

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 882, affiliated with DISTRICT
COUNCIL 48, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO

Case XLV
No. 13892 FF-363
Decision No. 10139

To Initiate Fact Finding Between
Said Petitioner and

THE COUNTY OF MILWAUKEE

Appearances:

Mr. Robert G. Polasek, Assistant Corporation Council, for the
Municipal Employer.

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S.
Williamson, Jr. and Mr. Ervin Horak, Staff Representative,
for the Petitioner.

ORDER DISMISSING PETITION FOR FACT FINDING

Local 882, affiliated with District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO 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; and the Commission having conducted a hearing on such petition on September 2, 1970 and September 17, 1970, by Howard S. Bellman, a member of the Commission's staff; and the Commission having considered the evidence and arguments of Counsel, and being fully advised in the premises; and being satisfied that no deadlock within the meaning of Section 111.70(4)(e) of the Wisconsin Statutes exists between said parties;

NOW, THEREFORE, it is

ORDERED

That the petition filed in the above entitled matter, be and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 1st
day of February, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slawney Chairman

Ed S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

No. 10139

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 882, affiliated with DISTRICT
COUNCIL 48, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO

Case KLV
No. 13892 FF-363
Decision No. 10139

To Initiate Fact Finding Between
Said Petitioner and

THE COUNTY OF MILWAUKEE

MEMORANDUM ACCOMPANYING ORDER DISMISSING PETITION FOR FACT FINDING

The Petitioner contends that "the parties are deadlocked after a reasonable period of negotiations" with regard to the establishment of wage rates for the operation of certain newly acquired equipment referred to as "Jacobsen, Triplex, Greens-King Mower" and "Cushman Spreader". The parties' labor agreement provides, in Part III, subsection (15), that "prior to establishing operating rates for new equipment, the County shall consult with the Union". Prior to the filing of the instant petition, the parties met and discussed the matter of these rates several times, but without reaching an agreement. The County contends that, in view of the aforesaid contract provision, it is under no obligation to enter "negotiations" with regard to these rates as contemplated by the fact finding provisions of Section 111.70, Wisconsin Statutes, and therefore no "deadlock", within the meaning of those provisions has been reached, nor can fact finding properly be ordered.

The essential dispute herein is over the intention of the parties when they agreed to "consult" with regard to the establishment of certain wage rates. During the course of the negotiations on the pertinent agreement the Union proposed that all such rates "be subject to Union approval". Later this proposal was modified to "subject to agreement". Finally, the parties agreed to "consult". (Prior to this contract the County established such rates.)

The County urges that, in view of this bargaining history as well as the dictionary meaning of "consult", that term should not be equated with "negotiation" within the meaning of Section 111.70.

The Petitioner, on the other hand, contends that by agreeing to "consult" it did not give up any right to negotiation provided by the Statute, but reinforced said right with an additional contractual right. It further urges that this case is analogous to Milwaukee County (Decision No. 9754, 6/70, affirmed, Dane County Cir. Ct., 12/70) and other determinations in which we concluded that there was a right to negotiate, within the meaning of the fact finding provisions, with

arbitration procedures. The Petitioner does not deny the appropriateness of arbitration, but also asserts that the Commission should, in this proceeding, rule upon whether or not the statutory right to negotiate has been affected.

It is our conclusion, based upon the foregoing and the record as a whole, that the term "consult" may be found to require something other than the negotiations referred to in Section 111.70; and that if that term were found to have been so intended, it would affect the parties obligations throughout the term of the pertinent agreement. Thus, if the parties agreed that in cases such as the instant matter, they should engage in something other than "negotiations", that agreement would govern during the term of the contract, despite what otherwise might have been their obligations under the Statute, absent such an agreement.

Pursuant to our consistent policy in favor of final and binding arbitration of contract interpretation disputes, we must defer to the parties aforesaid arbitration procedure for an interpretation of "consult". Lacking such an interpretation at this time, the instant matter is herewith dismissed.

Dated at Madison, Wisconsin, this 1st day of February, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

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

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner