

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**DANE COUNTY, WISCONSIN MUNICIPAL EMPLOYEES
LOCAL 60, AFSCME, AFL-CIO, Complainant,**

vs.

**GREGORY BREWER AND
MADISON METROPOLITAN SCHOOL DISTRICT, Respondents.**

Case 289
No. 61292
MP-3834

Decision No. 30436-A

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of the Complainant.

Ms. Malina R. Piontek Fischer, Assistant Director of Labor Relations, Madison Metropolitan School District, Doyle Administration Building, 545 West Dayton Street, Madison, Wisconsin 53703-1995, appearing on behalf of the Respondents.

**ORDER GRANTING MOTION TO MAKE
THE COMPLAINT MORE DEFINITE AND CERTAIN**

On June 5, 2002, the Dane County, Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO, hereinafter Complainant, filed a complaint with the Wisconsin Employment Relations Commission alleging that Gregory Brewer and the Madison Metropolitan School District, herein Respondent Brewer and Respondent District, respectively, had committed prohibited practices within the meaning of Sec. 111.70, Stats. On August 9, 2002, the Commission appointed Dennis P. McGilligan, a member of its staff, to act as

No. 30436-A

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 19, 2002, Respondents filed a Motion to Make the Complaint More Definite and Certain. On July 8, 2002 and September 10, 2002, the Complainant filed arguments opposing said motion.

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.

2. The Complainant shall amend its original complaint to show clearly and concisely by a statement of the facts what constitutes “the protected activity in which its members were engaging from which the prohibited practice stems” including the specific dates, times and locations where this protected activity took place.

3. The Complainant shall also amend its original complaint to show clearly and concisely by a statement of facts what constitutes the “threatening, coercive and discriminatory statements” which were made by Gregory Brewer to employees as well as the “punitive work assignments” given by Brewer to employees Spain, Wigdal, Parks and Wess. The aforesaid statement of facts shall include the specific dates, times and locations of these statements and assignments.

4. The Amendment shall be filed on or before October 25, 2002 with the Examiner, with a copy of the same mailed directly to:

Ms. Malina R. Piontek Fischer
Assistant Director of Labor
Relations
Madison Metropolitan School District
Doyle Administration Building
545 West Dayton Street
Madison, WI 53703-1995

5. The date for filing an answer to the Complaint and Amended Complaint is November 25, 2002.

Dated at Madison, Wisconsin, this 25th day of September, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

Dennis P. McGilligan, Examiner

MADISON METROPOLITAN SCHOOL DISTRICT

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

Wisconsin Administrative Code, Section ERB 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 the Respondents’ Motion to Make the Complaint More Definite and Certain by requiring Complainant to amend its original complaint to show clearly and concisely, by a statement of facts, what constitutes “the protected activity in which its members were engaging from which the prohibited practice stems”, including the specific dates, times and locations where this protected activity took place.

The Examiner also has granted Respondents’ request that Complainant amend its original complaint to show clearly and concisely by a statement of facts what constitutes the “threatening, coercive and discriminatory statements” which were made by Gregory Brewer to employees as well as the “punitive work assignments” given by Brewer to Spaini, Wigdal, Parks and Wess. The aforesaid statement of facts shall include the specific dates, times and locations of these statements and assignments.

By letters dated July 3, 2002 and September 9, 2002, Complainant submitted arguments in opposition to the aforesaid Motion. The Complainant argues primarily “that the Union’s complaint puts the District and Mr. Brewer fairly on notice of our claim. Any further detail would constitute discovery to which they are not entitled.”

Respondents, in their Memorandum in support of Respondents’ Motion to Make the Complaint More Definite and Certain, argue that the “Union’s complaint is defective because it provides ambiguous and insufficient information about what conduct it is based upon.”

Contrary to the Complainant’s assertions, and consistent with the requirements of Section ERB 12.02(2),(c) of the Wisconsin Administrative Code, the Examiner finds that the

information sought by Respondents will enable Respondents to determine with specificity the facts constituting the alleged prohibited practice and to permit Respondents to prepare a response to the charge. Therefore, the Complainant is ordered to provide said information.

Dated at Madison, Wisconsin, this 25th day of September, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

Dennis P. McGilligan, Examiner

