

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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WALWORTH COUNTY DEPUTY SHERIFF'S	:	Case XVI
ASSOCIATION	:	No. 15944 MIA-13
	:	Decision No. 11366
To Initiate Final and Binding	:	
Arbitration Between Said Petitioner and	:	
	:	
COUNTY OF WALWORTH	:	
	:	
	:	

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
CERTIFICATION OF RESULTS OF INVESTIGATION AND  
ORDER DISMISSING PETITION FOR COMPULSORY ARBITRATION

Walworth County Deputy Sheriff'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 law enforcement personnel employed in the Walworth County Sheriff's Department; and that on September 20, 1972, the Commission, by Robert M. McCormick, a member of its staff, having conducted an investigation at Elkhorn, Wisconsin in the course of a mediation session pursuant to Section 111.77(1)(e) to determine the facts and circumstances surrounding said petition; 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 Dismissing Petition for Compulsory Arbitration.

FINDINGS OF FACT

1. That Walworth County Deputy Sheriff's Association, hereinafter referred to as the Petitioner, is a labor organization which represents non-supervisory deputies for purposes of collective bargaining and has designated an attorney to represent it for such purposes, namely, Schwartz, Roberts and Cairo, by Mr. Jay Schwartz, 704 Park Avenue, Racine, Wisconsin.
  
2. That Walworth County, hereinafter referred to as the Municipal Employer, has its offices at the County Courthouse, Elkhorn, Wisconsin, and that the Municipal Employer maintains and operates a law enforcement agency known as the Walworth County Sheriff's Department.
  
3. That the Petitioner at all times material herein is the voluntarily recognized representative for the employes of the Walworth County Sheriff's Department employed in the bargaining unit consisting of all uniformed law enforcement personnel below the rank of lieutenant, but excluding elected officials, all officers occupying the rank of

demands to the Personnel Director for the Municipal Employer covering requested changes in wages and other conditions of employment for said employes to be included in a new collective agreement for 1973; and that on said date a representative for the Petitioner made a verbal request for a bargaining meeting; that the then existing collective bargaining agreement was due to expire on December 31, 1972, at least 180 days following the Petitioner's proffer of 1973 demands.

5. That prior to filing the instant petition, the parties did not meet in bilateral negotiations in an effort to reach an accord on a new collective agreement for 1973; that on September 20, 1972 the parties met in bilateral session with a staff member of the Commission, at which time the Petitioner restated its demands presented on June 29, 1972 and clarified its demands with respect to language changes involving application of seniority and time-limits for the processing of grievances; that the Municipal Employer indicated to the Petitioner that certain of its demands relating to installation and selection of equipment were matters exclusively the prerogative of management, but that the Municipal Employer was prepared to listen to Petitioner's contentions and suggestions relative to the usage or lack of equipment; that the Municipal Employer indicated to Petitioner that after sufficient time for examination of Petitioner's total demands it was prepared to make a counterproposal to such demands of the Petitioner; that the Municipal Employer further advised the Petitioner that it was prepared to meet bilaterally in further negotiations sometime in the week of October 16, 1972, or if necessary furnish the Petitioner with a written counterproposal, before meeting in bilateral session, by October 23, 1972; that the Petitioner requested that the Municipal Employer provide it with a written counterproposal by September 27, 1972, and agree to meet with the Petitioner on or before September 29, 1972, after furnishing such a counterproposal to Petitioner; that the Municipal Employer declined to commit itself to said meeting by September 29, 1972 and declined to furnish written proposals by September 27, 1972, and on September 20, 1972 further declined to communicate its acceptance or rejection of any or all of the Petitioner's demands for a 1973 agreement, but the Municipal Employer otherwise informed Petitioner that it had a flexible position in regard to Petitioner's total demands, and further expressed a willingness to meet with Petitioner in the future for purposes of negotiating changes for a 1973 agreement; that the Petitioner expressed dissatisfaction with the Municipal Employer's proffered date for future negotiations, and contended that the Commission should proceed to certify that an impasse has been reached within the meaning of Section 111.77(3), and should appoint an arbitrator for final disposition.

6. That the Petitioner and Municipal Employer have not reached an impasse in their 1973 negotiations based upon the written initial demands of the Petitioner and the Municipal Employer's proffer of a further bilateral negotiation session on or near October 23, 1972, after rejecting the Petitioner's demand for a written counterproposal and negotiation session by September 27, 1972.

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

#### CONCLUSIONS OF LAW

That there does not exist an impasse within the meaning of Section 111.77(3) of the Wisconsin Statutes between Walworth County

and the Walworth County Deputy Sheriff's Association on issues of wages, and other conditions of employment for all uniformed law enforcement personnel below the rank of lieutenant employed by Walworth County in its Sheriff's Department, excluding elected officials, all officers occupying the positions of lieutenant and above and all other employees of the Sheriff's Department; and that the provisions of Section 111.77 of the Wisconsin Statutes are not applicable at this time for the purpose of resolving matters presently in dispute between the parties, which do not constitute an impasse.

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

CERTIFICATION AND ORDER OF DISMISSAL

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 Walworth County Deputy Sheriff's Association on issues of wages and other conditions of employment for all uniformed law enforcement personnel below the rank of lieutenant employed by Walworth County, have not been met.

NOW, THEREFORE, it is

ORDERED

That the instant petition for initiating compulsory final and binding arbitration to resolve certain disputes now existing between Walworth County and the above named Petitioner, be, and the same hereby is, dismissed without prejudice.

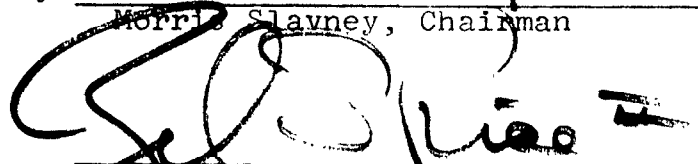
Given under our hands and seal at the City of Madison, Wisconsin, this 13<sup>th</sup> day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

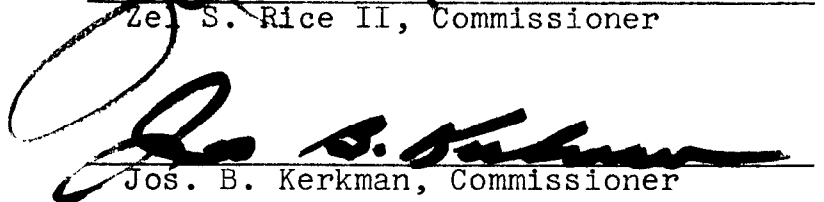
By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner



Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER OF DISMISSAL

The parties agreed that the staff mediator, ostensibly meeting with representatives of Walworth County Deputy Sheriff's Association and Walworth County pursuant to Section 111.77(1)(e), could utilize the report of the positions of the parties at said meeting on September 20, 1972 as the informal investigation of the Commission's agent, as provided by Section 111.77(3) for purposes of the Commission's determining whether an impasse did exist within the meaning of the statute. However, the Municipal Employer contended that the Petitioner's petition was premature, and that compulsory final and binding arbitration should not be initiated at this time, since no actual impasse within the meaning of 111.77(3) existed.

The Petitioner indicated that it was not obliged under the statute to wait for possible settlement of its demands for 1973 wages and conditions based upon a prospective, but much delayed, counterproposal from the Municipal Employer. The Petitioner contends: that the Municipal Employer had its initial bargaining demands in hand for consideration since June 29, 1972; that it never responded to a verbal request for a meeting; and that at the mediation session on September 20, 1972 the Municipal Employer chose not to respond to any of such bargaining demands with any definite counterproposal. The Petitioner further averred in the course of the informal investigation that the Municipal Employer by its delay evidences a desire to frustrate meaningful negotiations until after it has adopted a budget, a tactic at odds with unfettered good faith bargaining.

The recently enacted police-fire dispute settlement statute reads as follows:

"SECTION 3. 111.77 of the statutes is created to read:

111.77 SETTLEMENT OF DISPUTES IN COLLECTIVE BARGAINING UNITS COMPOSED OF LAW ENFORCEMENT PERSONNEL AND FIREFIGHTERS.  
In fire departments and city and county law enforcement agencies municipal employers and employes have the duty to bargain collectively in good faith including the duty to refrain from strikes or lockouts and to comply with the procedures set forth below:

. . .

(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

(3) If the parties have no procedures for the final disposition of the dispute and an impasse has been reached, either party may petition the commission to initiate compulsory final and binding arbitration of the dispute. On receipt of the petition, the commission shall investigate to determine if an impasse has been reached. If it so determines, it shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties within 10 days after the issuance of the order have not selected an arbitrator or a board of arbitration, the commission shall then order each party to select one arbitrator, and if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the commission shall submit a list from which the parties may alternately strike names until a single name is left who shall be appointed by the commission as arbitrator. Costs of each party's appointee shall be paid by the party, and the costs of the proceedings otherwise shall be shared equally between the parties.

(4) There shall be 2 alternative forms of arbitration:

(a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.

(b) Form 2. Parties shall submit their final offer in effect at the time that the petition for final and binding arbitration was filed. Either party may amend its final offer within 5 days of the date of the hearing. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

(5) The proceedings shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control.

. . .

(9) Section 111.70 (4) (e), (f) and (g) shall not apply to employments covered by this section.

. . ."

Prior to its enactment, and before the new Section 111.70 amendments of November 11, 1971 (Chapter 124 Laws of 1971 Section 111.70(1) et seq.) law enforcement personnel were not "employees" entitled to the coverage and protection of old 111.70, except that police personnel did have access to the fact finding provisions of the statute, which (prior to Nov. 11, 1971) read as follows:

"111.70 Municipal employment.

. . .

(4) Powers of the Commission. The commission shall be governed by the following provisions relating to bargaining in municipal employment:

. . .

(e) Fact Finding. Fact finding may be initiated in the following circumstances: 1. If after a reasonable period of negotiation the parties are deadlocked, either party or the parties jointly may initiate fact finding; 2. Where an employer or union fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

(f) Same. Upon receipt of a petition to initiate fact findings, the commission shall make an investigation and determine whether or not the condition set forth in par. (e) 1 or 2 has been met and shall certify the results of said investigation. If the certification requires that fact finding be initiated, the commission shall appoint from a list established by the commission a qualified disinterested person or 3-member panel when jointly requested by the parties, to function as a fact finder.

(g) . . . The fact finder may administer oaths. Upon completion of the hearings, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the municipal employer and the union.

. . .

(j) Personnel relations in law enforcement. In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative may be required by the commission to post a cash bond in an amount determined by the commission to guarantee payment of one-half of the costs of fact finding.

. . ."

Under the old statute, subparagraph (e) the key words indicating the threshold hurdle to fact finding in the normal deadlock situation are, "If after a reasonable period of negotiations the parties are deadlocked." Under said fact finding provision, the ultimate decision of a fact finder was for the voluntary consumption and implementation by the parties. After November 11, 1971, Chapter 124, Laws of 1971 Sections 111.70 (1)(b), (2) and (3)(a) (1) and (4) respectively gave police officers the same rights as municipal employes, including the protection against proven acts of a Municipal Employer's refusing to bargain with their majority representative. That sort of protection remained intact, and was supplemented by the special provisions for dispute settlement involving police and fire negotiations contained in Chapter 247, Laws of 1971 Section 111.77 et seq. (Emphasis supplied)

According to the facts and the position of the Petitioner in this case, the Commission is called upon to certify the initiation of final and binding interest arbitration upon the following evidentiary facts, namely, that because the Municipal Employer had possession of Petitioner's

demands for 80 days, as of September 20, 1972, and had not accepted same or made a counterproposal to same, and because it had failed to accede to the Petitioner's time-table for submitting a written counterproposal and agreement to meet by September 29, 1972, that therefore an impasse exists within the meaning of the statute.

If the Municipal Employer may have violated its duty to bargain under 111.70(3)(a)(4) by declining to initiate a meeting after verbal request for same on June 29, 1972, the Petitioner had a remedy under the aforesaid provision. This Commission cannot speculate on the motives of the Municipal Employer in its declination to bring negotiations to a conclusion or to a meaningful progress-point by September 20, or 29th. It is clear from the record that the Municipal Employer was willing to meet some three weeks after the date set by Petitioner for the Municipal Employer's mailing of a written counterproposal. We cannot presume that such a prospective Municipal Employer position would contain no concessions of substance. We do not hold that police and municipal negotiators must engage in successive and protracted negotiations before it can be said that an impasse exists. However, in this instance, further bilateral negotiations should take place to ascertain what the final offers of the parties might be at a time a timely petition for final and binding arbitration might be submitted. The chance for Form 2, arbitration (Section 111.77(4)(b)) presupposes some period of meaningful negotiations, especially where the existing contract does not expire until some 90 days after the date that Petitioner insisted on a time-table for receiving the Municipal Employer's written counter-proposal.

The Commission has therefore concluded that the parties have not reached an impasse in their 1973 negotiations and therefore we have certified that the conditions precedent to the appointment of an arbitrator for a final and binding decision on the parties' final offers have not been met. The Petitioner is not precluded from filing its petition again in the event the parties fail to reach agreement after a reasonable period of negotiations.

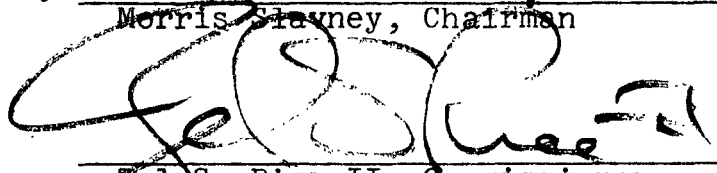
Dated at Madison, Wisconsin, this 13<sup>th</sup> day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

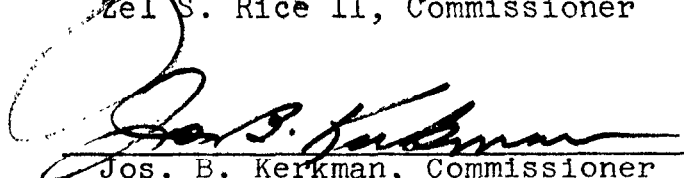
By



Morris Slawney, Chairman



Zel S. Rice II, Commissioner



Jos. B. Kerkman, Commissioner