

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN STATE EMPLOYEES
UNION (WSEU), AFSCME (American
Federation of State, County
and Municipal Employees),
Council 24, AFL-CIO,

Complainant,

vs.

STATE OF WISCONSIN,
DORIS HANSON, LINDA REIVITZ,
ERIC STANCHFIELD, and HOWARD
KOOP, individually and as
State Employees,

Respondents.

Case CLXXXIX
No. 31561 PP(S)-96
Decision No. 20711-A

ORDER DENYING MOTION TO AMEND COMPLAINT

Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO having, on May 9, 1983, filed a complaint alleging that the State of Wisconsin, Doris Hanson, Linda Reivitz, Eric Stanchfield, and Howard Koop had committed unfair labor practices within the meaning of Sec. 111.80, Wis. Stats.; and the Commission having appointed the undersigned as Examiner in this matter; and hearing having been held on July 19, 1983; and the parties thereafter having filed briefs, the last of which was filed on December 5, 1983; and the Complainant having, on December 5, 1983 filed a Motion to Amend Complaint by adding as Complainants two individual state employees; and Respondent having, on December 30, 1983, objected to said motion on grounds of lateness and possible introduction of additional hearing and briefing; and Complainant having, on January 4, 1984, waived further hearing and briefing and rested silent upon the record as it stands without giving any reason why the amendment should be allowed; the Examiner, having considered the positions of the parties, hereby makes and files the following

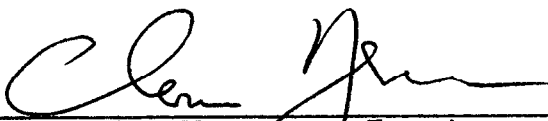
ORDER

That the amendment requested by Complainant is denied.

Dated at Madison, Wisconsin this 10th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Christopher Honeyman, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION TO AMEND COMPLAINT

Complainant's motion is unaccompanied by any reasoning in support of the motion, and Complainant has given no explanation of the need to add party complainants at this time. Respondents objected on the grounds that the hearing in this matter was held five months prior to the motion to add complainants and all of the briefs and reply briefs had been filed by the time the motion was made. Respondents argue that the addition of two individual complainants raises issues that are unknown and creates the potential need for further hearing and briefs.

The right to amend a complaint of this nature is controlled by rule ERB 22.02(5)(a), which states as follows:

Any Complainant may amend the complaint upon motion, prior to the hearing by the Commission; during the hearing by the Commission if it is conducting the hearing; or by the Commission member or Examiner authorized by the Commission to conduct the hearing; and at any time prior to the issuance of an order based thereon by the Commission, or Commission member or Examiner authorized to issue and make findings and orders.

This rule plainly provides for a liberal right to amend a complaint at virtually any time the proceeding is in progress. But the Examiner does not find that this rule confers upon a complainant an absolutely unlimited right to amend the complaint without reason or explanation at any time or in any way the complainant sees fit. Such a conclusion would open the door to abuses by litigants who feared an adverse decision or who wished merely to harass, by enabling them to amend the complaint repetitively at the last minute in order to keep the proceeding in doubt. Even in situations where no abuse is intended, the objections of Respondent here have merit, in that a late amendment may have the effect of requiring a reopening of the hearing and/or further briefing. The fact that Complainant has waived further hearing and further briefing does not mean that Respondents can be required to waive any rights to further development of the record which such an amendment might warrant. As a matter of common sense, therefore, the right to amend cannot be presumed to be absolute. When an amendment is proposed at so late a date, some showing of reasonableness is warranted.

Respondents' objection to the amendment stated in pertinent part as follows:

The possible addition of two individual complainants raises issues that are, at this time, unknown. The Complainants' reasons for this amendment are unstated and create the potential need for further hearing and briefs in this matter.

The Complainant's reply to this challenge reads, in its entirety, as follows:

I respond herewith to the Employer's letter to you of December 29, 1983.

There is no need for further hearing. There is no need for further briefing.

In short the Complainants rely upon the record to date.

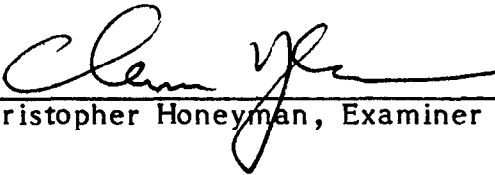
There is no apparent technical defect in the complaint which the amendment might be intended to rectify. The Examiner also cannot discern any particular remedy to which these two individual state employees might be entitled that would not also apply to some twenty-six thousand others. The Respondents cannot be required to waive their potential right to further hearing and/or briefing if the

amendment were allowed. And the Complainant has declined to give any reason or explanation whatsoever for its motion. The Examiner accordingly concludes that there is no reason here why this late amendment should be allowed, and the motion is denied. 1/

Dated at Madison, Wisconsin this 10th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY



Christopher Honeyman, Examiner

1/ The Examiner wishes to emphasize that this ruling is not an overall condemnation of all late amendments. Under rule 22.02(5)(a), cited above, the addition of complainants or other amendments to a complaint may, in other circumstances, be entirely appropriate even at so late a point in the proceeding.