

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**ASSOCIATION OF MENTAL HEALTH SPECIALISTS**, Complainant,

vs.

**ROCK COUNTY and JAMES WAGMAN**, Respondents.

Case 303  
No. 55463  
MP-3328

**Decision No. 29219-C**

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Appearances:

**Mr. Thomas A. Schroeder**, Corporation Counsel, Rock County, Courthouse, 51 South Main Street, Janesville, Wisconsin 53545, appearing on behalf of Rock County and James Wagman.

**Attorney John S. Williamson, Jr.**, 103 West College Avenue, Suite 1203, Appleton, Wisconsin 54911, appearing on behalf of the Association of Mental Health Specialists.

**ORDER**

On October 21, 1998, we issued an Order Affirming Examiner's Findings of Fact and Affirming in Part and Reversing in Part Examiner's Conclusions of Law and Order in the above matter.

By letter dated November 11, 1998, Complainant alleged that Respondent Rock County had failed to comply with our Order.

The parties thereafter exchanged written argument as to the issue of compliance, the last of which was received January 20, 1999. Both parties advised us that an evidentiary hearing was not necessary.

No. 29219-C

Having considered the matter and being fully advised in the premises, we are satisfied that the Respondent County has complied with our October 21, 1998 Order. Therefore, we hereby deny the Complainant's request that we commence enforcement proceedings against Respondent County.

Given under our hands and seal at the City of Madison, Wisconsin this 3<sup>rd</sup> day of March, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

Rock County

MEMORANDUM ACCOMPANYING ORDER

In our October 21, 1998 decision, we made the following Conclusion of Law:

1. By failing to place the Human Services Worker position in Complainant's bargaining unit when this new position was created and filled, and by unilaterally establishing the wages, hours and conditions of employment for the Human Services Worker position prior to commencement of bargaining with Complainant over said matters, Respondent Rock County committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and derivatively 1, Stats.

To remedy the violation of law found in Conclusion of Law 1, above, we made the following Order:

1. Cease and desist from refusing to bargain with the Association of Mental Health Professionals as to the wages, hours and conditions of employment of new positions which fall within the scope of the Association's bargaining unit.

2. Take the following affirmative action:

A. **Continue** bargaining with the Association of Mental Health Specialists over the wages, hours and conditions of employment of the Human Services Workers. (Emphasis added)

In the Memorandum accompanying our decision, we discussed our remedial Order as follows:

As to the appropriate remedy for this violation, the record establishes that **since Respondent County placed the Human Services Worker positions in the bargaining unit represented by Complainant, it has been attempting to bargain with Complainant over the wages, hours and conditions of employment applicable to the employees in question. Complainant has resisted those attempts based on its belief that good faith bargaining cannot occur until the Human Services Worker wages, hours and conditions of employment unilaterally imposed by Respondent County have been rescinded.** Complainant asserts we should order such a remedy. (Emphasis added)

We do not find such a remedy to be appropriate in this case. First, there is the practical question of what would the wages, hours and conditions of employment become for the new positions/employees if the existing wages, hours and conditions of employment were rescinded. Complainant suggests that the expired contract should apply but the Service Workers positions did not exist when that contract was bargained and thus, for instance, there obviously is no

Human Services Worker wage rate in the expired agreement. What wage rate would establish the “level playing field” which Complainant seeks? Second, the decision to create the new positions was a permissive subject of bargaining primarily related to Respondent County’s assessment of the service needs of patients. We have consistently held that an employer can proceed to implement a permissive subject of bargaining while bargaining over the impact of the permissive action on wages, hours and conditions of employment is ongoing. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 20093-A (WERC, 2/83); CITY OF MADISON, DEC. NO. 17300-C (WERC, 7/83). Thus, if Respondent County had bargained with Complainant over Human Services Worker wages, hours and conditions of employment from the time the position was created and if the parties had not reached agreement on these matters at the point in time when Respondent wanted to begin to provide services to patients, Respondent would have been entitled to proceed to implement its permissive decision by filling the positions using unilaterally established wages, hours and conditions of employment-subject to amendment by the parties’ ultimate agreement on what those wages, hours and conditions of employment should be from the time the two Human Services Worker positions were filled. Thus, we conclude the remedy which best effectuates the purposes of the Municipal Employment Relations Act in this case is one which leaves the existing Human Services Worker wages, hours and conditions of employment intact **pending the parties’ completion of bargaining over these matters.** (Emphasis added)

The parties’ correspondence indicates that while the matter was pending before us for decision, the parties reached agreement on a new contract for the entire bargaining unit, which contract includes the wages, hours and conditions of employment applicable to the Human Service Workers.

Complainant contends that despite this new overall agreement, our Order requires that Respondent County now engage in separate bargaining over the wages, hours and conditions of employment of the Human Services Workers and, if necessary, proceed to interest arbitration to establish a contract for these employees.

Respondent County argues that because it has already bargained to agreement with the Complainant over the wages, hours and conditions of employment of the Human Services Workers, it has complied with our Order.

After careful consideration of the matter, we conclude that the bargaining of the new contract does constitute compliance with our Order. We ordered that the Respondent:

**Continue** bargaining with the Association of Mental Health Specialists over the wages, hours and conditions of employment of the Human Services Workers. (emphasis added)

We stated in our Memorandum that this remedy:

. . . . leaves the existing Human Services Worker wages, hours and conditions of employment intact **pending the parties' completion of bargaining over these matters.** (emphasis added)

As reflected by the foregoing, we were aware that the parties were already bargaining over the Human Services Workers. The intent of our Order was that those ongoing negotiations continue to completion. Therefore, by reaching an agreement on an overall contract which by its terms covers the Human Services Workers, we are satisfied that the Respondent County has complied with our Order. Thus, we will not be commencing compliance proceedings against the Respondent County.

Dated at Madison, Wisconsin this 3rd day of March, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner