

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case VI
No. 16510 DR(M)-40
Decision No. 11716

Mr. Ed Durkin, Vice President, IAFF; and Mr. Kurt A. Schanz, Local President; appearing on behalf of the Petitioner.

Mr. Alvin R. Meyer, Village Attorney; Mr. Robert K. Maas, Chief; Mr. John F. Traudt, Deputy Chief, and Mr. Allan J. Klotsche, Village Trustee; appearing on behalf of the Municipal Employer.

Fire Fighters Local 808, IAFF, having filed a petition requesting a Declaratory Ruling on whether a premium rate of pay for bargaining unit employees assigned by the Village of Shorewood to perform the duties of Dispatcher constitutes a subject with respect to which the Village of Shorewood has a duty to bargain under Section 111.70 of the Wisconsin Statutes; and hearing on said petition having been conducted on March 12, 1973, at Shorewood, Wisconsin, Marshall L. Gratz, Hearing Officer, appearing on behalf of the Commission; and the Commission, having considered the evidence and the arguments of Counsel and being fully advised in the premises, makes and issues the following

1. That Fire Fighters Local 808, IAFF, hereinafter referred to as the Petitioner, is the recognized, exclusive collective bargaining representative of all members of the Shorewood Police Department, excluding the Police/Fire Chief and Deputy Chief, and has a mailing address of 3936 North Murray Avenue, Shorewood, Wisconsin 53211.

3. That, pursuant to negotiations between the Petitioner and the Municipal Employer, bargaining unit members have been employed on a normal work schedule of twenty-four (24) hours on, and forty-eight (48) hours off, for many years; and that such employees have traditionally received a negotiated base salary for such twenty-four hour tours of duty, regardless of the nature of the duties assigned to such employees by their superior officers.

4. That since 1968, the Municipal Employer has designated certain bargaining unit employees to regularly perform the duties of Dispatcher during a substantial portion of their twenty-four hour tours of duty; and that the Dispatcher duties so assigned include (1) the manning of the combined Police/Fire switchboard, and handling of all incoming telephone calls to both departments; (2) the monitoring and operation of police and fire communications equipment including two-way radio and teletype; (3) the manning of a counter window, answering citizens' inquiries, receiving fines, dispensing forms, etc.; and (4) the maintenance of various logs and reports concerning police and fire department related activities.

5. That the Petitioner has, at successive series of contract negotiations, sought to negotiate a premium rate of pay for bargaining unit employees who are assigned the duties of Dispatcher, but that the Municipal Employer has taken and takes the position that the Municipal Employer does not have a statutory duty to bargain on such matter.

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

CONCLUSION OF LAW

That a premium rate of pay for bargaining unit employees who are assigned by the Village of Shorewood to perform the duties of Dispatcher falls within the category of ". . . wages, hours and conditions of employment . . ." as those terms are set forth in Section 111.70(1)(d) 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

DECLARATORY RULING


That the Village of Shorewood has a duty to bargain collectively with Fire Fighters Local 808, IAFF, with respect to a premium rate of pay for bargaining unit employees to whom the Village of Shorewood assigns the duties of Dispatcher.

Given under our hands and seal at the
City of Madison, Wisconsin, this 26th
day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DECLARATORY RULING

The facts material to the instant Declaratory Ruling are adequately set forth in the Findings of Fact. There were no significant issues of material fact. At the hearing, the Petitioner clearly stated that its petition did not and was not intended to raise any issue concerning the Municipal Employer's right to assign to bargaining unit employees (for completion during their normal tour of duty) any and all duties which the Municipal Employer deems appropriate. The only issue raised by the petition is whether the Municipal Employer has a duty under Section 111.70 of the Wisconsin Statutes ^{1/} to bargain collectively as to whether the Municipal Employer should pay an additional rate of pay (above base salary) to those employees who are assigned to perform the duties of Dispatcher during a portion of their normal tours of duty. Petitioner asserts that the Municipal Employer has such a duty; the Municipal Employer asserts that it does not.

The Municipal Employer has a duty to bargain in good faith with respect to " . . . wages, hours and conditions of employment . . ." ^{2/} The instant subject of premium rates for Dispatcher duties performed appears to the Commission to involve a form of compensation for services performed--in other words, a form of " . . . wages . . ." The arguments of the Municipal Employer are not sufficient to deter the Commission from concluding that the Municipal Employer has a duty to bargain over the instant form of wages.

Village Trustee Klotsche initiated the Municipal Employer's argument by asserting that the Municipal Employer could not afford the added financial burden which a premium rate for Dispatcher work would entail. The Municipal Employer also argued that the firefighters did not deserve additional pay for Dispatcher work because they were relieved of various duties when dispatching, because when they were hired they knew that their base pay was intended to compensate them adequately for any work assignments given them by their superiors, because they were not subject to a 24-hour fire watch and because dispatching is uniformly assigned to practically all firefighters and to employees of no other rank. These arguments and the evidence placed on the record in support of them might be material to a municipal interest arbitration proceeding or useful in negotiations across the bargaining table, but they are not material to the instant issue. The issue herein is not whether a claim for a certain premium rate for Dispatching pay is warranted, or should be granted by the Municipal Employer; rather we seek to determine only whether the Municipal Employer has a duty under law to bargain in good faith with respect to the premium rate.

The Municipal Employer also argues that the subject at issue is " . . . reserved to management in exercising its powers and responsibilities to act for the government and good order of the municipality, to assure orderly operation and function within the Fire Department." In support of that proposition, the Municipal Employer cites Section 111.70(1)(d) which reads as follows:

^{1/} Section 111.70 constitutes the Municipal Employment Relations Act; all numerical references hereinafter shall be to that Act unless otherwise noted.

^{2/} See Section 111.70(1)(d) and (3)(a)5.

". . . (1) DEFINITIONS. As used in this subchapter:

. . .

(d) 'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, 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 employes. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the 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."

In citing this subsection in support of its position, the Municipal Employer apparently relies upon the last two sentences thereof. A careful reading of the proviso attached to each of those sentences reveals, however, that said subsection does not support the Municipal Employer's position with respect to the instant petition. The Petitioner has not attempted herein to impose blanket limitations upon the Municipal Employer's decision-making in the area of work assignments; instead, Petitioner requests the Commission to declare that the Municipal Employer has a duty to bargain with respect to wages which individuals assigned to particular duties are to receive for certain of their duties. Petitioner has not attempted to prevent the Municipal Employer from acting as it sees fit for the government and good order of itself and in the public interest; rather Petitioner seeks only to exercise its employes' rights to bargain collectively 3/ about " . . . wages, hours and conditions of employment . . ."

The Municipal Employer also relies upon the case of Libby, McNeill & Libby v. WERC 4/ for the proposition that the subject matter of decisions which are at the core of management's control of its functioning are not mandatory subjects of collective bargaining, regardless of whether they affect employe wages, hours or conditions of employment. It further reasons that the principle established by the Libby case would be violated if the Commission were to uphold the Petitioner's position herein.

3/ The right of municipal employes to bargain collectively is set forth in Section 111.70(2).

4/ 48 Wis. 2d 272, 1979 N.W. 2d 805 (1970).

Assuming arguendo, (without deciding) that the Libby case, supra, is at all relevant to a proceeding under Section 111.70, the Commission finds that said case is, on its facts, clearly distinguishable from, and therefore inapposite to, the instant case.

We have declared, therefore, that the premium rate, if any, to be paid to bargaining unit employees assigned to Dispatcher duties is a subject about which the Municipal Employer has a duty to bargain under Section 111.70. In so ruling, however, we note that such duty to bargain does not compel the Municipal Employer to agree to any proposal by Petitioner concerning such a premium rate, nor does it require the Municipal Employer to make a concession with respect thereto. 5/

Dated at Madison, Wisconsin, this 26th day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner

5/ See Section 111.70(1)(d).