STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO Involving Certain Employes of UNIFIED BOARD OF GRANT AND IOWA COUNTIES 1/	Case I No. 24789 ME-1695 Decision No. 17209

Appearances:

Mr. Darold O. Lowe, District Representative, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, appearing on behalf of the Petitioner.

Mr. Jack D. Walker, Melli, Shiels, Walker & Pease, Attorneys at Law, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTIONS

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having on June 21, 1979, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employes of the Unified Board of Grant and Iowa Counties, to determine whether said employes desire to be represented by said Petitioner for the purposes of collective bargaining; and hearing in the matter having been held on August 1, 1979, in Platteville, Wisconsin, before Christopher Honeyman, Examiner; and prior to any further action by the Commission, the Petitioner and the Municipal Employer having executed a Stipulation for Election; and the Commission being satisfied that a question has arisen concerning representation of certain employes of said Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the following voting groups for the following stated purposes:

Voting Group No. 1

All full-time and regular part-time employes of Unified Board of Grant and Iowa Counties, conditionally excluding professional employes, and fully excluding managerial employes, consultants, confidential employes and supervisors, who were employed on August 14, 1979, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority

---

1/ Petitioner identified the Municipal Employer as Unified Counseling Agency; however, during the course of the hearing, the Municipal Employer properly identified itself as reflected above.

of such employes voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Unified Board of Grant and Iowa Counties on questions of wages, hours and conditions of employment.

Voting Group No. 2

All full-time and regular part-time professional employes of Unified Board of Grant and Iowa Counties, excluding managerial employes, consultants, confidential employes, medical doctors, supervisors and all other employes of the Municipal Employer, who were employed on August 14, 1979, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employes in said voting group desire to be included in the bargaining unit described as Voting Group No. 1; and (2) whether a majority of such employes voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Unified Board of Grant and Iowa Counties on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 14th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

No. 17209

UNIFIED BOARD OF GRANT AND IOWA COUNTIES, I, Decision No. 17209

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

When a union in an election proceeding desires to include professional employes in a single unit with non-professional employes, Section 111.70(4)(d) of the Municipal Employment Relations Act requires that the professional employes be given an opportunity to vote to determine whether they desire to be included with the non-professional employes in a single unit. In order to be included in a unit with non-professional employes, a majority of the eligible professional employes must vote for such inclusion. Therefore, in this proceeding, the professional employes (Voting Group No. 2) will be given two ballots (1) to determine whether they desire to be included in a single unit with non-professional employes (Voting Group No. 1) and, (2) whether they desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO. The professional employes who appear to vote will be instructed to place their representation ballots in a furnished blank white envelope and seal such envelope and deposit same in the ballot box. The unit determination ballot will be a separate colored ballot and the professional employes will be instructed to deposit their unit determination ballots in the ballot box.

The unit determination ballots cast by the professional employes will be initially counted, and should a majority of the eligible professional employes vote in favor of being included in a unit with non-professional employes, the sealed envelopes, containing the ballots of the professionals with reprect to representation will be opened and their ballots will be co-mingled with the representation ballots cast by the non-professional employes, and thereafter the tally will include the representation ballots cast by all employes.

Should a majority of the professional employes eligible not vote in favor of being combined in a unit with non-professional employes, then the professional employes shall constitute a separate unit, and their representation ballots will non be co-mingled with the representation ballots cast by the non-professional employes. Should that end result the representation ballots cast by the professional employes will be tallied to determine whether the professional employes desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining.

Dated at Madison, Wisconsin, this 14th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

Institutions; that Respondent maintains offices at Brookside Care Center, 3506 Washington Road, Kenosha, Wisconsin 53140.

2. That Local #1392, Kenosha County Institutions Employees, Wisconsin Council 40, AFSCME, AFL-CIO, referred to herein as Complainant, is a labor organization; and that the president of Complainant is Louis Sacco, who resides at 2109 21st Street, Kenosha, Wisconsin 53140.

3. That Complainant and Respondent are parties to a collective bargaining agreement and to a two-page addendum thereto, which agreement and addendum have been in effect at all times material hereto; and that said agreement provides for a grievance and final and binding arbitration procedure for the resolution of disputes arising between the parties concerning the construction and application of the terms of said agreement and of said addendum.

4. That the aforesaid addendum provides for "casual day benefits" to employes.

5. That Respondent has established certain procedural conditions precedent to employes' enjoyment of said casual day benefits and Respondent has refused such benefits to employes who have failed to fulfill such procedural conditions precedent.

6. That a dispute has arisen between the parties as to whether the Respondent has violated said agreement and/or said addendum by establishing said procedural conditions precedent and by refusing to grant casual day benefits to employes who fail to fulfill said conditions precedent; and that said dispute falls within the purview of the grievance and final and binding arbitration provisions in said agreement.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That because the dispute referred to in Finding No. 6 above is subject to the grievance and final and binding arbitration procedure contained in the parties' collective bargaining agreement, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining herein whether Respondent Kenosha County, by the conduct noted in Finding No. 5 above, violated a collective bargaining agreement with Complainant Local #1392 Kenosha County Institutions Employees, Wisconsin Council 40, AFSCME, AFL-CIO

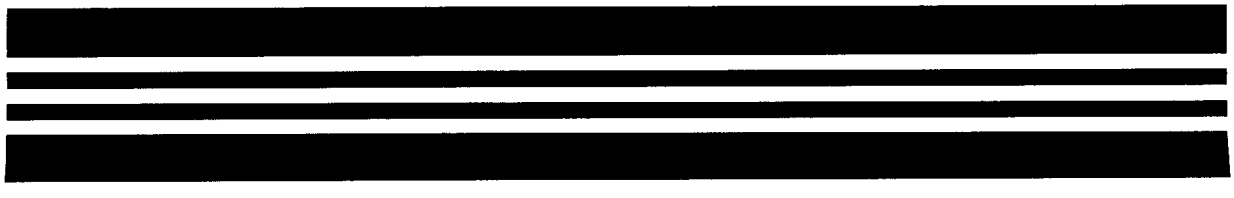
WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **17200.PDF**

DATE OF DECISION **8/10/79**

CASE CITATION **Manitowoc Public School District, Dec. No. 17200 (WERC, 8/10/79) (representation)**

COVER SHEET SEQUENTIAL NUMBER **1503**



STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
MANITOWOC EDUCATION ASSOCIATION	Case XVIII No. 23619 ME-1589
Involving Certain Employes of	Decision No. 17200
MANITOWOC PUBLIC SCHOOL DISTRICT	

Appearances:
Nash, Spindler, Dean & Grimstad, Attorneys at Law, by Mr. John M. Spindler, on behalf of the District.
Kelly & Haus, Attorneys at Law, by Mr. David B. Nance, on behalf of the Association.

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

The Manitowoc Education Association, herein the Association, filed the instant petition with the Wisconsin Employment Relations Commission, herein Commission, wherein it requested that certain department chairpersons and assistant principals be included in the established collective bargaining unit. Hearing was held in Manitowoc, Wisconsin on December 18, 1979 and January 9, 1979 before Hearing Examiner Stuart S. Mukamal. The parties filed briefs and reply briefs. The Commission has considered the evidence and the arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Manitowoc Education Association, herein Association, is a labor organization which represents, for collective bargaining purposes, certain personnel employed by the Manitowoc Public School District.

2. The Manitowoc Public School District, herein the District, is a municipal employer which operates a school system in Manitowoc, Wisconsin.

3. The District for a number of years has voluntarily recognized the Association as the collective bargaining representative of employes in a bargaining unit described in the parties 1978-1979 collective bargaining agreement as follows:

> The Board hereby recognizes the MEA, an affiliate of the National Education Association, Wisconsin Education Council and Kettle Moraine UniServ Council, as the exclusive negotiating representatives for persons certified and employed as teachers, librarians, and counselors (but excluding any other persons employed by the Board) on matters of wages, hours and conditions of employment for such represented. The term "teacher" as used elsewhere in this Agreement, shall mean a bargaining unit employe, as defined in this section.

4. Prior to 1972, some department heads were apparently included in the collective bargaining unit. Since from at least 1972 to the present, department heads and assistant principals have not been included in the collective bargaining unit. At the time of the instant hearing there were fourteen department heads and two assistant principals. The record shows that all of these individuals perform substantial supervisory and confidential duties.

Based on the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

That department heads and assistant principals are supervisory and confidential personnel who should be excluded from the appropriate bargaining unit.

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

ORDER CLARIFYING BARGAINING UNIT

The department heads and assistant principals employed by the District shall be, and hereby are, excluded from the appropriate bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

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

The Association alleges that eleven department heads 1/ and two assistant principals should be included in the collective bargaining unit. In this connection, it concedes that these individuals occasionally are involved in joint decisions relating to the hiring, firing and transfering of unit personnel. However, the Association contends that such joint decision making "is always diluted by the involvement of many other parties" and that, as a result, said individuals lack the authority to effectuate the decisions by themselves.

The District, on the other hand, maintains that the disputed positions are either supervisory, managerial, or confidential employes. The District also argues that said positions have been excluded from the unit since 1972 and that the Association now seeks their belated inclusion for the sole purpose of collecting fair share dues from them.

In resolving these issues, the Commission first notes that all of the disputed positions are on the District's Administrative Council. The Council is composed of all the approximately thirty or so administrators in the District and it includes department heads, elementary and secondary principals, assistant principals and central office staff. The Council meets on a monthly basis and periodically meets more frequently. The Council generally deals with the management of the District. In addition, it is involved in collective bargaining negotiations. Thus, the Council is asked how proposed contract language would affect the District, what changes should be made in the contract, whether it is in favor of a particular item, or whether a particular item should be reworded. The Council is also advised of the District's bottom line in negotiations. Moreover, the District has a policy where the department heads serve on a rotating basis on the District's bargaining team. Thus, three of the disputed department heads herein -- Vernon Hansen, Courtney Leonard, and Harold Beckman -- have in the past served on the District's bargaining team.

In addition, the record also shows that all of the disputed positions herein have the effective power to hire. In this connection, it is true, as the Association points out, that hiring decisions are generally made on a Committee-wide basis and that other administrative personnel also have a voice in the hiring process. However, the mere fact that these individuals are involved in a joint hiring process does not diminish the fact that they do have the effective power to hire. In fact, the record reveals several instances of where department heads have prevented the hiring of individuals who other Committee members sought to hire. On the other hand, there have been no instances of where individuals have been hired over the objections of a department head.

By the same token, the positions herein also have the effective power to fire. Thus, for example, the department heads each year recommend whether the teachers in their departments should be renewed or non-renewed. In this connection, they periodically evaluate teachers. The assistant principals also have the effective power to fire, and they, too, evaluate teachers.

1/ The Association agrees that three non-teaching department heads -- Jay Wilson, Don Jorgenson, and Lowell LaLeike -- should be excluded from the unit.

The department heads also have the effective power to assign classes and to transfer teachers from one building to another.

The department heads prepare the budget for their respective departments and they have the discretion to make cuts in the budget if they are needed. The department heads also help prepare summer programs and they have the authority to decide which teachers should be employed during the summer.

The department heads handle grievances and they have the effective power to resolve said grievances if the grievance involves a matter over which the department has control. In this regard, Article 6, Section D, of the collective bargaining agreement specifies that grievances at Level I can be brought to the attention of the department head or school principal.

The department heads are not paid pursuant to the teacher's salary schedule. Instead, all of the department heads (with the exception of one who was newly hired) receive salaries which were, generally, in excess of those provided for in the teacher's salary schedule. In addition, unlike the teacher's, all of the department heads, except three, are on a fifty-two week contract. The three exceptions work on either a forty-two or forty-four week contract. During the summer, all of the department heads exclusively spend their time on administrative duties.

With the foregoing general principles in mind, it is now appropriate to consider, in detail, the teaching duties of the disputed employes. Ron Stokes, the head of the art department, supervises the ten teachers under him and teaches four periods a day. Darlene Wotachek, the head of the business education department, supervises ten teachers and teaches four periods a day. Harold Beckman, the head of the foreign language department, supervises seven teachers and teaches four periods per day. William Rienks, the head of the guidance department, supervises three individuals and does not teach any classes. He does, however, spend approximately fifty percent of his time advising students. Rita LaFond, the head of the home economics department, supervises eight individuals and teaches four classes a day. David Olson, the head of the language arts department, supervises twenty-four teachers and teaches three classes a day. Courtney Leonard, the head of the math department, supervises nineteen teachers and teaches three classes a day. Dean Torkelson, the head of the music department, supervises fourteen teachers and teaches one class a day. He also gives music lessons. Ned Hodgson, the head of the physical education department, supervises seventeen teachers, and teaches four classes a day. Vernon Hansen, the head of the science department, supervises twenty teachers and teaches three classes a day. Assistant principal, Douglas Molzahn, teaches two periods a day and has one preparation period. The standard school day consists of five teaching periods, one study hall, and one preparation period.

By virtue of the above, there is no question but that the depart- heads and assistant principals do spend part of their time on teaching duties. At the same time, however, it is abundantly clear that the disputed positions possess substantial supervisory powers. Thus, to one degree or another, they: (1) serve on the Administrative Council where they deal with confidential collective bargaining negotiations with the Association; (2) at times have served on the District's bargaining team; and (3) have the effective power to hire, fire, transfer, assign work, evaluate, and to handle grievances. In light of these

latter functions, it follows that the disputed employes are supervisors and confidential employes under Section 111.70(1)(o) of the Municipal Employment Relations Act. They are, therefore, excluded from the appropriate unit.

Dated at Madison, Wisconsin this 10th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **17199.PDF**

DATE OF DECISION **8/10/79**

CASE CITATION **Milwaukee County (Sheriff's Dept.), Dec. No. 17199 (WERC, 8/10/79) (representation)**

COVER SHEET SEQUENTIAL NUMBER **1504**

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
MILWAUKEE COUNTY INSTITUTION PROTECTION OFFICERS ASSOCIATION	:	Case CXV No. 24228 ME-1640
Involving Certain Employes of	:	Decision No. 17199
MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)	:	

Appearances:

Mr. Robert B. Kliesmet, Vice President, International Union of Police Associations, AFL-CIO, appearing on behalf of the Petitioner.

Mr. Patrick J. Foster, Assistant Corporation Counsel, appearing on behalf of the County.

Mr. Leverett Baldwin, appearing on behalf of the Milwaukee County Deputy Sheriff's Association.

Mr. Earl Gregory, Staff Representative, appearing on behalf of District Council 48, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The Milwaukee County Institution Protection Officers Association, herein the Petitioner, having petitioned the Commission on March 5, 1979 for an election to determine whether certain Institutions Protection Officers employed by Milwaukee County desired to be represented by the Petitioner for the purposes of collective bargaining; and a hearing regarding said petition having been held on April 11, 1979 in Milwaukee County before Examiner Stuart S. Mukamal; and District Council 48, AFSCME, AFL-CIO and Milwaukee County Deputy Sheriff's Association having intervened at said hearing and sought the accretion of said employes to bargaining units which they respectively represent; and the Commission, having considered the evidence and arguments and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

1. That the Petitioner is a labor organization seeking to represent certain employes of Milwaukee County for the purposes of collective bargaining.

2. That Milwaukee County, herein the County, is a municipal employer with offices at 901 North 9th Street, Milwaukee, Wisconsin.

3. That on March 5, 1979 the Petitioner requested that the Commission direct an election to determine whether certain sworn law enforcement personnel employed by the County as Institutions Protection Officers wished to be represented by it for the purposes of collective bargaining; that the Institutions Protection Officers function as special deputy sheriffs who possess arrest powers and provide law enforcement and occasional firefighting service on the grounds of the Milwaukee County Institutions; that said officers are responsible for protecting public properties against the hazards of fire, damage, accident, theft and trespass, and for maintaining order and enforcing parking and

traffic regulations on public premises; that at the hearing regarding said petition District Council 48, AFSCME, AFL-CIO and the Milwaukee County Deputy Sheriff's Association were permitted to intervene on the basis of District Council 48's status as the exclusive collective bargaining representative of a bargaining unit including certain correctional officers and guards employed by the County and the Deputy Sheriff's Association's parallel status as the voluntarily recognized bargaining representative of certain sworn law enforcement personnel employed as deputy sheriffs by the County; that both District Council 48 and the Deputy Sheriff's Association expressed a desire to have those individuals employed as Instruction Protection Officers accreted to the bargaining units which they respectively represent; that the County asserted that accretion to either of the foregoing bargaining units represented by District Council 48 or the Deputy Sheriff's Association would be more appropriate under the provisions of the Municipal Employment Relations Act than the fragmentation which would be created by the direction of an election in a separate bargaining unit consisting of Institutions Protection Officers.

4. That the job functions and sworn status of the Institutions Protection Officers employed by the County make them law enforcement personnel and create a substantial community of interest with those County employes currently represented by the Milwaukee County Deputy Sheriff's Association; and that said community of interest warrants the inclusion of Institution Protection Officers into the bargaining unit represented by the Milwaukee Deputy Sheriff's Association if a majority of those officers who vote select said Association as their bargaining representative.

Based on the foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the creation of a bargaining unit consisting of the Institutions Protection Officers employed by Milwaukee County would constitute undue fragmentation of bargaining units of County employes within the meaning of Section 111.70(4)(d)2.a., Stats.

2. That a bargaining unit including the Institutions Protections Officers along with other law enforcement personnel currently represented for purposes of collective bargaining by the Milwaukee County Deputy Sheriff's Association constitutes an appropriate bargaining unit within the meaning of Section 111.70(4)(d)2.a., Stats.

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

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this directive among Institutions Protection Officers employed by Milwaukee County on August 9, 1979 except such employes as may prior to the election quit their employment or be discharged for

cause, for the purposes of determining whether a majority of such employes casting valid ballots desire to be represented by the Milwaukee County Deputy Sheriff's Association for the purposes of bargaining with said Municipal Employer.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT SPECIAL DEPUTIES, INSTITUTIONS), Case CXV, Decision No. 17199

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The Petitioner seeks to have the Commission direct an election in a separate bargaining unit consisting of individuals employed as Institutions Protection Officers by Milwaukee County. The employes which this Petitioner seeks to represent are special deputy sheriffs who provide law enforcement and occasional firefighting services on the grounds of Milwaukee County Institutions. They possess arrest powers and are armed and clothed in a manner which parallels the armament and equipment of the Milwaukee County Deputy Sheriffs. Intervenors District Council 48 and Deputy Sheriffs Association ask that the Institutions Protection Officers be accreted to the bargaining units which they respectively represent.

Given their status as sworn special deputy sheriffs performing law enforcement functions, as outlined in Finding of Fact No. 3, the Institutions Protection Officers are law enforcement personnel and thus the Commission concludes that a strong community of interest exists between the Institutions Protection Officers and the deputy sheriffs represented by the Deputy Sheriff's Association. In light of this substantial community of interest between these two groups of law enforcement officers and the fact that the creation of a separate bargaining unit would run counter to the anti-fragmentation policy contained in Section 111.70(4)(d)2.a., Stats., the Commission has concluded that the inclusion of the Institutions Protection Officers in the bargaining unit currently represented by the Milwaukee County Deputy Sheriff's Association would be appropriate under the Municipal Employment Relations Act. Thus, if a majority of those officers voting select the Association as their bargaining representative, the Institutions Protection Officers shall be included in the bargaining unit currently represented by said Association. 1/ However, if the majority so vote for inclusion, the terms of the current bargaining agreement between the Association and Milwaukee County would not automatically be applied to said officers unless collective bargaining produces

---

1/ The parties stipulated that should the Commission decide a separate bargaining unit of Institutions Protection Officers is inappropriate an accretion election between District Council 48 and the Deputy Sheriff's Association should be held. The Commission can not honor the precise terms of this stipulation inasmuch as it has been determined that the bargaining unit represented by the Association is the only statutorily appropriate unit into which the Protection Officers may be placed. However, the Commission has honored the parties' apparent desire to allow the employes in question to have a voice in determining their representative by directing the instant accretion election.

such a result. 2/ If a majority does not vote for representation by the Association, the Institutions Protection Officers shall remain unrepresented.

Dated at Madison, Wisconsin this 10th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

2/ Cochrane-Fountain City, 13700 (6/75).

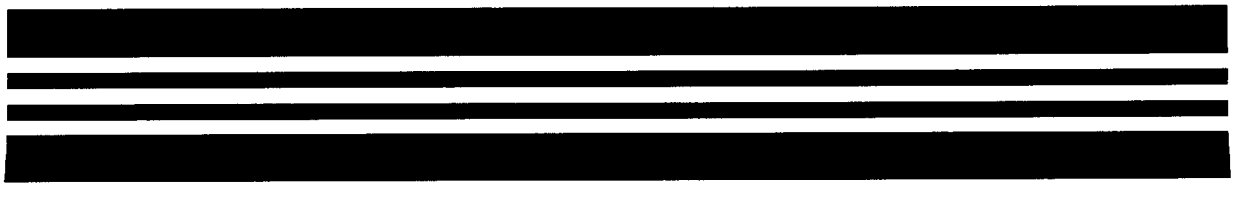
WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **16951-B.PDF**

DATE OF DECISION **9/24/79**

CASE CITATION **Winter Joint School District, Dec. No. 16951-B (WERC, 9/24/79) (complaint)**

COVER SHEET SEQUENTIAL NUMBER **1586**



STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WINTER JOINT SCHOOL DISTRICT, NO. 1, Complainant, vs. NORTHWEST UNITED EDUCATORS, Respondent.	Case XXIII No. 24343 MP-965 Decision No. 16951-B

ORDER DENYING PETITION

On April 5, 1979 the commission appointed Amedeo Greco examiner to hear and decide a complaint of prohibited practice filed by the Winter Joint School District, No. 1 (District) which alleged that Northwest United Educators (NUE) has committed certain prohibited practices in the course of its collective bargaining with the District. Thereafter, during the course of said proceeding before the examiner, Robert Hanus, Robert J. Langham and Lloyd D. Williams (Petitioners), employes of the District and included in the collective bargaining unit represented by NUE, moved by their representative, Hugh L. Reilly, National Right to Work Legal Foundation Inc., to intervene in said proceeding. After considering the arguments of the parties the examiner issued an order 1/ dated July 2, 1979, denying said motion. On July 19, 1979 the Petitioners filed a Petition For Review and for a Stay of Proceedings, wherein they seek to stay the proceedings before the examiner pending review of the examiner's decision denying their motion to intervene. Thereafter on July 25, 1979 the District responded to said petition indicating that it did not oppose the Petitioners' motion to intervene nor did it object to the request for a stay pending commission review of the examiner's order denying said motion provided said stay did not unduly delay the proceedings on the complainant. On July 27, 1979 NUE filed its response to the petition wherein it indicated that it objected to the Petitioners' request to intervene and was opposed to said petition. The commission, having considered the Petition, is satisfied that the proceedings before the examiner not be stayed as requested;

NOW, THEREFORE, it is

ORDERED

That the Petitioners' request for a stay of the proceedings before the examiner in order that they may seek a review of his

---

1/ Decision No. 16951-A.

decision denying their motion to intervene at this time be, and the same hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin this 24th day of September, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING ORDER DENYING PETITION

The gravamen of the complaint pending before the examiner is that NUE has committed prohibited practices by: (1) requesting that the District agree in collective bargaining to a fair share agreement while simultaneously refusing to provide the District with information concerning the amounts or purpose of expenditures of any funds that may be derived therefrom; and (2) using dues money collected from its members in the bargaining unit of District employes and fair share contributions collected from other municipal employes generally, and proposing to use the fair share contributions it seeks to collect from non-members in the bargaining unit of District employes all for purposes not directly related to collective bargaining within the meaning of Section 111.70(1)(d), Wisconsin Statutes. The examiner, in denying the Petitioner's Motion to Intervene, noted that there is no question but that individuals who are covered under a fair share agreement have an interest in how fair share funds collected are expended, but went on to indicate that the Petitioners lack standing as parties in interest in this proceeding because there is no fair share agreement in effect nor has the District agreed to a fair share agreement. We agree with the examiner's reason for denying the motion to intervene.

The first issue presented to the examiner relates to the rights of the District and the duties of NUE in collective bargaining. It is the District's rights as a municipal employer which are being violated if NUE's conduct is unlawful in that regard. With regard to the second issue presented, it would appear that there is no claim that any money is being collected from employes of the District who are not members of NUE. Since the Petitioners are non-members who are not currently required to pay a fair share contribution, they have no standing as parties in interest to the dispute between the District and NUE in that regard.

We agree with the examiner that it is sufficient that the petitioners be afforded the opportunity to present their views on the issue in dispute between the District and NUE in the form of a brief amicus curiae and it would be inappropriate to allow them to participate in the proceedings as a party to this dispute. 2/

Dated at Madison, Wisconsin this 24th day of September, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

2/ We note in this regard that the District and NUE have agreed to proceed to resolve the issues on the basis of a stipulated record; whereas, if the Petitioners were allowed to intervene they would insist on an evidentiary hearing which both parties have agreed is unnecessary to resolve the legal issues raised by the complaint.

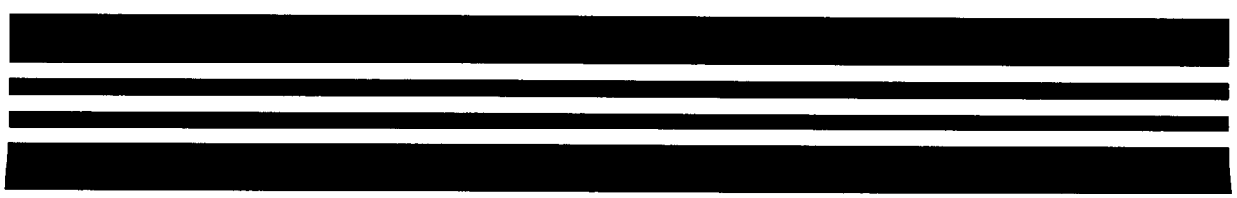
WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **16336.PDF**

DATE OF DECISION **4/28/78**

CASE CITATION **Cambria-Friesland School District, Dec. No. 16336 (WERC, 4/28/78) (declaratory ruling)**

COVER SHEET SEQUENTIAL NUMBER **1806**



STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation for a Declaratory Ruling filed by CAMBRIA-FRIESLAND SCHOOL DISTRICT and CAMBRIA-FRIESLAND EDUCATION ASSOCIATION	Case I No. 22824 DR(M)-86 Decision No. 16336

FINDINGS OF FACT, CONCLUSION OF LAW, AND DECLARATORY RULING

On March 21, 1978 the above-named parties having filed a joint request that the Commission determine whether certain Association proposals are subjects about which the District is currently required to bargain under the terms of the reopener clause in the parties' 1977-79 master contract agreement; and the parties having previously submitted memoranda and exhibits in support of their positions and having waived hearing and further argument in the matter; and the Commission having considered the documents submitted by the parties and subsequent joint telephone communications with the parties, and being fully advised in the premises, makes and issues the following findings of fact, conclusion of law and declaratory ruling.

FINDINGS OF FACT

1. The Cambria-Friesland School District is a municipal employer with offices at 410 East Edgewater Street, Cambria, Wisconsin 53923.

2. Cambria-Friesland Education Association is a labor organization with a mailing address of c/o Mr. Wayne Vanderploeg, Negotiation Chairman, CFEA, 410 East Edgewater Street, Cambria, Wisconsin 53923.

3. Said District and Association are parties to a 1977-1979 collective bargaining agreement concerning a bargaining unit represented by said Association and consisting of "all certified teaching personnel including classroom teachers, special teachers, guidance counselors, librarians, part-time teachers, and teaching principals who teach more than 50% of their time in the Cambria-Friesland School District, but excluding superintendents, principals, assistant principals, business manager, transportation supervisor, elementary and secondary coordinator, substitutes, CESA personnel, non-instructional personnel, not required to hold valid teaching certificates, such as nurses, office clerical, maintenance and operating employes and teacher aides."

4. Article VII (TERMS OF AGREEMENT) of said 1977-79 agreement provides as follows:

"ARTICLE VII - TERMS OF AGREEMENT

a. The agreement shall be in effect August 26, 1977 and shall remain in effect through August 26, 1979.

b. Reopener: The parties agree to negotiate the following subjects to be effective after August 26, 1978. Salary schedule, health insurance, mileage reimbursement, STRS payment by the Board and the 1978-79 school calendar. The parties shall meet at a mutually agreed time and place and exchange proposals on these topics on or before February 17, 1978. Bargaining on the proposals shall follow the initial discussions as mutually agreed. [Emphasis added]

c. The written agreement between CFEA and the school board constitutes the entire agreement between said parties on all matters pertaining to wages, hours and working conditions. All matters not specifically covered in the written agreement are and shall remain management prerogative of the school board and electors of the school district for the term of the agreement and the CFEA waives and gives up the right to negotiate further on wages, hours or working conditions or on any term of the written agreement for the period covered thereby."

5. In or about late January or early February, the parties exchanged bargaining proposals for contract modifications to be effective immediately after August 26, 1978. At their first meeting to discuss those proposals, held on February 9, 1978, the District took and continues to take the position, contrary to that of the Association, that several of the Association's proposals relate to subjects outside the scope of the reopener clause in Article VII(b) quoted above. Based on that contention, the District has refused to bargain with the Association about those proposals, and the parties have agreed that the Commission should render a declaratory ruling to resolve their dispute as to whether the District is presently obligated to bargain with respect to same.

6. The specific Association proposals that the District contends it is not obligated to bargain about are set forth below after the existing 1977-79 agreement language to which each proposal relates:

"ARTICLE V - TEACHER BENEFIT POLICIES

. . .

4. SUMMER SCHOOL PAY

Nine percent (9%) of a teacher's current base salary shall be used as the guide in setting the monthly salary of teachers on extended contracts.

[Association Proposal: "Summer School Pay
Nine Percent (9%) of Teacher's Current Base Salary"]

. . .

13. LUNCH PERIOD

Teachers will be scheduled for a 30-consecutive minute duty-free lunch period as required; and the

Board may negotiate with individuals when deemed necessary by the administrator for a non-consecutive lunch period without a grievance being filed against the board.

Teachers who lose their 30-consecutive minute duty-free lunch period shall be compensated at the rate of $5.00 per hour for the 1/4 hour which is not consecutive. The administration will attempt to seek individuals to take this duty on a semester basis during the first two weeks of each semester. During the first two weeks of each semester a schedule will be made up to meet the school supervision needs; and if necessary the remainder of the semester. Requests must meet with administrative approval.

[Association Proposal: "Lunch Period shall be compensated at a rate of $7.00/hr."]

. . .

15. TEACHER QUALIFICATION CREDITS

. . .

b. Expense stipend of $35.00 per semester hour for undergraduate credit and $45.00 per semester hour for graduate credit earned in courses approved by the Board in advance shall be paid for credits earned as a requirement under Paragraph 15a or for credits completed at the request of the Board of Education.

[Association Proposal: "Expense/Stipend of $40.00/semester hour for undergraduate credit and $45.00/semester hour for graduate credit. . . ."]

. . .

17. TEACHING LOAD

. . .

d. Sixth through twelfth grade teachers accepting a 6th period of instruction in lieu of a study hall shall be compensated at $600 per contract year for said class. It is also understood that sixth through twelfth teachers will accept supervising responsibilities when needed.

[Association Proposal: "Sixth Class
6-12th Grade Teachers accepting a 6th period of instruction in lieu of a study hall shall be compensated at $1000.00 per contract year for said class."]

. . .

18. DUES CHECK OFF

The district will advance to designated Teachers Association(s) within the first 20 contract days the entire

amount of professional dues, recovering same via payroll deduction over the length of contract.

[Association Proposal: "Dues Check Off
Same as 1977-78 Contract"

. . .

23. LONGEVITY PAY

Add to the basic salary schedule $100 for every 5 years of service after reaching top of schedule.

[Association Proposal: "Add to the Basic Salary Schedule - $100.00 for every 5 years of service."]

. . ."

7. The parties' 1977-79 agreement also contains the following provision:

"ARTICLE VI - SALARY SCHEDULE

1. The regular Salary Schedule is attached hereto and made a part of this agreement [that attachment consists of a cross-hatched set of salaries increasing with experience steps 0-12 and five educational achievement columns B.S. - M.S.]; and in addition, extra-curricular pay shall be based on a percentage of the B.S. base according to the following schedule:

Assignment	Percent
Basketball	9.5
. . .	. . .

2. Advisors to clubs plus other miscellaneous extra-curricular assignments shall be made by soliciting volunteers first, followed by dividing assignments equitable [sic] among the staff; specifically, 'shared' teachers shall also participate in such duties."

On the basis of the foregoing findings of fact, the Commission issues the following

CONCLUSION OF LAW

The Association proposals noted in Finding 6, above, are not within the scope of the terms "[s]alary schedule, health insurance, mileage reimbursement, STRS payment by the board and the 1978-79 school calendar" as those terms are used in Article VII(b) of the 1977-79 collective bargaining agreement noted in Finding 3, above.

On the basis of the foregoing findings of fact, and conclusions of law, the Commission issues the following

DECLARATORY RULING

The Cambria-Friesland School District does not have a present duty to bargain collectively with the Cambria-Friesland Education

Association about the proposals referred to in Finding 6, above.

Given under our hands and seal at the City of Madison, Wisconsin this 28th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

The District and Association have jointly requested that the Commission determine whether several Association proposals for modifications of the parties' 1977-79 agreement fall within the Article VII(b) reopener clause such that the District is presently obligated to bargain collectively regarding same. The District concedes that several of the proposals presented to it by the Association are properly reopenable and bargainable. The Association's position is that all of those the District contends are not reopenable (i.e., those set forth in Finding 6) fall within the Article VII term "salary schedule". 1/ The Association so argues on the theories that each such proposal, like salary, involves money or money figures; and that Article VI(2) incorporates (albeit indirectly) the disputed sections of Article V which is within Article VI expressly entitled "Salary Schedule". The District contends that the provisions of Article VI constitute the full extent of the "salary schedule" reference in the reopener clause.

In interpreting and applying the term "salary schedule" as it was used by the parties in Article VII(b), we note that the other subjects specified for reopening therein involve specific monetary items each of which corresponds to a nearly identically entitled article or section of the 1977-79 agreement outside of Article VI. Specifically, "health insurance" corresponds to the identically entitled Article V(6). Furthermore, "mileage reimbursement" corresponds to Article V(3) (Mileage Allowance); "STRS payment by the Board" corresponds to Article V(16) (Teacher Retirement Fund); and "school calendar" corresponds to Article V(3) (Calendar). Thus, we are satisfied that the parties intended the "salary schedule" subject matter referred to in Article VII(b) to be limited solely to those subjects covered in Article VI which is entitled "Salary Schedule". Had the parties intended to reopen all monetary items they could have chosen far more appropriate terminology than the narrow terms set forth in their reopener. Moreover, the parties' nondispute as to the currently reopenable status of the extra-curricular schedule further convinces us that the parties' "salary schedule" reference was to the contents of Article VI. For, if the parties had intended "salary schedule" to take its conventional meaning in public sector teacher bargaining (a generic reference to a cross-hatched set of annual salaries determined as a combined function of experience and educational attainment), rather than a special contractual meaning, even the extra-curricular schedule would be outside the scope of the reopener.

1/ Some of the "Association Proposals" noted in Finding 6 call for maintaining the existing contract language and benefits without modification. Evidently, the Association has put such proposals forward to make clear its view that they are within the reopenable set of subjects and to reserve the right to formulate counterproposals involving modifications in those areas in the event that its demands in areas of greater concern cannot be resolved to its satisfaction.

For the foregoing reasons, we issued the Conclusion of Law and Declaratory Ruling above.

Dated at Madison, Wisconsin this 28th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

_____
Marshall L. Gratz, Commissioner

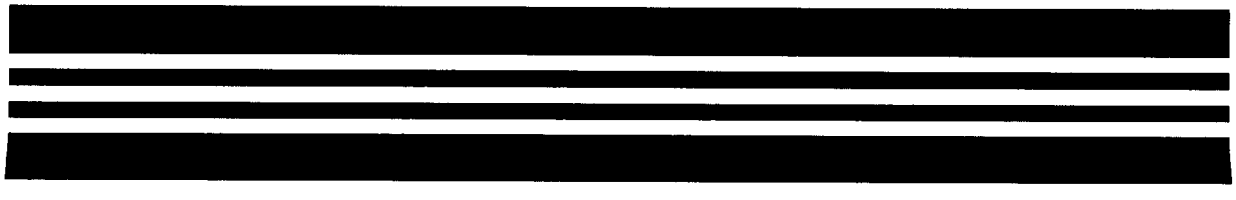
WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **15133.PDF**

DATE OF DECISION **12/23/76**

CASE CITATION **Adams County (Courthouse), Dec. No. 15133 (WERC, 12/23/76) (representation)**

COVER SHEET SEQUENTIAL NUMBER **2094**



STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of ADAMS COUNTY For Clarification of a Bargaining Unit Consisting of Certain Employes of ADAMS COUNTY (COURTHOUSE)	Case XX No. 20758 ME-1356 Decision No. 15133

ORDER CLARIFYING BARGAINING UNIT

Adams County having filed a petition with the Wisconsin Employment Relations Commission on August 25, 1976, requesting that the Commission issue an Order clarifying a certified collective bargaining unit, represented by Local 1168, WCCME, AFSCME, AFL-CIO, with respect to the appropriate inclusion or exclusion of certain employes employed by the Adams County Library Board from the unit consisting of "all employes of Adams County employed in the Courthouse and Courthouse Annex (including non-professional employes in the Social Services Department), and Highway Department Office, but excluding confidential employes, 1/ elected officials, professional employes, supervisors, as defined in the Act, law enforcement personnel in the Sheriff's Department and all other employes of the County" 2/; and the parties having waived hearing and filed written briefs in the matter; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

ORDER

That the employes of the Adams County Library Board be excluded from the above-described unit.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

_____
Charles D. Hoornstra, Commissioner

1/ Adams County, Case XII, (12866), 7/74.

2/ Adams County, Case VIII, (11937), 8/73.

ADAMS COUNTY (COURTHOUSE), XX, Decision No. 15133

MEMORANDUM ACCOMPANYING ORDER
CLARIFYING BARGAINING UNIT

The County did not operate a library in August, 1973 when the collective bargaining unit, represented by the Union, was certified. On January 1, 1976, the County assumed the responsibility of funding and operating the library from the City of Adams. The library occupies a building which is leased from the city of Adams and which is physically separate from any other County operated buildings. The six Library employes occupy the following positions; one Director, four Library Assistants (including one who works on an on-call basis as a substitute), and one page.

The County argues that, although the Adams County Board of Supervisors approves the Library Board's budget, the Library Board employs the Library employes and prescribes their duties and compensation pursuant to Section 43.58(4) of the Wisconsin Statutes. Further, the Library employes are not included in the description of the collective bargaining unit previously certified by the Commission. For said reasons it is the County's position that Library employes should not be included in the existing unit of Courthouse and Courthouse annex employes.

The Union seeks the accretion of the non-professional Library employes to the existing bargaining unit contending that both groups of employes perform similar and related duties. The Union believes fragmentation should be avoided in view of the small numbers of employes involved.

The Library employes are employed in an operation which is distinct from other clerical employes of the County in terms of their work function, immediate supervision, physical separation of facilities and lack of interchange with other departments or divisions. Although the library's budget is established by the County Board of Supervisors, only one of the seven members of the Library Board is also a member of the County's Board of Supervisors. The Library Board does its own hiring and firing, and, sets its employe wages, hours, working conditions and other terms of employment without consultation with the County Board.

For the above-mentioned reasons the Commission concludes that the employes of the County's Library Board share a community of interest which is sufficiently separate and distinct from that of other County employes, and that it would therefore be inappropriate to accrete said employes to the existing certified unit of County employes without first giving said employes the opportunity to decide for themselves whether they wish to be so accreted. Since the petition herein is for a unit clarification only and does not seek an election on their behalf, our order does not direct an election.

Dated at Madison, Wisconsin this 23rd day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

_____
Charles D. Hoornstra, Commissioner

WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **13569-A.PDF**

DATE OF DECISION **6/13/75**

CASE CITATION **Kenosha County, Dec. No. 13569-A (Gratz, 6/13/75) (complaint)**

COVER SHEET SEQUENTIAL NUMBER **2599**

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL #1392 KENOSHA COUNTY INSTITUTIONS EMPLOYEES, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO, Complainant, vs. KENOSHA COUNTY, Respondent.	Case XXIII No. 19066 MP-458 Decision No. 13569-A

Appearances:
Mr. James L. Koch, Business Representative, appearing on behalf of the Complainant.
Brigden, Petajahn, Lindner & Honzik, S.C., Attorneys at Law, by Mr. Eugene J. Hayman, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Marshall L. Gratz, a member of its staff, to act as an examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Sec. 111.07(5) of the Wisconsin Employment Peace Act (WEPA) as made applicable to municipal employment by Sec. 111.70(4)(a) of the Municipal Employment Relations Act (MERA); and a hearing on said Complaint having been held at Kenosha, Wisconsin, on June 9, 1975, before the Examiner; and during the course of said hearing, Respondent having moved for dismissal of the Complaint on the grounds that said Complaint, as amended, alleged only a violation of a collective bargaining agreement that was properly the subject of the grievance and final and binding arbitration procedure contained in said agreement; and the Examiner having granted said motion; and during the course of the hearing, the parties having waived the requirements of Sec. 227.12 of the Wisconsin Statutes with respect to the instant proceeding; and the Examiner having considered the evidence and arguments, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Kenosha County, referred to herein as Respondent, is a municipal employer which operates, inter alia, Kenosha County

Institutions; that Respondent maintains offices at Brookside Care Center, 3506 Washington Road, Kenosha, Wisconsin 53140.

2. That Local #1392, Kenosha County Institutions Employees, Wisconsin Council 40, AFSCME, AFL-CIO, referred to herein as Complainant, is a labor organization; and that the president of Complainant is Louis Sacco, who resides at 2109 21st Street, Kenosha, Wisconsin 53140.

3. That Complainant and Respondent are parties to a collective bargaining agreement and to a two-page addendum thereto, which agreement and addendum have been in effect at all times material hereto; and that said agreement provides for a grievance and final and binding arbitration procedure for the resolution of disputes arising between the parties concerning the construction and application of the terms of said agreement and of said addendum.

4. That the aforesaid addendum provides for "casual day benefits" to employes.

5. That Respondent has established certain procedural conditions precedent to employes' enjoyment of said casual day benefits and Respondent has refused such benefits to employes who have failed to fulfill such procedural conditions precedent.

6. That a dispute has arisen between the parties as to whether the Respondent has violated said agreement and/or said addendum by establishing said procedural conditions precedent and by refusing to grant casual day benefits to employes who fail to fulfill said conditions precedent; and that said dispute falls within the purview of the grievance and final and binding arbitration provisions in said agreement.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That because the dispute referred to in Finding No. 6 above is subject to the grievance and final and binding arbitration procedure contained in the parties' collective bargaining agreement, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission for the purpose of determining herein whether Respondent Kenosha County, by the conduct noted in Finding No. 5 above, violated a collective bargaining agreement with Complainant Local #1392 Kenosha County Institutions Employees, Wisconsin Council 40, AFSCME, AFL-CIO

in violation of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act.

NOW, THEREFORE, it is

ORDERED

That the Complaint filed in the instant matter, as amended, be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 13th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The initial Complaint in the instant matter was filed on April 17, 1975. In it, Complainant alleged and requested as follows:

> "c. Local #1392 contends that Kenosha County is in violation of Wisconsin Municipal Employment Relations Act 111.70 (3) (a) 4 of the Wisconsin State Statutes when it refused to execute the collective bargaining agreement previously agreed upon.
>
> During the negotiation process, up to and including the time of ratification, the employees were promised a "no catch" casual day program, but in the process of instituting this program, restrictive catches were added by the County.
>
> d. Local #1392 is requesting the WERC to direct the County of Kenosha to come into compliance with the collective bargaining agreements' application as it was negotiated by the parties."

Respondent in its Answer denied that it had committed any of the unfair labor pracrices alleged in the Complaint.

At the hearing, the Complainant made clear in its opening statement that the sole unfair labor practice intended to be dealt with in the Complaint is an alleged violation of the terms of the parties' collective bargaining agreement by Respondent. Thereupon a discussion was had off the record. Complainant then moved to amend its Complaint so as to substitute for the above-quoted paragraphs essentially the following allegations and requests: 1) that Complainant and Respondent are parties to a collective bargaining agreement; 2) that said agreement provides, in part, for casual day benefits to employes; 3) that Respondent imposed conditions precedent on the right of employes to casual day benefits which conditions are in violation of the provisions of said agreement; 4) that Respondent has refused to grant casual day benefits to employes on account of such employes' failure to meet said conditions precedent; 5) that by the foregoing refusals, Respondent has violated the terms of a collective bargaining agreement in violation of Sec. 111.70(3)(a)5 of the Wisconsin Statutes; and 6) that the Commismission should declare that such unfair labor practices have been committed by Respondent and should order Respondent to cease and desist from said unfair labor practices and to make whole any and all employes adversely affected by same and to order any other affirmative relief deemed appropriate by the Commission.

Respondent then amended its Answer so as to: 1) admit the establishment of procedural steps to be followed by employes in order to entitle such employes to casual day benefits; 2) admit that Respondent has refused to grant casual day benefits to employes who have failed to fulfill said procedural requirements; but 3) deny that either the establishment of such conditions or said refusals constitute an unfair labor practice in violation of Sec. 111.06(3)(a)5 of the Wisconsin Statutes.

Thereupon Respondent moved to dismiss the Complaint on the basis that the alleged violation of the terms of the agreement is subject to the grievance and final and binding arbitration procedure contained in said agreement. [1/] In support of its Motion, Respondent introduced the parties' 1975 collective bargaining agreement and the addendum thereto. The parties stipulated that the grievance and final and binding arbitration provisions governed disputes arising between the parties with respect to the interpretation and application of the terms both of said agreement and of said addendum.

Although Complainant opposed Respondent's Motion to Dismiss, the Examiner granted said Motion, citing the well-established policy of the Commission not ordinarily to assert its jurisdiction to entertain complaints which allege that one party has violated Sec. 111.70(3)(a)5 of MERA where the parties have agreed to final and binding arbitration of disputes which arise over alleged violations of the agreement. [2/]

Dated at Milwaukee, Wisconsin, this 13th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Examiner

[1/] At the same time, Respondent stated on the record that it would waive the contractual time limits for the processing of the then-pending grievances involving employes Hogan and Cassidy so that said grievances may continue to be processed through the grievance procedure set forth in the agreement. Respondent further stated that it would, upon request of Complainant, expedite the processing of a grievance embodying the casual day issue raised in the Complaint by dealing with same at the third step of the grievance procedure immediately upon the filing of such a grievance by the Union.

The parties agreed that the Examiner's Memorandum should memorialize the matters contained in this footnote. Upon the Examiner's agreement to do so, the parties agreed to waive the requirements of Sec. 227.12 of the Wisconsin Statutes for the purposes of the instant proceeding.

[2/] See, e.g., Oostburg Jt. School Dist. No. 1, Dec. Nos. 1196-A, B (12/72); Milwaukee Board of School Directors, Dec. No. 12028-A (5/74).

WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **11319.PDF**

DATE OF DECISION **9/27/72**

CASE CITATION **Cargill Heating and Air Conditioning Company, Inc. , Dec. No. 11319 (WERC, 9/27/72) (complaint)**

COVER SHEET SEQUENTIAL NUMBER **3486**

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PLUMBERS AND STEAMFITTERS LOCAL 31, Complainant, vs. CARGILL HEATING AND AIR CONDITIONING COMPANY, INC., Respondent.	Case I No. 15009 Ce-1374 Decision No. 11319

Appearances:
Chojnacki and Chojnacki, Attorneys at Law, by Mr. Leonard R. Chojnacki, appearing on behalf of the Complainant.
Steele, Smyth, Klos & Flynn, Attorneys at Law, by Mr. John E. Flynn, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter, and a hearing on said complaint having been conducted at LaCrosse, Wisconsin, on December 13, 1971, and January 17, 1972, by Commissioner Zel S. Rice II; and the Commission having considered the evidence and arguments of Counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Plumbers and Steamfitters Local 31, hereinafter referred to as the Complainant, is a labor organization having its offices at 423 King Street, LaCrosse, Wisconsin.

2. That Cargill Heating and Air Conditioning Company, Inc., hereinafter referred to as the Respondent, has its principal place of business at 403 North Front Street, LaCrosse, Wisconsin, where it is engaged in the heating and air conditioning and water treatment business; that the Respondent was incorporated under the laws of the State of Wisconsin on May 14, 1971, and that Earl Galstad, a resident of LaCrosse, Wisconsin, is its President and principal stockholder.

3. That from June 1, 1970, to May 14, 1971, Earl Galstad operated the business of the Respondent as a sole proprietor, having on the former date purchased certain assets and certain equipment from the estate of E. N. Weisenbecker, who operated a heating, air conditioning and fuel oil distribution business at the same location as a corporation known as Cargill Heating and Air Conditioning, Inc., hereinafter referred to as Cargill; and that Weisenbecker was the President, Director, Manager and sole stockholder of Cargill.

4. That on April 1, 1965, the Complainant and the LaCrosse Plumbing and Heating Contractors Association, hereinafter referred to as the Association, consisting of various employers in the LaCrosse area

who were engaged in the plumbing and heating business, executed a collective bargaining agreement, effective from April 1, 1965, through March 31, 1968, which agreement contained among its provisions, a provision providing for employer contributions on behalf of each of their employes to the Complainant's Welfare Fund, as well as a provision providing final and binding arbitration by a designee of the Wisconsin Employment Relations Commission with respect to grievances not resolved in the grievance procedure.

5. That Cargill, at no time material herein, was a member of the Association; that, however, on June 1, 1967, Weisenbecker, on behalf of Cargill, executed a Letter of Assent, wherein Cargill agreed to comply with the terms and conditions of employment contained in the collective bargaining agreement in effect between the Complainant and the Association, commencing April 1, 1965, through March 31, 1968; and that said Letter of Assent remained "in effect until the contract anniversary date unless terminated by written notice to the parties to the aforementioned agreement sixty days prior to the notification date provided therein".

6. That on January 19, 1968, the Complainant, by letter, advised Cargill that it desired to negotiate changes and revisions in the aforementioned collective bargaining agreement, and further therein, requested an initial meeting on February 12, 1968, for said purpose; that neither Weisenbecker, or any person representing Cargill, responded to said letter or ever met with the representative of the Complainant with respect thereto; that on April 1, 1968, Complainant and the Association entered into a collective bargaining agreement covering the wages, hours and working conditions of employes of the employers who were members of said Association; that said agreement contained provisions providing for welfare contributions to be made by employers to the Complainant's Welfare Fund, as well as a provision for final and binding arbitration similar to that contained in the 1965-1968 agreement; that Cargill was not a member of the Association at any time between April 1, 1968, and April 30, 1971; and that at no time neither Weisenbecker nor any other agent of Cargill executed a letter of intent to be bound by the collective bargaining agreement executed by the Complainant and the Association for the period effective April 1, 1968, through April 30, 1971.

7. That, from at least June 1968, through May 1970, Elmer Groth and Clarence Stockmeyer were employes of Cargill and members of the Complainant Union; that Cargill paid welfare contributions to the Complainant's Welfare Fund on behalf of Groth from June 1968, through March 1970, and on behalf of Stockmeyer from June 1968, through May 1970; that after June 1, 1970, and prior to October 15, 1970, a dispute arose between the Complainant and Respondent with respect to whether the Respondent was bound by the terms of the collective bargaining agreement then in effect between the Complainant and the Association, which dispute primarily involved the failure of the Respondent to make contributions to the Complainant's Welfare Fund; that the Respondent denied that it was a party to any collective bargaining agreement with the Complainant, and therefore, had no obligation to make such contributions; that thereupon and prior to October 19, 1971, the date on which the complaint was filed herein with the Wisconsin Employment Relations Commission, the Complainant requested that the Respondent proceed to arbitration in the matter; and that, however, at all times material herein, the Respondent has refused, and continues to refuse, to proceed to arbitration as requested by the Complainant; that since April 1, 1968, and thereafter, neither Cargill Heating and Air Conditioning, Inc. nor Earl Galstad, as the sole proprietor and as a successor to Cargill Heating and Air Conditioning, Inc., nor Respondent

Cargill Heating and Air Conditioning Company, Inc., have ever been a party or parties to any collective bargaining agreement with the Complainant, Plumbers and Steamfitters Local 31.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

That, since at all times material herein, neither Earl Galstad, as the sole proprietor and as the successor to Cargill Heating and Air Conditioning, Inc., nor Cargill Heating and Air Conditioning Company, Inc. have, singly or jointly, been a party to any collective bargaining agreement with the Plumbers and Steamfitters Local 31, the Respondent, Cargill Heating and Air Conditioning Company, Inc. is not contractually obligated to proceed to arbitration on any dispute with Complainant, Plumbers and Steamfitters Local 31 on any dispute arising over the wages, hours and conditions of employment of its employes, including the dispute as to whether the Respondent, Cargill Heating and Air Conditioning Company, Inc., is obligated to make welfare contributions to the Welfare Fund of the Complainant, Plumbers and Steamfitters Local 31, and that therefore, the Respondent, Cargill Heating and Air Conditioning Company, Inc., has not committed any unfair labor practices within the meaning of Section 111.06(1)(f), or any other provision of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

ORDER

It is ordered that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

FACTS

The facts material to the disposition as to whether the Employer violated an alleged collective bargaining agreement existing between it and the Union by refusing to proceed to arbitration regarding the Employer's failure to make contributions, on behalf of two employes, to the Union's Welfare Fund are set forth in the Findings of Fact.

DISCUSSION

The Commission concludes that Galstad, as a sole proprietor succeeded to the business formerly operated by Cargill Heating and Air Conditioning, Inc., when it purchased the assets of the estate of its former President, on June 1, 1970.

The former corporation, while not a member of the LaCrosse Plumbers and Heating Contractors Association, did on June 1, 1967, execute a Letter of Assent, thus agreeing to be bound by the terms of the collective bargaining agreement in effect between the Union and the Association from April 1, 1965, through March 31, 1968. On April 1, 1968, the Union and the Association executed a new collective bargaining agreement effective from April 1, 1968, through April 30, 1971. The former corporation was not a member of the Association during this period, nor did any agent of the former corporation execute any Letter of Assent binding the former corporation to the terms of said collective bargaining agreement. However, said former corporation, at least from June 1968, made welfare contributions to the Union's Welfare Fund on behalf of two employes. Contributions for employe Elmer Groth continued through March of 1970, while contributions for Clarence Stockmeyer continued through May of 1970. Contributions to such Welfare Fund had ceased to be made by the former corporation prior to the successorship by Galstad on June 1, 1970. Galstad, as sole proprietor, or as President of the Respondent Corporation, made no contributions to the Welfare Fund.

The Commission has considered the effect of the continuation of the payments to the Welfare Fund by the former corporation at such time as the former corporation had no collective bargaining agreement with the Union. We conclude that such payments were voluntarily made and that such payments did not constitute or establish a contractual relationship between the Union and the former corporation in the form of a collective bargaining agreement that existed between the Union and the Association during the period in which such payments were made.1/ Since the former corporation, at the time of the sale of its business to Galstad, was not a party to any collective bargaining agreement with the Union, Galstad, neither as a sole proprietor, nor as a corporation (the Respondent Corporation) were, or are, parties to

---

1/ Tiran Industrial Towels (7438) 1/66.

any collective bargaining agreement with the Union, and therefore, the Respondent Corporation cannot be deemed to have violated any provision of any collective bargaining agreement with the Union, and we have, therefore, dismissed the complaint.2/

Dated at Madison, Wisconsin, this 27th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

2/ During the course of the hearing on December 13, 1971, one of the witnesses, Elmer Groth, gave direct testimony on behalf of the Complainant. While he was testifying, Groth suffered a heart attack, and it was necessary to adjourn the hearing. By the time the hearing was rescheduled on January 17, 1972, Groth had died, and the cross-examination could not be continued. The Complainant contends that that part of Groth's testimony on which the Respondent's attorney had cross-examined Groth should be considered while the Respondent takes the position that since the cross-examination had not been completed, none of Groth's testimony should be considered by the Commission in reaching its decision. The Commission has not found it necessary to consider Groth's testimony in reaching its decision. None of the facts to which Groth testified were pertinent to the decision reached by the Commission. Therefore, we see no need to rule on whether all or any part of Groth's testimony should be admitted.

WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **10579-A.PDF**

DATE OF DECISION **1/11/72**

CASE CITATION **Fond du Lac County (Rolling Meadows Home), Dec. No. 10579-A (WERC, 1/11/72) (declaratory ruling)**

COVER SHEET SEQUENTIAL NUMBER **3758**

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of FOND DU LAC COUNTY (ROLLING MEADOWS HOME) For a Declaratory Ruling Involving Certain Employes claimed to be Represented by FOND DU LAC INSTITUTIONS, LOCAL 1366-A, WCCME, AFSCME, AFL-CIO	Case XXI No. 15008 DR(M)-27 Decision No. 10579-A

Appearances:

Mr. Robert J. Mueller, Attorney at Law, and, Mr. Robert V. Fowler, Corporation Counsel, appearing on behalf of the Petitioner.

Mr. William Sandoval, Representative, appearing on behalf of the Union.

DECLARATORY RULING

Fond du Lac County having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission issue a Declaratory Ruling to determine whether licensed practical nurses in the employ of its Rolling Meadows Home are supervisors and should therefore be excluded from the collective bargaining unit consisting of all regular full time and part time employes working 20 hours or more but excluding the Superintendent, Director of Nursing, manager, matron, professional employes, office clerical employes, seasonal and "on-call" employes and supervisors; and a hearing having been held in the matter on November 2, 1971, George R. Fleischli, Hearing Officer being present; and the Commission having considered the evidence and arguments, and being fully advised in the premises makes and files the following Findings of Fact and Declaratory Ruling.

FINDINGS OF FACT

1. That Fond du Lac County, hereinafter referred to as the Municipal Employer, is a municipal employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes and inter alia operates Rolling Meadows Home.

2. That Fond du Lac Institutions, Local 1366-A, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization within the meaning of Section 111.70(1)(j) of the Wisconsin Statutes and represents, for purposes of collective bargaining certain employes in the employ of Rolling Meadows Home.

3. That on May 28, 1969 the Union was certified as the representative of all regular full time and regular part time employes working 20 hours or more employed in Rolling Meadows Home, but excluding the Superintendent, Director of Nursing, manager, matron, professional employes, office clerical employes, seasonal and "on-call" employes, and supervisors, for purposes of collective bargaining on questions of wages, hours and conditions of employment; that at the time of said certification eight licensed practical nurses were employed at Rolling Meadows Home and that all eight of said licensed practical nurses were included on the stipulated eligibility list and voted in the election preceding said certification; and that since said certification a question has arisen concerning the allleged supervisory status of said licensed practical nurses.

4. That the Municipal Employer currently employs nine registered nurses, seven licensed practical nurses and fifty-six nurses aides at its Rolling Meadows Home; that in the absence of the registered nurses, the seven licensed practical nurses have the responsibility of calling in additional nurses aides when there is a shortage on their floor and shift, and the responsibility of assigning work to nurses aides based on the patients' charts and existing patient assignments; that said licensed practical nurses do not have the authority to hire or fire any employes, nor do they have the authority to effectively recommend same; that said licensed practical nurses have in the past been called upon to make recommendations concerning the hiring of nurses aides who happen to be within their acquaintance; that said licensed practical nurses help train nurses aides and enforce certain standards of conduct by verbally correcting the conduct of nurses aides and by advising their superiors in cases of violations without making recommendations; that said licensed practical nurses spend a considerable portion of their time performing work directly associated with patient care, such as dispensing medicine, checking charts and administering to the needs of patients; and that the work performed by the licensed practical nurses is primarily associated with the delivery of nursing care and is not superivsory in nature.

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

DECLARATORY RULING

That the licensed practical nurses employed by the Municipal Employer in its Rolling Meadows Home are not supervisors within the meaning of Section 111.70(1)(o)1 of the Wisconsin Municipal Employment Act, and are, therefore, included in the existing collective bargaining unit consisting of all regular full time and part time employes working 20 hours or more but excluding the Superintendent, Director of Nursing, manager of

County Home, matron of County Home, professional employes, office clerical employes, seasonal and "on-call" employes and supervisors as defined in the Act.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of January, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of FOND DU LAC COUNTY (ROLLING MEADOWS HOME) For a Declaratory Ruling Involving Certain Employes claimed to be Represented by FOND DU LAC INSTITUTIONS, LOCAL 1366-A, WCCME, AFSCME, AFL-CIO	Case XXI No. 15008 DR(M)-27 Decision No. 10579-A

MEMORANDUM ACCOMPANYING
DECLARATORY RULING

The Municipal Employer contends that, in response to pressure from the federal government under the Medicare and Medical Aid programs, it has increased its staff of registered nurses and licensed practical nurses and that this increase has resulted in an increase in the number of immediate supervisors of nurses aides. Most of the nine registered nurses are part time employes and, because the operation of Rolling Meadows Home includes seven days and three shifts, the Municipal Employer contends that the licensed practical nurses are often immediate supervisors over the nurses aides on certain floors.

The Union contends that the increase in the number of registered nurses and licensed practical nurses did not result in increased supervision over the nurses aides by licensed practical nurses, since the duties of the licensed practical nurses are primarily associated with patient care and not with the supervision of nurses aides.

At the hearing both the Municipal Employer and the Union presented considerable evidence regarding the division of responsibility for patient care, such as the handling of emergencies or deaths, the administration of medicine, shots and intravenous injections, and attending to the needs of patients and residents. Although these responsibilities are important and may have increased substantially in the case of the licensed practical nurses, these responsibilities do not bear directly on the question of whether or not said licensed practical nurses are supervisors within the meaning of Section 111.70 (1)(o)1, which defines a supervisor as:

> "...any individual who has authority in the interest of the municipal employer to hire, transfer, suspend, lay off, recall, promote, assign, reward or discipline other employes or to adjust their grievances or effectively to recommend such action if in connection with the foregoing have exercised such authority is not have a merely routine or clerical nature but requires the use of independent judgment."

The Commission has consistently looked for seven indicia of supervisory status in making judgments concerning whether individuals are supervisors. The decision as to whether an individual is a supervisor is based on the judgment of whether those indicia of supervisory status appear in sufficient combination and degree in a given case to warrant the conclusion that the individual in question is a supervisor. Said factors are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes.

2. The authority to direct and assign the work force.

3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes.

4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes.

5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes.

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes.

7. The amount of independent judgment and discretion exercised in the supervision of employes. 1/

In defining the term supervisor, in its recent extensive amendment of Section 111.70, the legislature did not change the law regarding supervisors but merely defined the concept, by focusing attention on the most significant factors in the test previously applied by the Commission. The factors relied on by the Commission in making such determinations, which are not specifically mentioned in the statutory definition, relate to evidence of the presence or absence of the statutory factors and are consistent with the statutory definition. The essential question remains the same and that is, whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors.

The evidence is clear in this case that, in the absence of a registered nurse, the licensed practical nurses perform some functions normally performed by supervisors, such as calling in employes, assigning work, and helping to enforce work rules. In addition they have participated in the written evaluation of nurses

---

1/ Wauwatosa Board of Education (6219-D) 9/67.

aides on the one occasion in the past where there was such an evaluation. On the other hand, the evidence is clear that none of the licensed practical nurses has the authority to hire or discharge employes or to effectively recommend such action. The only authority they have in the area of discipline is to either discuss the problem with the nurses aide or to report the infraction to their supervisor without recommendations. All disciplinary action of a more severe nature has been, and continues to be, administered by the Superintendent or Director of Nursing or both. All grievances arising under the agreement are settled by the Superintendent or the Director of Nursing. The licensed practical nurses exercise considerable authority and responsibility on questions concerning patient care because of their superior knowledge and training. However, that authority and responsibility does not make them supervisors, since they do not exercise sufficient concomitant supervisory authority over nurses aides to justify the conclusion that they are supervisors.

Dated at Madison, Wisconsin, this 11th day of January, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

WERC Archive of Pre-July 1989 Decisions

PDF FILENAME **10130-B.PDF**

DATE OF DECISION **6/14/71**

CASE CITATION **St. Mary's Hospital of Milwaukee, Dec. No. 10130-B (WERC, 6/14/71) (representation)**

COVER SHEET SEQUENTIAL NUMBER **3863**

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of LOCAL 150, SERVICE & HOSPITAL EMPLOYEES' INTERNATIONAL UNION, AFL-CIO Involving Certain Employes of ST. MARY'S HOSPITAL OF MILWAUKEE Milwaukee, Wisconsin	Case XII No. 14295 E-2681 Decision No. 10130-B

ORDER TO OPEN CHALLENGED BALLOT

The Wisconsin Employment Relations Commission having conducted an election on Wednesday, February 10, 1971, among certain employes of St. Mary's Hospital of Milwaukee, Wisconsin; and the Union having challenged the ballot of Jean Pape, and it appearing from the tally sheet that the ballot of Jean Pape, if entitled to be counted in said election, would affect the results thereof; and hearing on said ballot having been conducted on March 22, 1971, before Robert B. Moberly, Examiner; and the Commission being satisfied that Jean Pape is entitled to vote in said election, and that her ballot therefore should be opened and counted;

NOW, THEREFORE, it is

ORDERED

That the ballot of Jean Pape be opened and counted on Monday, June 21, 1971, at 10:00 a.m. at the Milwaukee State Office Building, Room 560, 819 North Sixth Street, Milwaukee, Wisconsin.

Given under our hands and seal at the City of Madison, Wisconsin, this 14th day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of LOCAL 150, SERVICE & HOSPITAL EMPLOYEES' INTERNATIONAL UNION, AFL-CIO Involving Certain Employes of ST. MARY'S HOSPITAL OF MILWAUKEE Milwaukee, Wisconsin	Case XII No. 14295 E-2681 Decision No. 10130-B

MEMORANDUM ACCOMPANYING
ORDER TO OPEN CHALLENGED BALLOT

Local 150, Service & Hospital Employees' International Union, AFL-CIO, petitioned the Wisconsin Employment Relations Commission for an election among certain employes of St. Mary's Hospital, Milwaukee, Wisconsin. On January 25, 1971, the Commission directed an election in the collective bargaining unit consisting of all regular full-time and regular part-time employes working twenty hours or more per week in the housekeeping department of St. Mary's Hospital, excluding supervisors and all other departments. The vote was conducted on February 10, 1971, and the results were thirty-one "yes" ballots favoring Local 150 as the collective bargaining representative; thirty "no" ballots; and one challenged ballot. The challenged ballot was that of Jean Pape, whose ballot was challenged by the Union on the claim that she is a confidential employe. Since the challenged ballot might affect the results of the election, the Employer requested the Commission to conduct a hearing with respect to the challenged ballot.

The employe in question is classified as a "Clerk Typist Senior" under the supervision of the Executive Housekeeper of the Housekeeping Department. A written description of her duties submitted at the hearing describes her duties as follows:

"1. Take incoming calls and inform supervisory staff of request.

2. Make and type all schedules after approved by department head.

3. Take care of time cards - prepare them for payroll.

4. Inform admitting of room status.

5. Prepare and keep all Housekeeping records.

6. Inform other departments of routine action.

7. Type and send out departmental correspondence.

8. Contact other departments for appointments and meetings.

9. Type periodic reports.

10. Run errands - pick up or deliver small articles within the Hospital."

It was testified without contradiction that she does not type employment forms for personnel files and does not have access to personnel files, which are kept separately in the personnel office. She does not see written reprimands or records of other disciplinary measures, nor does she have access to employe evaluation reports. We are satisfied that the employe in question performs only ordinary clerical duties and does not perform confidential duties. Upon a full consideration of the evidence and testimony, the challenge to the employe's ballot cannot be sustained. We are, therefore, today directing that the ballot be opened and counted in the final tally.

Dated at Madison, Wisconsin, this 14th day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner