STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO To Initiate Fact Finding between said Petitioner and MILWAUKEE COUNTY	Case XVI No. 10987 FF-110 Decision No. 7711-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Petitioner.

Mr. Robert P. Russell, Corporation Counsel, by Mr. Robert G. Polasek, Assistant Corporation Counsel, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Milwaukee District Council 48, AFSCME, AFL-CIO having filed a petition with the Wisconsin Employment Relations Board to initiate fact finding, pursuant to Section 111.70 of the Wisconsin Statutes, on behalf of certain employes in the employ of Milwaukee County; and thereafter the Board having set hearing on such petition for Friday, September 9, 1966 at Milwaukee, Wisconsin; and prior to the latter date, and on August 19, 1966, said Municipal Employer by its Corporation Counsel, having filed a motion, and accompanying affidavit in support thereof; and hearing having been conducted in the matter on September16, 1966 at Madison, Wisconsin, the entire Board being present; and the Board having reviewed the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, is a labor organization, with offices at 615 E. Michigan Street, Milwaukee, Wisconsin.

2. That Milwaukee County, hereinafter referred to as the Municipal Employer, has its offices in the Courthouse, Milwaukee, Wisconsin.

3. That at all times material herein, said Petitioner, together with certain of its affiliated locals, has been, and is, the exclusive collective bargaining representative for certain employes in the employ of the Municipal Employer in an appropriate collective bargaining unit.

4. That in the aforesaid relationship, the Petitioner, on or about June 13, 1966, submitted, in writing, to representatives of the Municipal Employer, its demands for wages, hours and working conditions governing employes of the Municipal Employer represented by the Petitioner in the appropriate collective bargaining unit; that representatives of the Petitioner and Municipal Employer met on July 26, 1966 in an exploratory meeting with respect to the proposals of the Petitioner as outlined in its letter of June 13, 1966; and that in said meeting representatives of the Petitioner explained its proposals set forth in said letter.

5. That representatives of the parties next met in the evening of August 3, 1966, at which time representatives of the Municipal Employer presented the proposals of the Municipal Employer with respect to the 1967 wages, hours and working conditions affecting the employes in the unit; and that at said meeting, after the initial explanation of the proposals by the Municipal Employer, representatives of the Petitioner requested that representatives of the Municipal Employer first agree on reducing the terms of any agreement reached between them to the form of a written collective bargaining agreement; that the representatives of the Petitioner indicated that they would neither discuss nor bargain on any other issues until representatives of the Municipal Employer agreed to execute a written collective bargaining agreement at such time that agreement was reached on the other matters; and that as a result of receiving no affirmative commitment in that regard from representatives of the Municipal Employer, the representatives of the Petitioner terminated the meeting.

7. That the parties again met in a meeting on August 4, 1966, where representatives of the Petitioner renewed their demand with respect to reducing any agreement to a written contract; and that while contending that the Municipal Employer had the sole right to determine whether any oral agreement between the parties should be reduced to the form of either a written collective bargaining agreement, or an ordinance, or a resolution, the representatives of the Municipal Employer indicated that the final form in which the

ultimate oral agreement would be reflected in writing was a matter on which they would bargain and negotiate with representatives of the Petitioner.

8. That on August 5, 1966 the Petitioner executed a petition for fact finding and filed same with the Wisconsin Employment Relations Board on August 8, 1966 initiating the instant proceeding; and that in said petition the Petitioner alleged that the parties were deadlocked after a reasonable period of negotiations, as a basis for initiating fact finding.

8. That, while representatives of both parties met on three separate occasions, their discussions, for the most part, were limited to the form in which the contemplated agreement between the parties would be reduced; that on said occasions there was no extensive bargaining on the remaining demands of the Petitioner or on the proposals of the Municipal Employer; and that therefore, under such circumstances, there has been no reasonable period of negotiations between the parties.

On the basis of the above and foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. That the issue as to whether the settlement, upon completion of the negotiations with a labor organization representing a majority of employes employed by a municipal employer in an appropriate collective bargaining unit, shall be an ordinance, resolution or written collective bargaining agreement, is a subject matter of collective bargaining under Section 111.70 of the Wisconsin Statutes.

2. That no deadlock, within the meaning of Section 111.70 (4)(e) of the Wisconsin Statutes, exists between Milwaukee District Council 48, AFSCME, AFL-CIO and Milwaukee County, since there was no reasonable period of negotiations between Milwaukee District Council 48, AFSCME, AFL-CIO and Milwaukee County, with respect to the wages, hours and working conditions of employes of said Municipal Employer, who are represented by said labor organization for the year 1967.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Board makes the following,

ORDER

IT IS ORDERED that the petition filed herein be, and the same hereby is, dismissed without prejudice to filing a new petition, if after a reasonable period of negotiations a deadlock exists, or as a result of either party failing and refusing to bargain in good faith.

Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of October, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By _____
Morris Slavney, Chairman

_____
Arvid Anderson, Commissioner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

After the Union, as the collective bargaining representative for certain employes of the Municipal Employer, had submitted its proposals for the 1967 wages, hours and working conditions which would cover said employes, representatives of the parties met on three separate occasions prior to the filing of the petition herein. At said meetings the Union explained its proposals and the Municipal Employer explained its proposals, which were submitted at the second meeting. At none of the three meetings was there any give and take between the representatives of the parties with respect to their proposals, except on the issue as to whether the oral agreement finally reached would be reduced to a written collective bargaining agreement. Representatives of the Union argued that the matter of the form of the agreement was a bargainable issue and therefore they demanded that the agreement be reflected in a written collective bargaining agreement. Representatives of the Municipal Employer took the position that the Municipal Employer had the unilateral right to determine the form of the written agreement that is, whether it would be reduced to an ordinance, a resolution or a written collective bargaining agreement. However, said representatives indicated that they were willing to bargain on the form in which the agreement would be reduced. The representatives of the County reiterated at the hearing before the Board that they were willing to negotiate on the form their ultimate agreement would take. The meetings were terminated with no other discussion or negotiation and there have been no additional meetings between the parties.

In its petition, the Union alleged, as the basis for fact finding, that the parties were deadlocked after a reasonable period of negotiations. After the petition had been filed, the Municipal Employer filed a motion requesting the Board to dismiss the petition on the grounds that it was premature, claiming no deadlock existed and, further, that the form of the written agreement reached between the parties was not an issue upon which the Municipal Employer was required to bargain.

The statute with respect to the form of the written agreement reads as follows:

Section 111.70 (4)(i)

"(i) Agreements. Upon the completion of negotiations with a labor organization representing a majority of the employes in a collective bargaining unit, if a settlement is reached, the employer shall reduce the same to writing either in the form of an ordinance, resolution or agreement. Such agreement may include a term for which it shall remain in effect not to exceed one year. Such agreements shall be binding on the parties only if express language to that effect is contained therein."

There is no language in the above quoted section which grants a municipal employer the right to solely determine in what form the collective bargaining agreement shall be reduced to writing. Since the above section is the statutory basis for the execution of written collective bargaining agreements and for the acceptance of final and binding provisions therein, it is apparent to the Board, since such section is incorporated in the municipal employer-employe labor relations law which pertains to collective bargaining in public employment, that the form of the written agreement, in itself, is a matter for collective bargaining under said statute.

Since the certification of the Union as the bargaining representative for certain employes of the Municipal Employer, the members of the Board, through their own personal contact and experience from news stories appearing in the Milwaukee newspapers with reference to the collective bargaining relationship between the parties, especially accounts of the recent strike by Milwaukee County Institutional employes, have observed that representatives of both the Union and the County have not approached the bargaining table with the attitude and degree of responsibility which should be exercised by them on behalf of their respective constituents. Section 111.70 of the Wisconsin Statutes encourages good faith collective bargaining and contemplates that the parties bargain with an open mind in a genuine effort to reach a mutually satisfactory resolution of whatever dispute exists between them.

The statute does not intend that the collective bargaining relationship be one of opposition and conflict, at least to the degree exercised by the representatives of the Union and the County. The fact finding procedure is merely a means to the end contemplated in the statute, namely a mutually satisfactory collective bargaining relationship between the representatives of employes and the municipal employer involved.

Parties to collective bargaining in municipal employment, because of the paramount interest of the public, must make every effort and utilize every possible legal means to reach a peaceful conclusion to whatever dispute exists between them. If the parties are unable to resolve their differences through good faith collective bargaining, they should not hesitate to request the Board to furnish its mediation facilities in an effort to resolve the dispute. While mediation is a voluntary process, there exists, in our view, a stronger obligation upon the parties involved in a dispute affecting municipal services to request and concur in mediation than there exists in private employment.

In the instant matter the County maintained that it had a right to determine the form in which the oral agreement between the parties should be reduced to writing, nevertheless, its representatives indicated that they would be willing to bargain with respect to that form. No extensive discussion or negotiations were had with regard to the other issues between the parties. It cannot be said that, under such circumstances and at this time, a deadlock exists between the parties after a reasonable period of negotiations. To order the instant dispute to fact finding would open the door to pot-shot collective bargaining and piecemeal fact finding, procedures not contemplated in the statute, as a means for resolving deadlocks over wages, hours and working conditions in public employment.

We have dismissed the petition without prejudice to the Union and the Municipal Employer to file a subsequent petition

if their negotiations, after a reasonable period of time, result in a deadlock, or if either of them refuses to bargain in good faith.

Dated at Madison, Wisconsin, this 5th day of October, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By _____
Morris Slavney, Chairman

_____
Arvid Anderson, Commissioner