

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYEES UNION LOCAL 61, Affiliated :  
with Laborers' International Union of :  
North America, AFL-CIO-CLC, :

Complainant, :

vs. :

CITY OF MILWAUKEE, :

Respondent. :  
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Case LV

No. 11503 MP-44

Decision No. 8410

Appearances:

Mr. Matthew Gentilli, President, and Mr. Milton S. Padway,  
Attorney at Law, for the Complainant.

Mr. John F. Kitzke, Assistant City Attorney, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on June 16, 1967, at Milwaukee, Wisconsin; Zel S. Rice II being present, and the Commission having considered the evidence and arguments and the briefs of Counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Public Employees Union Local 61, affiliated with Laborers' International Union of North America, AFL-CIO-CLC, hereinafter referred to as the Complainant, is a labor organization having its offices at 3855 South 13th Street, Milwaukee, Wisconsin.
2. That the City of Milwaukee, hereinafter referred to as the Respondent, is a Municipal Employer having its offices at City Hall, Milwaukee, Wisconsin.
3. That on September 27, 1966, the Complainant, as the certified collective bargaining representative of the Garbage Collection Laborers' in the employ of the Respondent, and the Respondent executed a collective bargaining agreement covering the wages, hours and conditions of employment of said employees; that said collective bargaining agreement contained among its terms, the following provisions with respect to its duration:

No. 8410

"PART I.

. . . .

D. Conditions and Duration of Agreement. (1) This Agreement shall remain in full force and effect commencing on execution hereof (including retroactive benefit features as covered in Schedule A), and terminating on the 31st day of December, 1966, except as provided below. In accordance with this provision and the intent of the parties and as provided for in paragraphs two, three and four of this Agreement, the Labor Policy Committee agrees within 20 days after execution of this agreement to recommend the financial terms of the contract for 1967 to the Finance Committee of the Common Council, and prior to July 31, 1967, agrees to recommend the financial terms of the contract for 1968 to the Finance Committee of the Common Council.

(2) If the Labor Policy Committee makes the aforementioned recommendation or if the Union fails to exercise the right to terminate the contract, which right as provided below results from the Labor Policy Committee's failing to make the aforesaid recommendation, and if the Common Council in its budget for 1967 adopts the financial terms of the contract for 1967, the parties agree that this shall constitute a readoption of all the terms of this contract from the 1st day of January, 1967, and terminating on the 31st day of December, 1967.

(3) If the Labor Policy Committee makes the aforementioned recommendation prior to July 31, 1967, or if the Union fails to exercise the right to terminate the contract, which right as provided below results from the Labor Policy Committee's failing to make the aforesaid recommendation, and if the Common Council in its budget for 1968 adopts the financial terms of the contract for 1968, the parties agree that this shall constitute a readoption of all the terms of this contract from the 1st day of January, 1968, and terminating on the 31st day of December, 1968.

(4) If and in the event the Labor Policy Committee of the Common Council fails to make the recommendations to the Finance Committee as set forth above, the Union may within ten (10) days terminate the contract.

(5) If and in the event the Common Council in its annual budget in November, 1966, and/or November, 1967, does not adopt the financial terms of the contract, the Union may within ten (10) days after passage of the budget terminate the contract."

4. That on January 30, 1967, the Respondent received a communication from the Complainant's president requesting to reopen the aforementioned agreement for the purpose of negotiations; and

that on March 15, 1967, the Respondent by the City Labor Negotiator sent a telegraphic communication to Counsel for the Complainant wherein the Respondent advised that in its opinion a valid contract existed between the parties which would expire on December 31, 1968, and that under its terms bargaining for a successor agreement would commence on February 1, 1968; and at all times thereafter the Respondent has failed and refused to confer and negotiate with the Complainant with respect to the Complainant's demand of January 30, 1967.

5. That on May 18, 1967, the Complainant filed a complaint with the Wisconsin Employment Relations Commission, initiating the instant proceeding, wherein it alleged that the Respondent had committed prohibited practices within the meaning of Section 111.70(3)(a) 1 and 2, Wisconsin Statutes, by refusing to "participate in negotiations for a 1968 contract".

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

#### CONCLUSION OF LAW

1. That the Respondent, City of Milwaukee, by failing and refusing to engage in conferences and negotiations with the Complainant, Public Employees Union Local 61, affiliated with Laborers' International Union of North America, AFL-CIO-CLC, with respect to the latter's request to reopen the collective bargaining agreement existing between the parties and to bargain on terms and conditions of employment for the year 1968 did not engage, and has not engaged, in any prohibited practice within the meaning of Section 111.70 of the Wisconsin Statutes.

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


#### ORDER

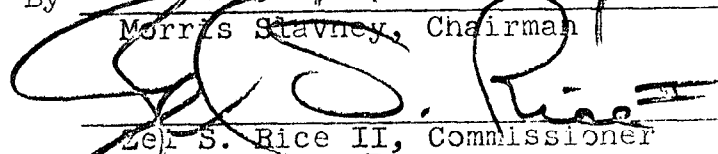
IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

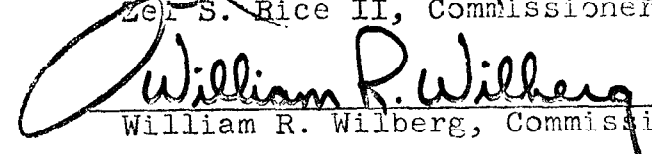
Given under our hands and seal at the  
City of Madison, Wisconsin, this 15th  
day of February, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Ler S. Rice II, Commissioner

  
William R. Wilberg, Commissioner

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

In its complaint the Union alleged that the City committed prohibited practices within the meaning of Section 111.70(3)(a) 1 and 2, Wisconsin Statutes, by refusing to negotiate a collective bargaining agreement covering Garbage Collection Laborers' for the year 1968 and that the basis for such refusal was to discourage membership in the Union. The City filed a motion to dismiss the complaint, alleging that the failure to bargain did not constitute a prohibited practice under Section 111.70, and also that the collective bargaining agreement previously executed by the parties governed the wages, hours and working conditions of the Garbage Collection Laborers' for the years 1966, 1967 and 1968.

The only evidence adduced by the Union in support of the allegations contained in its complaint was the fact that the City refused to confer and negotiate with the Union with respect to its request that the City reopen the three year agreement and negotiate terms of employment affecting employees involved for the year 1968. The City admits such refusal.

During the course of the hearing an issue arose with respect to whether the existing agreement, running to December 31, 1968, foreclosed any obligation upon the City to negotiate with the Union. The Union contended, despite the fact that it was a party to the agreement, since its term was for more than one year, the agreement was contrary to Section 111.70(4)(i), and therefore should not bar negotiations on terms and conditions of employment for 1968.


The Commission has previously held that the refusal to bargain or to confer and negotiate in good faith is not a prohibited practice within the meaning of Section 111.70, Wisconsin Statutes.<sup>1/</sup> The Commission's determination in this respect was affirmed by the Wisconsin Supreme Court in Joint School District No. 8, City of Madison vs. WERB and Madison Teachers, Inc.<sup>2/</sup>

We are therefore dismissing the complaint and see no necessity to make any determination with respect to the issue concerning the validity of the collective bargaining agreement involved herein.

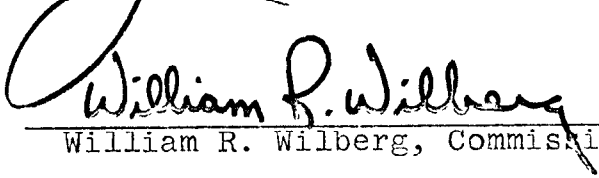
Dated at Madison, Wisconsin, this 15th day of February, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
William R. Wilberg, Commissioner

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<sup>1/</sup> Milwaukee Board of School Directors, Dec. No. 6883-A, 3/66;  
City of New Berlin, Dec. No. 7293, 3/66; LaCrosse County,  
Dec. No. 7707-A, 6/67.

<sup>2/</sup> August Term 1967, No. 105, 12/29/67.