute over the information that it essentially involves the same matter as that contained in paragraph nine of the amended complaint.

Respondent moved that no matter beyond the one year statutory limitations period be permitted in this case. The examiner orally denied that motion for the time being without prejudice to it being argued later.

The thrust of complainant's case is that the respondent over a period of time has engaged in such adverse conduct as to make the issuance of the Peterson memorandum, described in full in the examiner's December 15, 1977, decision, an interference with the rights of employees. It is evident that complainant's ability to prevail is contingent to a significant extent on the outcome of proceedings in other forums. For example, complainant's theory of the case will seriously be impaired, if not destroyed, if: respondent's motion to dismiss or defer in Case XLIV is granted; the arbitrator rules adversely to complainant respecting the checkoff dispute; examiner Fleischli rules adversely to complainant; the Dane County Circuit Court affirms examiner Greco; and the Racine County Circuit Court rules adversely to complainant. On the other hand, should complainant prevail in all those matters, a fresh look at this case will be in order. Further, if the complainant wins some and loses some, yet a different picture will be presented, and the wisdom of going forward with this case will hinge on which matters are decided which way and why.

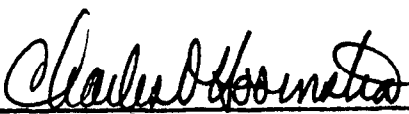
Accordingly, there is no merit to proceeding on this case at this time. This case should be reviewed after the ruling on the employer's motions to dismiss or defer in Case XLIV. By that time perhaps some of the other litigation may be disposed of.

#### Discussion of time for answering

At the prehearing conference, after the examiner orally had stated his disposition of these matters as described above, the parties agreed that respondent should have ten days after the ruling on the respondent's motion to dismiss or defer in Case XLIV, and the examiner has so ordered.

Dated at Madison, Wisconsin, this 3rd day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Charles D. Hoornstra, Examiner