

DOUGLAS COUNTY DEPARTMENT OF SOCIAL
SERVICES EMPLOYEES LOCAL UNION #2375,
AFSCME, AFL-CIO

VS.

DOUGLAS COUNTY,

Appearances:

Mr. James C. McKay, Sr., Douglas County Corporation Counsel,
appearing on behalf of the Respondent, Douglas County.

Douglas County Department of Social Services Employees Local Union No. 2375, AFSCME, AFL-CIO, herein after Complainant, having filed a complaint on February 12, 1979 with the Wisconsin Employment Relations Commission alleging that Douglas County, hereinafter Respondent, had committed a prohibited labor practice within the meaning of the Municipal Employment Relations Act; and the Commission having appointed William C. Houlihan, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5) Wisconsin Statutes, and hearing on said complaint having been held at Superior, Wisconsin on March 28, 1979, and the Examiner having received a transcript of the proceedings on April 9, 1979, and the Examiner having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

1. That Complainant is a labor organization within the meaning of Section 111.70(1)(j) Wisconsin Statutes; and at all times material herein was the exclusive collective bargaining representative for all Social workers and trainees employed by Douglas County, the Respondent.

2. That Respondent is a Municipal Employer within the meaning of Section 111.70(1)(a) Wisconsin Statutes.

3. That at all times material hereto, Complainant and Respondent have been signatories to a collective bargaining agreement, which agreement contains the following pertinent provisions:

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except in those respects specifically referred to herein or which may be reasonably implied from the language of this contract.

ARTICLE 6.

GRIEVANCE PROCEDURE

- C. If, as a result of active taken above, the grievance still remains unresolved, the dispute shall be submitted to an arbitration panel. One member of the panel shall be chosen by the Employer; the second member of the panel shall be chosen by the Union. These two members shall be chosen within ten (10) days of the final action taken in Step B above. These two members already chose will meet and choose a third member of the panel who shall act as the Chairman. Should these two members fail to agree on a Chairman within two (2) weeks' time the third member shall be appointed by the Wisconsin Employment Relations Commission. The arbitration panel, after hearing both sides of the controversy, shall hand down their decision in writing to both parties. The decision of the arbitration panel shall be considered final and binding on both parties to this Agreement. Each party shall bear the cost of their expenses incurred through the panel. Both parties shall share equally the cost of the third member and all other costs of arbitration.

ARTICLE 13.

WORK DAY -- WORK WEEK

Section 1. Work day shall be from 8:00 a.m. to 12:00 noon, 1:00 p.m. to 4:30 p.m. The work week shall be five (5), seven and one-half hour days, Monday through Friday, for a total of thirty seven and one-half (37 1/2) hours per week. The hours of work may be changed by mutual consent of the parties. If it is deemed necessary that the office is held open during the lunch period by the Director of Welfare then the office would be staffed by one (1) employee on a rotating basis.

Section 2. Overtime is not required of employees; however, should an employee be asked to put in additional time as needed to carry out their duties and responsibility, the employee would be paid overtime pay at the rate of one and one-half (1-1/2) times the regular rate of pay or compensatory time off at the rate of one and one-half (1-1/2)

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times the number of hours worked at the option of the employee. However, if an employee chooses to take compensatory time off, the employees are to work out in advance with their immediate supervisor any request for compensatory time.

Section 3. During a standard work day a ten (10) minute rest period is allowed in the morning and another in the afternoon.

ARTICLE 25.

COLLECTIVE BARGAINING

This Agreement is executed in full satisfaction of each and every demand of each party against the other for the duration of this Agreement. For the duration only of this Agreement, except as modified by the Expiration and Termination clause, each party waives its right to require the other to bargain collectively within the meaning of the Wisconsin Employment Relations Act, as amended, with respect to any matter whatsoever, except:

- A. As to grievances:
- B. If any new classification or significant restructuring of present classifications are effectuated, the Employer shall negotiate a new wage schedule to apply if requested to do so by the Union.

ARTICLE 26.

EXPIRATION AND TERMINATION

The period of this Agreement shall be from the 1st day of January, 1978, until the 31st day of December, 1979, and shall continue in full force and effect from year to year thereafter unless written notification of intention to terminate or modify this Agreement is given by either party to the other sixty (60) days prior to the date of expiration or any anniversary date next following.

4. That, on Saturday, November 18, 1978, the Respondent instituted an expanded juvenile service program which action had the effect of substantially increasing the workload and responsibility of members of the collective bargaining unit.

5. That on November 17, 1978 Petitioner, by letter, requested collective bargaining over the impact of the expansion of the juvenile service program on the unit employees wages, hours, and conditions of employment.

6. That Respondent failed to answer Petitioners November 17, 1978 invitation to commence bargaining.

7. That the Petitioner reiterated its request to commence bargaining by letter dated December 4, 1978, which letter resulted in a December 19, 1978 meeting between representatives of the Petitioner and the Respondent.

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8. That at the December 19, 1978 meeting the Petitioner submitted a wage proposal dealing with the impact of the expansion of the juvenile service program; that the Respondent received the proposal and requested time to study same.

9. That the parties reconvened on January 17, 1979 at which time the Respondent informed the Petitioner that it would not bargain concerning this matter.

CONCLUSION OF LAW

Respondent's refusal to bargain over the impact of the expansion of the juvenile program violates Section 111.70(3)(a)(4) Wisconsin Statutes.

On the basis of the above Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that Douglas County, its officers and agents, shall:

1. Immediately cease and desist from:

(a) Refusing to bargain over the impact of expanding the juvenile program.

2. Immediately take the following affirmative action which will effectuate the policies of the Wisconsin Employment Relations Act:

(a) Immediately enter into good faith negotiations over the impact of expanding the juvenile program.

(b) Notify its employees by posting in conspicuous places on its premises, where notices to all its employees are usually posted a copy of the notice attached hereto "Appendix A". Such copy shall be signed by Respondents Chief Executive Officer and shall be posted immediately upon receipt of a copy of this Order, and shall remain posted for a period of thirty (30) days thereafter. Reasonable steps shall be taken by Respondent, Douglas County, to insure that said notice is not altered, defaced or covered by other material.

(c) Notify the Examiner, in writing, within twenty (20) days after the receipt of this Order what steps it has taken to comply herewith.

Dated at Madison, Wisconsin this 9th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan
William C. Houlihan, Examiner

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APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Wisconsin Employment Relations Act, we hereby notify our employees that:

We will immediately cease and desist from refusing to bargain over the impact of expanding the juvenile program.

Dated this 9th day of August, 1979.

By _____

on behalf of Douglas County

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER

Plaintiff and Respondent are signatories to a collective bargaining agreement, the relevant portions of which have been set forth in the Findings of Fact. During the term of said agreement, on or about December 18, 1978 Respondent Douglas County unilaterally changed certain job duties and responsibilities of social workers covered by the collective bargaining agreement. 1/

In response to the change in job duties, the parties met on November 19, 1978 where the Union submitted a proposal for a wage increase. Douglas County, represented at the November 19 meeting by Negotiator William Sample and Jerry Egan, Director of the Child Welfare Department, requested time to check into the Unions proposal and to explore alternative possibilities.

A second meeting was scheduled for January 17, 1979. At that meeting the parties reconvened, only to have Mr. Sample inform the Union that the County would not open the contract for bargaining.

In refusing to open the contract for negotiations the Respondent relies exclusively 2/ upon the language of Article 25, of the collective bargaining agreement. The Respondent argues that Article 25 constitutes a waiver of the union's right to bargain over substantive matters excepting only "grievances" and "new classification or significant restructuring of present classification", for the duration of the Agreement. Respondent further argues that its actions did not result in the creation of new classifications nor did they bring about a significant restructuring of present classifications. Thus, Respondent concludes, its actions are insulated from any requirement to bargain by Article 25.

The Union alleges 3/ that the Respondents actions achieved a significant restructuring of present classifications thus falling outside of the scope of the waiver provisions of Article 25.

The critical question confronting this Examiner is whether or not significant restructuring of present classifications have been effectuated.

It was the uncontradicted testimony of Steven Koszarek, a member of the bargaining unit, that prior to November 18, 1978, he, and other members of the bargaining unit worked from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, in accordance with Article 13 of the collective bargaining agreement. Effective November 18, 1978,

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- 1/ The change in working conditions was implemented in order to bring the county into compliance with Section 48.01 Wisconsin Statutes, which chapter (Children's Code) was implemented on November 18, 1978.
- 2/ There is no allegation that this matter should be deferred to the grievance arbitration provision of the collective bargaining agreement, nor is there any allegation that any provision of the collective bargaining agreement is invalid.
- 3/ There is no allegation that the Employer's actions have violated any provision of the collective bargaining agreement.

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in addition to the hours previously worked, certain employees were required to provide "on call" coverage 24 hours per day, seven days per week. Three employees are so affected and those three employees share the on call coverage equally.

Koszarek also testified that as a result of the implementation of Chapter 48, bargaining unit members were given added responsibilities and duties. It is unnecessary to consider the changes in job duties and responsibilities since the change in hours alone appear to be a sufficiently "significant restructuring of present classifications" to require bargaining under Article 25.

In this relationship, the parties have elaborately and meticulously set forth the hours of work for unit employees. In Article 13 every moment of the work day is accounted for, including an assurance that overtime is optional. The employer's actions in multiplying the hours for which an employee is to be held accountable, in the face of such specific work day/work week language, must be regarded as a significant restructuring of those employee's job classifications, as those classifications existed at the time the parties negotiated the present contract. To find otherwise would be to ignore the detailed agreement struck by the parties in Article 13.

In view of the foregoing the Examiner must conclude that Respondent has violated Section 111.70(3)(a)(4) of the Municipal Employment Relations Act by refusing to bargain over the impact of a significant restructuring of present classifications and hereby orders Respondent to do same.

Dated at Madison, Wisconsin this 9th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan
William C. Houlihan, Examiner

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