

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	
	:	Case XLIV
vs.	:	No. 22243 MP-799
	:	Decision No. 15943-B
RACINE UNIFIED SCHOOL DISTRICT	:	
NO. 1,	:	
	:	
Respondent.	:	
	:	

ORDER GRANTING MOTION TO MAKE MORE DEFINITE
AND CERTAIN AND ESTABLISHING A NEW BRIEFING SCHEDULE
ON MOTION TO DISMISS OR DEFER

The respondent, on December 14, 1977, orally having moved for an order making complainant's specifications filed December 9, 1977 more definite and certain; and it appearing that said motion should be granted,

IT IS ORDERED that the specifications, and each of them, filed with the commission on December 9, 1977, shall be made more definite and certain and the complainant shall do the same not later than January 9, 1978.

IT IS FURTHER ORDERED that the respondent may, not later than January 23, 1978, serve and file a brief in support of its motion to dismiss or defer, and that the complainant may, not later than February 6, 1978, file a brief in opposition.

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

By Charles D. Hoornstra
Charles D. Hoornstra, Examiner

MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO MAKE MORE DEFINITE
AND CERTAIN AND ESTABLISHING A NEW BRIEFING SCHEDULE
ON MOTION TO DISMISS OR DEFER

Complainant filed its complaint on November 3, 1977. The commission recorded it as Case XLII. It alleged that the respondent had refused to execute a collective bargaining agreement and had made some 50 unilateral changes in the negotiated terms.

On November 9, 1977, respondent filed a partial answer which denied refusing to execute. In respect to the alleged 50 unilateral changes, respondent moved to dismiss, alternatively moved to defer, alternatively moved to make more definite and certain, and alternatively moved to sever.

On November 17, 1977, the examiner granted the motion to sever, and this case became identified in the commission records as Case XLIV.

On November 23, 1977, the examiner directed that the complaint be made more definite and certain and gave respondent until December 30, 1977 to file a brief in support of its motions to dismiss or defer, and gave complainant until January 13, 1978 to file a brief in opposition.

On December 9, 1977, complainant filed a specification enumerating 42 alleged unilateral violations. On December 14, 1977, during a conference telephone call with the examiner and the attorneys for the parties, respondent moved to make those specifications more definite and certain.

This being a class 3 proceeding in which discovery rights are severely limited, a motion to make more definite and certain is the only vehicle to assure that a respondent has notice of the allegations in sufficient detail so that it may prepare an adequate defense. Complainant's specifications on December 9, 1977, fail to provide such notice.

Without discussing each of the 42 specifications, a few illustrative examples are noted.

Specification #6 states:

"Denial of Bargaining Unit Employees the Right to Representation by the Exclusive Bargaining Representative.

"The School District has repudiated those portions of the collective bargaining agreement which deal with the discipline procedures in that it has denied bargaining unit employees the right to union representation at meaningful stages of the discipline procedures."

Respondent is entitled to know: When did this happen? Who was involved? Which portions, by article and section, of the collective bargaining agreement were violated? What is a "meaningful" stage?

Specification #8 states:

"Refusal to Notify Association of Changes in Policies Affecting Working Conditions.

"The School District has failed and refused to notify the Association or offered to negotiate with the Association concerning the implementation of changes in policies affecting working conditions."

When? Which policies affecting working conditions?

Specification #22 states:

"Repudiation of Layoff Procedures with Respect to Part-time Members of the Bargaining Unit."

"The Employer has repudiated the layoff provisions of the contract with respect to part-time teachers who are hired annually by the District."

When did it do so? Which part-time teachers? What specific portions of the layoff provisions have been violated? What did the employer do that violates such provisions?

The examiner has reviewed each and every one of the 42 specifications. Each one is too vague to enable the employer to make a proper investigation to answer or to litigate at a hearing.

Accordingly, the examiner has directed that these specifications, and each one, be made more definite and certain. That means names, dates, specific conduct, et cetera, must be spelled out. Conceivably in certain cases only the respondent has the exact information, in which cases tolerances shall be permitted. The point is that respondent should not be left to guess at what complainant thinks it did to violate its duties.

Because of complainant's failure adequately to make the complaint more definite and certain in accord with the original time table, it also is necessary to change the briefing schedule on respondent's motions to dismiss or defer.

The examiner has given complainant until January 9, 1978, to comply with the order to make more definite and certain. Because of the large number of violations alleged, the examiner is inclined to grant a request for an extension of time.

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

By Charles D. Hoornstra
Charles D. Hoornstra, Examiner