

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MARINETTE COUNTY SHERIFFS DEPARTMENT
EMPLOYEES UNION, AFSCME, AFL-CIO
For Final and Binding Arbitration
Involving Law Enforcement Personnel
in the Employ of
MARINETTE COUNTY (SHERIFF'S DEPT.)

Case XX
No. 16649 MIA-45
Decision No. 11800

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

The Marinette County Sheriffs Department Employees Union, AFSCME, AFL-CIO having, on March 26, 1973, filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission initiate compulsory final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between the Petitioner and Marinette County on matters affecting the wages, hours and conditions of employment of law enforcement personnel in the employ of said Municipal Employer; and the Commission, by Robert M. McCormick, having conducted an investigation on such petition at Marinette, Wisconsin, on April 11, 1973 and during the course of such investigation the parties having made known the facts material thereto, 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 Marinette County Sheriffs Department Employees Union, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at the residence of James W. Miller, Representative, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, at 1031 Chantel Street, Green Bay, Wisconsin 54304.
2. That Marinette County (Sheriff's Dept.), hereinafter referred to as the Municipal Employer, has its offices at the County Courthouse, Marinette, Wisconsin.
3. That the Union at all times material herein has been, and is, the voluntarily recognized exclusive collective bargaining representative of the law enforcement personnel in the employ of the Municipal Employer.
4. That on March 26, 1973, the Union filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting said Commission to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, hereinafter referred to as MERA, with regard to an alleged impasse existing between the parties with respect to wages, hours and working conditions of law enforcement personnel for the year

1973; that on April 11, 1973, the Commission, by Robert M. McCormick, conducted an informal investigation on said petition, during which he attempted to mediate the issues existing between the parties; and that, however, the parties were unable to reach an accord with regard to said issues and remain at impasse with respect thereto.

5. That other than the Union's request for mediation on February 28, 1973, which apprised the Commission that negotiations for 1973 wages and conditions remained in dispute, the Union filed no other notice with the Commission as set forth in either Section 111.77(1)(c) or (2) that an impasse did exist.

6. That in a written reply dated March 26, 1973, the Municipal Employer advised the Commission that the Union had not complied with Section 111.77(1)(c) or (2) and that during the course of the aforementioned April 11, 1973 hearing the Municipal Employer claimed that the Commission lacked jurisdiction in the matter because of the failure of the Union to serve a 180-day notice and thereafter file with the Commission a 30-day notice of its intention to make certain changes in the existing collective bargaining agreement as required in Section 111.77(1)(c) and (2) of MERA.

7. That, with respect to a collective agreement covering wages and conditions of employment for 1972 covering the aforementioned law enforcement personnel, on June 20, 1972, the Union filed a petition to initiate final and binding arbitration to resolve an alleged impasse over 1972 wages and conditions; that after certification of the matter to final and binding arbitration by the Commission, on September 29, 1972, an arbitrator appointed by the Commission, Arlen C. Christianson, conducted hearing in the matter of final-offer arbitration; that on November 9, 1972 said arbitrator issued his final and binding award in the matter resolving the matters in dispute, which decision had the effect of incorporating the Union's last offer into the previously existing 1971 collective bargaining agreement, which effectively changed or modified four provisions of the 1971 agreement according to the Union's last offer adopted by the arbitrator covering wage increases, meal allowance, night-shift differential and the implementation of the three aforementioned terms retroactive to January 1, 1972.

8. That in December 1972, the County Board took official action to implement the decision of said arbitrator covering the impasse items of the 1972 agreement; that on December 11, 1972 the Petitioner gave notice to the Municipal Employer of its proposed changes with respect to wages and conditions of employment for a 1973 collective bargaining agreement; that the parties met in negotiations on at least four occasions in an effort to reach a 1973 agreement, including the last meeting on March 19, 1973 with a staff mediator from the Commission, Mr. Marshall Gratz; that the parties were unable to resolve an impasse with respect to proposed changes affecting wages, hours and working conditions in said meeting or in a subsequent meeting conducted by the Commission's investigator at the informal investigation on April 11, 1973.

9. That the parties have not established any mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining, and further, the parties have not mutually agreed that the arbitration should not be limited to the last and final offers 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 (2), of MERA and in the rules of the Commission, more specifically, ERB 30.03(2) and (4), could not have been reasonably complied with by the Union in view of the pending final and binding arbitration procedure covering the 1972 impasse which prevented total implementation of a 1972 collective agreement until the end of calendar year 1972; that the Union gave as timely notice as possible in December 1972 of its desire to open negotiations for 1973; that the aforementioned notice requirements of MERA are directory rather than mandatory, and that failure of the Union to file the 30-day notice to the Commission as required in Section 111.77(1)(c) or (2) of MERA does not operate to deprive the Wisconsin Employment Relations Commission of its jurisdiction to initiate compulsory final and binding arbitration between the Union and Municipal Employer herein to resolve the impasse involved in their collective bargaining for wages, hours and working conditions for the year 1973, covering law enforcement personnel in the employ of the Municipal Employer.

2. That an impasse, within the meaning of Section 111.77(3), of MERA, exists between Marinette County Sheriffs Department Employees Union, AFSCME, AFL-CIO and Marinette County with respect to negotiations leading toward a collective bargaining agreement for the year 1973 covering the wages and conditions of employment for law enforcement personnel employed by Marinette County.

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 MERA with respect to negotiations between Marinette County Sheriffs Department Employees Union, AFSCME, AFL-CIO, and Marinette County on issues of wages and other conditions of employment of law enforcement personnel employed by Marinette County 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 Marinette County Sheriffs Department Employees Union, AFSCME, AFL-CIO and Marinette County.

2. That Marinette County Sheriffs Department Employees Union, AFSCME, AFL-CIO, file, in written form, its final offer as of April 11, 1973, on the issues remaining in said negotiations with Marinette County, with the Wisconsin Employment Relations Commission on or before May 4, 1973 and at the same time serve a copy thereof on Marinette County.

3. That Marinette County file, in written form, its final offer as of April 11, 1973, on the issues remaining in said negotiations with the Marinette County Sheriffs Department Employees Union, AFSCME, AFL-CIO, with the Wisconsin Employment Relations Commission on or before May 4, 1973 and at the same time serve a copy thereof on Marinette County Sheriffs Department Employees Union, AFSCME, AFL-CIO.

4. That the parties each select an arbitrator within ten (10) days after the issuance of this Order in a manner mutually agreed upon by the parties, and that said two designated arbitrators shall within fifteen (15) days after issuance of this Order make effort to select a neutral arbitrator, and if same is selected, the parties notify the Commission within five (5) days of the selection of a neutral, of the identity of the designated arbitrators and of the neutral arbitrator in order that the Commission may issue a supplemental order officially appointing said individuals as the arbitrators or board of arbitration to conduct a compulsory arbitration proceeding and make a final and binding resolution of the dispute involved.

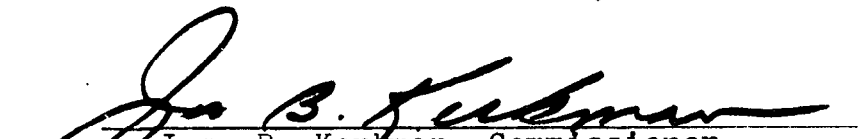
5. That if the two arbitrators selected by the parties cannot within fifteen (15) days of the issuance of this order select a neutral arbitrator, the parties shall notify the Commission of same within eight (8) days thereafter; that thereupon the Commission shall submit a panel of five (5) neutral arbitrators 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 said neutral arbitrator as chairman of the board of arbitration, or as the sole arbitrator if the parties so desire, 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 27th
day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

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

The County contends that the Union has failed to comply with the notice provisions of Section 111.77. The parties participated in final and binding arbitration proceedings over the period June 20, 1972 to November 9, 1972, over matters at impasse which otherwise prevented full accord over a 1972 collective agreement. The County itself was unable to take steps to implement the 1972 agreement until after the November 9, 1972 decision of the Arbitrator, when in December of 1972 the Board implemented the 1972 impasse items as directed by the arbitrator, according to the Union's final offer and made the changes as modification of its 1971 agreement to apply from January 1, 1973 forward.

The Union notified the County in the next month after the arbitrator's decision affecting 1972 conditions of its desire to begin 1973 negotiations. The Commission has held in City of Eau Claire, (WERC 11573, 1/73) that the notice provisions of Section 111.77(1)(c) and (2) are directory and not mandatory, so that a petitioner's failure to strictly comply with same and with Commission rules ERB 30.02, does not deprive the Commission of jurisdiction to issue an order requiring arbitration to resolve an impasse in collective bargaining involving a law enforcement unit. As the Commission stated in City of Eau Claire, such a result, namely ordering the matter here to final and binding arbitration, is consistent with the policy of Section 111.77 to promote peaceful resolution of impasse-disputes involving collective bargaining for law enforcement personnel.

The parties stipulated at the investigation meeting that, if the Commission should find an impasse to exist and order the matter to arbitration, it should issue an order directing the selection of an arbitrator by each party, for the purposes of permitting the two arbitrators to seek agreement on the selection of a neutral arbitrator; barring such an agreement between the two selected arbitrators, the parties then would expect the Commission to submit a panel of five arbitrators from which they would select a neutral or a single arbitrator to be appointed by the Commission.

Dated at Madison, Wisconsin, this 27th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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