

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
JAMES R. WOCKENFUS and the CLINTONVILLE :
PROFESSIONAL POLICEMEN'S ASSOCIATION :
Requesting a Declaratory Ruling Pursuant: Case II
to Section 111.70(4)(b) Wis. Stats., : No. 17181 DR(M)-49
Involving A Dispute Between Said : Decision No. 12187-A
Petitioners and the :
CITY OF CLINTONVILLE, :
Waupaca County :

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECLARATORY RULING

James R. Wockenfus and Clintonville Professional Policemen's Association having filed a petition with the Wisconsin Employment Relations Commission requesting a declaratory ruling pursuant to Section 111.70(4)(b) of the Wisconsin Municipal Employment Relations Act with respect to a dispute arising between said Petitioners and the City of Clintonville, Wisconsin, concerning the duty to bargain over the adoption and enforcement of a requirement that all of the employees of the City of Clintonville reside within the City of Clintonville; and hearing in the matter having been held at Waupaca, Wisconsin, on October 10, 1973, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That Clintonville Professional Policemen's Association, hereinafter referred to as the Association, is a labor organization having its principal offices at c/o James A. Krause, 258 Anne Street, Clintonville, Wisconsin; and that, at all times pertinent hereto, said Association has been, and is, the authorized collective bargaining representative for certain police officers employed by the City of Clintonville.

2. That James R. Wockenfus is an individual residing in or about Clintonville, Wisconsin; that, at all times pertinent hereto, Wockenfus has been, and is, employed by the City of Clintonville as a police officer; and that Wockenfus is among the employees represented by the Clintonville Professional Policemen's Association.

3. That the City of Clintonville, referred to herein as the Municipal Employer, is a municipality having its principal offices at City Hall, Clintonville, Wisconsin; that, among other municipal

services, the Municipal Employer maintains and operates a Police Department; that Frank Sinkewicz is the Mayor of the City of Clintonville; that Ralph M. Lauer is the City Attorney of the Municipal Employer; that Norman O. Erickson is President of the Board of Police and Fire Commissioners of the Municipal Employer; that Milford M. Bodoh is employed by the Municipal Employer as the Chief of the Clintonville Police Department; and that, at all times pertinent hereto, the Municipal Employer has recognized the Clintonville Professional Policemen's Association as the exclusive collective bargaining representative of all law enforcement employees of the City of Clintonville, excluding supervisors (defined as the Chief of Police and the Captain of Police).

4. That, by action of its Common Council on November 2, 1971, and by publication thereof on November 11, 1971, the Municipal Employer created Ordinance No. 354 of the City of Clintonville, as follows:

"AN ORDINANCE CREATING SECTION 3.75 OF THE MUNICIPAL CODE OF ORDINANCES OF THE CITY OF CLINTONVILLE PRESCRIBING RESIDENCE REQUIREMENTS FOR EMPLOYEES OF THE CITY OF CLINTONVILLE

THE COMMON COUNCIL OF THE CITY OF CLINTONVILLE, WISCONSIN
DOES ORDAIN AS FOLLOWS:

Section 1. Section 3.75 of the Municipal Code of Ordinances of the City of Clintonville is hereby created to read as follows:

3.75 Residence Requirements for City Employees. Except as hereinafter provided all persons employed by the City of Clintonville must be bona fide residents of the city.

a. Persons who are not residents of the City at the time of their employment must establish bona fide residence in the City of Clintonville on or before a date either (1) six months after the date of employment, or (2) 60 days following the date on which the probationary period of employment ends, whichever date is later.

b. Persons who are presently employees of the City of Clintonville and are not bona fide residents of the City must establish bona fide residence in the City in or before a date either (1) the date on which such employee completes his probationary period of employment, or (2) June 1, 1972 whichever date is later.

Section 2. Severability Clause. If any action, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity (sic) of the remaining portions of this ordinance. The Common Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared invalid or unconstitutional.

Section 3. Conflicts. Any ordinance or parts of ordinances inconsistent with this ordinance are hereby repealed.

Section 4. This ordinance shall be inforce (sic) and take effect from and after its passage and publication."

5. That, prior to the adoption of said Ordinance, Petitioner Wockenfus sought and obtained from the City Council specific permission to maintain his residence outside of the corporate limits of the City; and that, on or about July 19, 1973, the Municipal Employer initiated action to enforce Section 3.75 of the Municipal Code of Ordinances of the City of Clintonville as regards Wockenfus, and to terminate the employment of Wockenfus due to his failure to maintain a "bona fide" residence in the City.

6. That, during negotiations for a collective bargaining agreement for the year 1973, and again during negotiations for a collective bargaining agreement for the year 1974, the Association took the position that the imposition of the residency requirements set forth above was a proper subject for collective bargaining; and that, at all times, the Municipal Employer has taken the position that it was not required to bargain with respect to any proposal concerning the residence requirement.

7. That the imposition and enforcement of a residency requirement, as set forth in Section 3.75 of the Municipal Code of Ordinances of the City of Clintonville, affects the conditions of employment of employees in the bargaining unit represented by the Clintonville Professional Policemen's Association; and that the enforcement of such a residency requirement through suspension and discharge from employment affects the tenure of employment of employees in the aforesaid bargaining unit.

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

CONCLUSIONS OF LAW

1. That the City of Clintonville, Wisconsin, is a Municipal Employer within the meaning of Section 111.70(1)(2) of the Municipal Employment Relations Act.

2. That a unit of all law enforcement personnel employed by the City of Clintonville, excluding supervisors, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Sections 111.70(1)(e) and 111.70(4)(d)(2)(a) of the Municipal Employment Relations Act; and that, at all times material herein, Clintonville Professional Policemen's Association has been, and is, the exclusive representative of the employees in said unit, for the purpose of collective bargaining within the meaning of Sections 111.70(1)(d) and 111.70(4)(d)(1) of the Municipal Employment Relations Act.

3. That a dispute within the meaning of Section 111.70(4)(b) of the Municipal Employment Relations Act has arisen between the City of Clintonville and the Clintonville Professional Policemen's Association concerning the duty to bargain on the subject of a residency requirement imposed on employees in the aforesaid bargaining

unit; and that the Wisconsin Employment Relations Commission has jurisdiction to resolve such dispute through issuance of a declaratory ruling.

4. That Section 3.75 of the Municipal Code of Ordinances of the City of Clintonville, prescribing residence requirements for employees represented by the Clintonville Professional Policemen's Association in the aforesaid appropriate collective bargaining unit, imposes on such employees a condition of employment within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act.

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


DECLARATORY RULING

That the requirement that employees in the aforesaid appropriate collective bargaining unit reside within the City of Clintonville is subject to collective bargaining within the meaning of Sections 111.70(1)(d), 111.70(2), and 111.70(3)(a)4 of the Municipal Employment Relations Act.

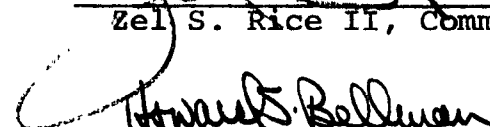
Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DECLARATORY RULING

Petition and Related Proceedings

The petition initiating the instant proceeding under Section 111.70(4)(b) of the Municipal Employment Relations Act (MERA) was filed with the Commission on September 19, 1973. In the instant case James R. Wockenfus and the Clintonville Professional Policemen's Association request a declaratory ruling on the question of whether the residency requirement imposed by Section 3.75 of the Municipal Code of Ordinances of the City of Clintonville is a subject for collective bargaining under the provisions of MERA.

On the same date that the petition initiating the instant proceeding was filed, the Petitioners herein filed a complaint with the Commission wherein they alleged that the City of Clintonville (1) has refused to bargain with the Association concerning the imposition and enforcement of a residency requirement for employees represented by the Association, (2) has taken action to enforce the existing residency requirement through the suspension and termination of Wockenfus, and (3) has refused to respond to a grievance on the subject, all in violation of Sections 111.70(3)(a)(1), (4) and (5) of the MERA. The complaint of prohibited practices has been docketed as City of Clintonville, Case II, No. 17180, MP-284, and will be the subject of a separate decision.

On or about August 31, 1973, the Petitioners herein brought suit in the Circuit Court for Waupaca County, identified as Civil Action No. 12646, wherein they sought a declaratory judgment that the City of Clintonville's residency Ordinance is unconstitutional on its face and in its application to Wockenfus. At the request of the plaintiffs therein, and with the consent of the City, the Circuit Court issued a temporary injunction restraining the City from terminating the employment of Wockenfus. Wockenfus was thereupon reinstated to his employment and has continued in his employment with the Clintonville Police Department, while residing outside of the City.

On an unspecified date following the filing, on August 21, 1973, of the findings and determination of the Board of Police and Fire Commissioners of the City of Clintonville, the Petitioners herein initiated proceedings in the Circuit Court for Waupaca County for review of the action of the Board of Police and Fire Commissioners.^{1/}

Jurisdiction

On September 28, 1973, this Commission appointed a member of its staff to act as Examiner in the prohibited practice proceedings, and ordered that the two matters pending before the Commission be consolidated for the purposes of hearing. On the same day, notices were issued setting hearing for October 10, 1973 and setting October 8, 1973 as the date for the City of Clintonville to file an answer to the complaint of prohibited practices, pursuant to Section ERB 12.03, Wisconsin Administrative Code, and a statement in response to the

^{1/} At the time of the hearing herein no action had been taken by said Court regarding said matter.

petition for declaratory ruling, pursuant to Section ERB 18.03, Wisconsin Administrative Code. Copies of the aforesaid Orders and Notices were served on the City Clerk of the City of Clintonville by Certified Mail on October 11, 1973, and receipt thereof was acknowledged on behalf of the City.

No responsive pleadings were filed by or on behalf of the City of Clintonville. At the outset of the hearing on October 10, 1973, the City moved for dismissal of the proceedings before the Commission, stating three lines of argument in support of its position. First, the City calls attention to the pendency of the Civil Action in the Circuit Court of Waupaca County seeking a declaratory judgment. The City contends that the facts in issue in that proceeding are identical to the facts in issue in the two proceedings before the Commission, and that the jurisdiction of the Commission is entirely usurped by the Circuit Court. The City also contends that, since the Declaratory Judgment action was filed in the Circuit Court prior to the commencement of the proceedings before the Commission, the Commission never had any jurisdiction in the matter. The City objected strenuously to the multiple proceedings arising out of the same fact situation. Secondly, the City asserts that the Commission has no jurisdiction under Section 111.70, since Section 111.70(1)(d) specifies a reservation of management rights and the City contends that its residency requirement is within those rights. Thirdly, the City takes the position that the jurisdiction of the Commission in these matters extends only to matters for which the Common Council of the City of Clintonville has authority, as distinguished from the Board of Police and Fire Commissioners, and that the Wisconsin Employment Relations Commission has no authority to interfere with actions of the statutorily created Board of Police and Fire Commissioners.

Responding to the City's motion, the Petitioners contend first that the Declaratory Judgment proceeding in the Circuit Court is based entirely upon constitutional grounds, and that no issue is raised in that Court concerning the City's duty to bargain or concerning prohibited practices within the meaning of Section 111.70(3)(a) of the MERA. The Petitioners therefore assert that the separate proceedings are based on entirely separate legal rights, and that there is no improper multiplicity of proceedings. Secondly, the Petitioners assert that the issue of whether the residency requirement is a matter reserved to management or is a subject for bargaining is the issue before the Commission, and that the issue is properly before the Commission. Thirdly, the Petitioners rely on the decision of the Commission in City of Sun Prairie, Decision No. 11703, 9/73, as establishing the proposition that the MERA does apply to Police and Fire Commissions and to matters within the statutory jurisdiction of such commissions.

Following the arguments of Counsel, the Examiner denied the City's motion to dismiss the prohibited practice complaint and denied the motion to dismiss the instant petition for declaratory ruling. It is well established that the Commission does not have, and does not purport to exercise, authority with respect to determinations on constitutionality. See Racine County, (10917-A,B) 7/72; aff'd Racine County Circuit Court, 7/73. The petition in this case frames only an issue concerning the duty to bargain under the MERA. No

constitutional issue is raised herein and, from the arguments of the parties, it is apparent that no issue concerning bargainability is raised before the Circuit Court for Waupaca County. Section 111.70 (4)(b) establishes specific and exclusive procedures for the resolution of disputes concerning the duty to bargain in municipal employment. The Commission has promulgated procedural rules, in Chapter ERB 18, Wisconsin Administrative Code, for proceedings under Section 111.70(4)(b) of MERA. The petition filed in the instant matter is filed in conformity with Chapter ERB 18, Wisconsin Administrative Code, and we find that the proceeding is properly before the Commission and that the Commission is not preempted from jurisdiction by the circumstances of the pendency of a related proceeding in a Circuit Court.

The Commission also concludes that there is no merit to the second basis for the City's motion. The Administrative Procedure Act, and specifically Section 227.07, Wisconsin Statutes, requires that a party seeking administrative adjudication of its rights be afforded a full hearing before the entry of a final order determining those rights. The arguments of the parties on this portion of the motion go to the merits of the issue before the Commission in the instant proceeding. Of their nature, Declaratory Rulings under Section 111.70(4)(b) of MERA, involve a determination as to whether a particular subject is a matter of wages, hours and conditions of employment, and therefore a subject for collective bargaining, or is a matter reserved to management, and therefore, excluded from the scope of bargaining. No determination could be made on such an issue in a preliminary motion to dismiss and the motion to dismiss was properly overruled on this point.

The relationship between statutorily created Police and Fire Commissions and the provisions of MERA has previously been the subject of decisions by this Commission. The Petitioners' reliance on the City of Sun Prairie case is well placed. The fact that certain of the actions, which constitute the factual background to this case, were actions of the Board of Police and Fire Commissioners of the City of Clintonville does not deprive the Wisconsin Employment Relations Commission of its jurisdiction to determine whether the matter of residency is a matter for collective bargaining. Denial of the motion to dismiss was also proper as to these contentions by the City.

Following the denial of its motion to dismiss, the City announced its intention not to participate further in the hearing. The Petitioners had earlier expressed a willingness to have the instant Declaratory Ruling proceeding dismissed, in that the bargainability issue raised in the instant proceeding is one of the issues raised in the complaint of prohibited practice filed by the Petitioners herein and mentioned above. However, under the circumstances of the City's refusal to answer or participate, the Petitioners declined to withdraw their petition herein, and indicated a desire to proceed with hearing on both cases. Thereafter, the Petitioners proceeded with the presentation of evidence, and, Counsel for the City was offered but declined further participation on behalf of the City.

The hearing was completed and closed on October 10, 1973. A transcript of the proceeding was issued on January 17, 1974, and, pursuant to his request therefor, a copy of that transcript was mailed to Mr. Lauer. Counsel for the City failed to respond to the Reporter's

request for an acknowledgment of receipt of the transcript, and the City has failed and refused to remit the charges for that transcript levied pursuant to Section 111.71(1) Wisconsin Statutes. By a letter addressed to Counsel for the City under date of January 21, 1974, the Examiner (and Hearing Officer herein) established a schedule for the filing of briefs, and set aside a period of approximately two weeks, ending on February 11, 1974, for the filing of any motions or arguments by the City of Clintonville. No response was received. The Petitioners filed a brief with the Commission on January 28, 1974, a copy of which was served on Counsel for the City. The City did not respond to, nor acknowledge the brief of the Petitioners.

Duty to Bargain

The Commission has previously ruled that rules or ordinances adopted by a Municipal Employer requiring that municipal employees maintain their residence within a specific area, impose a condition of employment on such municipal employees, and that such residency requirements are, therefore, subject to collective bargaining within the meaning of Section 111.70(1)(d) of MERA. In The Sewerage Commission of the City of Milwaukee (11228-A) 10/72, this Commission stated:

"It should be noted that the residency requirement adopted by the Municipal Employer specifically requires all current and future employees to either remain living or to live within the Milwaukee Metropolitan Sewerage District 'as a condition of employment' (emphasis supplied). Thus, it is clear that the resolution recognizes that the residency requirement is a condition of employment. In addition, testimony revealed that violation of the residency requirement could subject an employee to discipline and potentially to discharge. Therefore, if an employee were terminated because he violated the residency requirement, his conditions of employment would be most drastically affected. To hold otherwise would be to adopt a most untenable and myopic approach to the reality of labor relations. The Municipal Employment Relations Act does require a Municipal Employer to bargain in good faith over subjects affecting wages, hours and conditions of employment, 1/ but it does not require a Municipal Employer to necessarily accede to a Union's proposal relating to those subjects."

While the City of Clintonville's residency Ordinance does not use the same language, the effect of that Ordinance and the means of its enforcement are clearly the same. A similar issue was raised before the Commission in City of Brookfield (11406-A,B) 9/73, and we there reaffirmed the holding of the Sewerage Commission case. Nothing is found in the facts in this record which would indicate


a contrary result in this case, and we have therefore issued the accompanying Declaratory Ruling.

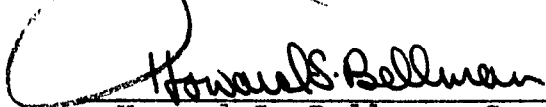
Dated at Madison, Wisconsin, this 6th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner