

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----

JANICE STUBLEFIELD,	:	
	:	
Complainant,	:	Case LV
	:	No. 22314 MP-807
vs.	:	Decision No. 16011-B
	:	
CHIPPEWA FALLS JOINT SCHOOL DISTRICT	:	
NO. 1,	:	
	:	
Respondent.	:	
	:	

-----

ORDER DENYING MOTION TO DISMISS AND GRANTING MOTION TO MAKE MORE DEFINITE AND CERTAIN

Janice Stublefield, referred to as Complainant, filed a complaint with the Wisconsin Employment Relations Commission alleging that Chippewa Falls Joint School District No. 1, referred to as Respondent, had committed prohibited practices within the meaning of the Municipal Employment Relations Act. The Commission appointed Ellen J. Henningsen, a member of its staff, to act as Examiner. Respondent, on January 10, 1978, filed a motion to make the complaint more definite and certain which the Examiner denied on February 3, 1978. A hearing was held on March 8, 1978 and was adjourned until April 12, 1978. Complainant filed an amendment to the complaint on March 24, 1978. Respondent, on March 29, 1978, timely filed a motion to dismiss the amendment or, in the alternative, to make a portion of the complaint which was incorporated into the amendment more definite and certain. Complainant opposes both motions. The Examiner has considered the matter and issues the following

ORDER

IT IS ORDERED that the motion to dismiss the amendment to the complaint is denied.

IT IS FURTHER ORDERED that the motion to make a portion of the complaint which was incorporated into the amendment more definite and certain is granted and that Complainant is required to specify which employes behaved in a manner similar to the manner for which Complainant was reprimanded and what was Respondent's treatment of these other employes.

IT IS FURTHER ORDERED that Complainant shall supply this information to the Examiner with a copy to Respondent's attorney on or before Monday, April 10, 1978.

IT IS FURTHER ORDERED that the hearing will be held as scheduled.

Dated at Madison, Wisconsin this 4th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen  
Ellen J. Henningsen, Examiner

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

Respondent moves to dismiss the amendment to the complaint on the bases that the amendment is not properly verified, that it does not specify which section of the Municipal Employment Relations Act has been violated and that the amendment is untimely since each factual allegation occurred prior to the filing of the original complaint and could have been included therein. Respondent, in the alternative, moves to make a portion of the original complaint which presumably is incorporated into the amendment more definite and certain.

The Examiner denies the motion to dismiss on all three bases. Although the amendment is not properly verified, such a defect is not grounds for dismissal. However, Complainant is directed to supply the Examiner and Respondent with a suitable affidavit verifying both the complaint and amendment prior to the hearing.

The amendment does not specify which section or sections of MERA have been violated by the acts alleged. The Examiner assumes that Complainant intended to allege the same statutory violations as alleged in the complaint in paragraphs 13, 14 and 15 and will proceed on this basis. Therefore, Respondent's motion to dismiss is denied. Complainant will not be permitted to allege any other statutory violations in this action, absent further amendment.

Concerning Respondent's third reason to dismiss, section ERB 12.02 (5) (a) provides that a complaint may be amended at any time prior to the hearing, during the hearing or prior to the issuance of a final order in the matter. Complainant's amendment is in accord with this rule and therefore is timely. The timing of Complainant's amendment does not prejudice Respondent as the amendment was filed prior to the continued hearing in this matter and because Respondent's opportunity to respond to the amendment by way of filing an answer and offering testimony and arguments on its behalf has not been limited.

Finally, in the alternative, Respondent has moved that, if paragraph 14 of the original complaint is interpreted as applying to the amendment, paragraph 14 be made more definite and certain because the allegations contained therein are so indefinite as to hamper Respondent in preparing its answer to the amendment. The Examiner concludes that the allegations in paragraph 14 do not specify with sufficient clarity the acts complained of as required by section ERB 12.02(2)(c) and Complainant is required to supply the information stated in the order.

In a conference telephone call on April 4, 1978, between the Examiner, Complainant's representative and Respondent's attorney, the Complainant's representative agreed to supply the required information by Monday, April 10, 1978.

It was further agreed that Respondent's Attorney would file his answer to the amendment at the hearing.

Dated at Madison, Wisconsin this 4th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen  
Ellen J. Henningsen, Examiner