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STATE OF WISCONSIN: IN CIRCUIT COURT WISCONSIN EMPLOYMENT
FOR SHAWANO AND MENOMINEE COUNTIES COMMISSION

SHAWANO COUNTY (MAPLE LANE
HEALTH CARE CENTER),

Plaintiff,

vs.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Defendant,

MEMORANDUM DECISION
Case no. 85-CV-86

and

Decision No. 22382

DISTRICT 1199W-UNITED
PROFESSIONALS FOR QUALITY,
HEALTH CARE,

Intervenor.

The Court will not repeat the facts in this case as they are not in dispute. This is an appeal from a decision of the Wisconsin Employment Relations Commission which granted a motion by 1199W to dismiss Shawano County's request for Unit Clarification. The bases of the Motion for Unit Clarification was the County's allegation that the LPN's would not be an appropriate separate Unit and that they should be combined with AFSCME which is the union that represents the other union employees at Maple Lane Health Care Center. The Commission granted the Motion to dismiss upon the following conclusions of law:

"1. That the anti-fragmentation ground upon which the County bases the instant petition amounts only to a claim that a combined unit would be more appropriate than the unit for which United Professionals was certified on February 27, 1984; and that a post-certification petition for unit clarification

is not a proper or available means of obtaining Commission adjudication of that claim.

2. That under Section 111.70(4)(d), Stats., a petition for unit clarification is not a proper or available means by which to seek the merger of two(2) existing bargaining units."

These are the conclusion of law that the County challenges.

The County alleges that there is no precedent for the conclusions arrived at by the Commission either in their decisions or in decisions by the Courts. However, the other parties point out that these have been the conclusions of the Commission in cases where there has been an attempt to expand a voluntarily recognized bargaining unit by including employees who were previously excluded. Quite frankly the Court does not see any distinction. As pointed out by the intervenor, the case would appear to be stronger in a case of non-voluntary recognition as opposed to voluntary recognition. The appropriateness of the unit would be examined by the Commission in the case of a non-voluntary recognition case and the failure to raise the issue of fragmentation at that hearing is an election by the employer that may come back to haunt them as it has in this case. As this Court reads the decision of the Commission, they are saying that a petition for unit clarification is an inappropriate way to raise the question of fragmentation and that such issues should have been raised before the certification or by appeal to the Circuit Court after the Commission's certification decision. Although the issue of fragmentation was not raised specifically by any party at the time of the hearing of 1199W petition for

election, the Commission must have by implication found that there was no fragmentation.

It does not appear to this Court that there are any grounds for clarification. Nothing has been alleged that constitutes a violation of an unequivocal statutory requirement. The prohibition against fragmentation is only one of the factors that must be considered by the Commission and it is clearly a discretionary issue when it is presented to the Commission. In other words, there are no hard and fast rules as to what constitutes fragmentation and what does not.

Finally, this is not a case where the plaintiff is left without a remedy, but rather a case where the plaintiff failed to seek the appropriate remedy at the proper time. Challenges to the appropriateness of a proposed bargaining unit should be done before certification while the petition for election is being considered. An appeal from the decision to certify a bargaining unit would also have been another remedy to raise the issue before a Circuit Court. When this Court gives due weight to the decision of the Commission because of their expertise in handling these types of matters, and when the Court considers the rationale for the Commission decision, the Court is satisfied that the conclusions arrived at by the Commission should be affirmed by this Court. It certainly appears that there is an improper use of a petition for unit clarification, especially when it is clear from the statements of plaintiff's counsel that their motive for filing such

a petition in the first place was their failure to be able to arrive at a negotiated contract with 1199W under the same or similar terms as the contract with AFSCME.

For all of the reasons stated above, the Court would affirm the decision of the Wisconsin Employment Relations Commission of February 25, 1985 with regard to the parties above and would ask that either counsel for the defendant or counsel for the intervenor prepare the necessary papers in conformity with the Court's decision above and presents said papers to the Court for signature after obtaining approval as to form from the other parties.

Dated: July 10th, 1985

BY THE COURT

Thomas M. Howell
Circuit Judge