

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION.

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In the Matter of the Petition of	:	
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CITY OF MILWAUKEE, a municipal	:	
corporation	:	Case CXXXIV
	:	No. 17333 FF-566
To Initiate Fact Finding Between	:	Decision No. 12277-B
Said Petitioner and	:	
	:	
MILWAUKEE PROFESSIONAL FIRE FIGHTERS	:	
ASSOCIATION, LOCAL #215, I.A.F.F.,	:	
AFL-CIO	:	

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

Milwaukee Professional Fire Fighters Association, Local #215, I.A.F.F., AFL-CIO, having filed a petition requesting the Wisconsin Employment Relations Commission to hold hearing to determine whether Fact Finder Robert L. Stutz, previously appointed by the Commission in the above entitled matter, has authority to issue an interim recommendation binding on the parties on the issue of manning of the Fire Department maintained and operated by the above named Municipal Employer; and hearing in the matter having been conducted at Milwaukee, Wisconsin, on December 7, 1973, the full Commission 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 and Conclusions of Law.

FINDINGS OF FACT

1. That on November 13, 1973, the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, issued Findings of Fact, Conclusion of Law, Certification of Results of Investigation and Order Initiating Fact Finding and Appointing Fact Finder, wherein it ordered that fact finding be initiated for the purpose of recommending a final and binding resolution of six issues, which included an issue identified as "Management Rights and Manning", which recommendations the City of Milwaukee and Milwaukee Professional Fire Fighters Association, Local #215, I.A.F.F., AFL-CIO, had agreed would be accepted and implemented by said Municipal Employer and Union; and further in said Order the Commission appointed Robert L. Stutz of Chilmark, Massachusetts, as the Fact Finder in the matter.

2. That said Fact Finder, on November 26, 1973, conducted a pre-hearing meeting at Milwaukee, Wisconsin, which meeting was attended by representatives of the parties and wherein, the Union requested that said Fact Finder make an interim ruling on the issue of "manning", specifically requiring the Municipal Employer to restore the status quo as it existed on October 31, 1973; that representatives of the Municipal Employer voiced their opposition to the request of the Union; and in that regard an issue arose as to whether the Fact Finder had the jurisdiction and authority to issue any interim recommendation.

3. That on December 4, 1973, said Union filed a petition with the Commission requesting the Commission to determine whether the Fact Finder has jurisdiction to issue an interim recommendation on the "manning" issue.

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

CONCLUSIONS OF LAW

1. That, as contemplated in Sec. 111.70(4)(c)3 of the Municipal Employment Relations Act, the Wisconsin Employment Relations Commission does not lose its jurisdiction in a fact finding proceeding upon the issuance of an order requiring the parties involved to proceed to fact finding and the designation of Fact Finder in said order.

2. That, within the meaning of Sec. 111.70(4)(c)3.b. of the Municipal Employment Relations Act, Robert L. Stutz, as the Fact Finder, has jurisdiction and authority to issue an interim binding recommendation on the issue of "manning", following a hearing conducted on said issue, at which hearing the parties be given the opportunity to present evidence and argument with respect thereto.

Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of December, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Les S. Rice II  
Les S. Rice II, Commissioner

Howard S. Bellman  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Two issues arose at the hearing in this matter regarding the petition filed by the Union to determine the interim jurisdiction of the Fact Finder, previously appointed by the Commission to issue a final and binding resolution of six issues existing in bargaining between the parties. 1/ The facts pertaining to said issues are set forth in the Findings.

Does the Commission Have Jurisdiction to Rule on the Petition to Determine the Interim Jurisdiction of the Fact Finder?

During the course of the hearing the Municipal Employer questioned the jurisdiction of the Commission to rule on the petition filed by the Union, contending that the jurisdiction of the Commission in the instant fact finding proceeding was terminated upon the issuance of its Order that the parties proceed to fact finding and naming the Fact Finder. We direct the attention of the parties to Section 111.70(4)(c)3.d. of the Municipal Employment Relations Act, which provides that, after a Fact Finder has issued his recommendations, the parties notify each other and the Commission with regard to the implementation or non-implementation, or the acceptance or rejection of the Fact Finder's recommendations. In the instant matter the parties stipulated to proceed to final and binding fact finding, nonetheless, the Commission concludes that such notification required in the subsection cited still applies, and therefore, the Commission is satisfied that it does not lose jurisdiction of the fact finding proceeding upon the appointment of the fact finder. Therefore, we conclude that the Commission has jurisdiction to determine the jurisdiction and authority of the Fact Finder, formally appointed by the Commission, specifically with respect to the Fact Finder's authority to issue interim recommendations and, in this case on the issue of "manning", which was one of the issues the parties had previously stipulated was subject to final and binding fact finding.

Does the Fact Finder Have Jurisdiction and Authority to Issue an Interim Final and Binding Recommendation?

There is no limitation in the Municipal Employment Relations Act which provides for the procedure to be followed by the Fact Finder, nor do the Administrative Rules of the Commission applying to the hearing before fact finders set forth any procedure regarding the scope and nature of the Fact Finder's hearing, except that the Fact Finder should serve the parties a notice of the hearing, that such notice may be amended or withdrawn, and that the hearing shall be public and shall concern pertinent matters necessary for the Fact Finder to determine the facts in dispute and which, in the opinion of the Fact Finder, assists him in reaching his recommendation for the resolution of the dispute. The rules also provide that the Fact Finder may reschedule the date of the hearing. 2/

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1/ It is also noted that the Union's petition for the instant ruling was prompted by a request of the Fact Finder for advice in the matter from the Commission.

2/ ERB 14.10

We deem that the Fact Finder has the authority to determine the sequence of the issues to be presented before him and whether he will separately issue interim final recommendations with respect to each issue, or whether he will combine his recommendations and issue said recommendations on the issues involved in one document. Further, the Fact Finder has the jurisdiction and authority to render an interim binding recommendation on the issue of "manning", following a hearing conducted on said issue, at which hearing the parties should be given an opportunity to present evidence and argument with respect thereto.

Any other authority granted to the Fact Finder, including a grant of authority to issue an interim order, without providing both parties with an opportunity to present evidence and argument on the issue involved, would be contrary to the letter and spirit of the agreement reached by the parties herein to proceed to final and binding fact finding to resolve the issues remaining in their negotiations.

Dated at Madison, Wisconsin, this 10th day of December, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slawney  
Morris Slawney, Chairman

Zel S. Rice II  
Zel S. Rice II, Commissioner

Howard S. Bellman  
Howard S. Bellman, Commissioner