

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN ASSOCIATION OF PROFESSIONAL CORRECTIONAL OFFICERS

Involving Certain Employees of
**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYMENT RELATIONS (CORRECTIONS)**

Case 469
No. 56907
SE-104

Decision No. 29754-A

Appearances:

Attorney Sally A. Stix, 7609 Elmwood Avenue, Suite 202, Middleton, Wisconsin 53562-3134, appearing on behalf of Wisconsin Association of Professional Correctional Officers.

Attorney David J. Vergeront, Legal Counsel, Department of Employment Relations, 345 West Washington Avenue, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the State of Wisconsin, Department of Employment Relations (Corrections).

Lawton & Cates, S.C., by **Attorney P. Scott Hassett**, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965 appearing on behalf of the Wisconsin State Employees Union.

ORDER DENYING MOTION

Wisconsin Association of Professional Correctional Officers (herein Petitioner) filed a petition and showing of interest on October 31, 2000 requesting the Wisconsin Employment Relations Commission to conduct an election among Security and Public Safety officers in the employ of the Department of Corrections, State of Wisconsin to determine whether said employees wished to be represented for the purposes of collective bargaining by the Petitioner.

Dec. No. 29754-A

Said officers are currently represented by Wisconsin State Employees Union. The Commission's staff having administratively determined on December 1, 2000 that Petitioner's showing of interest did not meet the 30 percent standard required by Sec. 111.83(6), Stats., Petitioner requested that the Commission review and validate five previously invalidated cards and limit evidence of a 30 percent showing of interest to the original list of employees provided by the Department of Employment Relations rather than the expanded list administratively developed by the Commission and thereby re-determine Petitioner's showing of interest. Petitioner contends that if one or more of the five invalidated cards are validated and only the Department of Employment Relations original employee list is used, as is legal and appropriate, Petitioner would have established a 30 percent showing of interest.

The Commission has reviewed said request of Petitioner as a Motion and is satisfied that it should be denied.

NOW, THEREFORE, it is

ORDERED

That the Motion filed by the Wisconsin Association of Professional Correctional Officers to find the 30 percent showing of interest has been established and to approve its election petition be, and the same hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin this 3rd day of May, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Department of Employment Relations (Corrections)

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION

Petitioner, Wisconsin Association of Professional Correctional Officers, on October 31, 2000, filed a petition accompanied by a number of authorization cards, 1,465 of which were able to be matched or validated against an employer list provided by the Department of Employment Relations of 4,887 bargaining unit employees as of the payroll period including October 31, 2000, the submission date of the petition. As detailed in the Yaeger Affidavit, attached hereto as Appendix A, the Commission staff administratively, through its own efforts in accessing the Wisconsin Personnel on-line computer program database and the Wisconsin Central Payroll, ultimately established a total number of bargaining unit employees of 4,997 as of October 31, 2000 and authorization cards of 1,514 submitted of which 1,485 were counted as valid, leaving Petitioner 12 authorization cards short of the necessary 30 percent (1,497) of the 4,997 bargaining unit employees required by Sec. 111.83(6), Stats.

Petitioner submits that when determining the adequacy of the showing of interest, the Commission staff should only have used the original list from the Department of Employment Relations of 4,887 unit employees. Petitioner further identified the five previously invalidated cards and requested that the Commission validate those cards which would result, if just one of the five cards were validated, in a showing of interest of 1,466 cards, which would meet the statutory required 30 percent showing of interest when calculated against the original 4,887 employee Department of Employment Relations list. Petitioner argues that the Wisconsin Employment Relations Commission staff deviated from a standard the Commission staff set in 1998 where Petitioner also failed to establish a showing of interest, because the Commission staff then only used the Department of Employment Relation's list of employees and did not attempt to administratively locate other employees even though Petitioner in the 1998 matter pointed out the discrepancy between DER's alpha list and the number of cards Wisconsin Association of Professional Correctional Officers had submitted whose signers did not appear on the alpha list. Petitioner submits that the Commission staff's 1998 decision only to use the DER list, and not one developed by the Commission, set a standard and a practice from which the Commission's staff should not have deviated in considering Petitioner's October 31, 2000 showing of interest submission.

As evidenced by the Yaeger Affidavit, it is readily apparent that staff of the Commission exercised good faith in attempting, with Petitioner's complaint about DER's 1998 list in mind, to establish the most accurate list of bargaining unit employees on the State payroll as of October 31, 2000. The Commission finds no error or inappropriate conduct on

the part of its staff. Parties cannot be found disadvantaged if the Commission staff uses its own resources to develop the most accurate list of employees to determine the showing of interest. Further, the Commission staff effort could have benefited the Petitioner in this case, as Commission staff tried to develop a more accurate bargaining unit employee list so that it could potentially match and validate some or all of the 42 authorization card names not on the original DER list. That it did not turn out that way violates no statute or Commission policy. A determination of a showing of interest is an administrative matter not subject to review by the parties. 1/

1/ MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 11165 (WERC 7/72).

Further, the Commission has no statutory authority to depart from the 30 percent showing of interest standard established in Sec. 111.83(6), Stats. 2/

2/ STATE OF WISCONSIN – DEPARTMENT OF EMPLOYMENT RELATIONS (SECURITY AND PUBLIC SAFETY), DEC. NO. 29754 (WERC, 10/99)

At Petitioner's request, the Commission has directed staff to re-examine the five original invalidated authorization cards based on evidence submitted by Petitioner. However, it is clear that even if those five cards are validated, Petitioner will still fall seven cards short of a 30 percent showing of interest. 3/

3/ WSEU has asked us to consider 72 cards submitted by them where employees allegedly disavowed their original WAPCO authorization cards. Given our decision on Petitioner's Motion, we see no need to consider this request.

We have therefore denied the Motion, and the election petition will be dismissed for failing to be supported by the statutorily required 30 percent showing of interest.

Dated at Madison, Wisconsin this 3rd day of May, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Appendix A

AFFIDAVIT OF THOMAS L. YAEGER

I am an Attorney Supervisor employed by the Wisconsin Employment Relations Commission. One of my current responsibilities is to oversee the processing of all election petitions filed with the Commission. This Affidavit contains my truthful recollections of actions taken when determining whether the Wisconsin Association of Professional Correctional Officers' (WAPCO) election petition was accompanied by the statutorily required 30% showing of interest.

On October 31, 2000, WAPCO Attorney Sally Stix and WAPCO representative Jim Wurtz came to the Commission's offices and presented the WAPCO Petition for Election and showing of interest authorization cards in the Security and Public Safety bargaining unit to Peter Davis, WERC General Counsel, and myself. I date stamped receipt of the petition, and Wurtz reminded Davis and me of the problems WAPCO encountered with the accuracy of the list of bargaining unit employees provided by DER in 1998 when WAPCO petitioned for an election in this bargaining unit.

On November 1, 2000, I wrote to Peter Fox, Secretary, Department of Employment Relations, and DER's Chief Legal Counsel David Vergeront advising them that WAPCO had filed a Petition for Election in the Security and Public Safety bargaining unit, that the petition was supported by a number of bargaining unit employees and that in order to determine whether the statutorily required 30% of bargaining unit employees supported the petition it was necessary for DER to provide WERC with a list containing employees who were in the bargaining unit on October 31, 2000.

When the WERC makes a showing of interest determination, the identity of the employees supporting the election petition is kept confidential from the employer and the union currently representing the employees.

On November 16, 2000, Vergeront provided the Commission with a list of 4,887 employees employed in the Security and Public Safety bargaining unit during the pay period ending November 4, 2000 (pay period 23-A). This pay period included October 31, 2000, the date the Petition for Election had been filed with the Commission.

On November 17, 2000, the Commission staff members Gina Fritz, Georgann Kramer and I began matching the showing of interest authorization cards with the aforesaid list of bargaining unit employees that DER had provided to the Commission on November 16, 2000. By mid-afternoon of the 17th, there were a number (approximately 15-20) of authorization cards that we could not match against the list of employee names provided by DER. At that

point, because I was aware that (1) WAPCO had stated they had not been satisfied with the completeness/accuracy of the list supplied by DER when they had filed their previous petition for election on October 30, 1998, and (2) the authorization cards had been signed no earlier than July 2000, thus making it unlikely in my mind that the employees had retired or quit, I went to General Counsel Davis and expressed my concern that we already had quite a number of cards that did not match with any name on the DER list of employees. Mr. Davis indicated we should wait until after we had finished the matching process to see how many cards, in the end, did not match with names on the list, and then decide what, if anything, to do.

Also, at approximately 3:30 p.m. on November 17, I received a fax from AFSCME, Council 24 Legal Representative P. Scott Hassett regarding the showing of interest determination. The original was received via U.S. mail on November 20, 2000. Mr. Hassett raised two issues in this correspondence. First, he indicated that it was his understanding that a number of bargaining unit employees who had signed authorization cards on behalf of WAPCO had subsequently disavowed their cards in signed statements received by the Commission. Mr. Hassett stated he assumed, based upon an individual's timely withdrawal, that the Commission would not include these cards among the authorization cards to be counted. Second, he indicated that the current collective bargaining agreement was effective on May 20, 2000, and that his client would object to the Commission counting any cards that were signed before May 20, 2000.

None of the cards WAPCO submitted were signed prior to May 20, 2000. For the purposes of our showing of interest determination, Davis and I concluded that we would count those cards that had subsequently been disavowed. We reasoned that if WAPCO failed to reach 30% even with the disputed cards, then there would be no need to resolve the dispute over the cards' validity.

The authorization card matching process was not concluded by the end of the work day on Friday, November 17, 2000. Therefore, the process was continued on Monday, November 20, 2000. Because I was out of the office on two cases [Monroe County (ME) and Montello Schools (MP)], Mr. Davis took my place.

On November 20, 2000, in between my Monroe County and Montello Schools cases, I contacted Kramer and Davis and asked whether they had finished the count. At that time, I was advised that they had concluded the count and that there were insufficient cards to establish the 30% showing of interest. I was also told that there were 42 cards signed by individuals whose names did not appear on the employee listing provided by DER. At that point, Peter Davis and I directed Kramer to contact Central Payroll to find out if it was possible that there could be Security and Public Safety bargaining unit employees who were employed on October 31 but whose names would not appear on the pay period 23-A list supplied us by DER. Central Payroll advised Kramer that was possible because employees who transferred, promoted, quit or retired in that payroll period might not appear on the list.

Central Payroll representatives indicated they would provide us with a list of employees who were in the Security and Public Safety bargaining unit during that payroll period but whose names likely did not appear on the pay period 23-A list supplied to us by DER, because of a change in their pay status during pay period 23-A.

Central Payroll supplied that list to Kramer at 12:15 p.m. on November 21 and that list contained 120 names. Shortly thereafter, Davis and I directed Kramer, the agency payroll officer with access to WISPR (Wisconsin Personnel) on-line computer program database, to use WISPR and determine the bargaining unit status, as of October 31, 2000, of the 120 individuals whose names she had been provided by Central Payroll. Late that afternoon and into the evening, Kramer and I evaluated the WISPR computer print-outs she had generated relative to the 120 names.

We concluded that of the 120 names appearing on the Central Payroll list, only 98 were employees in the bargaining unit on October 31, 2000. Consequently, when determining how many employees were in the bargaining unit on October 31, 2000, in order to calculate the number of cards needed to reach the 30% showing of interest ($30\% \times \text{number of employees in bargaining unit} = \text{number of authorization cards required}$), we added the 98 employee names to the 4,887 employee names on the DER list. We also concluded that 15 of these 98 employees had signed previously unmatched authorization cards. Thus, we added these 15 cards to the total number of cards we would count. Further, we determined that 17 of the unmatched authorization cards were signed by individuals who were not employees in the bargaining unit on October 31, 2000. Thus, these 17 names were not added to the number of employees in the bargaining unit and the 17 cards were not counted. At this point, 32 of the 42 previously unmatched authorization cards had been accounted for.

Kramer then went back into the WISPR database in an attempt to determine the bargaining unit status of the names appearing on the remaining 10 cards. She determined 5 of the cards matched with names of individuals WISPR showed were bargaining unit employees on October 31, 2000, and thus we added 5 names to the total number of bargaining unit employees and to the number of valid cards received. There were 5 employee names she was not able to find in the WISPR database. We, therefore, concluded those remaining 5 cards were for individuals who were not bargaining unit employees on October 31, 2000. Thus, these 5 names were not added to the number of employees in the bargaining unit and the cards were not counted.

On November 22nd, I met with General Counsel Davis and suggested that we have a meeting of the representatives of DER, WAPCO and WSEU, before officially advising them of the results of the count. We agreed that by doing so, if we had overlooked something, this would provide the parties with an opportunity to bring that to our attention before we officially notified them of the results of the count. I both called and wrote (attached) to the representatives of DER, WAPCO and WSEU and confirmed that a meeting would be held in our offices on December 1, 2000, at 11:00 a.m. for the purpose of going over with them the

count and how we arrived at the conclusions we had reached. On December 1st the meeting was held as scheduled and we reviewed our findings and provided the parties with both a narrative written summary and chart showing the results of the count (attached).

At this meeting, WAPCO requested that we provide it with a copy of the lists of employees provided to the WERC by DER and Central Payroll. WSEU consented to us furnishing the lists so long as the only information appearing on the lists was the employees' names. WAPCO further requested to look at the 22 authorization cards signed by individuals we had determined were not in the bargaining unit on October 31, 2000, and the 1 card we concluded was illegible. WSEU objected to WAPCO being able to see those cards unless they, WSEU, could also see the authorization cards. WAPCO would not consent to WSEU being able to review the 23 authorization cards. We then indicated that we would allow WAPCO, in the presence of a WERC representative, to look at all of the 1,514 authorization cards that they had submitted, but with the 23 cards co-mingled among all of the cards.

On Monday, December 4, 2000, I wrote to WAPCO Attorney Stix with copies to WSEU Attorney Hassett and DER Legal Counsel Vergeront and officially confirmed that we had determined WAPCO's showing of interest was not sufficient, as they had been told on Friday, December 1, 2000 (attached).

On December 8, 2000, I was called by Wisconsin Professional Police Association (WPPA) representative Steve Urso, and later spoke with WPPA Attorney Gordon McQuillen, and they both indicated Mr. Wurtz of WAPCO, along with McQuillen's secretary, would come into WERC offices on Tuesday, Wednesday and Thursday, December 12, 13 and 14, 2000, to view the authorization cards WAPCO had submitted. On Tuesday morning the 12th I was called and told that due to the weather WAPCO representatives could not get into our offices to look at the authorization cards that day. On Wednesday (13th) and Thursday (14th) Mr. Wurtz and Mr. McQuillen's secretary viewed each authorization card in the presence of Commission representatives Fritz and/or Kramer.

Dated at Madison, Wisconsin, this 6th day of March, 2001.

Thomas L. Yaeger /s/

Thomas L. Yaeger

Subscribed and sworn to me this 6th day of March, 2001.

Dave Shaw /s/

Notary Public
My commission is permanent.
Dane County, Wisconsin