

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL NO. 74, INTERNATIONAL ASSOCIA- TION OF FIRE FIGHTERS,	:	
	:	
Complainant,	:	Case XXII
	:	No. 16571 MP-222
vs.	:	Decision No. 11676-A
	:	
CITY OF SUPERIOR, WISCONSIN,	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. Charles C. Deneweth, Mayor, Personnel Director, City of Superior, appearing on behalf of the Respondent.

Mr. Ed Durkin, Vice President, International Association of Fire Fighters, appearing on behalf of the Complainant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission having appointed Herman Torosian, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Superior, Wisconsin, on April 4, 1973, before the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Local 74, International Association of Fire Fighters, hereinafter referred to as the Union, is a labor organization having offices at 1610 North Sixth Street, Superior, Wisconsin, and is recognized by the City of Superior as the representative of fire fighters employed by the City of Superior for the purposes of collective bargaining on questions of wages, hours and working conditions.
2. That City of Superior, hereinafter referred to as the Employer, is a Municipal Employer and operates a fire department.
3. That the Complainant and Respondent, at all times material herein, have been parties to a collective bargaining agreement effective January 1, 1972; that said collective bargaining agreement contains, among other provisions, the following provisions material herein:

"AGREEMENT"

The following shall constitute the Agreement in full between the CITY OF SUPERIOR and FIREFIGHTERS LOCAL #74.

. . .

Article 8.

(a) In addition to the above salary schedule, every member of the Fire Department, except the Fire Chief, in case of call back to duty to a major fire or emergency shall be compensated therefor at the rate of time and one-half per call, with a minimum of two (2) hours.

. . ."

4. That the above language was first negotiated by the parties and adopted in 1968; that prior to the adoption of said language the parties operated under the following language covering call back pay:

"SECTION 9. (a) In addition to the above salary schedule, every member of the Fire Department, except the Fire Chief, in case of call back to duty to a major fire or emergency shall be compensated therefore at the rate of Four (\$4.00) Dollars per call or at the rate of Two (\$2.00) Dollars per hour if he is on duty more than two (2) hours.

. . ."

5. That on January 6, 1973 fire fighters John Ennis, Anthony Fedyn, Gary Hurin, Leo O'Brien, Leonard Rouse and Stanley Stromko were called back to duty between 7:35 a.m. and 8:45 a.m.; that said fire fighters normal hours required them to report to work at 8:00 a.m. on said day; that Respondent did not pay said fire fighters a minimum of two hours call back pay at the rate of time and one-half.

Based upon the above and foregoing Findings of Fact, the Examiner makes and enters the following

CONCLUSIONS OF LAW

1. That the City of Superior, having entered into a collective bargaining agreement with Complainant, Local No. 74, International Association of Fire Fighters, recognized Local No. 74, International Association of Fire Fighters as the duly authorized bargaining representative of fire fighters covered by the current collective bargaining agreement existing between itself and Complainant, Local 74, International Association of Fire Fighters.

2. That the Respondent, City of Superior, by refusing to pay fire fighters John Ennis, Anthony Fedyn, Gary Hurin, Leo O'Brien, Leonard Rouse and Stanley Stromko a minimum of two hours call back pay at the rate of time and one-half violated Article 8(a) of the collective bargaining agreement existing between the Complainant and Respondent and by so doing has committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and enters the following

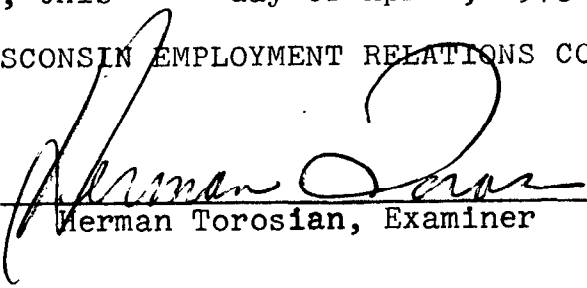
ORDER

That the Respondent, City of Superior, shall immediately make fire fighters John Ennis, Anthony Fedyn, Gary Hurin, Leo O'Brien, Leonard Rouse and Stanley Stromko whole in an amount equal to the difference in compensation received for call back duty on January 6 and compensation they would have received had they been paid a minimum of two hours pay at the rate of time and one-half as required by Article 8(a) of the collective bargaining agreement.

Dated at Madison, Wisconsin, this 18th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In its complaint, Complainant alleges that it is the duly authorized bargaining representative for fire fighters employed by Respondent, City of Superior. Complainant alleges that six members of Local 74 were called back to duty on January 6, 1973 for a major fire and were not paid in accordance with the parties' collective bargaining agreement and that the City by violating the collective bargaining agreement committed a prohibited practice under Section 111.70(3)(a)5.

Respondent, in its answer, claims that it does not agree that Complainant is the duly authorized representative of fire fighters employed by the City of Superior and further denies violating the collective bargaining agreement as alleged by Complainant.

In the opinion of the Examiner, Local 74 is clearly the duly recognized representative of fire fighters employed by the City of Superior. The Municipal Employer admits said labor organization has been voluntarily recognized by the City Police and Fire Commission but argues that the City, itself, has never formally recognized Local 74. The Examiner finds, however, that the City, by entering into a collective bargaining agreement with Local 74 covering the wages, hours and working conditions of fire fighters, recognized Local 74 as the duly authorized representative of the City's fire fighters. What's more, to do otherwise, i.e., sign an agreement with an organization that does not represent employees covered by the agreement, would be a prohibited practice within the meaning of Section 111.70, Wisconsin Statutes.

The facts in the instant case are not in dispute. On January 6, 1973, fire fighters John Ennis, Anthony Fedyn, Gary Hurin, Leo O'Brien, Leonard Rouse and Stanley Stromko were called back to duty between 7:35 a.m. and 7:45 a.m. for a major fire. Said fire fighters started their regular shift for that day at 8:00 a.m. Both parties agree that Article 8(a) is applicable in the instant case. There is, however, a dispute over the interpretation of said Article.

It is the contention of Complainant that Article 8(a) provides compensation at the rate of time and one-half per call for call back to duty pay with a minimum of two hours pay at the rate of time and one-half.

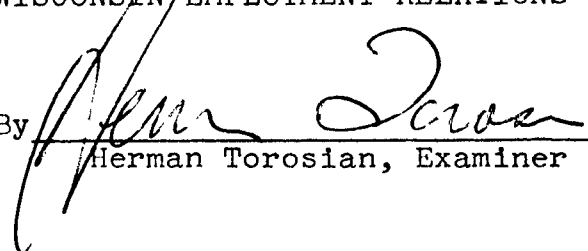
It is the Employer's interpretation of said language that fire fighters when called back to duty are guaranteed a minimum of two hours pay but that their rate of pay is at straight time and not at time and one-half as argued by the Union. In support of its position the City relies on the language covering compensation for call back to duty prior to the adoption of the current language contained in Article 8(a). Respondent argues that said language in pertinent part provided that fire fighters "in case of call back to duty to a major fire or emergency shall be compensated therefore at the rate of Four (\$4.00) Dollars per call or at the rate of Two (\$2.00) Dollars per hour if he is on duty more than two (2) hours." The Respondent points out that by said language that the minimum for call back duty was two hours at straight time and not time and one-half. It is the City's contention that when they adopted the current language in 1968, the parties agreed that call back to duty pay should be compensated at the rate of time and one-half but that the minimum was still to be two hours of pay and not two hours at time and one-half.

The Examiner cannot conclude as argued by the Complainant. It is clear to the undersigned that Article 8(a) of the agreement provides compensation for call back to duty at the rate of time and one-half per call and that the minimum payment for each call is two hours at the rate of time and one-half. Since the only rate mentioned in Article 8(a) is the rate of time and one-half, it seems reasonable to conclude that if the parties intended the minimum of two hours to be at any rate other than time and one-half, they would have specifically stated so. The Examiner finds no support of the Respondent's position in examining the call back provision existing prior to the current provision adopted in 1968, as urged by the City. In changing said language the parties by their previous language provided for a minimum of \$4.00 per call or at the rate of \$2.00 per hour if on duty more than two hours. The Examiner cannot conclude as argued by Respondent that after considering the above mentioned previous language, it becomes clear that the parties by adopting Article 8(a) intended the two hours minimum pay should be at the straight hourly rate instead of the hour and a half as stated above. It is the Examiner's opinion that the language of Article 8(a) is clear and unambiguous and provides a minimum of two hours at the rate of time and one-half for call back to duty pay.

Dated at Madison, Wisconsin, this 18th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Examiner