

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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TWO RIVERS CITY EMPLOYEES	:	
LOCAL #76 A.F.S.C.M.E. - AFL-CIO	:	
	:	Case IX
To Initiate Fact Finding Between	:	No. 13906 FF-365
Said Petitioner and	:	Decision No. 9828
	:	
CITY COUNCIL OF TWO RIVERS	:	
	:	
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FINDINGS OF FACT, CONCLUSION OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION AND
ORDER INITIATING FACT FINDING AND APPOINTING FACT FINDER

Local 76 of District Council 40, AFSCME, AFL-CIO having petitioned the Wisconsin Employment Relations Commission to initiate fact finding pursuant to Section 111.70(4) of the Wisconsin Statutes; and the Commission, by Allan J. Harrison, a member of its staff, having conducted a hearing on such petition at Manitowoc, Wisconsin, on July 7, 1970; and the Commission having considered the evidence and arguments of Counsel, and 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 Local 76, District Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, is a labor organization and has its offices on 528 South 27th Street, Manitowoc, Wisconsin.

2. That the City of Two Rivers, hereinafter referred to as the Municipal Employer, has its office in the City of Two Rivers City

Hall, Two Rivers, Wisconsin; and that the Municipal Employer maintains and operates a Department of Public Works.

3. That Local 76, District Council 40, AFSCME, AFL-CIO, is the certified collective bargaining representative of all employees of the Municipal Employer, excluding department heads, statutory officers, division superintendents, city manager's secretary, police and fire departments, seasonal and temporary employees, and employees of the municipal hospital.

4. That a collective bargaining agreement was entered into on January 6, 1969, between the Petitioner and the Municipal Employer and that said agreement contains the following pertinent provisions:

"ARTICLE VI - GRIEVANCE PROCEDURE

All grievances which may arise shall be processed in the following manner:

- Step 1. The aggrieved employee shall present the grievance orally to his steward. The steward and/or the aggrieved shall attempt to resolve the grievance with the immediate supervisor, who may call higher level supervisors into the discussion. If it is not resolved at this level, the grievance shall be processed as outlined in Step 2.
- Step 2. The grievance shall be presented in writing to the department head and if not resolved within 5 working days at this level, the department head shall note his statement on the grievance form and it shall be processed as outlined in Step 3.
- Step 3. The grievance shall be presented by letter to the City Manager. If it is not resolved at this level within a reasonable time, the City Manager shall note his statement on the grievance form and it shall be presented to the City Council as in Step 4.
- Step 4. If the grievance is not resolved in Step 3, the City Manager shall place the grievance before the City Council for action at its next regular meeting following rejection of the grievance.

the two members so selected shall then select a third member. Should the two members selected be unable to agree on the selection of the third member, then the selection of the third member shall be left to the Wisconsin Employment Relations Board.

The Board of Arbitration shall meet within five (5) days after their selection and submit their findings to the parties involved and shall be final and binding.

- A. Advisory Arbitration shall be used in the following: (1) If after a reasonable period of negotiations the parties are deadlocked, or (2) When either of the parties fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

The employer shall bear the expense of its member on the Board of Arbitration and the aggrieved employee of the aggrieved employee's Union shall bear the expense of his member on the Board of Arbitration. The costs, if any, of a third member on such Board shall be divided equally between the employer and the other party to the dispute.

. . .

ARTICLE XI - DURATION

This Agreement shall become effective January 1, 1969 and shall be in full force and effect through December 31, 1969, and shall be renewed automatically for periods of one year, remaining in full force and effect until such time that either party desiring to open, alter, amend, or otherwise change this Agreement shall serve written notice upon the other not later than August 1, 1969, or the first of August in any year thereafter. It shall be the intent of this provision that the Contract shall normally run from January 1 of each year."

5. That on or about July 21, 1969, in accordance with Article XI noted above, the Petitioner in writing reopened the existing collective bargaining agreement indicating that it desired to negotiate changes on wages, hours and conditions on Respondent to encompass an agreement effective January 1, 1970, and in that regard submitted its proposals to the Municipal Employer; that thereafter and between November 24, 1969, and on April 17, 1970, the parties met on five (5) occasions without being able to reach an agreement in their negotiations.

6. That on April 21, 1970, the Petitioner in a letter to the Municipal Employer requested that the parties proceed to advisory arbitration with respect to their impasse in negotiations; that on June 16, 1970, the Petitioner filed a petition for fact finding, with the Wisconsin Employment Relations Commission, initiated the instant proceeding, wherein it alleged that the Municipal Employer had failed or refused to meet and negotiate at reasonable times in a bona fide effort to arrive at a settlement and in support to such allegations alleged that the Municipal Employer "refuses to proceed to advisory arbitration as outlined in the agreement, Article VI, Step 5--A, and refuses to respond to any communications regarding the same."

7. That the action of the Petitioner as reflected in its letter of July 21, 1969, referred to above prevented the collective bargaining agreement from extending beyond December 31, 1969; that at no time since July 21, 1969, did the Municipal Employer agree to extend the term of said agreement beyond December 31, 1969; and that since the request to proceed to advisory arbitration with respect to the alleged deadlock and negotiations was made by the Petitioner after the collective bargaining agreement had expired and there was no duty or obligation upon the Municipal Employer to proceed to advisory arbitration in accordance with such agreement; and that, however, the parties were unable to reach an accord in their collective bargaining with respect to wages and other conditions of employment affecting said employees for the year commencing January 1, 1970, they remain in deadlock with respect thereto.

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

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

CONCLUSION OF LAW

That a deadlock within the meaning of Section 111.70(4)(e) of the Wisconsin Statutes exists between Two Rivers City Employees Local #76, AFSCME, AFL-CIO and City Council of Two Rivers after reasonable periods of negotiations with respect to wages and other conditions of employment affecting all employees of the Municipal Employer, excluding department heads, statutory officers, division superintendents, city manager's secretary, police and fire departments, seasonal and temporary employees, and employees of the municipal hospital.

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 of Section 111.70(4)(e) with respect to negotiations between Two Rivers City Employees Local #76, AFSCME, AFL-CIO, and City Council of Two Rivers, in issues of wages and other conditions of employment of all employees of the Municipal Employer, excluding department heads, statutory officers, division superintendents, city manager's secretary, police and fire departments, seasonal and temporary employees, and employees of the municipal hospital 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 Gordon Haferbecker, Stevens Point, Wisconsin, is hereby appointed as the fact finder to proceed forthwith in the matter pursuant to Section 111.70(4)(g) of the Wisconsin Statutes.

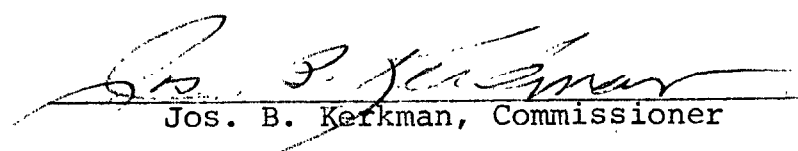
Given under our hands and seal at the City of Madison, Wisconsin, this 14th day of August, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Jos. B. Kerkman, Commissioner

In the Matter of the Petition of	:	
TWO RIVERS CITY EMPLOYEES	:	
LOCAL #76 A.F.S.C.M.E. - AFL-CIO	:	
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	:	

In their 1969 collective bargaining agreement the parties, within Article VI, agreed upon procedure for resolution of disputes arising during the term of the agreement. Such procedure includes a grievance procedure terminating in final and binding arbitration, and in addition provides for advisory arbitration if the parties were unable to reach an agreement in their negotiations after a reasonable period of negotiation or when either of the parties fail or refuse to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement. By the latter provision the parties established their own procedures for the resolution of disputes arising during negotiations. Although not specifically set forth therein, it is apparent to the Commission that the provision was intended to cover negotiations on a succeeding collective bargaining agreement, which negotiations would normally be expected to occur during the course of the 1969 agreement.

No. 9828

agreement from extending beyond its term and thus it expired on December 31, 1969. Had neither party reopened the agreement in accordance with the provisions in the reopening clause, the collective bargaining agreement would have been deemed to continue until it was reopened as provided in the agreement.

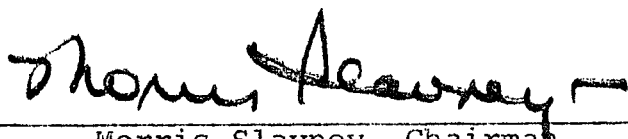
Had the Petitioner made its request for advisory arbitration during the term of the agreement, there would be a contractual obligation upon the Employer to utilize such procedure. However, the Union's request for advisory arbitration was made after the agreement had expired, and therefore, there was no contractual obligation upon the Employer to proceed to advisory arbitration.

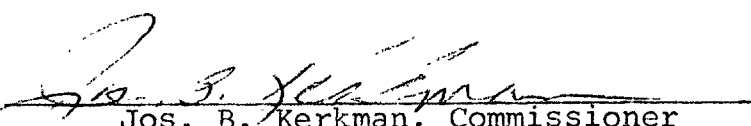
Regardless, the parties are in deadlock in their negotiations and an impasse has been reached, and since they are so deadlocked, a basis for fact finding exists, and therefore, the Commission has appointed a fact finder to make recommendations to the parties for the resolution of their dispute.

Given under our hands and seal at the
City of Madison, Wisconsin, this 14th
day of August, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner