

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

HERBERT F. SONNENBERG, Individually
and on Behalf of the ASSOCIATION OF
MUNICIPAL ATTORNEYS OF MILWAUKEE,

Complainants,

vs.

CITY OF MILWAUKEE, JAMES BRENNAN,
JAMES NEWCOMB, JAMES MORTIER,
ROBERT GARNIER and THE CITY
SERVICE COMMISSION OF THE CITY
OF MILWAUKEE,

Respondents.

Case CXXVIII
No. 16709 MP-235
Decision No. 12022

ORDER ADJOURNING HEARING INDEFINITELY

The Wisconsin Employment Relations Commission heretofore having scheduled hearing in the above entitled matter for Thursday, July 19, 1973, and the Respondents having on July 16, 1973, filed a Motion requesting an adjournment of said hearing; and the Commission having reviewed said Motion and being satisfied that the hearing be adjourned;

NOW, THEREFORE, it is

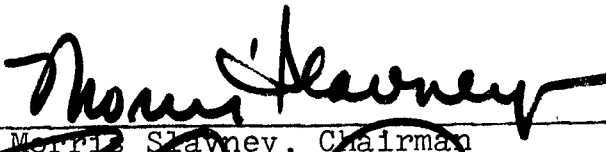
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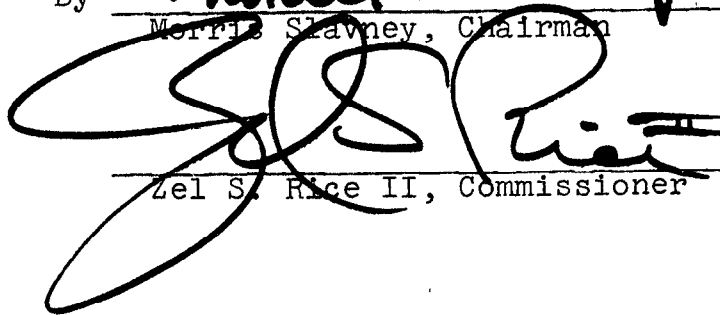
That hearing in the above entitled matter scheduled for July 19, 1973, be, and the same hereby is, adjourned indefinitely for the reasons, and until such time, as set forth in the Memorandum accompanying this instant Order.

Given under our hands and seal at the
City of Madison, Wisconsin, this 18th
day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING
ORDER ADJOURNING HEARING INDEFINITELY

On April 17, 1973, the Complainant herein filed a complaint with the Commission alleging that the Respondents committed prohibited practices within the meaning of the Municipal Employment Relations Act by failing to bargain in good faith with the Association of Municipal Attorneys of Milwaukee, and also engaged in acts of prohibited discrimination and interference. On April 19, 1973, the Commission issued a notice of hearing on said complaint, setting the matter for hearing for May 9, 1973, at Milwaukee, Wisconsin, and at the same time setting May 2, 1973, as the date on which an answer could be filed to the complaint. The Respondents, on May 2, 1973, filed answer to the complaint and on May 2, 1973, the Respondents also filed a petition for declaratory ruling, wherein it requested the Commission to determine whether the attorneys in the employ of the City of Milwaukee are or are not excluded from the coverage of the Municipal Employment Relations Act as amended November, 1971, it being the position of the Respondents that the attorneys involved were either managerial employees or managerial trainees and therefore not "municipal employees" under MERA, and therefore, not entitled to any rights under said Act.

On August 24, 1967, following an election conducted by it, the Commission issued a Certification of Representatives wherein it certified the Association of Municipal Attorneys of Milwaukee as the exclusive collective bargaining representative for "all of the attorneys employed by the City of Milwaukee in the office of the City Attorney, excluding confidential and supervisory employees." The issue as to whether the attorneys were "employees" under the then existing statute was litigated before the Commission, as well as appealed before the Milwaukee County Circuit Court and the Wisconsin Supreme Court. The Commission's determination was upheld in both the Milwaukee County Circuit Court and the Wisconsin Supreme Court.

At the time of the filing of the petition for declaratory ruling the Respondents requested that hearing be held on the petition for declaratory ruling prior to and separate from the hearing on the prohibited practice case, contending that the determination in the declaratory ruling might dispose of the complaint case. In addition, Counsel for the Respondents indicated that his calendar prevented him from appearing for hearing on the complaint on May 9, 1973.

On May 4, 1973, the Commission adjourned the hearing on the complaint indefinitely "pending notification of a new hearing date."

On May 9, 1973, the Commission rescheduled the hearing for June 12, 1973. No action was taken by the Commission with regard to the petition for declaratory ruling. Prior to June 12, 1973, the Complainant advised the Commission that it intended to file an amended complaint alleging a discriminatory discharge which had occurred since the filing of the original complaint and, therefore, on June 12, 1973, the date on which the amended complaint was received, the Commission further postponed the hearing until June 19, 1973. On June 13, 1973, Counsel for the Respondents, having received a copy of the amended complaint, filed a motion with the Commission requesting postponement of the hearing for time to file an amended answer. As a result, on June 19, 1973, the Commission further postponed the hearing on the complaint to July 19, 1973. On June 25, 1973, the Respondents filed an answer to the amended complaint. On June 21, 1973, the Commission received a letter from Counsel for the Respondents wherein he proposed, with respect to the declaratory ruling case, (1) that the record in the original Commission case, deposited in the Milwaukee County Circuit Court record room shall be considered by the Commission

in the resolution of the issues presented in the petition for declaratory ruling in lieu of a hearing; and (2) that the evidence contained in such record as to the duties and responsibilities of the attorneys in the office of the City Attorney shall be deemed by the Commission as evidence of the facts as they presently exist, with the exception that there may have been a change in certain duties and responsibilities which have been previously assigned to certain attorneys.

On July 2, 1973, the parties entered into a stipulation as proposed by the Counsel for the Petitioner and pursuant to an Order issued by the Honorable Maurice R. Spracker, Circuit Judge of Milwaukee County, the record in the original Commission case has been returned to the Commission.

Following the receipt of the record of the original Commission case, Counsel for the City of Milwaukee persisted in his request that the hearing on the petition for declaratory ruling be held prior to the hearing on the complaint case, and after due consideration, the Commission had determined to proceed in that manner. Counsel for the respective parties were advised prior to July 19, 1973, that the Commission would issue an Order adjourning the hearing on the complaint indefinitely and, further, that it would issue an Order setting time for the receipt of the briefs with respect to the issues involved in the petition for declaratory ruling. The Commission has, therefore, today issued its Order adjourning the complaint hearing indefinitely and also an Order setting time for filing of briefs in the declaratory ruling proceeding.

Dated at Madison, Wisconsin, this 18th day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner