

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WAUKESHA PROFESSIONAL POLICEMEN'S ASSOCIATION

For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of the

CITY OF WAUKESHA

Case XVII No. 15623 MIA-6 Decision No. 11012-A

FINDINGS OF FACT, CONCLUSION OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION AND ORDER APPOINTING ARBITRATOR

Waukesha Professional Policemen's Association having petitioned the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration pursuant to Section 111.77(3) of the Wisconsin Statutes on behalf of the law enforcement personnel employed in the Waukesha Police Department; and the Commission, by George R. Fleischli, a member of its staff, having conducted an investigation and hearing, into the facts and circumstances surrounding said petition on July 27, 1972 at Waukesha, Wisconsin; 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 Appointing Arbitrator.

FINDINGS OF FACT

1. That Waukesha Professional Policemen's Association, hereinafter referred to as the Petitioner, is a labor organization and has its offices at Waukesha, Wisconsin.

2. That the City of Waukesha, hereinafter referred to as the Municipal Employer, has its offices at Waukesha City Hall, Waukesha, Wisconsin, and that the Municipal Employer maintains and operates a law enforcement agency known as the Waukesha Police Department.

3. That the Petitioner at all times material herein is the voluntarily recognized representative for the employes of the Waukesha Police Department employed in the bargaining unit consisting of all dispatchers, patrolmen, detective and sergeant, but excluding the positions of Chief, Inspector, Captain, Lieutenant and all other employes of the Waukesha Police Department.

4. That prior to filing the instant petition on May 11, 1972, representatives of the Petitioner and Municipal Employer met on various dates during the Winter and Spring of 1971-72 for the purpose of negotiating changes in wages and other conditions of employment of said employes in an effort to reach an accord on a new collective bargaining agreement for 1972, the last occasion being April 26, 1972, during which a member of the staff of the Wisconsin Employment Relations Commission attempted to mediate the issues existing between the parties; and that, however, the parties were unable to reach an accord in their collective bargaining.

5. That the Petitioner and the Municipal Employer have reached an impasse in their negotiations based on their written final offers presented at the hearing on the petition herein; and that the parties have agreed that should the Commission order arbitration on the basis of the petition herein, Edward B. Krinsky should be appointed arbitrator; and that the parties have not agreed to proceed pursuant to Section 111.77(4) (a) of the Wisconsin Statutes.

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

CONCLUSIONS OF LAW

That an impasse within the meaning of Section 111.77(3) of the Wisconsin Statutes exists between the City of Waukesha and the Waukesha Professional Policemen's Association on issues of wages and other conditions of employment for all employes of the Waukesha Police Department employed as dispatchers, patrolmen, detective and sergeant, excluding the positions of Chief, Inspector, Captain, Lieutenant and all other employes of the Waukesha Police Department; and that the provisions of Section 111.77 of the Wisconsin Statutes are applicable for the purpose of resolving said impasse.

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 compulsory final and binding arbitration as required by Section 111.77 of the Wisconsin Statutes with respect to negotiations by Waukesha Professional Policemen's Association on issues of wages and other conditions of employment for all employes of the Waukesha Police Department employed as dispatchers, patrolmen, detective and sergeant, excluding the positions of Chief, Inspector, Captain, Lieutenant and all other employes of the Waukesha Police Department have been met.

NOW, THEREFORE, it is

ORDERED

1. That compulsory final and binding arbitration be, and the same hereby is, initiated for the purpose of issuing a final and binding arbitration award to resolve the impasse existing between the City of Waukesha and the Waukesha Professional Policemen's Association.

2. That Edward B. Krinsky of Madison, Wisconsin, is hereby appointed as the Arbitrator to proceed forthwith in the matter pursuant to Section 111.77(4) (b) of the Wisconsin Statutes.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION
AND ORDER APPOINTING ARBITRATOR

The parties are in agreement that they are at an impasse in their negotiations with respect to a collective bargaining agreement for the year 1972, and that said impasse was reached on or about April 26, 1972, at a meeting attended by a mediator from the staff of the Wisconsin Employment Relations Commission. During the course of the negotiations which involved a total of approximately eight meetings during the period from October 12, 1971, until the meeting on April 26, 1972, the parties reached accord on a number of issues in their negotiations, either involved the continuation of some of the provisions of the 1971 agreement or modifications, deletions or additions to those provisions. The parties had an understanding or ground rule, common, if not universal, in collective bargaining, that all agreements reached in bargaining are tentative, contingent on their ultimately reaching agreement on all the issues in bargaining.

The Municipal Employer contends that these tentative agreements reached on a number of specific items in bargaining constitute "vested rights" acquired pursuant to Section 111.70 of the Wisconsin Statutes as it then read, and that if Chapter 247 of the Laws of 1971 took effect on April 20, 1972, is applied to the negotiations in this case, it will have the effect of depriving the Municipal Employer of those "vested rights". The Municipal Employer cites the cases of State ex rel. Voight v. Hoeflinger 1/ and Boehmer v. Kalk 2/ as authority for its position.

There can be little doubt that the Legislature intended that the provisions of Chapter 247 should be applied to negotiations which were begun before the law was enacted. This conclusion is supported by the general wording employed, and from paragraph Section 111.77(1)

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- 1/ 31 Wis. 257 (1872) This case involved a suit to require the payment of certain monies for a general statutory purpose which had for a period of a few years been held for a special statutory purpose (a bridge) later repealed. The Court ruled that "whatever is given by statute can be may be taken away by statute except vested rights acquired under it and except also that the statute must not be in the nature of a contract on the part of the legislature." The money was in the nature of a gift and not a vested right and there was no contract with the bridge Commissioners who in turn had not committed themselves by contract to the expenditure of the funds so accumulated.
- 2/ 155 Wis. 156 (1913) In this case the Court was confronted with a law which denied the right of a husband to sell, assign or otherwise dispose of a policy on his own life on which he paid the premium if his wife was the named beneficiary except with the consent of the beneficiary. The Court held that the legislature could not deprive the purchasers of policies issued before the law took effect, of their vested right to alienate or otherwise dispose of such policies. The Court noted that vested property rights are protected by both the Federal and State Constitutions.

(a), which sets forth certain statutory notification requirements where a collective bargaining agreement is in effect. 3/ In the latter section a specific exception is made for "negotiations initiated or occurring in 1971," thereby implying that the other provisions do apply to such negotiations. The legislative purpose of attempting to avoid the untoward consequences of unresolved impasses in police and fire negotiations applies with equal force to impasses reached in bargaining which began before the effective date of the law as it does to impasses reached in bargaining which began after the effective date of the law.

The Municipal Employer's argument, which is based on the theory that the application of the provisions of Chapter 247 to the facts in this case would deprive it of a "vested property right" in violation of the due process provisions of the State and Federal Constitutions, rests on a faulty premise. Chapter 247 does not, by its terms, deal with issues in bargaining on which the parties have reached agreement. The purpose of Chapter 247 is to provide a means for the peaceful settlement of those issues in bargaining on which the parties are unable to agree. Even if it is assumed, for purposes of argument, that the tentative agreements reached on some of the issues in bargaining could be characterized as "vested property rights", the provisions of Chapter 247 do not give the arbitrator the authority to affect those agreements. The authority given the arbitrator under Chapter 247 is the power to settle the issues on which the parties have not agreed.

At the hearing the parties agreed that they would select a single arbitrator from a panel of five arbitrators to be provided by the Commission in order to avoid unnecessary delay in the appointment of an arbitrator in the event the Commission did order arbitration. Such a panel was provided prior to the receipt of briefs, and the Commission has appointed the arbitrator selected by the parties from the panel as agreed. 4/

At the hearing there was some disagreement between the parties with regard to the nature of the Municipal Employer's last offer on wages. According to the Petitioner the Municipal Employer's last offer was to spend a certain amount of money on wages and fringes (5.5% of present wages and fringes) and that the sum of money left after the costs of the offered improvements in fringe benefits had been met would be divided equally between the various ranks. According to the last offer submitted to the Commission by the Municipal Employer separate computations would be made for each employe and

3/ Section 111.77(1) If a contract is in effect, the duty to bargain collectively means that a party to such contract shall not terminate or modify such contract unless the party desiring such termination or modification: (a) Serves written notice upon the other party to the contract of the proposed termination or modification 180 days prior to the expiration date thereof or, if the contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification. This paragraph shall not apply to negotiations initiated or occurring in 1971.

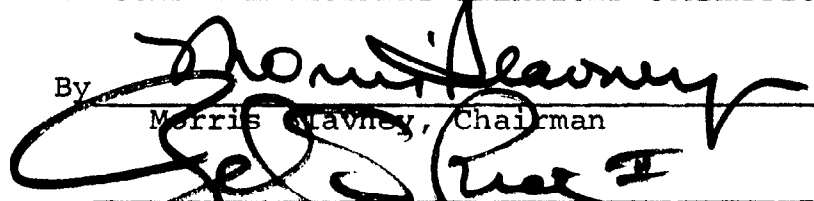
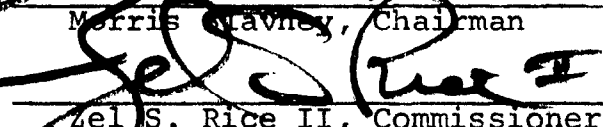
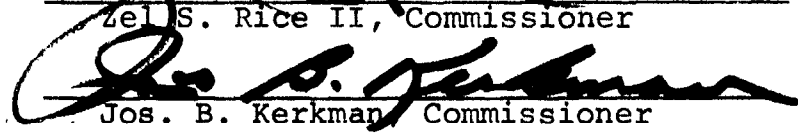
4/ Selection of an arbitrator in this simplified manner is provided for in ERB 30.12 of the Commission's Rules.

each employe would be given a salary increase equal to the money left over after the costs of offered improvements in his fringe benefits had been met. 5/ The Petitioner declined to present any evidence at the hearing in an effort to prove that the Municipal Employer's offer was as described above, but suggested that the Municipal Employer be given an opportunity to change its offer in order to avoid the necessity of presenting evidence to the arbitrator as to which offer had greater merit with regard to the method of computation.

The Municipal Employer has been given an opportunity to change its offer but has failed to do so. 6/ Therefore the Commission has ordered arbitration on the basis of the Municipal Employer's last offer in this proceeding which, in the absence of proof to the contrary, is presumably accurate. Section 111.77(4)(g) of the Wisconsin Statutes provides that the Municipal Employer may change its last offer within five days of the hearing before the arbitrator if it so desires.

Dated at Madison, Wisconsin, this 8th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Ravney, Chairman

Zel S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

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- 5/ The major difference between the two methods of computation lies in the fact that because of individual differences in longevity pay and fringe benefits the Municipal Employer's offer would make the existing salary schedule inapplicable to present employes. The salary schedule presently establishes base rates of pay for officers in the various ranks before computation of longevity pay or fringe benefits.
 - 6/ When the Municipal Employer failed to submit a statement as to whether it desired to change the nature of its last offer on wages, the Hearing Officer wrote the Municipal Employer a letter on August 17, 1972, requesting same. On August 18, 1972, the Municipal Employer acknowledged receipt of that request but, to date, the Commission has not been notified of any intent on the Municipal Employer's part to change the nature of its offer.