

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE COUNTY

Case XLVI
No. 13950 FF-367
Decision No. 9904

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Larry Brueggeman, appearing on behalf of Petitioner.
Mr. Robert G. Polasek, Assistant Corporation Counsel, appearing on behalf of the Municipal Employer.

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

District Council 48, Local No. 594, American Federation of State, County and Municipal Employees having petitioned the Wisconsin Employment Relations Commission to initiate fact finding pursuant to Section 111.70 of the Wisconsin Statutes on behalf of certain employees of Milwaukee County, Milwaukee, Wisconsin, and the Commission, by Robert B. Moberly, a member of its staff, having conducted a hearing on such petition at Milwaukee, Wisconsin, on August 18, 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, Conclusions of Law, Certification of Results of Investigation, and Order Initiating Fact Finding and Delaying Appointment of Fact Finder.

FINDINGS OF FACT

1. That District Council 48, Local No. 594, American Federation of State, County and Municipal Employees, hereinafter referred to as the Petitioner, is a labor organization having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

2. That Milwaukee County is a Municipal Employer, having its offices at the Milwaukee County Courthouse, Milwaukee, Wisconsin; and that it employs various employees in various departments including the Department of Public Welfare.

3. That the Petitioner, at all times material herein, has been, and is, the certified collective bargaining representative for various employees in the employ of Milwaukee County, including certain professional and nonprofessional employees in the employ of its Department of Public Welfare.

4. That on May 19, 1969, the Milwaukee County Management and Budget Analysis Director recommended to the Board of Public Welfare that the Department of Public Welfare be reorganized, and accompanied this recommendation with a thorough analysis of the changes necessary to implement such reorganization; that in November, 1969, said reorganization plan was approved in principle by the Milwaukee County Committee on Finance; that on May 12, 1970, the Deputy Director of the Department of Public Welfare issued an interoffice communication to the departmental staff explaining some initial steps and providing general information on the proposed reorganization of the department; that certain personnel therein were asked to study the material and to indicate choices of preferred assignment on reorganization; that said communication contained a survey to provide information for planning purposes, and that the Petitioner cooperated with Milwaukee County in the development of the survey involved; and that on July 6, 1970, the Deputy Director of the Department of Public Welfare submitted a proposal to the Milwaukee County Committee on Finance to implement the reorganization plan proposed by the Management and Budget Analysis Director of the department.

5. That the changes recommended in said proposed reorganization plan would require the elimination of certain positions and the creation of other positions within the bargaining units represented by the Petitioner; that said reorganization plan would also require the reassignment of certain

types of work to personnel at a lower compensation level than is paid to personnel currently performing said tasks, and would also require a change in the assignment of duties and a change in the work load of certain employees in the bargaining units represented by Petitioner, as well as possible changes in classifications of some employees; and that such changes, if implemented, would have a direct and intimate effect upon the salaries and other conditions of employment of employees in the bargaining units represented by Petitioner.

6. That on July 31, 1970, the Chairman of the Personnel Committee of Milwaukee County, by letter, urged the Deputy Director of the Department of Public Welfare to discontinue discussions with representatives of the Petitioner on the subject of the reorganization of the Department of Public Welfare; that the Deputy Director of said department then cancelled all subsequent meetings between Milwaukee County and the Petitioner, with respect to the planned reorganization; and that representatives and agents of Milwaukee County have refused, and have continued to refuse, to engage in collective bargaining with representatives of the Petitioner with respect to the proposed reorganization of the Department of Public Welfare and with respect to the effect of said reorganization on the salaries and other conditions of employment of employees in the bargaining units represented by the Petitioner.

7. That Milwaukee County 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 issue as to whether the Department of Public Welfare should be reorganized, as well as the effects of such reorganization upon bargaining unit employees, are proper subject matters of collective bargaining within the meaning of Section 111.70 of the Wisconsin Statutes.

2. That Milwaukee County, by refusing and continuing to refuse to engage in collective bargaining with District Council 48, Local No. 594, American Federation of State, County and Municipal Employees, with respect to the proposed reorganization of the Department of Public Welfare and with respect to the effects of such reorganization on the salaries and other conditions of employment of employees in the bargaining units represented by said labor organization, has, pursuant to Section 111.70(4)(e), Wisconsin Statutes, 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 on said matters.

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

CERTIFICATION

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 the failure and refusal of Milwaukee County to meet and negotiate in good faith at reasonable times with District Council 48, Local No. 594, American Federation of State, County and Municipal Employees, in a bona fide effort to arrive at a settlement with respect to the proposed reorganization of the Department of Public Welfare and with respect to the effects of such reorganization on the salaries and other conditions of employment of employees in the bargaining units represented by said labor organization, 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 the appointment of the fact finder is herewith being delayed in order to allow Milwaukee County the opportunity to commence collective bargaining with District Council 48, Local No. 594, American

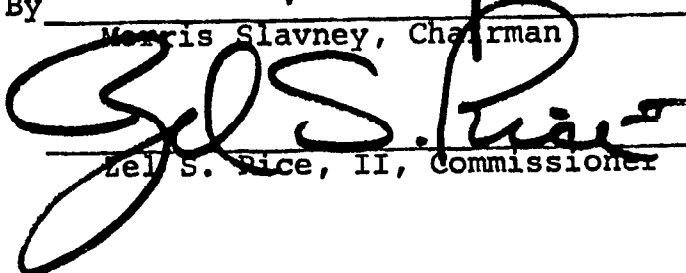
Federation of State, County and Municipal Employees on the matters involved herein; and that, however, the Commission will designate the fact finder at such time as District Council 48, Local No. 594, American Federation of State, County and Municipal Employees advises the Commission in writing that Milwaukee County has, following the receipt of a copy of this Order, refused to engage in collective bargaining as contemplated herein.

Given under our hands and seal at the
City of Madison, Wisconsin, this 11th
day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Mel S. Rice, II, Commissioner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XLVI
No. 13950 FF-367
Decision No. 9904

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

At least since May, 1969, the Municipal Employer has been seriously considering a reorganization of the Department of Public Welfare as indicated in the Findings of Fact. The reorganization plan was approved in principle by its Committee on Finance, and in July, 1970, the Deputy Director of the Department of Public Welfare submitted a plan to implement the reorganization. The reorganization would require the elimination of some positions represented by the Petitioner and the creation of other positions. Certain tasks now performed by personnel within the bargaining units would be performed by personnel at a lower compensation level. There would be changes in the assignment of duties of employees. There would be changes in the work load of employees, as well as possible changes in the classifications of some employees.

While it appears that some discussions did take place between the department head and the Petitioner, there is no dispute that the Municipal Employer has now refused and is continuing to refuse to engage in collective bargaining with the Petitioner with respect to either the decision to reorganize the department, or the effects of such decision upon the salaries and other conditions of employment of unit employees. The Municipal Employer argues that neither the decision to reorganize

the department, nor the effects of such decision on unit employees are subject to bargaining, and that fact finding should not be initiated. The Petitioner contends otherwise.

In Joint Sch. Dist. No. 8, City of Madison, et al, 1/ the Commission stated:

"Where any phase or portion of the legislative responsibilities of the School Board have a direct and intimate affect upon salaries, hours and working conditions of its employees, then those matters are subject to collective bargaining within the meaning of Section 111.70 of the Wisconsin Statutes, and any refusal to negotiate and bargain on such items, or any dead-lock with respect to issues on those items, after a reasonable period of negotiations, are subject to fact finding under the statute."

In the judgment of the Commission, both the decision to reorganize the Department of Public Welfare, and the effects thereof on the employees represented by Petitioner have a direct and intimate effect upon salaries and other conditions of employment of unit employees, and are therefore subject to collective bargaining within the meaning of Section 111.70. The proposed reorganization admittedly eliminates some positions and creates other positions. It also involves the reassignment of job duties, as well as a change in the work load of employees. In Libby, McNeill & Libby, 2/ an employer decided to change its operations to mechanize its harvesting. In doing so, it eliminated numerous positions. The Commission held that the employer's refusal to bargain over the decision to mechanize the harvesting operations and the effects thereof prior to such decision violated its duty to bargain under the Wisconsin Employment Peace Act. The Commission, in comments

1/ Dec. No. 7768 (aff. 37 Wis 2nd 483)

2/ Dec. No. 8616

which are equally applicable to this case, stated therein:

" . . . it appears well settled that where a decision is made by an employer to modify an operation presently performed by employees represented by a collective bargaining representative, and where such modification substantially eliminates unit work opportunities, the bargaining representative of the unit employees has the right to be notified in advance of the final decision and must be given the opportunity to bargain not only the decision but the effects of the decision on the work opportunities for the bargaining unit employees involved."

If the Petitioner is given an opportunity to bargain with respect to the decision to reorganize the Department of Public Welfare, as well as its effect on the work of bargaining unit employees, it can attempt to persuade the Municipal Employer that the proposed reorganization might not be as efficient as contemplated. It would be able to propose suggestions and comments as to how the reorganization might better be implemented to achieve the goals desired by the Municipal Employer. The Petitioner could suggest possible ways to ease the impact of reorganization upon unit employees. For example, the reorganization plan itself suggests the overfilling of certain positions until the positions become vacant or up to a maximum of two years, presumably to ease the impact of reorganization on unit employees. It is entirely within the realm of possibility that the Petitioner could suggest other methods of easing the impact, or could suggest improvements upon the proposed method. It could argue for different degrees of work load for the various positions, especially since it represents the employees affected and should have an intimate acquaintance of the actual duties involved. It might propose that certain duties could be better performed by one position rather than another. It could negotiate on behalf of bargaining unit employees for their placement in other positions, or for compensation if there is a loss of employment resulting from the reorganization.

The above constitute only a sampling of legitimate employee interests that would be directly and intimately affected by the proposed reorganization.

Moreover, the legitimate management interest in effectuating such reorganization would not be adversely affected by bargaining collectively with Petitioner on the subject. It is not necessary to obtain the agreement of the Petitioner to implement the reorganization. While the purpose of collective bargaining is to reach an agreement, such agreements are not always possible and the Municipal Employer is not precluded from taking action itself if agreement cannot be reached after good faith bargaining. As we stated in Joint Sch. Dist. No. 8, City of Madison, et al:

"Negotiations on matters subject to collective bargaining do not require either party to reach an agreement. . . .negotiation is a different act than the legislative function of finally establishing the conditions of employment."

Although there was no evidence at the time of the hearing that the reorganization plan has actually been implemented, it is clear that final action is imminent. The County Committee on Finances has approved the plan in principle, and the Deputy Director of the Department of Public Welfare has submitted final proposals to said Committee for implementing the reorganization. Bargaining is appropriate when plans have progressed to this point, and if an impasse is reached, fact finding should be given an opportunity to resolve said impasse and thus avoid a continuing labor dispute. A unilateral implementation of the reorganization plan, under the circumstances involved herein, would be violative of the intent and spirit of the statute.

It is clear that the Municipal Employer has failed and refused, and is continuing to fail and refuse, to meet and negotiate in good faith with the Petitioner with respect to the decision to reorganize the Department of Public Welfare, and with respect to the effects of such decision upon the salaries and other conditions of employment of bargaining unit employees. Accordingly, we are initiating fact finding in the dispute.

Dated at Madison, Wisconsin, this 11th day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawley, Chairman


Zel S. Rice, II, Commissioner

No. 9904