

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**STEVE  
PRELLER,**

Complainant,

vs.

**STATE OF WISCONSIN, DEPARTMENT OF  
EMPLOYMENT RELATIONS; UW  
HOSPITAL & CLINICS; UW HOSPITAL &  
CLINICS SUPERINTENDENT GORDON  
DERZON; UWHC PUBLIC AUTHORITY  
GOVERNING BOARD; GREG KRAMP;  
RENAE BUGGE; NEAL SPRANGER;  
DON KLIMPEL, Respondents,**

and

**LOCAL 171, WISCONSIN  
STATE EMPLOYEES UNION, COUNCIL 24, AFSCME,  
AFL-CIO, Intervenor.**

Case 429  
No. 54594  
PP(S)-264

**Decision No. 28937-A**

Appearances:

**Mr.**

**Steve Preller**, on behalf of himself.

**Mr. David J. Vergeront**, Chief Legal Counsel, Department of Employment Relations,  
on behalf of the State of Wisconsin.

Lawton & Cates, S.C., by **Mr. P. Scott Hassett**, on behalf of Local 171, Wisconsin  
State Employees Union, AFSCME, Council 24, AFL-CIO.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

**Amedeo Greco, Hearing Examiner:** Complainant Steve Preller ("Preller"), filed an unfair  
labor practices complaint with the Wisconsin Employment Relations Commission ("Commission"),  
on November 1, 1996, alleging that the State of Wisconsin ("State"), and

certain individually named representatives had committed unfair labor practices within the meaning of the State Employment Labor Relations Act ("SELRA"), by retaliating against him because of his concerted, protected activities and by interfering with, coercing, and restraining the exercise of his statutorily protected rights. 1/ The State filed its Answer on December 10, 1996. The Commission on December 11, 1996, appointed the undersigned to issue and make Findings of Fact, Conclusions of Law, and Order as provided for in Section 111.07(5), Wis. Stats.

Intervenor Local 171, Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO ("Council 24"), filed a motion to intervene on December 10, 1996, which was granted on January 6, 1997, over Preller's objection. 2/ Hearing was held in Madison, Wisconsin, on January 6, 1997, March 18, 1997, and March 19, 1997. Preller and the State thereafter filed briefs which were received by July 29, 1997. Council 24 did not file a brief.

Having considered the arguments and the record, I make and file the following Findings of Fact, Conclusions of Law, and Order.

### **FINDINGS OF FACT**

1. Preller, an employe under Section 111.81(7), has been employed by the State as a Hospital Supply Clerk at the State's University of Wisconsin Hospital & Clinics ("University Hospital"), in Madison, Wisconsin. Preller resides at 135 South Marquette Street, Apartment #1, Madison, Wisconsin 53704.

2. The State, an employer under Section 111.81(8), at all times material herein has operated University Hospital where it employs Director of Central Services Don Klimpel, Executive Director Greg Kramp, Labor Relations Director Renae Bugge, Liaison Officer Neal Spranger, and Superintendent Gordon Derzon. At all times material herein, they have acted on the State's behalf and have served as its agents.

3. Council 24, a labor organization, represents for collective bargaining purposes Preller and some of the employes employed by the State at University Hospital. At all times material herein, Carl Hacker has served as Council 24's Assistant Director and has acted on its behalf. Council 24 and Preller over the years have developed a difficult relationship which, in part, stems from Preller's claims that Council 24 is not properly representing the employes in the University hospital.

4. The Union and the State were privy to a 1995-1997 collective bargaining agreement which provided in Article XI, Section 5:

**Section 5: Uniforms**

**11/5/1** The present practices pertaining to uniforms within each department shall be continued for the duration of this Agreement. In those locations where monetary allowances for uniforms are presently being provided, changes in the reimbursement rate shall be a subject for discussion and local negotiation pursuant to Article XI, Section 2.

**11/5/2 (BC, ASU, SPS, T)** For the purposes of this Section, uniforms are defined as styled clothing uniquely related to the work place and not appropriate for personal or other outside use.

**11/5/3 (BC, ASU, SPS, T)** If the Employer desires, additional uniforms may be required. If required, uniforms shall be paid for or furnished by the Employer.

5. Under this provision, some employees before 1996 were paid \$3 per pay period for wearing a smock which they had to purchase themselves. Other employees were paid \$3 per pay period even though they did not wear a smock.

6. The State in the Spring of 1996 made the wearing of smocks optional and asked its employees to sign a form indicating whether they wanted to do so. If employees chose not to wear smocks, they no longer would be paid the \$3 per pay period uniform allowance. Said form stated:

**REQUEST FOR CLOTHING ALLOWANCE**

I agree to wear a smock during all work hours in Central Services and am therefore eligible for a clothing allowance. I understand that if I stop wearing a smock, my clothing allowance will be discontinued.

SIGNATURE DATE

PRINTED

March 29, 1996

As noted in the revised CS Administrative Standards, smocks now will be optional. If you choose not to wear a smock, you will not receive a clothing allowance.

This form must be returned to Bob Scheuer's mailbox (next to E5/134A) no later than April 27, 1996. A list of all those agreeing to wear smocks will then be given to payroll. Those not on this list will not receive a clothing allowance. If you sign this form and are found not wearing a smock, your clothing allowance will be discontinued.

Name tags will continue to be required at all times.

Said form had a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 111.82, Stats.

7. Preller and Marfilus refused to sign said form. They, instead, filed a grievance on June 13, 1996, wherein they claimed that the State was violating the contract by asking employees whether or not they wanted to wear a smock and by engaging in individual bargaining with employees. That grievance was subsequently granted by the State at the second step of the grievance procedure on November 13, 1996, after which point the State granted the back payment requested in the grievance and began to pay all affected employees \$3 per pay period for wearing smocks.

8. After Preller's grievance was granted, Director of Central Services Klimpel decided that employees (other than students and limited-term employees) had to wear smocks if they wanted the \$3 per pay period uniform allowance and that they would be disciplined if they did not do so. By letter dated December 3, 1996, he informed affected employees:

...

In May of this year, the Department of Central Services Administrative Standards was revised to make the wearing of smocks optional. Employees who would like to wear a smock and receive the uniform allowance were asked to sign a form indicating such. However, since the contract and local agreement provide for a uniform allowance it is not necessary to individually request the allowance. Employees involved will be reimbursed the uniform allowances not received since April 1996.

The department will continue to pay a uniform allowance to full-

time employs as in the past and represented by WSEU.

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Those receiving the allowance are expected to wear the uniform while working their shifts.

I'm hoping that this clears up any misunderstanding surrounding this issue.

Klimpel decided employees must wear smocks because departmental regulations - which had not been enforced for a long time - mandate that employees must do so. Klimpel's decision was not based on any union animus or any retaliatory motive.

9. Distribution Manager Robert Scheuer subsequently told employees they had to wear smocks because a grievance had been filed over the issue. Scheuer saw the smock grievance posted on the Union's bulletin board, but does not know who posted it.

10. Hospital Supply Clerk Robert Ramage was paid a uniform allowance before the grievance was filed, even when he did not wear a smock. He asked supervisor Rusty Clifton and Scheuer in about January, 1997, why he had to wear a smock. They told him Marfilius, Preller, and other employees had complained that employees in Central Supply were not wearing smocks. They also told him, "Well, this is a Union thing. So take it up with the Union" and that he also should take the matter up with Preller and Marfilius because they had brought the situation on "you guys so take it up with them." Ramage was then told that he could be disciplined if he did not buy a smock to wear. Ramage replied that he could not afford to buy a smock, but he subsequently did so. The statement that Preller and Marfilius were responsible for employees now wearing smocks had a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Sec. 111.84, Stats.

11. Hospital Supply Clerk Timothy Fisher was paid a uniform allowance before the grievance was filed, even when he did not wear a smock. He has been required to wear one since about December, 1996. He asked Scheuer why he had to wear a smock, to which Scheuer replied: "It's the Union's fault. Blame Steve Preller". Scheuer also told him to call the Union and voice his complaints to it. Fisher was told more than once by his supervisors, "Just blame Preller". These supervisory statements had a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 111.82., Stats.

12. Hospital Supply Clerk Michael Sweet received a uniform allowance before the grievance was filed, even when he did not wear a smock, but he now must wear one. Supervisor Larry Lange told him he had to do so because Preller had filed a grievance to receive back pay for the uniform allowance. Lange's statement had a reasonable tendency to interfere with, restrain, or

coerce employes in the exercise of their rights guaranteed by Section 111.82., Stats.

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13. Council 24 Assistant Director Hacker by letter dated February 27, 1996, informed bargaining unit employes at University Hospital's Central Service that Preller and Marfilius had filed a grievance over the smock issue and that it had been settled. Hacker did so because employes can be disciplined if they do not wear smocks and because he wanted to clarify the issue, which is something he has done on other matters. Said letter stated:

**To:** CENTRAL SERVICES EMPLOYEES

**From:** KARL HACKER, ASSISTANT DIRECTOR  
AFSCME COUNCIL 24

**Subject:** UNIFORMS

**Date:** February 27, 1997

It has come to our attention, that a number of you have been involved in pre-disciplinary meetings because you have not been wearing a smock during all work hours in Central Services. It is our understanding that you may be subject to disciplinary action because of your failure to wear the required smock.

The Employer currently pays a monetary allowance for uniforms under the terms of the contract and local agreement. It basically required the Employer to continue the present practices pertaining to uniforms within each department for the duration of this agreement.

On July 22, 1996, a group grievance was filed by Steve Preller and David Marfilius. This was a result of a memo issued to you by the Employer dated March 29, 1996. A grievance meeting was conducted and as a result the grievance was sustained by Phil Moss. This grievance was posted on the union bulletin board by individuals unknown and is included with this memo for you.

On December 3, 1996 in a memo to all Central Services Classified Permanent Employees from Don Klimpel addressed the uniform issue. He also stated, "*Those receiving the allowance are expected to wear the uniform while working their shifts.*"

I hope that this provides you with information and answers your questions on why you are being required to wear the smocks during your entire shift.

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Hacker in the past sent out similar information to members regarding prior grievances which were resolved. Hacker's February 27, 1997, letter was in accord with this past practice and it was not based on any attempt to embarrass Preller or to in any other way interfere with his right to file a grievance.

14. The State has not discriminated against Preller or any other employees relating to the smock issue.

#### **CONCLUSIONS OF LAW**

1. Respondent State of Wisconsin violated Section 111.84(1)(a) of the State Employment Labor Relations Act when it blamed and faulted Steve Preller for the fact that all affected employees must now wear smocks and when it told employees that he was responsible for them now wearing smocks.

2. Respondent State of Wisconsin did not violate Section 111.84(1)(c) of the State Employment Labor Relations Act, or any other section of the State Employment Labor Relations Act, when it required employees to wear smocks.

3. Respondent State of Wisconsin violated Section 111.84(1)(a) of the State Employment Labor Relations Act when it asked employees to sign a form which asked whether they wanted a uniform allowance.

4. Respondent State of Wisconsin did not retaliate or discriminate against Preller or any other employees because of their concerted, protected activities and it therefore did not violate Section 111.84(1)(c) of the State Employment Labor Relations Act.

Upon the basis of the above Findings of Fact and Conclusions of Law, I make and issue the following

#### **ORDER 3/**

1. IT IS ORDERED that the State of Wisconsin, its officers, agents, and officials shall immediately:

1. Cease and desist from blaming and/or faulting employes for filing grievances and cease and desist from claiming that Steve Preller is responsible for the fact that all affected employes must now wear smocks.
2. Cease and desist from asking employes to sign forms which ask whether they want to receive or waive a contractual benefit such as a uniform allowance.

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3. Take the following affirmative action to rectify the State of Wisconsin's unfair labor practices:
  - a. Notify all employes by posting in conspicuous places where employes are employed copies of the Notice attached hereto and marked "Appendix 'A'". That Notice shall be signed by the State of Wisconsin and shall be posted immediately upon receipt of a copy of the Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the State of Wisconsin to ensure that said Notice is not altered, defaced, or covered by other material.
  - b. Notify the Wisconsin Employment Relations Commission in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the other complaint allegations be, and they hereby are, dismissed in their entirety.

Dated at Madison, Wisconsin, this 18th day of September, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

\_\_\_\_\_  
Amedeo Greco /s/  
Amedeo Greco, Examiner



APPENDIX "A"

NOTICE TO ALL EMPLOYEES

1. WE WILL NOT blame or fault any employes for filing grievances and we will not tell employes that Steve Preller is responsible for the fact that all affected employes must now wear smocks.
2. WE WILL NOT ask employes to sign forms which ask whether they want to receive or waive a contractual benefit such as a uniform allowance.
3. WE WILL NOT interfere with, restrain, or coerce employes in the exercise of their rights under Sec. 111.82, Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

STATE OF WISCONSIN

By \_\_\_\_\_

THIS NOTICE MUST BE POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY MATERIAL.

**DEPARTMENT OF EMPLOYMENT RELATIONS**  
**(UW HOSPITALS AND CLINICS)**

**POSITIONS OF THE PARTIES**

Preller asserts that the State 4/ violated Section 111.84 of SELRA by forcing employes to sign a form - which he claims to be a "contract of employment" - indicating whether or not they wanted a uniform allowance and by retaliating against him and others for filing a grievance on this issue. He thus contends that the State's actions were part of "an extensive pattern of union animus" and that the State has unfairly blamed him for changing the smock policy so that he "would not pursue enforcement of the contract in the future." 5/

The State, in turn, claims that Preller has failed to prove any of his allegations; that its granting of Preller's grievance does not mean that it violated its contract with Council 24; and that it, in fact, never entered into any "contracts of employment" with its employes. The State also contends that it has the right to insist that employes wear a smock if they want a uniform allowance and that, moreover, "even if it could be said there was a violation, it was de minimis and technical in nature."

**DISCUSSION**

As related in Finding of Fact 7 above, Preller and Marfilus grieved over the State's refusal to pay them a uniform allowance and over the State's distribution of a form asking whether employes wanted such an allowance. Thereafter, the State granted the grievance and it has since paid a uniform allowance to all affected employes on the condition that they wear a smock.

Preller asserts that the distribution of the form was illegal and he objects to the State's requirement that all affected employes must wear a smock in order to collect the \$3 per pay period uniform allowance. The State's requirement, however, is certainly reasonable because it makes no sense whatsoever to pay a uniform allowance to employes who do not wear a smock. That rather elementary point should be obvious to all.

It is true that the State before Preller's grievance 6/ paid the allowance to employes who did not wear a smock. However, once Preller filed his grievance, the State was entitled to review its policies on this issue. For, just as employes have the right to grieve and to insist that employers follow the strict terms of a collective bargaining agreement, employers, too, have the right to insist that employes follow that same contract and any applicable work rules. Here, according to Klimpel whose testimony I credit, the State for years has had an administrative rule requiring all affected employes to wear smocks. While that rule was not enforced before the filing of Preller's grievance, the State had the right to insist that employes strictly follow it after Preller grieved and insisted that the State strictly adhere to the contractual provision providing for a uniform allowance.

That is not retaliation or discrimination. That simply is the other side of a two-headed coin: if employees insist on receiving a uniform allowance, employers have the right to insist that employees wear uniforms. This result, of course, may not be the result Preller wanted when he initially grieved over this issue. But, the Law of Unintended Consequences by its very nature results in unforeseen consequences. Absent proof of any discriminatory motive, this allegation therefore must be dismissed.

Another unforeseen consequence was the apparent employee discontent over wearing smocks and their questioning over why they had to do so. For, as related in Finding of Facts Nos. 10, 11 and 12, above, employees Ramage, Fisher, and Sweet all asked their supervisors why they had to wear smocks. In this connection, I credit all of their testimony as to what transpired between them and their supervisors. 7/

It thus was only natural for supervisors to tell Ramage that he should contact Council 24 or Preller and Marfilius if he had any questions since Council 24 is Ramage's certified bargaining agent and since Preller and Marfilius had filed the grievance which helped bring about this change. However, they went over the line when they added that Preller and Marfilius were responsible for the wearing of smocks.

That response was partially true because Preller and Marfilius had, in fact, served as catalysts in raising this issue. But, it also was partly untrue because Klimpel decided on his own to strictly enforce the rule on the wearing of smocks and because it was he, not Preller, who decided that employees henceforth had to wear smocks in order to receive their uniform allowance. Since that result was never sought in Preller's grievance, and since that result did not automatically flow from that grievance, it therefore is wrong to say that Preller and Marfilius were totally responsible for the change.

The same is true for the answers given Fisher. As related in Finding of Fact No. 11 above, he was told, "It's the Union's fault. Blame Steve Preller", an admonition he was told more than once. Words such as "fault" and "blame" are pejorative because they try to shift to someone else the reason and onus for the change. Since Council 24 and Preller did serve as agents for this change, this response is partially true. On the other hand, Council 24 and Preller cannot be "blamed" or "faulted" for anything because it was Klimpel, not they, who ultimately concluded that smocks henceforth must be worn pursuant to the State's own administrative rules.

Supervisor Lange also misstated the facts when, as related in Finding of Fact No. 12, supra, he told Sweet he had to wear a uniform because of Preller's grievance.

The supervisory responses given to Ramage, Sweet, and Fisher which claimed that Preller was responsible for this change are similar to the statements found unlawful in CEDAR GROVE-BELGIUM AREA SCHOOL DISTRICT, DEC. NO. 25849-B (WERC, 5/91). There, a school

administrator told an employee that the union was responsible for an additional work assignment. The Commission found that the statement:

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"although subsequently clarified during a follow-up conversation, constituted a misstatement which had a reasonable tendency to be coercive of [the teacher's] interest in further involvement with the Association." (Footnote citation omitted). Id., at 17.

This is true even "if the employer did not intend to interfere and even if the employees did not feel coerced or was not in fact deterred from exercising Sec. 111.70(2) rights." Id., at 11.

The responses to Ramage, Sweet, and Fisher's inquiries also were unlawful under Section 111.84(1)(a) because they, too, were not entirely true and because by placing "blame" and "fault", they had a reasonable tendency to make it more difficult for Preller (and others) to file grievances, thereby interfering with their statutory right to do so. 8/

The State also violated Section 111.84(1)(a) by forcing Preller and other employees to sign the form set forth in Finding of Fact No. 6 above which asked whether they wanted to waive receiving a uniform allowance. Since as related in Finding of Fact No. 4 above, Article XI, Section 5, of the contract provides for paying such an allowance, and since Klimpel himself admitted in his December 3, 1996, letter to affected employees that "the contract and local agreement provide to affected employees for a uniform allowance. . .", Preller (and other employees) were entitled to receive this benefit without any additional effort or statement on their part. By requiring employees to specifically ask for this contractual benefit, and by not granting it unless they signed the form, the State interfered with Preller's right to receive the contractual benefits that Council 24 had negotiated on his behalf. 9/

The State claims that any possible statutory violations were only "de minimis and technical in nature". I disagree. By "blaming" and "faulting" employees for a change which management itself has chosen to effectuate, the State has interfered with the right of its employees to file grievances without fear of opprobrium or ridicule from fellow bargaining unit members. As a result, it is important to make sure that this situation does not repeat itself and that bargaining unit members be told about the true facts surrounding the smock issue, i.e., that management itself - not Preller - is responsible for the fact that they must now wear smocks. It similarly is important to make sure that the State does not once again ask employees to sign a form which asks whether they want to waive or receive a contractually provided-for benefit. If that is not done, employees once again may be coerced into giving up such a benefit and their right to automatically receive it may be interfered with. Since these two matters have been fully litigated in this proceeding, it therefore is proper to rule on them and to provide for an effective remedy.

There is no merit, however, to Preller's additional claim that said forms constituted unlawful

individual contracts of employment since the forms did not relate to either wages or hours and since they, instead, only related to one minor, incidental condition of employment which hardly covers the full scope of Preller's employment relationship. Hence, this allegation is hereby dismissed.

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Preller also argues that the State retaliated against him and subjected him to unequal treatment of its attendance policy and that the State "kept disciplining me for more and more outlandish things that weren't really violations of the policy, it became clear to me that this was retaliation." In fact, this record is utterly devoid of any evidence to support this claim. This allegation is therefore dismissed.

In conclusion, I find that the State violated Section 111.84(1)(a) by requiring employes to sign a form which asked whether they wanted to waive or receive their contractually provided for uniform allowance and by telling employes that Preller was responsible for them now wearing a smock. To rectify said unlawful conduct, the State is required to take the affirmative action related above at page 7-8, and to post a notice to employes. 10/ All other complaint allegations are dismissed.

Dated at Madison, Wisconsin, this 18th day of September, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Amedeo Greco /s/

Amedeo Greco, Examiner

**ENDNOTES**

1/ The complaint was co-signed and co-filed by fellow employe David Marfilus who has since been dismissed as a named party pursuant to his motion to dismiss.

2/ Council 24 was allowed to intervene because it is a party to the collective bargaining contract which gave rise to part of this dispute.

3/ 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 new testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of an exceptional delay in receipt of a copy of any findings or order it may extend the time for another 20 days for filing a petition with the commission.

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

4/ Preller did not name Council 24 as a named respondent and he does not claim that Council 24 has violated his rights over the smock issue.

5/ Preller also alleges that the State discriminated and/or retaliated against employes Tom Kerns, Craig Marchant and Pat Wilkinson. Since these allegations involve matters outside the

one-year statute of limitations, it is unnecessary to address them. Hence, they are dismissed in their entirety.

6/ For the purpose of clarity, the grievance herein is called “Preller’s grievance” even though it was co-filed with Marfilius.

7/ Thus, Lange testified “I can’t recall” as to whether he had his exchange with Sweet, but added: “I’m not saying that it didn’t happen. . .” Clifton was not called as a witness and he thus never denied the statements Ramage attributed to him. I therefore draw an adverse inference that if called, he would have corroborated Ramage’s testimony. In addition, while Scheuer denied the statements attributed to him, he nevertheless conceded that he told employees that they had to wear smocks because of Preller’s grievance. Even under his version, then, Scheuer falsely blamed Preller for the fact that he was responsible for them wearing smocks.

8/ This is why Preller has standing to raise this issue on his own, a matter the State does not dispute.

9/ This, too, is why Preller as an individual employe has standing to raise this issue under Section 111.84(1)(a), a matter the State does not dispute.

10/ In his complaint amendment, Preller asks that the State be directed to send a letter to all affected employes which explains that it was the State, not Preller, who is responsible for employes now wearing smocks. In the absence of any extraordinary circumstances as to why that special remedy is needed, it is enough that the State post the Notice To All Employes provided for above.