

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**LOCAL 180, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO, Complainant,**

vs.

**CITY OF LACROSSE, Respondent.**

Case 299  
No. 57990  
MP-3553

**Decision No. 29954-B**

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**ORDER DENYING MOTION TO DISMISS  
FOR FAILURE TO STATE A CLAIM**

Local 180, Service Employees International Union, AFL-CIO filed an amended complaint with the Wisconsin Employment Relations Commission on September 16, 1999, which alleged that the City of LaCrosse had committed prohibited practices by continuing to flagrantly ignore prior grievance settlements in which the City promised that it would direct its supervisors and managers not to perform bargaining unit work and to enforce its directives. Thereafter, the complaint was held in abeyance pending settlement efforts. On August 14, 2000, the Commission appointed Coleen A. Burns as Examiner to conduct a hearing on the Complaint and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Secs. 111.70(4)(a) and 111.07, Stats. On September 15, 2000, Respondent filed a Notice of Motion and Motion to Dismiss for Failure to State a Claim. The Examiner, being fully advised in the premises, makes and issues the following

**ORDER**

Respondent's Motion to Dismiss for Failure to State a Claim is denied.

Dated at Madison, Wisconsin this 20th day of September, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

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Coleen A. Burns, Examiner

No. 29954-B

**CITY OF LACROSSE**

**MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS  
FOR FAILURE TO STATE A CLAIM**

The Wisconsin Administrative Code, Section ERC 12.02(2)(c) provides that a complaint shall 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.

On August 17, 2000, Respondent filed a Notice of Motion and Motion for More Definite Amended Complaint. On August 31, 2000, this Examiner issued an Order Granting Motion to Make Complaint More Definite and Certain. Paragraph One of this Order states as follows:

1. The Complainant shall make its amended complaint more definite and certain by identifying the facts constituting the alleged prohibited practices. In doing so, it is to identify the bargaining unit work alleged to have been performed by City managers or supervisors; the time and place of such bargaining work performance; and the names of the City managers or supervisors who are alleged to have performed bargaining unit work.

Subsequently, Complainant filed a Second Amended Prohibited Practice Complaint.

The Second Amended Prohibited Practice Complaint named the Supervisors and/or Managers alleged to have performed bargaining unit work and the date of the alleged bargaining unit work performance. The Second Amended Prohibited Practice Complaint did not identify the place of the alleged bargaining unit work performance. Nor did it identify the bargaining unit work alleged to have been performed by named Supervisors and/or Managers.

The Second Amended Prohibited Practice Complaint does not comply with the Examiner's Order of August 31, 2000. However, this failure to comply with the Examiner's Order does not mean that Complainant has failed to state a claim upon which the Commission may grant relief.

In the Complaint and Amended Complaints filed by Complainant, the Complainant has consistently claimed that Respondent has violated Sec. 111.70(3)(a) 1, 3 and 5, Stats., by continually and repeatedly violating agreements reached in collective bargaining; by interfering with, restraining and coercing employees in the exercise of Sec. 111.70 rights; and by otherwise discriminating against union members regarding wages, hours, and conditions of employment. These allegations are sufficient to state a claim upon which relief may be granted under the Municipal Employment Relations Act.

The purpose of ERC 12.02(2)(c) and the Order Granting Motion to Make Complaint More Definite and Certain is to provide Complainant with sufficient information to prepare an answer and to prepare for hearing. Under ERC 12.03(4)(a), if Respondent is without knowledge of an allegation in the Complaint, Respondent may so state to that effect when filing its Answer. Additionally, if the Complainant's failure to comply with the Examiner's Order has adversely impacted Respondent's ability to prepare for hearing, then Respondent may request that the hearing be rescheduled or continued to a later date.

Dated at Madison, Wisconsin this 20th day of September, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

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Coleen A. Burns, Examiner

