

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WAUPACA COUNTY

Involving Certain Employees of

WAUPACA COUNTY

Case 140
No. 63371
ME-1101

Decision No. 30882

Appearances:

William G. Bracken, Employment Relations Services Coordinator and **James R. Macy**, Davis & Kuelthau, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, WI 54903-1278, appearing on behalf of Waupaca County.

Michael J. Wilson, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, WI 53717-1903, appearing on behalf of Waupaca County Highway Department Employees Union Local 1756, AFSCME, AFL-CIO.

ORDER DENYING MOTION TO DISMISS

On February 23, 2004, Waupaca County filed a petition to clarify bargaining unit with the Wisconsin Employment Relations Commission seeking to exclude temporary and seasonal employees from a County Highway Department bargaining unit represented by Waupaca County Highway Department Employees Union Local 1756, AFSCME, AFL-CIO.

On February 25, 2004, Local 1756 filed a motion with the Commission asking that the petition be dismissed without hearing.

On March 18, 2004, the County filed a response opposing the motion.

Dec. No. 30882

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

ORDER

The motion to dismiss is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Waupaca County

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DISMISS

On November 4, 2003, we issued Findings of Fact, Conclusions of Law and Declaratory Ruling (DEC. NO. 30733) wherein we concluded that because seasonal and temporary employees are included in the Highway Department bargaining unit, the County had a duty to bargain with Local 1756 over the wages, hours and conditions of employment of said employees.

By this petition for unit clarification, the County now seeks to exclude the seasonal and temporary employees from the Highway Department unit. Local 1756 seeks to have the petition dismissed based on the doctrine of issue preclusion.

Issue preclusion is the term now applied to what was formerly referred to as collateral estoppel. It is "a flexible doctrine that is bottomed in concerns of fundamental fairness and requires that one must have had a fair opportunity procedurally, substantively and evidentially to litigate the issue before a second litigation will be precluded." *DANE COUNTY V. AFSCME LOCAL 65*, 210 WIS.2D 268, 565 N.W.2D 540 (CTAPP, 1997). Although issue preclusion does not require an identity of parties, it does require actual litigation of an issue necessary to the outcome of the first action.

We conclude that the doctrine of issue preclusion does not warrant dismissal of the unit clarification petition but does narrow the scope of the unit clarification proceeding.

The unit issue litigated and decided in the declaratory ruling proceeding was limited to determining whether the temporary and seasonal employees were included in the existing bargaining unit. We concluded that they were. The issue raised by the County's unit clarification petition is whether the temporary and seasonal employees should be removed from the existing unit. This is a different issue and thus issue preclusion does not warrant dismissal of the unit clarification petition.

However, Local 1756 correctly argues that in DEC. NO. 30733 we decided that inclusion of temporary and seasonal employees in the unit did not create "an illegally composed unit" because Sec. 111.70(4)(d)2.a., Stats., specifically authorizes department-wide units. Thus, Local 1756 is also correct when it contends that we have already decided that inclusion of temporary and seasonal employees does not create a unit that is repugnant to

the Municipal Employment Relations Act. Therefore, to the extent this already rejected contention is one of the bases upon which the County relies when seeking to remove these employees from the unit, it is not a contention that the County may relitigate in the instant unit clarification proceedings.

Given all of the foregoing, we have denied the motion to dismiss.

Dated at Madison, Wisconsin, this 16th day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner