

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case VI
No. 11147 MP-34
Decision No. 8378

No. 8378

of the Respondent in the Department of Public Works, excluding clerical employes, department heads and supervisors, for the purposes of conferences and negotiations on wages, hours and conditions of employment, as provided in Section 111.70, Wisconsin Statutes.^{1/}

4. That after three meetings between the Complainant and the Respondent, held subsequent to the aforementioned issuance of the Certification of Representatives, the Complainant, petitioned for fact-finding pursuant to Section 111.70 (4)(e), Wisconsin Statutes; that the Commission upon informal investigation of such petition for fact-finding found that the Complainant and the Respondent were deadlocked and on January 13, 1964 appointed a fact-finder;^{2/} that said fact-finder, Robert J. Mueller, after conducting a hearing issued a report and recommendations on March 31, 1964; and that the Complainant accepted said fact-finder's recommendation whereas the Respondent did not, but rather, enacted its previous proposals for the year 1964.

5. That following the issuance of the aforementioned fact-finder's report and recommendations, the Complainant and the Respondent resumed meeting with regard to wages, hours and conditions of employment; that again, and after several of such meetings, the Complainant petitioned for fact-finding; that the Commission, after conducting an informal investigation, found that the Complainant and the Respondent were deadlocked and, on January 8, 1965, appointed Gordon Haferbecker to act as fact-finder in the matter.^{3/}

6. That after a hearing conducted by said fact-finder, he issued, on March 16, 1965, his report and recommendations which recommendations were accepted by the Complainant and rejected by the Respondent; and that during 1965 the employes in the aforementioned bargaining unit, unlike other city employes and for the first time in many years, received no wage increase.

7. That representatives of the Complainant and the Respondent held further meetings with regard to wages, hours and conditions of employment from September 1965 through January 1966; that during said meetings the parties agreed to a wage increase and an improvement in insurance benefits for the employes in said bargaining unit which the Respondent enacted for 1966, but they failed to achieve an entire agreement on wages, hours and working conditions, and on February 22, 1966 representatives of the Complainant expressed to

^{1/}Dec. No. 6210, 2/63

^{2/}Dec. No. 6609, 3/64

^{3/}Dec. No. 7000, 3/65

employees in said bargaining unit that continuing to meet with the Respondent would probably be fruitless; that during March, 1966 the employees in said bargaining unit who were members of the Complainant ceased paying dues to Complainant.

8. That on June 13, 1966 the Respondent filed with the Commission a petition for a representation election among the employees in the aforementioned bargaining unit; that in response to said petition the Complainant, on June 24, 1966, notified the Commission that it no longer claimed to represent said employees; and that on the basis of said disclaimer the Commission, on June 27, 1966, set aside the abovementioned Certifications of Representatives and dismissed the Respondent's petition for a representation election.^{4/}

9. That on July 5, 1966 a Special Committee of the Common Council of the Respondent met with certain employees who were members of the bargaining unit formerly represented by the Complainant and received from said employees a proposal concerning wages, hours and working conditions; that on July 1, 1966 the employees in the aforesaid bargaining unit received a twenty cent per hour wage increase pursuant to the recommendation of said Special Committee; and that on January 1, 1967 said employees received another twenty cent per hour wage increase.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

That the City of Portage, by the conduct of its representatives, in its negotiations with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the representative of all employees of the City of Portage in the Department of Public Works, excluding clerical employees, department heads and supervisors, and by its failure to implement fact finding recommendations, as found in the foregoing Findings of Fact, did not and is not committing prohibited practices within the meaning of Section 111.70, Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

^{4/}Dec. Nos. 7635, 6/66 and 6210-A, 6/66

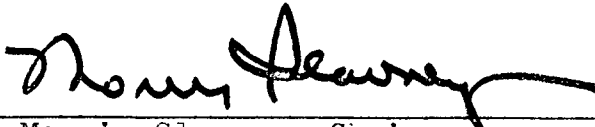
ORDER

IT IS ORDERED that the complaint filed in the instant matter
be, and the same hereby is, dismissed.

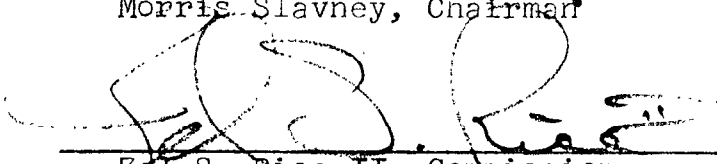
Given under our hands and seal at the
City of Madison, Wisconsin, this 29th
day of January, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

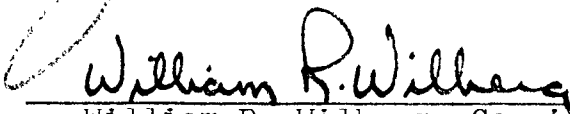
By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner



William R. Wilberg, Commissioner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 8378

and had reached a deadlock within the meaning of Section 111.70 (4)(e) on about November 21, 1963 with respect to wages and payment for hospital and surgical insurance. The Fact-Finder appointed was Robert J. Mueller.

Fact-Finder Mueller conducted a hearing on February 3, 1964 and issued his report and recommendations on March 31, 1964. The deadlock found by the Commission arose out of the Union's request for a ten cent per hour wage increase and for the City to assume the full cost of the insurance. The City had offered a five cent increase and had made no offer to assume the full cost of the insurance. Mueller recommended an eight cent increase and that "the City give very serious consideration to implementing single employee hospital and surgical insurance coverage." On January 1, 1964 the employees had begun to receive the five cent increase offered to the Union.

On April 9, 1964 the Special Committee of the City's Council, which was charged with representing the Council in these matters, recommended to the Council that the Fact-Finder's recommendations not be adopted and, in fact, they were not. The Union, however, determined to accept such recommendations as the basis for a settlement.

Later in 1964 the parties met on several occasions, including twice with a Commission mediator. During these meetings attention was turned to providing for 1965, and a deadlock was again reached. The Union again petitioned for fact-finding, and the Commission, on January 8, 1965, appointed Gordon Haferbecker Fact-Finder (Dec. No. 7000).

On January 1, 1965 the bargaining unit employees, unlike the other City employees and for the first time in many years, received no wage increase.

The report and recommendations of Fact-Finder Haferbecker were issued on March 16, 1965. He recommended a five cent per hour increase, that the City pay the full insurance premium for single employees, and that such improvements be retroactive to January 1, 1965. These terms were accepted by the Union, but the City rejected them pursuant to its Special Committee's Report of April 20, 1965.

From about Thursday, May 13, 1965 to Monday, May 17, 1965, a period inclusive of two working days, a majority of the employees in the bargaining unit engaged in a refusal to work. The evidence

indicates that this refusal was not authorized or stimulated by the Union but, rather, was precipitated by the employees' loyalty to a foreman who had a dispute with a superior.

At any rate, the parties met on May 18, 1965 with Fact-Finder Haferbecker acting as a mediator. As a result of that meeting and agreements reached there, the individuals who had engaged in the work stoppage resumed their employment.

In September 1965 the parties resumed meeting, and during that month and October, according to the Union, they reached an agreement with respect to wages, hours and working conditions for 1966. This included a seven cent per hour wage increase and City payment of the single employee insurance premium. These items were enacted by the City Council in November, and the wage increase became effective on January 1, 1966. The employees had voted to accept the entire proposed agreement at a meeting on October 10, 1965.

During October, November and December the parties continued to exchange drafts and proposals for the 1966 agreement. Then at a meeting on January 20, 1966 the Union was told by the City that the employees who had resumed work in May had done so as new employees with no seniority and, thus, would not receive the anticipated amount of certain seniority-determined benefits, such as sick-leave and vacations.

The City, contrary to the Union, contends that the new-hire status of these employees was clear when they resumed work, at the meeting with Haferbecker and throughout the subsequent discussions. It is also the City's allegation that, in fact, no complete agreement was reached by the parties in September or October 1965, but that some key proposals remained unresolved through January, 1966.

On February 22, 1966 Union officials informed the employees of the City's position with respect to seniority. The employees determined that they were unable to accept the agreement on such terms. The Union officials then predicted continued frustration for the Union in its attempts to represent the employees. In March 1966 the employees, a majority of whom had been members of the Union since early in 1963, ceased paying dues.

Considerable testimony and other evidence was produced at the hearings with respect to the resumption of work by the employees in May, 1965. Such evidence may be construed to indicate that the employees knowingly resigned and were subsequently rehired anew. A further complicating factor was that the meeting at which Fact-Finder Haferbecker mediated the resumption of work discussions was

conducted by him with the parties separated, which may have accounted for some communication difficulties. At any rate, there is no need, due to reasons explained below, to determine herein whether the employees were, in fact, rehired anew or whether the City changed its position in that respect when confronted with otherwise agreed-upon terms and conditions of employment.

On June 13, 1966 the City filed a Petition for a new representation election among the pertinent employees. The Union, on June 24, 1966, notified the Commission in writing that it no longer claimed to represent the employees. On the basis of such disclaimer the Commission, on June 27, 1966, dismissed the City's Petition and set aside the February 1963 Certification of Representatives (Dec. Nos. 7635 and 6210-A).

Robert A. Mael had become Mayor of the City on April 19, 1966. In June 1966 he was contacted by certain of the pertinent employees who asked for a meeting with the City Council to discuss their wages, hours and terms and conditions of employment. Apparently, this request precipitated the City's Petition for an election. The origins of this employee action are vague, however, as is the precise sequence of these events. On July 5, 1966, not long after the Union's Certification was set aside, a committee of the Council met with some of the employees and received a list of demands from them. After some caucusing and modification of positions, the Committee agreed to recommend a twenty cent per hour increase for the employees. The Committee's recommendation was adopted by the Council two days later.

The increase in July 1966 was extraordinary in that it was effective at that time, whereas it was practically a rule that wage increases be included in budgets passed in November and effective in January. When added to another twenty cent per hour increase effective in January 1965, it amounts to a 17% to 20% improvement.

Witnesses for the City testified that these unusually large wage increases were given to nearly all City employees in January 1967 and that they were stimulated by a particularly competitive labor market created in the Portage area by the opening of the Badger Ordinance operation. It was also testified that the employees involved herein threatened, in June 1966, to leave their employment with the City in favor of Badger Ordinance positions.

Apparently, the Union construes the 1966 wage raises as the final step in a scheme to make it clear to the City's employees that they would do better without the Union. The Union understands the

record to disclose a three-year effort by the City to frustrate any agreement with the Union even through the fact-finding and mediation procedures. The record is long and filled with testimony elicited by both parties with respect to efforts to bring about meetings, conduct at meetings, proposals and counterproposals, the exchange of drafts, willingness to employ mediation, apathy and energy of Union officials, arbitrary withdrawals of proposals and the like. There is creditable and persuasive evidence herein to support more than a suspicion that the City's conduct belied bad faith.

However, this Commission in City of New Berlin (Dec. No. 7293) held that it is not a prohibited practice for a municipal employer to fail or refuse to meet and negotiate in good faith, but rather that such conduct is a basis for ordering parties to fact-finding. It was further held that such conduct does not constitute unlawful interference under Section 111.70 (3)(a)(1). Twice the Commission had before it petitions for fact-finding in this matter. In both instances fact-finding was ordered because a deadlock existed and not because either party had refused or failed to negotiate in good faith. In fact, in neither of its two fact-finding petitions did the Union allege that the City had failed or refused to engage in bona fide negotiations.

Furthermore, the unilateral granting of benefits, and the withholding of benefits extending to City employees outside of the bargaining unit, during the course of negotiations is conduct which is part and parcel of the negotiation process and thus does not constitute prohibited discrimination within the meaning of Section 111.70 (3)(a)(2) or any other prohibited practice.

In the absence of specific argument by the Union, it is unclear what particular references were intended by the allegation of its Complaint that Sections 111.70 (3)(a)(1) and (2) had been violated. We discern no such violations in the record.

All of the foregoing history, no matter which version of controverted assertions is accepted, is a history of negotiations and intentions of the parties who engaged in them. All of the above recited facts relate to bargaining-table progress, or the lack of it, and therefore cannot constitute prohibited practices. Of course, fact-finding recommendations are not binding upon the parties, and failing to adopt them is not a prohibited practice.

The Wisconsin Supreme Court in Joint School District No. 8, City of Madison v. W.E.R.B. ____ Wis. 2d ____ (December 29, 1967) approved of the New Berlin decision cited above. The court also

noted an argument, implicit in the instant case, that fact-finding with its expenses is an inadequate response to such conduct. The Court replied, as do we, "If the fact-finding technique is not in the public interest in this area of labor relations . . . then the legislature should be so informed."

There was also some testimony that Alderman Kenneth E. Scherbert, who was at certain times on the relevant Special Committee and also was the individual whose dispute with the foreman precipitated the work stoppage on May 1965, had advised employees that they would receive improved wages if they abandoned the Union and to form a union of their own. This testimony is extremely vague and self-contradictory, particularly as to when the alleged statements were made. In view of this vagueness and Scherbert's contrary testimony, it is not found that such alleged acts were committed.

The City, in its brief, raises several legal arguments. Inasmuch as no violations of Section 111.70 have been found, it is not necessary to apply the one-year limitation applicable to prohibited practices actions as the City suggests. The City also argues that having disclaimed representative status the Union was not a proper party in interest to bring the instant Complaint. It is our determination that the Union was a proper party in that it did have representative status when the acts alleged in the Complaint occurred, except the 1966 wage increase, which may be construed as a part of a continued scheme.

Finally, the City contends that the work stoppage of May 1966 put the employees in a position of having unclean hands, and therefore without standing to complain. We do not apply the unclean hands' doctrine as a defense to prohibited practices, however.

Dated at Madison, Wisconsin, this 29th day of January, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

William R. Wilberg
William R. Wilberg, Commissioner