

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KAL LARSON, :  
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Complainant, :  
 :  
v. : Case XL  
 : No. 31648 MP-1481  
WEST ALLIS-WEST MILWAUKEE : Decision No. 20922-B  
EDUCATIONAL ASSOCIATION and :  
SCHOOL DISTRICT OF WEST :  
ALLIS-WEST MILWAUKEE, :  
 :  
Respondents. :  
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ORDER DENYING COMPLAINANT'S MOTION THAT MATERIAL  
FACTS AS ALLEGED AGAINST RESPONDENT WEST ALLIS-  
WEST MILWAUKEE EDUCATION ASSOCIATION BE DEEMED  
ADMITTED AND RESCHEDULING HEARING

The above-named Complainant having, on May 27, 1983, filed a complaint with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that the above-named Respondents have committed certain prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Mary Jo Schiavoni, a member of its staff, to act as Examiner in said matter; and the Examiner having issued a Notice of Hearing on Complaint on August 19, 1983, which inter alia, stated that the above-named Respondents could respond to Complainant's allegations in an Answer which was to be served on the Examiner and the Complainant on or before September 12, 1983; and Respondent School District of West Allis-West Milwaukee having filed its answer on September 6, 1983; and Respondent West Allis-West Milwaukee Education Association having filed a Motion to Stay Proceedings in the above-captioned matter on September 13, 1983, pursuant to the disposition of proceedings in Milwaukee County Circuit Court; and the Examiner, on September 20, 1983, having granted said Motion in which she held the hearing of the above-captioned matter in abeyance pending disposition by the circuit court; and Complainant having, on September 28, 1983, filed a motion for an order directing that material facts as alleged in its complaint and amended complaint be deemed admitted as to Respondent Association; and Respondent Association and Respondent District having, on October 3, 1983, filed memoranda in opposition to the Complainant's Motion; and Respondent Association having, on November 7, 1983, advised the Examiner that the Complainant withdrew its objection to Respondent Association's Motion to Defer Jurisdiction from the Milwaukee County Circuit Court to the Commission; and the Examiner having considered the Complainant's Motion;

NOW, THEREFORE, it is

ORDERED

1. That the Complainant's Motion that the pleadings be deemed admitted as against Respondent Association is hereby denied.
2. That the hearing in the above-entitled matter is hereby rescheduled for Wednesday, December 21 and Thursday, December 22, 1983, at the City Hall, Council Chambers, West Allis, Wisconsin, commencing at 9:00 a.m. on December 21, 1983.
3. That Respondent Association may file an answer to the complaint and the amended complaint with the Wisconsin Employment Relations Commission. The original shall be signed and verified and four copies shall be served on the

Commission on or before December 1, 1983, and on the same date a copy thereof shall be served on:

Mr. Robert B. Corris  
Corris, Charne, Glassner, Tehan,  
Clancy & Taitelman, S.C.  
Attorneys at Law  
211 West Wisconsin Avenue  
Milwaukee, WI 53203

Dated at Madison, Wisconsin this 17th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni  
Mary Jo Schiavoni, Examiner

MEMORANDUM ACCOMPANYING  
ORDER DENYING COMPLAINANT'S MOTION THAT MATERIAL  
FACTS AS ALLEGED AGAINST RESPONDENT WEST ALLIS-  
WEST MILWAUKEE EDUCATION ASSOCIATION BE DEEMED  
ADMITTED AND RESCHEDULING HEARING

ERB 12.03(6) to the contrary, the Commission has consistently refused to find that failure to file an answer in a prohibited practice case constitutes a waiver of hearing as to material facts alleged in the complaint against a respondent. 1/ Moreover, Complainant has not shown that it was in any way prejudiced by Respondent Association's failure to answer Complainant's motion, which is tantamount to a motion for judgment on the pleadings against Respondent Association. Said motion is therefore denied. The Association should, however, file its answer on or before December 1, 1983, to insure that all parties will be prepared to proceed with the hearing which has been scheduled for December 21 and 22, 1983.

Dated at Madison, Wisconsin this 17th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni  
Mary Jo Schiavoni, Examiner

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1/ School District of Walworth, (16550-A) 9/78; City of Milwaukee, (8017) 5/67.