

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN LAW ENFORCEMENT ASSOCIATION, Complainant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent

Case ID: 446.0024
Case Type: COMP_PPS

DECISION NO. 38943-A

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 August 21, 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 a residency 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. On June 30, 2020, the State modified a policy defining where public safety employees represented by the WLEA could reside. The policy “grandfathered” current employees in their current positions and thus only applied to new public safety employees and to current employees who chose to transfer into a new position.

4. By letter dated July 8, 2020, the WLEA demanded that the State rescind the June 30, 2020 policy change and bargain over the issue.

5. The State did not rescind the June 30, 2020 policy and has not bargained over the policy change.

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

CONCLUSIONS OF LAW

1. Where public safety employees represented by the WLEA can be required to reside is a “Management right” within the meaning of Wis. Stat. § 111.90.

2. Where public safety employees represented by the WLEA can be required to reside is a permissive subject of bargaining.

3. Because the issue referenced in Conclusions of Law 1 and 2 is a permissive subject of bargaining, it cannot be part of the status quo as to mandatory subjects of bargaining that the State was obligated to maintain on June 30, 2020 if there was no extended collective bargaining agreement in effect while the parties were bargaining a successor to the 2017-2019 collective bargaining agreement.

4. If the WLEA and the State have agreed to extend the terms of the 2017-2019 collective bargaining agreement until a successor agreement is reached and if the WLEA believes the June 30, 2020 action by the State violates the terms of that extended agreement, the grievance arbitration provisions of that extended agreement are the exclusive means by which that issue could be resolved.

5. By its June 30, 2020 action and subsequent unwillingness to bargain with the WLEA, the State of Wisconsin did not violate its duty to bargain with the WLEA and thus did not commit an unfair labor practice within the meaning of Wis. Stat. § 111.84(1)(d).

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

ORDER

The complaint is dismissed.

Issued at Madison, Wisconsin this 27th day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner

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

The public safety employees represented for the purposes of collective bargaining by the WLEA are included in a bargaining unit identified in Wis. Stat. § 111.825(1)(g).

The scope of the duty to bargain under the State Employment Labor Relations Act for the WLEA public safety unit is defined Wis. Stats. §§ 111.90 and 111.91.

Wisconsin Stat. § 111.90 provides:

Management rights. Nothing in this subchapter shall interfere with the right of the employer, in accordance with this subchapter to:

(1) Carry out the statutory mandate and goals assigned to a state agency by the most appropriate and efficient methods and means and utilize personnel in the most appropriate and efficient manner possible.

(2) Manage the employees of a state agency; hire, promote, transfer, assign or retain employees in positions within the agency; and in that regard establish reasonable work rules.

(3) Suspend, demote, discharge or take other appropriate disciplinary action against the employee for just cause; or to lay off employees in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive.

Wisconsin Stat. § 111.91(1)(a), Stats. provides that:

Except as provided in pars. (b) to (d), with regard to a collective bargaining unit under s. 111.825(1)(g), matters subject to collective bargaining to the point of impasse are . . . conditions of employment.

WLEA contends that residency issues are “conditions of employment” under Wis. Stat. §111.91(1)(a). The State counters by asserting that residency issues are “Management rights” and points to the reference in Wis. Stat. § 111.91(1)(b), which is found in the opening line of §111.91(1)(a) and to the text of §111.91(1)(b) itself, which in pertinent part states:

(b) The employer is not required to bargain with a collective bargaining unit under s.111.825(1)(g) on management rights under s.111.90

After considering all of the foregoing statutory provisions, I conclude that while residency issues are “conditions of employment”, such issues are only mandatory subjects of bargaining if such bargaining would not “interfere with the right of the employer” to exercise the “Management rights” listed in Wis. Stat. §111.90. If such bargaining would “interfere”, then Wis. Stat.

§111.91(1)(b) allows the State to choose to bargain over residency issues but makes clear that the State cannot be compelled to do so (i.e., such issues would be permissive subjects of bargaining).

As recited earlier herein, the first of the three “Management rights” listed in Wis. Stat. §111.90 is to:

- (1) Carry out the statutory mandate and goals assigned to a state agency by the most appropriate and efficient methods and means and utilize personnel in the most appropriate and efficient manner possible.

The record evidence establishes to my satisfaction that bargaining over residency issues would “interfere” with management decisions as to how to “utilize personnel in the most appropriate and efficient manner possible.” The public safety employees in question are in pay status as soon as they leave their residence and until they return to their residence. How long it may take for an employee to travel from their residence to their work assignment and then return to their residence directly impacts the amount of time the employee is performing work at their work assignment. In that context, the State’s judgments (typically established by a mile range that is acceptable) that seek to increase the amount of time spent at the site of the primary work assignment are clearly judgments as to how to “utilize personnel in the most appropriate and efficient manner possible.”

WLEA correctly contends that those residency judgments have varied over time and that the June 30, 2020 version could be viewed as at odds with some of the considerations that may have played a role in earlier versions that employees viewed as more favorable. However, it is the State’s “management right” to make different judgments over time as to how best to “utilize personnel” when meeting the “statutory mandate and goals assigned to a state agency.”

In light of the foregoing analysis, I conclude that residency issues are permissive subjects of bargaining as to which the State cannot be compelled to bargain.¹ Therefore, the State had no duty to bargain with the WLEA as to the June 30, 2020 policy change and the WLEA complaint is dismissed.

The record is not clear as to whether an extension of the terms of the 2017-2019 agreement was in effect on June 30, 2020. As reflected in Conclusion of Law 4, if such an extension was in place, the WLEA is free (subject to any time limitations or other procedural issues) to seek to utilize the grievance arbitration procedures contained therein if it believes that the June 30 action violated the extended contract.² If such an extension agreement was not in place on June 30, the State’s duty to bargain obligation to maintain the status quo as to all mandatory subjects of bargaining was operative. However, as reflected in Conclusion of Law 3, because residency issues

¹ To the extent the State argues that residency issues are prohibited subjects of bargaining under Wis. Stat. §111.91 (2)(b)1., that argument is not persuasive. Such issues are not “Policies, practices and procedures of the civil service merit system”

² Because residency issues are permissive subjects of bargaining, the State can choose to bargain over said issues and the result of any such bargaining can be contained in a collective bargaining agreement.

are permissive subjects of bargaining, the State's duty to bargain status quo obligations are not implicated.

Issued at Madison, Wisconsin this 27th day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner