

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LEE RICHARD RADTKE, Complainant,

vs.

WEST SALEM SCHOOL DISTRICT, Respondent.

Case 29
No. 68488
MP-4467

Decision No. 32696-A

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

Lee Richard Radtke filed a prohibited practice complaint with the Wisconsin Employment Relations Commission (WERC) on December 12, 2008, pro se, against the West Salem School District. On March 19, 2009, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.70(5), Stats. Hearing on the complaint is set for May 8, 2009. On March 31, 2009, the Respondent filed a Motion to Make Complaint More Definite and Certain. The Complainant filed a response to the motion on April 6, 2009. Having fully considered the matter, the Examiner makes and issues the following

ORDER

That Complainant Radtke shall make his complaint more definite and certain by identifying all the statutory provision(s) which he alleges the Respondent District violated. The Complainant is to supply this information by April 29, 2009.

Dated at Madison, Wisconsin, this 22nd day of April, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner

WEST SALEM SCHOOL DISTRICT

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

The following information about the complaint is pertinent to this motion. The complaint contains the following factual allegations:

- (1) “Statement to West Salem Board of Education, March 11, 2008, indicating defective non-renewal notice”;
- (2) “No response to the enclosed grievance (violation of contractual agreement, level II and III)”;
- (3) “No final notice from the school board by March 15 deadline to non-renew my contract – another violation of 118.22 statute.”

Attached to the complaint were nine letters, three documents, and portions of the 2005-07 collective bargaining agreement between the West Salem School District and the West Salem Education Association. Those attachments total 25 pages.

Other than the explicit reference to Sec. 118.22 in factual allegation number (3), and the implicit reference to the collective bargaining agreement in factual allegation number (2), the complaint does not identify any other statute which is alleged to have been violated by the District.

Hearing on the complaint is set for May 8, 2009. The District has not yet filed an answer to the complaint; the date set for it to do so is May 1, 2009.

The District filed a motion to make the complaint more definite and certain pursuant to Wisconsin Administrative Code Sec. 12.02(7). The District’s motion does not seek additional facts. Instead, it asks that the Complainant identify which statutory provision(s) he alleges the District violated.

The Complainant responded to the District’s motion by sending the District’s counsel another copy of his complaint and the attachments, but did not identify which statutory provision(s) he alleged the District had violated. He indicated in his response that he was leaving it to the Examiner which statutory provision(s) had been violated.

While it is apparent that the Complainant is alleging a violation of Sec. 118.22, and perhaps a violation of the collective bargaining agreement, it is not clear if those are the only provisions he alleges were violated herein. Other statutory provision(s) may also be involved. Currently though, the Respondent has to speculate at what other statutory provision(s) are involved. It does not have to do so because the Wisconsin Administrative Code provides in

Sec. 12.02(2)(c), that a complaint shall contain “the provisions. . .alleged to have been violated.” The Complainant’s failure to list all the statutory provision(s) alleged to have been violated makes the complaint so indefinite as to hinder the Respondent in the preparation of its answer to the complaint. In order to make the complaint conform with that code provision, the Complainant is to identify all the statutory provision(s) which he is alleging the District violated. This will enable the District to prepare its answer to the complaint.

The Complainant is to supply this information by April 29, 2009.

Dated at Madison, Wisconsin, this 22nd day of April, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner