

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LAKE GENEVA PROFESSIONAL POLICEMEN'S
PROTECTIVE ASSOCIATION,

Complainant,

vs.

CITY OF LAKE GENEVA,

Respondent.

Case XIV
No. 17178 MP-283
Decision No. 12184-B

CITY OF LAKE GENEVA,

Complainant,

vs.

LAKE GENEVA PROFESSIONAL POLICEMEN'S
PROTECTIVE ASSOCIATION,

Respondent.

Case XV
No. 17226 MP-285
Decision No. 12208-B

Appearances:

Schwartz, Schwartz, Roberts & Cairo, Attorneys at Law, by Mr.
Mark Cross, for the Association.

Peck, Bridgen, Petajan, Lindner, Honzik & Peck, S.C., Attorneys
at Law, by Mr. Roger E. Walsh, For the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint having been filed with the Wisconsin Employment Relations Commission by Lake Geneva Professional Policemen's Protective Association, on September 14, 1973, alleging that certain prohibited practices have been committed by the City of Lake Geneva, under the Municipal Employment Relations Act; and said City having filed with said Commission a separate complaint, on October 5, 1973, alleging that said Association has committed certain prohibited practices under the same Act; and the Commission having appointed a member of its staff, to act as Examiner in the matters and subsequently said cases having been transferred to the Commission; and a consolidated hearing having been conducted in the matters on November 15, 1973, Commissioner Howard S. Bellman being present; and the Commission having considered the evidence and arguments of counsel and being fully advised in the premises makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the City of Lake Geneva, referred to herein as the City, is a municipal employer, having offices at City Hall, Lake Geneva, Wisconsin, which operates, inter alia, a Police Department.

2. That Lake Geneva Professional Policemen's Protective Association, referred to herein as the Association, is a labor organization; and that at all times material herein the Association

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has been the collective bargaining representative of certain employees of the City's Police Department.

3. That the City and the Association commenced to meet by their respective representatives for the purposes of negotiating a collective bargaining agreement covering said law enforcement personnel on September 11, 1973 at the Lake Geneva City Hall; that at said meeting the Association's representatives insisted that said meeting be open to the public, and asserted that, if said meeting was not open to the public, the Association would not engage in further collective bargaining with the City; and that the City refused to agree to said demand by the Association, and thereupon said meeting was adjourned.

4. That since said September 11, 1973 meeting, the City has specifically requested further meetings with the Association; that in reply to said requests, the Association has stated that it would not meet with the City unless such meetings were open to the public; that the City and the Association have not met for the purposes of collective bargaining since September 11, 1973 because of said dispute over opening meetings to the public.

5. By its aforesaid conduct, particularly its insistence upon public negotiations despite the City's refusal to engage in same, the Association caused an impasse in the negotiations between the parties.

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

CONCLUSIONS OF LAW

1. That the proposal by the Association that negotiations be conducted in public did not constitute a proposal regarding wages, hours and working conditions, and, therefore, the Association by its insistence upon such proposal, despite the City's refusal to accept it, to the point of impasse, has engaged in, and is engaging in, prohibited practices within the meaning of Section 111.70(3)(b)(3) of the Municipal Employment Relations Act.

2. That the City by its refusal to engage in public negotiations, has not, and is not, engaging in any prohibited practice within the meaning of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the complaint filed in the instant matter against the City of Lake Geneva be, and the same hereby is, dismissed.

IT IS FURTHER ORDERED that the Lake Geneva Professional Policemen's Protective Association, its officers and agents, shall immediately:

1. Cease and desist from refusing to bargain collectively by insisting that negotiations be conducted in public.

2. Upon request, bargain collectively with the City of Lake Geneva at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement.

Given under our hands and seal at the
City of Madison, Wisconsin this 9th
day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The City filed an answer to the Association's complaint on October 5, 1973. No answer was filed by the Association to the City's complaint. At the hearing counsel for both parties entered a series of stipulations which are reflected by the Findings of Fact. These stipulations were accepted in substitution for the factual allegations of both complaints, the City's answer, and any answer that might have been interposed by the Association. Transcript was issued on November 19, 1973 and the post-hearing briefing period was closed on December 19, 1973. The City filed a brief, but the Association made neither written nor oral argument.

The legal contentions of the City are that the Association's insistence upon public negotiations constituted a violation of the Association's duty to bargain collectively, and thus a prohibited practice under Section 111.70(3)(b)(3) of the Municipal Employment Relations Act (MERA).

The Association contends that the City's refusal to engage in such negotiations constitutes a corresponding violation of Section 111.70(3)(a)(4) of MERA. In this regard, the Association also argues that the City's conduct also violates Section 66.77(3)(b), Wis. Stats. which makes an exception to a general requirement that governmental bodies conduct open meeting for meetings described as follows:

"(b) Considering employment, dismissal, promotion, demotion, licensing or discipline of any public employe or person licensed by a state board or commission or the investigation of charges against such person, unless an open meeting is requested by the employe or person charged, investigated or otherwise under discussion;"

The Commission recognizes that it is conventional for the collective bargaining that is engaged by parties governed by MERA to proceed in private, nonpublic sessions; that there are sound reasons for such procedures, including the reason that public statements of position tend to reduce the possibilities for compromise; and that some municipal employers and labor organizations prefer to bargain publicly, but this preference reflects an exception to the general analysis.

The statutory definition of collective bargaining to which both of the instant parties are alleged to have failed to adhere and which appears in Section 111.70(1)(d) of MERA, states, in material part, as follows:

" '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. . . "

It is our conclusion that although meeting publicly for collective bargaining is not prohibited, so that a request to do so is not a violation of the Act; such a request does not include in its terms those subject about which bargaining is mandatory, i.e., "wages, hours, and conditions of employment", and may not be maintained to the point of causing a deadlock in negotiations.

Therefore, the Association by insisting upon public negotiations so as to cause negotiations to cease, committed a prohibited practice as contended by the City. (See Mayor Samuel E. Zoll and the City of Salem, Mass. v. Local 1780, I.A.F.F., Mass. Labor Relations Commission, Case No. MUP-309; Pennsylvania Labor Relations Board v. Bethlehem Area School District, PLRB Case No. PERA - C - 2861-C.)

It follows that, inasmuch as the Association's demand for public negotiations was violatively maintained, the City's resistance to same was not a prohibited practice. Furthermore, it is clear from the decision of the Wisconsin Supreme Court in Milwaukee Board of School Directors v. WERC, (42 Wis. 2d 637, 1969) that nonpublic negotiations are not violative of the above-quoted open meetings statute.

Dated at Madison, Wisconsin this 9th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney -
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner