STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK PROCESSORS, CANNERY, DAIRY EMPLOYEES AND HELPERS LOCAL 695, Complainant, vs. COUNTY OF SAUK, Respondent.	Case XXVIII No. 25885 MP-1086 Decision No. 18570-A

ORDER DENYING MOTION TO RECONSIDER

The Wisconsin Employment Relations Commission having, on April 1, 1981, issued an Order of Dismissal in the above-entitled complaint proceeding on the basis of its conclusion that its decision in a companion declaratory ruling proceeding 1/ resolved the issues raised in the instant proceeding; and Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local 695 having, on April 20, 1981, filed a Motion to Reconsider; and the County of Sauk having, on April 27, 1981, filed a statement in response to said motion; and the Commission having reviewed Local 695's motion and the County's response thereto and being fully advised in the premises, and being satisfied that said motion be denied;

NOW, THEREFORE, it is

ORDERED

That the Motion to Reconsider filed by Local 695 in the above-entitled proceeding be, and the same hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Gary L. Covelli, Commissioner

1/ Sauk County, Case XXVII, No. 25808, DR(M)-145, Decision No. 18565.

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO RECONSIDER

In its Motion to Reconsider Local 695 makes essentially three arguments:

1. That the Commission's declaratory ruling in a companion case, which formed the basis of its dismissal in this case, ruled upon a proposal other than the proposal which was in dispute;

2. The Commission's declaratory ruling was in error as a matter of law; and

3. The Commission's decision was procedurally infirm because only one of the two commissioners who heard the evidence on April 29, 1980 participated in the decision to dismiss the complaint herein.

The County responds to the motion by pointing out that the motion was filed more than 20 days after the Commission issued its decision on the County's petition for declaratory ruling, and arguing that no useful purpose would be served by granting the motion since the Commission's decision in the instant proceeding, when read in conjunction with its declaratory ruling, disposes of the issues raised in both proceedings.

Discussion

We agree with the County in both respects. The Motion to Reconsider filed herein primarily relates to the merits of the Commission's decision in response to the petition for declaratory ruling, which was filed by the County, and not to the merits of the Commission's decision to dismiss the complaint of prohibited practices herein, which complaint was filed by Local 695.

In its complaint Local 695 contended that the County was in violation of its duty to bargain in good faith by refusing to include the following recognition clause in its new agreement with Local 695:

"ARTICLE III - RECOGNITION

Section 1. The County of Sauk hereby agrees to recognize Teamsters Union Local No. 695 as the sole and exclusive collective bargaining representative for hours, wages and other conditions of employment pursuant to the certification of the Wisconsin Employment Relations Commission for the following employees:

> All employees of the Sauke [sic] County Courthouse, and clerical employees of the Sauk County Highway Department, excluding supervisory, professional, confidential and craft employees, and law enforcement employees with the power of arrest."

In our declaratory ruling we held that the County had a duty to include such a clause in its new collective bargaining agreement provided it included a statement to the effect that said provision is set forth merely to describe the bargaining representative and the bargaining unit covered by the terms of said collective bargaining agreement and is not to be interpreted for any other purpose. It obviously follows, based on said ruling, that the County did not violate its bargaining obligation by its refusal to include the above recognition clause without the addition of such a proviso. In fact, the reasons asserted by the County for its refusal, and in support of its claim that the above recognition clause was not a mandatory subject of bargaining, related to its

concerns that Local 695 would attempt to utilize the recognition clause in grievance arbitration to obtain determinations as to which employes should be included or excluded from the bargaining unit, or to argue that it had impliedly agreed not to engage in subcontracting.

As noted above, it was the County that filed the petition for declaratory ruling and the County agrees that the Commission's ruling therein adequately answers the issues presented by these consolidated proceedings. Nevertheless Local 695 contends that the Commission has not ruled on the disputed provision and that even if it has, it erred as a matter of law. We disagree.

In order for a proposal to be found to be a mandatory subject of bargaining it must primarily relate to wages, hours and conditions of employment. 2/ Local 695 is no doubt correct that recognition clauses are commonly worded in a similar fashion to that which is set out above and do not include a "proviso" similar to that referred to in the Commission's decision. However, a recognition clause does not establish any wage, hour or condition of employment. To the extent that a party seeks to include such a clause in an agreement for any other purpose, such as to grant "concurrent jurisdiction" to an arbitrator to make determinations as to who is properly included or excluded from the bargaining unit or to create "implied obligations", such purpose is insufficiently related to wages, hours and conditions of employment to be found to be a mandatory subject of bargaining. Local 695's reliance on the Borg-Warner case 3/ is misplaced. That decision held that it was an unfair labor practice for the employer to insist to the point of an impasse on a change in the identity of the union which was certified by the National Labor Relations Board as the exclusive bargaining representative, since such a proposed change was not a mandatory subject of bargaining. In fact, the reasoning of that case supports our conclusion, that a proposal to include a recognition clause for a purpose unrelated to wages, hours and conditions of employment is not a mandatory subject of bargaining.

Finally, with regard to Local 695's claim that the Commission's decision is procedurally infirm, we would first note that Local 695 incorrectly states the facts, or at least fails to completely state the facts. There were two days of consolidated hearing held on the complaint in this case and on the petition for declaratory ruling, as well as a related petition for unit clarification. 4/ At the first day of hearing, which was held on April 29, 1980, Chairman Slavney and Commissioner Torosian were present and Commissioner Covelli was not. At the second day of hearing which was held on May 9, 1980, Chairman Slavney and Commissioner Covelli were present and Commissioner Torosian was not. While the second day was largely devoted to the issues in the unit clarification proceeding, the relevant facts in this proceeding and the declaratory ruling proceeding were uncontested. Only Chairman Slavney and Commissioner Covelli, both of whom reviewed the relevant portions of the record participated in the decision. We believe that such participation was proper under Section 227.09(4), Wisconsin Statutes, since the two who issued the decision either "heard the case or read the record".

2/ Unified School District No. 1 of Racine County v. WERC 81 Wis 2d 89 (1977); and Beloit Education Association v. WERC 73 Wis 2d 43 (1976).

3/ NLRB v. Wooster Division of Borg-Warner 356 US 342, 42 LRRM 2034 (1958).

4/ Sauk County, Case XIII, No. 21269, ME-1401, pending.

For the above and foregoing reasons the undersigned have denied the motion for reconsideration.

Dated at Madison, Wisconsin, this 6th day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Gary L. Covelli, Commissioner