STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JENNIFER PESHUT, Complainant,

vs.

UNIVERSITY OF WISCONSIN – MILWAUKEE; NANCY L. ZIMPHLER; SHANNON BRADBURY and MARY KAY MADSEN

and

COUNCIL 24, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; WISCONSIN STATE EMPLOYEES UNION; MARTIN BEIL and JANA WEAVER, Respondents.

Case 516
No. 59886
PP(S)–320

Decision No. 30125-F

Appearances:

Mr. Geoffrey R. Skoll, P.O. Box 11116, Milwaukee, WI 53211, appearing on behalf of Jennifer Peshut.

Lawton & Cates, S.C., by **Attorney P. Scott Hassett**, 214 West Mifflin Street, P.O. Box 2965, Madison, WI 53703-2594, appearing on behalf of Council 24, American Federation Of State, County and Municipal Employees, AFL-CIO; Wisconsin State Employees Union; Martin Beil and Jana Weaver.

Attorney David Vergeront, Chief Legal Counsel, Department of Employment Relations, P.O. Box 7855, Madison, WI 53707-7855, appearing on behalf of University of Wisconsin-Milwaukee; Nancy L. Zimphler; Shannon Bradbury and Mary Kay Madsen.

ORDER AFFIRMING AND MODIFYING EXAMINER'S FINDINGS OF FACT AND AFFIRMING EXAMINER'S CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINT

On April 16, 2002, Examiner Daniel Nielsen issued Findings of Fact, Conclusions of Law and Order Dismissing Complaint with Accompanying Memorandum in the above matter wherein he concluded that none of the named Respondents had committed unfair labor practices within the meaning of the State Employment Labor Relations Act and ordered the complaint dismissed.

On May 1, 2002, Complainant Peshut filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.84(4), Stats. The parties thereafter filed written argument in support of and in opposition to the petition-the last of which was received June 20, 2002.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

A. Examiner's Findings of Fact 1-33 are affirmed.

B. Examiner's Finding of Fact 34 A. is modified to read:

> A. The meeting on December 20, 2000, between Professor Madsen and Ms. Pichelman was for the purpose of conducting a performance evaluation related to Pichelmann's probationary period as a Program Assistant III. Ms. Pichelmann was advised of this purpose in advance of the meeting. By contract, performance evaluations are not disciplinary in nature. No investigation of Ms. Pichelmann's conduct was announced, contemplated or conducted during this meeting. Ms. Pichelmann did not have a reasonable expectation that the December 20th meeting was investigatory in nature.

C. Examiner's Findings of Fact 34 B-35 D are affirmed.

D. Examiner's Conclusions of Law 1-5 are affirmed.

E. Examiner's Order is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

DEPARTMENT OF EMPLOYMENT RELATIONS

MEMORANDUM ACCOMPANYING ORDER AFFIRMING AND MODIFYING EXAMINER'S FINDINGS OF FACT AND AFFIRMING EXAMINER'S CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINT

BACKGROUND

This is a companion to Case 515 (Pichelmann) in which we have also issued a decision today.

As the Examiner noted in his decision, this case differs somewhat from Pichelmann to the extent that Complainant Peshut argues: (1) she was coerced or misled by an agent of Respondent UWM regarding her rights to pursue a Sec. 111.83, Stats. grievance; and (2) Respondent WSEU interfered with her rights under the State Employees Labor Relations Act by seeking to have her removed as union steward because she filed an unfair labor practice complaint with the Commission.

As to the issues distinctive to Peshut, they will be discussed and resolved in this decision. As to the issues which the Pichelmann and Peshut cases have in common, we will herein adopt and repeat our rationale from the Pichelmann decision.

Distinctive Issues

The Alleged Coercion as to Sec. 111.83, Stats. Grievances

The Examiner discussed this issue as follows:

> The background on the coercion claim is that Ms. Peshut sent letters to various UWM officials in 1998 challenging a reprimand she had received, and Shannon Bradbury sent them back to her and told her she had to use an official grievance form if she wanted to process a grievance. According to Ms. Peshut, this caused her to believe that she could not pursue statutory grievances under Sec. 111.83 and also caused her to be confused as to the distinction between statutory and contractual grievances. That allegation was dismissed at hearing for a total lack of evidence to support any coercion claim. The alleged coercion took place three years before the filing of the instant complaint and was outside of the statute of limitations. Further, there is no evidence of any attempt by Peshut to link the letters to her rights under Section 111.83, SELRA. Even if there were, it is difficult to understand exactly how Bradbury telling her to use a grievance form amounts to coercion.

> Neither is it possible to credit Ms. Peshut's claim that Bradbury's rejection of her 1998 letter left her confused about the difference between statutory grievances under Sec. 111.83 and grievances brought under the contract, to the point that she believed that they were interchangeable. That is her reading of the law, but her testimony made it clear that she knows full well that it is not the Commission's reading of the law, and knew this at the time of the Pichelmann grievance. At about the same time that Bradbury was rejecting her letter of complaint, Ms. Peshut was filing an extensive written argument on the topic of statutory grievances in the PRELLER case. She also acknowledges being familiar with the Commission's 2000 declaratory ruling on the subject in UNIVERSITY OF WISCONSIN HOSPITAL AND CLINIC BOARD, DEC. NO. 29784-D. That decision was issued before the events in this case.
>
> The claims concerning the rights to representation in the processing of the Pichelmann grievance and the delay in hearing grievances have been addressed and resolved in the Pichelmann decision. There is no point to revisiting them in this case. In the same vein, the coercion claim was resolved at the hearing, with a ruling that it was impossible on this record to find coercion or to conclude that Ms. Peshut was misled by Bradbury's rejection of her letters of complaint into believing that only one form of grievance existed under SELRA.

As reflected above, one of the bases for the Examiner's dismissal of this allegation is that it was barred by the one-year statute of limitations found in Sec. 111.07(5), Stats., which is incorporated into this proceeding by Sec. 111.84(4), Stats. On review, Peshut makes no argument that the Examiner was incorrect in this regard and we find no basis for concluding that the Examiner erred. Thus, we affirm his dismissal of this allegation.

<u>The Alleged Interference as to Peshut's Status as a Union Steward</u>

The Examiner discussed this issue as follows:

> The Complainant asserts that Weaver interfered with her right to file unfair labor practice charges under SELRA, because she complained to the leadership of Local 82 about the charges filed against her and the WSEU and sought to have the Complainant removed as a steward.
>
> The record establishes that Weaver had many concerns about Peshut as a steward, including the unfair labor practices she had filed against Weaver and WSEU, and that she conveyed those concerns to officers of Local 82 and to the Local 82 Executive Board. The record also shows that the issue of unfair labor practices was but one concern, and that it was not the principal concern that brought her to the Executive Board's June 5th meeting. Weaver's appearance at

the meeting was a follow-up to her conversation with Local 82 President Yasaitis after the Pichelmann Step 2 hearing. That conversation took place before the instant complaint was filed, and approximately two years after the previous complaint was filed. The only fallout from the earlier complaint was Weaver's request to Yasaitis that he not have Peshut act as the grievance representative in a case they were taking to Step 2, because that hearing had not yet been held and she felt it was inappropriate to have two advocates working on the case, where one was suing the other. 1/ Yasaitis's memo to Peshut after the conversation with Weaver does not even mention the issue of unfair labor practices, nor do any of his e-mails or letters between June 5th and mid-August raise that as a basis on which the Executive Board would seek to remove or suspend her.

1/ Yasaitis referred to this request in his August 15th e-mail to the membership, and mischaracterized it as an official position of the WSEU that it would not process any grievance where Peshut was involved. Weaver testified credibly that this was not correct, and that the request was limited to the case that arose while Peshut's first unfair labor practice complaint was still awaiting hearing. I credit this testimony because it is borne out by later events. Had WSEU actually taken the position that it would not process grievances involving Peshut as a representative, Weaver would not have appeared at the Step 2 hearing for Mary Pichelmann.

The filing of unfair labor practices was just one of several issues raised by Weaver, and it was not the reason for her appearance before the Executive Board, nor a major part of her presentation. It was not discussed again after the June Executive Board meeting, and the actual effort to remove Ms. Peshut as a steward was pursued on other grounds. She was not ultimately removed or suspended. Thus, the issue in this case comes down to whether it is an unfair labor practice for Weaver to have included Ms. Peshut's filing of unfair labor practice complaint against the WSEU in the list of concerns she brought to the Executive Board – whether the simple raising of that issue would reasonably have the effect of intimidating or coercing Ms. Peshut in the exercise of her right to file such complaints. I conclude that it would not.

On a practical level, Weaver's complaint would not intimidate or coerce a reasonable person, since Weaver had no authority to act on the complaint aside from raising it. The Field Representative has no power to appoint or remove stewards. Any recommendation brought by the Field Representative must be acted on by the Executive Board, and that action must in turn be approved by a vote of the membership. Ms. Peshut's complaint here amounts to saying that she should be found to have been coerced or intimidated by the mere fact that she was criticized by Weaver. That is neither a reasonable interpretation of the facts, nor a plausible reading of the law.

The fact that one is engaged in protected activity does not mean that that person is free from criticism or even adverse reaction to that activity. In DEPARTMENT OF CORRECTIONS, DEC. NO. 29448-B (BURNS, 3/24/00), Examiner Burns considered myriad allegations of unfair labor practices flowing out of the efforts of the Wisconsin Association of Professional Corrections Officers (WAPCO) to decertify WSEU as the bargaining representative for security employees in the prison system. One of the complaints was that WSEU had expelled a WAPCO supporter from membership in AFSCME. Notwithstanding that supporting a competing labor organization is plainly protected concerted activity, and an express conclusion that agents of the WSEU were obviously hostile to her protected activity when they brought internal union charges against her, the Examiner concluded that no unfair labor practice occurred:

> By bringing charges against Correctional Officer Lori Cygan, Gregory Stevens exhibited hostility toward Correctional Officer Lori Cygan for her activities in support of WAPCO. However, the legal rights conferred upon Correctional Officer Lori Cygan by SELRA do not include an unfettered right to membership in the AFSCME union. Rather, the right conferred upon Correctional Officer Lori Cygan is the right to have fair representation from WSEU in its function as exclusive bargaining representative, irrespective of whether or not Correctional Officer Lori Cygan is a member of the AFSCME union. By concluding that Correctional Officer Lori Cygan had violated the AFSCME constitution and expelling Correctional Officer Lori Cygan from AFSCME membership, AFSCME and its affiliated WSEU did not violate SELRA.
> DEC. NO. 29448-B, at page 113.

On review, the Commission left undisturbed this aspect of the Examiner's decision. DEPARTMENT OF CORRECTIONS, DEC. NO. 29448-C (WERC, 8/31/00).

The appointment and removal of stewards is a matter for the Local Union. The WSEU Field Representative has a duty to inform the leadership of the Local if he or she believes a steward is conducting herself inappropriately. Weaver's testimony on this point is unrefuted and credible on its face. Her statements to the Executive Board concerning Ms. Peshut's unfair labor practice charges – that they were without merit, and were creating friction and wasting dues money – are a legitimate expression of her opinion. If she believed this to be true, it would be incumbent on her to bring it to the Local's attention. SELRA does not imbue the Commission with sweeping authority to regulate the internal political disputes of labor organizations, and the protections afforded to Peshut by SELRA do not extend to muzzling Weaver or stripping the Local of its

right to police its stewards. Analogous to the WAPCO case, the legal obligation owed to Peshut by WSEU does not extend to giving her the unfettered right to do as she pleases as a steward.

As reflected above, the Examiner concluded that Respondent WSEU did not interfere with Peshut's "legal rights, including those guaranteed under s. 111.82" when its agent Weaver raised concerns about Peshut's conduct as union steward-including her right to file an unfair labor practice complaint with the Wisconsin Employment Relations Commission.

As noted by the Examiner, the legal standard for determining whether Respondent WSEU interfered with Peshut's right to file a Commission complaint is an objective one which focuses on whether a reasonable person would be coerced under the circumstances presented. JEFFERSON COUNTY, DEC. NO. 26845-B (WERC, 7/92), AFF'D JEFFERSON COUNTY V. WERC, 187 WIS. 2D 647 (1994). He concluded that a reasonable person would not have been coerced and we find his above-quoted rationale persuasive and hereby affirm same. 1/

1/ We have also held that even where the conduct can reasonably be found to be coercive, no statutory violation will be found if the respondent had a valid business need for its conduct. STATE OF WISCONSIN, DEC. NOS. 29448-C, 29495-C, 29496-C, 29497-C (WERC, 8/00). That portion of the Examiner's above-quoted rationale that discusses the Respondent WSEU's interest in policing the conduct of its stewards acknowledges the existence of such a valid business need in this case. Thus, even if it were concluded that Respondent WSEU's actions had a reasonable tendency to interfere with Peshut's exercise of her statutory right to file an unfair labor practice complaint against Respondent WSEU, the existence of this valid business need would warrant a finding of no violation.

When reaching this conclusion, we have considered the various arguments made by Peshut on review but find them unpersuasive. To the extent these arguments assert that the Examiner's factual findings are not supported by the record, our review of the record leads us to conclude that his Findings are consistent with the evidence presented to him. To the extent these arguments are intertwined with Peshut's general disagreement with the Commission's view that distinguishes between contractual and statutory grievances, for the reasons set forth below in the "Issues Common to Cases 515 and 516," we continue to find such distinctions valid and conclude that the Examiner appropriately applied them in this matter.

One of Peshut's arguments on review merits more extensive comment. Peshut argues that Respondent WSEU must have interfered with her rights when unsuccessfully seeking her removal as steward because Respondent University would clearly have so interfered if it had sought such removal. However, as reflected in the Examiner's analysis, an interference allegation is subjected to a consideration of all of the facts and circumstances present. As Respondent WSEU aptly points out, its role as to its own internal structure is significantly different from that of Respondent UWM. Thus, the differing facts and circumstances applicable to interference allegations against Respondent WSEU and Respondent UWM can reasonably and correctly produce different results. Therefore, Peshut's argument to the contrary is rejected.

Issues Common to Cases 515 and 516

As to the issues discussed below, the legal arguments of Peshut and Pichelmann are essentially the same. Thus, we quote directly from our Pichelmann decision as follows and see no functional need to edit same herein by changing "Pichelmann" to Peshut," etc.

> We begin with Pichelmann's overriding contention that the Examiner dismissal of much of the complaint was based on the erroneous conclusion that a contractual grievance procedure is distinct from the statutory right of an employee to present grievances under Sec. 111.83(1), Stats., and that Pichelmann was not exercising Sec. 111.83(1), Stats., rights as to her grievance.
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> When rejecting Pichelmann's claim that her Sec. 111.83(1), Stats., rights had been violated, the Examiner correctly relied on existing Commission precedent which in UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS BOARD, DEC. NO. 29784-D (WERC, 11/00) was summarized as follows:
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>> Section 111.83(1), Stats., provides in pertinent part:
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>> Any individual employe, or any minority group of employes in a collective bargaining unit, may present grievances to the employer in person, or through representatives of their own choosing, and the employer shall confer with said employe or group of employes in relation thereto if the majority representative has been afforded the opportunity to be present at the conference. Any adjustment resulting from such a conference may not be inconsistent with the conditions of employment established by the majority representative and the employer.
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>> This same statutory language is found at Sec. 111.70(4)(d)1, Stats., in the Municipal Employment Relations Act (MERA). While the Commission has not extensively discussed Sec. 111.83(1), Stats., in prior cases, we have a long standing interpretation of Sec. 111.70(4)(d) 1, Stats. Given the parallel statutory language and the common policies behind both SELRA and MERA, we find the interpretation of Sec. 111.70(4)(d)1, to be instructive and applicable to the interpretation which should be given Sec. 111.83(1), Stats. STATE V. WERC, 122 WIS. 2D 132 (1985).
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>> In MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 11280-B (WERC, 12/72), we stated the following as to the relationship between a contractual grievance procedure and the above quoted statutory language:
>>
>>> Said statutory provision merely requires the Municipal Employer to confer with an individual employe or minority

> group of employes on grievances presented to the municipal employer. The provision implements Section 111.70(2) granting a "right" to employes to refrain from engaging in concerted activity for the purpose of collective bargaining. The right to present grievances and the duty of the employer to confer on those grievances, as required in the above quoted provision, does not grant the grievant involved the grievance procedure negotiated in the collective bargaining agreement between the Union and the Municipal Employer.
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> As evidenced by the above-quoted portion of MILWAUKEE, the **statutory opportunity** for individual employes to meet directly with their employer is separate and **distinct from** any such **contractually bargained opportunity.** The statutory opportunity to meet directly with the employer cannot be limited by a collective bargaining agreement. However, a union and employer have no obligation to bargain a contract which will give individual employes the right to independently process contractual grievances. The employe's statutory opportunity to meet with the employer is separate and distinct from the question of whether the employe has a contractual opportunity to meet with an employer over contractual grievances. (Emphasis added.)

While Pichelmann does not find this precedent persuasive, it continues to be our view that our existing precedent correctly concludes that there is a distinction between the rights, if any, of an employee under a contractual grievance procedure and the State employee's statutorily guaranteed right to present a grievance to the employer under Sec. 111.83(1), Stats. Thus, we affirm the Examiner's reliance on existing precedent and turn to the question of whether the Examiner correctly concluded that Pichelmann was proceeding under the contractual procedure in the case at hand.

When concluding that Pichelmann was proceeding under the contractual grievance procedure, the Examiner relied on the facts that the grievance was filed by a Council 24 steward, referenced a specific provision of the Council 24 contract, and was processed under the terms of the Council 24 contract -- including the Step 2 hearing at issue in this proceeding. We find the Examiner's reliance on these facts to be persuasive and thus affirm his determination that Pichelmann was proceeding under the contractual grievance procedure.

Pichelmann argues that she should be able to use the contractual procedure to exercise her statutory Sec. 111.83, Stats., rights, and should be able to jump instantaneously from the exercise of contractual rights to the exercise of statutory rights at her discretion. We disagree.

Section 111.83, Stats. does not specify any particular procedure for the exercise of the right therein created. As a general matter, we think the statute contemplates no more than: (1) the employee advises the employer that she wishes to meet pursuant to the statute; (2) the union is advised of the request; and (3) a meeting occurs at a time satisfactory to the employee, the employer and the union (if it indicates it wishes to be present). Here, Pichelmann never gave the employer notice that she wished to meet pursuant to Sec. 111.83, Stats. and the evidence points to the fact that she was at all times pursuing contractual rights using a contractual process. 1/ Further, while an employee and employer could agree to use a contractually established process for the purpose of a Sec. 111.83, Stats. meeting, there is no evidence in our record that such an agreement existed here. Lastly, there certainly is no evidence of any agreement that would allow Pichelmann to shift back and forth between the exercise of contractual and statutory rights in the middle of the contractual process and we reject Pichelmann's contention that she could unilaterally (with or without notice) make that choice.

1/ Pichelmann argues that if she had made a request for a statutory meeting, it would have been rejected by the University and thus she used the contractual process. Pichelmann did not testify that she was attempting to exercise her Sec. 111.83, Stats., rights when she filed a grievance and did not testify that she only used the contractual process because she believed the University would have rejected any other method. Thus, we reject this argument as having no factual support in the record.

. . .

Alleged Illegal Delay in Scheduling Step Two Hearings

When rejecting Pichelmann's claim that the delay in the conduct of the Step 2 hearing violated the contract and interfered with her Sec. 111.84(1)(a), Stats. rights, the Examiner concluded: that because the contract which includes the 21 day deadline is between the State and Council 24, the interpretation given the contract by these two parties should generally be given controlling weight; that the University and Council 24 had the contractual right to waive the 21 day time limit for conducting Step 2 hearings without Pichelmann's agreement; that both the University and Council 24 could and had historically agreed that such waivers could be accomplished verbally and by practice; that such waivers served legitimate purposes; and that such a waiver occurred here.

Pichelmann attacks the Examiner's reasoning by asserting that: (1) there is no evidence of an oral or written waiver here; (2) the contract unambiguously requires that waiver be written; (3) the parties to any waiver are Pichelmann and the University and thus Council 24 has no authority to waive the time limit; (4) any long standing practice by the University and Council 24 of failing to

comply with the 21 day time limit only establishes the long standing nature of the violation of contract and Sec. 111.84(1)(a), Stats.; and (5) delay discourages employees from filing grievances and thus interferes with employee rights under Sec. 111.84(2), Stats.

We affirm the Examiner's dismissal of this allegation.

Pichelmann is correct that there is no evidence of an explicit waiver of the 21 day time limit as to her contractual Step Two grievance and that the contract unambiguously states that a waiver must be written. However, as the Examiner correctly found, the University and Council 24 have a long standing practice of accommodating the scheduling of Step Two hearings to the schedule of the Council 24 representative. It is maxim of contract interpretation that an agreement can be amended by a long standing mutually accepted practice. Elkouri and Elkouri, How Arbitration Works, 5th Edition, pp. 652-653 (1997). We conclude that the scheduling practice of these parties had the effect of amending the contract to be consistent therewith. Pichelmann would attack this conclusion by arguing that she is a necessary party to any contractual amendment. We disagree. The contract is between the State/University and Council 24. They and they alone have the right to amend the agreement to which they are parties.

Remaining is the contention that such an amendment interferes with Pichelmann's rights because it produces delay which in turn discourages the filing of grievances and thereby interferes with her rights under Sec. 111.84(2), Stats. First, we concur with the Examiner's view that the scheduling practice generally serves the interests of employees by allowing the skills of the Council 24 Field Representative to be utilized during the Step Two hearing. However, even if this was not so, it must be remembered that the grievance in question was contractual -- not statutory -- and that employees have no statutory right to use a contractual grievance procedure. The extent of any such right is totally dependent on the result of bargaining between the employer and collective bargaining representative. Here, the employer and the collective bargaining representative have agreed through a mutually accepted practice that delay in Step Two hearings is acceptable. Thus, even if it were the case that delay in Step Two hearings may discourage employees from filing grievances (despite the benefits that result from the delay), such discouragement would not interfere with a statutory right. Thus, we reject Pichelmann's contention to the contrary.

Alleged Illegal Refusal to Proceed with the Step Two Hearing

The Examiner concluded that Council 24 representative Weaver refused to proceed with the Step Two hearing because Pichelmann refused to meet with

Weaver before the hearing began and because Pichelmann wanted the hearing to be public. He determined that Weaver's conduct under those circumstances did not violate the collective bargaining agreement or breach Council 24's duty of fair representation toward Pichelmann. He further determined that given the legitimate basis for Weaver's refusal to proceed, the University's refusal to proceed without Weaver also did not violate Pichelmann's rights under State Employment Labor Relations Act.

The Examiner also rejected Pichelmann's contention that she was entitled to proceed on April 5, 2002 through a representative of her own choosing. He reasoned that because Pichelmann was pursuing a contractual grievance, Council 24 "owned" the grievance and controlled who the union representative would be.

Pichelmann attacks the Examiner's determinations based on her view that she, not Council 24, had control of the Step Two hearing because she was processing a Sec. 111.83, Stats., grievance. We have previously discussed and rejected that view herein. We do so again and thus affirm the Examiner.

Given all of the foregoing, we have affirmed the Examiner in all respects except for a modification of Finding of Fact 34 A to bring said Finding into conformance with Finding 25 in the Pichelmann decision.

Dated at Madison, Wisconsin, this 3rd day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/
Steven R. Sorenson, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

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