

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

FINDINGS OF FACT, CONCLUSIONS OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION, AND
ORDER INITIATING FACT FINDING AND APPOINTING FACT FINDER

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695 having petitioned the Wisconsin Employment Relations Commission to initiate fact finding pursuant to Section 111.70(4) of the Wisconsin Statutes, on behalf of police officers in the employ of Sun Prairie, Wisconsin; and Commissioner Zel S. Rice II having conducted a hearing on such petition at Sun Prairie, Wisconsin, on October 16 and 22, and November 5, 1969; 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, Conclusions of Law, Certification of Results of Investigation, and Order Initiating Fact Finding and Appointing Fact Finder.

FINDINGS OF FACT

1. That Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, hereinafter referred to as the Petitioner, is a labor organization and has its offices at Madison, Wisconsin.

2. That the City of Sun Prairie, hereinafter referred to as the Municipal Employer has its offices at the City Hall, Sun Prairie, Wisconsin, and maintains and operates a police department, wherein it employs police officers; that the complement of the Municipal Employer's Police Department normally consists of twelve police officers; that however, two of the positions are presently unfilled and the police force presently consists of ten individuals, consisting of the Chief, two Police Sergeants, a Police Investigator and seven Patrolmen; that the duties of the Police Sergeant and the Police

Investigator are essentially the same as the regular duties performed by the Patrolmen, except that some of their duties require more skill than those performed by the Patrolmen; that the Police Sergeants also assist in the planning, organizing and supervision of the department and in developing policies and procedures; that however, such duties are performed under the general supervision of the Chief; that the Police Sergeant may also be assigned to act for the Chief in his absence and the Police Investigator may be required to replace superior officers in all phases of police work during their absence; that the salary of the Patrolman ranges from \$525 to \$640, depending on years of service; that the Police Investigator receives \$640 per month; that the two Police Sergeants receive \$665 and \$690 per month, based on their years of experience; that the training required of all three positions is the same except that the Police Investigator and the Police Sergeant are required to have special training; that the essential knowledges and abilities are practically the same for all three positions, except that a higher degree of knowledge and ability is required of the Police Investigator and Police Sergeants.

3. That between May 22, 1969 and May 26, 1969, a majority of the police officers in the employ of the Police Department of the Municipal Employer affixed their signatures to a "Petition and Authorization" wherein said police officers (a) petitioned the Municipal Employer for improvements in their wages, hours and working conditions, (b) authorized and designated the Petitioner as their representative under Section 111.70(4)(j) of the Wisconsin Statutes, (c) agreed to pay the Petitioner the sum of \$7.00 per month each, for services rendered in said representation, and (d) authorized the Municipal Employer to deduct from their wages the sum of \$7.00 per month and to remit same to the Petitioner.

4. That on May 27, 1969, the Petitioner, in writing, advised the Municipal Employer that it had been designated as the representative of the police officers in the employ of the Municipal Employer and wherein it also requested recognition from the Municipal Employer as the collective bargaining representative of said employees; that in said letter the Petitioner advised, should the Municipal Employer question its representative status, that the Petitioner would verify its representative status in accordance with mutually acceptable procedures; and that, having received no response to said letter, the Petitioner on June 23, 1969, sent an additional letter to the Municipal Employer indicating that it could verify its representative status, and that it was ready to meet with representatives of the Municipal Employer in regard to the matter.

5. That on September 30, 1969, representatives of the Petitioner met with representatives of the Municipal Employer and that during said meeting the Municipal Employer advised the Petitioner that it did not recognize the Petitioner as the representative of its police officers; and further that they had no authority to bargain with the Petitioner.

6. That on October 2, 1969, the Petitioner filed a petition for fact finding with the Wisconsin Employment Relations Commission wherein it alleged, among other things, that the Municipal Employer had failed and refused to meet and negotiate at reasonable times with the Petitioner in a bona fide effort to arrive at a settlement.

7. That prior to October 21, 1969, representatives of the Municipal Employer acknowledged that the Petitioner represented a majority of the police officers, but at the same time contended that they had no authority of engage in bargaining with the Petitioner; that subsequently on October 21, 1969, the City Council of the Municipal Employer adopted a resolution, which was approved by the Mayor, wherein the Municipal Employer designated a Negotiating Committee and authorized said Negotiating Committee to confer and negotiate with the Petitioner, as the representative of the non-supervisory police officers, on questions of wages, hours and conditions of employment, but only on the fulfillment of the following conditions:

"1. The Negotiating Committee may confer and negotiate only after the said representative has certified by sworn statement of its responsible officers that no non supervisory policemen employee of the City is a member of or otherwise affiliated with the said Union or any of its affiliates, and that it will not accept membership from any policeman while they are in the employ of the City in that capacity.

2. Negotiation procedures shall require that at least two off duty non supervisory policemen employees shall attend all negotiating sessions.

3. The Negotiating Committee has no authority to bind the City or Council, but may from time to time present proposals to the Council for approval.

4. There shall be no formal recognition agreement as requested by the said Teamsters Union."

8. That also on October 21, 1969, the Chief of Police also promulgated a rule to the effect that no police officer could affiliate "by membership or otherwise with a labor union affiliated with a national labor organization."

9. That on November 5, 1969, representatives of the Municipal Employer indicated that they would not bargain with the Petitioner unless the Petitioner would submit, in writing, a sworn statement to the effect that no police officer was a member of or otherwise affiliated with the Petitioner and further that the Petitioner would not accept any police officer in its membership; and that despite the fact that the Petitioner indicated that no police officer was a member of the Petitioner, the Municipal Employer has failed and refused to engage in collective bargaining with the Petitioner with respect to improvements in wages, hours and conditions of employment of its police officers.

10. That the Municipal Employer has not established any fact finding procedures pursuant to Section 111.70(4)(m) of the Wisconsin Statutes.

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

CONCLUSIONS OF LAW

1. That the police officers in the employ of the City of Sun Prairie, including Police Sergeants, Police Investigator and Patrolmen, but excluding the Chief constitute a appropriate collective bargaining unit, and that Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695 is the designated collective bargaining representative for the employees in said unit within the meaning of Section 111.70(4)(j), Wisconsin Statutes.

2. That the Petitioner, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695 is the duly designated representative of all police officers in the employ of the City of Sun Prairie, including Police Sergeants, Police Investigator and Patrolmen, but excluding the Chief, for the purposes of collective bargaining with the City of Sun Prairie within the meaning of Section 111.70(4)(j), Wisconsin Statutes.

3. That the City of Sun Prairie, by refusing to meet and negotiate at reasonable times with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers 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 appropriate collective bargaining unit described herein, until certain conditions set forth by the City of Sun Prairie, as indicated in the Findings of Fact, has failed and refused to meet and negotiate in good faith with said labor organization at reasonable times in a bona fide effort to arrive at a settlement with respect to wages, hours and conditions of employment covering its employees within the meaning of Section 111.70(4)(e), Wisconsin Statutes

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

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of fact finding, as required in Section 111.70(4)(e), Wisconsin Statutes, with respect to the failure and refusal of the City of Sun Prairie to meet and negotiate with Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, as the collective bargaining representative of the police officers in its employ, including Police Sergeants, Police Investigator, and Patrolmen, but excluding the Chief, at reasonable times in a bona fide effort to arrive at a settlement have been met.

NOW, THEREFORE, it is

ORDERED

1. That fact finding be initiated for the purpose of recommending a remedy, and/or a solution in the matter.


2. That Nathan Feinsinger of Madison, Wisconsin, is hereby appointed as fact finder to proceed forthwith in the matter pursuant to Section 111.70(4)(g) of the Wisconsin Statutes.

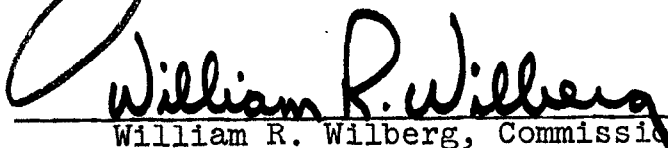
Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of November, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rhee II, Commissioner


William R. Wilberg, Commissioner

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

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION, AND
ORDER INITIATING FACT FINDING AND APPOINTING FACT FINDER

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695 on October 2, 1969, filed a petition with the Wisconsin Employment Relations Commission alleging that the City of Sun Prairie had failed and refused to meet and negotiate with the Petitioner at reasonable times in a bona fide effort to arrive at a settlement in collective bargaining involving police officers of the Sun Prairie Police Department excluding the Chief of Police. The informal investigation conducted by the Commission herein disclosed two issues involved in this proceeding. The primary issue is whether the representatives of said Municipal Employer have failed or refused to meet and negotiate at reasonable times in a bona fide effort to arrive at a settlement with the Petitioner, or in other words whether a condition for fact finding exists within the meaning of Section 111.70(4)(e)2. The remaining issue concerns the appropriateness of the unit.

The Municipal Employer concedes that the Petitioner has been designated by a majority of its police officers to represent said employes in collective bargaining. Section 111.70(4)(j) states as follows:

"In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one-half of the costs of fact finding."

Sections 111.70(4)(e) and (f) provide as follows:

"Fact finding may be initiated in the following circumstances:
1. If after a reasonable period of negotiation the parties are deadlocked, either party or the parties jointly may initiate fact finding; 2. Where an employer or union fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

Upon receipt of a petition to initiate fact findings, the board shall make an investigation and determine whether or not the condition set forth in par. (e) 1 or 2 has been met and shall certify the results of said investigation. If the certification requires that fact finding be initiated, the board shall appoint from a list established by the board a qualified disinterested person or 3-member panel when jointly requested by the parties, to function as a fact finder."

There is nothing in Section 111.70, or any of the Commission's decisions or court cases interpreting same, which requires that the designated representative of police officers meet the conditions precedent requested by the Municipal Employer in order to engage in conferences and negotiations with the Municipal Employer for changes or improvements in the wages, hours or working conditions of police officers. The Wisconsin Supreme Court has stated that a broad construction should be given to the language of the Statute.^{1/} Our Supreme Court has also recognized that a Municipal Employer may prohibit policemen from becoming or remaining members of a Union which is affiliated with a national labor organization.^{2/} However, in said case the Court specifically dealt with the composition of the representative of police officers, and therein the Court indicated that police officers could be represented by a Union affiliated with a national labor organization. During the course of the informal investigation representatives of the Petitioner advised that none of the police officers were members of the Petitioner. The Municipal Employer is not satisfied with such statement, but rather would require a sworn statement from each of the officers to that effect before it would engage in bargaining with the Petitioner. In the document executed by the individual police officers designating the Petitioner as their representative, the police officers indicated an agreement to pay the Petitioner \$7.00 per month in consideration of being represented for the purpose of collective bargaining pursuant to Section 111.70, and further requested the Municipal Employer to deduct such sums from their monthly wages and to remit same to the Petitioner. We are satisfied that

^{1/} City of Medford, 42 Wis. 2d 581.

^{2/} City of Greenfield, 35 Wis. 2d 175.

such authorization and request does not establish that the police officers are "members" of the Petitioner. Rather we conclude that said monthly amounts are in the form of a charge for services to be rendered by the Petitioner in its representative status.

We conclude that the condition precedent established by the Municipal Employer before it would engage in bargaining with the Petitioner, specifically, that the Petitioner submit in writing a sworn statement that no police officer was a member of or otherwise affiliated with the Petitioner and that the Petitioner would not accept any of the police officers as members and, further that the "bargaining team" of the Petitioner include at least two off-duty police officers, are neither reasonable nor necessary, and therefore, because of such conditions precedent, the Municipal Employer has failed and refused to meet and negotiate with the Petitioner at reasonable times in a bona fide effort to arrive at a settlement with respect to wages, hours and conditions of employment affecting the police officers in its employ. With respect to the appropriate unit, there are only ten officers in the department, and it appears that the Chief is able to provide all of the necessary supervision. While in his absence, Sergeants or the Police Investigator may be called upon to fill in for him, their duties are generally the same as the Patrolmen and they put in very little of their time in a supervisory capacity. The pay differentials seem to be based partially on length of time in service as well as the degree of skill required rather than supervisory duties.

We conclude that the Police Sergeants and Police Investigator do not perform such supervisory duties which would exclude them from the appropriate collective bargaining unit, and therefore the unit consists of all members of the Police Department with the exception of the Chief.

Dated at Madison, Wisconsin, this 25th day of November, 1969.

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