

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

FIRE FIGHTERS LOCAL 1816, INTERNATIONAL :
ASSOCIATION OF FIRE FIGHTERS, :

Complainant, :

vs. :

CITY OF CHIPPEWA FALLS, :

Respondent. :

Case XXVII
No. 16859 MP-246
Decision No. 11938-A

Appearances:

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

Mr. B. James Colbert, City Attorney, appearing for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Fire Fighters Local 1816, International Association of Fire Fighters having filed a complaint alleging that the City of Chippewa Falls has committed prohibited practices within the meaning of Section 111.70 of the Wisconsin Statutes; and the Commission having appointed Herman Torosian, a member of the Commission's staff, to act as an Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Wisconsin Statutes; and hearing on said complaint having been held at Chippewa Falls, Wisconsin, on August 14, 1973, before the Examiner; and the Examiner having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Fire Fighters Local 1816, International Association of Fire Fighters, referred to herein as the Complainant, is a labor organization; and that the Complainant, at all times material hereto, has been the bargaining representative of certain employees of Respondent's Fire Department.

2. That City of Chippewa Falls, referred to herein as the City, is a municipal employer which operates, inter alia, a fire department.

3. That at all times material herein, there was in effect a resolution, dated December 21, 1971, covering wages, hours, working conditions and fringe benefits for employees of the Fire Department of the City of Chippewa Falls, Wisconsin; and that the provisions of said resolution was certified by Complainant as constituting all the working agreements between said Complainant and the City of Chippewa Falls.

4. That Respondent also had in effect at all times material herein the following resolution regarding the working conditions and fringe benefits of all City employees, including Fire Department personnel, which was adopted by the City on December 15, 1970:

"BE IT HEREBY RESOLVED THAT, the following policies, rules and procedures with regard to the working conditions and fringe benefits of all employees of the City of Chippewa Falls, except as otherwise provided by law, are hereby established:

1. DISCIPLINARY PROCEDURES. In the case of failure to show proper respect, a refusal to obey orders, poor workmanship, or failure to perform the required duties as ordered by the Department Head or person in authority, the following sequence of reprimand shall be followed:

- (1) OFFENSE. A verbal reprimand and recording of the same on the payroll records.
- (2) RECURRENCE OF OFFENSE. A written reprimand to the employee with a copy to the Chairman of the Council Committee, the Mayor, and to the Union if organized.
- (3) SECOND RECURRENCE OF OFFENSE WITHIN 365 DAYS OF THE ORIGINAL OFFENSE. Immediate dismissal from the position with the right to appear before the Common Council personally and state employee's position with future rights. Further it is agreed that if final decision is found favorable to the dismissed employee, said employee shall be entitled to lost pay and accrued benefits.
- (4) WHEN SUBJECT TO IMMEDIATE DISMISSAL. In the case of a physical assault by the employee on any person, while on the job, or upon deliberate damage or misuse of equipment or property, said offense shall result in immediate dismissal, subject to grievance procedures, regardless of the fact that it may be a first offense.

2. PAID HOLIDAYS. Paid holidays shall be uniform for all regularly employed persons of the City of Chippewa Falls including the office of elected and appointed city officials, (sic) Holidays shall be seven and one-half days pay on an hourly basis and based on 2,080 hours per year, when applicable, and 8 hour day computed on a base monthly salary. Paid holidays shall be as follows: New Years (sic) Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and one-half day each on Good Friday, one-half day prior to Christmas, and one-half day prior to New Years. In certain instances and upon the approval by the council the offices may be closed for certain other occasions. Employees working less than full-time and on a regular schedule and eligible for coverage under the Wisconsin Retirement Fund, will be allowed holiday credits on a pro-rata basis determined by number of hours worked.

3. HOSPITALIZATION INSURANCE. The City shall pay a single premium policy for hospital and surgical benefits to all regularly and full time employees of the city. If employee selects family coverage, the city shall pay 80% of such family coverage premium. Part time employees are not covered by this provision.

4. VACATIONS. All full time and regularly employed employees shall be granted vacation time with pay, as follows:

- A. POLICE DEPARTMENT. (Only those employees covered by agreement) Vacations will be granted as recited in Article X of the Agreement between the City of Chippewa Falls and the Chippewa Falls Professional Policemen's Association in effect for the period from January 1, 1971 to December 31, 1971 when said agreement is executed.
- B. FIRE DEPARTMENT. (Only those employees covered by agreement) All full time and regularly employed employees shall receive fifteen consecutive calendar days after one year of service, and twenty-one consecutive calendar days after ten years of service, and commencing with an employee completing sixteen years of service, there will be added one day per year of service, of vacation, up to a maximum of four consecutive weeks. If a holiday or Kelly day falls during vacation time, the vacation shall be extended by such day or days and taken at a convenient time.
- C. STREET DEPARTMENT, WATER DEPARTMENT AND WASTE TREATMENT DEPARTMENT. (Only those employees covered by agreement) As recited in contract covering period January 1, 1971 to December 31, 1971, when said contract of agreement is executed.
- D. ALL OTHER EMPLOYEES. All other and full time and regularly employed officers and employees, not covered by separate agreement shall be granted vacation with pay as follows:

<u>Period of Employment</u>	<u>Vacation</u>
After one year	10 workdays
After six years	15 workdays
After sixteen years	16 workdays
After seventeen years	17 workdays
After eighteen years	18 workdays
After nineteen years	19 workdays
After twenty years	20 workdays

Employees working less than full time and on a regular schedule and eligible for coverage under the Wisconsin Retirement Fund, will be granted vacation with pay on a pro rata basis determined by hours worked.

5. SICK LEAVE. (This provision will cover all employees of the City).

- A. Sick day accumulation shall be at the rate of one day per month until a total of 60 days is reached.
- B. After 60 sick days have been accumulated an additional 30 days will be accumulated at the rate of one day per month and placed in a special "Reserve". Reserve days from this account shall be drawn only when the original 60 days sick time has been depleted and in the event of a prolonged illness.
- C. After an employee has accumulated a total of 90 days unused sick leave a separate incentive bank of sick leave credits will be established. These

credits will accumulate at the rate of one (1) day per month unless the sick leave credit for any particular month is required to restore sick leave credits used from the basic or reserve credits to sixty (60) and thirty (30) days respectively. Credits thus accumulated in the incentive bank will be paid to the employee each year, after December 31, at the rate of fifty per cent (50%) of his regular rate of pay in effect on December 31st of the year for which the payment is computed. Computation of the incentive payment will be made as follows:

Balance of basic sick leave days 12/31	XX
Add: Balance of Reserve sick leave days 12/31	XX
Add: Accumulated incentive sick leave credits	XX
TOTAL	XXX
Less: Maximum allowable basic and reserve sick leave credits	90
Incentive bank credits eligible for payment	XX

(No days within the three separate accumulations, reserves or banks may be transferred from one accumulation, reserve or bank, to another)

Any credits to the incentive bank will be used solely for computation of the incentive payment and can not be used as sick leave or to restore basic or reserve sick leave credits used by the employee.

- D. The employee shall gain vested rights, for the purpose of severance pay, to any days accumulated in the 60 day account in accordance with the following schedule.

	Percent of accumulated days
At completion of 11 years - - - - -	10%
At completion of 12 years - - - - -	20%
At completion of 13 years - - - - -	30%
At completion of 14 years - - - - -	40%
At completion of 15 years - - - - -	50%
At completion of 16 years - - - - -	60%
At completion of 17 years - - - - -	70%
At completion of 18 years - - - - -	80%
At completion of 19 years - - - - -	90%
At completion of 20 years or more - - - -	100%

- E. Any employee, qualifying under this schedule, terminating his employment with the CITY shall be compensated for the applicable number of days at the hourly rate based on straight time in effect at the time of severance.

- F. Any employee whose employment with the CITY is terminated by the CITY, for cause, shall lose all vested rights in the sick day fund.

6. WORKMEN'S COMPENSATION. All regularly and full time employed persons of the City of Chippewa Falls shall be covered by workmen's compensation, and if injured and covered,

shall turn their workmen's compensation check immediately after it is received, over to the clerk-comptroller, who will issue a regular pay check equal to said persons normal earnings for that period.

7. LONGEVITY. All regularly employed and full time persons of the City of Chippewa Falls shall be covered by the longevity program as follows:

<u>Period of Employment</u>	<u>Rate</u>
After 6 years	2%
After 12 years	3%
After 18 years	4%

8. CONTRIBUTIONS TO CITY TO RETIREMENT. The City of Chippewa Falls will pay all retirement costs - both employee and employer shares.

BE IS HEREBY FURTHER RESOLVED THAT this resolution upon adoption, shall become effective on January 1, 1971 and shall remain in effect until repealed, amended, or modified.

Dated this 15 day of December, 1970."

5. That all provisions of the above mentioned December 15, 1970 resolution except provision #1 entitled, "Disciplinary Procedure", was incorporated into their December 21, 1971 working agreement by the following language:

"11. Uniform policies, rules and procedures regarding the working conditions and fringe benefits of all employees of the City of Chippewa Falls, dated December 15, 1970, entitled "Resolution Regarding the Working Conditions and Fringe Benefits of all Employees of the City of Chippewa Falls, Wisconsin", which established policies, rules, and procedures in the areas of paid holidays, hospitalization, insurance, vacation, sick leave, workmens compensation, longevity, and contributions to Wisconsin Retirement Fund, shall become part of this Resolution except as provided elsewhere and when in conflict with this Resolution."

6. That Eugene Lloyd Williams has been an employe of the City of Chippewa Falls Fire Department, for approximately five and one-half years and is currently classified as a pipeman, and that said classification is included in the collective bargaining unit represented by Local No. 1816.

7. That on April 6, 1973 George Anderson, Fire Chief, Chippewa Falls Fire Department posted the following notice on the bulletin board:

"Classes will be held the nights of April 16, & 17, April 23, & 24th, for three hours at the station here on C.P.R. Both shifts shall attend the same as for First Aid. Classes will be from 7:00 P.M. to 10:00 (sic) P.M.

George Anderson Chief"

8. That pursuant to said notice Williams was required to attend one of the classes held on April 16 and 17 and one of the classes held on April 23 and 24.

9. That Williams did not attend one of the two classes held on April 16 and April 17 as required but did attend one of the two classes held on April 23 and 24.

10. That on April 19, 1973 Fire Chief Anderson had a meeting with Williams and notified him that he was suspended for one day without pay for not attending one of the classes held on April 16 and April 17, 1973; that Anderson then asked Williams why he did not attend one of the meetings as required; that Williams told Anderson that he had completely forgotten that said meeting was scheduled and further told Anderson that he was unable to attend either of the meetings held on April 16 and 17 because of a vasectomy operation performed on April 16, 1973 and that he was incapacitated for a period of at least 48 hours following the surgery.

11. That Anderson sent the following letter dated April 19, 1973 to Williams, stating the following:

"I am suspending you for one day without pay April 25, 1973 for the following reason; That you did not attend school at the Fire Department on one of the following nights of April 16th or 17th as the notice on the bulletin board down stairs states, all members shall attend these classes. The agreement between the Fire Fighters and the City of Chippewa Falls so states (8) All Firemen ordered to attend schools or programs by the Fire Chief shall attend such schools and be compensated at straight time, not to exceed 24 hrs. per man per year. Upon questioning, your reason for not attending, your statement was 'I forgot all about it.'"

12. That Williams appealed his one day suspension to the Police and Fire Commission and that the Police and Fire Commission after a hearing on said matter on May 21, 1973 upheld the one day suspension without pay as proposed by Fire Chief Anderson.

Based on the foregoing and the record as a whole, the Examiner makes the following

CONCLUSION OF LAW

1. That Respondent, City of Chippewa Falls by not following the disciplinary procedure contained in the December 15, 1970 resolution regarding the working conditions and fringe benefits of all employees of the City of Chippewa Falls, Wisconsin, in suspending Eugene Lloyd Williams did not commit a prohibited practice in violation of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint in the matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 27th day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The instant complaint filed by Complainant on June 4, 1973, alleges that Respondent City of Chippewa Falls violated Section 111.70(3)(a)5 of the Wisconsin Statutes by not applying the disciplinary procedures contained in the parties' collective bargaining agreement in disciplining fire fighter Eugene Williams.

The Respondent answered said complaint on July 3, 1973, alleging that the subject matter contained in the complaint is, pursuant to Section 62.13(5) of the Wisconsin Statutes, reserved to the Police and Fire Commission of the City of Chippewa Falls and that the Wisconsin Employment Relations Commission is without jurisdiction to hear the instant prohibited practice. Secondly, the Respondent denies that the City of Chippewa Falls failed to follow the agreement between Complainant Local 1816 and the City in disciplining Eugene Williams.

The Commission in a Declaratory Ruling involving the City of Sun Prairie 1/ was presented with the same arguments regarding jurisdiction as presented here by the Respondent. In that case the city of Sun Prairie filed a petition requesting the Wisconsin Employment Relations Commission to issue a Declaratory Ruling on whether procedures relating to suspension or termination of law enforcement personnel are subject to final and binding arbitration pursuant to Section 111.77 of the Municipal Employment Relations Act.

The City argued that it is the public policy of the state as declared by the Legislature that suspensions and termination of policemen shall only be accomplished pursuant to Section 62.13(5) of the Wisconsin Statutes and that a city cannot contract away the jurisdiction of the Police and Fire Commission.

The City further argued that the grievance procedure proposed by the Union culminating in final and binding arbitration on decisions of the Police and Fire Commission in matters of suspension and removal of police department employes was violative of the state's public policy as announced in 62.13(5), Wisconsin Statutes, and therefore, void as a matter of law.

The Commission in issuing its Declaratory Ruling held as follows:

"It is clear to the Commission that the authority granted to Police and Fire Commissions, pursuant to Sec. 62.13(5) with respect to discipline, suspension and/or termination of police and firefighters cannot be harmonized with those provisions in Sec. 111.77, relating to the authority of the arbitrators performing their function under the latter statutory provision. Secs. 111.77(d) and (n) specifically refer to 'conditions of employment' and ss. (f) among other matters, refers to 'the continuity and stability of employment'. Discipline, suspension or termination from employment affects an employe's working conditions, and most certainly has an effect on the stability of one's employment. Had the Legislature intended to exclude matters coming within the jurisdiction of Police and Fire Commission pursuant to Sec. 62.13(5) from those matters subject to final and binding arbitration in police and firefighter

1/ Decision No. 11703-A, 9/73.

negotiations, it could have included such an exception in Sec. 111.77. Since the latter statutory provision was adopted subsequent to Sec. 62.13(5) it modifies Sec. 62.13(5), at least with respect to the authority of an arbitrator, appointed pursuant to Sec. 111.77, to issue a final and binding award containing a provision providing for arbitration of discipline, and suspension or termination of police and/or firefighters, or any other conditions affecting the stability of their employment."

It follows from the above that if the parties can mutually agree to a disciplinary or grievance procedure covering suspension and/or terminations and if an arbitrator pursuant to Section 111.77 can issue a final and binding decision including such a procedure or procedures in a collective bargaining agreement, the Wisconsin Employment Relations Commission pursuant to Section 111.70(3)(a)5 has jurisdiction to determine whether said procedure or procedures has been violated.

The question in the instant case, then, is whether the parties have a disciplinary procedure in their agreement as alleged by the Complainant.

The working agreement in question was adopted by the City on December 21, 1971 and certified and signed by representatives of Complainant Local 1816. The last paragraph of said working agreement states the following:

"11. Uniform policies, rules and procedures regarding the working conditions and fringe benefits of all employees of the City of Chippewa Falls, dated December 15, 1970, entitled "Resolution Regarding the Working Conditions and Fringe Benefits of all Employees of the City of Chippewa Falls, Wisconsin", which established policies, rules, and procedures in the areas of paid holidays, hospitalization, insurance, vacation, sick leave, workmens compensation, longevity, and contributions to Wisconsin Retirement Fund, shall become part of this Resolution except as provided elsewhere and when in conflict with this Resolution."

The Union citing the above paragraph argues that the parties incorporated the December 15, 1970 resolution, which contains a disciplinary procedure, in their December 21, 1971 working agreement and that the Employer in suspending Eugene Williams on April 19, 1973 did not follow said procedure and therefore breached the working agreement in violation of 111.70(3)(a)5 of the Wisconsin Statutes.

Respondent does not dispute that the working agreement and the resolution dated December 15, 1970 were in effect at all times material herein. It is the position of the Respondent, however, that the first provision of the December 15, 1970 resolution pertaining to the disciplinary procedure was not incorporated into the working agreement between Local 1816 and the City. The Respondent cites the first paragraph of said resolution which states that, "The following policies, rules and procedures with regard to the working conditions and fringe benefits of all employees of the City of Chippewa Falls, except as otherwise provided by law, are hereby established." It is argued that pursuant to Section 62.13(5), Wisconsin Statutes, a disciplinary

procedure for Police and Fire personnel is "otherwise provided by law", and therefore not a part of the parties' working agreement.

In reviewing both documents referred to above it is the undersigned's opinion that the disciplinary procedure contained in the December 15, 1970 resolution was not incorporated by the parties into their working agreement dated December 21, 1971. In this regard the parties in incorporating the December 15, 1970 resolution only incorporated policies, rules and procedures in the areas of paid holidays, hospitalization, insurance, vacations, sick leave, workmen's compensation, longevity and contributions to Wisconsin Retirement Fund. The disciplinary procedure is conspicuously absent from the areas specifically incorporated.

The fact that all areas of the December 15 resolution were specifically named and incorporated by the parties except the disciplinary procedure leads the undersigned to conclude the parties intended to exclude said procedure as it applies to the fire fighters in favor of the procedure set forth in Sec. 62.13(5) of the Wisconsin Statutes. Had the parties intended to include same they would have specifically named the disciplinary procedure as they did with all other areas of the resolution or they would have simply adopted the December 15, 1970 resolution in its entirety without specifically naming any of the areas covered by said resolution.

Based on the above facts and discussion thereon, the Examiner concludes the Respondent did not violate the working agreement between the parties as alleged by the Complainant.

Dated at Madison, Wisconsin, this 8th day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Herman Torosian
Herman Torosian, Examiner