

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BROWN COUNTY MENTAL HEALTH CENTER  
PROFESSIONAL EMPLOYEES ASSOCIATION

Complainant,

vs.

BROWN COUNTY,

Respondent.

Case 484

No. 48660 MP-2684

Decision No. 27624-A

Appearances:

Mr. Frederick J. Mohr, Attorney at Law, 414 East Walnut Street, Suite 261, Post Office Box 1015, Green Bay, Wisconsin 54305, appearing on behalf of the Complainant.

Mr. John Jacques, Assistant Corporation Counsel, Brown County, 305 East Walnut Street, Post Office Box 23600, Green Bay, Wisconsin 54305-3600.

ORDER DENYING MOTION TO DISMISS

Daniel Nielsen, Examiner: Brown County Mental Health Center Professional Employees Association (hereinafter referred to as either the Association or the Complainant) filed a complaint of unfair labor practices with the Wisconsin Employment Relations Commission (Commission) on January 19, 1993, alleging that Brown County (hereinafter referred to as either the County or the Respondent) had committed prohibited labor practices within the meaning of §111.70(3)(a)5 of the Municipal Employment Relations Act (MERA) when its agents recommended the deletion of an Inpatient Psychiatric Social Worker's position in violation of a grievance settlement agreement. The Commission appointed Daniel Nielsen of its staff to serve as the hearing examiner, and to conduct a hearing, and make and issue findings of fact, conclusions of law and orders. On February 4, 1993, the Respondent filed a Motion to Dismiss, asserting that the collective bargaining agreement between the parties made no mention of the settlement agreement, that the settlement agreement had been fully complied with, and that the settlement agreement lacked standing as a collective bargaining agreement, and that the Commission therefore lacked jurisdiction to hear the case. The Complainant did not reply to the Motion. Now, having considered the arguments of the Respondent. the pleadings on file,

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and the exhibitry attached to the Complaint and the Motion to Dismiss, and being fully advised in the premises, the Examiner makes the following

ORDER 1/

The Motion to Dismiss is denied.

Signed this 19th day of April, 1993 at Racine, Wisconsin:

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Daniel Nielsen /s/  
Daniel 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 section 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 orders 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 in 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 new 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 an exceptional delay in receipt of a copy of any findings or order it may extend the time for another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING ORDER DENYING  
MOTION TO DISMISS

The Motion to Dismiss asserts that the settlement agreement is not a collective bargaining agreement, and that the 1991-92 collective bargaining agreement contained no provision which was violated by recommending the deletion of the social Worker position. The contract specifically reserves to management the right to determine the number of positions. Since there is no provision of the contract affected, the Respondent argues, there is no basis for the Commission to defer to arbitration.

Grievance settlement agreements are collective bargaining agreements within the meaning of Section 111.70(3)(a)5. 2/ The challenges raised by the County to the Association's claims about the scope and duration of the settlement agreement here represent questions of fact, requiring an evidentiary hearing. Inasmuch as the complaint, on its face, states a claim under Section 111.70, and since there are disputed material facts, the Examiner has denied the Motion to Dismiss.

Signed this 19th day of April, 1993 at Racine, Wisconsin:

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Daniel Nielsen /s/  
Daniel Nielsen, Examiner

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2/ Oneida County, Dec. No. 15374-B (Yaeger, 12/77), affirmed, Dec. No. 15374-C (WERC 6/78)