

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WISCONSIN LAW ENFORCEMENT ASSOCIATION, Complainant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent

Case ID: 446.0022  
Case Type: COMP\_PPS

DECISION NO. 38942-A

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**Appearances:**

Christopher MacGillis and Kevin Todt, Attorneys, MacGillis Wiemer, LLC, 11040 W. Bluemound Road, Suite 100, Wauwatosa, Wisconsin, appearing on behalf of the Wisconsin Law Enforcement Association.

William Ramsey and Anfin Jaw, Attorneys, Department of Administration 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Transportation.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On June 1, 2020, the Wisconsin Law Enforcement Association filed a complaint with the Wisconsin Employment Relations Commission alleging that the State of Wisconsin Department of Transportation had committed an unfair labor practice within the meaning of Wis. Stat. § 111.84(1)(d) by refusing to bargain over an hours of work issue. The State filed an Answer and Affirmative Defenses on September 15, 2020.

On November 9, 2020, I conducted a video hearing. A transcript of that hearing was prepared, and the parties filed written argument by April 1, 2021.

Having reviewed the record, I make and issue the following:

**FINDINGS OF FACT**

1. The State of Wisconsin, herein the State, is an employer. Thru its Department of Transportation, the State employs certain public safety employees in the State Patrol.

2. The Wisconsin Law Enforcement Association, herein the WLEA, is a labor organization that represents certain public safety employees in the State Patrol for the purposes of collective bargaining with the State.

3. In October, 2019, the contractual relationship between the State and WLEA was governed by an agreed upon extension of the terms of a 2013-2015 collective bargaining agreement. At that time the parties had also reached an agreement on all language to be included in a successor bargaining agreement, but that agreement had not yet been ratified. Both the 2013-2015 agreement and the tentative language agreement addressed the subject of employee hours of work.

4. By letter dated October 28, 2019, the WLEA demanded that the State rescind a change in employee hours and bargain over the issue. The State responded by advising WLEA that it believed it had the contractual authority to act as it did both under the existing agreement and the pending tentative agreement. The State did not rescind the change in employee hours and neither party sought to modify the existing tentative agreement that addressed employee hours of work.

5. The 2013-2015 agreement provided for final and binding grievance arbitration of any alleged violation of the agreement, and also stated:

[T]he Employer and the Union, for the life of this Agreement and any extension, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement . . . .

6. The allegation that the State committed an unfair labor practice by engaging in individual bargaining was first raised in the WLEA's post-hearing brief.

Based on the above and forgoing Findings of Fact, I make and issue the following

### **CONCLUSIONS OF LAW**

1. The hours of work of the public safety employees represented by the WLEA is a mandatory subject of bargaining under the State Employment Labor Relations Act

2. Because employee hours of work are addressed in both the extended 2013-2015 agreement and in the tentative agreement reached by the parties, the State of Wisconsin had no duty to bargain with the Wisconsin Law Enforcement Association over the change in hours referenced in Finding of Fact 4.

3. The question of whether the change in hours violated the 2013-2015 agreement and/or the ultimately ratified a tentative agreement is appropriately resolved thru the grievance arbitration process.

4. Consideration of the merits of the allegation referenced in Finding of Fact 5 would violate the State of Wisconsin's due process rights.

Based on the above and foregoing Findings of Fact, I make and issue the following

**ORDER**

The complaint is dismissed.

Issued at Madison, Wisconsin this 23<sup>rd</sup> day of August, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Examiner

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

Where, as here, a subject is addressed in an existing collective bargaining agreement, there is no duty to bargain over that subject during the term of that agreement. The parties have struck a bargain on the subject and must live with the scope of that bargain during the term of agreement.<sup>1</sup> Where, as here, there is a disagreement about the meaning of their bargain, the question becomes one of whether the agreement was violated-not whether the duty to bargain was violated. Alleged violations of an agreement are appropriately resolved through any contractual mechanism the parties have created for that purpose.<sup>2</sup>

Employee hours of work are addressed in the 2013-2015 agreement in effect in October 2019. Thus, there was no duty to bargain over that subject and the grievance arbitration procedure in the 2013-2015 agreement was available to resolve the parties' disagreement over whether the change in hours in question was or was not consistent with the agreement.

Although the parties had tentatively agreed upon hours of work language to be included in a successor to the 2013-2015 agreement, a successor agreement had not yet been ratified in October 2019. Thus, it can be argued that there was an ongoing duty to bargain over hours of work as to what would be included in the successor agreement. However, neither side sought any change in the tentative agreement and each side believed that the tentative agreement supported its position as the disputed change in hours. In that factual context, the State did not violate its duty to bargain by taking no action in response to the WLEA bargaining request.

In its post-hearing brief, the WLEA first raised an allegation of individual bargaining by the State. In its post-hearing reply brief, the State persuasively argues that it had no opportunity to respond to and dispute the merits of this allegation at hearing. I am persuaded that a consideration of the merits of this post-hearing allegation would violate the State's right to due process. Therefore, I will not address this allegation.

Given all of the foregoing, I conclude the State did not violate its duty to bargain with the WLEA and therefore the complaint has been dismissed.

Issued at Madison, Wisconsin this 23<sup>rd</sup> day of August, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Examiner

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<sup>1</sup> *City of Beloit*, Dec No. 27990-C (WERC, 7/96); *School District of Cadott*, Dec. No. 27775-C (WERC, 6/94), *aff'd* 197 Wis 2d 46 (Ct. App. 1995) Although these decisions were issued in the context of the Municipal Employment Relations Act (MERA), the relevant policy considerations and statutory provisions of MERA and the State Employment Labor Relations Act (SELRA) are substantively identical.

<sup>2</sup> *See School District of Cadott*.