

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES TAYLOR and LOCAL 1101 OF	:	
DISTRICT COUNCIL 40, AFSCME, AFL-CIO,	:	
	:	
Complainants,	:	
	:	Case XXIV
vs.	:	No. 25230 MP-1045
	:	Decision No. 17379-B
DISTRICT COUNCIL 40, AFSCME, AFL-CIO	:	
and SCHOOL DISTRICT OF MUKWONAGO,	:	
	:	
Respondents.	:	
	:	

ORDER REQUIRING COMPLAINANTS TO MAKE COMPLAINT
MORE DEFINITE AND CERTAIN

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having named Stanley H. Michelstetter II as Examiner; and Respondent District Council 40^{1/} having filed a motion to make more definite and certain and having expressed some confusion over the apparent conflict between the caption of the complaint and the body thereof; and the examiner having concluded that the complaint should be made more definite and certain with respect to the parties named and with respect to the allegations of violation of collective bargaining agreement, if any.

NOW, THEREFORE, it is

ORDERED

That within ten (10) days of the date of this Order Complainants make their complaint filed in the above-entitled matter more definite and certain with respect to the following enumerated items:

1. the specific parties Complainants are naming as complainant and respondent, and, if any such party is an individual, whether he or she is named as an individual or in his or her representative capacity;

^{1/} Attorney Graylow has appeared on behalf of Richard Abelson, Representative, District Council 40, which I deem to include District Council 40, AFSCME, AFL-CIO.

2. identify for each party complainant the nature of each relationship by which he, she or it asserts a right to relief against each respondent; and
3. if Complainants allege any respondent has violated a portion of a collective bargaining agreement, identify the portion(s) each such respondent is alleged to have violated, the time when each such violation occurred and the specific acts alleged to constitute violations of each portion cited.

Dated at Milwaukee, Wisconsin this 12th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II, Examiner

MEMORANDUM ACCOMPANYING ORDER REQUIRING COMPLAINANTS
TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN

The complaint filed in this matter carries a caption of

James Taylor

v.

"Richard Abelson - Council 40 Representative"

and

"Robert Hill, Pres.
Mukwonago School Board"

and alleges that former District Council 40 representative Robert Lyons; his successor, Richard Abelson; and Michael Roshar, identified in the Municipal Employer's Motion to Dismiss as its Chief Labor Negotiator at the relevant times, conspired to deprive him of either a hearing, or the right to make a presentation at such a hearing. Complainants alleged Respondents committed an unfair labor practice within the meaning of apparently Section 111.70(3)(a)5, but later stated they based their arguments on provisions of the AFSCME constitution. In the Commission's order appointing examiner and my notice of hearing, successive changes were made to the caption to reflect the parties believed effectively named in the body of the complaint. Those parties were, in turn, served or provided, as relevant, with the notice of hearing. On November 27, 1979 Attorney Graylow submitted a letter and Notice of Appearance and Motions on behalf of "Respondent Richard Abelson, Council 40 Representative." Inter alia, he made a motion to require complainant to make his complaint more definite and certain by alleging "(1) what portion, part, section or article of the agreement was violated; (2) by whom; (3) when; and (4) in what manner" on the basis that Respondent-District Council 40 is unable to prepare a defense in view of the omission of the foregoing. In the accompanying letter Attorney Graylow stated:

You will note that the pleadings filed herewith bear the caption of James Taylor and only James Taylor, Complainant. This reference is taken from the face of the Complaint, which apparently was filed by Taylor. You will note that there is no mention of Local 1101, District Council 40, AFSCME, AFL-CIO. Accordingly, I would ask that you amend your pleadings to reflect the accurate recitation of the caption.

Both Respondents have filed motions to dismiss based on, or preserving, a bountiful array of colorful legal theories.

Wisconsin Administrative Code section ERB 12.02 (2) provides in relevant part:

(2) CONTENTS. Such complaint shall contain the following:

(a) The name, address, and affiliation, if any, of the complainant, and of any representative thereof.

(b) The name and address of the respondent or respondents, and any other party named therein.

(c) 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.

(d) A prayer for specific and general relief.

Although Respondent-District Council 40 has not addressed its motion to make more definite and certain to this issue, it has demonstrated confusion with respect to the apparent contradiction between the body of the pleadings and the caption written by Complainant-Taylor. It is clear that Complainant-Taylor has not indicated whether he is naming himself or the local and, if he is naming himself, whether he claims rights as an individual employe and/or as a representative of the local union who has been denied some prerogative of his office. Similarly, Complainant-Taylor has named Richard Abelson, obviously in his representative capacity, but from the body of his complaint it is unclear whether he is naming Abelson as a representative or intends to name District Council 40, Abelson's and Lyons' principal. These ambiguities have, in part, caused the unnecessary array of potential legal theories of the case. (There can be no doubt that Complainant-Taylor is naming the School District of Mukwonago because he had not alleged that Robert Hill individually or in his capacity as president of the Respondent-Employer's school board committed any prohibited practice.) Complainant-Taylor has, therefore, failed to comply with ERB 12.02 (2) (a) and (b). In the interest of enabling all parties to properly prepare their defenses, I have directed that Complainants clarify their complaint naming the parties they precisely intend to name and in the body thereof identifying the basis or bases upon which they claim a right to receive relief.

Respondent-District Council 40's motion to make more definite and certain accounts for the central difficulties Respondents have encountered in stating their defenses.

Complainants also failed to allege that Respondents violated any provisions of a collective bargaining agreement, if indeed it intended to do so. It is this failure which accounts for the central difficulties which Respondents have encountered in stating their defenses. Under the circumstances, I conclude Complainants have failed to comply with section ERB 12.02 (2) (c). I have, therefore, entered an order which also requires them to state the specific provisions of a collective bargaining agreement, which they believe each Respondent violated.

Dated at Milwaukee, Wisconsin this 12th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II, Examiner