

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48, AFSCME,
AFL-CIO and LOCAL 2,

Complainant,

vs.

CITY OF FRANKLIN,

Respondent.

Case IV
No. 15746 MP-144
Decision No. 11296

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S.
Williamson, Jr., for the Complainant.
Mr. Gregory P. Gregory, City Attorney, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above entitled matter having come on for hearing before the Wisconsin Employment Relations Commission on August 2, 1972, at Milwaukee, Wisconsin, Commissioner Zel S. Rice II, being present; 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 and Order.

FINDINGS OF FACT

1. That Milwaukee District Council 48, AFSCME, AFL-CIO and Local 2, hereinafter jointly referred to as the Complainant, is a labor organization with offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.
2. That the City of Franklin, hereinafter referred to as the Respondent, is a municipal corporation having offices at the Municipal Building, 9929 West Loomis Road, Franklin, Wisconsin.
3. That the Complainant and Respondent were signators to a collective bargaining agreement which was in full force and effect at all times material herein, and which agreement contained the following provisions material herein:

"ARTICLE VII

Grievance Procedure

. . .

(d) Step 4. Arbitration If the grievance is not settled in Step 3, the employee or the Union may appeal the matter to arbitration within fifteen (15) working days after receiving the answer in Step 3. The grievance will then be

arbitrated by the Wisconsin Employment Relations Commission arbitrator as provided for in Section 298.01 of the Statutes. Each party will bear the expense of producing its own witnesses, and any cost involved in hearing will be shared equally by the City and the Union.

. . .

ARTICLE XV

Health Insurance

In accordance with the agreement between the Union and the City, the City shall provide for and pay for the full premium for hospitalization and surgical care insurance for City employees and their families. The contract shall be the Associated Hospital Service, Inc. Political Subdivision plan with Major Medical and package amendment (as attached). The hospitalization and surgical care insurance coverage provided shall not be less than that covered under the contract in effect on January 1, 1967.

. . .

ARTICLE XVII

Pensions

Section 1. Employees shall be covered under the pension program with Bankers Life Insurance Company, which is Group Contract No. GA6775 and Group Policy No. GP6775 (as attached). The City shall pay the entire premium for the pension program. The pension benefits provided shall not be less than those under the plan in effect on January 1, 1967.

Section 2. An employee shall become eligible to participate in the Revision Program after completing six (6) months of continuous service with the City.

. . ."

4. That sometime prior to March 1, 1972, a dispute arose between the Complainant and the Respondent as to whether regular part-time employees were entitled to the benefits set forth in Article XV and XVII of the collective bargaining agreement; that the parties were unable to resolve said dispute in their grievance procedure and thereupon, at the request of the Complainant, the Wisconsin Employment Relations Commission appointed John T. Coughlin, a member of its staff, as an arbitrator to issue a final and binding award with respect to said dispute; that the arbitrator conducted hearing in the matter on March 1, 1972, where the parties were present and given full opportunity to present oral and written evidence and to make such arguments as were pertinent to the issue; that thereafter, and on March 17, 1972, the arbitrator, in writing, issued his final and binding award with respect to the following issue: "Are regular part-time employees covered by the pension and health insurance provisions as outlined in the current collective bargaining agreement between the Municipal Employer and the Union?"; that in his award the arbitrator found "That the City of

Franklin grant to all of its regular part-time employees covered by its collective bargaining agreement with Local 2, AFSCME, AFL-CIO all benefits flowing from the pension and health insurance programs as outlined in the aforementioned collective bargaining agreement."

5. That following the receipt of a copy of the arbitration award the Respondent failed, and continues to fail, to comply with said award.

6. That the award issued by the arbitrator was issued in a fair and impartial manner and pursuant to the jurisdiction vested in said arbitrator by the collective bargaining agreement material herein.

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

CONCLUSION OF LAW

That the City of Franklin, by failing to provide to all of its regular part-time employees covered by its collective bargaining agreement with Milwaukee District Council 48, AFSCME, AFL-CIO and Local 2 all the benefits flowing from the pension and health insurance programs set forth in said agreement as required in the arbitration award issued on March 17, 1972, has refused and failed, and continues to refuse and fail, to comply with said award and therefore, in that regard, the City of Franklin has committed and continues to commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Wisconsin Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the City of Franklin, its officers and agents shall immediately

1. Cease and desist from

- a. Failing and refusing to recognize and accept as conclusive the arbitration award issued on March 17, 1972, with respect to granting all of its regular part-time employees covered by the collective bargaining agreement involved all benefits flowing from the pension and health insurance program as set forth in the collective bargaining agreement involved.

2. Take the following affirmative action which will effectuate the policies of the Wisconsin Municipal Employment Relations Act:

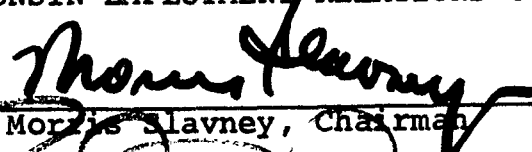
- a. Immediately comply with the arbitration award issued on March 17, 1972, by granting to all of its regular part-time employees covered by its collective bargaining agreement with Milwaukee District Council 48, AFSCME, AFL-CIO and Local 2 all benefits flowing from the pension and health insurance programs as outlined in the collective bargaining agreement between the parties.

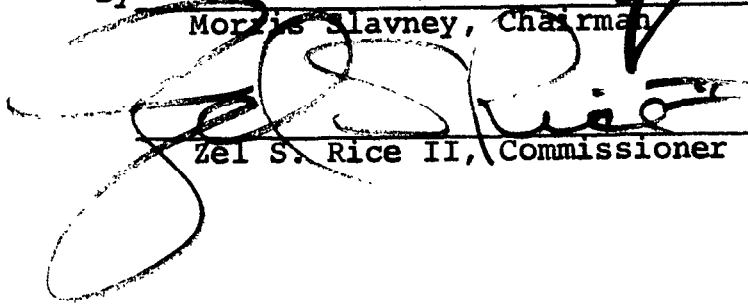
- b. Notify the Wisconsin Employment Relations Commission within ten (10) days from the date thereof as to what action it has taken to comply with this Order.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Union brought this action to enforce the arbitration award issued on March 17, 1972, requiring the Employer to grant to all of its regular part-time employees covered by the collective bargaining agreement with the Union all benefits flowing from the pension and health insurance program as outlined in the collective bargaining agreement. 1/ In its brief the Municipal Employer argues that the collective bargaining agreement does not include provisions for "regular part-time employees" and would persuade the Commission to support the Municipal Employer's position that "regular part-time employees" should receive fringe benefits proportionate to the number of hours worked per week. In proceedings before this agency to enforce arbitration awards we have observed the statutory tests provided in Chapter 298 of the Wisconsin Statutes with respect thereto. 2/ Section 298.10(1) provides as follows:

"In either of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:

- (a) Where the award was procured by corruption, fraud or undue means;
- (b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;
- (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
- (d) Where the arbitrators exceed their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made."

In the absence of any facts which would establish the lack of impartiality or the lack of due process, or acts of misconduct indicated in Section 298.10, or where the arbitrator exceeds his power, the Commission will not set aside the award.

The parties by their agreement provided for arbitration and agreed to be bound by an award issued by the arbitrator. The matter has been submitted to the arbitrator. He has issued his award. The Commission

1/ Failure to comply with an arbitration award constitutes a prohibited practice within the meaning of Section 111.70(3)(a)5.

2/ Harker Heating & Sheet Metal, Inc., (6704) 4/64; H. Froebel & Son, (7804) 11/66.

has no jurisdiction to relitigate the issue determined by the arbitrator. The award does not violate any positive provision of law, and therefore failure to comply with it constitutes a prohibited practice.

Dated at Madison, Wisconsin, this 20th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


J. S. Rice II, Commissioner