STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENOSHA COUNTY, KENOSHA COUNTY BOARD OF SUPERVISORS, Complainant, vs. LOCAL 70 HIGHWAYS, AFSCME, AFL-CIO, LOCAL 990 COURTHOUSE AND CLERICAL, AFSCME, AFL-CIO; LOCAL 990 WELFARE PROFESSIONALS AFSCME, AFL-CIO; LOCAL 1090 PARKS, AFSCME, AFL-CIO; LOCAL 1392 INSTITUTIONS, AFSCME, AFL-CIO; GEORGE C. SERPE, PRESIDENT, LOCAL 70, BETTY CORNELL, PRESIDENT, LOCAL 990 COURTHOUSE AND CLERICAL; BONITA SALTZBERG, PRESIDENT, LOCAL 990 WELFARE PROFESSIONALS; JOHN MICH, PRESIDENT, LOCAL 1090; HELEN KAQUATOSH, PRESIDENT, LOCAL 1392, Respondents.	Case 62 No. 32157 MP-1507 Decision No. 21130-B

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Mark L. Olson and Mr. Jon E. Anderson, 815 East Mason Street, Suite 1600, Milwaukee, WI 53202, and Mr. William P. Nickolai, Corporation Counsel, Kenosha County, 912 - 56th Street, Kenosha, WI 53140, appearing on behalf of the Complainant.

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

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Lionel L. Crowley having, on July 25, 1984, issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled proceeding wherein he concluded that the Respondents had committed prohibited practices within the meaning of Sec. 111.70(3)(b)3, Stats., and that the Complainant had not committed any prohibited practices within the meaning of Sec. 111.70(3)(a)1 and 4, Stats.; and the Respondents having, on August 7, 1984, timely filed a petition for Commission review of all of the Examiner's Findings and Conclusions in said decision; and the parties having filed briefs in the matter, the last of which was received on October 3, 1984; and the Commission having reviewed the record including the Examiner's decision, the petition for review and the briefs filed in support of and in opposition thereto; and the Commission being satisfied that the Examiner's Findings of Fact, Conclusions of Law and Order should be affirmed in all respects,

NOW THEREFORE, it is

ORDERED 1/

That the Commission affirms and adopts as its own the Examiner's Findings of Fact, Conclusions of Law and Order issued in this matter on July 25, 1984.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of February, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, 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
(Footnote One Continued on Page Three)

KENOSHA COUNTY

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

Kenosha County initiated this proceeding by complaining that the Unions named in the caption had refused to bargain in violation of Secs. 111.70(3)(b)3 and 4 of the Municipal Employment Relations Act (hereinafter MERA) by insisting on a "modified coalition bargaining arrangement" wherein the local representing each of the respective units conditioned its willingness to engage in any successor agreement bargaining on the County's agreeing to bargain with a coalition of the locals as regards certain issues of common concern to the five bargaining units of County employes represented by the Unions. The units and the AFSCME locals certified to represent each are as follows: Local 70, Highways; Local 990, Courthouse and Clerical; Local 990, Welfare Professionals; Local 1090, Parks; and Local 1392, Institutions.

The Unions denied that their conduct constituted a prohibited practice and counter-complained that the County refused to bargain in violation of Secs. 111.70(3)(a)1 and 4, Stats., by refusing to follow its past practice of bargaining in a coalition arrangement on issues of common concern to the five units and by refusing to commit to dates for any bargaining meetings whatever.

THE EXAMINER'S DECISION

The Examiner held that the Unions' insistence, despite County objections, that the County agree to bargain with a coalition of units about common issues as a precondition for bargaining with each local over unit-specific issues violated the Unions' duty to bargain in good faith as required under Sec. 111.70(3)(b)3 and 4, Stats. He also held that the County did not violate its bargaining obligation under Sec. 111.70(3)(a)1 and 4, Stats., by its refusals to coalition bargain about common-concern issues, or by its refusals, under the circumstances, to commit to any meeting dates with any of the Unions. Accordingly, the Examiner ordered the Unions to cease and desist and post notices, and that the Unions' counter-complaint be dismissed in its entirety.

The Examiner reasoned that MERA and Sec. 111.70(4)(d)2.d. thereof 2/ permit but do not compel parties to bargain on a coalition basis, that is, on a basis

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1/ (Footnote One Continued)
for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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.

2/ Section 111.70(4)(d)2.d., Stats., reads as follows:

> Nothing in this section shall be construed as prohibiting two or more collective bargaining units from bargaining collectively through the same representative.

whereby representatives of more than one unit bargain as one with the resultant terms binding on all of the units involved. He further reasoned that the same is true of the "modified coalition bargaining" upon which the Examiner found the Union to have conditioned their willingness to meet with the County. That "modified coalition bargaining" structure was to be one whereby issues of common concern to the five units were to be addressed in coalition fashion with results binding on all units and issues of separate local concern were to be separately negotiated on a unit-by-unit basis with the results binding only on the respective unit involved.

The Examiner distinguished the arrangement insisted upon by the Unions herein from "coordinated bargaining" arrangements which he stated could lawfully be insisted upon under MERA. In the latter arrangement, a bargaining team composed of individuals from several bargaining units separately bargains separate agreements on behalf of several separate bargaining units.

The Examiner found that the Unions were attempting to have the five separately-certified bargaining units treated as one combined unit for purposes of bargaining issues of common concern to the units. The Examiner found it incompatible with Sec. 111.70(4)(d)2.a., Stats., 3/ for the Union to insist on so structuring the parties' bargaining. He reasoned that if the Unions prevailed, they would be permitted--over County objections--both to frustrate the Commission's prior certifications of the five separate units as appropriate units onto themselves, and to subordinate the unique interests of each bargaining unit to the interests of the coalition as a whole, at least as regards the common issues.

MERA does not, in the Examiner's view, contemplate a unilateral right of either party to alter the unit structures in that manner. He therefore concluded that the Unions were not entitled to insist on a coalition or modified coalition structure for the parties' bargaining. In that regard, the Examiner rejected the Unions' reliance on Sec. 111.70(4)(d)2.d., Stats. He concluded that that provision permits voluntary coalition bargaining, but does not authorize the Unions to compel the County to bargain at one time and place about terms to be binding in more than one unit. In the latter regard, the Examiner noted that the Commission had previously interpreted similar language in the Wisconsin Employment Peace Act 4/ as "simply permitting the same organization to represent employes of one employer in more than one separate bargaining unit." 5/

3/ That provision reads, in pertinent part, as follows:

> 2. a. The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employes concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit. . . .

4/ Section 111.02(6) of WEPA, renumbered 111.02(3), ch. 189 Laws of 1983 provides in relevant part, as follows:

> . . . Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employes in each separate unit have voted by secret ballot as provided in s. 111.05(2) so to do.

5/ Citing, Manitowoc Memorial Hospital, Dec. No. 11952 (WERC, 6/73) at p. 5.

PETITION FOR REVIEW

In its Petition for Review and supporting briefs, incorporating arguments raised in their briefs to the Examiner, the Unions challenge the validity of each of the Examiner's Conclusions of Law. The Unions maintain that coalition bargaining is legal and compellable under Sec. 111.70(4)(d)2.d. Stats. The clear meaning of that provision, the Unions argue, supports the propriety of the Unions' position. To conclude to the contrary would yield "absurd, comical results." The Unions further argue that since the Unions and the County have bargained issues of common concern on a coalition basis in the past, the Unions should be free to insist on such arrangements in the instant round of bargaining as well.

The County, in its brief, argues that the Examiner's Findings of Fact, Conclusions of Law and Order should be affirmed in all respects.

The County argues that Sec. 111.70(4)(d)2.d., Stats., neither requires nor allows coalition bargaining unless the parties voluntarily agree to bargain in that manner. The County would have the Commision reject the Unions' contention that coalition bargaining is needed to avoid comical and absurd results. In that regard, the County asserts that the Unions' argument assumes that the certified representative of each unit will bargain the same language and provisions--an assumption that the County asserts does not comport with the instant parties' bargaining history. To the contrary, the County argues, past negotiations have resulted in labor agreements containing dissimilar language in many areas and several contract proposals offered by both the County and the Unions that were individualized and unit-specific.

The County also argues that the Commission has previously concluded that the coalition bargaining format could not be imposed over County objections. In that regard, the County notes that a petition for mediation-arbitration filed on behalf of the instant five units sought resolution of the parties' negotiation impasse(s) through a single mediation-arbitration procedure. The County objected, and the Commission treated the matter as five separate mediation-arbitration proceedings by issuing five separate Orders of Dismissal. 6/

DISCUSSION

We entirely agree with the Examiner as regards both his outcome and rationale.

Contrary to the Unions' contention, Section 111.70(4)(d)2.d., Stats., does not expressly authorize the Unions to insist upon coalition bargaining as they have herein. As the Examiner concluded, that provision establishes that a given representative is not precluded by MERA from representing more than one bargaining unit; it does not provide a representative with a right to insist on structuring its bargaining on behalf of multiple units on a coalition basis where the municipal employer objects.

While the decision in Manitowoc Memorial Hospital, supra, involved different issues arising under the slightly different language of the Wisconsin Employment Peace Act (WEPA) noted above, the Commission's dictum in that case as to the limited meaning of the WEPA provision then numbered Sec. 111.02(6) lends at least some further support to the Examiner's conclusion herein that Sec. 111.70(4)(d)2.d., Stats., should be similarly viewed as a provision that "simply permits the same organization to represent employes of one employer in more than one separate bargaining unit."

The fact that in the past the County has voluntarily bargained with a coalition of the instant locals does not alter our conclusion in that regard. Establishment of a multi-unit coalition or modified coalition bargaining structure, like the contours of the bargaining unit itself, is a permissive subject of bargaining. The Unions may request that bargaining be so structured and the County may agree upon such an arrangement. However, after the term of any such agreement, the County is free to refuse to continue to bargain in the coalition or modified coalition structure that it had agreed to operate under to various degrees in the past. 7/

As the Examiner noted, MERA would not prohibit the majority representative of a given unit from including on its bargaining team individuals drawn from various other bargaining units. In that way, the respective Unions involved herein could designate the same team as the bargaining representatives for each of the units involved. For, the composition of a party's negotiating team is also a permissive subject of bargaining about which neither party is required to bargain if it chooses not to do so. 8/

Here, however, the majority representatives of the five units each conditioned its willingness to engage in any bargaining upon the municipal employer's agreeing to bargain common-concern issues on a multi-unit coalition basis. The Unions thereby violated their Sec. 111.70(3)(b)3, Stats., duty to bargain in good faith, and the Examiner's remedy for those Union prohibited practices was entirely appropriate.

Since, as noted, the record satisfies us that the Unions unlawfully conditioned their willingness to bargain about unit-specific concern issues on the County's agreeing to bargain with the coalition over issues of common concern to the units, we also affirm the Examiner's conclusion that the County did not commit a prohibited practice when it refused--in the face of such Union-imposed conditions--to set meeting dates with each local to bargain over unit-specific issues.

For the foregoing reasons, then, we have affirmed the Examiner's Findings of Fact, Conclusions of Law and Order in their entirety.

Dated at Madison Wisconsin this 22nd day of February, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

7/ See, Crawford County (Sheriff's Department), Dec. No. 20116 (WERC, 12/82) at 10 (" . . . the fact that a proposal may mirror a current practice does not render the same a mandatory subject of bargaining.")

8/ Unified School District No. 1 of Racine County, Dec. Nos. 13696-C and 13876-B (Fleischli with final authority for WERC, 4/78) at 138, citing, Teamsters Local 70, (Kockos Brothers), 183 NLRB 1330, 74 LRRM 1401, aff'd, 459 F.2d 694, 80 LRRM 2464 (CA 9, 1972).