STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of BROWN COUNTY (DEPARTMENT OF SOCIAL SERVICES) Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and BROWN COUNTY SOCIAL SERVICES PARA-PROFESSIONAL EMPLOYEES ASSOCIATION and BROWN COUNTY SOCIAL SERVICES PROFESSIONAL EMPLOYEES ASSOCIATION	Case CLXIII No. 30342 DR(M)-242 Decision No. 20623

Appearances:

Mr. Frederick J. Mohr, Parins, McKay & Mohr, S.C., Attorneys at Law, 415 South Washington Street, P. O. Box 1098, Green Bay, Wisconsin 54305, appearing on behalf of the Associations.

Mr. Kenneth J. Bukowski, Corporation Counsel, and Mr. Gerald Lang, Personnel Director, Brown County, 305 East Walnut Street, P. O. Box 1600, Green Bay, Wisconsin 54301, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

The County of Brown having, on September 7, 1982, petitioned the Wisconsin Employment Relations Commission to issue a declaratory ruling regarding the duty to bargain over a unilaterally imposed work rule restricting the rights of employes to take coffee breaks outside of their work place; and the County having filed a statement in support of its petition on October 1, 1982; and the Brown County Social Services Paraprofessional Employees and the Brown County Social Services Professional Employees Association having filed a statement in opposition of petition on November 22, 1982; and the parties having on or about December 23, 1982, waived evidentiary hearing in the matter; and the Commission having fully considered the evidence and arguments adduced by the parties and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That the Brown County Social Services Paraprofessional Employees Association and the Brown County Social Services Professional Employees Association, hereinafter collectively referred to as the Associations, are labor organizations maintaining offices at Green Bay, Wisconsin.

2. That the County of Brown, hereinafter referred to as the Municipal Employer, has its offices at Green Bay, Wisconsin.

3. That the Brown County Social Services Paraprofessional Employees Association, at all times material herein, has been, and is, the collective bargaining representative for all non-professional employes employed by the Brown County Department of Social Services, excluding the Director, professional, supervisory and confidential employes.

4. That the Brown County Social Services Professional Employees Association, at all times material herein, has been, and is, the collective bargaining representative for all employes classified as Social Worker in the Brown County Social Services Department.

5. That the collective bargaining agreement for the year 1982 between the Municipal Employer and each of the Associations contains the following provision:

ARTICLE 3. MANAGEMENT RIGHTS

> Through its management, the Employer retains the sole and exclusive right to manage its business, including but not limited to the right to direct its work force, to hire, assign, suspend, promote, discharge or discipline for just cause, to maintain discipline and efficiency of its employees, to determine the extent to which the Employer's operations shall be conducted, the size and composition of the work force, the number of offices and locations of such offices, equipment requirements and location of such equipment and the right to change methods, equipment, systems or processes, or to use new equipment, products, methods or facilities and to reduce the work force if, in the Employer's sole judgment, the new equipment, methods, systems or facilities require fewer personnel. In no event shall the exercise of the above rights and responsibilities of the Employer violate the terms and conditions of this Agreement or restrict any rights of the employee under Wisconsoin (sic) Statute 111:70.

6. That in late May or early June, 1982, the Director of Social Services unilaterally promulgated a work rule providing that "employes cannot take coffee break outside of building without clearing with management personnel"; that among the employes governed by this work rule are those represented by the Associations; and that employes who violate said work rule are subject to disciplinary measures.

7. That the Municipal Employer filed a petition for declaratory ruling requesting the Commission to determine whether the establishment and content of said work rule was a mandatory subject of bargaining pursuant to Section 111.70 (1)(d) of the Wisconsin Statutes, hereinafter referred to as MERA.

8. That the work rule set forth in Finding of Fact 6 primarily relates to hours and conditions of employment.

9. That the parties have bargained over the subject of work rules for the term of their 1982 collective bargaining agreement and have set forth their agreement on the subject in Article 3 Management Rights.

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

CONCLUSIONS OF LAW

1. That the work rule set forth in Finding of Fact 6 is a mandatory subject of bargaining within the meaning of Section 111.70(1)(d) and 111.70(3)(a)4 of MERA.

2. That the parties have bargained to agreement on the subject of the Municipal Employer's right to establish reasonable work rules, and the Municipal Employer has therefore fulfilled its duty to bargain within the meaning of Sections 111.70(1)(d) and 111.70(3)(a)4 of MERA over the work rule set forth in Finding of Fact 6 for the term of the 1982 collective bargaining agreement.

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

DECLARATORY RULING 1/

The Municipal Employer has no duty to bargain collectively with the Associations, within the meaning of Section 111.70(1)(d) and Section 111.70(3)(a)4 of the Municipal Employment Relations Act, over the establishment of the work rule set forth in Finding of Fact 6 during the term of the 1982 collective bargaining agreement.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of May, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

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

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

During the term of the parties' calendar 1982 agreement, the Municipal Employer's Director of Social Services unilaterally promulgated a work rule restricting employes to the building for the duration of their coffee breaks unless prior management approval was obtained. The Municipal Employer takes the position that such a rule is consistent with the management rights clause of that collective bargaining agreement, and cites several private sector labor arbitration awards upholding the right of management to promulgate reasonable work rules regulating the use of break time.

The Associations concede that there is no provision for coffee breaks in the collective bargaining agreement, but assert that the Management Rights Clause cited by the Employer does not clearly vest in management the right to unilaterally establish rules relating to mandatory subjects of bargaining. Indeed, they note, the cited clause requires the Municipal Employer to respect the rights of employes under MERA in exercising its management rights. One of the statutory rights granted employes by MERA is that of bargaining over mandatory subjects prior to any change relative to those subjects. Coffee breaks are a significant benefit to employes who may use this duty-free time to perform errands outside the work site. As the Municipal Employer cites no management function which would be impaired in the absence of such a rule, and since the rule constitutes a significant benefit to employes, the Associations assert that this subject matter is primarily related to "wages, hours and working conditions" and is therefore a mandatory subject of bargaining.

DISCUSSION

It has long been held that, in general, the subject of duty-free break periods is a mandatory subject of bargaining. 2/ Further, it is well established that, where a work rule relates to a mandatory subject of bargaining, the rule itself is bargainable. 3/ A duty-free break period is a matter directly relating to the hours of work in the same manner that vacations relate to the hours of work. The Municipal Employer has not persuasively shown that the proposed work rule primarily relates to public policy concerns. There is no proof, for example, that the presence of employes at the work site during break periods is necessary for the delivery of services or the execution of the Employer's mission. Nor does it appear that the uninterrupted presence of such employes is inherently mandated by the nature of the services that they perform. In the absence of such evidence, the Commission concludes that the proposed work rule primarily relates to wages, hours and conditions of employment, and is therefore a mandatory subject of bargaining.

The duty to bargain to agreement or impasse during the term of an existing collective bargaining agreement extends to any mandatory subject of bargaining which the union has not waived its right to bargain over or which is not addressed in the existing agreement. 4/ The agreement between the parties provides, inter alia, that "(t)hrough its management, the Employer retains the sole and exclusive right . . . to direct its work force . . . (and) . . . maintain discipline and

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2/ See, for example, Madison Metropolitan School District, (16598) 1978.

3/ City of Wauwatosa, (15917) 1977.

4/ City of Kenosha, (16392) 1978; Madison Metropolitan School District, (15629) 1978; Nicolet Education Association, ((12073-B) 1974, (12073-C) 1975); Racine Unified School District No. 1, (18848) 1982.

efficiency of its employees." This is subject to the proviso that the Employer shall not, in its exercise of such right, "restrict any rights of the employe under Wisconsin Statute 111.70." The Municipal Employer asserts that the former language grants it the right to establish reasonable work rules. The Associations contend that the latter language makes the imposition of such rules subject to the duty to bargain collectively before implementation.

As a general rule, management has the right to establish reasonable work rules regulating the conduct of its employes. This notion derives from management's right to direct the work force, and maintain discipline among its employes and efficiency in its operations. 5/ These latter rights have been specifically reserved to management in the instant agreements. Absent record evidence to the contrary, the Commission concludes that the parties intended that the Management Rights clauses be given the meaning and effect customarily accorded them in the field of labor relations. Therefore, the parties have bargained to agreement over the establishment of reasonable work rules for the duration of their 1982 collective bargaining agreement.

In finding that the parties have agreed that management may establish and enforce work rules, the Commission does not suggest that the Associations are without recourse to challenge such rules. Along with the general principle that management may establish work rules is the caveat that such rules must be reasonable on their face and as applied, and that the reasonableness of the rule in those respects is subject to review in the grievance procedure. Implicit in the Associations' argument that these rules are unnecessary and unduly burdensome is the allegation that they are unreasonable. The Commission expresses no views on the merits of that claim, however, as it goes not to the question of a duty to bargain, but to the interpretation of the bargain ultimately reached. By the terms of their 1982 agreement, the parties have agreed to have such questions resolved through their grievance-arbitration procedure.

Dated at Madison, Wisconsin this 4th day of May, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

5/ See, generally, Elkouri and Elkouri, How Arbitration Works, 3rd edition (BNA, 1973) at pages 517-520.