

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| ERNEST H. EICK III, | : | |
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| Complainant, | : | Case XLV |
| | : | No. 22897 MP-850 |
| vs. | : | Decision No. 16341-C |
| | : | |
| UNIFIED SCHOOL DISTRICT OF RACINE, | : | |
| | : | |
| Respondent. | : | |
| | : | |

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS,
DENYING MOTION TO DECLINE JURISDICTION, DIRECTING
COMPLAINANT TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN,
EXTENDING DATE FOR ANSWER AND SETTING NEW HEARING DATE

The above-named Complainant, on April 13, 1978, having filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission; and the Commission having appointed the undersigned to act as Examiner in the matter; and the Examiner, on May 2, 1978, having issued an Order to Make Complaint More Definite and Certain; and in response the Complainant, on May 9, 1978, having filed a letter with the Wisconsin Employment Relations Commission stating additional facts regarding the matter; and subsequently on May 23, 1978 the Respondent having filed a Motion to Make Complaint More Definite and Certain; and the Examiner on May 25, 1978, having issued an Order granting the aforesaid Motion to Make Complaint More Definite and Certain; and the Examiner, on June 5, 1978, having received a copy of the Complainant's response to the aforementioned Order dated May 25, 1978 from the Respondent; and thereafter on June 8, 1978 the Respondent having filed an Answer in the matter along with a Motion to Dismiss and a Motion to Decline Jurisdiction; and the Examiner having considered said motions;

NOW, THEREFORE, it is

ORDERED

1. That the motion to dismiss in regard to the following items be, and the same hereby is, granted:
 - a. Paragraph 1 of the complaint.
 - b. That portion of paragraph 3 of the complaint relating to Janet Laube's actions in October of 1976 as described in paragraph number "5" of the amended complaint filed May 9, 1978 with the Commission.

2. That the motion to dismiss in regard to the following items be, and the same hereby is, denied:
 - a. The remaining portions of paragraph 3 of the complaint.
 - b. Paragraph 4 of the complaint.
 - c. Paragraph number "4" of the amended complaint filed May 9, 1978 with the Commission.

3. That the Motion to Decline Jurisdiction be, and the same hereby is, denied.

4. That Complainant make his complaint more definite and certain with respect to the allegations contained therein, by stating in a clear and concise form the specific time and date of the acts which took place "after the 1976 teachers' strike" as claimed in the remaining portions of paragraphs 3 and 4 of the complaint and paragraph number "4" of the amended complaint.

And furthermore, that Complainant file the above information with the Commission and serve a copy of same upon Respondent on or before July 4, 1978; and that the date for filing additional Answer in the matter is hereby extended to July 10, 1978; and that hearing in the matter is hereby rescheduled to July 17, 1978, at 10:00 a.m. in the Racine County Courthouse, 730 Wisconsin Avenue, Racine, Wisconsin.

Dated at Madison, Wisconsin this 19th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGiligan
Dennis P. McGiligan, Examiner

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

The Examiner has granted Respondent's motion to dismiss in part herein on the basis that the activity alleged to have constituted a prohibited practice occurred more than one year prior to the date upon which the complaint was filed, therefore precluding the Commission from finding such activity a prohibited practice. 1/ The Examiner has denied Respondent's motion to dismiss in part herein on the basis that it is not clear exactly when the events described in the remaining portions of paragraphs 3 and 4 of the complaint and paragraph number "4" of the amended complaint took place except that it was sometime "after the 1976 teachers' strike." Consequently, the Examiner has directed the Complainant to make his complaint more definite and certain by stating in a clear and concise form the specific time and dates of said acts. This is done pursuant to the purpose and intent of ERB rules 12.02(2) and 12.03(3). Following a response from the Complainant the Respondent may, or may not, wish to renew its motion to dismiss.

The Examiner has denied Respondent's motion to decline jurisdiction herein on the grounds that it is premature, and because the matter is in the nature of a contested case, 2/ requiring a full hearing in the pleadings. 3/

The Examiner has extended date for an additional Answer and set a new hearing date in the matter in order to facilitate the direction of the above Order, and in response to Respondent's letter dated June 14, 1978.

Dated at Madison, Wisconsin this 19th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

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- 1/ City of Milwaukee (13093), 10/74; City of Sheboygan (12134-A, B), 11/74.
 - 2/ Wisconsin Statutes, Section 111.07(2) (a), Section 111.07(4), Section 27.
 - 3/ 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.