

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**THE WISCONSIN STATE EMPLOYEES UNION (WSEU),
AFSCME, COUNCIL 24, AFL-CIO, Complainant,**

vs.

THE STATE OF WISCONSIN, Respondent.

Case 449
No. 55659
PP(S)-282

Decision No. 29318

Appearances

Lawton & Cates, S.C., by **Attorney Scott P. Hassett**, 214 West Mifflin Street, Madison, Wisconsin 53703-2965, appearing on behalf of the Complainant.

Attorney David Vergeront, Legal Counsel, Department of Employment Relations, 137 East Wilson Street, Madison, Wisconsin 53703, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

On October 16, 1997, the Wisconsin State Employees Union (WSEU), AFSCME, Council 40, AFL-CIO, filed a complaint with the Wisconsin Employment Relations Commission alleging that the State of Wisconsin had committed an unfair labor practice within the meaning of Sec. 111.84(1)(e), Stats.

On October 27, 1997, the parties filed a stipulation of facts with the Commission and further requested that the Commission issue the decision in this matter.

The parties thereafter filed briefs and the record was closed upon the Commission's February 12, 1998 receipt of a letter from Jane R. Henkel, Deputy Director, Legislative Council.

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

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FINDINGS OF FACT

The Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO (hereinafter "WSEU"), and the State of Wisconsin were parties to a two-year Collective Bargaining Agreement (CBA) effective November 26, 1995 and ending June 30, 1997.

Beginning in April of 1997, the WSEU and the State of Wisconsin, represented by the Department of Employment Relations (DER), began negotiations for the upcoming CBA, to be effective July 1, 1997 through June 30, 1999.

For the first time in 24 years of bargaining history between the parties, an agreement was reached on the upcoming contract prior to the expiration of the existing contract. Said agreement was reached between the parties on or about June 19, 1997, prior to the June 30, 1997 expiration date of the existing contract.

The new CBA contained changes providing for increases in shift and weekend differential pay. A copy of the new language, SS 12/4/1 and 12/4/2, is attached hereto as Exhibit A.

It was the expressed intent of both parties to the new CBA, the WSEU and the DER representatives acting on behalf of the State of Wisconsin, that the shift and weekend differential pay rates would take effect beginning July 1, 1997, which was the effective date of the new CBA, and that affected employees would receive any increased rates from and after July 1, 1997.

The parties discussed and agreed, and it was the intent of the parties, that employees represented by WSEU and covered by the CBA would be made whole for any increased unpaid wages or add-ons, such as shift and weekend differentials, that accrued from the effective date of the contract (July 1, 1997) until the contract could be implemented after being signed by the Governor of Wisconsin.

In the last 24 years of bargaining history between the parties, all new CBAs were agreed to after the expiration of the prior agreements. As a result, it was the practice to add language which would provide for lump sum payments of additional wages or add-ons that would have accrued since the expiration date of the last agreement.

Because of the unique experience of reaching an agreement prior to the expiration of the 1996-1997 agreement and through oversight and mutual mistake of the parties, or based simply on a belief that special language was not necessary, no language was included relating to lump-sum payments for increased shift and weekend differential pay from and after July 1, 1997, even though it was the intent of both parties that affected employees would receive such lump-sum payments.

Due to unanticipated and prolonged delays in the 1997 legislative budget process, the new CBA was not approved by both houses of the legislature until September 25, 1997, and was not signed into law by Governor Thompson until October 9, 1997. As a result, affected employees have been denied three (3) months of increased shift and weekend differential pay.

The parties have since been advised by an attorney with the Wisconsin Legislative Council,

who advises the Joint Committee on Employment Relations, that despite the intent and agreement of the parties, lump-sum payments to make employes whole for increased shift and weekend differential payments under the 1997-1999 CBA for the period July 1 to October 9, 1997, cannot be paid due to a lack of language in the contract which specifically permits such payments.

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Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

By failing to make lump sum payments for the increased shift differential and increased weekend differential for the period of July 1, 1997 through October 9, 1997, the Respondent State of Wisconsin has committed an unfair labor practice within the meaning of Sec. 111.84(1)(e), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

Respondent State of Wisconsin shall immediately take whatever steps are necessary and appropriate to make the lump sum payments for the increased shift differential and weekend differential rates for the period of July 1, 1997 through October 9, 1997.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of March, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Department of Employment Relations

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER**

Section 111.84(1)(e), Stats., makes it an unfair labor practice for the State of Wisconsin "To violate any collective bargaining agreement previously agreed upon by the parties. . . ."

Complainant WSEU filed a complaint with the Commission alleging the State of Wisconsin had agreed to make but then failed to make lump sum payments to affected employees for increased shift differential and weekend differential wage rates which became effective July 1, 1997. The State did not file an answer to the complaint and thereby admitted the facts alleged. 1/ The parties filed a stipulation of facts which confirmed the State's agreement to make the payments as part of the parties' settlement of the 1997-1999 contract. Although it is apparent that the violation was the result of an inadvertent mutual mistake by the parties, the pleadings compel us to find that the State violated the 1997-1999 contract by failing to make the lump sum payments and thereby violated Sec. 111.84(1)(e), Stats. Therefore, we have ordered the State to take whatever action is necessary and appropriate to make these payments.

Dated at the City of Madison, Wisconsin this 2nd day of March, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

ENDNOTES

1/ ERC 22.03(6) provides that the failure to file an answer constitutes an admission of the material facts alleged in the complaint.

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