

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LA CROSSE EDUCATION ASSOCIATION,

Complainant,

vs.

CITY OF LA CROSSE, BOARD OF EDUCATION
OF THE LA CROSSE AREA PUBLIC SCHOOLS,
JOINT DISTRICT NO. 5,

Respondent.

Case XXIV

No. 22248 MP-800

Decision No. 15949-A

ORDER DENYING MOTION TO
MAKE MORE DEFINITE AND CERTAIN

LaCrosse Education Association, herein Association, having on November 17, 1977, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission; and the Commission having appointed Thomas L. Yaeger, a member of the Commission's staff, to act as Examiner in the matter; and the City of LaCrosse, Board of Education of the LaCrosse Area Public Schools, Joint District No. 5, herein District having on December 14, 1977, filed a motion to make the complaint more definite and certain; and the Association having objected to granting said motion; and the Examiner having considered the matter;

NOW, THEREFORE, it is

ORDERED

That the motion to make the complaint more definite and certain in the above-entitled matter be, and the same hereby is denied.

Dated at Madison, Wisconsin this *14th* day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Thomas L. Yaeger
Thomas L. Yaeger, Examiner

No. 15949-A

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION TO MAKE MORE DEFINITE AND CERTAIN

The District moved that the complaint be made more definite and certain in several respects. The Association opposed granting said motion because said motion was not timely filed in accordance with Commission rules, and in any event, the complaint is sufficiently specific to allow the District to either admit or deny the allegations contained therein.

Wis. Adm. Code section ERB 12.03(3) provides:

"(3) MOTION TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN. If a complaint is alleged to be so indefinite as to hamper the respondent or any other party in the preparation of its answer to the complaint such party may, within 5 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."

Herein, the complaint was served upon the District's Clerk by certified mail not later than November 30, 1977. The District filed the subject motion on December 14, 1977. The elapsed time from service of the complaint excluding November 30, and Saturdays, Sundays and legal holidays 1/ until receipt of the subject motion is ten (10) days.

While Wis. Adm. Code Section 12.03(3) provides for a five day period within which to file a motion to make more definite and certain, the instant complaint was served upon the District by mail. Where this is the case, and the initial five (5) day period has not been extended and a date certain for filing said motion has not been established, Wis. Admin. Code section ERB 10.08(2), requires that three (3) days be added to the prescribed period for filing of said motion. Applying that requirement herein extends to eight (8) days the time which the District had to file a motion to make more definite and certain. Nonetheless, as noted earlier herein, the subject motion was not filed 2/ with the commission until the 10th day and, therefore, it is untimely.

Dated at Madison, Wisconsin this 10th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Thomas L. Yaeger
Thomas L. Yaeger, Examiner

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- 1/ Wis. Admin. Code Section ERB 10.08(1) provides that in computing any period of time prescribed by the rules where said period of time is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays are to be excluded from said computation.
- 2/ Wis. Adm. Code section ERB 10.08(4) provides that filing is complete "upon actual receipt at the place specified for such receipt."