

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SOUTHERN LAKES UNITED  
EDUCATORS COUNCIL #26,

Complainant,

vs.

JT. SCHOOL DIST. NO. 9,  
TOWNS OF SALEM & RANDALL  
(WILMOT SCHOOL),

Respondent.  
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Case IV  
No. 31049 MP-1437  
Decision No. 21092

Appearances:

Mr. Bruce Meredith, Staff Counsel, and Mr. James Mincey, Law Clerk, Wisconsin Education Association Council, P. O. Box 8003, Madison, Wisconsin 53708, and Ms. Esther Thronson, UniServ Director, Southern Lakes United Educators, Council #26, 202 East Chestnut Street, Burlington, Wisconsin 53105, appearing on behalf of the Complainant.

Mulcahy & Wherry, S.C., 815 East Mason Street, Milwaukee, Wisconsin 53202, by Mr. Mark S. Nelson, and Mr. Ervin Forgy, District Administrator, P. O. Box 68, Wilmot, Wisconsin 53192, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Daniel J. Nielsen, Examiner: Southern Lakes United Educators Council #26 (hereinafter referred to as SLUE) having, on January 24, 1983 filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission (hereinafter referred to as the Commission) wherein it alleged that the Jt. School District No. 9, Towns of Salem and Randall (hereinafter referred to as the District) had committed prohibited practices within the meaning of Sections 111.70(3)(a)1, 4 and 5, Stats., Municipal Employment Relations Act (hereinafter referred to as MERA) by non-renewing the teaching contract of Ms. Vicki Christensen and thereafter refusing to provide information relative to said non-renewal; and the Commission having, on March 4, 1983 appointed Daniel J. Nielsen, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Stats., Wisconsin Employment Peace Act (hereinafter referred to as WEPA); and notice of hearing having been served on the parties pursuant to Section 111.07(2)(a) WEPA on March 4, 1983; and the District having on March 14, 1983, filed an answer wherein it denied committing any prohibited practices and further raised various affirmative defenses including an allegation that SLUE is not a party in interest and therefore lacked standing to bring the complaint; and the District having, on March 28, 1983, filed with the Examiner a motion to dismiss and brief in support of the Respondent's motion to dismiss; and SLUE having, on March 31, 1983, filed a motion to amend its complaint to correct the name of the Complainant; and the Examiner having, on April 4, 1983 conducted a bifurcated hearing on the motions and the merits in Burlington, Wisconsin; and the Examiner having thereafter taken administrative notice of certain official documents pursuant to Section 227.08, Stats., Wisconsin Administrative Procedure Act; and a transcript of said hearing having been received by the Examiner on June 6, 1983; and the parties having submitted post-hearing briefs and reply briefs, the last of which was received on July 20, 1983; and the Examiner having considered the testimony, evidence, exhibits and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Jt. School District No. 9, Towns of Salem and Randall, (District), is a school district organized under the laws of the State of Wisconsin to provide educational services to the residents of the District; that

the District maintains its offices in Wilmot, Wisconsin and has as its mailing address P. O. Box 68, Wilmot, Wisconsin 53192; that the District is governed by the Board of Education which is charged with the management and control of the District; that at all times relevant herein, Ervin Forgy has been the District Administrator and Linda Marcussen has been the President of the Board of Education; that in delivering educational services, the District employs certified teachers; and that the District is a municipal employer.

2. That the Kenosha County Education Association, hereinafter referred to as the KCEA, is a labor organization comprised of three affiliated bargaining units of teachers employed in the elementary schools at Trevor, Brighton and Wilmot in Kenosha County, Wisconsin; that the President of the KCEA is Mary Knigge, a teacher employed at the elementary school in Trevor; that prior to Ms. Knigge's term, the President of the KCEA was Steven Voltz, a teacher employed at the elementary school in Trevor; that the KCEA exists primarily to provide an organizational structure for the three small bargaining units at Trevor, Brighton and Wilmot; that the KCEA does not, itself, bargain or administer collective bargaining agreement in the three districts; and that the three affiliated bargaining units individually negotiate and administer the collective bargaining agreements with their respective districts.

3. That the (KCEA) Wilmot Elementary Education Association, hereinafter referred to as the WEEA, is a labor organization and is the voluntarily recognized exclusive bargaining representative for all certified teachers employed by the District, excluding the administrators; that the WEEA has been the voluntarily recognized exclusive bargaining representative for said teachers since at least the 1960s; that the WEEA does not meet on a regular basis independently of the KCEA; that the WEEA negotiates and administers the collective bargaining agreement between it and the District; that the WEEA does not have formally elected officers independent of the KCEA, but does have an individual designated as the teacher leader in the building who functions in the same manner as a steward; that Charlotte Watson was, at all times material herein, the teacher-leader for the WEEA; and that the WEEA has employed the services of the staff of Southern Lakes United Educators, Council 26 (SLUE) for professional assistance in administering and negotiating their collective bargaining agreements.

4. That Southern Lakes United Educators, Council No. 26, (SLUE) is a labor organization comprised of all of the members of its constituent local unions, and maintaining its offices at 202 East Chestnut Street, Burlington, Wisconsin 53105; that the constituent local unions of SLUE represent teachers employed in approximately 28 school districts in South Central and Southeastern Wisconsin; that SLUE governed by a council consisting of representatives of its constituent local unions; that the KCEA has a representative on the SLUE council; that the WEEA does not have a representative on the SLUE council independent of that designated by the KCEA; that the President of SLUE is Steven Voltz; that SLUE employs four full-time employees; that Esther Thronson and Mary Horton are employed by SLUE as UniServ Directors and function in the role of business agents for the constituent locals; that, upon request, the UniServ Directors act as chief spokesperson for the local unions in negotiations and represent the local unions in the processing of grievances; that the WEEA requested that the UniServ Director, Esther Thronson, represent it and the grievant in the dispute over the non-renewal of Vicki Christensen as set forth in Finding of Fact No. 7, infra; that SLUE is not a signator to the collective bargaining agreement between the District and the (KCEA) Wilmot Elementary Education Association; that SLUE is not the exclusive bargaining representative of the teachers employed by the District; that SLUE has made no claim to being the exclusive bargaining representative of the teachers employed by the District; and that there is no direct independent relationship between SLUE and the District.

5. That the District and the WEEA were parties to a collective bargaining agreement for the period from July 1, 1979 through June 30, 1982; that among the provisions of said collective bargaining agreement were the following:

ARTICLE I  
RECOGNITION

- A. The Wilmot Elementary School Board, hereinafter the Board, recognizes the (KCEA) Wilmot Elementary Education Association, hereinafter the Association, as the exclusive bargaining agent for all certified teachers employed by the Board, excluding the administrator.
- B. This agreement hereby incorporates the rights of all teachers, the Board, and the Association as established by law.
- C. Subject to the provisions of this agreement the Board's right to operate and manage the school system is recognized, including the determination and direction of the teaching force, the right to plan, direct and control school activities, to schedule classes and assign workloads, to determine teaching methods and subjects to be taught and to maintain the effectiveness of the school system.

ARTICLE II  
WORKING CONDITIONS

. . .

- C. Teachers may be laid off in whole or in part only when there is a significant decline in pupil population provided that notice of such layoff is given by March 1 of the preceding year in which the layoff will take effect. Such layoff will be in accordance with the following:
  - 1. Volunteers shall be laid off first.
  - 2. When there are not sufficient volunteers', teachers shall be laid off in the inverse order of seniority.
  - 3. No new or substitute appointments shall be made for which laid off teachers are certified.
  - 4. Teachers on layoff shall continue to accumulate all benefits within this agreement including seniority. Full insurance benefits will be provided during the period of layoff at the cost of the teacher.
  - 5. Teachers shall be reinstated as the student population increases or positions for which laid off teachers are certified are established. Reinstatement shall occur in the inverse order of layoff.

. . .

- E. After two years of successful employment and the gaining of the third contract, no teacher shall be discharged, non-renewed, or disciplined without good and sufficient cause. The two years and shared contract requirement does not apply to employees of the district under contract effective August 28, 1978 (or at the beginning of this contract).

### ARTICLE III

#### RESOLUTION OF DIFFERENCES

- A. Differences as to the interpretation of application of this agreement shall be resolved in the following manner:
1. An effort will be made to resolve the issue informally with the Administrator.
  2. If the issue is not resolved with the Administrator, the Board and the Association will attempt to resolve the issue.

. . .

### ARTICLE VI

#### DURATION

- A. This agreement shall be effective July 1, 1979 through June 30, 1982 except for annual negotiations on calendar. An annual review of the maintenance of the agreement shall occur.
- B. Any changes in this agreement or in operations of the district affecting teachers shall be as a result of mutual agreement.
- C. The school district shall partake in county-wide bargaining only by mutual consent of the parties.
- D. In the event of a national economic disaster or a mandatory control on wages, which negates the economic provision of this agreement, the parties shall meet to arrive at amendments to the agreement that will cause compliance with law.
- E. In the event of school district consolidation the provisions of law shall prevail in respect to this agreement.

and that said collective bargaining agreement contained no provision for final and binding arbitration of grievances.

6. That the District employed the following teachers during the 1981-82 school year, said teachers having the indicated seniority:

|                     |            |
|---------------------|------------|
| Mary Ann Vulgrin    | 1 year     |
| Donna Barhyte       | 4.9 years  |
| Kathy Zeller        | 0.4 years  |
| Dale Kolmos         | 4.5 years  |
| Nancy Bird          | 2.68 years |
| Vicki Christensen   | 7.5 years  |
| Geraldine Hollister | 15 years   |
| Mary Ann Lancour    | 4.5 years  |
| Joan Letourneaux    | 10 years   |
| Agnes Strassheim    | 4.5 years  |
| Charlotte Watson    | 5.5 years; |

that the district contracted for the services of Roger Dodge, a certified 317 reading specialist employed by the Wilmot Union High School, for approximately 1 1/2 hours, two days per week during the 1981-82 school year; that Dodge's duties during the 1981-82 school year included the management of the reading program in the District; that Vicki Christensen possessed a K-8 teaching certificate and a 316 reading certification; that Christensen was employed by the District as a kindergarten teacher during the mornings and a remedial reading and language arts teacher during the afternoons in the 1981-82 school year; that Christensen worked with the students needing additional instruction in reading; that Christensen provided this support by removing the student from the classroom and individually

tutoring the child in the 1980-1981 school year; that as part of a program change, Christensen provided the assistance in the classroom, rather than outside the classroom, in the 1981-82 school year; that the district implemented a Title I reading program in November, 1981 providing remedial reading services to children in certain targeted socio-economic classifications; and that Dorothy McKinney was employed as the Title I reading teacher in the district on an hourly basis beginning in November, 1981.

7. That, on February 16, 1982, the District's Board of Education issued a preliminary notice of non-renewal of the teaching contract to Vicki Christensen; that Christensen requested a private hearing; that the hearing was held on March 10, 1982; that following completion of the hearing the Board of Education voted to non-renew the teaching contract of Vicki Christensen for the 1982-83 school year; and that the following letter was sent to Vicki Christensen, notifying her of her non-renewal:

Mrs. Vicki Christensen  
1024 Pheasant  
Twin Lakes, WI 53181

March 12, 1983

Dear Mrs. Christensen:

Pursuant to the standards of Section 118.22 of the Wisconsin Statutes, the Joint #9, Salem, Randall District Board issued you a "Preliminary Notice" of nonrenewal of your teaching contract on February 16, 1982. At your request for a private hearing, dated February 19, 1982, the Board scheduled the hearing for March 10, 1982, at 4:00 P.M.

Please be advised that upon completion of the hearing held on March 10, 1982, the Joint #9, Salem, Randall District Board, by a majority vote of the full membership of the Board, has decided not to renew your teacher's contract for the 1982-1983 school year. The decision not to issue you a contract to teach in the District for the ensuing school year was based on the following reason: a program change.

Sincerely,

BOARD OF EDUCATION -  
JOINT DISTRICT #9, SALEM,  
RANDALL

By Linda Marcussen /s/  
President

Glenn Andersen /s/  
Clerk

The undersigned acknowledges receipt of the above and foregoing notice \_\_\_\_\_ day of March, 1982.

\_\_\_\_\_  
Signature

and that Christensen was reemployed by the District in the 1982-83 school year as a kindergarten teacher in the mornings.

8. That on April 6, 1982 the WEEA filed a grievance with the District alleging that the non-renewal of Christensen was not for good and sufficient cause and therefore violated Article II (E) of the collective bargaining agreement; that the WEEA took the position that the District should have employed the layoff provisions of the agreement rather than the non-renewal provisions of the agreement; that the District denied the grievance on or about June 3, 1982 alleging that a program change was not within the specified reasons for layoff; that the parties thereafter met and attempted to resolve the grievance in

conjunction with their negotiations over the successor collective bargaining agreement; that the grievance was not resolved in these discussions; that, on or about October 15, 1982, Thronson wrote to Forgy, informing him that the WEEA was considering further pursuing the grievance of Mrs. Christensen and requesting information in 25 enumerated areas so as "to evaluate the merits of Mrs. Christensen's case"; and that, on or about October 25, 1982 Forgy responded to Thronson by letter as follows:

October 25, 1982

Esther Thronson, Executive Director  
SLUE/Council 26  
202 E. Chestnut  
Burlington, Wisconsin 53105

Dear Mrs. Thronson:

Your request of October 15, 1982 is denied.

This district shall continue to maintain its files in accordance with the Public Records Law (103.13 (3) Wisconsin S.S.). We will be most happy to cooperate with specific requests for information which comply with the aforementioned statutory requirements and do not violate the case law principle of "non-discovery" prior to hearing.

If you have any further questions, please feel free to call me (414-862-6461).

Sincerely,

Ervin L. Forgy  
District Administrator

c.c. Mark Nelson - Mulcahy & Wherry  
Board Members

9. That, on January 24, 1983, Southern Lakes United Educators Council No. 26 filed a complaint of prohibited practices alleging interference with the rights of employees, refusal to bargain, and violation of collective bargaining agreement by the Respondent District; that the complaint alleged that SLUE was the exclusive bargaining representative for the District's teachers; that the complaint did not designate WEEA as a complainant; and that the complaint did not designate Vicki Christensen as a complainant.

Based upon the above and foregoing Findings of Fact, Conclusions of Law and Order the Examiner makes the following

#### CONCLUSIONS OF LAW

1. That the Jt. School District No. 9, Towns of Salem and Randall is a municipal employer within the meaning of Section 111.70(1)(a), MERA.

2. That Vicki Christensen is a municipal employee within the meaning of Section 111.70(1)(b), MERA.

3. That the (KCEA) Wilmot Elementary Education Association is a labor organization within the meaning of Section 111.70(1)(j), MERA and is the exclusive bargaining representative for the certified teaching staff of the District.

4. That Southern Lakes United Educators Council No. 26 is a labor organization within the meaning of Section 111.70(1)(j), MERA; that Southern Lakes United Educators Council No. 26 neither has nor claims representative status with regard to the teachers employed by the District; and that the Southern Lakes United Educators Council No. 26 is not a party in interest within the meaning of

Section 111.07(2)(a), WEPA, to the dispute between (KCEA) Wilmot Elementary Education Association and the District over the non-renewal of Vicki Christensen.

5. That, inasmuch as the instant complaint was not filed by a party in interest as required by Section 111.07(2)(a), WEPA, the Commission is without subject matter jurisdiction over the complaint.

On the basis of the above and foregoing Findings of Fact, Conclusions of Law, the Examiner makes and issues the following

ORDER 1/

IT IS ORDERED that the instant complaint be, and hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 20th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Daniel J. Nielsen, Examiner

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- 1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

FACTUAL BACKGROUND

On March 10, 1982 the District's School Board voted to non-renew Vicki Christensen as a remedial reading teacher at the Wilmot State Graded School. On April 6, 1982, the Wilmot Elementary Education Association filed a grievance on behalf of Christensen alleging that the non-renewal was a violation of the collective bargaining agreement. On June 3, 1982 the grievance was denied by the District's Board of Education. The parties thereafter engaged in discussions relating to the grievance, but the matter was not resolved.

On January 24, 1983 Southern Lakes United Educators Council No. 26 filed a prohibited practice complaint with the Wisconsin Employment Relations Commission alleging that the District had violated the collective bargaining agreement in non-renewing Christensen 2/ and had refused to provide information necessary to the processing of the grievance requested by SLUE. The complaint identified the Complainant as Southern Lakes United Educators Council No. 26 and alleged that it was the exclusive bargaining representative of the Respondent's teachers. On March 4, 1983 the Commission appointed the undersigned as hearing examiner for the case. On that same date a notice of hearing was issued which established an answer date of March 14, 1983 and the hearing date of April 4, 1983. The Respondent filed its answer on March 14, 1983 denying that SLUE was the recognized exclusive bargaining representative of its certified teachers and alleging that the Wilmot Elementary Education Association was the representative. The answer further raised several "affirmative defenses" including laches and lack of standing. On March 28, 1983 the Respondent submitted a motion to dismiss and a brief in support thereof to the Examiner alleging that the Complainant SLUE was not a party in interest to the complaint as required by Section 111.07(2)(a), WEPA. 3/ On March 31, 1983 the Complainant submitted a motion to amend pursuant to ERB 12.02 (5) Wis. Adm. Code to correctly identify the (KCEA) Wilmot Elementary Education Association as the Complainant. In support of its motion, the Complainant averred that the designation of SLUE was inadvertent and that the amendment, if allowed, would in no way prejudice the Respondent.

A bifurcated hearing was held with evidence being taken first on the motion and later on the merits of the complaint. The parties agreed that the question of standing, the additional motion to dismiss for failure to join a necessary party (made the outset of the hearing), SLUE's motion to amend, and the effect of the running of statute of limitations on the ability of the WEEA to prosecute its claim would be considered in the Examiner's decision as threshold issues.

POSITION OF THE PARTIES

The threshold issue in this matter is whether the Southern Lakes United Educators Council No. 26 a UniServ Council, has standing to bring a complaint alleging that the District has violated its collective bargaining agreement and refused to bargain in violation of MERA. The District maintains that it has no legal relationship with, nor obligation to, the UniServ Council and that the UniServ is not a party in interest empowered to bring such an action under Section 111.07(2)(a), WEPA. The District urges that this complaint be dismissed. Since the one year statute of limitations on prohibited practice complaints set forth in Section 111.07(14) 4/ had expired at the time of the Respondent's answer, dis-

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- 2/ The collective bargaining agreement does not provide for binding arbitration of grievances.
- 3/ Made applicable to the processing of prohibited practice complaints under MERA by Section 111.70(4)(a), MERA.
- 4/ Section 111.07(14), WEPA: "The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged."



missal of this complaint would have the effect of extinguishing any claim that might be brought by the non-renewed teacher or her bargaining representative. 5/

The Complainant UniServ maintains that it is a party in interest by virtue of its role as representative of the local union. The local is largely a paper entity, having neither officers nor a written set of by-laws. Its organizational structure is provided by the KCEA, a confederation of three tiny locals in the same geographical area. The functions of bargaining and administering the collective bargaining agreement, however, are delegated to the UniServ. All members of the local are also members of the UniServ, and the whole function of the UniServ is to provide services to the locals. There is thus such an identity of interest between the local and the UniServ as to render them legally and functionally indistinguishable for the purposes of dealing with the District. 6/

In the alternative, the Complainant urges that it should be allowed to amend its complaint to correctly identify the Complainant. The designation of the UniServ as Complainant was the result of inadvertence and should not be allowed to impede the decision of this case on the merits, particularly inasmuch as the Respondent District has shown no prejudice that would result from proposed amendment. Although the motion to amend was filed after the statute of limitations had run on the local union's claim as to the non-renewal, the filing of the original complaint set forth the claim in a clear and specific manner, so as to give the Respondent notice of the actual claim against it and the true identity of the Complainant. The amendment should be construed as relating back to the date of the original filing of the complaint, and the case should thus be considered timely filed. 7/ The Complainant contends that any other result would be a victory of form over substance and establish a regime of legal formalism in what was intended to be a simple administrative forum.

#### DISCUSSION

Section 111.07(2)(a), WEPA requires that a complaint be brought by a "party in interest." The Supreme Court of Wisconsin, in Chauffeurs, Teamsters and Helpers "General" Local No. 200 v. Wisconsin Employment Relations Commission, 51 Wis. 2d 391 (1970) held that this requirement is jurisdictional. 8/ If the complaint against the District was not brought by a party in interest, therefore, the Commission is without subject matter jurisdiction. An individual may be a proper party in interest for certain types of prohibited practice complaints 9/ while a

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5/ "In Wisconsin the running of the statute of limitations absolutely extinguishes the cause of action for in Wisconsin limitations are not treated as statutes of repose. The limitation of actions is a right as well as a remedy, extinguishing the right on one side and creating a right on the other, which is as of high dignity as regards to judicial remedies as any other right and it is a right which enjoys constitutional protection. . ." Heifetz v. Johnson, 61 Wis. 2d 111 (1973), at 115, quoting from Haase v. Sawicki (1963), 20 Wis. 2d 308, 311, 312, 121 N.W.2d 876 and Maryland Casualty Co. v. Belezny (1944), 245, Wis. 390, 393, 14 N.W.2d 177.

6/ See Turtle Lake School District, Decision No. 18198-A (9/81) at pages 5 and 6.

7/ See Section 802.09(3), Stats., Wisconsin Rules of Civil Procedure; Wood v. Worachek, 618 F.2d 1225, 1229 (7th Cir. 1980); Lak v. Richardson-Merrell, Inc., 95 Wis. 2d 659 (Wis. App. 1980); But, see Lak v. Richardson-Merrell, Inc., 100 Wis. 2d 641 (1981), overturning the Court of Appeals; Ausen v. Moriarty, 268 Wis. 167 (1954); and particularly Aarhus Oliefabrik, A/S v. A. O. Smith Corp., 22 F.R.D. 33 (D.C.E.D. Wis. 1958).

8/ Chauffeurs, id., at page 403.

9/ City of Madison, Decision Nos. 15079-D, 15171-C, (1/78) at page 14.

labor organization is a proper party only if it claims or possesses representational status regarding the employees involved. 10/ The Complainant SLUE maintains that it enjoys such status because it performs a wide variety of functions for the local union, which employs the services of SLUE's professional staff for bargaining and contract administration. This argument cannot be maintained.

The obligation of the District is to bargain with the WEEA and the fact that the WEEA chooses to utilize the staff of SLUE for those functions can no more confer independent representational status on SLUE than the regular employment of a local attorney for those purposes would confer representational status on the attorney's law firm. Were the WEEA to withdraw its authorization from SLUE's staff to represent it at the table and in grievances, SLUE could not make an independent claim of right to participate in those matters, because SLUE has no independent legal relationship with the District. It is this lack of any legal connection between SLUE as an organization and the District which renders largely irrelevant the great quantity of evidence adduced by the parties about the close interrelationship between the WEEA, KCEA, SLUE and the Wisconsin Education Association Council. While the arguments raised by the Complainant focus on the relationship of these organizations to one another, the proper focus is on the relationship between the District and these organizations. The record reflects that only the (KCEA) Wilmot Elementary Education Association enjoys representational status for the District's employees. The WEEA is therefore the only labor organization meeting the statutory criteria for a "party in interest" capable of bringing a prohibitive practice complaint against the District. 11/ Since the Complaint was originally brought by SLUE was not filed by a party in interest, the Commission is without subject matter jurisdiction to consider the merits of SLUE's claim.

The Complainant filed a motion seeking to amend its complaint to correct the name of the Complainant and make it clear that the complaint was brought by the Wilmot Elementary Education Association and the Kenosha County Education Association, both of which were named in the labor agreement between the parties. The Respondent objected to the proposed amendment, alleging that the one year statute of limitations had run on any claim that WEEA might bring relative to the non-renewal. The Complainant acknowledges the running of the statute prior to its motion to amend, but asserts that the filing of the complaint by SLUE served to give the District notice of the specific claim that it was being made against it and that the District could not, therefore, suffer any prejudice by the proposed amendment and relation back of the amendment to the date of the filing of the

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10/ Chauffeurs, supra, at page 402; Berlin Area School District, Decision 16325-A (11/78) at page 5; Turtle Lake School District, supra at pages 5 and 6; See also Weyauwega Joint School District No. 2, Decision No. 14373-B (6/77) at page 13, wherein the Examiner suggests that any party whose rights will be directly affected by the outcome of the case is a party in interest.

11/ Turtle Lake School District, supra, upon which the Complainant relies is inapposite. In that case, Northwest United Educators, (NUE) had been determined to be the successor to the previous bargaining representative for the District's teachers. The Examiner found that the parties had used the terms NUE and NUE-Turtle Lake interchangeably thereafter. In the instant case, neither the title "Southern Lakes United Educators" nor the acronym "SLUE" appear in the collective bargaining agreement and a review of the documents relating to the District in the Commission's files does not reveal any pattern of interchangeable use of titles. While there is one document in the Commission's files which uses the title "Southern Lakes United Educators/26", the document is a joint petition for mediation which, given its function, is unlikely to be attacked for any procedural defect and thus any failure by the District to object is not particularly relevant to the issue of interchangeable use.

original complaint. The Complainant notes that ERB 12.02(5)(a), Wis. Adm. Code 12/ allows amendment as a matter of right, and that the Examiner may waive any requirement of the rules where party does not demonstrate prejudice. 13/

The Complainant's assertion with regard to the liberal amendment to the pleadings before the Commission is correct. It assumes, however, that the Examiner has jurisdiction to entertain the proposed amendment. The Commission is an administrative agency with limited jurisdiction. Once that jurisdiction is properly invoked, the course of litigation is governed by the administrative rules established by the Commission and by Chapter 227, Stats., Wis. Adm. Procedures Act. 14/ The complaint filed by SLUE fails to state a claim within the subject matter jurisdiction of the Commission because SLUE does not meet the statutory requirements of a party in interest. As the filing of the complaint does not trigger the exercise of the Commission's jurisdiction, the case is a nullity. To allow the proposed amendment would amount to jurisdictional "boot-strapping" since it would involve the Examiner's conferral of jurisdiction upon himself through the addition of a party without whom there could be no case in the first place.

The Examiner is mindful of the fact that disposition of a case on the merits is the preferred result in an administrative proceeding. The question of jurisdiction is not, however, one that may be avoided through equitable considerations. If the statutory prerequisites to the Commission's jurisdiction are not satisfied by the filing of the complaint, the Examiner can see no other course than to recognize his lack of jurisdiction and dismiss the complaint in its entirety.

Dated at Madison, Wisconsin this 20th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Daniel J. Nielsen, Examiner

12/ (5) AMENDMENT.

(a) Who may amend. Any complainant may amend the complaint upon motion, prior to the hearing by the commission; during the hearing by the commission if it is conducting the hearing, or by the commission member or examiner authorized by the board to conduct the hearing; and at any time prior to the issuance of an order based thereon by the commission, or commission member or examiner authorized to issue and make findings and orders.

13/ ERB 10.01 Purpose and construction. These rules govern the conduct of all proceedings involving municipal employment relations before the Wisconsin employment relations commission and before fact finders, appointed pursuant to commission action, in municipal employment disputes. These rules shall be liberally construed to effectuate the purposes and provisions of subchapter IV of chapter III, Wis. Stats. The commission, or fact finder, as the case may be waive any requirements of these rules unless a party shows prejudice thereby.

14/ The provision of Chapter 227, and rules adopted pursuant thereto, govern procedure before the Commission. City of Milwaukee (Police Dept.), No. 16549-A (1979); State ex rel. Thompson v. Nash, 27 Wis. 2d 183 (1964). Thus the Examiner does not consider the possible applications of Sec. 803.01, Stats., Wisconsin Rules of Civil Procedure (not cited by either party) to the instant case.