

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 381, MILWAUKEE BUILDING INSPECTORS,
and MILWAUKEE DISTRICT COUNCIL 48,
AMERICAN FEDERATION OF STATE, COUNTY and
MUNICIPAL EMPLOYEES

To Initiate Fact Finding Between

LOCAL 381, MILWAUKEE BUILDING INSPECTORS
and MILWAUKEE DISTRICT COUNCIL 48,
AMERICAN FEDERATION OF STATE, COUNTY and
MUNICIPAL EMPLOYEES

and

THE CITY OF MILWAUKEE

Case LVII
No. 11566 FF-136
Decision No. 8505

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson appearing on behalf of the Petitioner.
Mr. John J. Fleming, City Attorney, by Mr. John F. Kitzke,
Assistant City Attorney, appearing on behalf of the City
of Milwaukee.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Local 381, Milwaukee Building Inspectors, and Milwaukee District Council 48, American Federation of State, County and Municipal Employees, having filed a petition with the Wisconsin Employment Relations Commission to initiate fact finding, pursuant to Section 111.70 of the Wisconsin Statutes, on behalf of nonsupervisory Building Inspectors employed by the City of Milwaukee; and hearings having been conducted on the matter on September 19, 1967, and October 10, 1967, at Milwaukee, Wisconsin, before Gordon H. Brehm of the Commission's staff; and the Commission having reviewed the evidence and arguments 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 Local 381, Milwaukee Building Inspectors, and Milwaukee District Council 48, American Federation of State, County and Municipal Employees, hereinafter jointly referred to as the Union,

is a labor organization having its offices at 615 East Michigan Street, Milwaukee, Wisconsin.

2. That the City of Milwaukee, hereinafter referred to as the Municipal Employer, has its offices at 200 East Wells Street, Milwaukee, Wisconsin.

3. That at all times material herein the Union has been, and is, the exclusive collective bargaining representative for employees of the Municipal Employer employed as Building Inspectors, and that in said relationship representatives of the Union, as well as representatives of other local unions affiliated with Milwaukee District Council 48, American Federation of State, County and Municipal Employees, and representatives of the Municipal Employer, on December 16, 1965, executed a collective bargaining agreement, effective from January 1, 1966, through at least December 31, 1968, covering the wages, hours and working conditions of certain employees of the Municipal Employer, including Building Inspectors; and that said collective bargaining agreement contained among its provisions the following material:

"PART II

"C. Management rights.

1. Union recognizes the prerogative of City to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which City has not officially abridged, delegated or modified by this Agreement are retained by City.

* * * * *

4.City shall have the right to determine reasonable schedules of work and to establish the methods and processes by which such work is performed."

4. That on January 1, 1966, the Municipal Employer, in an attempt to achieve greater efficiency of operation, reorganized its Building Inspection Department on a trial basis; that on January 1, 1967, said reorganization became permanent; that as a result of said reorganization, two previously specialized divisions in the Building Inspection Department, "General Building Inspection" and "Public Building and Housing Inspection," along with a portion of the division of "Hazardous Occupancy Inspection" were combined into basically two divisions known as the "North" and "South" divisions.

5. That prior to the aforementioned reorganization, Building Inspectors assigned to "General Building Inspection" were involved.

in enforcing building codes which applied only to one- and two-family dwellings, apartments of less than four units, offices, small stores, factories, warehouses, and industrial plants; and that Building Inspectors assigned to "Public Building and Housing Inspection" performed their duties inspecting buildings and occupancies involving schools, churches, taverns, department stores, apartments containing four units or more, hospitals, places of public assemblage, rooming houses, and hotels.

6. That as a result, and since the reorganization of the Department, each Building Inspector is now required to know and work with the various building codes and licensing policies relating to all of the aforementioned buildings and structures, and further, all Building Inspectors perform duties which prior to the reorganization were performed only by Building Inspectors assigned to "Hazardous Occupancy," which includes inspection of parking lots, junk yards, trailer courts, canopies and marquees.

7. That following the reorganization in the Building Inspection Department, and prior to July 5, 1967, the date on which the instant proceeding was initiated, the Union sought to negotiate with the Municipal Employer a wage increase for the non-supervisory Building Inspectors, contending that the duties of the Building Inspectors had been materially changed by the reorganization; that the Municipal Employer refused to grant an increase in the wage rate for Building Inspectors contending (a) that their duties had not been materially changed as a result of the reorganization, and (b) that the Municipal Employer was under no duty to meet and confer and bargain with the Union thereon, since the collective bargaining agreement existing between the parties, covering the wages, hours and working conditions of its employees, including the Building Inspectors, was not due to expire until December 31, 1968.

8. That on July 5, 1967, the Union filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an investigation to determine whether fact finding should be initiated between the Union and the Municipal Employer, pursuant to Section 111.70 of the Wisconsin Statutes, with respect to their dispute involving the Building Inspectors.

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

CONCLUSION OF LAW

1. Since the collective bargaining agreement existing between

Local 381, Milwaukee Building Inspectors, and Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, and the City of Milwaukee permits said Municipal Employer to unilaterally establish the methods and processes by which the work of the Building Inspectors in its employ is to be performed, said Union, thereby, has waived its right to negotiate on matters relating to the revision of the duties of the Building Inspectors, and said Municipal Employer, thereby, has no duty, during the term of said collective bargaining agreement, to negotiate with said Union in that regard, and therefore, the conditions for fact finding, as contemplated in Section 111.70(4)(e) of the Wisconsin Statutes, do not herein exist.

On 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 petition 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 17th day of April, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

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

William R. Wilberg
William R. Wilberg, Commissioner

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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Commission conducted a hearing in the instant matter to determine whether it should order fact finding in the dispute existing between the parties as described in the Findings of Fact. In its fact finding petition the Union alleged, as a basis for proceeding to fact finding, that the parties were deadlocked after a reasonable period of negotiations.

While it appears that, prior to the filing of the petition, representatives of the parties had met with respect to the dispute, it is clear that the Municipal Employer maintained, and continues to maintain, that it has no duty to negotiate with the Union with respect to its demand for up-grading the pay range of the Building Inspectors as a result of claimed additional duties and responsibilities occurring since the reorganization of the Building Inspection Department. The Union produced testimony designed to establish that the workload of the Inspectors had been revised and increased since the execution of the agreement. The Employer disputed such testimony.

The Municipal Employer argues that it had authority under the collective bargaining agreement to make production and duty changes during the term of the contract in the interest of increased efficiency. The Union, however, argues that the change in duties here was material, and the gravamen of its contention is that where the duties of employees

are materially increased during the contract term, the Union, in the event of a deadlock or refusal to bargain, is entitled to proceed to fact finding in the hope of obtaining a recommendation for a wage increase in return for the additional duties.

In a recent decision^{1/} the Commission stated:

"Section 111.70 contemplates fact finding as a method of resolving all disputes which are subject to collective bargaining pursuant to Section 111.70, Wisconsin Statutes, and that such disputes may arise not only during the negotiation of a collective bargaining agreement, but also during the period that an agreement is in effect where there has been a change in the terms and conditions of employment of the employees in the bargaining unit. The Municipal Employer cannot, absent such authority in the agreement, unilaterally establish or alter wages, hours and working conditions of employees in the bargaining unit."

Assuming, without deciding, that the reorganization of the Building Inspection Department resulted in such a revision of the duties of the Building Inspectors so as to constitute a change in their conditions of employment, the primary issue in this proceeding, as it appears to the Commission, is whether the Union, in the agreement existing between the parties, more specifically those provisions dealing with management rights set forth in the Findings of Fact, has waived whatever rights it may otherwise have had with respect to fact finding on issues involving and arising from the revision of duties of Building Inspectors.

In private employment labor relations an employer is under a continual duty to bargain with the representative of the majority of its employees despite the existence of a collective bargaining agreement, except where such collective bargaining representative, in the agreement, surrenders its right to insist upon bargaining on certain conditions of employment by agreeing to permit the employer to make unilateral determinations in that regard.^{2/} There is no provision in Section 111.70 of the Wisconsin Statutes which prevents the representative of municipal employees from making such an agreement with the municipal employer involved.

We recognize and agree with the rule that a waiver of the right

1/ Milwaukee County, Decision No. 8137-B, 12/67.

2/ See e.g., Leroy Machine Co., 147 NLRB No. 140, 56 LRRM 1369 (1964).

to bargain on a mandatory subject of bargaining will not be readily inferred, and that a waiver of such a statutory right,^{3/} in order to be recognized, must be "clear and unmistakable."^{4/} We conclude that the "management rights" clause in question here specifically provides, "clearly and unmistakably," that the Municipal Employer has the authority, during the term of the agreement, to unilaterally make revisions in duties of employees in order to increase the efficiency of the particular operation involved.^{5/} The parties agreed that the Municipal Employer has the prerogative to "operate and manage its affairs," and also to retain all powers and authority not abridged or modified by the agreement. The Municipal Employer further specifically retained the authority to revise the duties of employees to obtain a greater degree of efficiency by the clause which gives it the exclusive right "to determine schedules of work and to establish the methods and processes by which such work is performed". To require the Municipal Employer to meet and negotiate with the Union on a request to change the pay range of Building Inspectors would constitute a limitation, not provided for in the agreement, on the agreed management rights.^{6/}

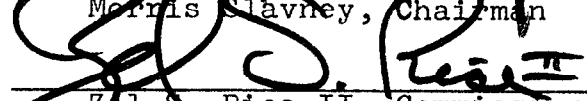
While we do not here determine the applicability of these provisions to other disputes, we believe that under the circumstances of this case the Municipal Employer has authority to revise the duties of these employees in the interest of efficiency without proceeding to fact finding on the Union's request, and the Municipal Employer's denial, to place Building Inspectors in a higher pay range.

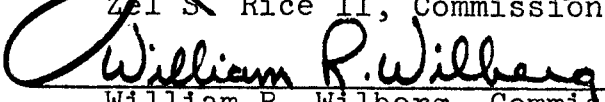
Dated at Madison, Wisconsin this 17th day of April, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

^{3/} In municipal employment, not as a prohibited practice, but as a basis for fact finding.

^{4/} Tidewater Associated Oil Co., 85 NLRB 1096, 24 LRRM 1518, 1949; NLRB v. Item Co., 220 Fed 2d 956, 35 LRRM 2709 (5th Cir., 1955), Cert. Denied, 350 U.S. 836, 36 LRRM 2716, 1955; Heakman Furniture Company, 101 NLRB 631, 31 LRRM 1116, 1952; California Portland Cement Company, 101 NLRB 1436, 31 LRRM 1220, 1952.

^{5/} Cf. Kennecott Copper Corp., 148 NLRB, No. 169, 57 LRRM 1217, 1964; Ador Corporation, 150 NLRB, No. 161, 58 LRRM 1280, 1965.

^{6/} Reference is made to Part II, C, 5 of the collective bargaining agreement, wherein the parties agreed that the right of contracting or subcontracting is vested in the municipal employer, subject to certain limitations expressly agreed upon in said provision.