

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**NORTHWEST UNITED EDUCATORS,
CLEAR LAKE SCHOOL DISTRICT TEACHERS,** Complainant,

vs.

SCHOOL DISTRICT OF CLEAR LAKE, Respondent.

Case 25
No. 65573
MP-4228

Decision No. 31627-A

Appearances:

Jesse L. Reschke, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, appearing on behalf of the Complainant.

Stephen L. Weld, Weld, Riley, Prenn & Ricci, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Respondent.

**ORDER DENYING RESPONDENT'S PRE-HEARING
MOTION TO DISMISS THE COMPLAINT AND
GRANTING, IN PART, RESPONDENT'S SECOND MOTION
TO MAKE THE COMPLAINT MORE DEFINITE AND CERTAIN**

Northwest United Educators, Clear Lake School District Teachers (Complainant) filed a complaint with the Wisconsin Employment Relations Commission on February 6, 2006, alleging that the Clear Lake School District (Respondent) had committed prohibited practices in violation of Sec. 111.70(3), Stats. On February 23, 2006, Respondent filed a Motion to Make the Complaint More Definite and Certain. On March 1, 2006, the Commission appointed Coleen A. Burns, as Examiner, to make and issue Findings of Fact, Conclusions of Law and Order in the matter of the prohibited practices complaint filed by the Complainant. On March 10, 2006, a hearing was scheduled for April 14, 2006. On March 13, 2006, Complainant responded to the Motion to Make the Complaint More Definite and Certain by

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filing an amended Complaint. On March 27, 2006, Respondent filed a second Motion to Make the Complaint More Definite and Certain and a Motion to Dismiss. Complainant was provided with an opportunity to respond to these two Motions by April 5, 2006. The Examiner, having considered the record to date, including arguments, makes and issues the following

ORDER

Respondent's pre-hearing Motion to Dismiss the Complaint is denied and Respondent's Second Motion to Make the Complaint More Definite and Certain is granted, in part.

Dated at Madison, Wisconsin, this 7th day of April, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

NORTHWEST UNITED EDUCATORS

**MEMORANDUM ACCOMPANYING ORDER
DENYING RESPONDENT'S PRE-HEARING MOTION
TO DISMISS THE COMPLAINT
AND GRANTING, IN PART, RESPONDENT'S SECOND MOTION
TO MAKE THE COMPLAINT MORE DEFINITE AND CERTAIN**

Respondent's Motion to Dismiss is governed by Chapters 111 and 227. As Examiner Richard B. McLaughlin stated in ONEIDA COUNTY, DEC. NO. 28240-A (8/95):

Sec. 227.01(3), Stats., defines a "Contested case" to mean "an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order."

The Commission is an "Agency" under Sec. 227.01(1), Stats., thus making this proceeding an "agency proceeding." To be a contested case under Sec. 227.01(3), Stats., the proceeding must involve a controverted, substantial interest which will be determined after a hearing required by law.

. . .

Chapter 227 does not provide a summary judgment procedure. The right to hearing is explicit, and the dismissal of a contested case prior to evidentiary hearing is not. Pre-hearing dismissal of a contested case is, then, an uncommon result:

Dismissal prior to evidentiary hearing would be proper if based on lack of jurisdiction, lack of timeliness and in certain other cases . . . (It would be a rare case where circumstances would permit dismissal of the proceedings prior to the conclusion of a meaningful evidentiary hearing on other than jurisdictional grounds or failure of the complaint to state a cause of action. 1/ (cite omitted)

As Examiner McLaughlin also stated, the Commission has reflected this reluctance to deny hearing in its own case law:

Because of the drastic consequences of denying an evidentiary hearing, on a motion to dismiss the complaint must be liberally construed in favor of the complainant and the motion should be granted only if under no interpretation of the facts alleged would the complainant be entitled to relief. UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY, WISCONSIN, DEC. NO. 15915-B (Hoornstra with final authority for WERC, 12/77), at 3; RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 27982-B (WERC, 6/94).

The complaint, as amended on March 13, 2006, alleges that Respondent has engaged in conduct that violates Sec. 111.70(3)(a)1,2,3 and 4, Stats. The complaint states a cause of action over which the Commission has jurisdiction and may grant relief.

Respondent has filed an Answer in which it denies that it has violated Sec. 111.70(3)(a)1, 2, 3 and 4, Stats., as alleged by Complainant. Complainant's claim that Respondent has engaged in conduct that violates MERA presents a contested case requiring a full hearing on the pleadings. Respondent's Pre-hearing Motion to Dismiss the Complaint is denied.

Sec. ERC 12.03, Answer to complaint, Wis. Admin. Code, provides that a respondent may, by motion, seek a more definite and certain statement of the complaint where it is alleged to be so indefinite as to hamper a respondent's ability to prepare an adequate answer. The Respondent alleges that the complaint continues to assert legal conclusions, not fact, which makes it impossible for Respondent to defend.

The complaint, as amended on March 13, 2006, asserts that Respondent violated Sec. 111.70(3)(a) 1, 2, 3, and/or 4, Stats., when

- 1) on or about February 1, 2006, its agent Mark Heyerdahl threatened to not bargain collectively with the representative chosen by the membership and threatened and coerced the Union by threatening not to bargain in good faith and, on or about November 21, 2005, attempted to dominate and interfere with the administration of the Union by refusing to reduce an agreed change in the work calendar to writing and threatening to repeal an agreed change in the work calendar if the Union requested the agreement in writing;
- 2) on or about November 15, 2005, the School District of Clear Lake bargained directly with the members of the bargaining unit regarding securing a change in the work calendar.

With respect to the conduct that is alleged to have occurred on or about February 1, 2006, the Examiner agrees that, in order to prepare an adequate answer, Respondent is entitled

to have the name of the Complainant bargaining representative with whom Heyerdahl is alleged to have threatened to not bargain collectively. The Examiner disagrees with Respondent's assertion that the complaint needs to be more detailed with respect to how this individual was threatened.

With respect to the conduct that is alleged to have occurred on or about November 15, 2005, the Examiner agrees that, in order to prepare an adequate answer, Respondent is entitled to have the name(s) of the individual(s) in the District who are alleged to have bargained directly with members of the bargaining unit.

The Examiner disagrees with Respondent's assertion that the complaint must provide more detail with respect to how the school year calendars were developed; when the "agreed change" had been ratified by the NUE Board of Directors and Board of Education; how the November 21 conversation constituted domination or interference; who was allegedly threatened on November 21, 2005 or how that individual was threatened.

Respondent's Second Motion to Make the Complaint More Definite and Certain is granted in part. At the hearing of April 14, 2006, Complainant will be required to Make the Complaint More Definite and Certain by identifying (1) the Complainant bargaining representative with whom Heyerdahl is alleged to have threatened to not bargain collectively on or about February 1, 2006 and (2) the name(s) of the individual(s) in the District who are alleged to have bargained directly with the members of the bargaining unit on November 15, 2005. Respondent will then be permitted to amend its Answer to the complaint in response to these identifications. Inasmuch as Complainant's presentation of its case will be continued on May 17, 2006, Respondent will have an adequate opportunity to defend against the allegations contained in the complaint, as amended at hearing.

Dated at Madison, Wisconsin, this 7th day of April, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

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