

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

## Respondents .

No. 11306

sheriffs in the employ of said Municipal Employer; and in that relationship the Association and Municipal Employer were parties to a collective bargaining agreement effective January 1, 1970 through at least December 31, 1971, which agreement established, among other things, a calendar for negotiations to be carried on between the parties during the year 1971 for negotiations relating to an agreement to be effective January 1, 1972; that pursuant to said calendar the Association timely submitted its proposals for the 1972 agreement on April 14, 1971, and negotiations between the parties commenced shortly thereafter.

4. That sometime prior to October 29, 1971, the Municipal Employer's Personnel Committee directed its staff, which included Romano and Polasek, as well as representatives of the Board of Judges of the Municipal Employer, to study adjustments in compensation and changes in the administration of the Municipal Employer's court system; that, pursuant to such direction said staff and representatives of the Board of Judges, on October 29, 1971, submitted, in writing, to the Personnel Committee of the Municipal Employer, a detailed report entitled "Modifications in Judicial Compensation and Court Administration", which recommended that (a) salaries of judges be increased and placed in a particular pay range, (b) pensions for judges be modified, (c) circuit judges be entitled to participate in an existing Blue Cross-Blue Shield insurance plan, (d) the number of deputy sheriffs, performing the duties of bailiffs assigned to all branches of the various courts operated by the Municipal Employer, be reduced from 52 to 39, and (e) certain other modifications be made with respect to the Municipal Employer's court administration.

5. That on November 9, 1971, the County Board of the Municipal Employer duly adopted an ordinance decreasing the authorized number of deputy sheriff positions, as of January 2, 1972, by 13; and that said ordinance was officially published on December 9, 1971.

6. That at no time between April 14, 1971 and November 9, 1971, did any of the Respondents, nor any agent thereof, advise the Complainants, or any other agent of the Milwaukee Deputy Sheriffs' Protective & Relief Association, of the Municipal Employer's intent to eliminate any deputy sheriff positions; and that, however, on a date between October 29, 1971 and November 9, 1971 representatives of the Association became aware of the Municipal Employer's intention to eliminate certain deputy sheriff positions from information related in newspaper articles appearing in the newspapers published in the City of Milwaukee.

7. That, after the Association became aware of the Municipal Employer's intention to eliminate the 13 deputy sheriff positions, representatives of the Association and the Municipal Employer met in negotiations on November 12 and 18, and December 2 and December 21, 1971; that, however, at no time prior to December 28, 1971, the date upon which the complaint herein was filed, did any representative or agent of the Association request that the representatives of the Municipal Employer bargain collectively with the Association with respect to the decision of the Municipal Employer to eliminate 13 deputy sheriff positions.

8. That subsequent to December 21, 1971 and prior to January 2, 1972, seven of the 13 deputy sheriffs scheduled for lay-off were re-assigned to positions other than bailiff; and that however, on January 2, 1972, the remaining six deputy sheriffs were laid-off however, were rehired as temporary employees on January 3, 1972.

9. That, since neither the Association nor any of its representatives at any time material herein requested that the Municipal Employer or any of its agents, including Romano and Polasek, bargain collectively with representatives of the Association on the matter of the lay-off of the deputy sheriffs involved, neither the Respondent Municipal Employer nor any of its agents, including Respondents Romano and Polasek, have failed and refused to bargain collectively with any representative of the Association with respect to the decision of the Municipal Employer involving the lay-off of the deputy sheriffs.

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

#### CONCLUSIONS OF LAW

1. That prior to November 11, 1971 Section 111.70, Wisconsin Statutes, relating to labor relations in municipal employment, contained no provision requiring a municipal employer to bargain at reasonable times, in good faith, with the representative of its employees, with respect to wages, hours and conditions of employment; and that, however, on November 11, 1971, the Municipal Employment Relations Act, Chapter 124 of the Laws of 1971, became effective, and therein Section 111.70(2) grants to municipal employees the right "to bargain collectively through representatives of their own choosing...", and Sec. 111.70(3)(a)(4) establishes a duty upon municipal employers to bargain in good faith with such representatives, with respect to wages, hours and conditions of employment.

2. That, while the decision of Respondent Milwaukee County, and the activity of its agents, Respondents Anthony P. Romano and Robert G. Polasek, to lay-off 13 deputy sheriffs affected wages, hours and working conditions of employees represented by the Deputy Sheriffs' Protective & Relief Association, said Respondents had no duty to bargain with said Association with regard to said decision at the time said decision was made, specifically November 9, 1971, on the adoption of a valid ordinance relating to the lay-off the 13 deputy sheriffs despite, the fact that the results of said ordinance did not become effective until January 2, 1972, the above named Respondents had no duty to bargain collectively with any representative of said Association with regard to said matter and, that therefore said Respondents did not commit, and are not committing, any prohibited practice within the meaning of Section 111.70(3)(a)4 and/or Section 111.70(3)(a)1 of the Municipal Employment Relations Act, with respect to the decision to lay-off 13 deputy sheriffs.

3. That, since at no time material herein, and especially since November 11, 1971, no representative of the Association has ever requested representatives of the Municipal Employer to bargain over the effects of the decision to lay-off the 13 deputy sheriffs, therefore said Respondents did not commit, and are not committing, any prohibited practice within the meaning of Section 111.70(3)(a)4 and/or Section 111.70(3)(a)1 of the Municipal Employment Relations Act, with respect to the effects of such lay-offs.

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

ORDER

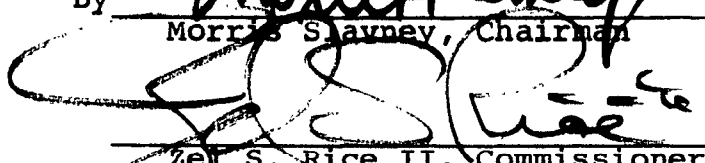
That the complaint of prohibited practices filed in the instant matter be, and the same hereby is, dismissed!


Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris S. Layney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

The Pleadings

The Complainants, in their complaint, which was filed with the Commission on December 28, 1971, in material part alleged as follows:

"3. It is alleged that the Respondents, ROMANO and POLASEK, were a part of the bargaining team negotiating for a contract with the Milwaukee Deputy Sheriffs' Association on behalf of Milwaukee County. That the Complainants are two members of the bargaining team negotiating on behalf of the Milwaukee Deputy Sheriffs' Association. That while the said Respondents, ROMANO and POLASEK, were negotiating with the Milwaukee County Deputy Sheriffs' Association, and more specifically, with the Complainants herein, they were making recommendations to the Personnel Committee of the Milwaukee County Board of Supervisors regarding the elimination of certain positions of Deputy Sheriffs within the Milwaukee County Courthouse. Specifically, Respondents, ROMANO and POLASEK, for themselves and on behalf of their principal Respondent, MILWAUKEE COUNTY, proposed that the number of Court Bailiffs previously assigned to all branches of the various courts in and within Milwaukee County, be reduced from 52 to 39. That at the time of and prior to the recommendations of the Respondents, ROMANO and POLASEK, being made regarding the reduction in the work force of the Milwaukee County Sheriffs' Department and more specifically, the elimination of some 13 Deputy Sheriffs' positions within the Milwaukee County Courthouse, the Respondents failed and refused to discuss this matter with the Complainants and their principal, the Milwaukee Deputy Sheriffs' Association.

4. It is contended by Complainants that the matter of continuing employment for Deputy Sheriffs in and within Milwaukee County is a matter which is a proper subject of collective bargaining. That by reason of the fact that the Respondents, and each of them, did fail and refuse to discuss in a collective bargaining procedure, their proposals to eliminate 13 positions within the Milwaukee County Sheriffs' Department, more specifically, the jobs of 13 Deputy Sheriffs serving as Court Bailiffs within the Milwaukee County Courthouse, the Respondents did engage in an unfair labor practice."

In their answer the Respondents denied the allegations in the complaint as set forth above and affirmatively alleged, in material part as follows:

"AFFIRMATIVE DEFENSE

The respondents as and for affirmative defense to the complaint allege as follows:

1. That the proposals regarding the reduction in the number of bailiffs in the courts of Milwaukee County were first presented to the Personnel (sic) Committee of the Milwaukee County Board of Supervisors on October 29, 1971.

2. That the proposals passed the County Board on November 9, 1971.

3. That, as your respondents are informed and verily believe, Chapter 124, Laws of 1971 amending Section 111.70 of the Wisconsin Statutes became effective November 11, 1971.

4. That, as your respondents are informed and verily believe, Chapter 124, Laws of 1971 created a duty in municipal employers to bargain in good faith in respect to wages, hours and conditions of employment and made failure so to bargain a prohibited practice.

5. That, as your respondents are informed and verily believe, prior to passage of Chapter 124, Laws of 1971, a municipal employer, and therefore the respondents, had no duty by statute, case law or otherwise to bargain at all with complainants and their failure so to do cannot be construed to be a prohibited practice."

#### The Facts

The facts dispositive of the issues are detailed in the Commission's Findings of Fact.

#### PERTINENT STATUTORY PROVISIONS

The various events relied upon by the Complainants in support of their contention that the Respondents committed prohibited practices, occurred prior to and subsequent to November 11, 1971, the date on which substantial changes in the Municipal Employment Relations Act (Sec. 111.70, Wis. Stats.) became effective. Prior to the latter date, Sec. 111.70(2) set forth the "rights" of municipal employes as follows:

"Municipal employes shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employes shall have the right to refrain from any and all such activities."

Also prior to November 11, 1971 municipal employers were only prohibited from "interfering with, restraining or coercing any municipal employe in the exercise of the rights provided in sub. (2)" 1/ and from "encouraging or discouraging membership in any labor organization .....by discrimination in regard to hiring, tenure or other terms or conditions of employment." 2/ Prior to November 11, 1971, Sec. 111.70 did not impose a duty upon a municipal employer to bargain in good faith

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1/ Sec. 111.70(3)(a)1

2/ Sec. 111.70(3)(a)2

with the representative of its employees, nor did the statute provide that it was a prohibited practice for an employer to refuse to bargain in good faith with such a representative on wages, hours and conditions of employment of such employees. 3/

However, on November 11, 1971 the Municipal Employment Relations Act became effective. Such Act repealed the former Sec. 111.70, and, as such, enacted material substantive changes in the rights, duties and obligations of municipal employers, municipal employees, and representatives of municipal employees.

MERA amended the "rights" section 4/ to read, in material part, as follows:

"Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection....."

MERA also enlarges the scope of municipal employer prohibited practices to include, not only the original Secs. 111.70 (3) (a) 1 and 2, but also the following provision, among others:

"Sec. 111.70(3)(a)4. To refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit....."

While the original Sec. 111.70 did not define the term "collective bargaining" MERA defines said term as follows:

"Collective bargaining means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the

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3/ Madison School Board, 36 Wis. 2d 483, 12/67; La Crosse County, 52 Wis. 2d 295, 10/71

4/ Sec. 111.70(2)

government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitutions of this state and of the United States and by this subchapter." 5/

#### Positions of the Parties

At the close of the hearing the parties were afforded the opportunity to file briefs 20 days after the receipt of a copy of the transcript. The transcript was submitted to the parties on May 23, 1972. However, neither counsel filed a brief, and the Commission is of the opinion that sufficient time has elapsed for that purpose and has concluded that counsel have determined not to file briefs.

As indicated in the complaint, the Complainants contend that the Respondents refused to bargain with the Association with respect to the decision of the Municipal Employer to lay-off the deputy sheriffs. In their answer the Respondents set forth that at such time as the decision was made by the Municipal Employer there was no enforceable statutory duty to bargain on wages, hours and working conditions, and therefore the Municipal Employer and its agents did not commit a prohibited practice as alleged in the complaint.

#### DISCUSSION

It is interesting to note that at no time material herein, either before or after November 11, 1971, the effective date of the Municipal Employment Relations Act, did any representative of the Association make any request to the Municipal Employer, or to any of its agents, that the Municipal Employer bargain collectively with representatives of the Association on the matter of the lay-offs of the deputy sheriffs involved, despite the fact that representatives of the Association had become aware that the Municipal Employer was contemplating the lay-off of the deputy sheriffs. Had such a request been made prior to November 11, 1971 and had the Municipal Employer refused to bargain with the Association on the subject involved, the Municipal Employer could not have committed a prohibited practice, since the then existing Section 111.70, which covered certain activities in municipal employment bargaining, did not provide that it was a prohibited practice to refuse to bargain collectively in good faith. 6/ After the adoption of the ordinance involved, and after the effective date of the Municipal Employment Relations Act, no representative of the Association requested the Municipal Employer to bargain on the effects of the Municipal Employer's decision to lay-off the 13 deputy sheriffs. Under the facts adduced during the course of this proceeding we cannot find that the Municipal Employer, or any of its agents, committed any prohibited practices as set forth in the Municipal Employment Relations Act, and we therefore have dismissed the complaint.

Dated at Madison, Wisconsin, this 22nd day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slawney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

5/ Sec. 111.70 (1) (d)

6/ Green Bay Jt. School Dist. No. 1 (10722-B) 8/72