

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**SANDRA LEA BENEDICT**, Complainant,

vs.

**WISCONSIN EDUCATION ASSOCIATION COUNCIL (WEAC), EAU CLAIRE  
ASSOCIATION OF EDUCATORS (ECAE) and EAU CLAIRE  
AREA SCHOOL DISTRICT**, Respondents.

Case 66  
No. 61466  
MP-3848

**Decision No. 30525-A**

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**ORDER TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN**

On July 30, 2002, Complainant Sandra Lea Benedict filed a complaint with the Wisconsin Employment Relations Commission alleging that the Respondents Wisconsin Education Association Council, Eau Claire Association of Educators and Eau Claire Area School District had committed unfair labor practices under the Wisconsin Employment Peace Act and/or the State Employment Labor Relations Act and/or prohibited practices within the meaning of the Municipal Employment Relations Act. The Commission appointed John R. Emery, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order. The Respondent, Eau Claire Area School District, filed a motion to make the complaint more definite and certain. The Examiner, being fully advised in the premises, makes and issues the following

**ORDER**

1. That the Complainant amend Paragraph C of her complaint to set forth as to the Respondent, Eau Claire Area School District, clearly and concisely:

a) the specific acts, omissions or course of conduct engaged in by the Respondent, along with the dates on which such acts, omissions or course of conduct

Dec. No. 30525-A

occurred, which are alleged to be in violation of the Wisconsin Employment Peace Act, the Municipal Employment Relations Act, or the State Employment Labor Relations Act.

2. That the Complainant amend Paragraph D of her complaint to identify the specific sections or subsections of the Wisconsin Employment Peace Act [Sec. 111.06, Wis. Stats.], the Municipal Employment Relations Act [Sec. 111.70(3), Wis. Stats.] or the State Employment Labor Relations Act [Sec. 111.84, Wis. Stats.] which are alleged to have been violated by the Respondents, Eau Claire Area School District.

3. That these amendments be filed with the Examiner at 18 South Thornton Avenue, P.O. Box 7870, Madison, Wisconsin 53707-7870, within thirty (30) days from the date of this order and a copy of same be mailed to:

Mr. James M. Ward  
Weld, Riley, Prenn & Ricci, S.C.  
Attorneys at Law  
3624 Oakwood Hills Drive  
P.O. Box 1030  
Eau Claire, WI 54702-1030

Ms. Teresa M. Elguézabal  
Legal Counsel  
Wisconsin Education Association Council  
33 Nob Hill Drive  
P.O. Box 8003  
Madison, WI 53708-8003

Dated at Madison, Wisconsin, this 2<sup>nd</sup> day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

John R. Emery, Examiner

EAU CLAIRE SCHOOL DISTRICT

**MEMORANDUM ACCOMPANYING ORDER REQUIRING COMPLAINANT TO  
MAKE COMPLAINT MORE DEFINITE AND CERTAIN**

The Commission, by rule, has established criteria for filing a complaint alleging unfair labor practices under the Wisconsin Employment Peace Act or prohibited practices under the Municipal Employment Relations Act and State Employment Labor Relations Act as follows:

**ERC 2.02 Complaint.** The complaint shall include:

...

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice or practices, including the time and place of occurrence of particular acts and the names of persons involved.

...

**ERC 12.02 Complaint.**

...

(2) CONTENTS. Such complaint shall contain the following:

...

(c) 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.

...

**ERC 22.02 Complaint.**

...

(2) CONTENTS. Such complaint shall contain the following:

...

(c) 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.

The Complainant simultaneously filed three separate Complaint forms, one against each Respondent, and attached thereto a seven page narrative of the allegations underlying her complaints, as well as an appendix of documentation purporting to support her allegations. In her response to Paragraph C of the Complaint form filed against Eau Claire Area School District, requesting the facts underlying her allegations of prohibited practices, the Complainant wrote: “Failure to provide grievance procedure,” “Failure to arbitrate,” “Failure to settle any previous or current unfair labor & prohibited practices claims,” “Retaliation.” These are statements of ultimate fact and do not constitute a “clear and concise statement of the facts,” including detail as to the time and place of material events, as required by the Administrative rules. Further, the accompanying narrative is no more instructive as to in what particulars the Respondent District has committed the alleged violations.

Paragraph D of the Complaint form requests information as to the particular statutes the Respondent is alleged to have violated. Again, with respect to the Respondent District, the Complainant wrote: Sec. 8 (§158) Unfair Labor Practices by Employer, Sec. 7 (§157) Employees Shall Have Rights to Self-organization and to Form, Join, or Assist Labor Organizations, to bargain collectively authorized in Sec. 8(a)(3) of this title. Sec. 9(a), Section 159(a). To Refuse to Bargain Collectively with an employer to cause or attempt to cause employer to discriminate. In the margins of the form the Complainant added Sec. 2 §152, Sec. 1 §151, Sec. 8 §158(b), Sec. 8(a)(11), Sec. 8(b)(2), Sec. 8(a)(2)(3)(4)(5), Sec. 302 §186, 29 USCA §401 [Sec. 5(b)], Sec. 301 (§185), Sec. 303 §187(a), 8(b)(4), Sec. 158(b)(4). These citations appear to refer to the National Labor Relations Act and other federal statutes, which are not enforced by the WERC. None of the citations appear to refer to the Municipal Employment Relations Act, Sec. 111.70, et seq., Wisconsin Statutes, which is enforced by the WERC. In my view, it is not possible on the basis of these pleadings for the Respondent District to understand either the factual or the legal basis for the Complaint, or to prepare a meaningful response thereto.

The Examiner has issued the Order to Make Complaint More Definite and Certain in order to comply with the rules of the Commission. The purpose of the Order is to clarify the factual and legal bases underlying the Complainant’s claims in such a way that the Examiner may understand them and the Respondent may prepare a meaningful response, which will thereby hopefully expedite these proceedings. The Order does not require the filing of additional arguments, exhibits or briefs, but merely seeks a concise statement of the relevant facts concerning any alleged acts, occurring within one year prior to the filing of the amended complaint, which are contended to constitute unfair labor practices and/or prohibited practices.

The Order requires that the amended complaint be filed within thirty days. Additionally, no further proceedings will be scheduled until an amended complaint is filed in conformance with this Order. At such time as the complaint is filed, the Examiner will address arguments from all parties as to whether this matter should be advanced to hearing or dismissed as to some or all parties.

Failure to comply with the Order may result in an Order to Show Cause Why the Complaint Should Not Be Dismissed.

Dated at Madison, Wisconsin, this 2<sup>nd</sup> day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

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John R. Emery, Examiner