STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARK THOMAS, on behalf of AFSCME LOCAL 171, Complainant, vs. STATE OF WISCONSIN (UW HOSPITAL AND CLINICS), Respondent, and WISCONSIN STATE EMPLOYEES' UNION, COUNCIL 24, AFSCME, AFL-CIO, Intervenor.	Case 352 No. 50059 PP(S)-203 Decision No. 28072-A

Appearances:

Boushea, Segall & Joanis, 2000 Engels Street, Suite 203, South Towne Office Park, Monona, WI 53713 by Ms. Helen Marks Dicks, Attorney at Law, appearing on behalf of the Complainant, Local 171, WSEU, AFSCME.

Mr. David Vergeront, Legal Counsel, Department of Employment Relations, Post Office Box 7855, Madison, WI 53707-7855 appearing on behalf of the Respondent State of Wisconsin.

Lawton & Cates, S.C., 214 West Mifflin Street, Post Office Box 2965, Madison, WI 53701-2965 by Mr. Richard V. Graylow, Attorney at Law, appearing on behalf of the Intervenor, Wisconsin State Employees Union, Council 24, AFSCME.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING MOTION TO INTERVENE, GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS, AND GRANTING MOTION TO AMEND

Daniel J. Nielsen, Examiner: Mark Thomas, on behalf of AFSCME Local 171, (hereinafter referred to as either the Complainant or Local 171) filed a complaint on November 3, 1993, alleging that the University of Wisconsin Hospital and Clinics (hereinafter referred to as either the Respondent or the State) had refused to bargain with Local 171 by breaking off local negotiations,

unilaterally implementing the employer's position on work

schedules for Maintenance Mechanics without first going through advisory arbitration, and communicating false information regarding bargaining directly to members. The complaint further alleged that the Respondent interfered with protected rights of employes by targeting union activists with its scheduling proposals, imposing discipline on one union activist, and by implementing its proposal on work schedules. The complaint alleged that these actions constituted unfair labor practices within the meaning of Section 111.84, Stats., the State Employment Labor Relations Act (SELRA).

The Respondent filed an Answer, denying any unfair labor practices, and raising as affirmative defenses a lack of standing by Thomas or Local 171, and a failure to exhaust contractual remedies. A hearing was held on July 25, 1994 in Madison, Wisconsin, at which time the standing question was taken under advisement pending [proof, and a dispute over the Respondent's demand for production of minutes of Union meetings was resolved. Part of the resolution was an in camera inspection of the minutes by the Examiner. Additional hearing was scheduled after the completion of the inspection. Prior to any additional hearing, the Wisconsin State Employees Union, Council 24, AFSCME, AFL-CIO (hereinafter referred to as the Intervenor or Council 24) moved to intervene in the case. In its Motion, Council 24 asserted that it was the sole and exclusive bargaining representative of the employes involved, that Local 171 lacked standing to bring the complaint, and that the complaint should be dismissed.

A hearing was held on the Motion to Intervene/Motion to Dismiss on November 9, 1994 at the Commission's offices in Madison. Proceedings on other issues were held in abeyance. The parties presented such testimony, exhibits, stipulations and other evidence as was relevant to the Motions. The Complainant moved to amend its complaint to individually name Jon Brickner, Laradene Reinke and Marilyn Williams as complainants. The Respondent and the Intervenor opposed the Motion, based upon failure to exhaust contractual remedies and the passage of more than one year from the date of the alleged interference to the time of the request for an amendment to the complaint.

The Respondent and the Intervenor submitted written arguments in favor of the Motion to Intervene/Motion to Dismiss. The Complainant submitted responsive arguments, and the record was completed on December 23, 1994. Now, having considered the evidence, the arguments of the parties, and the record as a whole, the Examiner makes the following

FINDINGS OF FACT

1. The State of Wisconsin is an employer and operates, among other enterprises, the University of Wisconsin Hospitals and Clinics. The State's agent for collective bargainingand contract administration is the Department of Employment Relations, hereinafter referred to as DER. DER maintains its offices at 137 East Wilson Street, Madison, WI 53707-7855. The Secretary of DER is Jon Litscher. The Chief Spokesperson and Administrator for Collective Bargaining in

DER is Glen Blahnik.

2. The Wisconsin State Employees' Union, American Council of State County and Municipal Employees, Council 24, AFL-CIO, hereinafter referred to as Council 24, is a labor organization, which maintains its offices at 8033 Excelsior Drive, Madison, WI 53717. The Executive Director of Council 24 is Martin Beil.

3. University of Wisconsin Employees, Madison, Local 171, hereinafter referred to as Local 171, is a labor organization chartered by the American Federation of State, County and Municipal Employees, and is one of 51 affiliated locals of Council 24. Local 171 maintains its offices at 306 North Brooks Street, Madison WI 53715. Marc Thomas is a Steward for Local 171, and has served on the Local's bargaining team on two occasions in the past.

4. In a series of decisions issued between August 25 - August 28, 1972, the Wisconsin Employment Relations Commission certified "American Federation of State, County and Municipal Employees, Council 24, and its affiliated Locals" as the exclusive collective bargaining representative for security and public safety employes (Dec. No. 11243), blue collar and non-building trades employes (Dec. No. 11244), and technical employes (Dec. No. 11245) in the classified service of the State of Wisconsin. These certifications were issued pursuant to stipulations submitted by the State and Council 24.

5. The State and Council 24 have been parties to a series of collective bargaining agreements, including one for the period from November 3, 1991 through June 30, 1993. This agreement applied to employes in the following six bargaining units: Blue Collar and Non-Building Trades (BC): Clerical and Related (CR): Professional Research, Statistics and Analysis (RSA); Technical (T); Security and Public Safety (SPS); and Professional Social Services (PSS). The letters in parentheses indicate the notations used in the contract to indicate which bargaining units are covered by a particular Article, Section or Subsection.

6. Local 171 has jurisdiction over employes of the University of Wisconsin-Madison in the Technical, Blue Collar and Security and Public Safety bargaining units.

7. The bargaining team for the 1991-93 State contract negotiations on the Union side was comprised of Martin Beil as the chief spokesperson, as well as the President, Assistant Executive Director and Research Coordinator of Council 24, one representative of the Research, Statistics and Analysis bargaining unit, and five representatives of the Blue Collar and Non-Building Trades, Clerical and Related, Technical, Security and Public Safety and Professional Social Services bargaining units.

8. The representatives of the bargaining units on the bargaining team are elected from conferences within the Council. The bargaining conferences are comprised of delegates elected by each local union having members within a bargaining unit. The conference formulates bargaining proposals and prioritizes them and gives the bargaining team instructions on the conduct of bargaining. The bargaining team from a particular unit participates directly in the negotiations with the State as part of the overall Council 24 bargaining team. The procedures, duties and responsibilities of the bargaining unit conferences and teams are set forth in ARTICLE VI of the

ARTICLE VI
BARGAINING UNIT CONFERENCES

Section 1. There shall be established within this Council a series of bargaining unit conferences. One such conference shall be established for each bargaining unit for which this Council and/or its affiliated locals are the certified bargaining agents.

Section 2. A regular meeting of each bargaining unit conference shall be held in June of each even-numbered year. Locals shall be entitled to delegates and votes in such meetings based on the same formula used for determining delegates and votes at Council conventions; provided, however, that the figures used for any such meeting shall be based on the number of members included in the bargaining unit which is included in the jurisdiction of each bargaining unit conference separately. In the case of any statewide local whose jurisdiction falls exclusively within a single bargaining unit, the number of delegates who will be elected to cast such local's vote in such bargaining unit conference shall be determined in accordance with the local's constitution. Delegates must meet the same eligibility requirements provided for convention delegates and must, in addition, be employed in the jurisdiction of the bargaining unit which is included in the jurisdiction of the Bargaining Unit Conference. In the election of local union delegates to bargaining conferences, only members employed within the unit the delegate represents shall be eligible to vote.

Section 3. Each bargaining unit conference shall allow a local union president or vice president to attend any bargaining unit conference, as an observer, without voting rights, if the local he/she represents has any members which fall into that bargaining unit.

Section 4. Special meetings of any bargaining unit conference may be called by the executive director of the Council and may be called under rules and procedures adopted by any regular or special meeting of the bargaining unit conference. Unless a bargaining unit conference specifically adopts different rules, the delegates to any special meeting shall be those persons who were delegates to the most recent meeting of the conference.

Section 5. Each bargaining unit conference will, for its unit:

(a) determine the bargaining proposals;
(b) assign initial priorities to those proposals;
(c) adopt procedures for establishing the bargaining team;
(d) give the bargaining team clear authority and instruction;
(e) receive and act on reports on matters concerning the bargaining process and other matters of direct concern to the unit.

Section 6. Each bargaining team will, for its unit:

(a) keep the chief negotiator fully informed of the unit's proposals and priorities.
(b) modify or drop those proposals and priorities as it deems necessary.
(c) determine whether to tentatively agree to any proposal by the employer.
(d) keep the bargaining unit informed on the progress of negotiations or lack thereof.

Section 7. Tentative agreement on an entire contract for any unit can only be achieved by majority vote of the bargaining team. Once a tentative agreement on an entire contract has been reached, the bargaining team will report to the bargaining unit conference, with each member of the team giving his/her recommendation for acceptance or rejection.

Section 8.

(a) Once a tentative agreement on an entire contract has been reached, the bargaining unit conference can only make a recommendation of either acceptance or rejection of the tentative agreement to the membership of the unit.

(b) Each delegate to a bargaining unit conference shall be entitled to one vote on actions taken under this section.

(c) Each bargaining unit conference shall elect two representatives to count the ballots for that unit after

the last ratification meeting.

Section 9. The contract shall be ratified by a simple majority of members voting in each unit.

9. Included among the provisions of the 1991-1993 collective bargaining agreement are provisions which delegate the negotiation of certain issues to the employing unit and the affected local union, including:

ARTICLE XI - Miscellaneous

. . .

Section 2: Union-Management Meetings

. . .

11/2/9 Agenda

Items to be included on the agenda for the aforementioned Labor-Management meetings are to be submitted at least five (5) days in advance of the scheduled dates of the meeting if at all possible. The purpose of each meeting shall be:

. . .

(i) (BC, T, CR) Negotiate hours of work, work schedules and overtime assignments. In the event no agreement is reached, either party may appeal to arbitration pursuant to the procedures of Article IV, Section 2, Step Four, except that the decision of the arbitrator shall be advisory. If the advisory award is not implemented by local management, a representative of the department, a representative of the Department of Employment Relations, and a representative of the Wisconsin State Employees Union, District Council 24, will meet to discuss the implementation of the award.

. . .

10. On November 3, 1993, Marc Thomas on behalf of Local 171 as "the certified bargaining agent for employes in the Blue Collar, Technical, and Security and Public Safety bargaining units who work at the University of Wisconsin-Madison" filed the instant complaint. Thomas was acting pursuant to a vote of the membership of Local 171. The complaint alleges that issues concerning hours of work for food service workers and maintenance mechanics at the University of Wisconsin Hospitals and Clinics had been delegated to local negotiations in the 1991-93 collective bargaining agreement. The complaint claimed that the State had failed to

bargain in good faith with Local 171 and had unilaterally implemented its position without following the advisory arbitration impasse procedures in the master contract.

11. The complaint filed by Thomas further alleged that three employes -- Marilyn Williams, Jon Brickner and Laradene Reinke -- had been discriminated against by the State because of their activism on behalf of Local 171. The complaint alleged retaliation against Williams took place in January and February of 1993, when the State proposed a work schedule that was unfavorable to her as part of the local negotiations. Addition retaliation was alleged, in that Williams received a reprimand on September 23, 1993, for her actions as a Union steward. The alleged retaliation against Jon Brickner and Laradene Reinke took place on August 1, 1993, when the State implemented a work schedule that moved them to a rotating shift.

12. On July 8, 1994, the State filed an answer to the Complaint, denying that Local 171 was the certified bargaining agent for any employes and asserting that Marc Thomas or Local 171 had no standing to bring the complaint. The Answer denied the commission of any unfair labor practices. With respect to individual employes alleged to have been discriminated against, the State also asserted that they had failed to exhaust their remedies under the contract's grievance procedure.

13. On July 25, 1994, a hearing was held before the Examiner, at which time a motion was brought by the State to dismiss the action and another motion was made to defer the allegations of discrimination to the grievance procedure. The motion to defer was denied. The motion to dismiss based upon a lack of standing was denied pending the presentation of proof on the issue. Because of pending discovery issues, additional hearing was put over to October 12th.

14. On October 6, 1994 Council 24, through its attorney, moved to intervene and to dismiss the complaint, alleging that it was the only entity with standing to bring a refusal to bargain charge against the State on behalf of employes within its bargaining units. As a result of these motions, the October 12th hearing was rescheduled.

15. A hearing was held on November 9, 1994 on the motions brought by Council 24. At this hearing, the State renewed its Motion to Defer the complaints of discrimination to the grievance procedure. Local 171 moved to allow the individual complainants to intervene, or in the alternative to amend the complaint to name the three individuals as complainants. The parties stipulated that grievances had been filed by all three employes over the actions challenged by the original complaint. The parties further stipulated that the three employes would have filed complaints individually had Thomas and/or Local 171 not filed the instant proceeding. The State opposed the Complainant's Motions, again alleging that the matter should be deferred, and that the one year statute of limitations had expired prior to the Motion.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. The State of Wisconsin is an employer within the meaning of Section 111.81(8), SELRA.

2. The Wisconsin State Employees' Union, American Council of State County and Municipal Employees, Council 24, AFL-CIO, is a labor organization within the meaning of Section 111.81(12), SELRA, and is a party in interest, within the meaning of Section 111.07(2)(a), WEPA and ERC 22.02(1), to disputes involving the State and employes in the Technical, Blue Collar and Security and Public Safety bargaining units. Council 24 is therefore a proper party to the instant complaint and is entitled to intervene in this action.

3. University of Wisconsin Employees, Madison, Local 171 is a labor organization within the meaning of Section 111.81(12), SELRA. Local 171 neither claims nor possesses status as the representative of a majority of the employes in any appropriate bargaining unit established by Section 111.825, SELRA. Local 171 is therefore not a party in interest, within the meaning of Section 111.07(2)(a), WEPA and ERC 22.02(1), to disputes involving the State and employes in the Technical, Blue Collar and Security and Public Safety bargaining units.

4. Marilyn Williams, Jon Brickner and Laradene Reinke are employes within the meaning of Section 111.81(7), SELRA, and are parties in interest, within the meaning of Section 111.07(2)(a), WEPA and ERC 22.02(1), to disputes involving allegations of retaliation against them for their involvement in protected concerted activities.

5. University of Wisconsin Employees, Madison, Local 171 was acting as the "representative", within the meaning of ERC 22.02(1), of Williams, Brickner and Reinke when it filed the instant complaint of unfair labor practices, and the complaint is therefore a valid pleading under Chapter ERC 22, Wisconsin Administrative Code.

6. The instant complaint of unfair labor practices was filed within one year of the alleged acts of retaliation against Williams, Brickner and Reinke, and is therefore timely under Section 111.07(14), WEPA.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

1. The Motion to allow Wisconsin State Employees Union, Council 24, AFSCME to intervene is hereby granted.

2. The Motion to Dismiss is hereby granted as to the allegations that the State of

Wisconsin refused to bargain in good faith with AFSCME Local 171.

3. The Motion to dismiss is hereby denied as to the allegations that the State of Wisconsin interfered with the protected rights of Jon Brickner, Laradene Reinke and Marilyn Williams or discriminated against them for the exercise of such rights.

4. The Motion to Amend the Complaint to allow Jon Brickner, Laradene Reinke and Marilyn Williams to be named as individual complainants is hereby granted.

Dated at Racine, Wisconsin this 29th day of March, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Daniel J. Nielsen /s/
Daniel J. Nielsen, Examiner

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO INTERVENE, GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS, AND GRANTING MOTION TO AMEND

The issues in this Motion are (1) whether the WERC has jurisdiction to determine which of two labor organizations has the authority to bring unfair labor practice charges against a State employer; (2) whether the status of "party in interest" may be held by two labor organizations with respect to the same group of employes for the purpose of bringing a refusal to bargain charge under the State Employment Labor Relations Act; and (3) whether the individual employes may be named as Complainants, either through intervention or amendment, where the Motion to accomplish this is brought more than one year after the acts complained of, but the underlying complaint was filed in a timely fashion by an entity which is arguably not a party in interest.

I. The Arguments of the Parties

A. The Argument of the Complainant, Local 171, AFSCME:

Local 171 asserts that the WERC should not entertain the Motions to Dismiss because they are, at base, arguments over internal Union affairs. Local 171 and Council 24 disagree about the division of duties between them with respect to defending the rights of the employes at the University. Both are subdivisions of the same International Union, and the AFSCME International has established procedures by which internal disputes are to be resolved. These procedures must be exhausted before the WERC asserts jurisdiction. Thus the WERC should find that it is without jurisdiction over the dispute.

If the Examiner asserts the WERC's jurisdiction over the dispute, Local 171 argues that it is clearly a "party in interest" within the meaning of ERC 2.01. The complaint asserts a failure to bargain in good faith about the terms of the local agreement, and Local 171 is the labor organization with the responsibility for bargaining that local agreement. Marc Thomas had standing to bring this action in his own name, since individuals may be parties in interest, and also had the authority to bring the action on behalf of the Local, which directed him to file the charge.

Even if the Examiner concludes that this charge may only be brought by the certified bargaining agent for the affected employes, Local 171 maintains that it enjoys that status through the certification of Council 24 "and its appropriate affiliated Locals" as the bargaining agent. Local 171 is the appropriate affiliated Local for the blue collar employes of the University of Wisconsin - Madison, and has been authorized to conduct local negotiations by the collective bargaining agreement between Council 24 and the State. While Council 24 could also assert all of the claims in the complaint, it cannot oust Local 171. Both labor organizations have equal status in

the area of local negotiations, and the Council 24 is not a necessary party to this action since the Local has already acted to protect the rights of employes at the local bargaining table. Both Local 171 and Council 24 are "AFSCME". Local 171 points out that the rules require merely an interested party, and do not require the most interested party, or establish a hierarchy of interested parties. The WERC should not involve itself in the morass of internal Union affairs by attempting to determine who is the better bargaining agent between the two labor organizations that simultaneously enjoy representative status. Instead, it should content itself that one of the representatives has brought a complaint, and that a party in interest is already present in the action.

Thus Council 24 is not a necessary party, and the Motions to Intervene and Dismiss should themselves be dismissed.

Local 171 points out that it has been delegated the duty to bargain the local agreement through its own Constitution and through the collective bargaining agreement. Even if Council 24 is determined to be the sole certified bargaining representative, this delegation should be recognized by the Commission. The collective bargaining agreement recognizes that some fundamental functions are exercised at the local level, including dues deduction, initial grievance processing, steward selection and Labor-Management meetings. DER and the Council 24 play a very limited role in the contract, primarily concerning themselves with the negotiation of wages and fringe benefits. Issues concerning working conditions are almost exclusively left as matters of local concern, with the Locals bargaining on behalf of the employes and local employing units representing the rights of management. DER and Council 24 do not negotiate or sign local agreements. Their only involvement is in the event that a local issue goes to advisory arbitration and the local parties refuse to accept the award. Nowhere else does the contract give Council 24 the right to reassert itself as a party to local negotiations. Inasmuch as it plays no role in local negotiations, the Commission should determine that Council 24 has delegated all responsibility for these negotiations to the Local, including the right to bring a complaint when the State refuses to bargain in good faith.

Aside from the right to bring the action on the State's refusal to bargain, Local 171 argues that it has standing to bring a complaint on behalf of the individual members who suffered retaliation for their union activities. ERC 2.12 allows individuals to be represented "by counsel or otherwise". The complaint here is the essence of representation by the Local through its agent, Marc Thomas. This is the traditional role of the Local Union, and the Commission should accept the complaints of the individuals even if it decides that Council 24 is the more appropriate party for the refusal to bargain charge.

Finally, Local 171 argues that the individual complainants should be allowed to intervene as parties to this case, since the action clearly was brought on their behalf, and the employer had timely notice of their claims. The argument that the statute of limitations has passed is flawed, argues the Local, since the matters were still pending in the grievance procedure when the complaint was filed and when the Motion was brought. The time limits for the individual

complainants should be calculated from the exhaustion of the grievance procedure, and thus the Motion to Amend should be deemed timely.

B. The Arguments of the Intervenor, Council 24

Council 24 asserts that the complaint should be dismissed. SELRA requires the State to bargain only with "... the representative of a majority of its employes in an appropriate bargaining unit." Council 24 is the exclusive bargaining representative for the employes in this bargaining unit. It has negotiated and enforced their collective bargaining agreement, and has brought all of the actions before the WERC necessary to accomplish these ends. No other labor organization can make this claim, and no other labor organization is legally entitled to assert representation status for these workers. Given that Local 171 does not enjoy status as the exclusive bargaining representative, it cannot bring this action.

Council 24 notes that both it, as the exclusive bargaining representative, and the employer agree that Local 171 has no standing to assert these claims. The contract repeatedly references the "parties" and these references are all to DER and Council 24. Since the Local's claim is rooted in the collective bargaining agreement, and since both parties to the contract are asserting the same interpretation of its provisions, the Commission should defer to the parties' understanding of the contract.

Council 24 points out that Commission case law requires dismissal of Local 171's complaint. Both the Examiner and the Commission considered this issue in Southern Lakes United Educators Council #26 v. Jt. School District No. 9, Towns of Salem & Randall (Wilmot School). 1/ In that case, a complaint was brought asserting that the school district had refused to bargain by failing to provide necessary information to the Association for grievance processing, and claiming a violation of the collective bargaining agreement for the non-renewal of a teacher. The case was filed by the UniServ Council, rather than by the Local Union. It was dismissed for lack of standing, because only the exclusive bargaining representative was a party in interest to the refusal to bargain. This analysis was employed by the Commission as recently as 1991, when it noted in City of LaCrosse (Police Department) 2/ that an employer's duty to bargain "runs not to the individual municipal employes but only to the bargaining representative.." Council 24 is the exclusive bargaining representative, and as such is the only "party in interest" that may assert the

---

1/ The Examiner's decision was Dec. No. 21092 (10/83) and is hereinafter cited as Southern Lakes; the Commission's decision was Dec. No. 21092-A (10/84) and is hereinafter cited as SLUE Council 26.

2/ Dec. No. 26518-B (1/91).

claims contained in this complaint. The lack of a "party in interest", as required by ERC 12.02, dooms the complaint as originally filed.

The exclusive bargaining representative has not brought any complaint over the actions of the State as detailed in the pending case. The case was filed by Marc Thomas, but does not assert any claim on his behalf. The only parties who have arguably suffered a legal injury are the three individual employes. None of them has filed a complaint, and the one year statute of limitations ran out well before they attempted to add themselves as named parties to this complaint. Thus they are time-barred from raising any issues at this point, and the complaint should be dismissed in its entirety.

C. The Arguments of the Respondent, State of Wisconsin

The State fully supports Council 24's Motion to Dismiss. The State notes that SELRA recognizes the proposition that there is an exclusive bargaining representative in each bargaining unit, and that the State is obligated to deal only with that exclusive representative. Council 24 is the certified exclusive bargaining representative for this bargaining unit. Local 171 is a subordinate body of the Union, with jurisdiction across several bargaining units. Its authority to act in local negotiations is granted by the State and Council 24 through the Master Agreement. Nothing in that Agreement suggests that it has the right to proceed before the WERC. Since it has no legal standing for SELRA purposes outside of that granted by the Agreement, and since the right to bring an action before the WERC is not contemplated by the Agreement, the WERC should dismiss the instant complaint.

The State also urges that the attempt to amend the complaint to name Brickner, Reinke and Williams as individual complainants should be rejected. Since the initial complaint was not brought by a "party in interest", there is no valid pleading which may be amended. Moreover, the Motion to Amend the Complaint was brought well over a year after the incidents of alleged retaliation took place. The statute of limitations has run with respect to those allegations, and they may not be resurrected through an amendment. Finally, the State notes that ERC 22.02 requires that a complaint be verified by the complainant. As of this point, none of the individual complainants have met this requirement. Thus, since there is no valid pleading to amend, no valid complaint naming the individual complainants, and no right surviving the passage of the one year statute of limitations, the State argues that the individual complainants should be barred from asserting their claims.

II. Discussion

A. Jurisdiction to Resolve the Dispute

Local 171 challenges the jurisdiction of the Commission, alleging that this is a dispute between two unions which should be resolved through the internal procedures established in the AFSCME International Constitution. On the contrary, this is a dispute over the meaning and

application of Wisconsin Statutes and the Wisconsin Administrative Code. Section 111.07(2)(a), WEPA, requires that a complaint of unfair labor practices be brought by a "party in interest". 3/ A labor organization is a party in interest to a dispute if it enjoys status as the bargaining representative for the affected employes. 4/ The question of whether Local 171 or Council 24, or both, possess such status under the law of Wisconsin is not a matter within the expertise of the International Union. Nor is this simply a matter of sorting out the rights of the two organizations. The State, as the employer bound to bargain contracts and defend unfair labor practice complaints, has a distinct interest which it cannot assert before the International Union. For these reasons, the examiner concludes that the WERC does have jurisdiction over this dispute, and that it should not refrain from exercising that jurisdiction in hopes of having the matter resolved through internal Union procedures.

B. The Status of Local 171 as a "Party in Interest" to the Refusal to Bargain

As noted above, a labor organization is a party in interest to a dispute if it enjoys status as the bargaining representative for the affected employes or is seeking such status. Local 171 asserts that it is a party in interest to this dispute both independently as a certified bargaining agent, and derivatively through its status as the designated agent of Council 24 for the negotiation of the local agreements. Neither of these arguments is persuasive.

All parties to this dispute agree that Council 24 has status as the exclusive bargaining representative, but Local 171 asserts that it shares this status by virtue of the certification issued by the Commission in 1972: "American Federation of State, County and Municipal Employees, Council 24, and its affiliated locals, is the exclusive collective bargaining representative...". Granting that the language used in the certification leaves the impression that Council 24 shares its status as the bargaining representative, in order for Local 171's theory to be accepted, it must be that the State and Council 24, when they entered into the stipulation, and the WERC, when it accepted the stipulation, all contemplated the existence of multiple and overlapping exclusive bargaining representatives, and that the State has a simultaneous duty to bargain with Council 24 and each of 51 affiliated locals. This interpretation is completely at odds with the concept of an exclusive bargaining representative, and the structure of collective bargaining under SELRA.

Sec. 111.83 addresses the selection and certification of bargaining representatives. It cannot reasonably be read as allowing more than one labor organization to act as the exclusive bargaining representative for the same State employes:

3/ This requirement is mirrored in the relevant portions of the Wisconsin Administrative Code: ERC 2.01 (private sector labor relations), ERC 12.02 (municipal labor relations) and ERC 22.02 (State labor relations).

4/ See Southern Lakes at pages 9-10, and the cases cited in footnote 10 of that decision.

111.83 Representatives and elections. (1) Except as provided in sub. (5), a representative chosen for the purposes of collective bargaining by a majority of the employes voting in a collective bargaining unit shall be the exclusive representative of all of the employes in such unit for the purposes of collective bargaining. Any individual employe, or any minority group of employes in any collective bargaining unit, may present grievances to the employer in person, or through representatives of their own choosing, and the employer shall confer with said employe or group of employes in relation thereto if the majority representative has been afforded the opportunity to be present at the conference. Any adjustment resulting from such a conference may not be inconsistent with the conditions of employment established by the majority representative and the employer.

(2) Whenever the commission decides to permit employes to determine for themselves whether they desire to establish themselves as a collective bargaining unit, such determination shall be conducted by secret ballot. In such instances, the commission shall cause the balloting to be conducted so as to show separately the wishes of the employes in the voting group involved as to the determination of the collective bargaining unit.

(3) Whenever a question arises concerning the representation of employes in a collective bargaining unit the commission shall determine the representative thereof by taking a secret ballot of the employes and certifying in writing the results thereof to the interested parties and to the secretary of the department. There shall be included on any ballot for the election of representatives the names of all labor organizations having an interest in representing the employes participating in the election as indicated in petitions filed with the commission. The name of any existing representative shall be included on the ballot without the necessity of filing a petition. The commission may exclude from the ballot one who, at the time of the election, stands deprived of his or her rights under this subchapter by reason of a prior adjudication of his or having engaged in an unfair labor practice. The ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot. The commission's certification of the results of any election is conclusive as to the findings included therein unless reviewed under s. 111.07(8).

(4) Whenever an election has been conducted under sub. (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the commission may, if

> requested by any party to the proceeding within 30 days from the date of the certification of the results of the election, conduct a runoff election. In that runoff election, the commission shall drop from the ballot the name of the representative who received the least number of votes at the original election. The commission shall drop from the ballot the privilege of voting against any representative if the least number of votes cast at the first election was against representation by any named representative.
>
> . . .
>
> **(6)** While a collective bargaining agreement between a labor organization and an employer is in force under this subchapter, a petition for an election in the collective bargaining unit to which the agreement applies may only be filed during October in the calendar year prior to the expiration of that agreement. An election held under that petition may be held only if the petition is supported by proof that at least 30% of the employes in the collective bargaining unit desire a change or discontinuance of existing representation. Within 60 days of the time that an original petition is filed, another petition may be filed supported by proof that at least 10% of the employes in the same collective bargaining unit desire a different representative. If a majority of the employes in the collective bargaining unit vote for a change or discontinuance of representation by any named representative, the decision takes effect upon expiration of any existing collective bargaining agreement between the employer and the existing representative.

The reference throughout the statute to a single exclusive bargaining representative, as well as the administration of the statute since the time of its original passage, makes it absolutely clear that the State's obligation is to deal with the single labor organization selected by the majority of the employes in an appropriate bargaining unit.

This conclusion is buttressed by consideration of Section 111.825 and the implications for bargaining if the Local's theory was accepted. Section 111.825 specifies the bargaining units for State employes, and reads in relevant part:

> **111.825 Collective bargaining units. (1)** It is the legislative intent that in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, collective bargaining units for employes in the classified service of the state are structured on a statewide basis with one collective bargaining unit for each of the following occupational groups:

(a) Clerical and related.
(b) Blue collar and non-building trades.
(c) Building trades crafts.
(d) Security and public safety.
(e) Technical.
(f) Professional:
1. Fiscal and staff services.
2. Research, statistics and analysis.
3. Legal.
4. Patient treatment.
5. Patient care.
6. Social services.
7. Education.
8. Engineering.
9. Science.

. . .

(3) The commission shall assign employes to the appropriate collective bargaining units set forth in subs. (1) and (2).

(4) Any labor organization may petition for recognition as the exclusive representative of a collective bargaining unit specified in sub. (1) or (2) in accordance with the election procedures set forth in s. 111.83, provided the petition is accompanied by a 30% showing of interest in the form of signed authorization cards. Each additional labor organization seeking to appear on the ballot shall file petitions within 60 days of the date of filing of the original petition and prove, through signed authorization cards, that at least \10% of the employes in the collective bargaining unit want it to be their representative. An original petition to serve as the initial representative of the collective bargaining unit specified in sub. (2)(d) may only be filed during the period commencing on July 2, 1990, and ending on December 31, 1990.

. . .

The stated purpose of this section is to avoid fragmentation and promote meaningful bargaining. Local 171 and its fellow AFSCME locals have jurisdiction over employes in multiple bargaining units, but not over all of the employes in any one unit. If the State has a duty to bargain with the individual locals, the boundaries of its bargaining obligation would be defined by the jurisdiction of the locals, rather than the bargaining units established by the statute. Within each bargaining unit, it would have a duty to bargain with multiple locals, depending upon the

classification of the employes in the bargaining unit, and would simultaneously have the duty to bargain with Council 24 over every employe.

Local 171 points out that Council 24 and its locals have arrived at an orderly means of structuring their bargaining so that the Union speaks as a single entity during negotiations. Granting this point, the issue here is to whom the State's duty to bargain is directed. ("While the arguments raised by the Complainant focus on the relationship of [WEEA, KCEA, SLUE and the Wisconsin Education Association] to one another, the proper focus is on the relationship between the District and these organizations." Southern Lakes, supra, at page 10.) Since the State is prohibited from interfering with the internal organization of the Union(s), the determination of standing as the exclusive bargaining representative in this case cannot be predicated on a particular internal structure for Council 24 and its affiliated locals.

The multiplicity of bargaining obligations imposed on the State by Local 171's interpretation cannot be reconciled with the concept of an exclusive bargaining representative. Moreover, since the jurisdiction of the locals does not extend to any one complete bargaining unit, the duty to bargain suggested by Local 171 would be unenforceable under the statute. Section 111.84 makes it an unfair labor practice for the State to "refuse to bargain collectively on the matters set forth in s. 111.91(1) with a representative of a majority of its employes in an appropriate collective bargaining unit." (emphasis added). In this case, Local 171 seeks to bargain over the working conditions for blue collar, technical and public safety employes of the University of Wisconsin-Madison. This is not an appropriate bargaining unit under Section 111.825.

Local 171's assertion of multiple and overlapping exclusive bargaining representatives is a literal, practical and legal oxymoron. There is no plausible interpretation of the statute that would allow for the existence of such a structure within the scheme of State labor relations. For that reason, even while recognizing the ambiguity of the certifications issued in 1972, the Examiner concludes that the State did not have a free-standing duty to bargain with the Local over working conditions at the UW Hospitals and Clinics.

Turning to the assertion that the Local has been delegated status as the exclusive bargaining representative for local negotiations, and that it therefore necessarily possess the authority to bring complaint cases to require good faith bargaining, the Examiner notes two flaws in the theory. The first is that both parties to the contract which accomplished this delegation agree that it does not extend to filing unfair labor practice complaints. The contract itself is silent on this point and, aside from Local 171's simple assertion that Council 24 and the State delegated to it the right to bring a complaint, there is no evidence that the parties who negotiated the contract intended to divest themselves of their standing as the parties in interest to statutory disputes. Where the parties to a contract agree on the meaning of an ambiguous provision, and their agreement on that meaning is not a subterfuge to hide an arbitrary, capricious, discriminatory or bad faith course of action, their understanding must be given controlling weight in interpreting the contract. This is a fundamental precept of contract law in the field of labor relations. I find no evidence of bad motive in the

interpretation assigned to the contract by Council 24 and the State, and Local 171 has not suggested any. Thus, I find that the parties to the Master Agreement have not vested Local 171 with standing as a party in interest for the purpose of filing unfair labor practice charges.

The second flaw in Local 171's assertion of a contractually based right to file a complaint is that the remedy for a contract violation during the term of an agreement is the filing of a grievance, not the submission of an unfair labor practice complaint. The right asserted in this case springs from the provisions of Article XI, 11/2/9(i):

> ARTICLE XI - Miscellaneous
>
> . . .
>
> Section 2: Union-Management Meetings
>
> . . .
>
> 11/2/9 Agenda
>
> Items to be included on the agenda for the aforementioned Labor-Management meetings are to be submitted at least five (5) days in advance of the scheduled dates of the meeting if at all possible. The purpose of each meeting shall be:
>
> . . .
>
> (i) (**BC, T, CR**) Negotiate hours of work, work schedules and overtime assignments. In the event no agreement is reached, either party may appeal to arbitration pursuant to the procedures of Article IV, Section 2, Step Four, except that the decision of the arbitrator shall be advisory. If the advisory award is not implemented by local management, a representative of the department, a representative of the Department of Employment Relations, and a representative of the Wisconsin State Employees Union, District Council 24, will meet to discuss the implementation of the award.
>
> . . .

Negotiations mandated by the contract are policed through the procedures set forth for that

purpose in the contract. 5/ The statutory duty to bargain is satisfied by agreement on the terms in the Master Agreement. The Local's assertion is that the State failed to negotiate with it in good faith, as is implicitly required by Article XI, and upon impasse implemented its position rather than proceeding to advisory arbitration. Since the State's duty to bargain with Local 171 flows from the contract rather than the statute, the recourse for a failure of that duty must be found in the contract. 6/

C. The Status of Local 171 as a "Party in Interest" to the Retaliation Charges

In addition to alleging a refusal to bargain in good faith/ contract violation during local negotiations over hours, the complaint asserts that the State has retaliated against three employes -- Williams, Brickner and Reinke -- for their activities on behalf of the Union. I have concluded that Local 171 does not possess status as the exclusive bargaining representative of the blue collar employes of the University, and is not a "party in interest" to labor disputes involving the relationship between those employes and the State. This conclusion does not, however, mandate dismissal of the complaint insofar as it seeks to assert the rights of the three individual employes.

The State and Council 24 do not dispute the right of the three individuals to bring an action for retaliation. They instead assert that Local 171 was not a party in interest to any of the alleged unfair labor practices, and that the passage of time has extinguished the employes' right to amend the complaint or intervene so as to create a valid pleading. The motions at the November 9th hearing were clearly brought more than one year after the alleged retaliation. Section 111.07(14) creates a one year statute of limitations for unfair labor practices: "The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged." 7/ While the decision in SLUE Council 26 allows the transformation of a complaint filed by one who is not a party in interest into a valid complaint if a party in interest is substituted for the original complainant, the decision suggests that such a transformation may only take place within one year from the commission of the unfair labor practice. 8/

5/ The comments herein are directed towards defining the contractual relationship of Local 171 and the State. They do not purport to define the remedies available to Council 24 and the State for a refusal to bargain over hours.

6/ Local 171 did grieve the State's conduct during local negotiations, but the State refused to process the grievance. Refusal to abide by a collective bargaining agreement is itself a prohibited practice under Section 111.84(1)(e). However, since Council 24, and not Local 171 is the party in interest with respect to the Master Agreement and this bargaining unit, it is up to Council 24 to assert this claim.

7/ Section 111.84(4) makes the processing of complaints under SELRA subject to the procedures of Section 111.07.

8/ SLUE Council 26, at pages 4-5.

The Wisconsin Administrative Code provisions governing the submission of unfair labor practice complaints under SELRA differs in a significant way from the chapters dealing with violations of WEPA and MERA. ERC 2.01 (WEPA) and ERC 12.01 (MERA) both provide that a complaint may be filed "by any party in interest." ERC 22.02 provides that "A complaint that any state employer or state employes, individually or in concert with others have engaged in, or are engaging in, any prohibited or unfair labor practices, as defined in s. 111.84, Stats., may be filed by any party in interest, or their representative."

With respect to the refusal to bargain charges, it is clear that Local 171 was filing on its own behalf, and not as the representative of Council 24, the true party in interest. However, it was stipulated at the November 9th hearing that Williams, Brickner and Reinke would have filed individually had Local 171 not filed on their behalf. While Local 171 did not have standing as a party in interest, it clearly was acting as a "representative" of the three individual employes who are parties in interest to the retaliation complaints, since it was authorized to file the complaint on their behalf. Such a filing is a valid pleading under the administrative rules. Given that there was a valid complaint filed within the one year statute of limitations, clearly specifying the interests of the three employes, it follows that their motion to amend the complaint to substitute their names for that of their representative is timely and appropriate. The Motion to Amend is therefore granted, and the Motion to Dismiss the Complaint with respect to the retaliation charges is denied.

Dated at Racine, Wisconsin this 29th day of March, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Daniel J. Nielsen /s/
Daniel J. Nielsen, Examiner