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. WISCONSIN STATE EMPLOYEES' UNION, COUNCIL 24, AFSCME, AFL-CIO, Intervenor.	Case 352 No. 50059 PP(S)-203 Decision No. 28072-B

Appearances:

Boushea, Segall & Joanis, 124 West Broadway, Madison, Wisconsin 53716, 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, Wisconsin 53707-7855, appearing on behalf of the Respondent State of Wisconsin.

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

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT AND AFFIRMING IN PART AND REVERSING IN PART EXAMINER'S CONCLUSIONS OF LAW AND ORDER

On March 29, 1995, Examiner Daniel J. Nielsen issued 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 in the above matter.

Complainant, Respondent and Intervenor all filed petitions with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision.

The parties thereafter filed written argument in support of and in opposition to the three petitions, the last of which was received on October 16, 1995.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER 1/

A. The Examiner's Findings of Fact are affirmed.

B. The Examiner's Conclusions of Law 1-4 are affirmed.

C. The Examiner's Conclusions of Law 5-6 are reversed and the following Conclusion of Law is issued:

> 5. A complaint naming employes Williams, Brickner and Reinke as Complainants was not filed by a "party in interest" or a "representative" within one year of the alleged violations of the State Employment Labor Relations Act and thus the alleged violations were not timely filed under Sec. 111.07(14), Stats.

D. The Examiner's Order is affirmed as to paragraphs 1-2 thereof.

E. Paragraphs 3-4 of the Examiner's Order are reversed and the following Order is issued:

> The complaint allegations as to Williams, Brickner and Reinke are dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of August, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

(Footnote 1/ appears on the next page.)

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.

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) 1. 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.

2. 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 deposing 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.

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

> 3. 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.
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> (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. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent. . .
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> (c) A copy 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 each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

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.

STATE OF WISCONSIN (UW HOSPITAL AND CLINICS)

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, AND AFFIRMING IN PART AND REVERSING IN PART EXAMINER'S CONCLUSIONS OF LAW AND ORDER

The Pleadings

A November 3, 1993, complaint filed by Mark Thomas, on behalf of AFSCME Local 171, alleged that the Respondent State of Wisconsin (University Hospital and Clinic) violated Secs. 111.84(1)(a)(b)(c) and (d), Stats. during the period of February 5, 1993 through September 23, 1993 by: breaking off negotiations with Local 171 over work schedules; unilaterally implementing a work schedule without going through a contractual advisory arbitration process; communicating false information to employes regarding union actions; offering to bargain directly with individual employes; targeting union activists (Brickner and Reinke) when developing and implementing work schedule proposals; and disciplining an employe (Williams) because she was a union steward.

In July, 1994, Respondent filed an answer denying it had committed any unfair labor practices and affirmatively asserting that: Thomas lacked "authority and standing" to file the complaint; Thomas lacked authority to seek or obtain advisory arbitration; and, to the extent the allegations constituted violations of the contract, Complainant had failed to exhaust contractual remedies.

In October, 1994, Wisconsin State Employees Union, Council 24, AFSCME, AFL-CIO filed a motion to intervene asserting that it is the exclusive bargaining representative for Thomas and all other involved employes and that it has the right to raise duty to bargain and advisory arbitration issues. If allowed to intervene, Council 24 stated that it would move to dismiss the complaint.

Hearing was held on the motion to intervene and motion to dismiss on November 9, 1994. During the hearing, Complainant moved to amend the complaint to name Brickner, Reinke and Williams as Complainants. Council 24 and Respondent opposed the motion.

Complainant, Respondent and Council 24 thereafter filed briefs regarding Council 24's motion to intervene/motion to dismiss and Complainant's motion to amend.

The Examiner's Decision

On March 29, 1995, Examiner Nielsen issued 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.

His Conclusions of Law stated:

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.

His Order stated:

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.

His rationale was as follows:

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". 2/ A labor organization is a party in interest to a dispute if it enjoys status as the bargaining representative for the affected employes. 3/ 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.

2/ 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).

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

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:

> **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.
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> **(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:
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> **(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

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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. 4/ 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. 5/

4/ 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.

5/ 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.

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." 6/ 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. 7/

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

7/ 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.

Petitions for Review

Following their receipt of the Examiner's decision, all parties filed petitions for review with the Commission. Although the Examiner's decision did not constitute a final decision as to which the parties had a right to obtain review, the Commission exercised its discretionary authority and accepted jurisdiction over the petitions. The parties thereafter filed written argument in support of their respective positions.

POSITIONS OF THE PARTIES IN SUPPORT OF THEIR PETITIONS

Local 171

Local 171 contends that the Examiner erred by allowing Council 24 to intervene, concluding Local 171 was not a party in interest and then dismissing a portion of the complaint.

Local 171 asserts the Examiner incorrectly viewed Local 171 and Council 24 as separate and competing labor organizations when they are in fact parts of the same union with shared responsibilities at the bargaining table and under the bargaining agreement. At the local level, Complainant asserts that Respondent and Council 24 have delegated responsibility to Local 171 for the collective bargaining process. Under such a delegation, Complainant contends it is appropriate to allow it to enforce the duty to bargain as to "local negotiations". Local 171 argues that a contrary

conclusion calls into question the legitimacy of all local agreements and the bargaining process that produces them.

Given the foregoing, Local 171 asks the Commission to reverse the Examiner as to the portions of his decision adverse to Local 171.

Respondent State

Respondent seeks review of those portions of the Examiner's decision which found the complaint related to three specific employes to be timely and which failed, in the alternative, to defer these portions of the complaint to grievance arbitration.

Respondent contends that Local 171 is neither a "party in interest" nor a "representative" of the three individuals and that the motion to amend the complaint is therefore untimely under the Commission's rationale in Jt. School District No. 9, Towns of Salem & Randall (Wilmot Schools), Dec. No. 21092-A (WERC, 10/84), because the motion was made more than one year after the alleged occurrence of the unfair labor practices.

In the alternative, Respondent urges that the Examiner erred by failing to defer the claims of the three employes to grievance arbitration. Respondent contends that deferral was appropriate under Commission precedent because "the complaint and grievance allegations appear to be sufficiently similar so that an arbitrator's decision would operate to resolve all issues raised by the complaint."

Council 24

Council 24 alleges that because no "party in interest" filed a complaint within one year of the alleged unfair labor practices, the Examiner erred by failing to dismiss the entire complaint. Council 24 further asserts that because Local 171 is not the exclusive bargaining representative, Local 171 is not a "party in interest" empowered to pursue unfair labor practice allegations against the Respondent.

DISCUSSION

We affirm the Examiner's conclusion that Local 171 is not a "party in interest" under Sec. 111.07(2)(a) Stats., and thus lacks the ability of a "party in interest" to file valid unfair labor practice complaints with the Commission regarding the conduct of Respondent State of Wisconsin. However, we reject his conclusion that Local 171's standing as a "representative" to file a complaint as to alleged illegal conduct by Respondent State toward employes Williams, Brickner and Reinke can overcome the untimely amendment of the complaint to name Williams, Brickner and Reinke as Complainants. Thus, we have dismissed the complaint in its entirety.

The Examiner analyzed the relationship of Council 24 and Local 171 in the context of the State Employment Labor Relations Act and correctly concluded that Council 24 is the exclusive collective bargaining representative of the employes in question and thus possesses exclusive standing as the **labor organization** with "party in interest" status to file unfair labor practice complaints. His above quoted rationale in support of his conclusion persuasively responds to Local 171's contentions on review and thus we adopt the same as our own.

The Examiner also correctly concluded that as to the alleged interference and discrimination by Respondent against employes Williams, Brickner and Reinke, these individual employes all had an **employe** "party in interest" status. This status would have allowed them to individually pursue these allegations against Respondent with or without the participation or concurrence of Council 24.

However, the Examiner erred when he concluded that even though no "party in interest" had timely filed any of the unfair labor practices, it was nonetheless appropriate to allow the unfair labor practices related to employes Williams, Brickner and Reinke to proceed. The Examiner correctly noted that, unlike the complaint administrative code provisions applicable to the Wisconsin Employment Peace Act (WEPA) and the Municipal Employment Relations Act (MERA), ERC 22.02(1) explicitly states that a "representative" may file a complaint. However, this administrative code provision is not an expansion of the entities with standing to file complaints beyond "parties in interest" but rather an explicit acknowledgement (which we find implicit under the WEPA and MERA code provisions) that law firms, or union business agents, or personnel directors generally "file" complaints. While "representatives" can file complaints, an appropriate "party in interest" must be named as the complainant for the complaint to be a valid one. Here, the complaint was filed by "Mark Thomas", a Local 171 "representative", on behalf of "Local 171". If "representative" Thomas/Local 171 had filed on behalf of named complainants Williams, Brickner and Reinke, the complaint allegations as to these three individuals would have been timely filed and it would be appropriate for them to proceed to hearing. However, here, more than one year passed from the date of the alleged unfair labor practices to the effort by Local 171 to amend the complaint to add the employes as named complainants. Thus, these complaint allegations must be dismissed as untimely.

Dated at Madison, Wisconsin this 20th day of August, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner