

STEVENS POINT FIRE FIGHTERS  
ASSOCIATION, IAFF, LOCAL 484,  
AFL-CIO,

VS.

Respondent.

ORDER DENYING MOTION TO MAKE COMPLAINT  
MORE DEFINITE AND CERTAIN

City of Stevens Point having previously filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission (Case XI) alleging that Stevens Point Firefighters Association, IAFF, Local 484, AFL-CIO, has committed prohibited practices within the meaning of Section 111.70, Wisconsin Statutes; and the Commission having appointed George R. Fleischli, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Statutes in that case; and the Examiner having set the matter for hearing on May 9, 1974, with Answer date of May 2, 1974; and the Stevens Point Firefighters Association, IAFF, Local 484, AFL-CIO in that case having filed an "Answer and Counterclaim" wherein it alleged that the City of Stevens Point has committed certain prohibited practices; and that said matters be consolidated for the purposes of hearing, which are to be heard on May 9, 1974, at Stevens Point, Wisconsin, and further Respondent City having been granted the right to file Answer to the Counterclaim on or before May 6, 1974; and on April 29, 1974, the Respondent City having filed a motion to make said Counterclaim more definite and certain; and the Examiner, having reviewed the Counterclaim and said motion, being fully advised in the premises, and being satisfied that the motion to make the Counterclaim more definite and certain be denied;

NOW, THEREFORE, it is

ORDERED

That the motion to make said Counterclaim more definite and certain be, and the same hereby is, denied.

Dated at Madison, Wisconsin, this 2nd day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

George R. Fleischli, Examiner

MEMORANDUM ACCOMPANYING  
ORDER DENYING MOTION TO MAKE COMPLAINT  
MORE DEFINITE AND CERTAIN

In its motion to make the Counterclaim more definite and certain the City requested an order requiring Local 484 to state in a clear and concise manner the facts constituting the alleged prohibited practices, including the following:

- "1. By stating what section of 111.70 (3) (a) has been violated by the employer.
2. By stating how the City of Stevens Point's, in Case IX No. 17556 MIA-86, final offer is totally meaningless and the reasons for the conclusion that under no circumstances could it be the basis for an arbitrator's decision.
3. By stating how and in what respect the City of Stevens Point's activity in Case IX No. 17556 MIA-86 was fraudulent and deceitful and an attempt to avoid the consequences of the laws of the State of Wisconsin pursuant to Section 111.77 for binding final offer arbitration.
4. By stating how the employer has engaged in a prohibited practice by contacting the arbitrator in Case IX No. 17556 MIA-86 and the Wisconsin Employment Relations Commission to inform both parties of the City's intent to file a charge of prohibited practice.
5. By stating how and in what respect the final offer of the employer in any way shows facts which could lead to the conclusion that it was fraudulent or designed to prejudice the rights of the Respondent and how any acts of the employer lead to the conclusion that the City of Stevens Point has sought to evade and avoid the consequences of arbitration pursuant to 111.77.
6. By stating under what authority the Respondent now seeks an order of the Commission for the appointment of an arbitrator in Case IX No. 17556 MIA-86 in light of the prior selection and appointment of David B. Johnson to so act."

It should be noted that the sections alleged by Local 484 to have been violated by the City are Sections 111.77(4)(b), 111.70(5), 111.77, 111.70(3)(5) and 111.70(3)(c). Section 111.70(5) does not refer to prohibited practices. However, Section 111.77, the provision relating to final and binding arbitration in disputes involving law enforcement and firefighting personnel, requires municipal employers and employees to bargain in good faith and to comply with the procedures set forth in said Section relating to such arbitration. Section 111.70(3)(a)<sup>4</sup> provides that it is a prohibited practice for a municipal employer to refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit. It is, therefore, apparent to the Examiner, and it should be apparent to the City, that Local 484 in its Counterclaim is alleging a violation of Section 111.70(3)(a)<sup>4</sup>.

Portions of the City's motion, namely, paragraphs 2 through 5, refer to conclusionary allegations of fact contained in said Counterclaim. Such findings are for the Examiner to make based on the evidence adduced at the hearing. Local 484 describes the final offer submitted by the City for the purposes of the arbitration as "totally meaningless." The same is true with the characterization of such offer as being submitted "deceitfully, fraudulently and in an effort to completely misrepresent its (the City's) position."

Further, with respect to paragraph 4 of the motion, the facts alleged in the Counterclaim with respect thereto are set out in paragraph 3 of the Counterclaim. If these facts are established in the record, the Examiner will determine whether such facts constitute a prohibited practice.

Paragraph 5 of the motion relates to also a conclusionary matter, and the facts relied upon by Local 484 with respect to the allegation referred to is contained in the Counterclaim.

Paragraph 6 of the motion relates to a matter of the interpretation of the statute and not a matter of fact, and, therefore, the motion to make the Counterclaim more definite and certain in that respect is also denied.

Dated at Madison, Wisconsin, this 2nd day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli  
George R. Fleischli, Examiner