

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TOMAH AREA SCHOOL NON-TEACHING	:	
EMPLOYEES, LOCAL 1947-B,	:	
WCCME, AFL-CIO,	:	
	:	Case 42
Complainant,	:	No. 41069 MP-2137
	:	Decision No. 25862-A
vs.	:	
	:	
TOMAH AREA SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

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Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appearing on behalf of Tomah Area School Non-Teaching Employees, Local 1947-B, WCCME, AFL-CIO, hereinafter referred to as the Union.

Lathrop & Clark, Attorneys at Law, by Mr. Michael J. Julka, 122 West Washington Avenue, Suite 1000, P.O. Box 1507, Madison, Wisconsin 53701-1507, appearing on behalf of the Tomah Area School District, hereinafter referred to as the District.

ORDER GRANTING MOTION TO COMPLY AND TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN

The Union filed a Complaint with the Wisconsin Employment Relations Commission on September 9, 1988, alleging that the District had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2 and 5, Stats. On September 21, 1988, the District filed a Motion to Comply and to Make More Definite and Certain. The parties jointly agreed that hearing in the matter be held in abeyance pending an informal attempt to resolve the dispute by William C. Houlihan, the Commission's Coordinator of Mediation. When this attempt did not result in a resolution of the dispute, the Commission appointed the undersigned, a member of its staff, to act as Examiner in the matter. The Examiner being advised in the premises makes and issues the following

ORDERS

1. The Motion to Comply and to Make the Complaint More Definite and Certain is granted.
2. That said complaint shall be amended by Complainant and filed with the Examiner and a copy of same mailed to Respondent's Counsel

Mr. Michael J. Julka  
Lathrop & Clark  
Attorneys at Law  
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on or before February 7, 1989. Failure to amend the complaint may result in its dismissal.

3. That Respondent shall file an answer with the Examiner and mail a copy of same to Complainant's counsel

Mr. Daniel R. Pfeifer  
Staff Representative  
Wisconsin Council 40,  
AFSCME, AFL-CIO  
Route 1  
Sparta, WI 54656

on or before February 28, 1989.

Dated at Madison, Wisconsin this 27th day of January, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Lionel L. Crowley*  
Lionel L. Crowley, Examiner

TOMAH AREA SCHOOL  
DISTRICT

MEMORANDUM ACCOMPANYING ORDER GRANTING  
MOTION TO COMPLY AND TO MAKE  
COMPLAINT MORE DEFINITE AND CERTAIN

Wisconsin Administrative Code, section ERB 12.02(2) provides that a complaint must contain, inter alia:

(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 Examiner has reviewed the complaint herein as well as the District's Motion to Comply and to Make More Definite and Certain. The Complaint does not contain a statement that the filing fee accompanies the complaint and the Union is directed to comply with paragraph (e) of Section ERB 12.02(2).

The complaint is unclear as to the exact nature of the alleged prohibited practice, i.e. whether it is the District's refusal to proceed to arbitration on the grievances that allegedly violates the statute, or whether the District has violated the agreement by its conduct as alleged in the grievances which constitutes the alleged violation of the statute. Therefore, the Motion to Comply and to Make the Complaint More Definite and Certain has been granted.

The District also asserted that the complaint was not signed and sworn to before any person authorized to administer oaths and acknowledgements. A review of the original complaint indicates that the complaint was signed by Mr. Pfeifer and was also signed by Patricia Davis, Notary Public. It thus appears that there was compliance with the above noted requirement. Any amended complaint should also be signed and notarized.

Dated at Madison, Wisconsin this 27th day of January, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley  
Lionel L. Crowley, Examiner