

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AFSCME LOCALS 576, 576A, 576B AND 2721, ST.
CROIX COUNTY EMPLOYEES,

Complainants,

vs.

ST. CROIX COUNTY,

Respondent.

Case 151
No. 53690 MP-3120
Decision No. 28791-A

Appearances:

Mr. Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 364, Menomonie, Wisconsin 54751, appearing on behalf of AFSCME Locals 576, 576A, 576B and 2721, St. Croix County Employees.
Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Mr. Stephen L. Weld and Ms. Victoria L. Seltun, 4330 Golf Terrace, Suite 205, P. O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of St. Croix County.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

AFSCME Locals 576, 576A, 576B and 2721, St. Croix County Employees filed a complaint with the Wisconsin Employment Relations Commission on December 27, 1995, which was amended on August 6, 1996, alleging that St. Croix County had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act. On July 17, 1996, the Commission appointed Lionel L. Crowley, a member of its staff to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. Hearing on the complaint, as amended, was held on November 18, 1996, in Hudson, Wisconsin. The parties filed post-hearing briefs. The parties reserved the right to file reply briefs, but only the Union filed a reply brief which was received on April 1, 1997.

FINDINGS OF FACT

1. AFSCME Locals 576, 576A, 576B and 2721, St. Croix County Employees, hereinafter referred to as the Union, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and its offices are located c/o Steve Hartmann, P. O. Box 364, Menomonie, Wisconsin

No. 28791-A

54751.

2. St. Croix County, hereinafter referred to as the County, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and its offices are located at 1101 Carmichael Road, Hudson, Wisconsin 54016-7710.

3. At all times material herein, the Union and County have been parties to a collective bargaining agreement setting forth the wages, hours and conditions of employment of the employees of the County represented by the Union.

4. The County has had a Personnel Handbook for many years which has been revised on occasion. In 1995, the County revised its Personnel Handbook and in April, 1995, distributed it to employees with the following cover letter:

To: Union Members

From: Personnel Department

Re: Distribution of the updated Personnel Handbook

We are providing you with a copy of the St. Croix County Personnel Handbook. It includes materials that were part of the previous manual as well as policies and procedures that have been authorized and implemented by the Personnel Committee since the last re-writing of the handbook in 1988.

It is important that you understand the role of the handbook, in light of the union contract that governs the relationship between the union and the county. The contract governs wages, hours, and conditions of employment for the union membership in the County. The Personnel Handbook does **not** supersede the authority of the contract. The handbook is a supplement to the contract. In those areas where the union contract deals specifically with issues, the contract language prevails. In those areas where the contract is silent, we turn to the Personnel Handbook for guidance.

For example, the union contract acknowledges adherence to affirmative action policies and equal employment opportunities, however the handbook deals with these issues in great detail--outlining procedures for assuring compliance, etc. In other areas, the handbook provides procedures and details for County-wide policies--Drug Free Workplace Policy, Travel Policy, Conference, Convention and Training Policy, etc.

When you receive the handbook, it is very important that you sign the **Receipt and Certification** form that is inside the front cover and return it to your supervisor or the Personnel Department immediately. We must have these forms on file to verify that the County has distributed its Affirmative Action, Equal Opportunity Employment, and Sexual Harassment policies to its employees.

We hope the commonly-used forms that are included in the Appendix will help you when you need to complete paperwork for various purposes. If you know which form you need, copies can be obtained from the Personnel Department. Most payroll centers carry these forms as well.

Please let us know if you have any questions or concerns.

The **Receipt and Certification** form stated the following:

Receipt and Certification

This is to acknowledge my receipt of the Personnel Handbook. I understand that it is my responsibility to read the material contained herein and conduct myself in a manner consistent with these guidelines. I understand that, in addition to the policies stated herein, other departmental, contractual, state, or federal regulations may apply to my work conduct.

Further, I acknowledge that it is incumbent upon me to seek immediate interpretation of any portion of this handbook that I do not understand. Unless a written question, concern, or request for interpretation is received by the Personnel Department within ten (10) calendar days of this date, it is assumed that I have read and understand the policies and procedures contained in this handbook.

Nothing contained in this handbook shall imply, either implicitly or explicitly, that this is a contract between employer and employee guaranteeing job tenure. St. Croix County subscribes to the philosophy of employment at will. The County may amend, modify, or delete portions of this handbook at their discretion.

Lastly, I acknowledge my acceptance of standards of confidentiality in dealing with selected records, memoranda, files, etc.

Signed: _____ *Date:* _____

Received by Personnel: _____

This will be included in the employee's permanent personnel file.

5. After the Personnel Handbook was distributed, the Union informed the Personnel Director that some employees were concerned that they were somehow signing their rights away. The County was interested in distributing the Handbook, so it did not require employees who were uncomfortable with signing the receipt to sign it and simply had the supervisor verify that employees received it.

6. On June 5, 1995, the Union sent a letter to the County's Personnel Director which provided as follows:

This letter is written on behalf of the signatories to the Joint Labor Agreement, AFSCME Locals 576, 576A, 576B, and 2721.

We are in receipt of copies of the revised Personnel Manual, an undated cover letter from the Personnel Department, and a "Receipt and Certification".

With respect to the cover letter, the Union disagrees with the asserted relationship of the Personnel Manual to the Contract. Local 576B, for example, was specifically told that the previous Personnel Manual did not apply to them as a result of the most recent round of bargaining. We view the Personnel Manual as a statement of the County's position on various matters, but not binding on the Union, unless it mirrors the Contract or represents binding practice.

With respect to the "Receipt and Certification", the Union is concerned that this document, particularly paragraphs two and three, appears to constitute individual bargaining. It also seems unnecessary to require some employees in bargaining units to sign these document (sic) while not requiring others to do so. Therefore

the Union requests that the County cease and desist from requiring bargaining unit members to sign the "Receipt and Certification" and that those "Receipt and Certification" documents already turned in be returned, uncopied to the individual signer.

Thank you for your attention to this matter.

7. The Union and County then had discussions with respect to drafts of receipts but none were acceptable. The County's attorney sent to the Union's representative and indicated that a revised receipt had been developed and employees who signed the first receipt "have been advised" that the revised receipt could be substituted for the original receipt. That letter was in error in that the revised receipt was not sent around to employees. The revised receipt was not acceptable to the Union and it was not distributed. The Union amended its complaint alleging that as employees had been informed of the substituted receipt, another violation had occurred.

8. The County's request to employees to sign and return the Receipt and Certification attached to the 1995 revised Personnel Handbook was not individual bargaining with employees.

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

CONCLUSION OF LAW

The County, by its Receipt and Certification distributed to employees represented by the Union, who were asked to sign it and return it to the County, did not engage in individual bargaining with employees represented by the Union, and therefore, did not violate Secs. 111.70(3)(a)1 and 4, Stats.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER 1/

IT IS ORDERED that the complaint be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 30th day of May, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

1/ See footnote on Page 6.

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

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- 1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

ST. CROIX COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint initiating these proceedings, the Union alleged that the County violated Secs. 111.70(3)(a)1 and 4, Stats., by requiring bargaining unit employees to sign a Receipt and Certification for the County's revised Personnel Manual. The Union amended its complaint alleging that the County had advised employees who signed the original Receipt that they had the right to substitute a revised receipt for the original. The County denied that it had engaged in individual bargaining in violation of Secs. 111.70(3)(a)1 and 4, Stats.

UNION'S POSITION

The Union contends that the Personnel Manual is a statement of the County's position on various matters which is not binding on the Union unless it mirrors the contract or represents a binding practice. It submits that both parties acknowledge some meaningful relationship exists between some aspects of the Handbook and the contract. It argues that requiring employees to ask for an interpretation of any and all possible questions or issues involving the Handbook, some of which may have collective bargaining impact, or they will be "assumed" to have understood the County's interpretation, could be used as a defense by the County in a grievance involving interaction between the Handbook and contract and therefore constitutes individual bargaining. It asserts that how the County's policies impact bargaining unit employees is a function of the Union and not the individual employee. It insists that no employee can waive the right to challenge an application that may affect wages, benefits and other terms and conditions of employment.

The Union further objects to a Union member being required to sign a document indicating that the County's philosophy is that of "employment at will." It notes that this is contrary to the express terms of the contract. The Union points out that although the cover letter states that anything contrary to the contract is moot, employees were not asked to sign the cover letter but rather the Receipt and Certification which is designed specifically for non-Union employees and includes impermissible language that constitutes by its terms individual bargaining.

The Union contends that a second incident of individual bargaining occurred when the Union received a letter from the County's attorney which stated that employees had been advised of the right to substitute a revised Receipt and Certification for the original one. It observes that the parties were attempting to settle the matter and during the process, the County made a settlement offer to employees individually which was later shown to the Union. It claims that the

County engaged in individual bargaining by these acts and violated Secs. 111.70(3)(a)1 and 4, Stats. It asks that the violative document be removed from the files of employees who signed it and the County be ordered to cease and desist from engaging in individual bargaining.

COUNTY'S POSITION

The County contends that it merely followed past practice and the requirements of State and Federal law in requiring employees to return the Receipt and Certification form. It notes that the Personnel Handbook has been in place since 1984, with revisions in 1988 and 1995, and although it applies to all terms and conditions of employment for non-represented employees, it also establishes work rules for all employees. It points out that in the past employees represented by the Union have signed the receipt and it certifies to State and Federal agencies that the County has distributed information to employees. The County observes that when the Union objected to employees signing the form, the County had supervisors certify that employees were given the handbook and it is an open question whether this is in compliance with Federal law.

The County denies that it has engaged in individual bargaining with employees. It maintains that it has gone to extreme lengths to assure unit members that the contract supersedes the handbook as the memorandum accompanying it clearly spells out. Additionally, it asserts that any dispute whether a Union member is covered by a specific provision in the handbook is subject to the grievance procedure. The County claims that the Union had input into the handbook and there were extended discussions about the content of the receipt.

The County argues that not all communications between an employer and individuals are unlawful such as requiring applicants to sign that statements on the application form are true and any omission or misstatement could be grounds for discharge. With respect to the County's counsel's letter dated May 20, 1996, there was no individual bargaining because the revised receipt was never distributed to employees.

The County insists that it has not acted unreasonably or in bad faith in adopting reasonable work rules and requiring that employees acknowledge receipt of the employee handbook. It states that it has the right under the contract to establish reasonable work rules which the Union can challenge through the grievance procedure. It submits that it is willing to negotiate the content of the receipt form but simply because the parties failed to reach an agreement does not mean the County has committed a prohibited practice. The County denies that it had engaged in the prohibited practices alleged in the complaint and requests that the complaint be dismissed with attorneys' fees awarded to the County.

UNION'S REPLY

The Union denies that it had any input into the creation of Personnel Manual prior to its distribution and the Union never asked for input. The Union objects to the consideration of any evidence of offers of compromise as a defense. The Union has sought the removal of the violative document from employees' files as the first order of business and the County has refused and continues to refuse. The Union argues that the County has produced no evidence that the receipt is required by either Federal or State agencies and two years after the complaint was filed, the County cannot produce evidence that the "Receipt and Certification" is required.

DISCUSSION

Individual bargaining is defined as negotiations which take place between the employee and the employer. 2/ Under Sec. 111.70(1)(a), Stats., a municipal employer is obligated to bargain with the collective bargaining representative over the wages, hours and conditions of employment for employees in a collective bargaining unit represented by said representative. Under Sec. 111.70(3)(a)4, Stats., a municipal employer commits a prohibited practice where it bypasses the representative and seeks to obtain a contract directly with employees. Thus, when employees selected the Union to represent them, the County was obligated to bargain in good faith only with the Union. However, not all communications by an employer with its employees is a prohibited practice. The employer has certain free speech rights and employer remarks which critically or inaccurately portray the employees' labor organization are not violative of Sec. 111.70, Stats. 3/ Additionally, an employer can directly communicate to its employees truthful comments as to its bargaining proposals that had been submitted to the bargaining representative. An employer cannot threaten or coerce employees or portray the employer as a protector of their rights rather than the bargaining representative and cannot deal with the Union through employees rather than vice versa. 4/

With these principles in mind, it is necessary to review the facts of the instant case to determine whether any violation of Secs. 111.70(3)(a)1 and 4, Stats., has occurred.

The Union objected to paragraphs 2 and 3 of the Receipt and Certification form. As to paragraph 2, the form provides that unless an employee makes a written request, concern or request for an interpretation, the employee will be assumed to have read and understood what is in the handbook. The Union asserts that this is individual bargaining because this could be used as a

2/ Roberts' Dictionary of Industrial Relations, 3rd Ed., 1984 at 284.

3/ Milwaukee Board of School Directors, Dec. No. 27867-B (WERC, 5/95); Ashwaubenon Joint School District No. 1, Dec. No. 14474-A (WERC, 10/77); Janesville Board of Education, Dec. No. 8791 (WERC, 3/69).

4/ NLRB v. General Electric Co., 418 F.2d 736, 72 LRRM 2530 (2d Cir, 1969).

defense in a grievance concerning mandatory subjects of bargaining. The Handbook expressly states that employees covered by the contract are subject to the contract. Additionally, employees are not conceding any rights. Employees sign many documents which can be used as a defense. Employees can be required to fill out and sign time sheets or punch a time clock, even though hours and wages are subjects of bargaining. Employees can be required to fill out vacation and sick leave requests, mileage and expense reimbursement forms, reports of various kinds, such as gas receipts for trucks or equipment, accidents, safety concerns, etc. The Employer can require these to run its operations effectively and efficiently and an employee who falsifies or fails to fill out a form properly could be disciplined or his signed statement could be used to show that he vouched for something in case of a later denial by the employee but this is not individual bargaining. There is no attempt to undercut the Union and no threat to or coercion of the employee. The requirement of the Receipt and Certification is nothing more than a verification the County can rely on so that an employee cannot later plead ignorance of the Handbook's contents such as the sexual harassment policy or the procedures on blood borne pathogens. The employee is not asked to concur or agree with anything; rather, all that the employee is doing is indicating that the document was read and understood.

There was no evidence that the County refused to bargain upon request by the Union on any mandatory subject of bargaining. The paragraph is no different than asking employees to sign that they have read and understood their job description and duties. This simply does not constitute individual bargaining.

The Union also objects to paragraph 3 which states the Handbook is not a contract. This is simply boilerplate language to disclaim any claim by an employee that the Handbook is a contract that gives the employee certain job security rights. Some courts have held that a handbook may create job security provisions and this language simply disclaims any such interpretation. Bargaining unit employees do have a contract with the County and job security provisions can be included in it and enforced under it. The language of paragraph 3 merely states that the Handbook is not a contract and employees who sign are not entering into one. This is consistent with a collective bargaining agreement between the County and Union and certainly does not undercut the Union and cannot be read to denigrate any right or contract negotiated by the Union. Thus, it must be concluded that this paragraph does not give rise to any individual bargaining.

The Union amended its complaint alleging that the County's May 20, 1996 letter to the Union indicated that there was individual bargaining with employees in that they had been given a revised receipt for the Handbook. The evidence failed to show that any employees were given a revised receipt to sign. The County's Personnel Director testified that the revised form was never given to employees. 5/ Therefore, this charge has been dismissed.

5/ Tr. 57, 67-68.

The undersigned finds that the County did not engage in individual bargaining nor did it restrain, coerce or interfere with employees nor bypass the Union in violation of Secs. 111.70(3)(a)1 or (4), Stats.

The County requested attorneys' fees. The Commission has held that attorneys' fees are warranted only in exceptional cases where the allegations or defenses are frivolous as opposed to debatable. 6/ The Union's allegations have not been shown to be so frivolous, in bad faith or devoid of merit so as to warrant the imposition of costs and attorneys' fees and the County's request for same is denied.

Dated at Madison, Wisconsin, this 30th day of May, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

6/ Wisconsin Dells School District, Dec. No. 25997-C (WERC, 8/90) citing Madison Metropolitan School District, Dec. No. 16471-B (WERC, 5/81).