

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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APPLETON PROFESSIONAL POLICEMEN'S ASSOCIATION	:	Case XLVI
	:	No. 16107 MIA-17
To Initiate Final and Binding Arbitration Between Said Petitioner and	:	Decision No. 11597
	:	
CITY OF APPLETON	:	
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FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION AND ORDER REQUIRING ARBITRATION

Appleton Professional Policemen's Association having, on October 13, 1972, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate compulsory final and binding arbitration pursuant to Section 111.77(3)(b) of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between the Petitioner and the City of Appleton on matters affecting the wages, hours and conditions of employment of all police personnel in the employ of said Municipal Employer, represented by the Petitioner; and the Commission by Jos. B. Kerkman, Commissioner, having conducted an investigation on such petition at Appleton, Wisconsin, on October 24, 1972, and during the course of such investigation the parties having had the opportunity to file briefs in the matter; and the Commission, being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration.

FINDINGS OF FACT

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

2. That the City of Appleton, hereinafter referred to as the Municipal Employer, has its offices at the City Hall, Appleton, Wisconsin.

3. That the Petitioner at all times material herein has been and is the voluntarily recognized exclusive collective bargaining representative of all policemen, excluding the supervisory positions of chief of police, inspector, captain and lieutenant in the employ of the Municipal Employer.

4. That the parties had in existence a collective bargaining agreement covering wages, hours and conditions of employment of the employes involved herein for the year 1972.

5. That on June 26, 1972, the Petitioner, by its representative, Gordon E. Myse, sent a letter to the Director of Personnel of the Municipal Employer making specific requests for modifications to be embodied in the 1973 collective bargaining agreement, and said letter was received by the Municipal Employer on June 27, 1972.

6. That the Petitioner and the Municipal Employer met on July 24, 1972, August 10, 1972, September 7, 1972, and September 20, 1972, to negotiate over the proposed modifications of the collective bargaining agreement.

7. That on September 29, 1972, the Petitioner, by its representative, Dennis W. Herrling, requested mediation of the Wisconsin Employment Relations Commission and in said letter also advised the Commission that the Petitioner requested binding arbitration in accordance with the provisions of Wisconsin Statutes 111.77.

8. That on October 2, 1972, the Commission forwarded appropriate petition forms to the Petitioner for final and binding arbitration of the dispute.

9. That on October 16, 1972, the Petitioner filed a petition with the Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.77, Wisconsin Statutes, with regard to an alleged impasse existing between the parties in their collective bargaining with respect to wages, hours and working conditions for the employes involved in 1973; and that on October 24, 1972, the Commission by Commissioner Jos. B. Kerkman conducted an informal investigation on said petition during which he attempted to mediate the issues existing between the parties, and that the parties were unable to reach an accord with regard to said issues and remain at impasse with respect thereto.

10. That at no time material herein has the Petitioner filed any notice, as set forth in Section 111.77(1)(c), Wisconsin Statutes, advising the Commission that an impasse exists between the parties.

11. That the parties have not established any mutually agreed procedures for final resolution of disputes arising in collective bargaining; and, further, that the parties have not mutually agreed that the arbitration should be other than limited to the last and final offer of each of the parties.

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

CONCLUSIONS OF LAW

1. That the notice requirements set forth in Section 111.77(1)(c) and in rule ERB 30.03(2) are directory rather than mandatory and the failure of the Petitioner to file the 30-day notice to the Commission as required in Section 111.77 does not operate to deprive the Wisconsin Employment Relations Commission of its jurisdiction to initiate final and binding arbitration between the Petitioner and the Municipal Employer herein to resolve the impasse involved in their collective bargaining for wages, hours and conditions of employment for the year 1973 covering all policemen, excluding the supervisory positions of chief of police, inspector, captain and lieutenant in the employ of the Municipal Employer.

2. That an impasse within the meaning of Section 111.77(3), Wisconsin Statutes exists between Appleton Professional Policemen's Association and the City of Appleton with respect to negotiations leading toward a collective bargaining agreement for the year 1973 covering the conditions of employment for all policemen, excluding the supervisory positions of chief of police, inspector, captain and lieutenant in the employ of the Municipal Employer.

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

CERTIFICATION

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 between the Appleton Professional Policemen's Association and the City of Appleton on issues of wages and other conditions of employment of all policemen, excluding the supervisory positions of chief of police, inspector, captain and lieutenant in the employ of the Municipal Employer have been met.

NOW, THEREFORE, it is


ORDERED


1. That compulsory final and binding final offer arbitration be, and the same hereby is, initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the Appleton Professional Policemen's Association and the City of Appleton.
2. That the Appleton Professional Policemen's Association file, in written form, its final offer as of October 24, 1972, on the issues remaining in said negotiations with the City of Appleton, with the Wisconsin Employment Relations Commission on or before February 19, 1973, and at the same time serve a copy thereof on the City of Appleton.
3. That the City of Appleton file, in written form, its final offer as of October 24, 1972, on the issues remaining in said negotiations with the Appleton Professional Policemen's Association, with the Wisconsin Employment Relations Commission on or before February 19, 1973, and at the same time serve a copy thereof on the Appleton Professional Policemen's Association.
4. That the parties each select a single arbitrator, or a board of arbitration, within ten (10) days after the issuance of this Order in a manner mutually agreed upon by the parties, to resolve said impasse; and that the parties notify the Commission within fifteen (15) days of the issuance of this Order as to whether they have selected an arbitrator or a board of arbitration, as the case may be.
5. That if the parties select one or more arbitrators said parties should then notify the Commission as to the identity of said arbitrator or arbitrators in order that the Commission may issue an order officially appointing said individual or individuals as the arbitrator or board of arbitration to conduct a compulsory arbitration proceeding and make a final and binding resolution of the dispute involved.

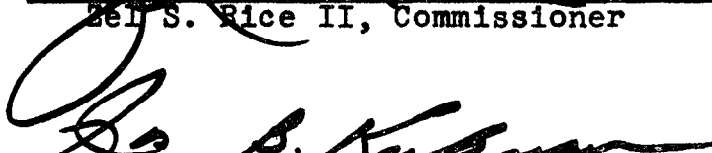
6. That if the parties have not selected an arbitrator or board of arbitration the Commission shall then order each party to select one arbitrator, and if these two arbitrators cannot in five (5) days select a neutral arbitrator, the Commission must be notified of same within eight (8) days of the issuance of the supplemental order; that thereupon the Commission shall issue a further supplemental order, and therein submit a panel of five (5) neutral arbitrators, from which the parties shall, within three (3) days of the receipt thereof alternately strike four of the members of said panel; that thereupon the parties or either of them, shall notify the Commission in writing as to the neutral arbitrator so selected, and the Commission shall then issue an order appointing same neutral arbitrator as chairman of the board of arbitration, and at the same time, shall serve copies thereof on the parties and the neutral arbitrator, and also at the same time serve a copy of the certification of the results of the investigation upon said neutral arbitrator.

Given under our hands and seal at the
City of Madison, Wisconsin, this 7th
day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Earl S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF
RESULTS OF INVESTIGATION AND ORDER REQUIRING ARBITRATION


During the course of the informal investigation conducted on October 24, 1972, the Municipal Employer raised an issue as to whether the Petitioner could utilize final and binding arbitration as provided for in Section 111.77, Wisconsin Statutes, since the Petitioner had failed to notify the Wisconsin Employment Relations Commission of the existence of a dispute as required in the notice requirements of said section. During the course of the investigation conducted by Commissioner Kerkman, the parties were advised that they would be given an opportunity to file briefs in the matter due in the Commission's office 20 days subsequent to October 24, 1972. On October 25, 1972, the parties were advised, by letter from Commissioner Kerkman, that the issue raised by the City of Appleton was identical with the issue raised by the City of Eau Claire and the parties would be afforded an opportunity to file amicus briefs in the City of Appleton matter. The Petitioner in this case joined with the Eau Claire Professional Policemen's Association and the Wisconsin Professional Policemen's Association in submitting a brief in the aforementioned matter. The City of Appleton filed no brief.


Determination has been withheld in this matter pending the Commission's decision on the identical issue in the City of Eau Claire (Decision No. 11573). That decision issued on January 31, 1973, and the instant Order is in accordance therewith.

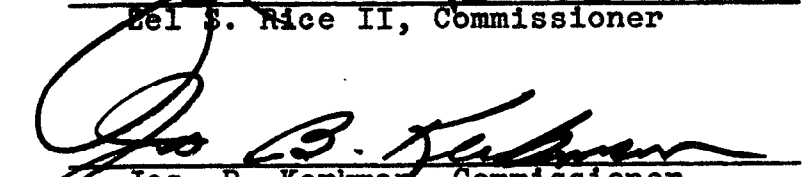
Dated at Madison, Wisconsin, this 7th day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Del S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner