

In the Matter of the Petitions of	:	
ASSOCIATION OF MENTAL	:	Case 221
HEALTH SPECIALISTS	:	No. 38766 DR(M)-427
	:	Decision No. 24794
Requesting Declaratory Rulings	:	
Pursuant to Section 111.70(4)(b)	:	Case 222
Wis. Stats., Involving a Dispute	:	No. 38861 DR(M)-428
Between Said Petitioner and	:	Decision No. 24795
ROCK COUNTY	:	

Mr. John S. Williamson, Jr., Attorney at Law, 120 North Morrison Street, Appleton, Wisconsin, 54911-5494, on behalf of the Association.

Mr. Bruce K. Patterson, Labor Relations Consultant, 3685 Oakdale Drive, New Berlin, Wisconsin, 53151, and Mr. Thomas A. Schroeder, Corporation Counsel, 51 South Main Street, Janesville, Wisconsin, 53545, on behalf of the County.

The Association of Mental Health Specialists having on May 8, 1987, filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to whether a proposal contained in Rock County's final offer in an interest arbitration proceeding was a mandatory subject of bargaining; and the County having on May 21, 1987 responded to said petition by modifying its final offer to eliminate the proposal which was the subject of the Association's petition; and the Association having on June 4, 1987 filed an amended petition for declaratory ruling as to a proposal contained both Rock County's initial and modified final offers; and the County having on June 8, 1987 filed a motion with the Commission seeking dismissal of the Association's petitions for declaratory ruling; and the parties thereafter having submitted written argument the last of which was received on July 23, 1987; and the Commission having considered the matter, makes and issues the following

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provide the pool of nurses by December 1st of each year for the following calendar year. Nurses added to this list after December 1st will be valid for the remainder of the calendar year. Placement of personnel on said list shall be subject to authorization by employer. Notice of said authorization shall be given by employer within fifteen (15) days of application for placement on said list.

Insofar as it is feasible, 'supervisory nurse' responsibilities shall be equally apportioned among those members listed in the pool.

Any individual required to exercise the responsibilities of 'supervisory nurse' shall be paid one and one-half times the salary he/she would regularly receive for working such shift. For purposes of computing time and one half, base pay shall include any shift differential paid to the nurse."

and that on May 8, 1987, the Association filed a petition for declaratory ruling with the Commission pursuant to Sec. 111.70(4)(b) asserting that the above quoted proposal was a non-mandatory subject of bargaining.

4. That on May 21, 1987, the County responded to the Association's petition through the following letter:

Enclosed, please find the revised Final Offer which provides for the deletion of Section. 15.04(A) Supervisory from said Final Offer. The deletion should resolve the basis for the above cited petition and allow the Commission to certify impasse on WERC Case 218 No. 38361 Arb 4302.

and that the County's revised final offer stated:

The Employer makes the following final offer on all issues in dispute for a successor Agreement to begin January 1, 1987 and remain in full force and effect through December 31, 1988.

1. All provisions of the 1985-86 Agreement between the parties not modified by a Stipulation Of Agreed Upon Items, if any, or this Final Offer shall be included in the successor Agreement between the parties for the term of said Agreement.
2. Delete Section 15.04 A. Supervisory of the 1985-86 Agreement from the successor Agreement (see attachment for specific language).
3. Term of Agreement: Beginning January 1, 1987 through December 31, 1988. The dates in the Agreement setting forth the terms shall be changed to reflect the above cited terms.

the following portion of the County's final offer was a non-mandatory subject of bargaining.

Article II -- Management Rights, Section 2.01

"(T)he management of the County of Rock and the direction of the work force is vested exclusively in the County, including, but not limited to . . . the right to create job descriptions and determine the composition thereof, the right to plan and schedule work . . . together with the right to determine the methods and manner of performing work . . ."

6. That the Management Rights proposal which is the subject of the Association's June 4, 1987 petition was present in the County's final offer at the time the Association filed its May 8, 1987 petition; that the Association did not challenge said proposal in its May 8, 1987 petition; and that by failing to make said challenge, the Association waived its rights under Secs. 111.70(4)(b) and 111.70(4)(cm)(6)(a) Stats., and ERB 32.10 and 32.12, to assert that the proposal set forth in Finding of Fact 5 is a non-mandatory subject of bargaining.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That as the Association has waived its right to obtain a declaratory ruling from the Wisconsin Employment Relations Commission pursuant to Secs. 111.70(4)(b) and 111.70(4)(cm)(6)(a) Stats., as to the proposal challenged in the June 4, 1987 petition, said proposal is considered a mandatory subject of bargaining.

2. That as the County has deleted from its final offer the proposal challenged by the Association in its May 8, 1987 petition for declaratory ruling, there is presently no dispute before the Commission concerning the duty to bargain as to said proposal which the Association is entitled to have resolved pursuant to Sec. 111.70(4)(b), Stats., declaratory ruling.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER 1/

That the Association's petitions for declaratory ruling are dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 20th day of August, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

(Footnote 1 continued on Page 4.)

(Footnote 1 continued from Page 3.)

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(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. 227.57 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.

ROCK COUNTY

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER DISMISSING PETITIONS FOR
DECLARATORY RULING

Positions of the Parties

The County submits that the Association's petitions for declaratory ruling should be dismissed because the Association could have but did not challenge the Management Rights proposal in the May 8, 1987 petition for declaratory ruling and because the County has dropped the proposal which was the subject to the May 8 petition. The County cites Racine United School District, Dec. No. 21689 (WERC, 5/84) as support for its position.

The Association asserts that Racine is inapplicable herein. It argues that the County's withdrawal of the Supervisory proposal challenged in the May 8, 1987 petition does not remove the underlying issue of whether the County will still proceed under its amended offer to require unit employees to perform supervisory work. Thus the Association contends it should have the right to pursue its challenge to the Management Rights proposal under which the County may seek to compel unit employees to perform supervisory work. The Association alleges that as the County has not disclaimed the possibility of using the Management Rights clause in what the Association believes would be a non-mandatory manner, the Association should be able to pursue its petition. The Association further alleges that it cannot be found to have waived its right to challenge the Management rights proposal because it did not anticipate that the County would drop the Supervisory proposal and it had no knowledge that the County would or could rely on a Management Rights clause to obligate unit employees to perform supervisory duties. Thus, the Association urges the Commission to deny the motion and to schedule hearing.

Discussion

As we concluded in Racine and in the Madison Metropolitan School District 2/ decision extensively quoted therein, the Commission's obligation under Sec. 111.70(6) Stats., to ensure that the parties have available to them a fair, speedy and above all peaceful procedure for settlement of disputes requires that the piecemeal litigation of matters contained in a party's final offer be prohibited. In our view, ERB 32.10(1) and 32.12(3) 3/ mandate dismissal of the

2/ Dec. No. 16598-A (WERC, 1/79).

3/ **ERB 32.10 Final offers.** (1) CONTENTS GENERALLY. Final offers shall contain proposals relating only to mandatory subjects of bargaining, except either final offer may contain proposals relating to permissive subjects of bargaining if there is no timely objection by the other party to the inclusion of the proposal in such final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.70(4)(cm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERB 32.12 or injunction proceedings referred to in s. ERB 32.18(1).

. . .

ERB 32.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal or proposals relate to mandatory subjects of bargaining (1)

(Footnote 3 continued on Page 6.)

Association's June 4, 1987 petition because the Association could have but did not therein object to the Management Rights proposal. In response to the Association's argument that it was surprised by the County's decision to drop the supervisory proposal and is concerned about the potential use of the Management Rights proposal, 4/ we conclude that the need to avoid piecemeal litigation is of such paramount importance that such concerns are appropriately addressed during the bargaining process which precedes the submission of final offers so that a party can then prudently evaluate what, if any, portions of a final offer it finds non-mandatory and include same in its petition.

Dated at Madison, Wisconsin this 20th day of August, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner

(Footnote 3 continued from Page 5.)

WHO MAY FILE. Either party may file a petition, or both of the parties may file a stipulation, to initiate such a declaratory ruling proceeding before the commission.

(2) WHERE TO FILE. A petition or stipulation may be filed with the commission during negotiations, mediation or investigation. If a petition or stipulation is filed after the investigator calls for final offers, the petition or stipulation for declaratory ruling must be filed within 10 days following the service on the commission or its