

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OWEN-WITHEE EDUCATION
ASSOCIATION,

Complainant,

vs.

BOARD OF EDUCATION, SCHOOL
DISTRICT OF OWEN-WITHEE

Respondent.

Case 16
No. 35016 MP-1716
Decision No. 22735-A

ORDER DENYING MOTIONS TO DISMISS AND TO
MAKE COMPLAINT MORE DEFINITE AND CERTAIN

On May 20, 1985, Owen-Withee Education Association, herein Complainant, filed a complaint with the Wisconsin Employment Relations Commission, herein Commission, alleging that the Board of Education, School District of Owen-Withee, herein Respondent, had committed certain prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2, 3, 4, and 5 of the Municipal Employment Relations Act, herein MERA. On May 31, 1985, Respondent filed a Motion to Make Complaint More Definite and Certain. On June 11, 1985, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. In response to Respondent's Motion, Complainant, on June 13, 1985, amended its complaint. Thereafter, the Respondent, by a letter dated July 3, 1985, requested that a ruling be made on its Motion to Make More Definite and Certain as to paragraphs 1(a) and 1(b) of the amended complaint. On July 10, 1985, the Respondent filed a Motion to Dismiss certain allegations of the amended complaint. On July 15, 1985, Complainant filed a response in opposition to Respondent's Motion to Dismiss. The Examiner, being fully advised in the premises makes and issues the following

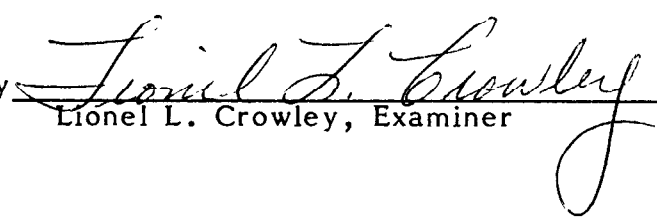
ORDER

1. That Respondent's Motions to Dismiss and to Make Complaint More Definite and Certain be, and the same hereby are, denied.

Dated at Madison, Wisconsin this 23rd day of July, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Lionel L. Crowley, Examiner

OWEN-WITHEE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTIONS TO DISMISS AND TO MAKE COMPLAINT
MORE DEFINITE AND CERTAIN

The Examiner has denied Respondent's Motion to Dismiss on the grounds that the complaint presents a contested case which raises questions of fact and law which are best resolved by an evidentiary hearing and therefore its motion is premature. Respondent bases its motion partly on the grounds of mootness in that certain items have been processed through final and binding arbitration, or resolved, and/or the parties have entered into a collective bargaining agreement. The Commission has determined that, even though parties have subsequently entered into a collective bargaining agreement, a complaint of prohibited practices is not rendered moot. 1/ The rationale in that situation appears to be applicable to the instances alleged in the instant complaint. Thus, whether or not certain allegations are moot can be determined only after the hearing on the complaint.

The Respondent also bases its Motion to Dismiss on the lack of timeliness of certain events which occurred prior to one year before the filing of the complaint. Events occurring prior to the one year statutory period standing by themselves may be untimely; however, these events may be offered as evidence of the character of events occurring within the one year period which by themselves constitute prohibited practices. 2/ Here, the Respondent's motion applies only to certain portions of the complaint rather than to its entirety and the undersigned concludes that a hearing is necessary to determine whether the events in question are untimely or merely evidence of the character of events which occurred during the period of one year before the filing of the complaint. Therefore, the undersigned has denied Respondent's Motion to Dismiss.

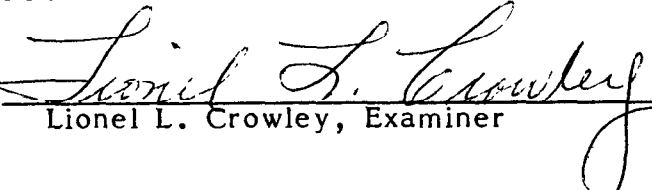
With respect to Respondent's Motion to Make Complaint More Definite and Certain, Wisconsin Administrative Code, Section ERB 12.02(2)(c) provides that a complaint must contain:

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.

Respondent asserts that Section II, paragraphs 1(a) and (b) of the amended complaint do not meet this requirement in that the date and teachers are not identified. The undersigned has reviewed the complaint as amended and it states that teachers had heard that Mr. Nelson had made a comment that he would "break the Union". The amended complaint does not allege that any of these teachers were present when the alleged comment was made or that they actually heard Nelson make the alleged comment. The complaint alleges that the comment was made to people present in the clubhouse of the Middleview Country Club sometime in the latter part of the summer of 1984. The complaint provides sufficient information as to the events constituting the alleged prohibited practice to permit Respondent to respond to the charge, and therefore, it is concluded that the complaint, as amended, sufficiently complies with ERB 12.02(2)(c), and therefore the Motion to Make More Definite and Certain has been denied.

Dated at Madison, Wisconsin this 23rd day of July, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Lionel L. Crowley, Examiner

1/ School District of Tomorrow River, Dec. No. 21329-A (Crowley, 6/84) aff'd by operation of law, Dec. No. 21329-C (WERC, 7/84).

2/ Local Lodge 1424 v. NLRB, 362 U.S. 411, 45 LRRM 3212 (1960); Clayton School District, Dec. No. 20477-A (McLaughlin, 4/83).