

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARINETTE COUNTY COURTHOUSE
EMPLOYEES UNION, LOCAL 1752,
AFSCME, AFL-CIO,

Complainant,

vs.

MARINETTE COUNTY (COURTHOUSE),

Respondent.

Case 156
No. 53805 MP-3134
Decision No. 28675-A

ORDER DENYING MOTION TO CORRECT TRANSCRIPT

Marinette County Courthouse Employees Union, Local 1752, AFSCME, filed a complaint with the Wisconsin Employment Relations Commission on February 5, 1996, alleging that Marinette County had committed a prohibited practice in violation of Sections 111.70(3)(a)1 and 5, Stats., by refusing to arbitrate a grievance on behalf of Jeanne Lantagne. The Commission subsequently appointed the undersigned to serve as examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter. A hearing on the complaint was held on June 5, 1996, in Marinette, Wisconsin. Thereafter, the parties filed briefs in the matter. Attached to the County's brief was an affidavit from County Finance Director Roger DeGroot who had testified at the hearing. Both DeGroot's affidavit and the County's brief assert that one sentence of his (DeGroot's) testimony on page 48 of the transcript was transcribed incorrectly and needs to be changed to reflect his real testimony. The Examiner treated this request as a Motion to Correct the Transcript pursuant to ERC 10.13(6). On September 6, 1996, the Union filed a written response opposing the changing or correcting of DeGroot's testimony in the transcript. Having considered the matter fully, the Examiner is satisfied that the County's Motion to Correct the Transcript should be denied. Accordingly, the Examiner issues the following

ORDER

1. The County's Motion to Correct the Transcript is denied;

No. 28675-A

2. The new date for filing reply briefs is October 4, 1996.

Dated at Madison, Wisconsin, this 19th day of September, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner

MARINETTE COUNTY (COURTHOUSE)

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO CORRECT TRANSCRIPT

The County's motion seeks to change one sentence of witness Roger DeGroot's testimony. The sentence in question is found on page 48 of the hearing transcript and reads as follows:

My understanding was that if anything would come back to the committee that the employee didn't agree with, the committee's decision was grievable or went to an outside arbitrator.

The County asserts this sentence was "erroneously reproduced in the transcript." To support this contention, it attached an affidavit from DeGroot to its brief "to show what the real testimony is." That affidavit provides in pertinent part:

5. This transcription of my testimony is very incorrect. It always has been my understanding that a disappointed employee would not be able to grieve the decision of the job study committee beyond a request for reconsideration by the job study committee. The transcript should have indicated that the committee's decision is not grievable and would not go to an outside arbitrator.

6. In the event that the reporter's notes or recording indicate that I actually did speak what is transcribed, then what I said is a material misstatement that needs to be corrected to make the record accurate and complete.

The County's alternate contentions can be summarized as follows: either the transcription of DeGroot's testimony is incorrect, or if the transcription of DeGroot's testimony is correct a misstatement occurred which now needs to be changed. Based on the rationale which follows, neither contention is found persuasive.

With regard to the first contention (i.e., that the transcription of DeGroot's testimony is incorrect), it is noted at the outset that the court reporter certified at the end of the transcript that the transcription was "true and correct in accordance with my original shorthand notes." 1/ Given this certification by the reporter, the initial presumption is that DeGroot's testimony was accurately transcribed. This presumption is buttressed by the following. After the question about DeGroot's testimony arose, the Examiner contacted the court reporter who was present at the hearing and

1/ Transcript, p. 53.

asked her to compare her original shorthand notes of DeGroot's testimony with what she transcribed into the transcript. After doing so, she verified that the transcription of DeGroot's testimony on page 48 accurately reflected his testimony. The foregoing obviously supports a finding that the transcription in question is accurate. In contrast, the County offered no proof whatsoever that DeGroot's testimony on page 48 was inaccurately transcribed by the reporter. Since the County has not shown otherwise, the Examiner concludes that the existing transcription of the sentence in question on page 48 is accurate.

The focus now turns to the County's alternate contention that a misstatement occurred in DeGroot's testimony on page 48 which needs to be changed. The sentence which the County wants changed was elicited during DeGroot's direct examination by the County. If the County wanted to correct an error or misstatement in DeGroot's testimony on direct examination, the time to do so was redirect examination. There was no redirect examination of the witness however. This means that the opportunity for changing DeGroot's testimony has since passed. The Examiner therefore declines to correct any alleged misstatement in DeGroot's testimony.

Given the foregoing findings, the County's Motion to Correct the Transcript has been denied.

Dated at Madison, Wisconsin this 19th day of September, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner