STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SOUTHERN LAKES UNITED EDUCATORS COUNCIL #26,	:	
Complainant,	:	Case IV No. 31049 MP-1437
vs.	:	Decision No. 21092-A
JT. SCHOOL DIST. NO 9, TOWNS OF SALEM & RANDALL (WILMOT SCHOOL),	:	
Respondent.	:	

Appearances:

Mr. Bruce Meredith, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, WI 53708, appearing on behalf of the Complainant.

Mulcahy & Wherry, S.C., Attorneys at Law, 815 East Mason Street, Milwaukee, WI 53202, by Mr. Mark S. Nelson, appearing on behalf of the Respondent.

ORDER MODIFYING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, REVERSING EXAMINER'S ORDER AND REMANDING FOR FURTHER PROCEEDINGS

On October 20, 1983, Examiner Daniel J. Nielsen, issued Findings of Fact, Conclusions of Law and Order with accompanying memorandum in the above matter wherein he concluded that Complainant, Southern Lakes United Educators Council #26, was not a party in interest within the meaning of Sec. 111.07(2)(a), Stats., to a dispute between the Wilmot Elementary Education Association and Respondent Jt. School District No. 9, Towns of Salem & Randall (Wilmot School), as to whether the Respondent had violated a collective bargaining agreement when it non-renewed a teacher, and had breached its duty to bargain as to certain related matters. Based upon the foregoing conclusion, the Examiner found that he was without jurisdiction over the existing complaint and thus also could not entertain any proposed amendment which would seek to cure the party in interest defect. The Examiner dismissed the instant complaint based upon the foregoing conclusions.

On October 24, 1983, the Complainant Southern Lakes United Educators Council #26, timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision. Thereafter an ultimately unsuccessful settlement effort was undertaken and written arguments were filed, the last of which was received by the Commission on April 25, 1984. Having reviewed the record and the petition for review, the Commission has concluded that the Examiner's Findings of Fact and Conclusions of Law should be modified, and that the Examiner's Order should be reversed.

NOW, THEREFORE, it is

ORDERED

A. That the Examiner's Findings of Fact 1-9 are affirmed and adopted.

B. That the Examiner's Findings of Fact are supplemented as follows:

> 10. That on March 31, 1983, Complainant SLUE, filed a motion to amend its complaint to state that the Wilmot Elementary Education Association (WEEA) and the Kenosha County Education Association (KCEA) are the Complainants in the instant matter; and that said motion was filed less than one year from the date on which the parties' grievance procedure, which is applicable to the disputed non-renewal, was exhausted and less than one year from certain act or acts which are

alleged in the complaint as independent violations of the Respondent's Sec. 111.70(3)(a)4, Stats., duty to bargain.

C. That the Examiner's Conclusions of Law are modified to read as follows:

1. That the Wilmot Elementary Education Association is a party in interest, within the meaning of Sec. 111.07(2)(a), Stats., to a dispute between said labor organization and Respondent Jt. School District No. 9, Towns of Salem & Randall, as to whether Respondent District committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 4, and 5, Stats.

2. That inasmuch as the March 31, 1983, motion to amend the complaint to name the Wilmot Elementary Education Association was filed less than one year after certain of the actions which are alleged to constitute independent violations of the District's duty to bargain under Sec. 111.70(3)(a)(4), Stats., the Commission has jurisdiction to determine the merits of said allegations of independent violations.

3. That inasmuch as the March 31, 1983, motion to amend the complaint to name the Wilmot Elementary Education Association was filed less than one year after the exhaustion of the grievance procedure contained in the parties' collective bargaining agreement, the Commission has jurisdiction over the complaint allegation that the Respondent District committed a prohibited practice under Sec. 111.70(3)(a)5, when it non-renewed Christensen.

D. That the Examiner's Order is reversed such that the above-noted March 31, 1983 motion is hereby granted, Respondent District's motion to dismiss is hereby denied and the complaint is remanded to the Examiner for further proceedings consistent with this decision.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of October, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

MEMORANDUM ACCOMPANYING ORDER MODIFYING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, REVERSING EXAMINER'S ORDER AND REMANDING FOR FURTHER PROCEEDINGS

BACKGROUND

On January 24, 1983, SLUE filed a complaint with the Wisconsin Employment Relations Commission alleging that the District had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 4, and 5, Stats., by non-renewing the teaching contract of Ms. Vicki Christensen, by refusing to provide information relative to said non-renewal, and by failing to bargain over certain related matters. Examiner Daniel J. Nielsen, a member of the Commission's staff, was appointed as Examiner on March 4, 1983, to make and issue Findings of Fact, Conclusions of Law and Order as provided in Secs. 111.70(4)(a) and 111.07(5), Stats. On March 28, 1983, the District filed a motion to dismiss with the Examiner wherein it was alleged that SLUE was not a party in interest to the alleged statutory violations. On March 31, 1983, SLUE filed a motion to amend its complaint to name the Wilmot Elementary Education Association and the Kenosha County Education Association as the proper Complainants in the matter. Examiner Nielsen conducted a hearing on the parties' respective motions as well as the merits of the parties' dispute on April 4, 1983.

THE EXAMINER'S DECISION

The Examiner found that SLUE was not a party in interest to the refusal to bargain and violation of contract claims presented by its complaint because it was not the collective bargaining representative of the teaching employes of the District. He concluded that only the Wilmot Elementary Education Association enjoys representational status for the District's employes. The Examiner therefore determined that he was without jurisdiction to determine the merits of the complaint as filed or to entertain any motion to amend said complaint. The Examiner therefore dismissed the complaint in its entirety.

PETITION FOR REVIEW

Complainant's petition for review asserts that the Examiner erred by: (1) failing to allow the Complainant to amend the complaint to reflect the technically correct name of the collective bargaining representative, especially given the absence of any prejudice to Respondent District; (2) concluding that SLUE was not a proper party in interest since the aggrieved employe was a member of SLUE and SLUE provided most of the actual representation of the grievant in matters relating to collective bargaining; and (3) failing to discuss the refusal to bargain allegations raised in the complaint which fell within the one year statute of limitations applied by the Examiner.

In its brief filed in support of the petition, the SLUE elaborated by arguing that a reading of the entire complaint convincingly establishes the nature of the facts underlying the parties' dispute as well as the true identity of the party bringing the action. SLUE asserts that there can be no doubt that the complaint was intended to be brought on behalf of the employe's collective bargaining representative and that the clerical error contained in the caption of the complaint should not be a basis for dismissal. SLUE asserts that courts look to the substance of the pleadings in their entirety rather than to the literally designated parties when determining whether a complaint is properly filed. SLUE contends that for the purposes of collective bargaining, it is functionally interchangeable with the KCEA and WEEA and as there is no doubt that SLUE was acting on behalf of Christensen as well as the KCEA and the WEEA when it filed the complaint SLUE argues that therefore the Respondent District's motion to dismiss was based on a legal and procedural technicality which has no practical meaning and thus should not have been granted. SLUE also notes that Commission Rule ERB 12.02(5) allows amendment of a complaint at any time prior to the issuance of an order. SLUE argues that the Examiner's decision is based upon a highly superficial legal analysis which renders what should be a relatively simple and informal administrative law practice more technical and restrictive than federal and state judicial proceedings.

SLUE further argues that even if the Commission were not to permit the proposed amendment, the Commission would still have jurisdiction over the complaint because SLUE is a proper party in interest. SLUE asserts that the record overwhelmingly demonstrates that it represents employes of the District in employment controversies. SLUE contends that the Examiner ignored this close interrelationship between it and the bargaining unit employes and that the Court's holding in Chauffeurs, Teamsters and Helpers v. WERC, 51 Wis.2d 391 (1971) is supportive of SLUE's position in that regard.

As to the violation of contract allegation, SLUE asserts that the Examiner erred when he concluded that the motion to amend was filed after the one year statute of limitations had run. In this regard, SLUE argues that under applicable Commission case law, the statute of limitations did not begin to run until the June 3, 1983, exhaustion of the parties' grievance procedure. SLUE argues that there is no indication that the Union unduly delayed the processing of the grievance through the grievance procedure, noting that said process was completed within approximately two and one-half months after the non-renewal despite the fact that the grievance procedure itself contains no timelines. SLUE asserts that the instant complaint was not filed earlier because of the close relationship between the non-renewal violation of contract issues and the refusal to bargain allegations. SLUE also contends that as to the refusal to bargain allegations, the one year statute of limitations did not commence until at least June, 1982, in one instance and late October, 1982, in another. Since the motion to amend was made in March, 1983, SLUE argues that the Examiner clearly erred when finding that these claims should be dismissed as untimely. SLUE notes that there is no discussion of the status of the refusal to bargain allegations in the Examiner's decision.

The District elected not to file any additional written argument beyond that previously submitted to the Examiner prior to the issuance of his decision. The District's arguments to the Examiner stressed that SLUE was not a party in interest empowered to bring the instant action under Sec. 111.07(2)(a), Stats.; that the motion to amend was filed more than one year after the non-renewal, i.e., the alleged act violative of the contract; and that since the one year statute of limitations had expired when SLUE made its motion to amend, any claim that might properly be brought by the non-renewed teacher or her bargaining representative was thereby extinguished.

DISCUSSION

In its brief filed in support of its petition for review, SLUE advances for the first time in this proceeding the argument that the statute of limitations had not run with respect to the violation of contract allegations because the one year statute of limitations had not begun to run until the June, 1982, exhaustion of the parties' grievance procedure. As SLUE argues, the Commission has long held that where a collective bargaining agreement contains procedures for the voluntary settlement of disputes arising thereunder and where the parties thereto have attempted to resolve such disputes with such procedures, a statutory cause of action alleging violation of that collective bargaining agreement does not ripen until the grievance procedure has been exhausted. Thus, the one year statute of limitations for the filing of such a complaint is computed from the date on which the grievance procedure was exhausted by the parties to the agreement, providing that the complaining party has not unduly delayed the processing of the grievance. Harley-Davidson Motor Company, Dec. No. 7166 (WERC, 6/65); City of Madison, Dec. No. 15725-A, B, (WERC, 6/79); Local 950, Operating Engineers, Dec. No. 21050, (WERC, 7/84). Here, the record establishes that the parties exhausted the contractual grievance procedure on or about June 3, 1982 without undue delay by the affected employe or her exclusive representative. Therefore, SLUE's motion to amend, filed on March 31, 1983, fell well within the above noted and long-standing interpretation of the one year statute of limitations set forth in Sec. 111.07(2)(a), Stats., and made applicable to the instant dispute by Sec. 111.70(4)(a), Stats.

As to the refusal to bargain allegations contained in the complaint, the refusal to provide information allegedly occurred in October, 1982, and the District's allegedly improper implementation of a new remedial reading program allegedly occurred between April, 1982, and August, 1982. Thus, the relevant time periods with respect to these two independent refusal to bargain allegations also fall within one year of the March 31, 1983 motion to amend.

Having found that the motion to amend was filed in time to clothe the Commission with jurisdiction of each of the violations alleged in the complaint, we proceed to the question of whether the Examiner's refusal to allow the amendment was proper.

In their pleadings and arguments to the Examiner, SLUE and the District appear to have assumed that the statute of limitations had run, at least with respect to the violation of contract allegation, prior to the motion to amend. However, that assumption does not appear to have been the primary basis for the Examiner's dismissal of the complaint. Both his stated rationale and the absence of any discussion of the timeliness of the motion to amend vis-a-vis the refusal to bargain allegations indicate that the Examiner's outcome is predicated upon the principle that a complaint filed by a person other than a party in interest to the dispute is a nullity and cannot be transformed into a valid complaint by subsequent amendment. We do not agree.

As the Examiner properly noted in his decision, ERB 10.01 and 12.02(5)(a) demonstrate a commitment by this agency to effectuate labor peace through dispute resolution which is accomplished in part by allowing liberal amendments to pleadings. We believe this commitment requires that we allow timely amendment of the complaint herein to substitute as the Complainant a party that is undisputedly a party in interest even assuming arguendo that the party filing the motion, SLUE, is not itself a party in interest.

The District cannot justifiably claim surprise or other prejudice within the meaning of ERB 10.01 by reason of our outcome herein. The District has known since the grievance was filed that the affected employe and her exclusive bargaining representative were challenging the non-renewal. Similarly, the District has known of the substance of the refusal to bargain claims since the complaint was initially filed. The District has known that each of the causes pleaded in the complaint were being pursued in the name of the exclusive bargaining representative of its employes at least from and after the time the motion to amend was filed.

Thus, the District would have us decline to adjudicate the merits of the instant complaint essentially because the District was formally notified that the complaint allegations were being advanced in the name of the exclusive representative of its employes by means of a timely motion to amend a previously filed complaint rather than via a separately filed complaint. In our view, that outcome would elevate form over substance and would ill serve the underlying purposes of MERA.

We have therefore granted the motion to amend, denied the Respondent's motion to dismiss and have remanded the matter to the Examiner for further proceedings consistent with this decision.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner