

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 11709

course of said negotiations and prior to February 21, 1972, an issue arose between the parties as to the effect of a resolution previously adopted by the Respondent to the effect that it would not grant or approve any retroactive salary or compensation increases to any of its employees, including Deputy Sheriffs; that thereafter and on February 21, 1972, the Complainant filed a complaint with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that by the adoption of such resolution, the Respondent refused to bargain in good faith with the Complainant within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act, hereinafter referred to as MERA; that in said proceeding, identified in the Commission's records as Racine County XII, Marvin L. Schurke, a member of the Commission's staff, who had been appointed by the Commission as an Examiner to hear the complaint and to issue a decision with regard thereto, following a hearing, did on June 22, 1972, issue Findings of Fact, Conclusions of Law and Order in said proceeding, wherein said Examiner issued the following Conclusions of Law:

"1. That the Racine County Deputy Sheriffs' Association is the representative of a majority of the employees in an appropriate collective bargaining unit.

2. That the question of retroactive payment of negotiated wage increases directly affects the wages of municipal employees and is a subject for bargaining within the meaning of Section 111.70(1)(d), Wisconsin Statutes.

3. That Racine County, by its refusal to negotiate with the Racine County Deputy Sheriffs' Association concerning the payment of wage increases for 1972 retroactive to the termination date of the 1971 collective bargaining agreement, has refused to bargain collectively with the representative of a majority of its employees in an appropriate collective bargaining unit and has committed and is committing prohibited practices within the meaning of Sections 111.70(3)(a)1 and 4, Wisconsin Statutes."

4. That on June 29, 1972, the Respondent, by its Corporation Counsel, filed a petition for review, in the nature of an appeal, with the Commission, wherein in effect it requested the Commission to overrule the Examiner's decision noted above; that on July 14, 1972, the Commission, after reviewing the record, Examiner's decision and the petition for review, issued an Order wherein the Commission adopted the Examiner's Findings of Fact, Conclusions of Law and Order, as well as the Memorandum accompanying same, and copies of said Order were served on the parties in the ordinary course of mailing.

5. That following the receipt of the Commission's Order affirming the Examiner's decision, representatives of the Complainant and Respondent continued their negotiations with respect to the 1972 agreement covering the wages, hours and conditions of employment of the Deputy Sheriffs involved, and in that respect the Respondent, by its County Board, on August 8, 1972, adopted a resolution identified as Resolution #72-70, which reflected the agreement of the parties regarding the terms and conditions of employment for Deputy Sheriffs for the year 1972, and therein among other things, provided that the conditions of employment, including matters relating to salaries and other fringe benefits, would be retroactive to January 1, 1972; that said resolution

was approved by the Respondent on August 11, 1972, and further that said resolution contained the following provision:

"It is agreed that within 30 days from the last ratification of this Agreement that the Deputy Sheriffs' Association shall commence an action for Declaratory Judgment concerning the legality of Section 4.21 of the Racine County Code of Ordinances."

6. That on or about August 15, 1972, the Respondent filed a petition with the Racine County Circuit Court, pursuant to Section 227.16, Wisconsin Statutes, requesting the Court to review the Commission's Order affirming Examiner Schurke's Findings of Fact, Conclusions of Law and Order and Memorandum issued in the matter entitled Racine County XII; that thereupon, and on August 17, 1972, the Commission requested the Attorney General of the State of Wisconsin to defend the Commission in the matter involving the Petition for Review filed in the Racine County Circuit Court and further to institute proceedings to enforce the Commission's Order; that, after an exchange of correspondence between the Attorney for the Complainant and the Municipal Employer's Corporation Counsel, Counsel for the Complainant, in compliance with paragraph 5 of Resolution #72-70, filed a petition with the Commission requesting a declaratory ruling, pursuant to Section 111.70(4)(b), with respect to whether the Municipal Employer had a duty to bargain on the retroactive application of wages and other fringe benefits covering the Deputy Sheriffs in the employ of the Municipal Employer; that on November 14, 1972, the Municipal Employer's Corporation Counsel forwarded to the Commission a stipulation which was executed by the Corporation Counsel on behalf of the Municipal Employer, wherein it was requested that the Chairman of the Commission execute same which would constitute an agreement by the Commission and the Respondent that the Commission's decision, rendered in Racine County XII, be dismissed on its merits; and that said stipulation also include a paragraph, which would indicate that the Circuit Judge of Racine County who was hearing the appeal matter, would also execute same; that prior to the filing of the petition for declaratory ruling the Respondent had agreed that, upon the filing of such petition for declaratory ruling, the Respondent would withdraw its appeal pending in the Racine County Circuit Court regarding the Commission's decision and Order rendered in Racine County XII; that on November 15, 1972, in a letter addressed to the Corporation Counsel of the Respondent and to Counsel for the Complainant, the Chairman of the Commission indicated the Commission's refusal to execute the stipulation dismissing the court proceeding and further, with respect to the petition for declaratory ruling filed by Counsel for the Complainant, indicating a refusal to readjudicate the issue with respect to the duty of the Respondent to bargain on the issue of retroactivity; and that in said letter the Commission advised that it would not process the petition for declaratory ruling, and further in said letter, the Commission advised that it would continue seeking enforcement of its Order in Racine County XII, unless the stipulation for dismissal set forth that the Complainant had complied with the Order of the Commission.

7. That the failure of the Respondent to withdraw its appeal of the Commission's decision and Order issued in Racine County XII pending in the Racine County Circuit Court resulted from the refusal of the Commission to entertain the petition for declaratory ruling filed by the Respondent.

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

CONCLUSION OF LAW

That since the petition for declaratory ruling filed by the Racine County Deputy Sheriffs' Association was not processed by the Wisconsin Employment Relations Commission as contemplated by the representative of the Racine County Deputy Sheriffs' Association and the County of Racine, the failure of the County of Racine to withdraw its appeal pending before the Racine County Circuit Court involving the Commission's decision and Order rendered in Racine County XII, the County of Racine did not, and has not, refused to bargain in good faith with the Racine County Deputy Sheriffs' Association, within the meaning of Section 111.70(3)(a)4 of the 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 complaint filed in the instant matter be, and the same hereby is, dismissed.

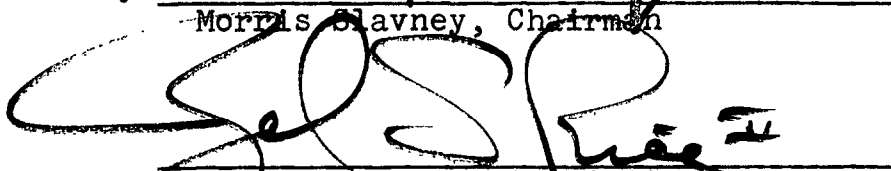
Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

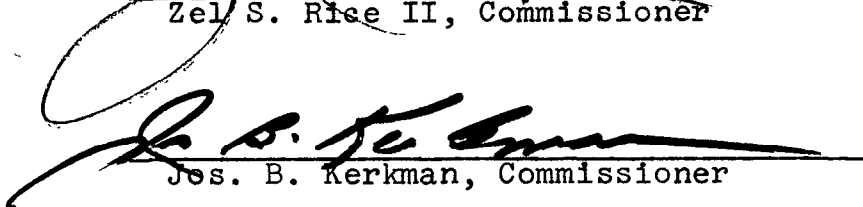
By



Morris Slavney, Chairman



Zel S. Rise II, Commissioner



Jos. B. Kerkman, Commissioner


MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

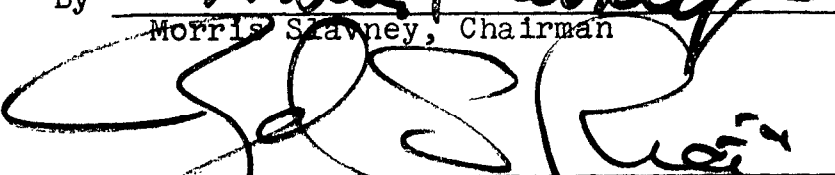
None of the facts dispositive of the issue herein are in dispute. The Respondent's agreement to withdraw its appeal of the Commission's decision and Order in Racine County XII was predicated on its filing a petition for a declaratory ruling with the Commission. It filed such a petition; however, the Commission refused to process same as indicated in the Findings of Fact. It is obvious to the Commission that the parties intended the Commission to issue a declaratory ruling in the matter involved. The Respondent cannot be held responsible for the determination of the Commission not to process the petition for declaratory ruling. Under such circumstances, we cannot find that the Respondent failed to bargain in good faith within the meaning of Section 111.70(3)(a)<sup>4</sup> of the Municipal Employment Relations Act by not withdrawing its appeal pending in the Racine County Circuit Court with respect to the Commission's decision and Order rendered in Racine County XII.

Dated at Madison, Wisconsin, this 23rd day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slawney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner