

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MILWAUKEE TEACHERS EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	
	:	Case XCVI
vs.	:	No. 22778 MP-837
	:	Decision No. 16231-C
MILWAUKEE BOARD OF SCHOOL DIRECTORS,	:	
	:	
Respondent.	:	
	:	

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ORDER DENYING MOTION TO DISMISS COMPLAINT

Milwaukee Teachers Education Association, herein Complainant, having on March 13, 1978, filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission, wherein it alleges Milwaukee Board of School Directors, herein Respondent, has committed certain unfair labor practices; and the Commission on March 15, 1978, having appointed Stanley H. Michelstetter II, a member of the Commission's staff, to act as Examiner in the matter; and Complainant having objected to Michelstetter participating as Examiner, Dennis P. McGilligan was substituted as Examiner on April 10, 1978; and Respondent having on June 26, 1978, moved to dismiss said complaint on the ground that there was another prohibited practice complaint then pending between the parties for the same cause of action; and on October 13, 1978, the Commission having substituted the undersigned as Examiner; and the Examiner having considered said motion to dismiss the instant complaint.

NOW, THEREFORE, it is

ORDERED

That Respondent's motion to dismiss the instant complaint be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 27th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
 Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING ORDER  
DENYING MOTION TO DISMISS COMPLAINT

Respondent's motion to dismiss is predicated upon the belief that another complaint 1/ involving the same parties pending before the undersigned at the time of filing of the instant complaint was for the same cause and, therefore, it should operate as a bar to the subject complaint. It further claims that, at the least, the subject matter of the instant complaint forms a part of the subject matter of the earlier complaint. That being so, Respondent concludes Complainant has split its cause of action when all allegations could have been raised earlier, and although the Commission does not have a rule prohibiting splitting causes of action it should follow Wisconsin Supreme Court precedent against allowing same and dismiss the instant complaint.

Complainant, on the other hand, argues that the cause of action herein is dissimilar from that raised in the earlier complaint. It claims the earlier complaint alleged Respondent violated Section 111.70(3)(a)4, Stats., when it refused to furnish Complainant with information it had requested concerning staffing of counseling centers, and refused to honor contractual provisions relative to the appropriateness in proceeding in prohibited practice against Respondent with respect to the allegations of the subject complaint. Whereas, it claims the instant complaint deals with the substantive issues presented by the Respondent's conduct in staffing said centers, i.e., that the Respondent by the conduct alleged herein violated Section 111.70(3)(a)1 and 4, by engaging in economic reprisals against employes, by refusing to bargain with Complainant about the program and its impact upon employe wages, hours and conditions of employment, and by engaging in direct negotiations with employes. Finally, Complainant contends there is no Commission rule against splitting causes of action and in addition public policy weighs against such a rule.

The undersigned, being the Examiner in the earlier complaint case which Respondent contends is for the same cause as the subject complaint, is very familiar with the issues raised therein. A comparison of said complaint with the allegations of the instant complaint establishes that although both arise from a common factual background they do indeed involve different causes of action. The earlier complaint alleges Respondent violated its duty to bargain in good faith by refusing to provide Complainant with information it requested concerning staffing of the disputed counseling centers and refusing to process its contractual notice of prohibited practice pertaining to same. However, in the subject complaint, Complainant alleges Respondent interfered with Complainant's protected rights and refused to bargain in good faith in violation of Section 111.70(3)(a)1 and 4, Stats., by engaging in economic reprisals against employes, refusing to bargain about staffing of the counseling centers and their impact upon employe's wages, hours and conditions of employment and negotiating directly with employes thereby bypassing the Complainant as exclusive bargaining agent. Consequently, there is no basis for barring the subject complaint for the reason that the same complaint is pending before the undersigned.

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1/ Milwaukee Board of School Directors, (15825-B) 6/79, decision issued this date.

Respondent has also argued, alternatively, that even if the complaints do not involve identical causes of action, they arise from the same operative facts and the subject complaint should therefore be barred as an impermissible splitting of causes of action. In support of this position it relies upon the Wisconsin Supreme Court decision in Cohan v. Associated Fur Farms, Inc., 261 Wis 584 (1957). The undersigned finds that case inapposite herein. Said case concluded that in a damage suit for breach of warranty, consequential damages are indivisible from claimant's primary damages and, therefore, demand for both cannot be split. The Court found that recovery in a prior suit for all but consequential damages barred a later suit for said consequential damages.

The Commission's rules however do not prohibit the splitting of causes of action. Rather, the rules provide for the discretionary consolidation of cases in order to eliminate or significantly reduce unnecessary costs and delay that could otherwise result from, inter alia, splitting causes of action.

ERB 10.07 Transfer, consolidation and severance of proceedings. Whenever the commission deems it necessary, in order to effectuate the purposes of section 111.70, Wis. Stats., or to avoid unnecessary costs or delay, it may remove or transfer any proceeding before a single commission or examiner. Proceedings under several subsections of section 111.70, Wis. Stats., may be combined or severed. 2/ (emphasis added)

Furthermore, the rules also provide for severance of proceedings involving various subsections of Section 111.70, Stats., presumably, even to the extent of splitting causes.

Thus, inasmuch as the Commission has no rule prohibiting the splitting of causes of action and no compelling reasons were advanced herein for not allowing same in the instant case, the motion to dismiss the instant complaint has been denied.

Dated at Madison, Wisconsin this 27th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Thomas L. Yaeger, Examiner

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2/ Wis. Adm. Code section ERB 10.07.