

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO and its
AFFILIATED LOCAL 742, Complainant,**

vs.

CITY OF CUDAHY (LIBRARY), Respondent.

Case 6
No. 59823
MP-3726

Decision No. 30160-A

Appearances:

Mr. Robert E. Haney, Podell, Ugent & Haney, S.C., Attorneys at Law, 611 North Broadway Street, Suite 200, Milwaukee, Wisconsin 53202-5004, appearing on behalf of Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 742.

Mr. Jesus Villa, Michael, Best & Friedrich, Attorneys at Law, Two Riverwood Place, N19 W24133 Riverwood Drive, Suite 200, Waukesha, Wisconsin 53188-1174, appearing on behalf of the City of Cudahy Library.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING COMPLAINANT'S MOTION
TO AMEND THE COMPLAINT**

On March 28, 2001, Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 742 filed with the Wisconsin Employment Relations Commission a complaint alleging that the City of Cudahy Library had violated Sections 111.07(3)(a)1, 2, 3, 4 and 5, Wis. Stats., by unilaterally changing the wages, hours and conditions of employment of a bargaining unit position. After efforts at conciliation proved unsuccessful, hearing in the matter was held on August 2, 2001, before Examiner Stuart Levitan, a member of the Commission's staff. The employer and labor organization filed briefs on October 4 and October 30, respectively, and reply briefs by December 17, 2001. Also on December 17, the

No. 30160-A

employer filed a Motion to Strike, seeking to have aspects of the union's brief struck from the record. On January 11, 2002, the union filed a reply, a "motion to adopt respondent's motion to reopen," and a motion to amend the complaint, all of which the employer responded to on January 22. The parties then requested the matter be held in abeyance while they sought to resolve the matter voluntarily. On May 2 and May 6, respectively, the City and Union informed the Examiner their efforts to resolve the matter voluntarily had proved unsuccessful. The Examiner, now being fully advised in the premises, now makes the following

FINDINGS OF FACT

1. Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 742, hereafter "the Union", is a labor organization with offices at 3427 West Saint Paul Avenue, Milwaukee, Wisconsin.

2. The City of Cudahy Library Board, hereafter "the Library", is a municipal employer with offices at 4665 South Packard Avenue, Cudahy, Wisconsin.

3. On March 28, 2001, the Union filed with the Wisconsin Employment Relations Commission a complaint alleging that the Library had committed various prohibited practices by the means and manner in which it created the position of Head Youth Services Librarian. Among other elements, the Union asserted as follows:

C-5. During this period of negotiations the employer unilaterally renamed the Youth Services Librarian position (a vacant position within the bargaining unit) to Head Youth Services Librarian, changed its rate of pay and filled it.

C-7 The unilateral act of changing conditions, hours and wages of a bargaining unit position during contract negotiations was intestinally (sic) done for the purpose of interfering with the administration of the union, discouraging union activity on the part of bargaining union (sic) members, with the purpose of discrediting the union, and constitutes bad faith negotiating, all in violation of Sec. 111.70, Wis. Stats.

4. On January 11, 2002, after hearing in the matter but prior to the issuance of an order based thereupon, the Union moved to amend its complaint to read as follows:

C-5. During this period of negotiations the employer unilaterally renamed the Youth Services Librarian position (a vacant position within the bargaining unit) to Head Youth Services Librarian, changed its rate of pay and filled it. The employer informed the Union that this was done because the person being considered to fill the Youth Services Librarian did not want to be part of the bargaining unit.

C-8 In the alternative to C-7, above, if in fact the employer told the Union this and it was not true the employer violated Section 111.70(3)(a)4, Wis. Stats., by “disseminating untruthful information regarding the hiring of the Head Youth Services Librarian.”

On the basis of the above and foregoing Findings of Fact, the Examiner issues the following

CONCLUSION OF LAW

That the Union has timely exercised its right to amend its complaint, pursuant to ERC 12.02(5)(a), Wisconsin Administrative Code.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner issues the following

ORDER

That the complaint is hereby amended, as indicated in Finding of Fact 4.

Dated at Madison, Wisconsin, this 23rd day of May, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart Levitan, Examiner

CUDAHY PUBLIC LIBRARY BOARD

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER GRANTING
COMPLAINANT'S MOTION TO AMEND THE COMPLAINT**

The Wisconsin Employment Relations Commission's administrative code, at Section 12.02(5)(a), Wisconsin Administrative Code, provides as follows:

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

This is a "broad right to amend (the) complaint at any time prior to the issuance of a final order." BLACKHAWK TECHNICAL COLLEGE, DEC. NO. 29066-A (Gratz, 12/97). By statute and rule, "a liberal pleading practice governs the amendment of the complaint." ONEIDA COUNTY, DEC. NO. 28240-A (McLaughlin, 8/95).

Because this theory of the case is substantially different from that which the union originally presented at hearing, it will be necessary to schedule an additional hearing to take further testimony and evidence. Upon issuance of this order, I will contact the parties to schedule such further proceedings.

Dated at Madison, Wisconsin, this 23rd day of May, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart Levitan /s/

Stuart Levitan, Examiner

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