

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petitions of : Case 7
WALWORTH COUNTY : No. 43401 ME-386
 : Decision No. 9394-B
 :
Involving Certain Employees of : Case 34
WALWORTH COUNTY : No. 43400 ME-385
 : Decision No. 18271-A
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Appearances:
Whyte & Hirschboeck, by Mr. Alfred A. Heon, 2100 Marine Plaza, Milwaukee, Wisconsin 532023202, appearing on behalf of the County.
Mr. John Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 624, Racine, Wisconsin 53401-0624, appearing on behalf

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

Walworth County having on December 28, 1989, filed two petitions requesting that the Wisconsin Employment Relations Commission clarify two collective bargaining units by excluding all clerical employees in the Public Health Department from the bargaining unit currently represented by the Walworth County Courthouse Employees, Local 1925-B, WCCME, AFSCME, AFL-CIO and by including those clerical employees in the bargaining unit represented by Lakeland Hospital Employees, Local 1444, Professional and Health Care Employees Division of the United Food and Commercial Workers International, AFL-CIO; and a hearing on the petitions having been held on May 7, 1990, in Elkhorn, Wisconsin, before Examiner Karen J. Mawhinney; and a transcript of the hearing having been received as well as post hearing briefs by August 8, 1990; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Walworth County, herein the County, is a municipal employer and has its offices at the Walworth County Courthouse, Elkhorn, Wisconsin 53121.
2. Walworth County Courthouse Employees, Local 1925-B, WCCME, AFSCME, AFL-CIO, herein AFSCME, is a labor organization and has its offices at P.O. Box 624, Racine, Wisconsin 53401-0624. In February, 1970, AFSCME was certified by the Wisconsin Employment Relations Commission as the collective bargaining representative of the following stipulated bargaining unit:

all Walworth County Courthouse employees, including Social Services Department clerical employees but excluding elected officials, professional employees, social services employees represented by Local 1925, supervisors, court reporters, the deputy coroner and all other employees of Walworth County.

The County and AFSCME, are parties to a 1990-91 collective bargaining agreement which includes the following Recognition Clause:

The County hereby recognizes the Union as the exclusive bargaining representative for purposes of conferences and negotiations on all matters concerning wages, hours, and other conditions of employment for all Walworth County courthouse employees, but excluding elected officials, professional employees, social services employees represented by Local 1925, supervisors, court reporters, the deputy coroner, confidential employees in the Personnel Office, and all other employees of Walworth County as certified by the Wisconsin Employment Relations Commission on February 3, 1970.

3. Lakeland Hospital Employees, Local 1444, Professional and Health Care Employees Division of the United Food and Commercial Workers International, AFL-CIO, herein Food and Commercial Workers, is a labor organization with its offices at 2001 North Mayfair Road, Milwaukee, Wisconsin 53226. In December, 1980, the Food and Commercial Workers were certified by the Wisconsin Employment Relations Commission as the collective bargaining representative of the following stipulated bargaining unit:

all regular full-time and part-time employees employed by Walworth County at its Lakeland Hospital, Elkhorn, Wisconsin, but excluding administrators and

supervisors, registered nurses, professional, casual and confidential employees, and guards.

The County and the Food and Commercial Workers, through its Local 1444, are parties to a 1989-1991 collective bargaining agreement which contains the following Recognition Clause:

The Hospital hereby recognizes the Union as the exclusive collective bargaining representative with respect to wages, hours of employment and other working conditions, for all regular full-time and part-time employees employed by the Hospital at its Elkhorn, Wisconsin facilities; but excluding administrator and supervisors, registered nurses, professional, casual (as defined by the WERC) and confidential employees, guards and supervisors as certified by the Wisconsin Employment Relations Commission.

4. Through its unit clarification petitions, the County seeks to have the following three positions and five individuals moved from the AFSCME unit to the Food and Commercial Worker unit: Clerk Typist II (one employee), Administrative Secretary (one employee) and Home Health Aide (three employees). AFSCME opposes the loss of the positions from its unit. Jeffrey Stone, Business Representative for Food and Commercial Workers, was notified of the hearing on the County petitions by certified mail on April 5, 1990. Neither Stone nor any representative of the Food and Commercial Workers appeared at the hearing in this matter. Stone had previously notified the Commission on January 16, 1990, that Food and Commercial Workers did not seek to represent the employees the County seeks to move into the Food and Commercial Worker bargaining unit.

5. Prior to January 1, 1990, the positions in dispute were part of a free standing County Public Health Department located in Elkhorn, Wisconsin. The Department was located in a separate building located approximately 300 yards from the County's Lakeland Hospital, and consisted of: registered nurses who handled immunization programs and other public health matters; Home Health Aides who performed patient care services within homes; and clerical and administrative employees. The Director of the Department was Lorraine Fuecks. On January 1, 1990, the County incorporated Public Health Department into the Lakeland Hospital. Fuecks' position was abolished and the Assistant Administrator for Patient Care Services at the Hospital, Roberta Welsh, took over her responsibilities. The disputed employees' immediate supervisor is Jean Carter, who is the home health registered nurse supervisor of home health care. Carter also assisted in the supervision of Public Health Department employees before January 1, 1990, but was not their designated supervisor until that date. The duties of the Home Health Aides did not change following the reorganization while the duties of the Clerk Typist and Administrative Secretary have changed only slightly. The County plans to physically relocate the disputed employees to offices within the Hospital building in about three years.

On the basis of the above and foregoing Findings of Fact, the Commission issues the following

CONCLUSION OF LAW

Due to Walworth County's reorganization of the manner in which it provides public health service, the positions of Home Health Aide, Clerk Typist II, and Administrative Secretary, which are currently included in a bargaining unit represented by Walworth County Courthouse Employees, Local 1925-B, WCCME, AFSCME, AFL-CIO are appropriately included in the bargaining unit represented by Lakeland Hospital Employees, Local 1444, Professional and Health Care Employees Division of the United Food and Commercial Workers International, AFL-CIO.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The positions in dispute are hereby included in the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 12th day of December,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues)

s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except

that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

In this case, the County seeks to move a group of five employees who were formerly part of the Public Health Department and are currently included in AFSCME's Courthouse bargaining unit into the bargaining unit of Hospital employees represented by Food and Commercial Workers. AFSCME and the affected employees oppose the move, and Food and Commercial Workers do not seek to represent the affected employees.

THE PARTIES' POSITIONS:

The County:

The County argues that the Commission has stated it is proper to alter the composition of bargaining units in unit clarification proceedings when the positions in dispute have been impacted by changed circumstances which materially affect their unit status. The County contends that this is exactly the case here because the operation unit of the employees involved has been dissolved and the employees are subject to new supervision and will soon be moving into the Hospital.

The County submits that the Home Health Aides and two clerical employees are involved in health care work and thus have more in common with the Hospital unit than with the clerical unit of Courthouse employees. Even the clerical employees in question deal with medical matters, as they work with and support registered nurses and aides who are health care providers. Like other clerical employees of the Hospital and unlike other Courthouse clericals, one of the clericals' main tasks is to maintain medical records and transcribe medical notes. Additionally, the Home Health Aides perform virtually the same type of work in private homes as Nursing Assistants do in the Hospital, and they have the same state certification. The County contends that Hospital workers and the employees in dispute also have a similarity of wages, hours and working conditions.

Supervision and common workplace matters are really decisive in this case, the County argues. The employees are supervised by Hospital personnel and will soon be working in the Hospital. Moreover, the Commission has emphasized that common supervision and workplace are the most important factors to be considered in a number of cases.

The County sees no fragmentation issue where five employees would be transferred from one large unit to another large unit, and argues that there is no real loss to AFSCME as only five employees out of 130 in the Courthouse unit are involved. While AFSCME made an attempt to show that there are other situations within the County where AFSCME members worked in a setting with employees represented by other unions, the only such situation is where those other employees are members of blue-collar unions which clerical employees could not join.

Finally, the County asserts that the two recognition clauses of the collective bargaining agreements require a transfer of these employees to the Hospital unit because AFSCME's contract calls for representing all Courthouse employees and Food and Commercial Workers' contract calls for representing all employees employed by the Hospital.

Therefore, the County asks that the five employees involved in its petitions be included in the Hospital unit.

AFSCME:

AFSCME asserts that Sec. 111.70(4)(d)2.a. Stats. has been construed by the Commission to mean that employees have the right to be represented by organizations of their own choosing, and that the employees at issue have expressed an interest to remain in the AFSCME bargaining unit. Home Health Aide Anderson testified that she would not have posted for her job if it had been in the Hospital bargaining unit, and that the potential for modified hours of work are of great concern to her. Also, AFSCME notes that inclusion in the Courthouse unit allows employees the ability to post for other jobs in the Courthouse.

AFSCME states that there are differences in benefits between the two bargaining units, because the Hospital employees have a lesser benefit in life insurance and must work an additional year to reach the maximum rate of pay. AFSCME also contends the employees fear a loss of bargaining unit seniority which would affect their contractual rights.

AFSCME argues that the employees in question have not had a change in job duties that substantiates a need to transfer them into a different bargaining unit. Further, the degree of change in the supervision of these employees is in

dispute, as Carter assisted in the supervision of Public Health Department employees before the reorganization.

While a large number of the 130 employees comprising the Courthouse bargaining unit work in the Courthouse, AFSCME notes that its jurisdiction extends beyond the Courthouse to the Courthouse Annex, the Highway Department, the UW Extension Office, the Zoning Office, and the Huber Dorm. Huber Dorm members are classified as correctional officers but do some typing. Three members of the Courthouse unit work at the Highway Department under the direct supervision of the Highway Commissioner. Also, as AFSCME unit members work in various locations, AFSCME contends the location of workplace should play no part in this unit clarification proceeding.

Any changes in the reimbursement formula of Medicare and Medicaid that result from the reorganization would be the same regardless of the unit in which employees belong, AFSCME notes. Thus, AFSCME argues that no weight should be given to the County's position that a change in unit is needed for economic considerations.

Lastly, AFSCME notes that the instant petitions were filed with the Commission eight days before AFSCME ratified its current collective bargaining agreement on January 4, 1990, and that the County never made any proposals to remove these employees from the AFSCME unit or to seek a modification in the hours that services could be provided.

Given the foregoing, AFSCME urges the Commission to deny the County's petitions.

DISCUSSION:

When deciding this case, the personal wishes of the employees and the impact which a change in unit might have on their wages, hours and conditions of employment are not relevant. Our role is limited to considering the two units' present composition in light of the changes which have occurred and then determining whether a change in the unit status of these employees is warranted.

The record establishes that on January 1, 1990, the County's Public Health Department was absorbed into the County's Hospital. With the reorganization came a partial change in supervisory structure but the duties of the disputed employees were substantially unaffected and they will not move to a new work site for the next several years. The question before us is whether the reorganization of the County's public health service is an intervening event which materially affects the current AFSCME unit status of five public health employees. 2/

The bargaining unit into which the County seeks to have us place the five employees consists of "all regular full-time and part-time employees employed by the Hospital at its Elkhorn, Wisconsin facilities. . . ." Although this broad unit already includes employees whose duties are similar to those of the five disputed employees, the scope of this unit is defined not by the function of the employees but solely by whether the employees are employed "by the Hospital". 3/ Where the scope of the unit is so defined, a change in the identity of an employee's employment unit is an intervening event which materially affects such employee's unit status. The absence of any significant change in job responsibilities or present work location is irrelevant under such circumstances.

Following the reorganization, these five employees are "employed by the Hospital at its Elkhorn, Wisconsin facilities. . . ." Under these circumstances, we think it clear that the five employees now fall squarely within the scope of the Hospital unit and should be so included.

Dated at Madison, Wisconsin this 12th day of December, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

2/ Eau Claire Area School District, Dec. No. 17124-A (WERC, 4/90); Mid-State Vocational, Technical and Adult Education District, Dec. No. 14526-A (WERC, 5/85.)

3/ Although the parties have described the unit as employees "employed by the Hospital", it is clear said reference is in the context of the Hospital being a separate employing unit and not a separate employer. No. 9394-B
No. 18271-A