

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LEONARD A. TOKUS, BRUCE D. SCHRIMPT,	:	
JOYCE E. BORKENHAGEN and JOHN J. DOLL,	:	
	:	
Complainants,	:	Case VII
	:	No. 23343 PP(S)-53
vs.	:	Decision No. 16487-E
	:	
NANCY NEWBURY, Administrator, Equal	:	
Rights Division and THOMAS W. DALE,	:	
Director, Legal Service Bureau, Equal	:	
Rights Division, Department of Industry,	:	
Labor and Human Relations and STATE OF	:	
WISCONSIN,	:	
	:	
Respondents.	:	
	:	

ORDER DENYING MOTION TO DISMISS COMPLAINT

Leonard A. Tokus, Bruce D. Schrimpf, Joyce E. Borkenhagen and John J. Doll, herein Complainants, having, on July 31, 1978, filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission, wherein they allege Nancy Newbury and Thomas W. Dale, of the Department of Industry, Labor and Human Relations, State of Wisconsin, herein Respondents, have committed certain unfair labor practices; and the Commission, on August 7, 1978, having appointed Thomas L. Yaeger, a member of the Commission's staff, to act as Examiner in the matter; and Complainants having on October 6, 1978, moved to amend said complaint to add the State of Wisconsin as a Respondent; and the Examiner having, on October 9, 1978, granted said motion; and, thereafter, on October 11, 1978, the Examiner having ordered Complainants to further amend said complaint on or before October 25, 1978, to make same more definite and certain; and on November 6, 1978, Respondents having moved to dismiss said complaint because of Complainants' failure to amend same as ordered by the Examiner; and on November 7, 1978, the Examiner having ordered Complainants to show cause why complaint should not be dismissed; and on November 13, 1978 Complainants' counsel having withdrawn as counsel in the instant proceeding; and on November 17, 1978, Complainants having filed Notice of pro se Appearances with the Examiner; and on November 21, 1978, Complainants having filed a response to the aforesaid Order to Show Cause and an Amended Complaint; and the Examiner having considered said motion;

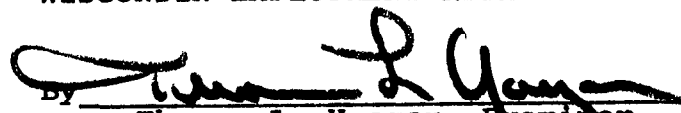
NOW, THEREFORE, it is

ORDERED

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

Dated at Madison, Wisconsin this 9th day of January, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
 Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION TO DISMISS COMPLAINT


Respondents' motion to dismiss is predicated upon Complainants' failure to amend its complaint by October 25, 1978, as ordered by the Examiner. The Examiner's order to make complaint more definite and certain was pursuant to his authority to regulate the course of the proceeding, 1/ and in the interest of orderly administration of Commission processes.

As noted in the Order to Show Cause Complainants' counsel never accepted delivery of the Order to Amend Complaint and same was returned to the Examiner on November 6, 1978. On November 7, counsel advised Complainants he was withdrawing from the case. Shortly thereafter, on November 13, 1978, counsel advised the Examiner he was withdrawing from the case. Within a week of counsel's notice to the Examiner, Complainants appeared pro se and did file an amended complaint with the Examiner.

While there is authority for the Examiner to dismiss a complaint for failure to comply with his order to amend the complaint to make it more definite and certain 2/, the undersigned does not believe it would be an appropriate exercise of his discretion to do so in view of the circumstances present herein. Complainants have now amended their complaint and the delay in doing so has not prejudiced Respondents'. Hence the motion to dismiss has been denied.

Dated at Madison, Wisconsin this 9th day of January, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner

1/ Section 227.09, Stats.

2/ Medved v. Baird 207 N.W. 2d 70, 58 Wis. 2d 563 (1973).