

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK
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

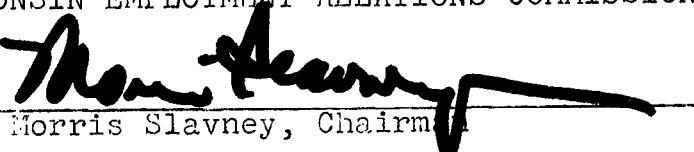
ORDER

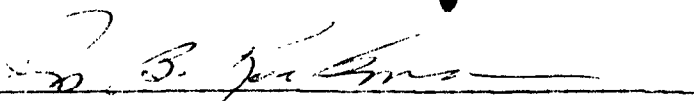
IT IS ORDERED that the motion filed by Counsel on behalf of Charles V. Treadwell, Theodore Chase, Everett Geitner and Charles Mueller to void and revoke subpoenas previously served upon them be, and the same hereby is, denied.

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, Chairman


Jos. B. Kerkman, Commissioner

No. 9345-A

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

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 "insufficient" 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 subpoenas on their face did not indicate the name and address of the party to whose request they were issued as required in ERB 10.14, the Commission does not deem the omission of such information as to void the subpoenas 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.

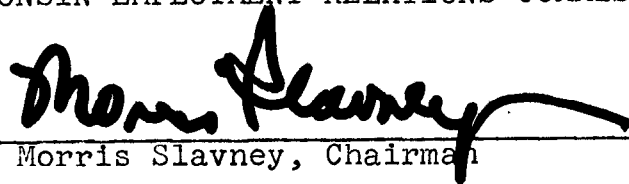
With respect to the argument that the matters subpoenaed were not material to the proceeding, it is a determination which the fact finder must rule on. We have, therefore, denied the motion of the City to declare the subpoenas void and to revoke same.

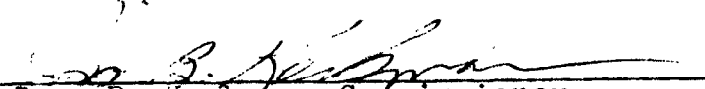
It appears to the Commission that the agents of the City of Sun Prairie are attempting to ignore the peaceful procedures established in Section 111.70 for the resolution of disputes over wages, hours and conditions of employment involving their police officers by being required to be subpoenaed and to 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.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner