

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN COUNCIL 40, AFSCME,	:	
AFL-CIO, TONI CAGLE, BRUCE	:	
CHAPMAN, JEAN ELLIOT, DARLENE	:	
FUNK, MIMA LORBERBLATT-TESKE,	:	
JOHN NANNEY, KATHY PALMER,	:	
GEORGE PRONOLD, STEVE RICE,	:	
JULIE SOWERS, DOUG STANGEL,	:	
NANCY VERRIER AND MARK	:	
ZIMONICK,	:	
	:	
Complainants,	:	Case 207
	:	No. 31845 MP-1495
vs.	:	Decision No. 20857-C
	:	
BROWN COUNTY,	:	
	:	
Respondent,	:	
	:	
and	:	
	:	
LLOYD BRAZEAU,	:	
	:	
Co-Respondent.	:	
	:	

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of the Complainants.

Mr. Kenneth Bukowski, Corporation Counsel, Brown County Courthouse, P. O. Box 1600, Green Bay, Wisconsin 54305, appearing on behalf of Respondent Brown County.

Warpinski and Vande Castle, S.C., Attorneys at Law, by Mr. Mark A. Warpinski, 303 South Jefferson Street, P. O. Box 993, Green Bay, Wisconsin 54305, appearing on behalf of the Respondent Lloyd Brazeau.

ORDER DENYING PETITIONS FOR REHEARING

Lloyd Brazeau and Brown County having filed separate petitions with the Wisconsin Employment Relations Commission on July 19, 1985, and July 22, 1985, respectively, requesting that the Commission grant a rehearing pursuant to Sec. 227.12, Stats., as to certain matters arising out of the Order Modifying Examiner's Findings of Fact, Conclusions of Law and Order issued by the Commission on July 3, 1985, in the above-captioned matter; and Wisconsin Council 40, et al., having, on July 25, 1985, filed a statement in opposition to said petitions; and the Commission having considered the matters and concluded that the petitions should be denied;

NOW, THEREFORE, it is

ORDERED 1/

That the Petitions for Rehearing be, and the same hereby are, denied.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian, Chairman

Marshall L. Gratz
Marshall L. Gratz, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

1/ See footnote on Page 2.

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties 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.

227.16 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.

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

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITIONS FOR REHEARING

Applicable Law

Section 227.12(3), Stats., provides that:

Rehearing will be granted only on the basis of:

- (a) Some material error of law.
- (b) Some material error of fact.
- (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

The Instant Petitions

The petitions before us ask that we:

1. Take additional testimony to determine what information the County Board relied upon in making their subcontracting decision.
2. Take additional testimony to determine what, if any, offers of substantially equivalent employment have been made to employees affected by the County's decision to subcontract.
3. Modify our Order to allow for implementation of the remedy coincidental with the giving of a 45 day notice pursuant to the contract existing between Brown County and Shelter Care of Brown County, Inc.

Discussion

As to the request that we take additional testimony to determine what information the County Board of Supervisors relied upon in making their decision to subcontract out the Youth Home function, we note that evidence on that question was adduced at the hearing, and all parties had a full opportunity to present whatever relevant and material evidence they possessed. Thus, a request for further hearing to clarify the status of the Advisory Committee, whose minutes were received into evidence by the Examiner in this matter and discussed by the Commission in its decision, essentially seeks a second opportunity to present evidence which existed at the time of hearing. As such, the evidence Respondents now seek to introduce is not "new," within the meaning of Sec. 227.12(3)(c), Stats., and therefore, does not warrant the granting of the petition to provide that opportunity.

We would also point out that, contrary to the assertions set forth in the petitions, we did not conclude that statements made during Advisory Committee proceedings were "binding" on the County Board. Instead, we found that the Advisory Committee minutes could be considered probative of the nature of the County's decision-making process regarding the future provision of youth home services. In our view, the Advisory Committee discussion we noted focused probatively (albeit indirectly) on what the County Board of Supervisors had to decide and the bases of that decision. Crompton, a member of the County Board who was centrally involved in the County's decision-making process, answered questions at the Advisory Committee meeting about why the resolution presented to the County Board opted for subcontracting, and other related questions were answered in his presence without contradiction by Crompton. That discussion supports our conclusion that the County had an opportunity to decide whether to staff the Mason

Street facility with its own employes or with those of a subcontractor. It further confirms what the County resolution itself suggests, to wit, that the latter alternative was selected because it was cheaper. Given the foregoing, we reject the Petitioners' assertion that our consideration of Advisory Committee proceedings constituted a material error of law or fact.

Turning to the request that the Commission take additional testimony to determine what, if any, offers of substantially equivalent employment have been made to employes affected by the County's decision to subcontract out the Youth Home function, we conclude that such matters are not appropriately raised or resolved in a petition for rehearing. As we noted in our decision at page 20, we are available through informal mediation or compliance hearing to resolve any disputes over County compliance with our Order.

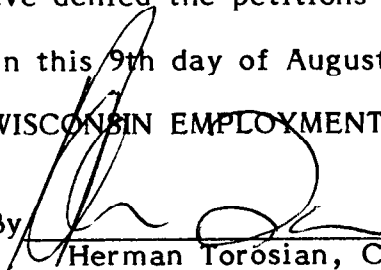
Lastly, Respondents request that the Commission modify its Order to allow for an implementation of the Order coincidental with the giving of a 45 day notice pursuant to the contract existing between Brown County and Shelter Care of Brown County, Inc. We find no merit in this request. Consistent with our normal practice, the Commission ordered the immediate implementation of its remedy. The arrangement with Shelter Care represents illegal conduct on the County's part and any notice provision contained in the subcontract ought not and does not delay the County's obligation to remedy that illegality.

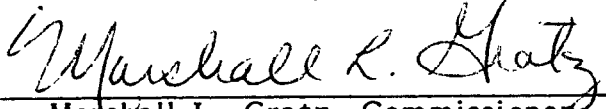
Given the foregoing, we have denied the petitions for rehearing.


Dated at Madison, Wisconsin this 9th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner