DEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

in the Matter of the Petition of

DRIVERS, SALESIEN, WAREHOUSEMEN, HILK PROCESSORS, CANNERY, DAIRY EMPLOYEES AND HELPERS UNION LOCAL NO. 695

To Initiate Fact Finding Between Said Petitioner and

CITY OF SUN PRAIRIE (POLICE DEPARTMENT)

Case I No. 13161 FF-265 Decision No. 9345-A

ORDER DISMISSING PETITION TO VOID AND REVOKE SUBPOENAS

Pursuant to the request of the above named Labor Organization, the Wisconsin Employment Relations Commission issued subpoenas dated July 22, 1971, wherein Charles V. Treadwell, City Clerk of the City of Sun Prairie, Theodore Chase, the Mayor of the City of Sun Prairie, Everett Geitner, Acting Chief of Police of the City of Sun Prairie, and Charles Mueller, an Alderman of the City of Sun Prairie, were required to appear before Fact Finder Nathan P. Feinsinger on July 26, 1971, in Room 207 of the University of Wisconsin Law School, Madison, Wisconsin, at 9:30 a.m. on said date, to give evidence in a fact finding proceeding pending before said fact finder involving the above named parties and to bring with them certain papers and documents providing information on points specifically set forth in an attachment to the subpoenas and made a part thereof, in order to update the facts and figures involving matters pertaining to the issues in dispute before the fact finder; and the subpoenas having been served upon said parties; and the parties so subpoenaed having ignored same and failed to appear at the hearing designated in the subpoenas, and thereafter Counsel for the individuals so subpoenaed having filed a motion and a brief in support thereof, wherein he moved that the Commission declare such subpoenas void on the basis that the Commission had no jurisdiction to issue same, and, further, said Counsel requested an order revoking such subpoenas, setting forth five grounds in support thereof; and the Commission having reviewed the motion, and the brief in support thereof, and being fully advised in the premises, hereby issues the following

ORDER

IT IS ORDERED that the motion filed by Counsel on behalf of Charles V. Treadwell, Theodore Chase, Everett Geitner and Charles Hueller to void and revoke subpoenas previously served upon them be, and the same hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney, Chairm

Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DRIVERS, SALESHEN, WAREHOUSEMEN, HILK PROCESSORS, CANNERY, DAIRY EMPLOYEES AND HELPERS UNION LOCAL NO. 695

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To Initiate Fact Finding Between : Said Petitioner and :

CITY OF SUN PRAIRIE (POLICE DEPARTMENT)

Case I No. 13161 FF-265 Decision No. 9345-A

PETITION TO VOID AND REVOKE SUBPOENAS

On Movember 25, 1969, the Misconsin Employment Relations Commission issued an Order in the above entitled matter appointing Nathan P. Feinsinger of Madison, Wisconsin, as a fact finder for the purpose of recommending a remedy and/or solution with respect to the fact that the City of Sun Prairie had refused to meet and negotiate with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Melpers Union Local No. 695 in a bona fide effort to arrive at a settlement with respect to wages, hours and conditions of employment affecting police officers in the employ of the City of Sun Prairie. The City on February 4, 1970, filed a petition for stay of the fact finding in the Dane County Circuit Court and on February 16, 1970, Judge Bardwell of said Circuit Court denied the petition for such stay. In his order he directed the Commission to advise the fact finder to commence the fact finding proceeding. On February 17, 1970, the Commission, in writing, directed the fact finder to proceed with his fact finding proceeding. Thereafter the fact finder set further hearing on the matter for July 26, 1971. On July 22, 1971, the Commission, at the request of the Labor Organization involved, issued subpoenas requiring the persons identified in the Order to appear at the hearing before the fact finder and to give evidence in the matter and to bring with them certain documentary evidence set forth in an attachment to each subpoena. The individuals subpoenaed refused to honor same and failed to appear at the hearing.

On July 30, 1971, Counsel for the City of Sun Prairie filed a petition with the Commission requesting an order declaring such subpoenas void on the basis that the Commission had no jurisdiction to issue them, or in the alternative for an order revoking such subpoenas on the following grounds:

- "A. Failure to tender witness fees as required by Wis. Stat. 885.05(1)(b) and (c);
- B. Failure to show on the face of the subpoena the name and address of the party at whose request it was issued as required by Wisconsin Administrative Code, Section ERB 10.14;

C. Lack of a showing of good cause to reopen the hearing, as required by Wisconsin Administrative Code, Section ERB 10.19:

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- D. The matter purportedly subpoenaed by Exhibit A, paragraphs 1 through 4 and 6 does not describe the documents sought to be produced with sufficient particularity;
- E. Paragraphs 1 through 4 and 6 do not call for documents, but would require petitioners to create documents and such paragraphs are beyond the subpoena power.
- F. The matter purportedly subpoenaed is not material to the proceeding and therefore not within the subpoena power of the Commission."

Upon inquiry the fact finder has advised that he has not issued any final fact finding report, and, therefore, the Commission deems that the fact finding proceeding is not closed, that the fact finder still retains jurisdiction, and that the Commission, therefore, has jurisdiction to issue subpoenas material to the disposition of the fact finding proceeding.

We do not believe that the failure to tender the exact amount of fees upon each of the individuals served defeats the validity of the subpoenas. It would appear to the Commission, since the subpoenas were served on July 23, 1971, requiring an appearance at the hearing on July 26, 1971, that there was sufficient time for the subpoenaed individuals to notify the fact finder or the Commission of the dinsufficient fee and no doubt such "insufficiency," if any, could have been remedied prior to the date required for the appearance of those subpoenaed.

While the suppoenss on their face did not indicate the name and address of the party to whose request they were issued as required in MRB 10.14, the Commission does not deem the omission of such information as to void the subpoenss since the proceeding was identified and the City of Sun Prairie, its Counsel, and those subpoenaed were well aware of the identity of the other party to the fact finding proceeding as a result of the initial proceeding before the Commission and the initial hearing before the fact finder.

With respect to its argument that there was a lack of good cause to reopen the hearing before the fact finder as required in ERB 10.19, it is to be noted that the fact finder had not issued a final report and under such circumstances, it cannot be deemed that the hearing before the fact finder was closed.

With respect to the argument that the documents required through the subpoenas were not described with sufficient particularity, it appears to the Commission that the information as requested in Exhibit "A" attached to each subpoena was specific and clear despite the fact that there was no identification of the documents in which such information might have been reduced (except for the documents identified in paragraph 7 of Exhibit "A"). If the information requested were reduced to specific documents, those documents should have been made available pursuant to the subpoenas. If they were not reduced to writing in any specific document, if those subpoenaed had appeared at the hearing, they could have given oral testimony with regard to the information requested.

with respect to the argument that the matters subpoenaed were not material to the proceeding, it is a determination which the fact finder must rule on. We have, therefore, denied the motion of the City to declare the subpoenas void and to revoke same.

It appears to the Commission that the agents of the City of Sun Prairie are attempting to ignore the peaceful procedures established in Section 111.70 for the resolution of disputes over wages, hours and conditions of employment involving their police officers by being required to be subpoenaed and to furnish material evidence, documentary or otherwise, to the fact finder in order for him to complete the fact finding proceeding. The failure to honor the subpoenas further indicates an attitude by said individuals which will only create a climate contrary to the intent and purposes of the statute.

Dated at Madison, Wisconsin, this 30th day of September, 1971.

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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Bv

Morris Slavney, Chairma

Jos. B. Kerkman, Commissioner