

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF GREEN BAY

Case XXXIX  
No. 17366 MIA-69  
Decision No. 12307-A

Green Bay Fire Fighters Local 141, International Association of Fire Fighters, having on November 19, 1973, filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission initiate compulsory final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between the Petitioner and City of Green Bay on matters affecting the wages, hours and conditions of employment of firefighting personnel in the employ of said Municipal Employer; and an informal investigation having been conducted on December 11, 1973 and December 19, 1973, by Marvin L. Schurke, a member of the Commission's staff; and the Commission being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law, Certification of Results of Investigation and Order Requiring Arbitration.

1. That Green Bay Fire Fighters Local 141, International Association of Fire Fighters, hereinafter referred to as the Union, is a labor organization having its offices at 1671 - 9th Street, Green Bay, Wisconsin 54304.

2. That City of Green Bay, hereinafter referred to as the Municipal Employer, has its offices at City Hall, 100 North Jefferson, Green Bay, Wisconsin.

3. That, at all times material herein, the Union has been, and is, the voluntarily recognized exclusive collective bargaining representative of the firefighting personnel in the employ of the Municipal Employer.

4. That, on November 19, 1973, the Union filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, with regard to an impasse existing between the parties with respect to wages, hours and conditions

of employment of firefighting personnel for the year 1974; that informal investigation was conducted on December 11, 1973 and December 19, 1973, by Marvin L. Schurke, a member of the Commission's staff; and that, however, the parties remain at impasse on the existing issues.

5. That the parties have not established mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining, and further, that the parties have not mutually agreed that the arbitration should not be limited to the last and final offers of each of the parties.

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

#### CONCLUSION OF LAW

That an impasse, within the meaning of Section 111.77(3) of the Municipal Employment Relations Act, exists between Green Bay Fire Fighters Local 141, International Association of Fire Fighters, and City of Green Bay with respect to negotiations leading toward a collective bargaining agreement for the year 1974 covering the wages, hours and conditions of employment for firefighting personnel employed by the City of Green Bay.

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

#### CERTIFICATION

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of compulsory final and binding arbitration, as required by Section 111.77 of the Municipal Employment Relations Act, with respect to negotiations between Green Bay Fire Fighters Local 141, International Association of Fire Fighters, and City of Green Bay, on issues of wages, hours and conditions of employment of firefighting personnel employed by City of Green Bay have been met.

NOW, THEREFORE, it is

#### ORDERED

1. That compulsory final and binding final offer arbitration be, and the same hereby is, initiated for the purpose of issuing a final and binding award to resolve the impasse existing between Green Bay Fire Fighters Local 141, International Association of Fire Fighters, and City of Green Bay.

2. That Green Bay Fire Fighters Local 141, International Association of Fire Fighters, file, in written form, its final offer as of November 19, 1973, as well as its final offer as of December 19, 1973, on the issues remaining in negotiations between said Union and City of Green Bay, with the Wisconsin Employment Relations Commission on or before February 25, 1974, and at the same time serve a copy thereof on the above named Municipal Employer.

3. That City of Green Bay file, in written form, its final offer as of November 19, 1973, as well as its final offer as of December 19, 1973, on the issues remaining in negotiations between said Municipal Employer and Green Bay Fire Fighters Local 141, International Association

of Fire Fighters, with the Wisconsin Employment Relations Commission on or before February 25, 1974, and at the same time serve a copy thereof on the above named Union.

4. That the parties select an arbitrator within ten (10) days after the issuance of this Order from the panel of arbitrators submitted to the parties in the accompanying letter of transmittal, by alternately striking four (4) of the members from said panel for the selection of the neutral arbitrator; and thereupon the parties, or either of them, shall notify the Commission, in writing, of the name of the neutral arbitrator, and the Commission shall then issue an Order appointing said neutral arbitrator.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of February, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Thomas Slayney*

Thomas Slayney, Chairman

*Zell S. Rice II*  
Zell S. Rice II, Commissioner

*Howard S. Sullivan*

Howard S. Sullivan, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION  
OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION AND  
ORDER REQUIRING ARBITRATION

The parties to the instant proceeding were parties to a collective bargaining agreement effective for the calendar year 1973. Pursuant to the provisions of that agreement, the Union gave notice of a desire to alter or amend the provisions of the agreement, and the parties held three formal collective bargaining meetings during the period commencing on September 25, 1973 and ending on November 14, 1973. The Union filed the petition initiating the instant proceeding on November 19, 1973, wherein it described the issues at impasse between the parties as: "Lay-offs - Wages - Pension Payment - Sick Leave - Holiday Pay". By mutual agreement of the parties, informal investigation was commenced on December 11, 1973 at Green Bay, Wisconsin, Marvin L. Schurke, a member of the Commission's staff, being present.

At the outset of the informal investigation, the Union stated its opposition to the layoff of four members of the bargaining unit, scheduled for December 31, 1973. The Union proposed reduction of the size of the work force by attrition, and that the 1974 collective bargaining agreement between the parties contain a minimum manning provision. The City offered to bargain layoff procedures for inclusion in the 1974 agreement of the parties, but took the position that the layoff of four employees on or before December 31, 1973 was not a proper subject for final and binding arbitration concerning a collective bargaining agreement for 1974.

During the informal investigation held on December 11, 1973, the Union also proposed a cost of living increase, a wage increase, improved pension contribution by the City, dental insurance to be provided by the City, improved sick leave accumulation, improved vacation benefits, conversion of unused sick leave for payment of health insurance premiums following retirement, and overtime payment at the rate of time and one half for hours in excess of 56 hours per week, all for inclusion in the 1974 collective bargaining agreement between the parties. The City's offer of a total package increase equal to 5.5% was rejected by the Union.

The parties were unable to resolve their differences on December 11, 1973, and, by mutual agreement, the informal investigation was continued on December 19, 1973. At the conclusion of the meeting held on December 19, 1973, the representatives of the City indicated that they would give further consideration to the latest proposal of the Union on issues other than the then pending layoffs. However, the parties remained at impasse on all such issues and they concurred that further informal investigation or mediation would not be productive under the circumstances then existing. At the close of the informal investigation the parties were at impasse on issues involving the four layoffs, minimum manning, wage increases, pension contributions, benefits improvement and overtime pay.

The City contends that the layoffs in question were accomplished within the authority reserved to the City in the management rights clause of the 1973 collective bargaining agreement between the parties and, therefore, are not a proper subject for arbitration in the instant "interest" arbitration proceeding. The Union contends that the City is under a duty to bargain concerning its decision to lay off four members of the bargaining unit, and that the layoff issue is an

appropriate issue for inclusion in this arbitration proceeding concerning the 1974 agreement between the parties.

Prior to any further action by the Commission, the Union, on January 14, 1974, filed a complaint with the Commission wherein it alleged that the City had violated Section 111.70(3)(a)(4) of the Act by unilaterally changing working conditions with respect to the City's action in laying off of four employees as above noted, contending that such action occurred while the parties were at impasse with regard thereto. Thereafter, on January 25, 1974, the Union, in writing, advised the Commission that it waived said complaint, as well as another pending complaint 1/, the latter not containing matters material to the instant proceeding, as affecting the processing of the instant proceeding.

The Commission is satisfied that the issues involved in Case XLIII are not to be considered in this final and binding arbitration proceeding, since that case involves an activity occurring under the agreement which expired December 31, 1973; and further that the Commission, and not the Arbitrator, has jurisdiction to determine the mandatory subjects of bargaining and as whether there has been a violation of the duty to bargain.

Section 111.77 of MERA contemplates that only impasses arising in negotiations of a "new contract or a contract containing the proposed modifications" 2/ of an existing contract are subject to final and binding arbitration. Nothing in Section 111.77 contemplates that impasses, involving law enforcement and firefighter personnel, which occur other than in negotiations of a new contract, or of proposed modifications of an existing contract, are subject to arbitration pursuant to Section 111.77. Thus, for example, impasses which occur in the processing of contractual grievances, or with respect to collective bargaining, during the term of an agreement, on matters not covered by said agreement, are not within the purview of said Section. Of course there is nothing in the statute to prevent the implementation of arbitration procedures voluntarily agreed upon by the parties for the resolution of such matters.

Therefore, in the instant proceeding, the parties are at impasse with regard to wage increases, pension contributions, benefit improvements and overtime pay with respect to a collective bargaining agreement for the year 1974.

Dated at Madison, Wisconsin, this 20th day of February, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Thomas Slavney  
Morris Slavney, Chairman

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

Howard S. Bellman  
Howard S. Bellman, Commissioner

1/ City of Green Bay XLIII

2/ Section 111.77(1)(a) and (b)