

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OCONTO COUNTY PROFESSIONALS,
LOCAL 778-D, AFSCME, AFL-CIO,

Complainant,

vs.

OCONTO COUNTY,

Respondent.

Case 136

No. 53848 MP-3140

Decision No. 28758-B

ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO MAKE
THE COMPLAINT MORE DEFINITE AND CERTAIN

On February 15, 1996, the Oconto County Professionals, Local 778-D, AFSCME, AFL-CIO, hereinafter Complainant, filed a complaint with the Wisconsin Employment Relations Commission alleging that Oconto County, hereinafter Respondent, had committed prohibited practices within the meaning of Sec. 111.70, Stats. On June 13, 1996, the Commission appointed Dennis P. McGilligan, 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 Secs. 111.70(4)(a) and 111.07, Stats. On June 20, 1996, Respondent filed a Motion to Make the Complaint More Definite and Certain. On June 28, 1996, the Complainant filed arguments opposing said Motion; on July 2, 1996, Respondent submitted a response to the Complainant's arguments. On July 3, 1996, the Examiner issued an Order Granting Motion to Make the Complaint More Definite and Certain. On August 16, 1996, the Complainant filed an Amended Complaint with the Commission. On August 26, 1996, the Respondent filed a Second Motion to Make the Complaint More Definite and Certain. On August 27, 1996, the Complainant filed a letter opposing said Motion. On August 29, 1996, the Respondent filed a response to the Complainant's aforesaid letter.

The Examiner, being fully advised in the premises, makes and issues the following

ORDER

1. The Motion to Make the Complaint More Definite and Certain is hereby granted with respect to Paragraph D.7 of the Amended Complaint and Section I.F of the original

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Complaint.

2. The Motion to Make the Complaint More Definite and Certain with respect to Paragraph D.6 of the Amended Complaint is hereby denied.

3. The Complainant shall amend its original Complaint to show clearly and concisely by a statement of facts what constitutes the actions and statements of supervisors within the County's Department of Human Services who, on numerous occasions during the past twelve months, "have threatened retaliation against bargaining unit employes for exercising their collective bargaining rights," including specific dates, times, locations and names of said supervisors.

4. The Complainant shall amend its Amended Complaint to show clearly and concisely by a statement of facts what constitutes the actions and statements of supervisors who, at staff meetings during the late spring and early summer of 1995 "would ask the employees to comment regarding the material presented . . . employees whose comments were in any way critical later were warned not to 'make waves,' and Mrs. Hobbs was told to no longer attend staff meetings," including specific dates, times, locations and names of said supervisors.

5. The Amendment shall be filed on or before September 18, 1996, with the Examiner, with a copy of the same mailed directly to:

Mr. Dennis W. Rader
Godfrey & Kahn, S.C.
Attorneys at Law
333 Main Street, Suite 600
P. O. Box 13067
Green Bay, WI 54307-3067

on the same date.

6. The date for filing an answer to the Complaint and Amended Complaint is hereby extended to September 25, 1996.

Dated at Madison, Wisconsin, this 4th day of September, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Examiner

No. 28758-B

OCONTO COUNTY

MEMORANDUM ACCOMPANYING
ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO MAKE
THE COMPLAINT MORE DEFINITE AND CERTAIN

As noted in the previous Order, Wisconsin Administrative Code, Section ERC 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 statute alleged to have been violated thereby."

In order to comply with the Commission's rules, the Examiner has granted Respondent's Second Motion to Make Complaint More Definite and Certain by requiring Complainant to amend Paragraph D.7 of the Amended Complaint and Section 1.F of the original Complaint as set out in the Order. As pointed out by the Respondent, the Examiner has previously in his July 3 Order Granting Motion to Make the Complaint More Definite and Certain ordered the Complainant to amend its Complaint "by identifying the specific occasions during the past twelve (12) months or at any other material time where 'supervisors within the County's Department of Human Services have threatened retaliation against bargaining unit employes for exercising their collective bargaining rights,' all which it is alleging to have been in violation of Secs. 111.70(3)(a)1, 3 and 5, Stats." without additional sufficient specifying information provided in the Amended Complaint regarding that request.

Contrary to the Complainant's assertions, and consistent with the requirements of Section ERC 12.02(2)(c) of the Wisconsin Administrative Code, the Examiner finds that the information sought by the Respondent will enable it to determine with specificity the facts constituting the alleged prohibited practice and to permit it to prepare a response to the charge. Therefore, the Complainant is ordered to provide said information.

The Examiner has denied the Respondent's aforesaid second Motion with respect to Paragraph D.6 of the Amended Complaint because the Examiner believes said paragraph sufficiently comports with the basic pleading requirements of Wisconsin Administrative Code, Section ERC 12.02(2)(c) and puts the Respondent on sufficient notice as to what is the gravamen of Complainant's complaint with respect to those allegations.

Dated at Madison, Wisconsin, this 4th day of September, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Examiner