

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOCAL UNION NO. 560,	:	
AFSCME, AFL-CIO,	:	
	:	
Complainant,	:	Case 156
	:	No. 37305 MP-1869
vs.	:	Decision No. 23944-A
	:	
AREA VOCATIONAL, TECHNICAL AND	:	
ADULT EDUCATION DISTRICT ONE,	:	
EAU CLAIRE,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Mr. Richard V. Graylow, Lawton & Cates, Attorneys at Law, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, appearing on behalf of Local Union No. 560, AFSCME, AFL-CIO, referred to below as the Union.

Mr. James M. Ward, Riley, Ward & Kaiser, S.C., Attorneys at Law, 306 Barstow Court, P.O. Box 358, Eau Claire, Wisconsin 54702-0358, appearing on behalf of Area Vocational, Technical and Adult Education District One, Eau Claire, referred to below as the District.

ORDER DENYING MOTION TO MAKE PROHIBITED PRACTICE COMPLAINT MORE DEFINITE AND CERTAIN

The Union filed a Complaint of Prohibited Practice with the Wisconsin Employment Relations Commission on July 18, 1986, which alleged that the District had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2, 3 and 4, Stats. The District, on July 30, 1986, filed a motion to make the complaint more definite and certain. The Union responded to the District's motion in a letter filed with the Commission on August 6, 1986. The parties jointly agreed that the matter be held in abeyance pending an informal inquiry by Robert M. McCormick, the Commission's Assistant Coordinator of Mediations, to narrow or to resolve the dispute. After this informal inquiry, the Commission, on September 11, 1986, appointed Richard B. McLaughlin, a member of its staff, to act as Examiner in the matter. Hearing on the matter has been set for October 23, 1986.

ORDER

The motion to make prohibited practice complaint more definite and certain filed by the District on July 30, 1986, is denied.

Dated at Madison, Wisconsin this 30th day of September, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Richard B. McLaughlin  
Richard B. McLaughlin, Examiner

AREA VOCATIONAL, TECHNICAL AND ADULT  
EDUCATION DISTRICT ONE, EAU CLAIRE

MEMORANDUM ACCOMPANYING ORDER DENYING  
MOTION TO MAKE PROHIBITED PRACTICE  
COMPLAINT MORE DEFINITE AND CERTAIN

Background

The Union filed a "Complaint of Prohibited Practice" with the Commission on July 18, 1986. The complaint consists of thirteen separately numbered paragraphs. Paragraph 13 of that complaint reads thus:

The subcontracting out of the food services operations is in violation of the Municipal Employment Relations Act (MERA), Section 111.70(3)(a)1, (3)(a)2, (3)(a)3, and (3)(a)4 Wis. Stats. (1983-84).

WEHREFORE (sic) this Complaining Union demands the following relief:

A. An adjudication by the WERC that the (in)action of the Respondent was/is unlawful;

B. An order directing the said conduct cease and desist forthwith;

C. An Order restoring the status quo ante;

D. An Order granting this Union its costs, disbursements, expenses including, but not limited to, attorneys' fees; and

E. An Order granting such further and other relief as may be appropriate.

On July 30, 1986, the District filed a "Motion to Make Prohibited Practice Complaint More Definite and Certain". In its written motion, the District alleged that "the allegations in Paragraph 13 of the Complaint . . . are so indefinite as to hamper it in the preparation of its answer . . ." The District's motion requests that paragraph 13 of the complaint be made "more definite and certain in the following respects":

(a) In what respect(s) does the subcontracting decision and/or the events preceding such subcontracting decision, as alleged in Paragraphs 1 through 12 inclusive, constitute a violation of Section 111.70(3)(a)1, Wisconsin Statutes?

(b) In what respect(s) does the subcontracting decision and/or the events preceding such subcontracting decision, as alleged in Paragraphs 1 through 12 inclusive, constitute a violation of Section 111.70(3)(a)2, Wisconsin Statutes?

(c) In what respect(s) does the subcontracting decision and/or the events preceding such subcontracting decision, as alleged in Paragraphs 1 through 12 inclusive, constitute a violation of Section 111.70(3)(a)3, Wisconsin Statutes?

(d) In what respect(s) does the subcontracting decision and/or the events preceding such subcontracting decision, as alleged in Paragraphs 1 through 12 inclusive, constitute a violation of Section 111.70(3)(a)4, Wisconsin Statutes?

The Union, in a letter filed with the Commission on August 6, 1986, responded to the District's motion thus:

Absent an Order from the Examiner, the Union intends to make no further response. It is the Union's position that the Complaint previously filed comports fully with ERB 12.02.

The answer to the complaint is due October 9, 1986, and hearing on the complaint has been set for October 23, 1986.

### Discussion

The Union does not question the timeliness of the filing of the District's motion, 1/ but affirmatively asserts that the complaint is sufficient under the provisions of Section 12.02 (2) of the Commission's rules. That section states:

CONTENTS. Such complaint shall contain the following:

(a) The name, address, and affiliation, if any, of the complainant, and of any representative thereof.

(b) The name and address of the respondent or respondents, and any other party named therein.

(c) 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 statute alleged to have been violated thereby.

(d) A prayer for specific and general relief.

(e) A statement that the filing fee established by s. 111.71(2), Stats., accompanies the complaint.

The District's motion does not question the sufficiency of the Union's statement of the facts or of the statutory sections involved under any of subsections (a) through (e) of Section 12.02 (2), but questions how the facts alleged, if proven, establish a violation of the Municipal Employment Relations Act. The District asks, then, for the Union's legal theories.

The District's request is too broad to be granted in this case. Section (3) of ERB 12.03 states:

MOTION TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN. If a complaint is alleged to be so indefinite as to hamper the respondent or any other party in the preparation of its answer to the complaint such party may, within 5 days after the service of the complaint, by motion request the commission to order the complainant to file a statement supplying specified information to make the complaint more definite and certain.

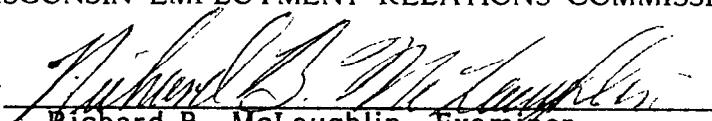
To grant the District's motion, it is necessary to conclude that paragraph 13 of the complaint is so indefinite that it hampers the District's ability to answer the complaint. That paragraph contains a clear statement of the statutory provisions alleged to have been violated by "(t)he subcontracting out of the food services". The quoted phrase incorporates the factual allegations of the preceding twelve paragraphs, the sufficiency of which the District does not challenge. Disclosure of the Union's legal arguments which may or may not be sufficiently persuasive to make proof of the alleged facts sufficient to establish a violation of the statutory provisions at issue is not a necessary condition to the District's ability to answer the complaint. Conversely, the absence of such a disclosure will not constitute any limitation on the District's ability to answer the complaint or to prepare for hearing. The District's motion may serve to

question whether the facts alleged in the complaint, if proven, can establish a violation of the statutory sections at issue, but this point is more appropriately raised by closing argument at or after the hearing, or by a motion to dismiss the complaint on its merits. Since there is no persuasive reason to believe the complaint is so indefinite that it hampers the District's ability to answer it, the motion has been denied.

Dated at Madison, Wisconsin this 30th day of September, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Richard B. McLaughlin, Examiner

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1/ See generally, ERB 12.03 (3).