

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOIS ALFERI, et al., Complainants,

vs.

LITTLE CHUTE SCHOOL DISTRICT, Respondent.

Case ID: 93.0001  
Case Type: COMP\_MP

DECISION NO. 35771-A

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**Appearances:**

Randall Garczynski, Legal Counsel, Wisconsin Education Association Council, 33 Nob Hill Road, Madison, Wisconsin 53708, appearing on behalf of the Complainants.

Christine V. Hamiel and Daniel J. Borowski, Attorneys, von Briesen & Roper, S.C. 411 East Wisconsin Avenue, Suite 1000, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

**ORDER DENYING MOTION TO DISMISS**

Complainants having on May 1, 2015 filed an amended prohibited practice complaint alleging that the Respondent had committed certain prohibited practices within the meaning of §§ 111.70(3)(a)1 and 3, Stats.; and Respondent having on May 18, 2015 filed a motion to dismiss the complaint; and briefing on said motion having been completed on July 7, 2015; and the Examiner being satisfied that the motion should be denied;

NOW, THEREFORE, it is

**ORDERED**

The motion to dismiss is denied.

Signed at Madison, Wisconsin, this 4th day of August 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By: \_\_\_\_\_  
Peter G. Davis, Examiner

**MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS**

ERC 12.04 (2)(f) provides in pertinent part:

A motion to dismiss shall not be granted before an evidentiary hearing has been conducted except where the pleadings, viewed in the light most favorable to the complainant, permit no interpretation of the facts alleged that would make dismissal inappropriate.

The complaint alleges violations of §§ 111.70(3)(a)1 and 3, Stats.

Respondent contends that none of the Complainants are municipal employees and thus they lack standing to pursue the instant complaint. The complaint generally alleges that all Complainants were municipal employees and more specifically that they all were placed on a list that made them eligible for substitute teacher assignments. Under ERC 12.04(2)(f), these alleged facts require that the Respondent's lack of standing argument be rejected.<sup>1</sup>

Respondent also contends that the doctrine of claim preclusion requires dismissal of the complaint. In this regard, Respondent cites the August 18, 2014 settlement/order of dismissal reached as to an earlier WERC complaint alleging that Respondent had violated §§ 111.70(3)(a)1 and 3, Stats., in January 2014 by removing Complainants from the list that made them eligible for substitute teaching assignments. Complainants correctly respond that because the instant complaint is based on alleged Respondent conduct after August 18, 2014, it could not have litigated the instant claim in that earlier proceeding. Thus, dismissal based on claim preclusion is not appropriate.

Signed at Madison, Wisconsin, this 4th day of August 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By: \_\_\_\_\_  
Peter G. Davis, Examiner

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<sup>1</sup> I also note, as argued by Complainants, that even if they are ultimately determined not to be municipal employees but rather to be applicants for employment, dismissal of the § 111.70(3)(a)3, Stats., allegation would not be appropriate because that statutory provision (unlike § 111.70(3)(a)1, Stats.) applies not only to municipal employees but also to applicants for municipal employment. See *Milwaukee Board of School Directors*, Dec. No. 27975-C (WERC, 8/94).