

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MILWAUKEE

No. 11792

an accord on a new collective bargaining agreement, the last occasion being a meeting held on February 15, 1973, during which a member of the staff of the Wisconsin Employment Relations Commission attempted to mediate the issues existing between the parties; and that however the parties are unable to reach an accord in their collective bargaining and remain in deadlock with respect thereto.

5. That the Petitioner and the Municipal Employer have not agreed on a procedure for the selection of a fact finder different from that provided in Section 111.70(4)(c)3a nor have they jointly requested a three member panel as provided therein.

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

CONCLUSIONS OF LAW

1. That a deadlock within the meaning of Section 111.70(4)(c)3 of the Wisconsin Statutes exists between the City of Milwaukee and Public Employees Union Local #61, affiliated with Laborers' International Union of North America, AFL-CIO, CLC after a reasonable period of negotiations with respect to wages and other conditions of employment affecting the employees employed in the Bureau of Sanitation excluding drivers, supervisors and confidential employees.

2. That in the absence of an agreement calling for the selection of a fact finder by a procedure other than that set out in Section 111.70(4)(c)3a, or a joint request for a three member panel as provided therein, the Wisconsin Employment Relations Commission is obligated to follow the statutory procedure set out therein and appoint a single fact finder from the panel of fact finders maintained by it and referred to in Rule ERB 14.09(3).

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

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of fact finding as required by Section 111.70(4)(c)3 of the Wisconsin Statutes with respect to negotiations by Public Employees Union Local #61, affiliated with Laborers' International Union of North America, AFL-CIO, CLC on issues of wages and other conditions of employment of the employees of the Bureau of Sanitation, excluding drivers, supervisors and confidential employees, have been met.

NOW, THEREFORE, it is

ORDERED

1. That fact finding be initiated for the purpose of recommending a solution to said dispute.

2. That Gerald Somers of Madison, Wisconsin, is hereby appointed as the fact finder to proceed forthwith in the matter pursuant to Section 111.70(4)(c)3 of the Wisconsin Statutes.

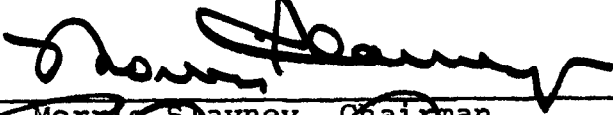
3. That within 30 days of the receipt of the fact finder's recommendations or within the time period mutually agreed upon by the parties each party shall advise the other in writing as to its

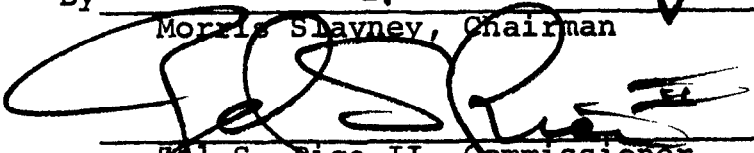
acceptance or rejection in whole or in part of the fact finder's recommendations and at the same time transmit a copy of such notice to the Commission at its Madison office.

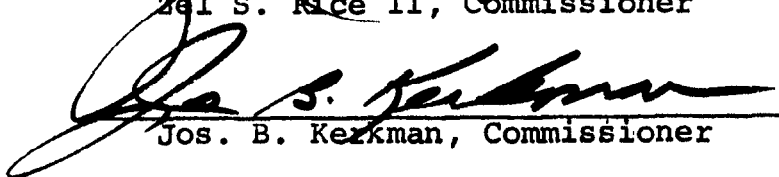
Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, 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 INITIATING FACT FINDING AND APPOINTING FACT FINDER

At the informal investigation and hearing conducted by the Commission's agent the City took the position that a deadlock did not exist within the meaning of the statute. The City's position stems from its claim that the Petitioner has been advised from the outset of negotiations that due to the fact that it is engaged in simultaneous bargaining with a number of bargaining units, some of which are substantially larger than the Petitioner's, any settlement with the Petitioner would, in all likelihood, have to follow settlement with some of the other bargaining units involved, and that the Petitioner has accepted, albeit reluctantly, that fact during the negotiations. Specifically, the City points out that one of the issues in negotiations involves the application of seniority provisions to members of the Petitioner's bargaining unit which provisions must, in its judgment, be consistent with the seniority provisions applicable to at least five other bargaining units. With regard to the latter issue the City maintains that it has offered to provide the Petitioner with a clarification of its proposal in this regard in the near future, but has been unable to do so at this point in time because of the uncertainty created by the lack of any final settlement on seniority provisions with the other five bargaining units involved. The Municipal Employer states that it is willing to meet with the Petitioner for the purpose of further mediation, subject only to demands on the schedule of its Labor Negotiator for meetings with the numerous other bargaining units involved.

The Petitioner points out that it has met with the Municipal Employer on approximately thirteen separate occasions, the last six of which occasions included efforts at mediation of the remaining issues in dispute. It claims that the City promised, at the last mediation session on February 15, 1973, that it would re-evaluate its proposal with regard to seniority language and advise the Petitioner in writing with regard to any possible change in its position and that to date no such information has been provided. In addition the Petitioner points out that the City has not made any substantial change in its monetary proposal which would justify the continuation of negotiations or mediation in its judgment.

The Commission is satisfied that a deadlock exists at the current point in time even though it is within the power of the Municipal Employer or the Union to break that deadlock. The Petitioner could accept the last official offer of the City, but there is no indication that it is willing to do so. Similarly, the City could modify or drop its seniority language and improve its economic offer and get negotiations started again, however it has not done so. While it is true that the City is understandably concerned with maintaining uniformity in seniority practices and avoiding the potential for "leap frogging" when bargaining with so many separate bargaining units, the Commission does not view either of these reasons as constituting evidence of the lack of a deadlock. In fact the City has pointed to the two most important reasons why a deadlock exists at the current point in time.

With regard to the appointment of a fact finder, the statute 1/ is quite clear that only the Commission has the power to appoint a fact finder from the panel maintained by it and referred to in its rules. 2/ Although the Commission's rules read in a permissive manner with regard to the appointment of a fact finder or the submission of a list from which the parties select a fact finder the language employed merely recognizes the fact that the parties frequently stipulate that the selection shall be from a list and that the Commission will accommodate the parties and honor such stipulations. The statute itself however is quite clear that, in the absence of such a stipulation, the Commission is under a duty to appoint a fact finder in accordance with the procedure contemplated by the statute. 3/

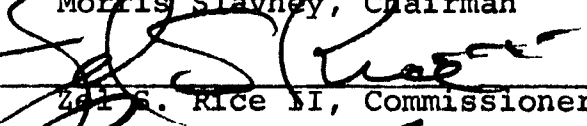
For the above and foregoing reasons the Commission has certified the existence of a deadlock and appointed a fact finder pursuant to Section 111.70(4)(c)3a from the panel referred to in Rule ERB 14.09(3).

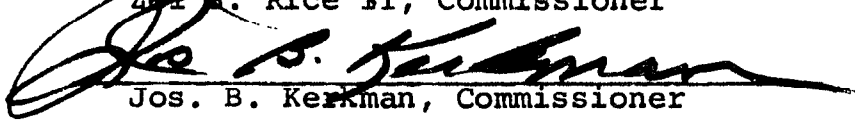
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- 1/ Section 111.70(4)(c)3a: "a. Upon receipt of a petition to initiate fact-finding, the commission shall make an investigation with or without a formal hearing, to determine whether a deadlock in fact exists. After its investigation the commission shall certify the results thereof. If the commission decides that fact-finding should be initiated, it shall appoint a qualified, disinterested person or 3-member panel, when jointly requested by the parties, to function as a fact finder."
- 2/ ERB 14.09(3) "(3) APPOINTMENT OF FACT FINDER. If the certification requires that fact finding be initiated and that the commission should appoint the fact finder, the selection of the fact finder shall be made from a panel established by the commission. The commission may immediately appoint the fact finder or it may submit to the parties the names of either three or five persons from the panel. Each party by its authorized representative shall alternately strike one name from such list of persons. The person remaining on the list shall be appointed by the commission as the fact finder."
- 3/ In this case the Municipal Employer was not willing to stipulate that a list be submitted and specifically objected to the Petitioner's request that the Commission submit a list of five fact finders from which each party could alternately strike two names.