

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE WISCONSIN STATE EMPLOYEES UNION
(WSEU), AFSCME, AFL-CIO, and
LOCAL 2748, Complainants,

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vs.

LAWTON & CATES

STATE OF WISCONSIN,
DEPARTMENT OF CORRECTIONS, Respondent.

Case 664
No. 64426
PP(S)-349

Decision No. 31272-B

Appearances:

Kurt C. Kobelt, Lawton & Cates, S.C., Attorneys at Law, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of the Wisconsin State Employees Union (WSEU), AFSCME, AFL-CIO, and Local 2748.

David J. Vergeront, Chief Legal Counsel, Office of State Employment Relations, State of Wisconsin, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of State of Wisconsin, Department of Corrections.

ORDER ON REVIEW OF EXAMINER'S DECISION

On March 28, 2006, Examiner Richard B. McLaughlin issued Findings of Fact, Conclusions of Law and Order in the above-captioned matter, holding that the State of Wisconsin, Department of Corrections (State or DOC) refused to bargain in good faith with Wisconsin State Employees Union (WSEU), Local 2742, in violation of Sec. 111.84(1)(d) and (a), Stats., by unilaterally repudiating a practice ("the Arrangement") pursuant to which Thomas Corcoran, President of Local 2748, was given certain case load relief in order to accommodate the union duties he performed during his normal work day. The Examiner also concluded that the State's action in terminating this practice was motivated at least in part by hostility to Corcoran's lawful concerted activities, which violated Sec. 111.84(1)(c) and (a), Stats. The Examiner dismissed the alleged independent violation of Sec. 111.84(1)(a), Stats., and the alleged violation of Sec. 111.84(1)(e), Stats. He ordered the State (in principal part) to restore the practice and to negotiate with WSEU about its appropriate scope and duration, as well as to post a notice regarding the violations.

On March 17, 2006, WSEU filed a timely petition seeking review of the Examiner's decision, pursuant to Secs. 111.07(5) and 111.84(4), Stats. On April 12, 2006, the State filed a timely petition seeking such review. Both parties thereafter filed briefs and reply briefs in support of and in opposition to the respective petitions, the last of which was received by the Commission on June 26, 2006. The decision was held in abeyance for several months during the fall of 2006, while the parties, with the assistance of the Commission's General Counsel, attempted to conciliate the matter.

For the reasons set forth in the Memorandum that accompanies this Order, the Commission largely affirms the Examiner's Findings of Fact and reaches a similar ultimate result, though on different grounds. The Commission concludes that the "Arrangement" at issue was an enforceable agreement between DOC and WSEU as to case load relief that would accommodate Corcoran's use of contractual union leave. The Commission also holds that the State did not violate Secs. 111.84(1)(a) or (1)(c), Stats., by ending the Arrangement and by issuing certain directives circumscribing Corcoran's and other stewards' union leave. The Examiner's Conclusions of Law and Order are modified to reflect the Commission's conclusions in these respects.

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

ORDER

- A. The Examiner's Findings of Fact 1 through 20 are affirmed.
- B. The Examiner's Findings of Fact 21 and 22 are partially affirmed and partially set aside, as reflected in the following Findings of Fact 21 through 25:

21. The Arrangement was an agreement between DOC and WSEU, within DOC's lawful sphere of authority, addressing the work place problems associated with Corcoran's use of contractually-permitted union leave. As such, the Arrangement was analogous to a grievance settlement and was implicitly incorporated into the collective bargaining agreement's union leave provisions as they pertained to Corcoran. The Arrangement served the mutually beneficial purposes of facilitating Corcoran's effectiveness as a union official, on the one hand, and facilitating DOC's practical ability to assign its cases effectively, on the other hand. The Arrangement required DOC to provide Corcoran meaningful case load relief that would permit him to undertake legitimate/approved union activities during work time, and included a commitment on the part of DOC to deploy LTEs to decrease the degree to which Corcoran's case load relief burdened other staff. The Arrangement did