

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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1199W/UNITED PROFESSIONALS FOR	:	
QUALITY HEALTH CARE/SEIU,	:	
	:	
Complainant,	:	
	:	Case 347
v.	:	No. 49753 PP(S)-201
	:	Decision No. 27914
STATE OF WISCONSIN, JON LITSCHER,	:	
SECRETARY, DEPARTMENT OF EMPLOYMENT	:	
RELATIONS, and STEPHEN SARGEANT,	:	
	:	
Respondents.	:	
	:	

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ORDER GRANTING MOTION TO AMEND COMPLAINT

On September 8, 1993, 1199W/United Professionals for Quality Health Care/SEIU (1199) filed a complaint with the Wisconsin Employment Relations Commission alleging the State of Wisconsin, Jon Litscher, Secretary, Department of Employment Relations and Stephen Sargeant (Respondents), had committed unfair labor practices within the meaning of the State Employment Labor Relations Act.

Hearing on the complaint was conducted on November 3, 1993, in Madison, Wisconsin, before Examiner Peter G. Davis.

On December 21, 1993, 1199 filed an amended complaint, and asked that:

"this matter be reopened for additional hearing before you, as the most efficient method of handling the allegations which involve the same actors, similar types of conduct, and relate to a pattern of such conduct on Respondents' part."

By letter dated December 29, 1993, Respondents objected to the amendment of the complaint and argued 1199 must file a new complaint because:

"Despite what Complainant may believe, the allegations of the proceeding which has a closed record and the new allegations are not similar; the new allegations are not part of a common transaction which now only came to light. The allegations in the completed proceeding and the new allegations are separate and distinct."

Section 111.07(2)(a), Stats. (which is made applicable to the instant proceeding by Sec. 111.84(4), Stats.) provides in pertinent part:

No. 27914

". . .any such complaint may be amended in the discretion of the Commission at any time prior to the issuance of a final order based thereon."

ERB 22.02(5)(a) provides:

(5) AMENDMENT. (a) Who may amend. Any complainant may amend the complaint upon motion, prior to the hearing by the commission; during the hearing by the commission if it is conducting the hearing; or by

the commission member or examiner authorized by the commission to conduct the hearing; and at any time prior to the issuance of an order based thereon by the commission, or commission member or examiner authorized to issue and make findings and orders.

Given the foregoing statutory provision and administrative rule, it is clear that the right to amend is very broad and explicitly encompasses post-hearing amendments (i.e. prior to issuance of a final order). Contrary to Respondents' argument, there is no "relatedness" test by which an amendment should be judged. However, it has been held that amendments can be denied where the requested amendment is unsupported by any rationale and requires waiver by Respondent of further hearing 1/ or where the amendment constitutes an abuse of process 2/ or prejudices Respondent. 3/ Assuming such limitations on the right to amend are appropriate, none are present here. Particularly where briefs have not yet been filed, Complainants correctly assert the rationale of efficiency (conservation of agency and party resources) as an interest served by litigation of the new allegations involving the same parties in the context of an amended complaint rather than a new complaint proceeding. Respondents are not being asked to waive any rights as they will have the opportunity to defend against the new allegation during additional hearing. The events upon which the new allegation is premised allegedly occurred after hearing on the initial complaint and thus no abuse of process can be, or is being, claimed. Respondents have not identified any particular prejudice they suffer by having the new allegation litigated in the existing proceeding.

Given all of the foregoing, I have granted the motion to amend the complaint.

Dated at Madison, Wisconsin this 12th day of January, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Peter G. Davis /s/  
Peter G. Davis, Examiner

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- 1/ State of Wisconsin, Dec. No. 20711-A (Honeyman, 1/84); White Lake Schools, Dec. No. 12623-B (Schurke, 9/75).
  - 2/ Racine Schools, Dec. No. 15915-B (Hoorstra, 12/77).
  - 3/ Wautoma Schools, Dec. No. 15220-A (Malamud, 7/77).