

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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WEST ALLIS PROFESSIONAL POLICEMEN'S	:	Case VII
PROTECTIVE ASSOCIATION	:	No. 13188 FF-269
	:	Decision No. 9365
To Initiate Fact Finding Between	:	
Said Petitioner and	:	
	:	
CITY OF WEST ALLIS	:	
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FINDINGS OF FACT, CONCLUSION OF LAW
CERTIFICATION OF RESULTS OF INVESTIGATION AND
ORDER INITIATING FACT FINDING AND APPOINTING FACT FINDER

West Allis Professional Policemen's Protective Association having petitioned the Wisconsin Employment Relations Commission to initiate fact finding pursuant to Section 111.70(4) of the Wisconsin Statutes on behalf of certain employees of the City of West Allis employed in the City of West Allis Police Department; and the Commission, by Allan J. Harrison, a member of its staff, having conducted a hearing on such petition at Milwaukee, Wisconsin, on November 5, 1969; and during the course of this hearing the parties having made known the facts material thereto and having been given an opportunity to make written and oral arguments; and the Commission being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law, Certification of Results of Investigation and Order Initiating Fact Finding and Appointing Fact Finder.

FINDINGS OF FACT

1. That the West Allis Professional Policemen's Protective Association, hereinafter referred to as the Petitioner, has its office at 7310 West National Avenue, West Allis, Wisconsin.
2. That the City of West Allis, hereinafter referred to as the Municipal Employer, has its offices at the West Allis City Hall, West Allis, Wisconsin; and that the Municipal Employer maintains and operates a police department.
3. That the Petitioner at all times material herein is the voluntarily recognized representative of all police officers of the ranks of patrolman, corporal and detective in the employ of the Municipal Employer.

4. That prior to the filing of the instant petition on October 10, 1969, representatives of the Petitioner and the Municipal Employer met on July 9, August 12 and September 11, 1969 for the purpose of negotiating changes in wages and other conditions of employment affecting said employes in efforts to reach an accord on a new collective bargaining agreement; and that at the September 11, 1969 meeting the Municipal Employer discussed the various financial difficulties for its taxpayers for the year 1970 and indicated to the Petitioner that the Municipal Employer had attempted to determine the costs of the Petitioner's proposals in order to determine the potential impact on its taxpayers, but was unable to do so because of uncertainties in present wage rates caused by Petitioner's law suit against the Municipal Employer, presently pending before the Milwaukee County Circuit Court; and that thereupon the Municipal Employer terminated collective bargaining, and since said occasion has failed and refused, and continues to fail and refuse, to engage in further collective bargaining with the Petitioner on wages and hours and working conditions, affecting the employes involved herein, for the year 1970.

5. That the aforementioned court action involves a claim by the Petitioner, alleging that the Municipal Employer had breached the wage provisions of the 1966 collective bargaining agreement between the parties covering the employes herein; that said court action has been pending since August 14, 1967, and was heard by the Judge assigned thereto on November 12 and 13, 1969; and that said suit is still presently pending before said Court.

6. That during the pendency of the aforementioned law suit the parties had previously negotiated and entered into collective bargaining agreements covering the wages, hours and conditions of employment for the employes involved herein for the years 1967, 1968 and 1969.

7. That, on September 11, 1969 and thereafter, by its failure to continue meeting and negotiating with the Petitioner with respect to wages, hours and working conditions for the employes involved herein for the year 1970, the Municipal Employer has failed and refused to meet and negotiate at reasonable times with the Petitioner in a bona fide effort to arrive at a settlement with respect to the wages, hours and conditions of employment, covering the employes involved herein, for the year 1970.

8. That the Municipal Employer has not established any fact finding procedures substantially in compliance with Section 111.70(4)(m) of the Wisconsin Statutes.

On the basis of the above and foregoing Fact Finding, the Commission makes the following

CONCLUSION OF LAW

That the City of West Allis has failed and refused to meet and negotiate in good faith at reasonable times with West Allis Professional Policemen's Protective Association in a bona fide effort to arrive at a settlement with respect to wages, hours and conditions of employment affecting police officers holding the rank of patrolman, corporal and detective, in its employ, within the meaning of Section 111.70(4)(e), Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusion 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) of the Wisconsin Statutes with respect to negotiations between the West Allis Professional Policemen's Protective Association and the City of West Allis on issues of wages, hours and conditions of employment of all police officers holding the rank of patrolman, corporal and detective in the employ of the City of West Allis have been met.

NOW, THEREFORE, it is

ORDERED

1. That fact finding be initiated for the purpose of recommending a solution to said dispute.
2. That the appointment of the Fact Finder is herewith being delayed in order to permit the parties an opportunity to commence their negotiations on the matters in issue; that, however, the Commission will designate the Fact Finder at such time when the Petitioner herein so requests.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of December, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slawney
Morris Slawney, Chairman

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

William R. Wilberg
William R. Wilberg, Commissioner
No. 936

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WEST ALLIS PROFESSIONAL POLICEMEN'S
PROTECTIVE ASSOCIATION

To Initiate Fact Finding Between
Said Petitioner and

CITY OF WEST ALLIS

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Case VII
No. 13188 FF-269
Decision No. 9365

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

The issue herein is whether the action presently pending in the Milwaukee County Circuit Court, as described in the Findings of Fact, justifies the Municipal Employer's refusal to continue in negotiations with the Petitioner on wages, hours and working conditions for its police officers for the year 1970.

The Municipal Employer contends that its position is reasonable, since it is unable to determine, until the law suit is adjudicated, its financial liabilities thereunder, which may have a substantial impact on its offer to be made for the year 1970. It contends that while collective bargaining does not compel the parties to reach an agreement, it does require that negotiation be with an open mind and that the parties make a reasonable effort to reach an agreement. It argues that, because of the pending law suit, it cannot with any certainty know its starting point in negotiations. It further argues that the Common Council of the Municipal Employer would fail in its duty to represent the taxpayers if it were to meet and negotiate with the Petitioner before it disposes of the pending law suit.

The Petitioner contends that the position of Municipal Employer is untenable for various reasons, to the effect (a) that the Municipal Employer had numerous opportunities to fix its liability in the law suit by settlement, which it has spurned, (b) that the Municipal Employer's position with respect to the suit is no different than it was when collective bargaining agreements were negotiated for the years 1967 through 1969 covering the police officers, (c) that the matters involved in the pending law suit are distinct from the proposals made by the Petitioner for the 1970 collective bargaining agreement, and (d) that the position of the Municipal Employer, of refusing to proceed with

negotiations, constitutes an attempt to coerce the Petitioner into dropping its law suit.

While we understand the position in which the Municipal Employer finds itself, we cannot agree that it can properly terminate negotiations because of the pending law suit. The Municipal Employer's duty to bargain, as set forth in Section 111.70(4)(e), with respect to fact finding proceedings, cannot be postponed by the pendency of the Court action. If a party would be permitted to refuse to bargain because it was pursuing certain legal processes, the duty to bargain, as a basis for fact finding, would become meaningless during the period when law suits of the nature involved herein were pending in the Courts.

The Commission's determination herein is not meant to infer that there may be no impact upon the tax structure of the Municipal Employer as a result of the law suit. However, there is nothing to prevent the potential impact of such law suit from being considered by the Municipal Employer in the offers it may make to the proposals of the Petitioner.

We have therefore found that the Municipal Employer has failed in its duty to meet and negotiate with the Petitioner and have ordered Fact Finding.

Dated at Madison, Wisconsin, this 9th day of December, 1969

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slayney
Morris Slayney, Chairman

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

William R. Wilberg
William R. Wilberg, Commissioner