

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 1947-B, AFSCME, AFL-CIO,	:	
	:	
Complainant,	:	
	:	Case 53
vs.	:	No. 44369 MP-2380
	:	Decision No. 26708-A
TOMAH AREA SCHOOL DISTRICT,	:	
	:	
Respondent.	:	
	:	

ORDER DENYING MOTION TO SUPPLEMENT THE RECORD

Local 1947-B, AFSCME, AFL-CIO, hereinafter Complainant, having, on July 31, 1990, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Tomah Area School District, hereinafter Respondent, committed certain prohibited practices in violation of the Municipal Employment Relations Act; and the Commission having, on December 10, 1990, appointed Lionel L. Crowley, a member of its staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats.; and hearing on said complaint having been held in Tomah, Wisconsin on January 9, 1991; and on February 12, 1991, Respondent filed a Motion to Supplement the Record by admitting into evidence the "In-Processing Sheet" of a witness in this matter which allegedly related to the credibility of that witness; and additionally, Respondent offered the affidavit of the Respondent's business manager for the purpose of identifying and authenticating the "In-Processing Sheet"; and the undersigned having considered the Motion to Supplement the Record makes and issues the following;

ORDER

The Motion to Supplement the Record is hereby denied.

Dated at Madison, Wisconsin this 2nd day of April, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
 Lionel L. Crowley, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION
TO SUPPLEMENT THE RECORD

Respondent in its Motion asserts that the "In-Processing Sheet" should be admitted because it is directly relevant to the credibility of the testimony of a witness for Complainant. Essentially, the purpose of this document is to impeach the witness. Section 906.08(2), Stats., prohibits the impeachment of a witness on the basis of extrinsic evidence on collateral facts. The "In-Processing Sheet" is extrinsic evidence because it is evidence sought to be admitted other than through the examination of the witness whose impeachment is sought. 1/ The "In-Processing Sheet" also pertains to a collateral matter. A matter is not collateral if it is independently provable regardless of the contradiction. 2/ In other words, would the evidence be admitted for any purpose other than to impeach the witness? 3/ The undersigned finds that the "In-Processing Sheet" is collateral as it would not be admissible for any other purpose in the instant case. The issue present in this case is whether the Respondent violated the existing contract by changing the work schedule of employees. The "In-Processing Sheet" is not directly relevant to the present contract language nor does it indirectly relate to the contractual language or to the interpretation of the contract either as bargaining history or past practice. There appears to be no basis for its admission with respect to the present contractual language. The "In-Processing Sheet" has no relevance on its own to the issue and therefore is collateral.

It is also questionable whether the "In-Processing Sheet" has any relevance to the witness's testimony. The witness's testimony relates to his initial job interview which occurred on a date not specified in the record. 4/ It is reasonable to conclude that in the normal course of events, the Respondent would have interviewed the witness before deciding to hire him. It would be unlikely that the witness would be checked in or "In-Processed" before he was offered and accepted the job. The "In-Processing Sheet" is dated September 17, 1980 and the evidence fails to establish that the interview testified to by the witness occurred on that date. The document does not tend to prove that which it is asserted to prove and thus is not relevant.

In any case, the "In-Processing Sheet" has no relevance to this matter for any reason other than impeachment of the witness. It comes squarely within the rule that impeachment of a witness on the basis of collateral facts introduced by extrinsic evidence is prohibited. 5/ The affidavit of the present Business Manager is also not admissible as it merely authenticates the "In-Processing Sheet" which is not admissible. Therefore, the Motion to Supplement the Record has been dismissed.

Dated at Madison, Wisconsin this 2nd day of April, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Lionel L. Crowley, Examiner

1/ State v. Sonnenberg, 117 Wis. 2d 159, 344 N.W. 2d 95 (1984) citing T. Warshafsky, Trial Handbook for Wisconsin Lawyers, Sec. 315, p.500 (1981).

2/ Jones on Evidence, Sec. 25.8.

3/ Wigmore, 3A Evidence, Sec. 1003.

4/ TR-18.

5/ McClelland v. State, 84 Wis. 2d 146, 267 N.W. 2d 843 (1978).