STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IRON WORKERS UNION NO. 383
INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL & ORNAMENTAL
IRON WORKERS, AFL-CIO

: Case I

No. 25931 Ce-1862 Decision No. 17739-A

Complainant,

comprarnant,

vs.

HOLSTER CONSTRUCTION, INC.

Respondent.

Respondenc.

ORDER DENYING MOTION TO MAKE
MORE DEFINITE AND CERTAIN AND
RESERVING RULING ON MOTION TO DISMISS

On March 25, 1980 Iron Workers Union No. 383, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO (Complainant) filed a complaint of unfair labor practices against Holster Construction, Inc. (Respondent), with the Wisconsin Employment Relations Commission. On April 9, 1980 the Commission appointed Christopher Honeyman, a member of its staff, as Examiner and authorized the undersigned to make and issue Findings of Fact, Conclusions of Law and Order in the matter. On April 25, 1980 Respondent filed its answer in this matter together with Motions to dismiss and to make the complaint more definite and certain, and on July 7, 1980 Complainant replied to said motions. The Examiner, being fully advised in the premises, makes and issues the following

ORDER

- 1. That Respondent's Motion to Make Complaint More Definite and Certain is denied.
- 2. That the undersigned reserves ruling, for the time being, concerning Respondent's Motion to Dismiss Complaint.

Dated at Madison, Wisconsin this 15th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Christopher Honeyman, Examiner

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MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO MAKE MORE DEFINITE AND CERTAIN AND RESERVING RULING ON MOTION TO DISMISS

Respondent's motions are timely filed. Respondent's Motion to Make More Definite and Certain seeks information as to the number of employes affected and wages and benfits lost by Respondent's alleged mis-assignment of certain work; Complainant in its reply states that it lacks the relevant information and that same is under Respondent's control. It is apparent that the fullest information as to the length of time a particular job is expected to take, and the number of employes necessary, is likely to be more readily available to the employer involved than to the Union, and the applicable wage rates and benefits are known to both, since the existence of a labor agreement is admitted. Accordingly, the undersigned finds the complaint to be adequately definite and certain.

Respondent moves that the complaint be dismissed on three grounds, two of them having to do with deferral to other forums (arbitration or, alternatively, the Impartial Jurisdictional Disputes Board of the AFL-CIO). The third ground, deferral to the National Labor Relations Board's jurisdiction, is without merit since no section of the National Labor Relations Act, as amended, makes violation of a labor agreement an unfair labor practice under that statute, and consequently there is no concurrent jurisdiction for the types of violations alleged here. With respect to Respondent's other alternative grounds for deferral, Complainant's reply indicates that there is a question of fact as to whether Complainant failed to proceed to arbitration or Respondent frustrated Complainant's attempt. These arguments are therefore appropriately addressed after the hearing.

Dated at Madison, Wisconsin this 15th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Christopher Honeyman, Examiner