BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXIII No. 22311 Ce-1758 Decision No. 15986-A	

ORDER DENYING MOTION TO DISMISS, GRANTING IN PART AND DENYING IN PART MOTION TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN, EXTENDING DATE FOR SUBMISSION OF ANSWER AND SETTING NEW HEARING DATE

Local No. 1406 of the International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter Complainant, having on December 1, 1977, filed a complaint with the Wisconsin Employment Relations Commission alleging that Wisconsin Porcelain Company, hereinafter Respondent, had committed prohibited practices within the meaning of the Wisconsin Employment Peace Act; and the Commission having appointed Stephen Schoenfeld, Examiner, to make and issue Findings of Fact, Conclusions of Law and Order; and Respondent on December 19, 1977, having filed a motion to dismiss the complaint or in the alternative to make the complaint more definite and certain; and Complainant having responded to said motion; and the Examiner having considered the matter;

NOW, THEREFORE, it is

ORDERED

1. That Respondent's motion to dismiss be, and the same hereby is, denied.

2. That the motion to make the complaint more definite and certain in the above-entitled matter be, and the same hereby is, granted in part, and that therefore Complainant shall make its complaint more definite and certain by specifying the following:

- a. With respect to paragraph 9 of said complaint: the names of employes to whom the Respondent continued to refuse to pay the holiday benefits.
- b. With respect to paragraph 10 of said complaint: the number of demands that Complainant made of Respondent to pay holiday benefits in accordance with the Arbitrator's award; when said demands were made; to whom the demands were made; by whom the demands were made; and the means by which the demands were made.
- c. With respect to paragraph 11 of said complaint: when and by what means the Respondent disputed that the arbitration award required the payments in question.
- d. With respect to paragraph 12 of said complaint: when and by what means the Complainant requested that all issues in

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dispute relative to the payment of said holiday benefits and the determination of what are 'regularly scheduled hours' within the meaning of the collective bargaining agreement should be submitted to the Arbitrator.

- e. With respect to paragraph 14 of said complaint: the areas of the Arbitrator's award with which Respondent has allegedly failed and refused to fully comply; the areas of dispute relative to the award of the Arbitrator with which Respondent has allegedly failed and refused to submit pursuant to the "retained jurisdiction stipulation agreed to by the parties".
- f. With respect to paragraph 1 of the Second Cause of Action: the employes against whom the Respondent has allegedly discriminated and when said alleged discrimination took place.

3. That the aforesaid information shall be filed by the Complainant with the Commission, a copy to Respondent, no later than January 20, 1978.

4. That all other requests for information sought in Respondent's motion are denied.

5. That the date for filing an Answer is hereby extended to February 10, 1978.

By___

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6. That the hearing in this matter is hereby rescheduled to Tuesday, February 21, 1978, commencing at 10:00 a.m. at the Madison Central Fire Station, 325 West Johnson Street, Madison, Wisconsin.

Dated at Madison, Wisconsin, this 12 day of January, 1978.

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Stephen Schoenfeld, Etaminer

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WISCONSIN PORCELAIN COMPANY, XXIII, Decision No. 15986-A

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS, GRANTING IN PART AND DENYING IN PART MOTION TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN, EXTENDING DATE FOR SUBMISSION OF ANSWER AND SETTING NEW HEARING DATE

The Examiner has denied Respondent's motion to dismiss on the grounds that the undersigned believes the complaint presents a contested case, 1/ requiring a full hearing on the pleadings. 2/

The Commission, in its rules at ERB 12.02(2)(c), established that a complaint must contain, in part:

"A clear and concise statement of the facts constituting the alleged prohibited practice or practices including the time and place of occurrence of particular acts and the sections of the act alleged to have been violated thereby."

The Examiner has granted Respondent's motion in part so that compliance with said rule is satisfied. On the other hand, in those instances wherein Respondent's motion was denied, it was because the allegations set forth in the complaint are sufficiently clear to enable Respondent to answer.

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Dated at Madison, Wisconsin, this 12 day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stephen Schwengeld, Stephen Schoenfeld, Stam Ву___ Examiner

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

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.